

MARCH 2008

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ROLLING BLACKOUTS – WHAT TO DO, WHO TO SUE?

If you have suffered measurable losses as a result of rolling blackouts, you should, sooner rather than later, take advice on whether you possibly have a claim against Eskom and/or your municipality. Depending on the circumstances, you could perhaps have a claim for breach of contract and/or breach of statutory requirements.

In any event, check that you are ready for further power cuts -

- If you are a landlord, check that your lease covers you for unforeseen interruptions to electricity, water supply etc.
- If you are an employer, consider asking your employees to agree to temporary suspension of employment contracts in such circumstances – but first seek proper advice, as the correct procedures must be closely followed.
- Also check that your insurance cover is adequate; and that it will hold even if your security systems and alarms are disabled by a blackout.

BUYING PROPERTY FROM A COMPANY? SPECIAL RESOLUTION REQUIRED!

If you are buying a property or business (or indeed any substantial assets) from a company, be warned that your sale could be invalid if the directors aren't properly authorised to sell.

And the requirements have just changed - a special resolution of members is now required where a company is disposing of all or "the greater part" of its "undertaking" or "assets".

The special resolution is different in important respects from an ordinary resolution (the previous requirement). It must be: -

- Properly worded to authorise or ratify the *specific* transaction;
- Passed at a general meeting by 75% of shareholders (no longer just a simple majority). Be careful here - various formalities in regard to notice of the meeting and passing of the resolution apply;
- Registered with CIPRO within 30 days (it doesn't take effect until then).

Take advice also (*before* you sign the sale agreement) on whether or not the sale requires advertisement in terms of the Insolvency Act.

VAT REGISTRATION – QUICKER, EASIER

If you have suffered the complexities and delays of an application to register for VAT, you will be delighted to hear that SARS has now introduced “a vastly simplified and streamlined” process.

A substantial reduction of paperwork and “instant issuing of VAT registration numbers over the counter at SARS branches” are promised.

The new application form is shorter than the old one, and supporting documents are reduced to “two key documents – copy of ID and proof of banking details.”

P.S. The turnover threshold for registration will be increased to R1m per Budget proposals; if your business is below that, it seems that you will have the option of going onto a sliding-scale “presumptive turnover tax” to replace VAT and income tax.

BODIES CORPORATE – BEWARE THE BENT MANAGING AGENT!

The recent liquidation of a company, which has a 30-year track record in administration of sectional title schemes, has drawn attention to the necessity for bodies corporate and home owners associations to appoint managing agents with care. Court papers filed in the matter talk of over R5m of body corporate money reportedly missing.

If a managing agent does raid your funds, you may have a claim on the Estate Agents Fidelity Fund – but only if: -

1. The loss results from theft. Mere negligence by the administrators isn't covered – check your insurance if you want cover for that.
2. The monies stolen are “trust” monies. Check that any funds held for you are in a trust account. Even if any monies are left, they will fall into the liquidation unless they are identifiable as trust monies.
3. The theft was committed by an “estate agent”. If managing agents aren't registered with the Estate Agency Affairs Board, you will have to show that they fall under the statutory definition of “estate agent”. So insist that the agents give you proof of registration and a copy of their fidelity fund certificate *every year*.

BROKERS AND CLIENTS: INTERIM INSURANCE PITFALL!

When you buy a car, you will want/need immediate insurance cover. Make sure that you complete the necessary paperwork immediately, even if your broker is prepared to confirm that cover is in place without it.

In a recent determination by the Ombud for Financial Service Providers, insurers agreed to give interim cover on a motorcycle subject to submission of a completed and signed proposal form. The owner failed to lodge the form, and consequently his claim for the subsequent loss of the motorcycle was rejected.

In dismissing the owner's claim against the broker, the Ombud held that the broker in this case had acted in good faith in confirming interim cover. But he also warned brokers against the general practice of confirming cover “without first having obtained at least a signed application or proposal form” – there are clear risks there for both broker and client.

CONTEMPT OF COURT AND DIVORCE SETTLEMENTS

You have obtained a court order, but the other party is refusing to comply – what can you do about it? One line of action is to bring “contempt of court” proceedings. You will need to prove *beyond a reasonable doubt* (a much higher standard of proof than is normally required in civil cases) that the other party –

- Knew of the order, and
- Failed to comply with it

It's then up to the other party to “furnish evidence raising a reasonable doubt whether non-compliance was wilful and mala fide” (i.e. intentional and in bad faith).

For example the High Court recently fined a mother R20.000 (suspended for 5 years) for unilaterally deciding to send her child to a particular school, in breach of a court order requiring such decisions to be made jointly with the child's father.

WORKING HOURS CONTROL – EARNINGS THRESHOLD UP ON 1 MARCH

Most of the provisions in the Basic Conditions of Employment Act that regulate working hours, overtime pay, public holiday work etc, do not apply to employees earning in excess of a determined threshold.

From 1 March 2008, the threshold increases to R149.736 p.a. (R12.478 p.m.).

WEBSITE OF THE MONTH: WEB DIRECTORIES

The Internet is a truly massive resource of information on any topic you can think of, but a huge amount of that information is – at best – of doubtful origin and value.

Using a search engine won't filter the good from the bad for you. But don't be put off – use a trusted “Web Directory” to find your way to sites (sorted by category) that have been checked and reviewed for quality. That way you are leveraging off the time and expertise of people around the world who (unlike most of the rest of us) have the time and interest to surf around looking for value.

Get a list of some of the better-known international directories on Wikipedia at http://en.wikipedia.org/wiki/List_of_web_directories.

A South African web directory worth visiting is StartPage at www.startpage.co.za - have a look for example at their “Load Shedding” category for information sites, alternative energy sites etc.

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