

**JUNE 2008**

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*The information in this document is of a general nature and does not constitute legal advice*

## **PROPERTY DEALS WITH A TRUST? CHECK FOR AUTHORITY!**

Trustees of trusts must be both

- Appointed per the terms of the trust deed, and
- Authorised in writing by the Master of the High Court to act as trustees.

The High Court held recently that in some circumstances a trustee may be justified in taking legal action on behalf of the trust even before receiving the Master's authorisation to act as trustee – the court has a discretion to subsequently ratify such action.

But in contrast, any contract purportedly entered into by an unauthorised Trustee will be totally void – and *cannot* be subsequently ratified.

So when contracting with a Trust – for any purpose – check that: -

1. The Master has issued “Letters of Authority” to each trustee, and
2. The trust deed empowers the trustees to enter into the contract in question in the first place (with property deals, check for authority to deal with immovable property in the applicable manner).

## **SUING THE STATE – MOVE FAST, YOU HAVE 6 MONTHS ONLY!**

Recent high-profile media reports confirm that any victim of unlawful arrest (and/or assault whilst in detention) should sue the State for damages – the courts are making substantial awards.

But if you have a case against the State (for anything – not just claims related to police action), you need to obtain legal assistance without delay.

You have only six months to give the State proper notice of any claim. Whilst late notice can be condoned, a recent High Court case illustrates the danger of leaving it too long. A couple

wanting to sue for the death of their baby in a State hospital was refused permission to do so, the Court holding that they had not shown “good cause” for their delay in giving notice.

## **DIRECTORS: BEWARE DELAY IN LIQUIDATION APPLICATIONS**

A company may apply for its own liquidation, but, the High Court held recently, the board of directors cannot make such an application “without a resolution approved by a general meeting of the company”.

The formalities involved in holding a general meeting introduce potential delay into what may be a very urgent process – so directors of companies in distress need to act quickly as soon as they become aware of problems.

Directors should also immediately take legal advice as to whether or not trading may continue, as they could well become personally liable for corporate debts if they trade on regardless.

## **IMPORTED GOODS – KEEP THE PAPERWORK, OR SARS CAN SEIZE!**

Anyone selling or dealing in imported goods is obliged to “maintain books of account and documents to reflect from whom the goods were purchased”.

Otherwise, as happened in a recent case before the Supreme Court of Appeal involving some R1.2m worth of clothing labelled as made in China, they are at risk of seizure and forfeiture as illegal imports. If you bought the goods locally (from an importer or wholesaler for example), it’s up to you to prove that you did – it is not for SARS to prove that you didn’t.

## **EMPLOYERS’ NEW OBLIGATIONS TO BAR SEXUAL OFFENDERS**

Children and mentally disabled people receive further protection from sexual abuse once new laws come into effect in June (by the 16th at the latest).

A “National Register for Sex Offenders” will be established within 6 months, and it will be unlawful for offenders to be “employed” (which includes assisting an employer without pay) in a wide variety of situations where they may interact with children or mentally disabled people. The range of employers likely to be affected is extremely wide – apart from the obvious categories, many sports clubs, churches, medical practices, airlines, bus services etc will have to comply. Failure to do so carries not only criminal liability, but also the potential for substantial damages claims if anything goes wrong.

As always, all the formalities and requirements of labour legislation will still apply, so get ready now. Seek advice on how you should handle these new requirements - both in regard to existing employees, and in regard to new recruitment practices (once the Register has been established, a “clear” certificate must *a/ways* be obtained before hiring).

## HOW TO FORCE A SERVITUDE RELOCATION

If your property is subject to a “defined” right of way servitude (in other words, the servitude specifies exactly where the right of way is to run), can you forcibly relocate the right of way over the objections of the other party?

Until recently, the answer was no – you needed consent from the servitude holder (the person with a right of way over your property). Now, however, the Supreme Court of Appeal has held that a landowner may unilaterally force relocation, provided that: -

1. The landowner “is or will be materially inconvenienced in the use of his property” if the right of way remains as is;
2. The new right of way is still over his property;
3. The relocation will not prejudice the owner of the servitude;
4. The landowner pays all costs of relocation and of changing the title deeds.

## NOT ENOUGH SEATS, NO TAXES INCLUDED – SO AIRLINE’S PRICE ADVERT GROUNDED

Don’t allow advertisers to mislead you, either as to availability of product, or accuracy of price. A budget airline was recently forced to pull an advert for two breaches of the Code of Advertising Practice: -

1. The airline was unable to prove that “a reasonable number of seats were actually available” at the advertised price; and
2. The advertised flight prices did not indicate that they excluded taxes; the Code requires advertisers “to either quote a fully inclusive price in their advertising, or draw the consumer’s attention in a prominent manner to the fact that further costs are payable over and above the advertised amount.”

## WEBSITE OF THE MONTH: SAVE FUEL, SAVE RAND

With the soaring cost of petrol and diesel hammering many business and personal budgets, it makes sense to cut consumption in every way possible.

The good news is that you can save as much as 25% – and that’s a lot of money these days!

Be wary of some of the advice you will find on the Internet (and in e-mails currently circulating, which purport to emanate from “petroleum industry” professionals). Rather go to sites such as these: -

- The City of Cape Town has a quick list of fuel-saving tips on its website at <http://www.capetown.gov.za/en/EnvironmentalResourceManagement/tips/Pages/FuelSavingTips.aspx>.
- For more detailed ideas, go to [www.gaspump-tips.co.za](http://www.gaspump-tips.co.za) and [www.save-petrol.co.uk](http://www.save-petrol.co.uk) (but ignore the advice to “shop around” for the best deal – regrettably, petrol prices are still regulated in SA).

Should you require any further information or assistance please contact:

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