JUDICIAL MATTERS AMENDMENT BILL, 2015

SECTIONS OF ACTS, TO WHICH AMENDMENTS ARE PROPOSED

MAGISTRATES’ COURTS ACT  
NO. 32 OF 1944

**9.   Appointment of judicial officers.**—(1)  (*a*)  Subject to the Magistrates Act, 1993, and [section 10](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/cyfh#g0) of this Act, the Minister may appoint for any district or sub-district a magistrate, one or more additional magistrates or one or more assistant magistrates and for every regional division a magistrate or magistrates.

[[Para. (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g2) substituted by [s. 17](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/maio#g0) of [Act No. 90 of 1993](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho#g0) and by [s. 1 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c/ebf5c#g0) of [Act No. 19 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c#g0).]

(*a*A)  The Minister may, in a particular case or generally and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g2) to the Director-General of his or her department or another officer of that department with the rank of director or an equivalent or higher rank or a magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate.

[[Para. (*a*A)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g3) inserted by [s. 11](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/ayq5c/byq5c/nnr5c#g0) of [Act No. 29 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/ayq5c/byq5c#g0) and substituted by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/bcf5c/ccf5c#g0) of [Act No. 28 of 1981](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/bcf5c#g0), by [s. 3 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c/pt54c#g0) of [Act No. 104 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c#g0) and by [s. 3 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c/taf5c#g0) of [Act No. 66 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c#g0).]

(*b*)  . . . . . .

[[Para. (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g4) substituted by [s. 3 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c/taf5c#g0) of [Act No. 66 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c#g0) and deleted by [s. 1 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c/ebf5c#g0) of Act. [No. 19 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c#g0).]

(*c*)  . . . . . .

[[Para. (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g5) substituted by [s. 24 (1) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/kmt4c/ymt4c#g0) of [Act No. 94 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/kmt4c#g0) and deleted by [s. 3](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c/qp54c#g2) of [Act No. 31 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c#g0).]

(*d*)  A magistrate, an additional magistrate or an assistant magistrate of a district or sub-district may at the same time also be a magistrate, an additional magistrate or an assistant magistrate of another district.

[[Para. (*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g6) added by [s. 24 (1) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/kmt4c/ymt4c#g0) of [Act No. 94 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/kmt4c#g0).]

(1A)  . . . . . .

[[Sub-s. (1A)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g7) inserted by [s. 8 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/hvq5c/ivq5c/ovq5c#g0) of [Act No. 102 of 1972](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/hvq5c/ivq5c#g0) and deleted by [s. 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/xdtg/ydtg/ap2i#g0) of [Act No. 34 of 1986](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/xdtg/ydtg#g0).]

(2)  (*a*)  A person appointed as judicial officer under this section shall, before commencing with his or her functions in terms of this Act for the first time, take an oath or make an affirmation subscribed by him or her, in the form set out below:

“I, (full name)

do hereby swear/solemnly affirm that in my capacity as a judicial officer I will be faithful to the Republic of South Africa, will uphold and protect [the Constitution](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg#g0) and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with [the Constitution](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg#g0) and the law.”

[[Para. (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g8) substituted by [s. 4](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/2cf5c/5cf5c#g0) of [Act No. 53 of 1970](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/2cf5c#g0) and by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/bs54c/cs54c#g0) of Act No. 62 of 2000.]

(*b*)  Any such oath or affirmation shall be taken or made in open court before the most senior available magistrate of the district concerned or a justice of the peace who shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

(3)  Subject to [subsections (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gc) and [(5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gd), the Minister, after consultation with the head of the court concerned, may appoint any appropriately qualified and fit and proper person to act—

(*a*) in the place of any magistrate, additional magistrate or assistant magistrate who is not available; or

(*b*) in any vacant office of magistrate; or

(*c*) as a magistrate in addition to any magistrate of a regional division or a district.

[[Sub-s. (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gb) substituted by [s. 3 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c/pt54c#g0) of [Act No. 104 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c#g0), by [s. 3 (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c/taf5c#g0) of [Act No. 66 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c#g0) and by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n/rv8n#g0) of [Act No. 28 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n#g0).]

(4)  (*a*)A magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may—

(i) whenever a magistrate additional magistrate or assistant magistrate is for any reason unavailable to carry out the functions of his or her office; and

(ii) in consultation with the Minister or an officer in the Department of Justice and Constitutional Development designated by the Minister,

temporarily appoint any competent person in the place of the magistrate concerned.

(*b*)An appointment in terms of [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gh) remains valid for the duration of the unavailability of the magistrate in question, or for a period not exceeding five consecutive court days, whichever period is the shortest.

(*c*)Any person appointed in terms of [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gh) may—

(i) upon the expiry of the appointment in terms of [paragraph (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gk); and

(ii) if the magistrate in whose place the appointment has been made, is still unavailable,

be reappointed once only in terms of [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gh) in the place of that magistrate.

[[Sub-s. (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gc) substituted by [s. 3 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c/pt54c#g0) of [Act No. 104 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c#g0), by [s. 3 (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c/taf5c#g0) of [Act No. 66 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c#g0) and by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n/rv8n#g0) of [Act No. 28 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n#g0).]

(5)  (*a*)  Any person appointed in terms of [subsection (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gb)—

(i) holds that office for a period determined by the Minister at the time of the appointment, but the period so determined may not exceed three months; and

(ii) may be reappointed to that office in terms of [subsection (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gb).

(*b*)The Minister must cause Parliament and the Magistrates Commission to be informed whenever any vacancy in the office of a magistrate has remained unfilled for a continuous period exceeding three months.

[[Sub-s. (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gd) deleted by [s. 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/xdtg/ydtg/ap2i#g0) of [Act No. 34 of 1986](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/xdtg/ydtg#g0), added by [s. 3 (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c/pt54c#g0) of [Act No. 104 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/mt54c#g0) and substituted by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n/rv8n#g0) of [Act No. 28 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n#g0).]

(6)  Any person appointed in terms of [subsection (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gb) or [(4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gc) is also deemed to have been so appointed in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings—

(*a*) in which he or she has participated as such a magistrate, including an application for leave to appeal in respect of such proceedings; and

(*b*) which have not yet been disposed of at the expiry of the period for which he or she was appointed.

[[Sub-s. (6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gs) added by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n/rv8n#g0) of [Act No. 28 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n#g0).]

(7)  (*a*)  A magistrate appointed in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/wqqg/xqqg/6bfh#g1) who presided in criminal proceedings in which a plea was recorded in accordance with [section 106](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/wqqg/xqqg/6bfh#g0) of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/wqqg/xqqg#g0)), shall, notwithstanding his or her subsequent vacation of the office of magistrate at any stage, dispose of those proceedings and, for such purpose, shall continue to hold such office in respect of any period during which he or she is necessarily engaged in connection with the disposal of those proceedings—

(i) in which he or she participated, including an application for leave to appeal in respect of such proceedings; and

(ii) which were not disposed of when he or she vacated the office of magistrate.

(*b*)  The proceedings contemplated in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gv) shall be disposed of at the court where the proceedings were commenced, unless all parties to the proceedings agree unconditionally in writing to the proceedings being resumed in another court mentioned in the agreement.

(*c*)  If the magistrate contemplated in paragraph (*a*) has subsequently been appointed as a Constitutional Court judge or judge as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g0) of the Judges’ Remuneration and Conditions of Employment Act, 2001 ([Act No. 47 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg#g0))—

(i) he or she shall only be entitled to the benefits to which such a Constitutional Court judge or judge is entitled as contemplated in the Judges’ Remuneration and Conditions of Employment Act, 2001, in respect of any period taken to dispose of the proceedings as contemplated in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gv); and

(ii) the period taken to dispose of the proceedings as contemplated in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gv) is deemed to be active service for purposes of the Judges’ Remuneration and Conditions of Employment Act, 2001.

(*d*)  If the magistrate contemplated in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gv) has subsequently not been appointed as a Constitutional Court judge or judge as contemplated in [paragraph (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g10), he or she is entitled to such benefits as determined by the Minister from time to time by notice in the *Gazette* at an hourly rate.

(*e*)  A magistrate contemplated in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gv) who is, in the opinion of the Minister—

(i) unfit to continue holding the office of magistrate for purposes of disposing of the proceedings in question; or

(ii) incapacitated and is not able to dispose of the proceedings in question due to such incapacity,

may be exempted by the Minister from the provisions of this subsection, after consultation with the Chief Justice.

[[S. 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#g0) amended by [s. 8](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/hcf5c/jcf5c#g7) of [Act No. 40 of 1952](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/hcf5c#g0), by [s. 17](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/gqr5c/hqr5c/xqr5c#g0) of [Act No. 50 of 1956](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/gqr5c/hqr5c#g0), by [s. 38](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/9ut5c/hwt5c/6wt5c#g2) of [Act No. 68 of 1957](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/9ut5c/hwt5c#g0), by [s. 24](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/r3t5c/s3t5c/43t5c#g2) of [Act No. 93 of 1962](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/gsg4c/r3t5c/s3t5c#g0), by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/jbf5c/kbf5c#g0) of [Act No. 19 of 1963](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/jbf5c#g0) and by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/xcf5c/ycf5c#g0) of [Act No. 48 of 1965](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/xcf5c#g0) and substituted by [s. 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/0af5c/1af5c#g1) of [Act No. 8 of 1967](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/0af5c#g0). [Sub-s. (7)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/ayfh#gw) added by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/3krla/4krla/5krla#g0) of [Act No. 22 of 2005](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/3krla/4krla#g0).]

CRIMINAL PROCEDURE ACT  
NO. 56 OF 1955

**384.   Binding over of persons to keep the peace.**—(1)  Whenever a complaint on oath is made to a magistrate that any person is conducting himself violently towards, or is threatening injury to the person or property of another or that he has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault, then, whether such conduct occurred or such language was used or such threat was made in a public or private place, the magistrate may order such person to appear before him and if necessary may cause him to be arrested and brought before him, and thereupon the magistrate shall enquire into and determine upon such complaint and may place the parties or any witnesses thereat on oath and in his discretion may order the person against whom the complaint is made to give recognizances with or without sureties in an amount not exceeding R2 000 for a period not exceeding six months to keep the peace towards the complainant and refrain from doing or threatening injury to his person or property.

[[Sub-s. (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/4rqg/5rqg/5dhh?f=templates$fn=document-frame.htm$3.0#g1) amended by [s. 1 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/gbx4c/hbx4c#g0) of [Act No. 4 of 1992](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/gbx4c#g0).]

(2)  The magistrate may, upon any such enquiry, order the person against whom the complaint is made or the complaint to pay the costs of and incidental to the enquiry.

(3)  If any person after having been ordered to give recognizances under this section refuses or fails to do so the magistrate may order him to be committed to gaol for a period not exceeding six months unless such security is sooner found.

[[Sub-s. (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/4rqg/5rqg/5dhh?f=templates$fn=document-frame.htm$3.0#g3) amended by [s. 1 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/gbx4c/hbx4c#g0) of [Act No. 4 of 1992](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/gbx4c#g0).]

(4)  If the conditions upon which the recognizances were given are not observed by the person who gave the same, the magistrate may declare the recognizances to be forfeited and any such declaration of forfeiture shall have the effect of a judgment in a civil action in the magistrate’s court of the district.

PRESCRIBED RATE OF INTEREST ACT  
NO. 55 OF 1975

**1.   Interest on a debt to be calculated at a prescribed rate in certain circumstances.**—(1)  If a debt bears interest and the rate at which the interest is to be calculated is not governed by any other law or by an agreement or a trade custom or in any other manner, such interest shall be calculated at the rate prescribed under [subsection (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/fqsg/gqsg/q76h#g2) as at the time when such interest begins to run, unless a court of law, on the ground of special circumstances relating to that debt, orders otherwise.

(2)  The Minister of Justice may from time to time prescribe a rate of interest for the purposes of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/fqsg/gqsg/q76h#g1) by notice in the *Gazette*.

(General Note: Prescribed rate of interest determined as 9, 0% per annum from 1 August, 2014 as published under GN R554 in *Government Gazette* 37831 of 18 July, 2014)

(3)  No rate of interest shall be prescribed under [subsection (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/fqsg/gqsg/q76h#g2) except after consultation with the Minister of Finance.

MAGISTRATES ACT  
NO. 90 OF 1993

**13.   Vacation of office and discharge of magistrates.**—(1)  A magistrate shall vacate his or her office on attaining the age of 65 years: Provided that—

(*a*) the Minister may, after consultation with the Commission, allow a magistrate—

(i) who, on attaining the age of 65 years wishes to continue to serve in such office; and

(ii) whose mental and physical health enables him or her to do so,

to continue to hold such office for the period that the Minister may determine; and

(*b*) if he or she attains the said age after the first day of any month, he or she shall be deemed to attain that age on the first day of the next ensuing month.

[[Sub-s. (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g1) substituted by [s. 11](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/du54c/ou54c#gz) of [Act No. 122 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/du54c#g0).]

(2)  A magistrate shall not be suspended or removed from office except in accordance with the provisions of [subsections (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g1), [(3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g8), [(4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gh) and [(5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gj).

(3)  (*a*)  The Minister, on the advice of the Commission, may provisionally suspend a magistrate from office if—

(i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and

(ii) an investigation has been instituted by the Commission into such magistrate’s fitness to hold office.

(*b*)  A report in which the provisional suspension in terms of [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g7) of a magistrate and the reasons therefor are made known, must be tabled in Parliament by the Minister within seven days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

(*c*)Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed.

(*d*)If Parliament passes a resolution as contemplated in [paragraph (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#ge) that the provisional suspension is not confirmed, the suspension lapses.

(*e*)The provisional suspension of a magistrate in terms of [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g7) lapses after 60 days from the date of the suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegation concerned to be served on the magistrate.

( *f*)An inquiry referred to in [paragraph (*e*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gg) must be concluded as soon as possible, and the Commission must cause a report on the progress in respect of that inquiry to be submitted to Parliament every three months.

(*g*)  Parliament may, at any stage pending—

(i) the conclusion of an inquiry referred to in [paragraph (*e*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gg); or

(ii) a resolution referred to in [subsection (4) (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g16),

pass a resolution setting aside the suspension of the magistrate concerned, whereupon the suspension shall lapse forthwith.

[[Sub-s. (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g8) amended by [s. 6](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/faf5c/laf5c#g0) of [Act No. 35 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/faf5c#g0) and substituted by [s. 4](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n/uv8n#g3) of [Act No. 28 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n#g0).]

(4)  (*a*)  If the Commission recommends that a magistrate be removed from office—

(i) on the ground of misconduct;

(ii) on account of continued ill-health; or

(iii) on account of incapacity to carry out the duties of his or her office efficiently,

the Minister must suspend that magistrate from office or, if the magistrate is at that stage provisionally suspended in terms of [subsection (1) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g2), confirm the suspension.

(*b*)A report in which the suspension in terms of [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g11) of a magistrate and the reason therefor are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(*c*)Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of a magistrate so suspended is recommended.

(*d*)After a resolution has been passed by Parliament as contemplated in [paragraph (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g16), the Minister shall restore the magistrate concerned to his or her office or remove him or her from office, as the case may be.

[[Sub-s. (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gh) substituted by [s. 4](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n/uv8n#g3) of [Act No. 28 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n#g0).]

(4A)  (*a*)  The remuneration of a magistrate is not affected during a period of suspension in terms of [subsection (3) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g7) or [(4)(*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g11), unless the Commission determines otherwise.

(*b*)If the Commission determines that the remuneration of a magistrate shall be reduced or withheld in terms of [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g18), a report regarding that determination and the reason therefor must be tabled in Parliament by the Minister within seven days of such determination, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

(*c*)Parliament must, as soon as is reasonably possible, consider that report and pass a resolution as to whether or not the determination concerned is confirmed, either with or without amendment, or set aside.

(*d*)If Parliament passes a resolution as contemplated in [paragraph (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g1b) that the determination is set aside, that determination shall lapse with effect from the date when the determination was first made.

[[Sub-s. (4A)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#g19) inserted by [s. 4](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n/uv8n#g3) of [Act No. 28 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ov8n/pv8n#g0).]

(5)  (*a*)  The Minister may, at the request of a magistrate, allow such magistrate to vacate his or her office—

(i) on account of continued ill-health; or

(iA) in order to effect a transfer and appointment as contemplated in section 15 (1) of the Public Service Act, 1994 (Proclamation No. R. 103 of 1994); or

[[Sub-para. (iA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gl) inserted by [s.4 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/ay54c/ey54c#g0) of [Act No. 85 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/ay54c#g0).]

(ii) for any other reason which the Minister deems sufficient.

(*b*)  Any request of a magistrate contemplated in [paragraph (*a*) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gm) shall be addressed to the Minister so that he or she receives it at least six calendar months before the date on which the magistrate wishes so to vacate his or her office, unless the Minister approves a shorter period in a specific case.

(*c*)  If a magistrate—

(i) is allowed to vacate his or her office in terms of [paragraph (*a*) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gk), he or she shall be entitled to such pension benefits as he or she would have been entitled to under the pensions Act applicable to him or her if his or her services had been terminated on the ground of continued ill-health occasioned without his or her being instrumental thereto; or

(ii) is allowed to vacate his or her office in terms of [paragraph (*a*) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gm), he or she shall be deemed—

(*aa*) to have been removed from office to promote efficiency for reasons other than his or her own unfitness or incapacity; or

(*bb*) to have been retired in accordance with [section 16 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gt5) of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj#g0)),

[[Item (*bb*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gs) amended by [s. 4](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/mtrg/ntrg/plli#g0) of [Act No. 18 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/mtrg/ntrg#g0).]

as the Minister may direct, and he or she shall be entitled to such pension benefits as he or she would have been entitled to under the pensions Act applicable to him or her if he or she had been so removed from office or had been so retired, according to the direction of the Minister.

(6)  For the purpose of a transfer and appointment contemplated in section 15 (1) of the Public Service Act, 1994, a magistrate shall be deemed to be holding an appointment in an institution as contemplated in that section.

[[Sub-s. (6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gt) added by [s. 4 (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/ay54c/ey54c#g0) of [Act No. 85 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/ay54c#g0).]

(7)  The period of service as a magistrate of a magistrate transferred and appointed under section 15 (1) of the Public Service Act, 1994, shall be reckoned as part of and continuous with his or her service in the public service for the purposes of leave, pension and any other condition of service.

[[Sub-s. (7)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/fzrg/19ho/haio#gu) added by [s. 4 (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/ay54c/ey54c#g0) of [Act No. 85 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/ay54c#g0).]

**PUBLIC SERVICE ACT, 1994**

[PROCLAMATION NO. 103 OF 1994]

**16.   Retirement and retention of services.**—(1)  (*a*)  Subject to the provisions of this section, an officer, other than a member of the services or an educator or a member of the State Security Agency, shall have the right to retire from the public service, and shall be so retired, on the date when he or she attains the age of 65 years: Provided that a person who is an employee on the day immediately before the commencement of the Public Service Amendment Act, 1996, has the right to retire on reaching the retirement age or prescribed retirement date provided for any other law applicable to him or her on that day.

[[Para. (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gsp) substituted by s. 3 of Act No. 13 of 1996 and

amended by s. 53 of Act No. 11 of 2013.]

(*b*)  If such an officer attains the said age after the first day of a month, he or she shall be deemed to have attained it on the first day of the following month.

(2)  (*a*)  Notwithstanding the provisions of subsection (1), an employee, other than a member of the services or an educator or a member of the State Security Agency, employed with effect from a date prior to 1 October 1993 in terms of a law repealed by this Act, shall have the right to retire from the public service at or at any time after the retirement age applicable to him or her as at 1 October 1993, and that retirement age shall not be changed without his or her consent.

[[Para. (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gsr) substituted by s. 13(*a*) of Act No. 47 of 1997 and

amended by s. 53 of Act No. 11 of 2013.]

(*b*)  An officer who has the right to an earlier retirement age in terms of paragraph (*a*), and who wishes to be so retired, shall give written notification to his or her head of department of his or her wish to be so retired, and he or she shall—

(i) if that notification is given at least three calendar months prior to the date on which he or she attains the retirement age applicable to him or her in terms of paragraph (*a*), be so retired on the date on which he or she attains that age or, if he or she attains it after the first day of a month, on the first day of the following month; or

(ii) if that notification is not given at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of such month as the executive authority may approve, which day may not be before the date on which he or she attains the said age and not be later than the first day of the fourth month after the month in which the notification is received.

[[Sub-para. (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gsv) substituted by s. 23(*a*) of Act No. 30 of 2007.]

(*c*)  (i)  In the case of an officer who occupies the office of head of department, he or she shall give notification of his or her wish to be retired from the public service at least six calendar months prior to the date on which he or she attains the said age, and if he or she has so given notification, the provisions of paragraph (*b*) (i) apply *mutatis mutandis*.

(ii)  If such an officer has not so given notification at least six calendar months prior to the date on which he or she attains the said age, he or she shall be so retired on the first day of the seventh month following the month in which that notification is received.

(2A)  (*a*)  Notwithstanding the provisions of subsections (1) and (2)(*a*), an officer, other than a member of the services or an educator or a member of the State Security Agency, shall have the right to retire from the public service on the date on which he or she attains the age of 55 years, or on any date after that date.

[[Para. (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gsz) amended by s. 53 of Act No. 11 of 2013.]

(*b*)  The provisions of subsection (2) (*b*) shall apply with the necessary changes to an officer who wishes to retire in terms of paragraph (*a*).

[[Sub-s. (2A)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gt0) inserted by s. 1(*a*) of Act No. 67 of 1996.]

(3)  (*a*)  Subject to this section and the terms and conditions of a contract contemplated in section 12(2), an officer who occupies the office of head of department has the right to retire from the public service and he or she shall be so retired at the expiry of the term contemplated in that section, or of any extended term contemplated therein, as the case may be.

(*b*)  If an employee so retires or is retired in terms of paragraph (*a*), he or she shall be deemed to have been dismissed from the public service in terms of section 17(2)(*b*).

[[Sub-s. (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gt3) amended by s. 13(*b*) of Act No. 47 of 1997 and by s. 9(*a*) of Act No. 86 of 1998 and substituted by s. 23(*b*) of Act No. 30 of 2007.]

(4)  An officer, other than a member of the services or an educator or a member of the State Security Agency who has reached the age of 60 years may, subject in every case to the approval of the relevant executive authority, be retired from the public service.

[[Sub-s. (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gt5) substituted by s. 13 (*c*) of Act No. 47 of 1997

and amended by s. 53 of Act No. 11 of 2013.]

(5)  (*a*)  Subject to the terms and conditions of a contract contemplated in section 12 (2), an executive authority may, at the request of an employee occupying the office of head of department, allow him or her to retire from the public service before the expiry of the term contemplated in section 12 (2), or any extended term contemplated therein, and notwithstanding the absence of any reason for dismissal in terms of section 17 (2) or the contract concluded with the employee, as the case may be, if sufficient reason exists for the retirement.

[[Para. (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gt6) substituted by s. 13(*d*) of Act No. 47 of 1997,

by s. 9(*b*) of Act No. 86 of 1998 and by s. 23(*c*) of Act No. 30 of 2007.]

(*b*)  If an officer is allowed to retire from the public service in terms of paragraph (*a*), he or she shall, notwithstanding anything to the contrary contained in subsection (4), be deemed to have retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection.

(6)  (*a*)  An executive authority may, at the request of an employee, allow him or her to retire from the public service before reaching the age of 60 years, notwithstanding the absence of any reason for dismissal in terms of section 17 (2), if sufficient reason exists for the retirement.

(*b*)  If an employee is allowed to so retire, he or she shall, notwithstanding anything to the contrary contained in subsection (4), be deemed to have retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection.

[[Sub-s. (6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/nuxg/1tjj/zg28a#gta) amended by s. 1(*b*) of Act No. 67 of 1996, by s. 13(*e*) of Act No. 47 of 1997 and substituted by s. 23(*d*) of Act No. 30 of 2007.]

(7)  If it is in the public interest to retain an officer, other than a member of the services or an educator or a member of the State Security Agency, in his or her post beyond the age at which he or she is required to be retired in terms of subsection (1), he or she may, with his or her consent and with the approval of the relevant executive authority, be so retained from time to time for further periods which shall not, except with the approval of Parliament granted by resolution, exceed in the aggregate two years.

**INCOME TAX ACT  
NO. 58 OF 1962**

1.   Interpretation.—(1)  In this Act, unless the context otherwise indicates—

“agent” includes any partnership or company or any other body of persons corporate or unincorporate acting as an agent;

“aggregate capital gain” means an amount determined in terms of [paragraph 6](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnpi) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

[Definition of “[aggregate capital gain](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giac)” inserted by [s. 5 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0).]

“aggregate capital loss” means an amount determined in terms of [paragraph 7](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnpl) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

[Definition of “[aggregate capital loss](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giad)” inserted by [s. 5 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0).]

“assessed capital loss” means an amount determined in terms of [paragraph 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnpr) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

[Definition of “[assessed capital loss](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giae)” inserted by [s. 5 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0).]

“assessment” has the meaning assigned under [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Tax Administration Act, and includes a determination by the Commissioner—

(a) . . . . . .

(b) . . . . . .

(c) of any loss ranking for set-off;

(d) of any assessed capital loss determined in terms of [paragraph 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnpr) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp); or

(e) of any amounts to be taken into account in the determination of tax payable on income in future years;

“assisted gold mine”  . . . . . .

[Definition of “[assisted gold mine](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gial)” inserted by [s. 5 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/m934c/q934c#g0) of [Act No. 76 of 1968](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/m934c#g0) and deleted by [s. 2 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3144c/5144c#g0) of [Act No. 141 of 1992](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3144c#g0).]

“average exchange rate” in relation to a year of assessment means the average determined by using the closing spot rates at the end of daily or monthly intervals during that year of assessment which must be consistently applied within that year of assessment;

[Definition of “[average exchange rate](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giam)” inserted by [s. 6 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0) and substituted by [s. 3 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c/cp05c#g4) of [Act No. 32 of 2005](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c#g0) deemed to have come into operation on 8 November, 2005 and applicable in respect of years of assessment ending on or after that date.]

“Banks Act” means the Banks Act, 1990 ([Act No. 94 of 1990](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/qcqg/0xqg/1xqg#g0));

[Definition of “[Banks Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gio3)” inserted by [s. 4 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 January, 2014.]

“beneficiary” in relation to a trust means a person who has a vested or contingent interest in all or a portion of the receipts or accruals or the assets of that trust;

[Definition of “[beneficiary](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gian)” inserted by [s. 3 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c/cp05c#g4) of [Act No. 32 of 2005](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c#g0).]

“benefit fund” means—

(a) any friendly society registered under the Friendly Societies Act, 1956 ([Act No. 25 of 1956](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/26qg/5arg/6arg#g0)), or any fund established before 13 June 1986 which is not so registered solely because of the provisions of section 2 (2) (a) of that Act; or

[[Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giap) substituted by [s. 3 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/dt44c/gt44c#g0) of [Act No. 101 of 1978](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/dt44c#g0) and by [s. 2 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3434c/5434c#g0) of [Act No. 65 of 1986](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3434c#g0).]

(b) any medical scheme registered under the provisions of the Medical Schemes Act;

[[Para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giaq) substituted by [s. 3 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/dt44c/gt44c#g0) of [Act No. 101 of 1978](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/dt44c#g0) and by [s. 10 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/v854c/5854c#g0) of [Act No. 53 of 1999](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/v854c#g0), amended by [s. 4 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c/2sz5c#g9) of [Act No. 60 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c#g0) and substituted by [s. 4 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 January, 2014.]

(c)  . . . . .

[[Para. (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giar) substituted by [s. 2 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c/7v34c#g0) of [Act No. 21 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c#g0) and by [s. 19 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c/k2n4c#g0) of [Act No. 30 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c#g0) and deleted by [s. 19 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c/k2n4c#g0) of [Act No. 30 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c#g0) with effect from 1 January, 2000 and applicable in respect of years of assessment commencing on or after that date.]

“bonus debentures or securities” means debentures or securities issued by a company, whether by way of a bonus award or otherwise, in such manner that the company’s reserves or unappropriated profits are in whole or in part applied in paying up such debentures or securities;

[Definition of “[bonus debentures or securities](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gias)” inserted by [s. 4 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c/ga44c#g0) of [Act No. 85 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c#g0).]

“building society”  . . . . . .

[Definition of “[building society](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giat)” inserted by [s. 1 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/bpn4c/cpn4c#g0) of [Act No. 108 of 1986](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/bpn4c#g0) and deleted by [s. 2 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

“business day”  . . . . . .

[Definition of “[business day](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giau)” inserted by [s. 2 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/44qka/74qka/94qka#g0) of [Act No. 113 of 1993](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/44qka/74qka#g0) and deleted by s. 271 read with [para. 23 (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

“capital gain” means an amount determined in terms of [paragraph 3](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnos) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

[Definition of “[capital gain](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giav)” inserted by [s. 5 (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0).]

“capital loss” means an amount determined in terms of [paragraph 4](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnp2) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

[Definition of “[capital loss](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giaw)” inserted by [s. 5 (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0).]

“capitalization shares”  . . . . . .

[Definition of “[capitalization shares](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giax)” inserted by [s. 4 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c/ga44c#g0) of [Act No. 85 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c#g0) and deleted by [s. 6 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) with effect from 1 January, 2011.]

“Chief Executive Officer”  . . . . . .

[Definition of “[Chief Executive Officer](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giay)” inserted by [s. 2 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/zz34c/1z34c#g0) of [Act No. 36 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/zz34c#g0) and deleted by [s. 34 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg/991i#g0) of [Act No. 34 of 1997](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg#g0).]

“child”, in relation to any person, includes any person adopted by him or her—

(a) under the law of the Republic; or

(b) under the law of any country other than the Republic, provided the adopted person is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the adoptive parent was ordinarily resident in such country;

[Definition of “[child](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giaz)” inserted by [s. 4 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c/1i44c#g0) of [Act No. 90 of 1964](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c#g0) and amended by [s. 2 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

“close corporation” means a close corporation within the meaning of the Close Corporations Act, 1984 ([Act No. 69 of 1984](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/ljqg/mjqg#g0));

[Definition of “[close corporation](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib2)” inserted by [s. 2 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c/vy44c#g0) of [Act No. 121 of 1984](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c#g0).]

“Collective Investment Schemes Control Act” means the Collective Investment Schemes Control Act, 2002 ([Act No. 45 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/ikqg/jkqg#g0));

[Definition of “[Collective Investment Schemes Control Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gio4)” inserted by [s. 4 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 January, 2014.]

“Commissioner” means the Commissioner for the South African Revenue Service appointed in terms of [section 6](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg/h91i#g0) of the South African Revenue Service Act, 1997 ([Act No. 34 of 1997](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg#g0)), or the Acting Commissioner designated in terms of [section 7](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/mrw6c#gitb) of that Act;

[Definition of “[Commissioner](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib3)” deleted by [s. 4 (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c/1i44c#g0) of [Act No. 90 of 1964](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c#g0), inserted by [s. 2 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c/jw44c#g0) of [Act No. 104 of 1980](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c#g0) and substituted by [s. 34 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg/991i#g0) of [Act No. 34 of 1997](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg#g0) and by s. 271 read with [para. 23 (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

“Companies Act” means the Companies Act, 2008 ([Act No. 71 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/30oib/c9uxc#g6));

[Definition of “[Companies Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gio5)” inserted by [s. 4 (1) (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 January, 2014.]

“company” includes—

(a) any association, corporation or company (other than a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or

[[Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib5) substituted by [s. 4 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c/ga44c#g0) of [Act No. 85 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c#g0) and by [s. 2 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c/vy44c#g0) of [Act No. 121 of 1984](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c#g0).]

(b) any association, corporation or company incorporated under the law of any country other than the Republic or any body corporate formed or established under such law; or

[[Para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib6) substituted by [s. 4 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c/ga44c#g0) of [Act No. 85 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c#g0) and by [s. 13 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c/4z55c#g0) of [Act No. 30 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c#g0) deemed to have come into operation on 23 February, 2000 and applicable in respect of any foreign dividend received by or accrued to any person on or after that date, or accrued to the person before 23 February, 2000 but received on or after that date (subject to a proviso regarding listed companies or a declaration under oath by certain officers that the dividend was actually declared before 23 February, 2000).]

(c) any co-operative; or

[[Para. (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib7) substituted by [s. 4 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c/ga44c#g0) of [Act No. 85 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c#g0), deleted by [s. 13 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c/4z55c#g0) of [Act No. 30 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c#g0) and inserted by [s. 3 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g2) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0).]

(d) any association (not being an association referred to in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib5) or [( f )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gibd)) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public; or

[[Para. (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib8) substituted by [s. 2 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c/vy44c#g0) of [Act No. 121 of 1984](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c#g0) and by [s. 13 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c/4z55c#g0) of [Act No. 30 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c#g0) with effect from 1 January, 2001 and applicable in respect of years of assessment commencing on or after that date.]

(e) any—

(i) . . . . . .

[[Sub-para. (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giba) deleted by [s. 7 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0) with effect from the commencement of years of assessment commencing on or after 1 January, 2010.]

(ii) portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of the public (as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Collective Investment Schemes Control Act) are invited or permitted to contribute to and hold participatory interests in that portfolio through shares, units or any other form of participatory interest; or

[[Sub-para. (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gibb) substituted by [s. 3 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/yq55c#ge) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0), by [s. 6 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) and by [s. 4 (1) (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 January, 2014.]

(iii) portfolio of a collective investment scheme in property; or

|  |
| --- |
|  |
| (iii) portfolio of a collective investment scheme in property that qualifies as a REIT; or  (Proposed amendment: Sub-para. (iii) to be substituted by [s. 4 (1) ( f )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 January, 2015 and applicable in respect of years of assessment commencing on or after that date.)  (Date of commencement: 1 January, 2015.) |

( f ) a close corporation,

but does not include a foreign partnership;

[Definition of “[company](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib4)” amended by [s. 6 (1) (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) with effect from the commencement of years of assessment commencing on or after 1 October, 2011 in the case of any foreign partnership that is established or formed before 24 August, 2010, and with effect from the date of establishment or formation in the case of any foreign partnership that is established or formed on or after 24 August, 2010 (Editorial Note: effective date in [s. 6 (4) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gs) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) as substituted by [s. 159 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/x655c#ggy) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0)).]

“connected person” means—

(a) in relation to a natural person—

(i) any relative; and

(ii) any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) of which such natural person or such relative is a beneficiary;

(b) in relation to a trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property)—

(i) any beneficiary of such trust; and

(ii) any connected person in relation to such beneficiary;

(bA) in relation to a connected person in relation to a trust (other than a portfolio of a collective investment scheme in property or a portfolio of a collective investment scheme in securities), includes any other person who is a connected person in relation to such trust;

(c) in relation to a member of any partnership or foreign partnership—

(i) any other member; and

(ii) any connected person in relation to any member of such partnership or foreign partnership;

(d) in relation to a company—

(i) any other company that would be part of the same group of companies as that company if the expression “at least 70 per cent of the equity shares in” in [paragraphs (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigc) and [(b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigd) of the definition of “[group of companies](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigb)” in this section were replaced by the expression “more than 50 per cent of the equity shares or voting rights in”;

(ii) . . . . . .

(iii) . . . . . .

(iv) any person, other than a company as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Companies Act that individually or jointly with any connected person in relation to that person, holds, directly or indirectly, at least 20 per cent of—

(aa) the equity shares in the company; or

(bb) the voting rights in the company;

(v) any other company if at least 20 per cent of the equity shares or voting rights in the company are held by that other company, and no holder of shares holds the majority voting rights in the company;

(vA) any other company if such other company is managed or controlled by—

(aa) any person who or which is a connected person in relation to such company; or

(bb) any person who or which is a connected person in relation to a person contemplated in [item (aa)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giby); and

(vi) where such company is a close corporation—

(aa) any member;

(bb) any relative of such member or any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) which is a connected person in relation to such member; and

(cc) any other close corporation or company which is a connected person in relation to—

(i) any member contemplated in [item (aa)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gic1); or

(ii) the relative or trust contemplated in [item (bb)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gic2); and

(e) in relation to any person who is a connected person in relation to any other person in terms of the foregoing provisions of this definition, such other person:

Provided that for the purposes of this definition, a company includes a portfolio of a collective investment scheme in securities;

“contributed tax capital”, in relation to a class of shares issued by a company, means—

(a) in the case of a foreign company that becomes a resident on or after 1 January 2011, an amount equal to the sum of—

(i) the market value of all the shares in that company of that class immediately before the date on which that company becomes a resident; and

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after the date on which that company becomes a resident,

reduced by so much of that amount as—

(aa) the company has transferred on or after the date on which the company becomes a resident for the benefit of any person holding a share in that company of that class in respect of that share; and

(bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; or

(b) in the case of any other company, an amount equal to the sum of—

(i) the stated capital or share capital and share premium of that company immediately before 1 January 2011 in relation to shares in that company of that class issued by that company before that date, less so much of that stated capital or share capital and share premium as would have constituted a dividend, as defined before that date, had the stated capital or share capital and share premium been distributed by that company immediately before that date; and

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after 1 January 2011,

reduced by so much of that amount as—

(aa) the company has transferred on or after 1 January 2011 for the benefit of any person holding a share in that company of that class in respect of that share; and

(bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred:

Provided that the amount transferred by a company as contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gic8) or [(b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gicd) for the benefit of a person holding shares of any class of shares of that company must not exceed an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the transfer the same ratio as the number of shares of that class held by that person bears to the total number of shares of that class;

“controlled group company” means a controlled group company contemplated in the definition of “[group of companies](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigb)”;

“controlling group company” means a controlling group company contemplated in the definition of “[group of companies](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigb)”;

“controlled foreign company” means a controlled foreign company as defined in [section 9D](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/1rw6c#gj5n), and includes any reference in this Act, prior to the amendment thereof by the Revenue Laws Amendment Act, 2002, to a controlled foreign entity;

“co-operative” means any association of persons registered in terms of section 27  of the Co-operatives Act, 1981 (Act No. 91 of 1981) or section 7  of the Co-operatives Act, 2005 ([Act No. 14 of 2005](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/jsxha/g40ha#g0));

“Copyright Act” means the Copyright Act, 1978 ([Act No. 98 of 1978](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/mpqg/npqg#g0));

“date of deep level production”  . . . . . .

“date of assessment”  . . . . . .

“date of sequestration” means—

(a) the date of voluntary surrender of an estate, if accepted by the Court; or

(b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by the Court;

“depreciable asset” means an asset as defined in [paragraph 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnr) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp) (other than any trading stock and any debt), in respect of which a deduction or allowance determined wholly or partly with reference to the cost or value of that asset is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

“dependant”  . . . . . .

[Definition of “[dependant](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gics)” substituted by [s. 4 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/oe44c/se44c#g0) of [Act No. 88 of 1971](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/oe44c#g0) and by [s. 4 (1) (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c/ga44c#g0) of [Act No. 85 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c#g0), amended by [s. 3 (1) (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/nv44c/qv44c#g0) of [Act No. 104 of 1979](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/nv44c#g0) and by [s. 2 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c/jw44c#g0) of [Act No. 104 of 1980](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c#g0) and deleted by [s. 2 (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/zk44c/1k44c#g0) of [Act No. 90 of 1988](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/zk44c#g0).]

“Designs Act” means the Designs Act, 1993 ([Act No. 195 of 1993](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/9uqg/byqg/cyqg#g0));

“designated country”  . . . . . .

[Definition of “[designated country](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gict)” inserted by [s. 6 (1) (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0) and deleted by [s. 12 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c/wa05c#gu) of [Act No. 45 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c#g0) with effect from 1 June, 2004 and applicable in respect of years of assessment commencing on or after that date.]

“director”, in relation to a close corporation, means any person who in respect of such close corporation holds any office or performs any functions similar to the office or functions of a director of a company other than a close corporation;

“dividend” means any amount transferred or applied by a company that is a resident for the benefit or on behalf of any person in respect of any share in that company, whether that amount is transferred or applied—

(a) by way of a distribution made by; or

(b) as consideration for the acquisition of any share in,

that company, but does not include any amount so transferred or applied to the extent that the amount so transferred or applied—

(i) results in a reduction of contributed tax capital of the company;

(ii) constitutes shares in the company; or

(iii) constitutes an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67(B) of [section 5](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/drw6c#giou) of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.84 of [section 5](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/drw6c#giou) of the JSE Limited Listings Requirements;

“domestic company”  . . . . . .

“domestic treasury management company” means a company—

(a) incorporated or deemed to be incorporated by or under any law in force in the Republic;

(b) that has its place of effective management in the Republic; and

(c) that is not subject to exchange control restrictions by virtue of being registered with the financial surveillance department of the South African Reserve Bank;

[ “entertainment expenditure”  . . . . . .

“equity share” means any share in a company, excluding any share that, neither as respects dividends nor as respects returns of capital, carries any right to participate beyond a specified amount in a distribution;

“executor” means any person to whom letters of administration have been granted by a Master or an Assistant Master of the High Court appointed under the Administration of Estates Act, 1965 ([Act No. 66 of 1965](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/c0pg/i2pg/j2pg#g0)), in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside the Republic but signed and sealed by such a Master or Assistant Master for use within the Republic and, in any case where the estate is not required to be administered under the supervision of such a Master or Assistant Master, the person administering the estate;

“external company”  . . . . . .

“financial instrument” includes—

(a) a loan, advance, debt, bond, debenture, bill, share, promissory note, banker’s acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;

(b) any repurchase or resale agreement, forward purchase arrangement, forward sale arrangement, futures contract, option contract or swap contract;

(c) any other contractual right or obligation the value of which is determined directly or indirectly with reference to—

(i) a debt security or equity;

(ii) any commodity as quoted on an exchange; or

(iii) a rate index or a specified index;

(d) any interest-bearing arrangement; and

(e) any financial arrangement based on or determined with reference to the time value of money or cash flow or the exchange or transfer of an asset;

“Financial Markets Act” means the Financial Markets Act, 2012 ([Act No. 19 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/26qg/dexwc/eexwc#g0));

“financial year”, in relation to any company, means—

(a) the period, whether of 12 months or not, commencing upon the date of incorporation or creation of such company and ending upon the last day of February immediately succeeding such date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or

(b) any period subsequent to the period referred to in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gidg), whether of 12 months or not, commencing immediately after the last day of the immediately preceding financial year of such company and ending upon the first anniversary of such last day or upon such other date as the Commissioner having regard to the circumstances of the case may approve;

“foreign company” means any company which is not a resident;

“foreign dividend” means any amount that is paid or payable by a foreign company in respect of a share in that foreign company where that amount is treated as a dividend or similar payment by that foreign company for the purposes of the laws relating to—

(a) tax on income on companies of the country in which that foreign company has its place of effective management; or

(b) companies of the country in which that foreign company is incorporated, formed or established, where the country in which that foreign company has its place of effective management does not have any applicable laws relating to tax on income,

but does not include any amount so paid or payable that—

(i) constitutes a redemption of a participatory interest in an arrangement or scheme contemplated in [paragraph (e) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gibb) of the definition of “[company](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib4)”; or

(ii) . . . . . .

(iii) constitutes a share in that foreign company;

“foreign equity instrument”  . . . . . .

“foreign investment entity” means any person other than a natural person—

(a) that is not incorporated, established or formed in the Republic;

(b) the assets of which consist solely of a portfolio of one or more of the following:

(i) amounts in cash or that constitute cash equivalents;

(ii) financial instruments that—

(aa) are issued by a listed company or by the government of the Republic in the national, provincial or local sphere; or

(bb) if not issued by a listed company or by the government of the Republic in the national, provincial or local sphere, are traded by members of the general public and a market for that trade exists;

(iii) financial instruments, the values of which are determined with reference to financial instruments contemplated in [subparagraph (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gie1); or

(iv) rights to receive any asset contemplated in [subparagraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gie0), [(ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gie1) or [(iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gie4),

which amounts, financial instruments and rights are held by that person for investment purposes;

(c) where no more than 10 per cent of the shares, units or other form of participatory interest in that person are directly or indirectly held by persons that are residents; and

(d) where that person has no employees and has no directors or trustees that are engaged in the management of that person on a full-time basis;

“foreign partnership”, in respect of any year of assessment, means any partnership, association, body of persons or entity formed or established under the laws of any country other than the Republic if—

(a) for the purposes of the laws relating to tax on income of the country in which that partnership, association, body of persons or entity is formed or established—

(i) each member of the partnership, association, body of persons or entity is required to take into account the member’s interest in any amount received by or accrued to that partnership, association, body of persons or entity when that amount is received by or accrued to the partnership, association, body of persons or entity; and

(ii) the partnership, association, body of persons or entity is not liable for or subject to any tax on income in that country; or

(b) where the country in which that partnership, association, body of persons or entity is formed or established does not have any applicable laws relating to tax on income—

(i) any amount—

(aa) that is received by or accrued to; or

(bb) of expenditure that is incurred by,

the partnership, association, body of persons or entity is allocated concurrently with the receipt, accrual or incurral to the members of that partnership, association, body of persons or entity in terms of an agreement between those members; and

(ii) no amount distributed to a member of a partnership, association, body of persons or entity may exceed the allocation contemplated in [subparagraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gied) after taking into account any prior distributions made by the partnership, association, body of persons or entity;

“foreign return of capital” means any amount that is paid or payable by a foreign company in respect of any share in that foreign company where that amount is treated as a distribution or similar payment (other than an amount that constitutes a foreign dividend) by that foreign company for the purposes of the laws relating to—

(a) tax on income on companies of the country in which that foreign company has its place of effective management; or

(b) companies of the country in which that foreign company is incorporated, formed or established, where that country in which that foreign company has its place of effective management does not have any applicable laws relating to tax on income,

but does not include any amount so paid or payable to the extent that the amount so paid or payable—

(i) is deductible by that foreign company in the determination of any tax on income of companies of the country in which that foreign company has its place of effective management; or

(ii) constitutes shares in that foreign company;

“foreign tax year”, in relation to a foreign company, means any year or period of reporting for foreign income tax purposes by that company or, if that company is not subject to foreign income tax, any annual period of financial reporting by that company;

“functional currency”, in relation to—

(a) a person, means the currency of the primary economic environment in which the business operations of that person are conducted; and

(b) a permanent establishment of any person, means the currency of the primary economic environment in which the business operations of that permanent establishment are conducted;

“government grant” . . . . . .

“government scrapping payment” . . . . . .

“gross income”, in relation to any year or period of assessment, means—

(i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or

(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic,

during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—

(a) any amount received or accrued by way of annuity, including any amount contemplated in the definition of “[living annuity](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigp)” or the definition of “[annuity amount](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8rw6c#gjis)” in [section 10A (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8rw6c#gjir), other than an amount contemplated in [paragraph (d) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gif9);

(b) any amount payable to the taxpayer—

(i) by the spouse or former spouse of that taxpayer, under any judicial order or written agreement of separation or under any order of divorce, by way of alimony or allowance or maintenance of the taxpayer; or

(ii) in terms of any maintenance order for the maintenance of a child as contemplated in [section 15 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/b1rg/c1rg/6xhh#g9) of the Maintenance Act, 1998 ([Act No. 99 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/b1rg/c1rg#g0));

(c) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in [section 8 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/prw6c#giv1)) received or accrued in respect of any employment or the holding of any office: Provided that—

(i) the provisions of this paragraph shall not apply in respect of any benefit or advantage in respect of which the provisions of [paragraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giey) apply;

(ii) any amount received by or accrued to or for the benefit of any person in respect of services rendered or to be rendered by any other person shall for the purposes of this definition be deemed to have been received by or to have accrued to the said other person;

(iii) to (vi) inclusive  . . . . . .

(cA) any amount received by or accrued to any person who—

(i) is a natural person;

(ii) is or was a labour broker as defined in the [Fourth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/r1w6c#gn3d) (other than a labour broker in respect of which a certificate of exemption has been issued in terms of that Schedule);

(iii) is or was a personal service provider as defined in the [Fourth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/r1w6c#gn3d); or

(iv) was a personal service company or personal service trust as defined in the [Fourth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/r1w6c#gn3d) prior to [section 66](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/6xw6c#gmmg) of the Revenue Laws Amendment Act, 2008, coming into operation,

as consideration for any restraint of trade imposed on such person;

(d) any amount (other than an amount contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giet)), including any voluntary award, received or accrued—

(i) in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment;

(ii) by or to a person, or dependant or nominee of the person, directly or indirectly in respect of proceeds from a policy of insurance where the person is or was an employee or director of the policyholder; or

(iii) by or to a person, or dependant or nominee of the person, in respect of any policy of insurance (other than a risk policy with no cash value or surrender value) that has been ceded to—

(aa) the person;

(bb) a dependant or nominee of the person; or

(cc) . . . . . .

for the benefit of the person, or dependant or nominee of the person, by—

(A) the employer or former employer of the person; or

(B) the company of which the person is or was a director:

Provided that—

(aa) the provisions of [subparagraphs (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gif8) and [(ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gif9) shall not apply to any lump sum award from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

(bb) any such amount which becomes payable in consequence of or following upon the death of any person shall be deemed to be an amount which accrued to such person immediately prior to his or her death;

(cc) for the purposes of subparagraphs (ii) and (iii), any amount received by or accrued to a dependant or nominee of a person shall be deemed to be received by or to accrue to that person;

(e) a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit other than any amount included under [paragraph (eA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giff);

(eA) where, in relation to a member who effectively remains in the employment of the same employer, or the dependants or nominees of a deceased member—

(i) any amount in a fund contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihs) or [(b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihy) of the definition of “[pension fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihr)”, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, has been transferred to a fund, the rules of which entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

(ii) a fund contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihs) or [(b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihy) of the definition of “[pension fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihr)”, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

(iii) any amount in a fund contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihs) or [(b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihy) of the definition of “[pension fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihr)” has become payable to the member or is being utilised to redeem a an amount equal to two-thirds—

(aa) of the amount so transferred; or

(bb) in the case of a conversion, of the amount representing the amount converted for the benefit or ultimate benefit of the member or the dependants or nominees of the deceased member, and such amount shall be deemed to have been received by or accrued to or in favour of such member, dependants or nominees, as the case may be: Provided that where a court order granting a decree of divorce in respect of such member has made an order that any part of such amount shall be paid to the former spouse of such member, as provided for in [section 7 (8)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/9uqg/nzqg/ozqg/twrh#gj) of the Divorce Act, 1979 ([Act No. 70 of 1979](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/9uqg/nzqg/ozqg#g0)), such part shall for the purposes of this paragraph be deemed to be an amount converted for the benefit or ultimate benefit of such member; or

(cc) in the case of an amount becoming payable to a member or being utilised to redeem a debt, of the amount so payable or so utilised:

Provided that the Commissioner may, on application by a fund, in particular circumstances, increase the proportion of one-third contemplated in [subparagraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gifg) up to a maximum of one-half on the following conditions:

(a) that on 12 March 1997 the proportion of the benefit on retirement in such fund that could be taken in the form of a lump sum was greater than one-third, but not greater than one-half, of the total capitalized value of all benefits;

(b) that the rules of such fund are amended so that the maximum proportion of such member’s benefit on retirement that can be taken in the form of a lump sum is one-third of the total capitalized value of all benefits; and

(c) such further conditions as the Commissioner may determine from time to time;

(eB) . . . . . .

(eC) . . . . . .

( f ) any amount received or accrued in commutation of amounts due under any contract of employment or service;

(g) any amount received or accrued from another person, as a premium or consideration in the nature of a premium—

(i) for the use or occupation or the right of use or occupation of land or buildings; or

(ii) for the use or the right of use of plant or machinery; or

(ii)bis

for the use or the right of use of any motion picture film or any film or video tape or disc for use in connection with television or any sound recording or advertising matter connected with such motion picture film, film or video tape or disc; or

(iii) for the use or right of use of any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any model, pattern, plan, formula or process or any other property or right of a similar nature;

(gA) any amount received or accrued from another person as consideration for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;

(h) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by virtue of the cession of any rights under any such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person—

(i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or

(ii) if no amount is so stipulated, an amount representing the fair and reasonable value of the improvements;

(i) the cash equivalent, as determined under the provisions of the [Seventh Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/u1w6c#gngp), of the value during the year of assessment of any benefit or advantage granted in respect of employment or to the holder of any office, being a taxable benefit as defined in the said Schedule, and any amount required to be included in the taxpayer’s income under [section 8A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/qrw6c#gixn);

( j) so much of the sum of any amounts received or accrued during any year of assessment in respect of disposals of assets the cost of which has in whole or in part been included in capital expenditure taken into account (whether under this Act or any previous Income Tax Act) for the purposes of any deduction in respect of any mine under [section 15 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/gtw6c#gkdm) of this Act or the corresponding provisions of any previous Income Tax Act, as exceeds the sum of so much of any capital expenditure as in the case of such mine is unredeemed at the commencement of the said year of assessment and the capital expenditure that is incurred during that year in respect of such mine, as determined before applying the definition of “[capital expenditure incurred](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/mvw6c#glo1)” in [section 36 (11)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/mvw6c#glmv);

(jA) any amount received by or accrued to any person during the year of assessment in respect of the disposal of any asset manufactured, produced, constructed or assembled by that person, which is similar to any other asset manufactured, produced, constructed or assembled by that person for purposes of manufacture, sale or exchange by that person or on that person’s behalf;

(k) any amount received or accrued by way of a dividend or a foreign dividend;

(l) any amount received or accrued by way of grant or subsidy in respect of any soil erosion works referred to in [section 17A (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/ltw6c#gke0) or any of the matters mentioned in items (a) to (i), inclusive, of paragraph 12 (1) of the [First Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/o1w6c#gmvt);

(lA) any amount received by or accrued to a company or association as contemplated in subparagraph (ii) of [section 11E](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/gsw6c#gjsb);

(lB) . . . . . .

(m) any amount received or accrued in respect of a policy of insurance of which the taxpayer is the policyholder, where the policy relates to the death, disablement or severe illness of an employee or director (or former employee or director) of the taxpayer, including by way of any loan or advance: Provided that any amount so received or accrued shall be reduced by the amount of any such loan or advance which is or has been included in the taxpayer’s gross income;

(mA) . . .

(n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer’s income and that amount must—

(i) for the purposes of this paragraph be deemed to have been received by or to have accrued to the taxpayer; and

(ii) in the case of any amount required to be included in the taxpayer’s income in terms of [section 8 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/prw6c#giw4), be deemed to have been received or accrued from a source within the Republic notwithstanding that such amounts may have been recovered or recouped outside the Republic:

Provided that where during any year of assessment a person has become entitled to any amount which is payable on a date or dates falling after the last day of such year, that amount shall be deemed to have accrued to the person during such year;

“group of companies” means two or more companies in which one company (hereinafter referred to as the “controlling group company”) directly or indirectly holds shares in at least one other company (hereinafter referred to as the “controlled group company”), to the extent that—

(a)at least 70 percent of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and

(b) the controlling group company directly holds at least 70 per cent of the equity shares in at least one controlled group company;

“headquarter company”, in respect of any year of assessment means a company contemplated in [section 9I (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/6rw6c#gjbv) in respect of which an election has been made in terms of that section;

“hotel keeper” means any person carrying on the business of hotel keeper or boarding or lodging house keeper where meals and sleeping accommodation are supplied to others for money or its equivalent;

“IFRS” means the International Financial Reporting Standards issued by the International Accounting Standards Board;

“income” means the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under [Part I](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/crw6c#giot) of [Chapter II](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/crw6c#gios);

“insolvent estate” means an insolvent estate as defined in [section 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/lprg/mprg/r1oi#g0) of the Insolvency Act, 1936 ([Act No. 24 of 1936](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/lprg/mprg#g0));

[Definition of “[insolvent estate](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigi)” inserted by [s. 2 (1) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/vx34c/xx34c#g0) of [Act No. 28 of 1997](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/vx34c#g0).]

“international headquarter company”  . . . . . .

“JSE Limited Listings Requirements” means the JSE Limited Listings Requirements, 2003, made by the JSE Limited in terms of [section 11](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/bsw6c#gjkw) of the Financial Markets Act;

“linked unit” means a unit comprising a share and a debenture in a company, where that share and that debenture are linked and are traded together as a single unit;

“listed company” means a company where its shares or depository receipts in respect of its shares are listed on—

(a) an exchange as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Financial Markets Act and licensed under [section 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/xrw6c#gj37) of that Act; or

(b) a stock exchange in a country other than the Republic which has been recognised by the Minister as contemplated in [paragraph (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gno7) of the definition of “[recognised exchange](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gno4)” in [paragraph 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnr) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

[Definition of “[listed company](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigl)” inserted by [s. 6 (1) (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0) with effect from the date of promulgation of that Act, 13 December, 2002.]

“listed share” means a share that is listed on an exchange as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Financial Markets Act and licensed under [section 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/xrw6c#gj37) of that Act;

“living annuity” means a right of a member or former member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or his or her dependant or nominee, or any subsequent nominee, to an annuity purchased from a person or provided by that fund on or after the retirement date of that member or former member in respect of which—

(a) the value of the annuity is determined solely by reference to the value of assets which are specified in the annuity agreement and are held for purposes of providing the annuity;

(b) the amount of the annuity is determined in accordance with a method or formula prescribed by the Minister by notice in the Gazette;

(c) the full remaining value of the assets contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigq) may be paid as a lump sum when the value of those assets become at any time less than an amount prescribed by the Minister by notice in the Gazette;

(d) the amount of the annuity is not guaranteed by that person or fund;

(e) on the death of the member or former member, the value of the assets referred to in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigq) may be paid to a nominee of the member or former member as an annuity or lump sum or as an annuity and a lump sum, or, in the absence of a nominee, to the deceased’s estate as a lump sum; and

( f ) further requirements regarding the annuity may be prescribed by the Minister by notice in the Gazette;

“local authority”  . . . . . .

“Long-term Insurance Act” means the Long-term Insurance Act, 1998 ([Act No. 52 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/4yrg/f5us#g2));

“low-cost residential unit” means—

(a) an apartment qualifying as a residential unit in a building located within the Republic, where—

(i) the cost of the apartment does not exceed R350 000; and

(ii) the owner of the apartment does not charge a monthly rental in respect of that apartment that exceeds one per cent of the cost; or

(b) a building qualifying as a residential unit located within the Republic, where—

(i) the cost of the building does not exceed R300 000; and

(ii) the owner of the building does not charge a monthly rental in respect of that building that exceeds one per cent of the cost contemplated in [subparagraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gih2) plus a proportionate share of the cost of the land and the bulk infrastructure:

Provided that for the purposes of [paragraphs (a) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gih0) and [(b) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gih3), the cost is deemed to be increased by 10 per cent in each year succeeding the year in which the apartment or building is first brought into use;

“lump sum benefit” means a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;

[Definition of “[lump sum benefit](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gih4)” inserted by [s. 7 (1) (n)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

“married”  . . . . . .

“married person”  . . . . . .

“married woman”  . . . . . .

“Medical Schemes Act” means the Medical Schemes Act, 1998 ([Act No. 131 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/j5rg/k5rg#g0));

[Definition of “[Medical Schemes Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giof)” inserted by [s. 4 (1) (z)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“Mineral and Petroleum Resources Development Act” means the Mineral and Petroleum Resources Development Act, 2002 ([Act No. 28 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/g9rg/h9rg#g4));

[Definition of “[Mineral and Petroleum Resources Development Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giog)” inserted by [s. 4 (1) (z)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“mining for gold” or “to mine for gold” includes mining for uranium or to mine for uranium;

“mining operations” and “mining” include every method or process by which any mineral is won from the soil or from any substance or constituent thereof;

“Minister” means the Minister of Finance;

[Definition of “[Minister](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihc)” inserted by [s. 13 (1) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c/4z55c#g0) of [Act No. 30 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c#g0).]

“municipality” means a municipality which is within a category listed in [section 155 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg/s4bh#g1) of [the Constitution](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg#g0) of the Republic of South Africa, 1996, and which is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 ([Act No. 27 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/kyrg/lyrg#g0));

[Definition of “[municipality](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihd)” inserted by [s. 3 (1) ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g2) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0).]

“municipal value” means an amount determined in terms of [section 46](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/8yzfb/9yzfb/72zfb#g1q9) of the Local Government: Municipal Property Rates Act, 2004 ([Act No. 6 of 2004](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/8yzfb/9yzfb#g0));

[Definition of “[municipal value](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gioh)” inserted by [s. 4 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2014 and applicable in respect of amounts paid or transferred during years of assessment commencing on or after that date.]

“mutual building society”  . . . . . .

“natural oil” means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth’s crust, but does not include coal or bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits;

[Definition of “[natural oil](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihf)” inserted by [s. 4 (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/u834c/x834c#g0) of [Act No. 72 of 1963](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/u834c#g0).]

“neighbouring country” means Botswana, Lesotho, Namibia and Swaziland;

“new deep level gold mine”  . . . . . .

[Definition of “[new deep level gold mine](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihh)” deleted by [s. 2 (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/u734c/w734c#g0) of [Act No. 70 of 1989](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/u734c#g0).]

Wording of Sections

“new gold mine”  . . . . . .

“nominal value”  . . . . . .

“normal retirement age” means—

(a) in the case of a member of a pension fund or provident fund, the date on which the member becomes entitled to retire from employment for reasons other than sickness, accident, injury or incapacity through infirmity of mind or body;

(b) in the case of a member of a retirement annuity fund, a pension preservation fund or a provident preservation fund, the date on which the member attains 55 years of age; or

(c) in the case of a member of any fund contemplated in this definition, the date on which that member becomes permanently incapable of carrying on his or her occupation due to sickness, accident, injury or incapacity through infirmity of mind or body;

[Definition of “[normal retirement age](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihk)” inserted by [s. 2 (1) (r)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

“normal tax” means income tax referred to in [section 5 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/drw6c#giov);

[Definition of “[normal tax](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giho)” inserted by s. 271 read with [para. 23 (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

“officer” means, where used in the context of a person who is engaged by the Commissioner in carrying out the provisions of this Act, a SARS official as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Tax Administration Act;

[Definition of “[officer](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihp)” inserted by s. 271 read with [para. 23 (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

“other deep level gold mine”  . . . . . .

“Patents Act” means the Patents Act, 1978 ([Act No. 57 of 1978](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/mksg/nksg#g0));

[Definition of “[Patents Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gioi)” inserted by [s. 4 (1) (zB)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“pension fund” means—

(a) (i) any pension, provident or dependants’ fund or pension scheme established by law;

(ii) any pension, provident or dependants’ fund or pension scheme established for the benefit of the employees of any municipality or of any local authority (as defined in the definition of “[local authority](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigw)” in this section prior to the coming into operation of section 3 (1) (h) of the Revenue Laws Amendment Act, 2006 ([Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0)), that was established prior to the date that section so came into operation); or

(iii) any fund contemplated in [subparagraph (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihu), which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 ([Act No. 32 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/yyrg/zyrg#g0)), over which one or more municipalities or local authorities (as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) prior to the coming into operation of section 3 (1) (h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) exercise ownership control as contemplated by that Act, where such fund was established—

(aa) on or before 14 November 2000, and such employees were employees of a local authority (as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) prior to the coming into operation of section 3 (1) (h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) immediately prior to becoming employees of such municipal entity; or

(bb) after 14 November 2000, and such fund has been approved by the Commissioner subject to such limitations, conditions and requirements as contemplated in paragraph (c);

(b) with effect from a date determined by the Commissioner in relation to any fund hereinafter referred to (not being a date earlier than 4 December 1981), any pension fund established for the benefit of employees of a control board as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/13rg/23rg/a5qi#g0) of the Marketing of Agricultural Products Act, 1996 ([Act No. 47 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/13rg/23rg#g0)), or for the benefit of employees of the Development Bank of Southern Africa, if the Commissioner is satisfied that the rules of such fund are in all material respects identical to those of the Government Employees’ Pension Fund; or

(c) the Municipal Councillors Pension Fund provisionally registered under the Pension Funds Act on 23 May 1988, or any fund (other than a retirement annuity fund, a pension preservation fund or a fund contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihs) or [(b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihy)) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of that Act: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—

(i) that the fund is a permanent fund bona fide established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) or [section 15A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/htw6c#gkdr) or 15E of the Pension Funds Act; and

(ii) that the rules of the fund provide—

(aa) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;

(bb) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which—

(A) the fund comes into operation; or

(B) the employer becomes a participant in that fund;

[Sub-para. (bb) substituted by [s. 7 (1) (z)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0).]

(cc) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than 12 months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;

(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the employee is deceased;

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| (dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R100 000 or where the employee is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—  (A) any contributions made to a provident fund prior to 1 March 2015;  (B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and  (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),  must not be taken into account;  (Proposed amendment: Sub-para. (dd) to be substituted by [s. 4 (1) (zE)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

(ee) that a partner of a partnership is regarded as an employee of the partnership; and

[Sub-para. (ee) substituted by [s. 2 (g)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/9b64c/bc64c#g0) of [Act No. 59 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/9b64c#g0) and by [s. 2 (1) (t)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

( ff ) that the Commissioner shall be notified of all amendments of the rules; and

(gg)   . . . . . .

[Sub-para. (gg) substituted by [s. 2 (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c/7v34c#g0) of [Act No. 21 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c#g0) and deleted by [s. 2 (1) (u)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

(iii) that the rules of the fund have been complied with:

Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of “[pension preservation fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giia)” which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September 2010 to be a fund which is not approved in terms of this definition;

“Pension Funds Act” means the Pension Funds Act, 1956 ([Act No. 24 of 1956](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8ksg/9ksg#g3));

[Definition of “[Pension Funds Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gioj)” inserted by [s. 4 (1) (zF)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“pension preservation fund” means a pension fund organisation which is registered under the Pension Funds Act and which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations and conditions as the Commissioner may determine, and shall not approve a fund in respect of any year of assessment unless the Commissioner is satisfied in respect of that year of assessment that the rules of the fund provide that—

(a) membership of the fund consists of—

(i) former members of a pension fund or provident fund whose membership of that fund has terminated due to—

(aa) resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund;

(bb) the winding up or partial winding up of that fund, if the member elects or is required in terms of the rules to transfer to this fund; or

[[Item (bb)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giie) substituted by [s. 6 (1) (s)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) deemed to have come into operation on 1 March, 2008 and applicable in respect of lump sum benefits transferred on or after that date.]

(cc) a transfer of business from one employer to another in terms of [section 197](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/zurg/0urg/5n9g#g0) of the Labour Relations Act, 1995 ([Act No. 66 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/zurg/0urg#g0)), and the employment of the employee with the transferor employer is transferred to the transferee employer, if the member elects or is required in terms of the rules to transfer to this fund;

[[Sub-para. (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giic) amended by [s. 7 (1) (zB)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) with effect from 1 March, 2012.]

(ii) former members of any other pension preservation fund or a provident preservation fund—

(aa) if that fund was wound up or partially wound up; or

[[Item (aa)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giih) substituted by [s. 6 (1) (t)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) deemed to have come into operation on 1 March, 2008 and applicable in respect of lump sum benefits transferred on or after that date.]

(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2 (1) (b) (ii) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) transferred to this pension preservation fund and who made this election while they were members of that other fund;

[[Sub-para. (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giig) amended by [s. 7 (1) (zC)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) with effect from 1 March, 2012. [Item (bb)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giii) substituted by [s. 7 (1) (p)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

(iii) former members of a pension fund or nominees or dependants of that former member in respect of whom an “unclaimed benefit” as defined in the Pension Funds Act is due or payable by that fund; or

(iv) persons who have elected to transfer to that fund amounts awarded to those persons in terms of any court order contemplated in [section 7 (8)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/9uqg/nzqg/ozqg/twrh#gj) of the Divorce Act, 1979 ([Act No. 70 of 1979](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/9uqg/nzqg/ozqg#g0)), from any pension fund or pension preservation fund for the benefit of those persons;

[[Sub-para. (iv)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giik) substituted by [s. 7 (1) (q)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2 (1) (a) (ii) or (b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 ([Act No. 24 of 1956](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8ksg/9ksg#g3)), that is paid or transferred to the fund by—

(i) a pension fund or any other pension preservation fund of which such member was previously a member; or

(ii) a pension fund or pension preservation fund of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D (4) (b) (ii) of the Pension Funds Act;

(c) with the exception of amounts transferred to any other pension fund, pension preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2 (1) (b) (ii) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund: Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in [paragraph (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giil);

(d) a member, other than a member contemplated in [paragraph (a) (iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giij) of this proviso, will become entitled to a benefit on his or her retirement date; and

(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the member is deceased:

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| (e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R100 000 or where the member is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—  (A) any contributions made to a provident fund prior to 1 March 2015;  (B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and  (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),  must not be taken into account  (Proposed amendment: [Para. (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giiq) to be substituted by [s. 4 (1) (zJ)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

Provided further that—

(i) the rules of a pension fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September 2010; and

(ii) the rules of a pension fund contemplated in [paragraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giir) that are submitted before 30 September 2010 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition;

“permanent establishment” means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development: Provided that in determining whether a qualifying investor in relation to a partnership, trust or foreign partnership has a permanent establishment in the Republic, any act of that partnership, trust or foreign partnership in respect of any financial instrument must not be ascribed to that qualifying investor;

“person” includes—

(a) an insolvent estate;

(b)the estate of a deceased person;

(c)any trust; and

(d)any portfolio of a collective investment scheme,

but does not include a foreign partnership;

“portfolio of a collective investment scheme” means any—

(a)portfolio of a collective investment scheme in participation bonds;

(b)portfolio of a collective investment scheme in property;

(c)portfolio of a collective investment scheme in securities; or

(d)portfolio of a declared collective investment scheme;

[ “portfolio of a collective investment scheme in participation bonds” means any portfolio comprised in any collective investment scheme in participation bonds contemplated in Part VI of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under and for the purposes of that Part;

“portfolio of a collective investment scheme in property” means any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under [section 51](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/9ww6c#gmaq) of that Act for the purposes of that Part;

“portfolio of a collective investment scheme in securities” means any portfolio comprised in any collective investment scheme in securities contemplated in Part IV of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under [section 42](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/dww6c#glwc) of that Act for the purposes of that Part;

“portfolio of a declared collective investment scheme” means any portfolio comprised in any declared collective investment scheme contemplated in Part VII of the Collective Investment Schemes Control Act managed or carried on by any company registered as a manager under [section 64](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/nxw6c#gmdf) of that Act for the purposes of that Part;

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| “portfolio of a hedge fund collective investment scheme” means any portfolio held by any hedge fund business that qualifies as a declared collective investment scheme in terms of [section 63](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/mxw6c#gmde) of the Collective Investment Schemes Control Act;  (Proposed amendment: Definition of “portfolio of a hedge fund collective investment scheme” to be inserted by [s. 4 (1) (zL)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from the date on which the Minister, in accordance with [s. 63](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/mxw6c#gmde) of the Collective Investment Schemes Control Act, declares a hedge fund business, in which a portfolio is held, to be a collective investment scheme – date not determined.) |

“post-1966 gold mine”  . . . . . .

“post-1973 gold mine” means an independent workable proposition in respect of which the State President or the Minister of Mines has, after 1 January, 1974, on the recommendation of the Mining Leases Board signified in writing his decision to grant a lease of the right to mine for gold, and includes any other gold mine which, in the opinion of the Government Mining Engineer, is an independent workable proposition which was established as such after the said date;

“post-1990 gold mine” means a gold mine which, in the opinion of the Director-General: Mineral and Energy Affairs, is an independent workable proposition and in respect of which a mining authorization for gold mining was issued for the first time after 14 March 1990;

“prescribed” means prescribed or deemed to be prescribed by or under this Act;

“prescribed rate”, in relation to any interest payable in terms of this Act, means for the purposes of—

(a)interest payable to any taxpayer under the provisions of [section 89quat (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/o0w6c#gmt5), a rate determined at four percentage points below the rate contemplated in [paragraph (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gije); or

(b)any other provision of this Act, such rate as the Minister may from time to time fix by notice in the Gazette in terms of [section 80 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/7zkfb/8zkfb/g2kfb#g3) of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/7zkfb/8zkfb#g0)): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;

[General Note: Prescribed rate determined for purposes of [para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gije) as 8.5% p.a. with effect from 1 March, 2011 for purposes of this Act under Notice No. 3 in Government Gazette 33915 of 7 January, 2011.]

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| “prescribed rate” means the rate contemplated in section 189 (3) of the Tax Administration Act;  (Proposed amendment: Definition of “[prescribed rate](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijc)” to be substituted by s. 271 read with [para. 23 ( f )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0) with effect from a date to be determined by the President by proclamation in the Gazette – date not determined to the extent that Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/o1w6c#gmvt) amends or repeals a provision relating to interest: Proclamation No. 51 in Government Gazette 35687 of 14 September, 2012.) |

“provident fund” means any fund (other than a pension fund, pension preservation fund, provident preservation fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—

(a)that the fund is a permanent fund bona fide established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes or mainly for the said purpose and also for the purpose of providing any benefit contemplated in paragraph 2C of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) or [section 15A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/htw6c#gkdr) or 15E of the Pension Funds Act; and

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| (a)that the fund is a permanent fund bona fide established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) or [section 15A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/htw6c#gkdr) or 15E of the Pension Funds Act; and  (Proposed amendment: [Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijg) to be substituted by [s. 4 (1) (zO)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

(b)that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of [subparagraphs (aa)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gii2), [(bb)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gii3), [(cc)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gii4), [(ee)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gii6) and [( ff )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gii7) of [paragraph (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gii1) of the proviso to [paragraph (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihz) of the definition of “[pension fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihr)”; and

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| (b)that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of [paragraph (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gii1) of the proviso to [paragraph (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihz) of the definition of “[pension fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gihr)”; and  (Proposed amendment: [Para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijh) to be substituted by [s. 4 (1) (zO)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

(c)that the rules of the fund have been complied with:

Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of “[provident preservation fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijj)” which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September 2010 to be a fund which is not approved in terms of this definition;

“provident preservation fund” means a pension fund organisation which is registered under the Pension Funds Act and which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations and conditions as the Commissioner may determine, and shall not approve a fund in respect of any year of assessment unless the Commissioner is satisfied in respect of that year of assessment that the rules of the fund provide that—

(a)membership of the fund consists of—

(i)former members of a provident fund whose membership of that fund has terminated due to—

(aa)resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund;

(bb)the winding up or partial winding up of that fund, if the members elected or are required in terms of the rules to transfer to this fund; or

[[Item (bb)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijn) substituted by [s. 6 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) deemed to have come into operation on 1 March, 2008 and applicable in respect of lump sum benefits transferred on or after that date.]

(cc)a transfer of business from one employer to another in terms of [section 197](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/zurg/0urg/5n9g#g0) of the Labour Relations Act, 1995 ([Act No. 66 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/turg/zurg/0urg#g0)), and the employment of the employee with the transferor employer is transferred to the transferee employer, if the members elected or are required in terms of the rules to transfer to this fund;

(ii)former members of any other provident preservation fund—

(aa)if that fund was wound up or partially wound up; or

[[Item (aa)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijq) substituted by [s. 6 (1) (zB)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) deemed to have come into operation on 1 March, 2008 and applicable in respect of lump sum benefits transferred on or after that date.]

(bb)if the member elected to have any lump sum benefit contemplated in paragraph 2 (1) (b) (ii) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) transferred to that fund and who made this election while they were members of that other fund;

(iii)former members of a provident fund or nominees or dependants of that former member in respect of whom an “unclaimed benefit” as defined in the Pension Funds Act is due or payable by that fund; or

(iv)a person who has elected to transfer an amount awarded to that person in terms of a court order contemplated in [section 7 (8)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/9uqg/nzqg/ozqg/twrh#gj) of the Divorce Act, 1979 ([Act No. 70 of 1979](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/9uqg/nzqg/ozqg#g0)), from a provident fund or provident preservation fund for the benefit of that person;

(b)payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2 (1) (a) (ii) or (b) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund by—

(i)a provident fund or any other provident preservation fund of which such member was previously a member; or

(ii)a provident fund or provident preservation fund of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D (4) (b) (ii) of the Pension Funds Act;

(c)with the exception of amounts transferred to any pension fund, pension preservation fund, other provident fund, provident preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2 (1) (b) (ii) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) is allowed to be paid to the member during the period of membership of the fund or any other provident preservation fund: Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in [paragraph (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giju); and

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| (c)with the exception of amounts transferred to any pension fund, pension preservation fund, other provident fund, provident preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2 (1) (b) (ii) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) is allowed to be paid to the member during the period of membership of the fund or any other provident preservation fund: Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in [paragraph (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giju);  (Proposed amendment: Para. (c) to be amended by the deletion of the word “and” at the end by [s. 4 (1) (zT)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

(d)

a member, other than a member contemplated in [paragraph (a) (iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijs) of this proviso, will become entitled to a benefit on his or her retirement date:

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| (d)a member, other than a member contemplated in [paragraph (a) (iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijs) of this proviso, will become entitled to a benefit on his or her retirement date; and  (Proposed amendment: [Para. (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gijy) to be amended by the substitution at the end for the colon of the expression “; and” by [s. 4 (1) (zU)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

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| (e)that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R100 000 or where the employee is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—  (A)any contributions made to a provident fund prior to 1 March 2015;  (B)in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and  (C)any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),  must not be taken into account:  (Proposed amendment: [Para. (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giol) to be added by [s. 4 (1) (zV)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

Provided further that—

(i)the rules of a provident fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September 2010; and

(ii)the rules of the provident fund contemplated in [paragraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giom) that are submitted before 30 September 2010 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition;

“Public Finance Management Act” means the Public Finance Management Act, 1999 ([Act No. 1 of 1999](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/7zkfb/8zkfb#g0));

[Definition of “[Public Finance Management Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gioo)” inserted by [s. 4 (1) (zW)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“Public Private Partnership” means a Public Private Partnership as defined in Regulation 16 of the Treasury Regulations issued in terms of [section 76](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/tyw6c#gmom) of the Public Finance Management Act;

[Definition of “[Public Private Partnership](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gik1)” inserted by [s. 3 (1) (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/4nz5c/5nz5c/76z5c#g4) of [Act No. 32 of 2004](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/4nz5c/5nz5c#g0) and substituted by [s. 4 (1) (zX)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“qualifying investor” means a member of a partnership or foreign partnership or a beneficiary of a trust if the liability of the member or beneficiary to any creditor of the partnership, trust or foreign partnership is limited to the amount that the member or beneficiary has contributed or undertaken to contribute to the partnership, trust or foreign partnership, unless that member or beneficiary—

(a)participates in the effective management of the trade or business of the partnership, trust or foreign partnership;

(b)has the authority to act on behalf of—

(i)the partnership or foreign partnership;

(ii)the members of the partnership or foreign partnership; or

(iii)the trust; or

(c)renders any services to or on behalf of the partnership, trust or foreign partnership;

“qualifying statutory rate”  . . . . . .

[Definition of “[qualifying statutory rate](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gik9)” inserted by [s. 6 (1) (o)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0) and deleted by [s. 12 (1) (h)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c/wa05c#gu) of [Act No. 45 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c#g0) with effect from 1 June, 2004 and applicable in respect of years of assessment commencing on or after that date.]

“regional electricity distributor” means an electricity distribution services provider established after 30 June 2005 that is—

(a)a public entity regulated under the Public Finance Management Act;

[[Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gikb) substituted by [s. 4 (1) (zY)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

(b)a wholly owned subsidiary or entity of a public entity contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gikb) if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity; or

(c)a company as contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib5) of the definition of “[company](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib4)”, which is wholly owned by one or more municipalities;

[Definition of “[regional electricity distributor](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gika)” inserted by [s. 3 (1) (n)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g2) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0).]

“regulation” means a regulation in force under this Act;

“REIT” means a company—

(a)that is a resident; and

(b)the shares of which are listed—

(i)on an exchange (as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Financial Markets Act and licensed under [section 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/xrw6c#gj37) of that Act); and

[[Sub-para. (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giki) substituted by [s. 4 (1) (zZ)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) deemed to have come into operation on 3 June, 2013.]

(ii)as shares in a REIT as defined in the JSE Limited Listings Requirements;

“relative” in relation to any person, means the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of “[child](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giaz)” in this section and any other person, such child shall be deemed to be related to its adoptive parent within the first degree of consanguinity;

[Definition of “[relative](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gikk)” inserted by [s. 4 (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c/1i44c#g0) of [Act No. 90 of 1964](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c#g0).]

“remuneration proxy”, in relation to a year of assessment, means the remuneration, as defined in [paragraph 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/r1w6c#gndt) of the [Fourth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/r1w6c#gn3d), derived by an employee from an employer during the year of assessment immediately preceding that year of assessment: Provided that—

(a)where during a portion of such preceding year the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy as respects that employee must be deemed to be an amount which bears to the amount of the employee’s remuneration for the portion of such preceding year during which the employee was in such employment the same ratio as the period of 365 days bears to the number of days in such last-mentioned portion;

(b)where during the whole of such preceding year, the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy as respects that employee must be deemed to be an amount which bears to the employee’s remuneration during the first month during which the employee was in the employment of the employer the same ratio as 365 days bears to the number of days during which the employee was in such employment;

[Definition of “[remuneration proxy](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giop)” inserted by [s. 4 (1) (zZa)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) deemed to have come into operation on 1 March, 2013 and applicable in respect of years of assessment commencing on or after that date.]

“representative taxpayer” means a natural person who resides in the Republic and—

(a)in respect of the income of a company, the public officer thereof;

(b)in respect of the income under his or her management, disposition or control, the agent of any person;

(c)in respect of income which is the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;

(d)in respect of income paid under the decree or order of any court or judge to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;

(e)in respect of the income received by or accrued to any deceased person during his lifetime and the income received by or accrued to the estate of any deceased person, the executor or administrator of the estate of such deceased person;

( f )in respect of the income received by or accrued to an insolvent estate, the trustee or administrator of such insolvent estate:

Provided that for the purposes of this definition income includes any amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset envisaged in the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

“Republic” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;

“resident” means any—

(a)natural person who is—

(i)ordinarily resident in the Republic; or

(ii)not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic—

(aa)for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the five years of assessment preceding such year of assessment; and

(bb)for a period or periods exceeding 915 days in aggregate during those five preceding years of assessment,

in which case that person will be a resident with effect from the first day of that relevant year of assessment: Provided that—

(A)a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a “port of entry” as contemplated in [section 9 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/glrg/hlrg/3fki#g1) of the Immigration Act, 2002 ([Act No. 13 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/glrg/hlrg#g0)), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act; and

(B)where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or

(b)person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic,

[[Para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gikz) substituted by [s. 12 (1) (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c/wa05c#gu) of [Act No. 45 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c#g0) with effect from 1 June, 2004 and applicable in respect of years of assessment commencing on or after that date.]

but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation: Provided that where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident: Provided further that in determining whether a person that is a foreign investment entity has its place of effective management in the Republic, no regard must be had to any activity that—

(a)constitutes—

(i)a financial service as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/26qg/i8qg/j8qg/m2p3b#gjb) of the Financial Advisory and Intermediary Services Act, 2002 ([Act No. 37 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/26qg/i8qg/j8qg#g2)); or

(ii)any service that is incidental to a financial service contemplated in [subparagraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gikv) where the incidental service is in respect of a financial product that is exempted from the provisions of that Act, as contemplated in [section 1 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gio1) of that Act; and

(b)is carried on by a financial service provider as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/26qg/i8qg/j8qg/m2p3b#gjb) of the Financial Advisory and Intermediary Services Act, 2002 ([Act No. 37 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/26qg/i8qg/j8qg#g2)), in terms of a licence issued to that financial service provider under [section 8](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/prw6c#giv0) of that Act;

“residential unit” means a building or self-contained apartment mainly used for residential accommodation, unless the building or apartment is used by a person in carrying on a trade as an hotel keeper;

[Definition of “[residential unit](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gil0)” inserted by [s. 4 (1) (w)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c/2sz5c#g9) of [Act No. 60 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c#g0) deemed to have come into operation on 21 October, 2008.]

“retirement annuity fund” means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—

(a)that the fund is a permanent fund bona fide established for the sole purpose of providing life annuities for the members of the fund or annuities for the dependants or nominees of deceased members; and

[[Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gil2) substituted by [s. 2 (g)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c/7v34c#g0) of [Act No. 21 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c#g0).]

(b)that the rules of the fund provide—

(i)for contributions by the members, including contributions made by way of transfer of members’ interests in approved pension funds, pension preservation funds, provident funds, provident preservation funds or other retirement annuity funds;

(ii)that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the member is deceased;

|  |
| --- |
|  |
| (ii)that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R100 000 or where the member is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—  (A)any contributions made to a provident fund prior to 1 March 2015;  (B)in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and  (C)any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),  must not be taken into account;  (Proposed amendment: Sub-para. (ii) to be substituted by [s. 4 (1) (zZc)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015.)  (Date of commencement: 1 March, 2015.) |

(iii). . . . . .

[[Sub-para. (iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gil6) substituted by [s. 2 (h)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c/7v34c#g0) of [Act No. 21 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c#g0) and deleted by [s. 2 (1) (y)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

(iv). . . . . .

[[Sub-para. (iv)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gil7) deleted by [s. 2 (1) (y)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

(v)that no member shall become entitled to the payment of any annuity or lump sum benefit contemplated in paragraph 2 (1) (a) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) prior to reaching normal retirement age;

[[Sub-para. (v)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gil8) substituted by [s. 2 (1) (z)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0) and by [s. 7 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

(vi). . . . . .

[[Sub-para. (vi)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gil9) substituted by [s. 2 (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c/7v34c#g0) of [Act No. 21 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c#g0) and deleted by [s. 2 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

(vii). . . . . .

[[Sub-para. (vii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gila) substituted by [s. 2 (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c/7v34c#g0) of [Act No. 21 of 1995](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/5v34c#g0) and deleted by [s. 2 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

(viii). . . . . .

[[Sub-para. (viii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilb) substituted by [s. 6 (1) (g)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c/lg44c#g0) of [Act No. 89 of 1969](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c#g0) and deleted by [s. 4 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/8t44c/cu44c#g0) of [Act No. 103 of 1976](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/8t44c#g0).]

(ix). . . . . .

[[Sub-para. (ix)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilc) substituted by [s. 6 (1) (g)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c/lg44c#g0) of [Act No. 89 of 1969](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c#g0) and deleted by [s. 4 (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/8t44c/cu44c#g0) of [Act No. 103 of 1976](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/8t44c#g0).]

(x)that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to—

(aa)an annuity or a lump sum benefit contemplated in paragraph 2 (1) (a) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) payable on that date;

(bb)be reinstated as a full member under conditions prescribed in the rules of the fund;

(cc)the payment of a lump sum benefit contemplated in paragraph 2 (1) (b) (ii) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) where that member’s interest in the fund is less than an amount determined by the Minister by notice in the Gazette; or

(dd)the payment of a lump sum benefit contemplated in paragraph 2 (1) (b) (ii) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) where that member emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control;

[[Sub-para. (x)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gild) substituted by [s. 3 (1) (p)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g2) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0), by [s. 2 (1) (zB)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0) and by [s. 7 (1) (zB)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

(xi)that upon the winding up of the fund a member’s withdrawal interest therein must—

(aa)where the member received an annuity from the fund on the date upon which the fund is wound up, be used to purchase an annuity (including a living annuity) from any other fund; or

(bb)in any other case, be paid for the member’s benefit into any other retirement annuity fund;

(xii)that save—

(aa)as is contemplated in subparagraph (ii);

(bb)for the transfer of any member’s total interest in any approved retirement annuity fund into another approved retirement annuity fund;

(cc)for the benefit contemplated in [subparagraph (x) (cc)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilg);

(dd)as is contemplated in Part V of the Policyholder Protection Rules promulgated in terms of [section 62](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/lxw6c#gmcv) of the Long-term Insurance Act; or

(ee)for any deduction contemplated in paragraph 2 (1) (b) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k),

[[Item (ee)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilq) added by [s. 5 (1) (r)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/doz5c/eoz5c/xwz5c#ga) of [Act No. 35 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/doz5c/eoz5c#g0) and substituted by [s. 7 (1) (zC)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

member’s rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;

[[Sub-para. (xii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gill) substituted by [s. 19 (1) (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c/k2n4c#g0) of [Act No. 30 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c#g0) and by [s. 3 (1) (q)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g2) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0) (Editorial Note: effective date in [s. 3 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g6) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0) as amended by [s. 95 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/it55c#g7c) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0)).]

(xiii)that the Commissioner shall be notified of all amendments of the rules; and

(c)that the rules of the fund have been complied with;

[Definition of “[retirement annuity fund](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gil1)” amended by [s. 2 (1) (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3434c/5434c#g0) of [Act No. 65 of 1986](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3434c#g0) and by [s. 4 (1) (zZb)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“retirement date” means the date on which—

(a)a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2 (1) (a) (i) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) on or subsequent to attaining normal retirement age; or

(b)a nominee or dependant of a deceased member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2 (1) (a) (i) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k) on the death of the member;

[Definition of “[retirement date](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilt)” inserted by [s. 2 (1) (zC)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0) and substituted by [s. 7 (1) (zD)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0) and by [s. 7 (1) (zI)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) deemed to have come into operation on 1 March, 2009.]

“retirement-funding employment” means—

(a)in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law), who—

(i)in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in [paragraph 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/r1w6c#gndt) of the [Fourth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/r1w6c#gn3d) (but leaving out of account the provisions of paragraphs (c) and (cA) of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in [section 8 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/prw6c#giva), but not an allowance or advance contemplated in [section 8 (1) (b) (iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/prw6c#givd) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said [section 8 (1) (b) (iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/prw6c#givd), and excluding any retirement fund lump sum benefit and any retirement fund lump sum withdrawal benefit) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or

[[Sub-para. (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gily) substituted by [s. 2 (1) (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/44qka/74qka/94qka#g0) of [Act No. 113 of 1993](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/44qka/74qka#g0), by [s. 2 (1) (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/lnogb/mnogb/onogb#g0) of [Act No. 21 of 1994](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/lnogb/mnogb#g0), by [s. 6 (1) (q)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0), by [s. 3 (1) (h)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/yq55c#ge) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0) and by [s. 4 (1) (y)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c/2sz5c#g9) of [Act No. 60 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c#g0) with effect from 1 March, 2009 and applicable in respect of lump sum benefits withdrawn on or after that date.]

(ii)in the case of such holder of an office, derives in respect of his office any income (other than any retirement fund lump sum benefit) by way of salary, emoluments, fees or other remuneration and is, as respects such office, a member of or contributes to a pension fund or provident fund established—

(aa)by law or for the benefit of holders of offices; or

(bb)for the benefit of employees of the person from whom such income is derived,

[[Sub-para. (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilz) amended by [s. 3 (1) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/yq55c#ge) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0) with effect from 1 October, 2007 and applicable in respect of any lump sum benefit accrued on or after that date.]

the employment of such employee or the holding of such office, as the case may be, as respects that part of his said income as is taken into account in the determination of the contributions made by him or on his behalf to such pension fund or provident fund; or

[[Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilx) substituted by [s. 2 (1) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c/vy44c#g0) of [Act No. 121 of 1984](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c#g0).]

(b)(i)in relation to a partner in a partnership who was an employee of the partnership and who on becoming a partner retained membership of the pension fund of the partnership as if he or she had not ceased to be an employee, as respects the part of the partner’s income from the partnership in the form of the partner’s share of profits as does not exceed an amount equal to the partner’s pensionable emoluments during the 12 months which ended on the day on which the partner ceased to be an employee; or

(ii)in relation to a partner in a partnership (other than a partner contemplated in [subparagraph (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gim3)) the part of the partner’s income from the partnership in the form of the partner’s share of profits;

[Definition of “[retirement-funding employment](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gilw)” inserted by [s. 3 (1) (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/nv44c/qv44c#g0) of [Act No. 104 of 1979](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/nv44c#g0). [Para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gim2) substituted by [s. 2 (1) (h)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/qn44c/sn44c#g0) of [Act No. 94 of 1983](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/qn44c#g0) and by [s. 2 (1) (zD)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

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|  |
| “retirement-funding employment”  . . . . . .  (Proposed amendment: Definition of “retirement-funding employment” to be deleted by [s. 4 (1) (zZe)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2015 and applicable in respect of contributions made on or after that date.)  Wording of Sections  (Date of commencement: 1 March, 2015.) |

“retirement fund lump sum benefit” means an amount determined in terms of paragraph 2 (1) (a) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k);

[Definition of “[retirement fund lump sum benefit](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gim5)” inserted by [s. 3 (1) ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/yq55c#ge) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0) and substituted by [s. 2 (1) (zE)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0) and by [s. 7 (1) (zE)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

“retirement fund lump sum withdrawal benefit” means an amount determined in terms of paragraph 2 (1) (b) of the [Second Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/p1w6c#gn0k);

[Definition of “[retirement fund lump sum withdrawal benefit](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gim6)” inserted by [s. 2 (1) (zF)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0) and substituted by [s. 7 (1) (zF)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0).]

“retirement interest” means a member’s share of the value of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as determined in terms of the rules of the fund upon his or her retirement date;

[Definition of “[retirement interest](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gim7)” inserted by [s. 2 (1) (zF)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

“return” means a return as defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9) of the Tax Administration Act;

[Definition of “[return](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gim8)” inserted by s. 271 read with [para. 23 ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

“return of capital” means any amount transferred by a company that is a resident for the benefit or on behalf of any person in respect of any share in that company to the extent that that transfer results in a reduction of contributed tax capital of the company, whether that amount is transferred—

(a)by way of a distribution made by; or

(b)as consideration for the acquisition of any share in,

that company, but does not include any amount so transferred to the extent that the amount so transferred constitutes—

(i)shares in the company; or

(ii)an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67(B) of [section 5](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/drw6c#giou) of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.84 of [section 5](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/drw6c#giou) of the JSE Limited Listings Requirements;

[Definition of “return of capital” inserted by [s. 7 (1) (zJ)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) deemed to have come into operation on 1 January, 2011.]

“scientific research”  . . . . . .

[Definition of “[scientific research](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gime)” deleted by [s. 12 (1) (m)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c/wa05c#gu) of [Act No. 45 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c#g0).]

“Secretary”  . . . . . .

[Definition of “[Secretary](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimf)” inserted by [s. 4 (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c/1i44c#g0) of [Act No. 90 of 1964](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c#g0) and deleted by [s. 2 (1) (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c/jw44c#g0) of [Act No. 104 of 1980](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c#g0).]

“securities lending arrangement” means a “lending arrangement” as defined in the Securities Transfer Tax Act, 2007 ([Act No. 25 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/fl67a/hl67a#g0));

[Definition of “[securities lending arrangement](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimg)” inserted by [s. 12 (1) (n)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c/wa05c#gu) of [Act No. 45 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c#g0) and substituted by [s. 4 (1) (z)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c/2sz5c#g9) of [Act No. 60 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c#g0).]

“severance benefit” means any amount (other than a lump sum benefit or an amount contemplated in [paragraph (d) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gif9) or [(iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gifa) of the definition of “[gross income](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gies)”) received by or accrued to a person by way of a lump sum from or by arrangement with the person’s employer or an associated institution in relation to that employer in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person’s office or employment or of the person’s appointment (or right or claim to be appointed) to any office or employment, if—

(a)such person has attained the age of 55 years;

(b)such relinquishment, termination, loss, repudiation, cancellation or variation is due to the person becoming permanently incapable of holding the person’s office or employment due to sickness, accident, injury or incapacity through infirmity of mind or body; or

(c)such termination or loss is due to—

(i)the person’s employer having ceased to carry on or intending to cease carrying on the trade in respect of which the person was employed or appointed; or

(ii)the person having become redundant in consequence of a general reduction in personnel or a reduction in personnel of a particular class by the person’s employer,

unless, where the person’s employer is a company, the person at any time held more than five per cent of the issued shares or members’ interest in the company:

[[Para. (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimk) amended by [s. 7 (1) (zL)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) with effect from 1 April, 2012.]

Provided that any such amount which becomes payable in consequence of or following upon the death of a person must be deemed to be an amount which accrued to such person immediately prior to his or her death;

[Definition of “[severance benefit](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimh)” inserted by [s. 6 (1) (zF)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) and amended by [s. 7 (1) (zK)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) with effect from 1 March, 2012 and applicable in respect of receipts and accruals on or after that date and by [s. 7 (1) (zM)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0).]

“share” means, in relation to any company, any unit into which the proprietary interest in that company is divided;

[Definition of “[share](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimn)” inserted by [s. 7 (1) (zN)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) and substituted by [s. 2 (1) (z)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c/k689c#g3) of [Act No. 22 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c#g0) with effect from 1 January, 2013.]

“shareholder”  . . . . . .

[Definition of “[shareholder](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimo)” substituted by [s. 3 ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/7h44c/ai44c#g0) of [Act No. 90 of 1962](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/7h44c#g0), amended by [s. 2 (1) ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c/vy44c#g0) of [Act No. 121 of 1984](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ty44c#g0), by [s. 6 (1) (r)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0), by [s. 12 (1) (o)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c/wa05c#gu) of [Act No. 45 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/1nz5c/2nz5c#g0), by [s. 3 (1) (r)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g2) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0), by [s. 3 (1) (k)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/yq55c#ge) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0) and by [s. 6 (1) (zG)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) and deleted by [s. 7 (1) (zO)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c/p255c#gs) of [Act No. 24 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/pf55c/sf55c#g0) with effect from 1 April, 2012.]

“Short-term Insurance Act” means the Short-term Insurance Act, 1998 ([Act No. 53 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/q8sg/r8sg#g0));

[Definition of “[Short-term Insurance Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gios)” inserted by [s. 4 (1) (zZf)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“South African company”  . . . . . .

[Definition of “[South African company](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimp)” inserted by [s. 4 (1) (w)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c/ga44c#g0) of [Act No. 85 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ca44c#g0), substituted by [s. 4 (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/8t44c/cu44c#g0) of [Act No. 103 of 1976](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/8t44c#g0), by [s. 2 (1) (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/tr44c/vr44c#g0) of [Act No. 96 of 1985](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/tr44c#g0) and by [s. 2 (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/zz34c/1z34c#g0) of [Act No. 36 of 1996](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/zz34c#g0) and deleted by [s. 2 (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/9b64c/bc64c#g0) of [Act No. 59 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/9b64c#g0).]

“South African Reserve Bank” means the central bank of the Republic regulated in terms of the South African Reserve Bank Act, 1989 ([Act No. 90 of 1989](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/mctg/nctg#g0));

[Definition of “[South African Reserve Bank](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giot)” inserted by [s. 4 (1) (zZg)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“South African Revenue Service” means the South African Revenue Service established by [section 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/9qw6c#gio3) of the South African Revenue Service Act, 1997;

[Definition of “[South African Revenue Service](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimq)” inserted by [s. 34 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg/991i#g0) of [Act No. 34 of 1997](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/wctg/xctg#g0), deleted by [s. 3 (1) (k)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c/cp05c#g4) of [Act No. 32 of 2005](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c#g0) (English only) and inserted by [s. 3 (1) (k)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c/cp05c#g4) of [Act No. 32 of 2005](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c#g0) (English only).]

“special trust” means a trust created—

(a)solely for the benefit of one or more persons who is or are persons with a disability as defined in [section 6B (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/7hx8c#goki) where such disability incapacitates such person or persons from earning sufficient income for their maintenance, or from managing their own financial affairs: Provided that—

(aa)such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date on which all such persons are deceased; and

(bb)where such trust is created for the benefit of more than one person, all persons for whose benefit the trust is created must be relatives in relation to each other; or

[[Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gims) amended by [s. 3 (1) (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/yq55c#ge) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0), substituted by [s. 2 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c/k689c#g3) of [Act No. 22 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c#g0) and amended by [s. 4 (1) (zZh)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0) with effect from 1 March, 2014 and applicable in respect of years of assessment commencing on or after that date.]

(b)by or in terms of the will of a deceased person, solely for the benefit of beneficiaries who are relatives in relation to that deceased person and who are alive on the date of death of that deceased person (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust under the age of 18 years;

[Definition of “[special trust](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimr)” inserted by [s. 5 (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0) and substituted by [s. 9 (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/dg55c/eg55c/jx55c#g0) of [Act No. 30 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/dg55c/eg55c#g0). [Para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimt) substituted by [s. 2 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c/k689c#g3) of [Act No. 22 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c#g0) deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March, 2012.]

“specified date”, in relation to any company, means—

(a)in respect of the year of assessment ending the thirtieth day of June, 1962, that date or, if such company’s return is under the proviso to [subsection (13)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/6xw6c#gmn0) of [section sixty-six](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/6xw6c#gmmg) accepted in respect of a period ending upon some other date, such other date; or

(b)in respect of any other year of assessment, the last day of such other year of assessment;

[Definition of “[specified date](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimu)” substituted by [s. 1 (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c/1t34c#g0) of [Act No. 6 of 1963](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c#g0).]

“specified period”, in relation to a year of assessment of any company commencing on or after 1 April 1977, means—

(a)where such year of assessment is the first financial year of such company, the period commencing on the first day of such year and ending six months after the specified date in respect of such year; and

(b)where such year of assessment is a subsequent financial year of such company, the period commencing the day after the end of the specified period in respect of the immediately preceding year of assessment and ending six months after the specified date in respect of the year of assessment in question:

Provided that where by reason of the amalgamation under section 94  of the Co-operative Societies Act, 1939 (Act No. 29 of 1939), of two or more agricultural co-operatives (as defined in [section 27 (9)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/6uw6c#glc6) of this Act), the assets and liabilities of such co-operatives have vested in a new agricultural co-operative (as so defined), the Commissioner may, having regard to the circumstances of the case, direct that the specified period of each of the co-operatives which have so amalgamated, as applicable in relation to the final year of assessment of the co-operative in question be extended so as to end on such day as the Commissioner may determine;

[Definition of “[specified period](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gimx)” inserted by [s. 4 (1) (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ox44c/sx44c#g0) of [Act No. 113 of 1977](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/ox44c#g0) and substituted by [s. 3 (1) (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/nv44c/qv44c#g0) of [Act No. 104 of 1979](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/nv44c#g0).]

“spot rate” means the appropriate quoted exchange rate at a specific time by any authorised dealer in foreign exchange for the delivery of currency;

[Definition of “[spot rate](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin0)” inserted by [s. 3 (1) (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c/cp05c#g4) of [Act No. 32 of 2005](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/poz5c/qoz5c#g0) deemed to have come into operation on 8 November, 2005 and applicable in respect of years of assessment ending on or after that date.]

“spouse”, in relation to any person, means a person who is the partner of such person—

(a)in a marriage or customary union recognised in terms of the laws of the Republic;

(b)in a union recognised as a marriage in accordance with the tenets of any religion; or

(c)in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent,

and “married”, “husband” or “wife” shall be construed accordingly: Provided that a marriage or union contemplated in [paragraph (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin3) or [(c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin4) shall, in the absence of proof to the contrary, be deemed to be a marriage or union out of community of property;

[Definition of “[spouse](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin1)” inserted by [s. 5 ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0) and amended by [s. 2 (1) (zB)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c/k689c#g3) of [Act No. 22 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/9589c/b689c#g0) deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March, 2012.]

“tax” means tax or a penalty imposed in terms of this Act;

[Definition of “[tax](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin5)” (previously definition of “[tax](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin5)” or “the tax” or “taxation”) amended by [s. 1 (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c/1t34c#g0) of [Act No. 6 of 1963](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c#g0) and substituted by [s. 19 (1) (m)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c/k2n4c#g0) of [Act No. 30 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c#g0); by [s. 2 (1) (zG)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0), by [s. 4 (1) (zA)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c/2sz5c#g9) of [Act No. 60 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/goz5c/hoz5c#g0) and by s. 271 read with [para. 23 (k)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

“Tax Administration Act” means the Tax Administration Act, 2011 ([Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0));

[Definition of “[Tax Administration Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin6)” inserted by s. 271 read with [para. 23 (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0) and substituted by [s. 4 (1) (zZi)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“tax benefit” includes any avoidance, postponement or reduction of any liability for tax;

[Definition of “[tax benefit](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin7)” inserted by [s. 6 (1) (zH)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0).]

“taxable amount”  . . . . . .

[Definition of “[taxable amount](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin8)” inserted by [s. 4 (1) ( f )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/oe44c/se44c#g0) of [Act No. 88 of 1971](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/oe44c#g0) and deleted by [s. 2 (1) ( f )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c/jw44c#g0) of [Act No. 104 of 1980](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c#g0).]

“taxable capital gain” means an amount determined in terms of [paragraph 10](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnpv) of the [Eighth Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/v1w6c#gnnp);

[Definition of “[taxable capital gain](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gin9)” inserted by [s. 5 (k)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0).]

“taxable income” means the aggregate of—

(a)the amount remaining after deducting from the income of any person all the amounts allowed under [Part I](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/crw6c#giot) of [Chapter II](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/crw6c#gios) to be deducted from or set off against such income; and

(b)all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act;

[Definition of “[taxable income](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gina)” substituted by [s. 4 (1) (g)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/oe44c/se44c#g0) of [Act No. 88 of 1971](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/oe44c#g0), by [s. 2 (1) (g)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c/jw44c#g0) of [Act No. 104 of 1980](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/hw44c#g0) and by [s. 5 (l)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c/wpn4c#g0) of [Act No. 5 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/rpn4c#g0).]

“taxpayer” means any person chargeable with any tax leviable under this Act;

[Definition of “[taxpayer](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gind)” amended by [s. 1 (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c/1t34c#g0) of [Act No. 6 of 1963](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c#g0) and substituted by [s. 19 (1) (n)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c/k2n4c#g0) of [Act No. 30 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/11n4c#g0), by [s. 6 (1) (s)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0) and by s. 271 read with [para. 23 (m)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

“territory”  . . . . . .

[Definition of “[territory](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gine)” inserted by [s. 6 (1) (h)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c/lg44c#g0) of [Act No. 89 of 1969](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c#g0), substituted by [s. 2 (h)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3144c/5144c#g0) of [Act No. 141 of 1992](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3144c#g0) and deleted by [s. 2 ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/9b64c/bc64c#g0) of [Act No. 59 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/9b64c#g0).]

“this Act” includes the regulations;

“trade” includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any other property which is of a similar nature;

[Definition of “[trade](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#ging)” substituted by [s. 6 (1) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c/lg44c#g0) of [Act No. 89 of 1969](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/fg44c#g0), by [s. 2 (1) (d)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/k044c/m044c#g0) of [Act No. 129 of 1991](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/k044c#g0), by [s. 10 (1) (k)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/v854c/5854c#g0) of [Act No. 53 of 1999](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/v854c#g0) and by [s. 4 (1) (zZj)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“Trade Marks Act” means the Trade Marks Act, 1993 ([Act No. 194 of 1993](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/7ltg/8ltg#g0));

[Definition of “[Trade Marks Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giou)” inserted by [s. 4 (1) (zZk)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“trading stock”—

(a)includes—

(i)anything produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by the taxpayer or on behalf of the taxpayer;

(ii)anything the proceeds from the disposal of which forms or will form part of the taxpayer’s gross income, otherwise than—

(aa)in terms of [paragraph ( j)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gig0) or [(m)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gig6) of the definition of “[gross income](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gies)”;

(bb)in terms of paragraph 14 (1) of the [First Schedule](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/o1w6c#gmvt); or

(cc)as a recovery or recoupment contemplated in [section 8 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/prw6c#giw4) which is included in gross income in terms of [paragraph (n)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gig8) of the definition of “[gross income](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gies)”; or

(iii)any consumable stores and spare parts acquired by the taxpayer to be used or consumed in the course of the taxpayer’s trade; but

(b)does not include—

(i)a foreign currency option contract; or

(ii)a forward exchange contract,

as defined in [section 24I (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/ouw6c#gkx3);

[Definition of “[trading stock](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#ginh)” substituted by [s. 2 (1) (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/cxwwc/exwwc/hxwwc#g0) of [Act No. 101 of 1990](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/cxwwc/exwwc#g0), by [s. 2 (1) (m)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/44qka/74qka/94qka#g0) of [Act No. 113 of 1993](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/44qka/74qka#g0) and by [s. 13 (1) (k)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c/4z55c#g0) of [Act No. 30 of 2000](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/gg55c/hg55c#g0), amended by [s. 17 (1) (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/m115c/n115c/5115c#g0) of [Act No. 60 of 2001](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/m115c/n115c#g0) and by [s. 6 (1) (t)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c/0g05c#g0) of [Act No. 74 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/ynz5c/znz5c#g0) and substituted by [s. 6 (1) (zI)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c/j755c#gn) of [Act No. 7 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/nf55c/rf55c#g0) with effect from the date of promulgation of that Act, 2 November, 2010 and applicable in respect of years of assessment ending on or after that date.]

“trust” means any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person;

[Definition of “[trust](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gins)” inserted by [s. 2 (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3144c/5144c#g0) of [Act No. 141 of 1992](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/3144c#g0).]

“trustee”, in addition to every person appointed or constituted as such by act of parties, by will, by order or declaration of court or by operation of law, includes an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, fideicommissum or other limited interest or acting in any fiduciary capacity or having, either in a private or in an official capacity, the possession, direction, control or management of any property of any person under legal disability;

“Value-Added Tax Act” means the Value-Added Tax Act, 1991 ([Act No. 89 of 1991](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/artg/drtg/ertg#g0));

[Definition of “[Value-Added Tax Act](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giov)” inserted by [s. 4 (1) (zZl)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

“water services provider” means a person who provides water supply services and sanitation services and who is—

(a)a public entity regulated under the Public Finance Management Act;

[[Para. (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#ginv) substituted by [s. 4 (1) (zZm)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd/bdqbd#g5) of [Act No. 31 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/7cqbd#g0).]

(b)a wholly owned subsidiary or entity of a public entity contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#ginv) if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity;

[[Para. (b)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#ginw) substituted by [s. 3 (1) (m)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c/yq55c#ge) of [Act No. 8 of 2007](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/1f55c/2f55c#g0) deemed to have come into operation on 1 January, 2007 and applicable in respect of any year of assessment ending on or after that date (English only).]

(c)a company as contemplated in [paragraph (a)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib5) of the definition of “[company](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gib4)”, which is wholly owned by one or more municipalities; or

(d)a board or institution which has powers similar to a water board established in terms of the Water Services Act, 1997 ([Act No. 108 of 1997](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/kstg/0stg/1stg#g0)), and would have fallen within the ambit of the definition of “[local authority](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gigw)” prior to the coming into operation of section 3 (1) (h) of the Revenue Laws Amendment Act, 2006;

[Definition of “[water services provider](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#ginu)” inserted by [s. 3 (1) (s)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c/d0z5c#g2) of [Act No. 20 of 2006](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/rsg4c/aoz5c/boz5c#g0).]

“withdrawal interest” means the value of the member’s share of the pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund value, as determined in terms of the rules of the fund, immediately prior to the date on which the member becomes entitled to a benefit from that fund because of an event other than the member attaining normal retirement age, as determined by the rules of the fund;

[Definition of “[withdrawal interest](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#ginz)” inserted by [s. 2 (1) (zH)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c/no55c#ge) of [Act No. 3 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/yf55c/zf55c#g0).]

“year of assessment” means any year or other period in respect of which any tax or duty leviable under this Act is chargeable, and any reference in this Act to any year of assessment ending the last or the twenty-eighth or the twenty-ninth day of February shall, unless the context otherwise indicates, in the case of a company or a portfolio of a collective investment scheme in securities be construed as a reference to any financial year of that company or portfolio ending during the calendar year in question.

[[Sub-s. (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#giaa) (previously [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gia9)) renumbered by s. 271 read with [para. 23 (n)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0). Definition of “year of assessment” substituted by [s. 1 (e)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c/1t34c#g0) of [Act No. 6 of 1963](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/0t34c#g0), amended by [s. 4 ( f )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/u834c/x834c#g0) of [Act No. 72 of 1963](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/u834c#g0) and substituted by [s. 4 ( f )](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c/1i44c#g0) of [Act No. 90 of 1964](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/isg4c/yi44c#g0), by [s. 9 (c)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/dg55c/eg55c/jx55c#g0) of [Act No. 30 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/dg55c/eg55c#g0) and by [s. 7 (1) (zG)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c/kl55c#gq) of [Act No. 17 of 2009](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/tsg4c/uf55c/vf55c#g0) with effect from the commencement of years of assessment commencing on or after 1 January, 2010.]

(2)  Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.

[[Sub-s. (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/alrg/ulrg/0ds6c/8qw6c#gio1) inserted by s. 271 read with [para. 23 (o)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of Sch. [1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc/wrkrc#g1lp) of [Act No. 28 of 2011](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/pjtg/akkrc/bkkrc#g0).]

**GOVERNMENT EMPLOYEES PENSION LAW, 1996**

[PROCLAMATION NO. 21 OF 1996]

**17.**   **Funding of Fund.**—(1)  A person who is or becomes a member of the Fund shall continue to contribute or shall with effect from the date on which he or she becomes a member, as the case may be, contribute to the Fund at the prescribed rate, and shall continue so to contribute for as long as he or she is such a member.

(2)  The employer shall in respect of every member employed in its service make contributions to the Fund at the rate referred to in subsection (3).

(3)  The rate of contributions referred to in subsection (2) shall be determined with due regard to the valuations of the Fund, which shall be performed at intervals not exceeding three years, by an actuary appointed by the Board.

(4)  If any action taken by the employer or if any legislation adopted by Parliament places any additional financial obligation on the Fund, the employer or the Government or the employer and the Government, as the case may be shall pay to the Fund an amount which is required to meet such obligation.

**19.**   **Age of retirement.**—Subject to the provisions of this Law, a member shall have the right to retire on pension and shall be so retired on reaching the age determined by the law governing his or her employment: Provided that where such a law does not determine such a retirement age, a member—

(*a*) who was a member of the Fund on the fixed date shall have the right to retire on pension and shall be so retired on reaching the retirement age provided for in any other law which applied to him or her on the day preceding the fixed date; or

(*b*) who became a member of the Fund after the fixed date shall have the right to retire and shall be so retired on reaching the retirement age determined in the rules.

JUDICIAL SERVICE COMMISSION ACT  
NO. 9 OF 1994

**36.  Finances and accountability.**—(1)  Expenditure in connection with the administration and functioning of the Commission must be defrayed from monies appropriated by Parliament for this purpose to the Department of Justice and Constitutional Development vote (hereinafter referred to as the Departmental vote) in terms of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/7zkfb/8zkfb#g0)).

(2)  Monies appropriated by Parliament for this purpose—

(*a*) constitute earmarked funds on the Departmental vote; and

(*b*) may not be used by the Department for any other purpose, without the approval of Treasury and the Chief Justice as Chairperson of the Commission.

(3)  The Minister must consult with the Chief Justice on the funds required for the administration and functioning of the Commission, as part of the budgetary process of departments of state, in the manner prescribed.

(4)  Subject to the Public Finance Management Act, 1999 ([Act No. 1 of 1999](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/7zkfb/8zkfb#g0)), the Director-General of the Department—

(*a*) is charged with the responsibility of accounting for monies received or paid out for or on account of the administration and functioning of the Commission; and

(*b*) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

[[S. 36](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/ktrg/ltrg/g2zsb#g9m) inserted by [s. 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/jy54c/sy54c#g8) of [Act No. 20 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/jy54c#g0).]

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT  
NO. 74 OF 1996

**4.   Functions of Special Investigating Unit.**—(1)  The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in [section 2 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/0dtg/1dtg/gp2i#g1)—

(*a*) to investigate all allegations regarding the matter concerned;

(*b*) to collect evidence regarding acts or omissions which are relevant to its investigation;

[[Para. (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/0dtg/1dtg/ip2i#g3) substituted by [s. 3 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/6v54c#g4) of [Act No. 11 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/6v54c#g0).]

(*c*) to institute and conduct civil proceedings in a Special Tribunal or any court of law for—

(i) any relief to which the State institution concerned is entitled, including the recovery of any damages or losses and the prevention of potential damages or losses which may be suffered by such a State institution;

(ii) any relief relevant to any investigation; or

(iii) any relief relevant to the interests of a Special Investigating Unit;

[Para. (*c*) substituted by [s. 3 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/6v54c#g4) of [Act No. 11 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/6v54c#g0).]

(*d*) to refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;

(*e*) to perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;

(*f*) from time to time as directed by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned or any court of law;

[[Para. (*f*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/0dtg/1dtg/ip2i#g7) substituted by [s. 3 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/6v54c#g4) of [Act No. 11 of 2012](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/6v54c#g0).]

(*g*) upon the conclusion of the investigation, to submit a final report to the President; and

(*h*) to at least twice a year submit a report to Parliament on the investigations by and the activities, composition and expenditure of such Unit.

(2)  A Special Investigating Unit must, as soon as practicable after it has obtained evidence referred to in [subsection (1) (*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/0dtg/1dtg/ip2i#g5), inform the relevant prosecuting authority thereof, whereupon such evidence must be dealt with in the manner which best serves the interests of the public.

PROMOTION OF ACCESS TO INFORMATION ACT  
NO. 2 OF 2000

**“court”** means—

(*a*) the Constitutional Court acting in terms of [section 167 (6) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg/74bh#gg) of [the Constitution](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg#g0); or

(*b*) (i) a High Court or another court of similar status; or

(ii) a Magistrate’s Court, either generally or in respect of a specified class of decisions in terms of this Act, designated by the Minister by notice in the *Gazette* and presided over by a magistrate or an additional magistrate designated in terms of [section 91A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#g0), within whose area of jurisdiction—

(*aa*) the decision of the information officer or relevant authority of the public body or the head of a private body has been taken;

(*bb*) the public body or private body concerned has its principal place of administration or business; or

(*cc*) the requester or third party concerned is domiciled or ordinarily resident;

[Definition of “[court](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/4ymsb?f=templates$fn=document-frame.htm$3.0#g4)” substituted by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/4194c/5194c#g0) of [Act No. 54 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/4194c#g0).]

**91A.   Designation and training of presiding officers.**—(1)  (*a*)  The head of an administrative region defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/1xfh#g0) of the Magistrates’ Courts Act, 1944 ([Act No. 32 of 1944](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg#g0)), must, subject to subsection (2), designate in writing any magistrate or additional magistrate as a presiding officer of a Magistrate’s Court designated by the Minister in terms of [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/4ymsb#g0) of this Act.

(*b*)  A presiding officer must perform the functions and duties and exercise the powers assigned to or conferred on him or her under this Act or any other law.

(2)  Only a magistrate or additional magistrate who has completed a training course—

(*a*) before the date of commencement of this section; or

(*b*) as contemplated in [subsection (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#gd),

and whose name has been included on the list contemplated in [subsection (4) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#gb), may be designated in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#g1).

(3)  The heads of administrative regions must—

(*a*) take all reasonable steps within available resources to designate at least one presiding officer for each magistrate’s court within his or her area of jurisdiction which has been designated by the Minister in terms of [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/4ymsb#g0); and

(*b*) without delay, inform the Director-General: Justice and Constitutional Development of any magistrate or additional magistrate who has completed a training course as contemplated in [subsections (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#gd) and [(6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#ge) or who has been designated in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#g1).

(4)  The Director-General: Justice and Constitutional Development must compile and keep a list of every magistrate or additional magistrate who has—

(*a*) completed a training course as contemplated in [subsections (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#gd) and [(6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#ge); or

(*b*) been designated as a presiding officer of a magistrate’s court contemplated in [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#g1).

(5)  The Chief Justice must, in consultation with the Judicial Service Commission and the Magistrates Commission, develop the content of training courses with the view to building a dedicated and experienced pool of trained and specialised presiding officers for purposes of presiding in court proceedings as contemplated in this Act.

(6)  The Chief Justice must, in consultation with the Judicial Service Commission, the Magistrates Commission and the Minister, implement the training courses referred to in [subsection (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#gd).

(7)  The Minister must table a report in Parliament, as prescribed, relating to the content and implementation of the training courses referred to in [subsections (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#gd) and [(6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#ge).

[[S. 91A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/1tsg/3ymsb/n1msb#g0) inserted by [s. 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/4194c/6194c#g0) of [Act No. 54 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/4194c#g0).]

**MAGISTRATES’ COURTS ACT  
NO. 32 OF 1944**

**12.   Powers of judicial officers.**—(1)  A magistrate—

(*a*)may hold a court, provided that a court of a regional division may, subject to [subsection (6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#gc), only be held by a magistrate of the regional division;

[[Para. (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#g2) amended by [s. 9](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/hcf5c/jcf5c#g1) of [Act No. 40 of 1952](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/hcf5c#g0) and substituted by [s. 4 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c/rp54c#g3) of [Act No. 31 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c#g0).]

(*b*)shall possess the powers and perform the duties conferred or imposed upon the magistrates by any law for the time being in force within the province wherein his district is situate;

(*c*)shall be subject to the administrative control of the head of the administrative region in which his or her district is situate.

[[Para. (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#g4) added by [s. 5](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c/vaf5c#g0) of [Act No. 66 of 1998](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/qaf5c#g0).]

(2)  An additional magistrate or an assistant magistrate—

(*a*)may hold a court;

(*b*)shall possess such powers and perform such duties conferred or imposed upon magistrates by law.

[[Para. (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#g7) substituted by [s. 4 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c/rp54c#g3) of [Act No. 31 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c#g0).]

(3)  An acting magistrate, additional magistrate, or assistant magistrate, respectively, shall possess the powers and jurisdiction and perform the duties of the magistrate, additional magistrate, or assistant magistrate in whose place he is appointed to act, for the particular case or during the time or in the circumstances for which he is appointed to act.

(4)  Every additional magistrate and every assistant magistrate shall, in each district for which he has been appointed, be subject to the administrative direction of the magistrate; and the magistrate shall allocate the work among the additional magistrates and assistant magistrates.

(5)  . . . . . .

[[Sub-s. (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#ga) added by [s. 25](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/kmt4c/zmt4c#g0) of [Act No. 94 of 1974](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/ssg4c/kmt4c#g0) and deleted by [s. 4 (*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c/rp54c#g3) of

[Act No. 31 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c#g0).]

(6)  Only a magistrate of a regional division whose name appears on the list referred to in [subsection (7)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#gd), may adjudicate on civil disputes contemplated in [section 29 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#g1) or [29 (1B)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#gd), in accordance with the criteria set out in [subsection (8)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#ge).

[[Sub-s. (6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#gc) added by [s. 4 (*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c/rp54c#g3) of [Act No. 31 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c#g0) and substituted by [s. 3](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c/gbf5c#g2) of [Act No. 19 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c#g0).]

(7)  The Magistrates Commission must enter the names of magistrates of regional divisions on a list of magistrates who may adjudicate on civil disputes contemplated in—

(*a*) [section 29 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#g1) or [29 (1B)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#gd); or

(*b*) both [sections 29 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#g1) and [29 (1B)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#gd).

[[Sub-s. (7)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#gd) added by [s. 4 (*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c/rp54c#g3) of [Act No. 31 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c#g0) and substituted by [s. 3](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c/gbf5c#g2) of [Act No. 19 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c#g0).]

(8)  The Magistrates Commission may only enter the name of a magistrate on the list in terms of [subsection (7)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#gd) if one or more places have been appointed in terms of [section 2 (1) (*i*A)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/2xfh#gk) within the regional division in respect of which the magistrate in question had been appointed for the adjudication of civil disputes, and—

(*a*) the head of the South African Judicial Education Institute has issued a duly signed certificate that the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or

(*b*) the Magistrates Commission is satisfied that, before the establishment of the Institute referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#gf), the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or

(*c*) the Magistrates Commission is satisfied that the magistrate, on account of previous experience has suitable knowledge of, and expertise in, civil litigation matters to preside over the adjudication of civil disputes contemplated in [section 29 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#g1) or [29 (1B)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#gd) or both [sections 29 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#g1) and [29 (1B)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/4yfh#gd).

[[Sub-s. (8)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/fyfh#ge) added by [s. 4 (*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c/rp54c#g3) of [Act No. 31 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/np54c#g0) and substituted by [s. 3](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c/gbf5c#g2) of [Act No. 19 of 2010](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/msg4c/dbf5c#g0).]

**PROMOTION OF ADMINISTRATIVE JUSTICE ACT  
NO. 3 OF 2000**

**“court”** means—

(*a*) the Constitutional Court acting in terms of [section 167 (6) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg/74bh#gg) of [the Constitution](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg#g0); or

(*b*) (i) a High Court or another court of similar status; or

(ii) a Magistrate’s Court, either generally or in respect of a specified class of administrative actions, designated by the Minister by notice in the *Gazette* and presided over by a magistrate or an additional magistrate designated in terms of [section 9A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h#g0),

within whose area of jurisdiction the administrative action occurred or the administrator has his or her or its principal place of administration or the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced;

[Definition of “[court](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/i48h?f=templates$fn=document-frame.htm$3.0#gh)” substituted by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/0194c/1194c#g0) of [Act No. 53 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/0194c#g0).]

**9A.   Designation and training of presiding officers.**—(1)  (*a*)  The head of an administrative region defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/1xfh#g0) of the Magistrates’ Courts Act, 1944 ([Act No. 32 of 1944](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg#g0)), must, subject to subsection (2), designate in writing any magistrate or additional magistrate as a presiding officer of the Magistrate’s Court designated by the Minister in terms of [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/i48h#g0) of this Act.

(*b*)  A presiding officer must perform the functions and duties and exercise the powers assigned to or conferred on him or her under this Act or any other law.

(2)  Only a magistrate or additional magistrate who has completed a training course—

(*a*) before the date of commencement of this section; or

(*b*) as contemplated in [subsection (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#gd),

and whose name has been included on the list contemplated in [subsection (4) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#gb), may be designated in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#g1).

(3)  The heads of administrative regions must—

(*a*) take all reasonable steps within available resources to designate at least one presiding officer for each magistrate’s court within his or her area of jurisdiction which has been designated by the Minister in terms of [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/i48h#g0); and

(*b*) without delay, inform the Director-General: Justice and Constitutional Development of any magistrate or additional magistrate who has completed a training course as contemplated in [subsections (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#gd) and [(6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#ge) or who has been designated in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#g1).

(4)  The Director-General: Justice and Constitutional Development must compile and keep a list of every magistrate or additional magistrate who has—

(*a*) completed a training course as contemplated in [subsections (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#gd) and [(6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#ge); or

(*b*) been designated as a presiding officer of a magistrate’s court contemplated in [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#g1).

(5)  The Chief Justice must, in consultation with the Judicial Service Commission and the Magistrates Commission, develop the content of training courses with the view to building a dedicated and experienced pool of trained and specialised presiding officers for purposes of presiding in court proceedings as contemplated in this Act*.*

(6)  The Chief Justice must, in consultation with the Judicial Service Commission, the Magistrates Commission and the Minister, implement the training courses contemplated in [subsection (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#gd).

(7)  The Minister must table a report in Parliament, as prescribed, relating to the content and implementation of the training courses referred to in [subsections (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#gd) and [(6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#ge).

[[S. 9A](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/8tsg/9tsg/r48h?f=templates$fn=document-frame.htm$3.0#g0) inserted by [s. 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/0194c/2194c#g0) of [Act No. 53 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/0194c#g0).]

**PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT  
NO. 4 OF 2000**

**16.   Equality courts and presiding officers.**—(1)  For the purposes of this Act, but subject to [section 31](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h#g0)—

(*a*) every High Court is an equality court for the area of its jurisdiction;

(*b*) any judge may, subject to [subsection (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#gb), be designated in writing by the Judge President as a presiding officer of the equality court of the area in respect of which he or she is a judge;

(*c*) the Minister must, after consultation with the head of an administrative region defined in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg/1xfh#g0) of the Magistrates’ Courts Act, 1944 ([Act No. 32 of 1944](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/ezrg/rzrg/szrg#g0)), by notice in the *Gazette*—

(i) designate one or more magistrate’s courts as equality courts for the administrative region concerned;

(ii) define the area of jurisdiction of each equality court, which may consist of any number of districts, sub-districts or other areas of jurisdiction created in terms of [section 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/568h#g0) of the Magistrates’ Courts Act, 1944;

(iii) increase or reduce the area of jurisdiction of each equality court;

(iv) appoint one or more places within the area of jurisdiction of each equality court for the holding of equality court sittings;

(v) withdraw or vary any notice under this paragraph:

Provided that any proceedings pending before an equality court which are not finalised at the time of the publication of a notice in the *Gazette* as contemplated in this paragraph, must be finalised by that court, as if such notice had not been published; and

[Para. (*c*) substituted by [s. 28](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/wjmba/zkmba/rlmba#gz) of [Act No. 55 of 2003](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/wjmba/zkmba#g0).]

(*d*) the head of an administrative region contemplated in paragraph (*c*) must, subject to [subsection (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#gb), designate in writing any magistrate or additional magistrate as a presiding officer of the equality court.

(2)  Only a judge, magistrate or additional magistrate who has completed a training course as a presiding officer of an equality court—

(*a*) before the date of commencement of [section 31](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h#g0); or

(*b*) as contemplated in [section 31 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h#g8),

and whose name has been included on the list contemplated in [subsection (4) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#gi), may be designated as such in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#g1).

(3)  The Judges President and the heads of administrative regions must—

(*a*) take all reasonable steps within available resources to designate at least one presiding officer for each equality court within his or her area of jurisdiction; and

(*b*) without delay, inform the Director-General of the Department of any judge, magistrate or additional magistrate who has completed a training course as contemplated in [section 31 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h#g8) and [(5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h#gb) or who has been designated in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#g1).

(4)  The Director-General of the Department must compile and keep a list of every judge, magistrate and additional magistrate who has—

(*a*) completed a training course as contemplated in [section 31 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h#g8) and [(5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h#gb); or

(*b*) been designated as a presiding officer of an equality court in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#g1).

(5)  A presiding officer must perform the functions and duties and exercise the powers assigned to or conferred on him or her under this Act or any other law.

[[S. 16](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#g0) substituted by [s. 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/v194c/w194c#g0) of [Act No. 52 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/v194c#g0).]

**31.   Implementation of Act.**—(1)  Despite [section 16 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/j78h#g1) no proceedings may be instituted in any court unless a presiding officer and one or more clerks are available.

(2)  For purposes of giving full effect to this Act and making the Act as accessible as possible—

(*a*) and in giving effect to [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h?f=templates$fn=document-frame.htm$3.0#g1), judges, magistrates or additional magistrates, as the case may be, and clerks referred to in [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h?f=templates$fn=document-frame.htm$3.0#g1) may be—

(i) designated as presiding officers; and

(ii) appointed or designated as clerks,

respectively, for one or more equality courts;

(*b*) the Minister must make the Act available in all official languages in the prescribed manner within a period of two years after the commencement of this Act.

(3)  The Director-General of the Department must take all reasonable steps within the available resources of the Department to ensure that a clerk is available for each court in the Republic.

(4)  The Chief Justice must, in consultation with the Judicial Service Commission and the Magistrates Commission, develop the content of training courses with a view to building a dedicated and experienced pool of trained and specialised presiding officers, for purposes of presiding in court proceedings as contemplated in this Act, by providing—

(*a*) social context training for presiding officers; and

(*b*) uniform norms, standards and procedures to be observed by presiding officers in the performance of their functions and duties and in the exercise of their powers.

(5)  The Chief Justice must, in consultation with the Judicial Service Commission, the Magistrates Commission and the Minister, implement the training courses contemplated in [subsection (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h?f=templates$fn=document-frame.htm$3.0#g8).

(6)  The Director-General of the Department must develop and implement a training course for clerks of equality courts with the view to building a dedicated and experienced pool of trained and specialised clerks, for purposes of performing their functions and duties as contemplated in this Act, by providing—

(*a*) social context training for clerks; and

(*b*) uniform norms, standards and procedures to be observed by clerks in the performance of their functions and duties.

(7)  The Minister must table a report in Parliament, as prescribed, relating to the content and implementation of the training courses referred to in [subsections (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h?f=templates$fn=document-frame.htm$3.0#g8) and [(5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h?f=templates$fn=document-frame.htm$3.0#gb).

[[S. 31](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/eusg/fusg/y78h?f=templates$fn=document-frame.htm$3.0#g0) substituted by [s. 3](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/v194c/y194c#g0) of [Act No. 52 of 2002](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/psg4c/v194c#g0).]

JUDGES’ REMUNERATION AND CONDITIONS OF EMPLOYMENT ACT  
NO. 47 OF 2001

**7.   Performance of service by Constitutional Court judges and judges discharged from active service.**—(1)  (*a*)  A Constitutional Court judge or judge who has been discharged from active service, except a Constitutional Court judge or judge who has been discharged in terms of [section 3 (1) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/wkli#gf) or [(*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/wkli#gg) or [(2) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/wkli#g8), [(*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/wkli#g9) or [(*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/wkli#ga), who—

(i) has not attained the age of 75 years must, subject to paragraph (*c*), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year: Provided that such a Constitutional Court judge or judge may voluntarily perform more than three months’ service a year, if his or her services are so requested; or

(ii) has already attained the age of 75 years, may voluntarily perform further service, if his or her services are so requested,

if that Constitutional Court judge’s or judge’s mental and physical health enable him or her to perform such service.

(*b*)  Service referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1a) of the definition of “[service](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g19)” in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g0), in a permanent post on the establishment of a particular court, may, subject to [paragraph (*b*A)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gl), only be performed if that service is requested by the Chief Justice, President of the Supreme Court of Appeal or the judge president in whose area of jurisdiction the Constitutional Court judge or judge resides or of the court to which he or she was attached when discharged from active service, or with his or her consent, any other judge president, in consultation with the Chief Justice or the judge president in question, as the case may be, and the Minister so approves, after consultation with the Judicial Service Commission.

[[Para. (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gh) substituted by [s. 34 (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/g9vib/i9vib/hawib#g16) of [Act No. 66 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/g9vib/i9vib#g0).]

(*b*A)  Service referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1a) of the definition of “[service](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g19)” in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g0) which becomes necessary as a result of the creation of an additional temporary post on the establishment of a particular court, to deal with additional workload or backlogs which have developed, may be performed if that service is approved by the Minister after consultation with the head of the court in question, and for the period decided by the Minister, which period may not exceed three months at a time.

[[Para. (*b*A)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gl) inserted by [s. 34 (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/g9vib/i9vib/hawib#g16) of [Act No. 66 of 2008](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/g9vib/i9vib#g0).]

(*c*)  Service as mentioned in [paragraph (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1b), [(*c*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1c) or [(*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1d) of the definition of “[service](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g19)” in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g0) may be performed only with the consent of the Constitutional Court judge or judge concerned.

(2)  (*a*)  A Constitutional Court judge or judge who performs service in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gd), as contemplated in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1a) of the definition of “[service](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g19)” in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g0), shall, subject to [paragraph (*b*) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#g9), monthly be paid an additional amount in remuneration which is equal to the amount which at that time is payable to the holder of the office which he or she holds for that period.

(*b*)  A Constitutional Court judge or judge who performs service in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gd) as contemplated in—

(i) [paragraphs (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1b) to [(*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1d) of the definition of “[service](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g19)” in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g0); and

(ii) the proviso to [subsection (1) (*a*) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gf) or in [subsection (1) (*a*) (ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gg), read with [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g1a) of the definition of “[service](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g19)” in [section 1](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/tkli#g0),

shall monthly be paid such remuneration as the President may determine.

(3)  The salary of a Constitutional Court judge or judge who contrary to [subsection (1) (*a*) (i)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gf) fails to perform the minimum period of service referred to in that subsection if so requested, shall, for every full year during which he or she so fails, be reduced by two per cent: Provided that such reduction shall, in the aggregate, not amount to more than 10 per cent of such salary.

(4)  The registrar of the Supreme Court of Appeal or a High Court where a Constitutional Court judge or judge performs service in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gd), shall notify the Director-General: Justice and Constitutional Development immediately of the commencement and duration of the service.

(5)  The Director-General: Justice and Constitutional Development shall keep a register of all service performed by Constitutional Court judges or judges in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/atrg/itrg/jtrg/0kli#gd).

**14.   Administration of Act.**—The Director-General: Justice and Constitutional Development shall, subject to the directions of the Minister, be charged with the general administration of this Act.

**CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT  
NO. 32 OF 2007**

**65.   Responsibilities, functions and duties of Committee.**—(1)  The Committee shall be responsible for developing and compiling a draft national policy framework, as contemplated in [section 62 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/qiw5c#ghn), which must include guidelines for—

(*a*) the implementation of the priorities and strategies contained in the national policy framework;

(*b*) measuring progress on the achievement of the national policy framework objectives;

(*c*) ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national policy framework and this Act; and

(*d*) monitoring the implementation of the national policy framework and of this Act.

(2)  The Committee may make recommendations to the Minister with regard to the amendment of the national policy framework.

(3)  The Minister must, after consultation with the cabinet members responsible for safety and security, correctional services, social development and health and the National Director of Public Prosecutions—

(*a*) within one year after the implementation of this Act, submit reports to Parliament, by each Department or institution contemplated in [section 63 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/riw5c#ghy), on the implementation of this Act; and

(*b*) every year thereafter submit such reports to Parliament.

**66.   National instructions and directives.**—(1)  (*a*)The National Commissioner of the South African Police Service must, in consultation with the Minister of Safety and Security and after consultation with the Minister, the National Director or Public Prosecutions, the National Commissioner of Correctional Services and the Directors-General: Health and Social Development, issue and publish in the *Gazette* national instructions regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all police officials who are tasked with receiving reports of and the investigation of sexual offence cases, in order to achieve the objects of this Act as set out in [section 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/1gw5c#g25) and the Preamble, particularly those objects which have a bearing on complainants of such offences, including the following:

(i) The manner in which the reporting of an alleged sexual offence is to be dealt with by police officials;

(ii) the manner in which sexual offence cases are to be investigated by police officials, including the circumstances in which an investigation in respect of a sexual offence may be discontinued;

(iii) the circumstances in which and the relevant sexual offence or offence in respect of which a police official may apply for the HIV testing of an alleged offender as contemplated in [section 33](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/whw5c#ga2);

(iv) the manner in which police officials must execute court orders for compulsory HIV testing contemplated in [section 33](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/whw5c#ga2) in order to ensure the security, integrity and reliability of the testing processes and test results;

(v) the manner in which police officials must deal with the outcome of applications made and granted in terms of [section 31](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/uhw5c#g95) or [32](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/vhw5c#g9n) in order to ensure confidentiality; and

(vi) the manner in which police officials must hand over to the victim or to the interested person, as the case may be, and to the alleged offender the test results.

(*b*)  The National Commissioner of the South African Police Service must develop training courses, which must—

(i) include training on the national instructions referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/uiw5c?f=templates$fn=document-frame.htm$3.0#giq);

(ii) include social context training in respect of sexual offences; and

(iii) provide for and promote the use of uniform norms, standards and procedures,

with a view to ensuring that as many police officials as possible are able to deal with sexual offence cases in an appropriate, efficient and sensitive manner.

(*c*)  The National Commissioner of the South African Police Service must, in consultation with the National Director of Public Prosecutions, issue and publish in the *Gazette* national instructions regarding the manner in which police officials must—

(i) retain test results obtained;

(ii) make the record of the test results available to a prosecutor; and

(iii) destroy the test results as contemplated in [section 33 (2) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/whw5c#gah),

as contemplated in [section 33 (1) (*e*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/whw5c#gac), in order to ensure the confidentiality of such test results.

(2)  (*a*)  The National Director of Public Prosecutions must, in consultation with the Minister and after consultation with the National Commissioners of the South African Police Service and Correctional Services and the Directors-General: Health and Social Development, issue and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in sexual offence cases, in order to achieve the objects of this Act as set out in [section 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/1gw5c#g25) and the Preamble, particularly those objects which have a bearing on complainants of such offences, including the following:

(i) The manner in which sexual offence cases should be dealt with in general, including the circumstances in which a charge may be withdrawn or a prosecution stopped;

(ii) the criteria to be used and circumstances in which the prosecution must apply to court for an order that witnesses and, in particular, child complainants below the age of 16 years give evidence by means of closed circuit television as provided for in section 158 of the Criminal Procedure Act, 1977, if the court does not make an order on its own initiative in terms [subsection (2) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/uiw5c?f=templates$fn=document-frame.htm$3.0#gj5) of that section or an application in terms of subsection (2) (*b*) of that section is not made;

(iii) the criteria to be used and circumstances in which the prosecution must request the court to consider appointing a competent person as an intermediary as provided for in section 170A of the Criminal Procedure Act, 1977, in respect of witnesses and, in particular, child complainants below the age of 16 years;

(iv) the circumstances in which the prosecution must request the court to consider directing that the proceedings may not take place in open court as provided for in section 153 of the Criminal Procedure Act, 1977;

(v) the circumstances in which the prosecution must request the court to consider prohibiting the publication of the identity of the complainant in the case as provided for in section 154 of the Criminal Procedure Act, 1977, or of the complainant’s family, including the publication of information that may lead to the identification of the complainant or the complainant’s family;

(vi) the criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in [section 16 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/fhw5c#g42), dealing with consensual sexual violation with a child with the view to ensuring uniformity;

(vii) the criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in [section 38 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/1hw5c#gb8), dealing with the ascertainment of the HIV status of an alleged offender or disclosure of the results of any HIV tests, with the view to ensuring uniformity;

(viii) the information to be placed before a court during sentencing, including pre-sentence reports and information on the impact of the sexual offence on the complainant; and

(ix). . . . . .

[[Sub-para. (ix)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/uiw5c?f=templates$fn=document-frame.htm$3.0#gjf) deleted by [s. 33](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/y59ad/g69ad#gw) of [Act No. 42 of 2013](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/jsg4c/y59ad#g0).]

(*b*)The National Director of Public Prosecutions must develop training courses, which must—

(i) include training on the directives referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/uiw5c?f=templates$fn=document-frame.htm$3.0#gj5);

(ii) include social context training in respect of sexual offences; and

(iii) provide for and promote the use of uniform norms, standards and procedures,

with a view to ensuring that as many prosecutors as possible are able to deal with sexual offence cases in an appropriate, efficient and sensitive manner.

(*c*)The National Director of Public Prosecutions must, in consultation with the National Commissioner of the South African Police Service, issue and publish in the *Gazette* directives regarding the manner in which prosecutors and other officials in the national prosecuting authority must deal with the HIV test results that were disclosed by police officials, as contemplated in [section 33 (1) (*e*)(ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/whw5c#gae), in order to ensure the confidentiality of such test results.

(3)  (*a*)  The Director-General: Health must, in consultation with the Minister of Health and after consultation with the Directors-General: Justice and Constitutional Development and Social Development and the National Commissioners of the South African Police Service and Correctional Services, publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all medical practitioners and any other relevant persons when dealing with sexual offence cases, in order to achieve the objects of this Act as set out in [section 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/1gw5c#g25) and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, among others, to—

(i) the administering of Post Exposure Prophylaxis;

(ii) the manner in which court orders for compulsory HIV testing contemplated in [section 33](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/whw5c#ga2) must be executed in order to ensure the security, integrity and reliability of the testing processes and test results;

(iii) the manner in which the HIV test results contemplated in [section 37](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/0hw5c#gaz) must be dealt with in order to ensure confidentiality;

(iv) the manner in which the reporting of an alleged sexual offence is to be dealt with if the offence is reported to a designated public health establishment; and

(v) the manner in which assistance in the investigation and prosecution of sexual offences, generally, must be provided.

(*b*)The Director-General: Health must develop training courses, which must—

(i) include training on the directives referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/uiw5c?f=templates$fn=document-frame.htm$3.0#gjg);

(ii) include social context training in respect of sexual offences; and

(iii) provide for and promote the use of uniform norms, standards and procedures,

with a view to ensuring that as many medical practitioners and any other relevant persons as possible are able to deal with sexual offence cases in an appropriate, efficient and sensitive manner.

(4)  (*a*)  The national instructions and directives by each Department or institution, contemplated in this section, must be:

(i) Submitted to Parliament within six months after the commencement of this section, before publication in the *Gazette*; and

(ii) published in the *Gazette.*

(*b*) [Paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/wrg4c/csg4c/3cw5c/4cw5c/uiw5c?f=templates$fn=document-frame.htm$3.0#gjn) applies to any new or amended national instructions or directives issued under this section with the changes required by the context.

(5)  (*a*)  The training courses contemplated in this section must be tabled in Parliament within six months after the commencement of this Act.

(*b*)The cabinet members responsible for safety and security, the administration of justice and health must, within a year after the commencement of this Act and every 12 months thereafter, table a report in Parliament relating to the implementation of the training courses.

(*c*)Any new or amended training courses developed under this section must be tabled in Parliament within 14 days of the finalisation thereof.

SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE ACT  
NO. 14 OF 2008

**1.   Definitions.**—In this Act, unless the context indicates otherwise—

(i) **“Constitution”** means [the Constitution](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0nqg/1nqg#g0) of the Republic of South Africa, 1996;

(ii) **“Council”** means the Council of the Institute established by [section 6](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/ps0eb/qs0eb/ws0eb#gm);

(iii) **“Department”** means the Department of Justice and Constitutional Development;

(iv) **“Director”** means the Director appointed in terms of [section 12 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/ps0eb/qs0eb/2s0eb#g2c);

(v) **“Director-General”** means the head of the Department;

(vi) **“Institute”** means the South African Judicial Education Institute established by [section 3](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/ps0eb/qs0eb/ts0eb#gb);

(vii) **“Minister”** means the Cabinet member responsible for the administration of justice;

(viii) **“this Act”** includes any guidelines issued under [section 16](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/u4sg/ps0eb/qs0eb/6s0eb#g3a).

**13.   Finances and accountability.**—(1)  Expenditure in connection with the administration and functioning of the Institute must be defrayed from monies appropriated by Parliament for this purpose.

(2)  Monies appropriated by Parliament for this purpose—

(*a*) constitute earmarked funds on the Departmental vote; and

(*b*) may not be used by the Department for any other purpose unless the Council has been consulted and the National Treasury approves such use.

(3)  The Institute may receive funds from donations, contributions or gifts and from other sources approved by the Council in accordance with National Treasury regulations.

(4)  Subject to the Public Finance Management Act, 1999 ([Act No. 1 of 1999](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/7zkfb/8zkfb#g0)), the Director-General—

(*a*) is charged with the responsibility of accounting for monies received or paid out for or on account of the administration and functioning of the Institute and for donations, contributions or gifts in accordance with National Treasury regulations; and

(*b*) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

(5)  The Institute must utilise the donations, contributions or gifts to advance the objects of the Institute as contained in this Act or any other law.

(6)  The financial year of the Institute is the period of 1 April in any year to 31 March in the following year, except that the first financial year of the Institute begins on the date on which this Act comes into operation, and ends on 31 March of the following year.

(7)  The Institute may invest or deposit money that is not immediately required for contingencies or current expenditure—

(*a*) in a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or

(*b*) in an investment account with the Corporation for Public Deposits established by [section 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0pqg/1pqg/j2dh#g0) of the Corporation for Public Deposits Act, 1984 ([Act No. 46 of 1984](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/0pqg/1pqg#g0)).

(8)  Within six months after the end of each financial year, the Director must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising—

(*a*) a statement, with suitable and sufficient particulars, reflecting the income and expenditure of the Institute during the preceding financial year; and

(*b*) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.

(9)  The Auditor-General must audit the financial statements of the Institute each year.

**CHILD JUSTICE ACT  
NO. 75 OF 2008**

**96.   Responsibilities, functions and duties of Intersectoral Committee.**—(1)  The Intersectoral Committee is responsible for developing a draft national policy framework, referred to in [section 93 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/uojjb#gs7), which must include guidelines for—

(*a*) the implementation of the priorities and strategies contained in the national policy framework;

(*b*) measuring progress on the achievement of the national policy framework objectives;

(*c*) ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national policy framework and this Act;

(*d*) monitoring the implementation of the national policy framework and this Act; and

(*e*) the establishment of an integrated information management system to enable effective monitoring, analysis of trends and interventions, to map the flow of children through the child justice system and to provide quantitative and qualitative data relating, among others, to—

(i) arrest or methods of securing attendance at criminal proceedings;

(ii) assessment;

(iii) preliminary inquiries;

(iv) diversion;

(v) children awaiting trial;

(vi) bail and placement;

(vii) trials;

(viii) sentencing;

(ix) appeals and reviews;

(x) sexual offences committed by children;

(xi) children who lack criminal capacity as provided for in [section 7 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/gmjjb#g2k); and

(xii) any other relevant factor.

(2)  The Intersectoral Committee may make recommendations to the Cabinet member responsible for the administration of justice with regard to the amendment of the national policy framework.

(3)  The Cabinet member responsible for the administration of justice must, after consultation with the Cabinet members responsible for safety and security, correctional services, social development, education and health—

(*a*) within one year after the commencement of this Act, submit reports to Parliament, by each Department or institution referred to in [section 94 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/vojjb#gsj), on the implementation of this Act; and

(*b*) every year thereafter submit those reports to Parliament.

(4)  In order for Parliament to review the minimum age of criminal capacity, as provided for in [section 8](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/hmjjb#g2n), the Intersectoral Committee must, not later than five years after the commencement of this Act, submit a report to the Cabinet member responsible for the administration of justice, setting out the following:

(*a*) The statistics of the following categories of children who are alleged to have committed an offence and the offences they are alleged to have committed:

(i) Children who are 10 years at the time of the commission of the alleged offence;

(ii) children who are 11 years at the time of the commission of the alleged offence;

(iii) children who are 12 years at the time of the commission of the alleged offence;

(iv) children who are 13 years at the time of the commission of the alleged offence;

(*b*) sentences imposed on the children in the categories referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/xojjb#gtp), if they were convicted;

(*c*) the number of children referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/xojjb#gtp) whose matters did not go to trial, as provided for in [section 10 (2) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/jmjjb#g3q) on the grounds that the prosecutor was of the view that criminal capacity would not be proved and reasons for that decision in each case;

(*d*) the number of children referred to in paragraph (*a*) whose matters were dealt with in accordance with [section 11](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/kmjjb#g3r), whether expert evidence was led, and the outcome of each matter regarding the establishment of criminal capacity;

(*e*) an analysis of the statistics referred to in [paragraphs (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/xojjb#gtp) to [(*d*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/xojjb#gtw); and

(*f*) a recommendation based on the analysis as to whether the minimum age of criminal capacity should remain at 10 years as provided for in [section 7 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/gmjjb#g2k) or whether the minimum age of criminal capacity should be raised.

(5)  The Cabinet member responsible for the administration of justice must, on receipt of the report referred to in [subsection (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/xojjb#gto), submit the report to Cabinet for approval, and thereafter to Parliament for consideration.

**98.   Transitional arrangements.**—(1)  All criminal proceedings in which children are accused of having committed an offence, which were instituted prior to the commencement of this Act and which are not concluded before the commencement of this Act, must be continued and concluded in all respects as if this Act had not been passed.

(2)  Every diversion programme and diversion service provider which existed at the time of the commencement of this Act may continue to operate until it has been informed of the decision in respect of its application as provided for in [section 56 (2) (*c*)(iii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/tnjjb#gj7).

(3)  The initial regulations referred to in [section 97 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/egqg/2gjjb/hhjjb/yojjb#gu1) must be tabled in Parliament for approval by no later than 1 December 2009, and must be approved before the commencement of this Act, failing which they will be deemed to have been approved by Parliament.

PREVENTION AND COMBATING OF   
TRAFFICKING IN PERSONS ACT  
NO. 7 OF 2013

**15.   Protective measures for purposes of investigation and prosecution in respect of foreign victims of trafficking.**—(1)  Despite the provisions of the Immigration Act, the Director-General: Home Affairs may, in the prescribed manner and subject to the prescribed conditions, issue, a foreigner in respect of whom—

(*a*) a report has been made to a police official as provided for in [section 19](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/hjx0c#g6c); and

(*b*) the National Commissioner of the South African Police Service has, in writing, confirmed to be a person who might be able to assist in a police investigation relating to an offence under [Chapter 2](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/1ix0c#g2g),

a visitor’s visa in terms of [section 11 (1) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/9ix0c#g3u) of the Immigration Act to remain in the Republic for a recovery and reflection period not exceeding three months which may be extended once in terms of [subsection (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/ojx0c#g9l) for a further period not exceeding three months for the purpose of accessing the programmes referred to in [section 26](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/ojx0c#g9a) with the view to enabling the foreigner to make informed decisions regarding his or her cooperation with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons as referred to in [section 16 (1) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/ejx0c#g5h)*.*

(2)  If a foreigner referred to in [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g56), after a period of 30 days after he or she has been issued with a visitor’s visa to remain in the Republic for a recovery and reflection period, is unwilling or unable to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a trafficker, an investigation into his or her circumstances must be conducted by the Director-General: Social Development in order to determine whether it is safe to repatriate him or her to his or her country of origin or the country from where he or she has been trafficked.

(3)  If a foreigner referred to in [subsection (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g59) is still unwilling or unable to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a trafficker upon expiration of the visitor’s visa the person must be dealt with in terms of [sections 31 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/tjx0c#gaf) and [32](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/ujx0c#gaq).

(4)  If the Director-General: Social Development is unable to complete an investigation referred to in [subsection (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g59) before the expiration of the recovery and reflection period, he or she must, in the prescribed manner, request the Director-General: Home Affairs to extend, in the prescribed manner, that period for a further period not exceeding three months.

(5)  The issuing of a visitor’s visa as provided for in [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g56) does not prevent or prejudice the competent authority from conducting any relevant investigation, provided that due regard is given to the emotional state of the victim.

(6)  A foreigner referred to in [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g56) in respect of whom a decision by the Director-General: Home Affairs in terms of [subsection (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g56) or [(4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g5b) is pending, may not be deported.

**43.   Regulations.**—(1)  (*a*)  The Minister must make regulations regarding the manner in which prosecutors must refer children and adult person suspected of being victims of trafficking for assessment as provided for in [section 22 (2) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/kjx0c#g7l)*.*

(*b*)  The Minister may make regulations regarding the establishment and regulation of a mechanism to facilitate the implementation of this Act as provided for in [section 41 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/3jx0c#gdc).

(2)  The Minister of Home Affairs must make regulations regarding—

(*a*) the manner in which a foreigner referred to in [section 15 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g56) will be issued with a visitor’s visa to remain in the Republic for a recovery and reflection period and the conditions upon which that visa is issued, as provided for in [section 15 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g56);

(*b*) the manner in which the Director-General: Social Development must request an extension of the recovery and reflection period as provided for in [section 15 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g5b);

(*c*) the manner in which any extension of the recovery and reflection period must be granted as provided for in [section 15 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/djx0c#g5b); and

(*d*) the manner in which a person must be informed of arrangements that have been made for his or her reception in the country to which he or she is to be repatriated as provided for in [section 31 (2) (*b*)(ii)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/tjx0c#gam).

(3)  The Minister of Social Development must make regulations regarding—

(*a*) the assessment of a person to determine whether he or she is a victim of trafficking as provided for in [sections 18 (6)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/gjx0c#g66) and [19 (8)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/hjx0c#g6y) as well as the information to be obtained from the South African Police Service as provided for in those subsections;

(*b*) the letter of recognition to be issued to a person who has been found to be a victim of trafficking as provided for in [section 19 (10)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/hjx0c#g70);

(*c*) the manner in which a provincial head may withdraw a letter of recognition as provided for in [section 19 (11)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/hjx0c#g71);

(*d*) the manner in which a person must lodge an appeal as provided for in [section 20 (1) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/ijx0c#g7d);

(*e*) the manner in which the MEC must deal with an appeal as provided for in [section 20 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/ijx0c#g7e);

(*f*) the manner in which the provincial department of social development must refer a person referred to in [section 20 (3)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/ijx0c#g7f) to the Department of Home Affairs;

(*g*) the system of accreditation of organisations to provide services to adult victims of trafficking as provided for in [section 24 (2) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/mjx0c#g7z);

(*h*) the circumstances in which accredited organisations qualify for financial assistance as provided for in [section 24 (2) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/mjx0c#g80);

(*i*) the manner in which the applications for accreditation of organisations must be considered and the form of the certificate of accreditation to be issued to an organisation which provides services to adult victims of trafficking as provided for in [section 24 (4) (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/mjx0c#g85);

(*j*) the manner in which the developmental quality assurance process must be conducted in respect of each accredited organisation, as provided for in [section 24 (5)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/mjx0c#g88);

(*k*) the norms and minimum standards for accredited organisations as provided for in [section 25 (1)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/njx0c#g8g);

(*l*) the manner in which information on victims of trafficking must be collected as provided for in [section 25 (4)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/njx0c#g8w);

(*m)* the form of the plan referred to in [section 28 (2)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/qjx0c#g9q); and

(*n*) the manner in which an adult victim of trafficking is to be returned as provided for in [section 34 (2) (*b*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/wjx0c#gba)*.*

(4)  Any regulations made under this section—

(*a*) must be submitted to Parliament for approval 60 days prior to publication thereof in the *Gazette*;

(*b*) which are not approved within the 60-day period referred to in [paragraph (*a*)](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/xjsg/xix0c/yix0c/5jx0c?f=templates$fn=document-frame.htm$3.0#ge7) are deemed to have been approved by Parliament; and

(*c*) which may result in expenditure for the State, must be made in consultation with the Minister of Finance.