

How To Remain Compliant With The Law (62)

One of the most time-consuming aspects of running any business – and your route is indeed a business – is complying with legal regulations. These regulations relate to company law, tax law, labour law, municipal bylaws and many others.

Although it takes time, your route needs to comply with these laws so that you can avoid the risk of prosecution or even closure. Compliance also puts you in a good position with large customers such as government and big business. Without a Tax Clearance Certificate, for instance, most large organisations will not do business with you. You can only get a TCC if you have complied with your financial and tax obligations.

If you do not comply, the risk is a fine, disruption of your business or even a jail term.

This Guide will explain the main areas of regulation that affect your route, and how to comply with them. They are:

- Registering your route as a legal entity
- Tax registration
- Labour regulations
- Sector-related regulations
- Municipal regulations
- Consumer rights
- Liquor laws

Why is compliance important?

The route needs to comply with the law to stay legal, but compliance also helps the organisation to run smoothly. By complying you will also become more professional in the way

you work, and more respectable in the eyes of the public. This will bring more customers in the long run and will help to give them a good experience that they will tell others about.

Most routes deal with local or provincial government as important stakeholders, and this is another important reason why your route needs to comply with all legal requirements. It puts you on a level that government stakeholders can see is professional and deserving of any support they can offer. For example, if you want to apply for funding from any government department or agency, you will need to have the necessary tax clearance and status as a registered nonprofit organisation.

What is compliance?

Compliance affects almost all aspect of your operations. Company law says how you must manage your finances and keep records. Tax law says how much tax you must pay, and when you must submit returns. Labour law says how you must deal with staff. Municipal bylaws say which licences and permissions you must have before you can trade.

So it is easy to see how complying with the law will affect almost all the things that your organisation does – from money matters and taxation to employing people and everyday operations. These compliance issues will therefore be important to remember when you read Guides about finance, tax, human resources and operations.

Registering your route as a legal entity

After finalising a constitution, many routes have decided to register as a legal entity. This raises your status and can be very helpful when raising money or dealing with authorities. There are a number of options available for registering an enterprise, but the most common for an Open Africa route are: voluntary associations; nonprofit organisations and co-operatives. You can also register as a (profit-making)

company.

The Mothers of Creation Route in the Western Cape registered as a voluntary association in 2006. This allowed them to qualify as a legal entity so they could start applying for funding. They managed to raise R300 000 from the National Lottery Fund to take on a number of projects.

In the Northern Cape, the Richtersveld Route identified its municipality as one of the organisations that could help them. After a few initial meetings, it was suggested that if the route was registered as a legal entity, it would be able to register as a service provider for the municipality. This was done, and the route now has a mutually beneficial relationship with the municipality, providing it with services in exchange for support in setting up route meetings and ensuring that people have transport to attend these meetings.

Tax registration

Every year, your route will have to submit its financial documents to an accountant or auditor so that an annual financial statement (AFS) can be prepared. This is vital, since you will need to give this to the SA Revenue Services to remain tax compliant. Only if SARS gets your AFS, and is happy with it, can you get a Tax Clearance Certificate, which allows you to do business with government, large corporations and many other institutions.

Even though most routes are nonprofit organisations, SARS still needs you to register as a taxpaying organisation and get a tax number. This will also be necessary if you employ staff at some stage, since you will need to be registered with SARS as an employer and must submit Pay as you earn (PAYE or income tax) to SARS on behalf of your staff.

But it does not necessarily mean that you will actually pay tax as an organisation. If you are registered as a business,

for instance, SARS allows small business to earn a certain profit before it has to pay tax. And if you are registered as a non-profit organisation, your surplus funds can be ploughed back into your work without being taxed.

You can also apply to the SARS Tax Exemption Unit to be recognised as public benefit organisation (PBO), which allows you to be exempt from tax. More information on this can be found at www.sars.gov.za or by phoning the SARS contact centre at 0800 00 7277.

PAYE tax: If you employ staff, you may have to deduct tax from their salaries if they earn above the tax threshold. Again, you can ask SARS whether this applies to you.

Value-added tax (VAT): Businesses must register for VAT if their turnover is above R1 million per year. You can register voluntarily, but VAT does involve some extra administration.

Labour regulations

One of the most difficult things for any organisation is to manage its employees fairly and efficiently. Part of this challenge is compliance with labour laws; the main ones are: the Basic Conditions of Employment Act; the Labour Relations Act; and the Occupational Health and Safety Act. A good resource is www.labour.gov.za, which has guides that explain how to comply.

The Basic Conditions of Employment Act provides the minimum conditions for employing anyone. It also governs conditions such as working hours, overtime, sick leave, maternity leave, annual leave, family responsibility leave and termination of employment, among others.

When taking on a new employee, for instance, you must record certain particulars in writing, such as a job description, date of employment, and wage or rate of remuneration. You must also keep records of employment of your employees, showing how

long they have worked for you and what they have been paid each week or each month.

The Labour Relations Act protects the rights of employees and explains what an employer must do before they can lawfully dismiss an employee. The Act also governs things such as unfair discrimination in the job application stage, the right to strike, access to information for trade unions, and unfair conduct in the workplace.

As an employer, you need to know how the dispute and dismissal process works so that you can follow the correct procedures. Unfair process is often the main reason for the Commission for Conciliation Mediation and Arbitration (CCMA) ruling in an employee's favour when an employer finds themselves before the commission. The CCMA is a dispute resolution body established in terms of this law; for more information, visit www.ccma.org.za.

The Occupational Health and Safety Act demands that employers provide a safe and risk-free environment to employees. Although each industry sector also has its own set of regulations governing health and safety, the Occupational Health and Safety Acts sets out the general conditions and regulations for a clean and safe workplace, including: having an employee on site trained in first-aid, what to include in a first-aid box, and suitable fire exits and firefighting equipment.

Then there is Unemployment Insurance: Any organisation that employs a person for longer than 24 hours in a month must register them with the Unemployment Insurance Fund (UIF) at the Department of Labour. The fund pays out to employees who become unemployed as a result of termination of employment or an illness. The UIF contribution is 2% of an employee's salary; half is contributed by the employee, and half by the employer. Deductions must be paid over to SARS.

Sector regulations

Every industry sector has its own regulations in addition to the general regulations listed above. In the tourism sector, provinces usually publish their own regulations to register and monitor tourism establishments and tourism operators. Talk to other Open Africa routes in your province if you are not familiar with these regulations. The tourism association in your area should also know more about this.

Municipal regulations

When starting a new enterprise, talk to your municipality to see if there are any regulations you need to know about. If you plan on setting up a new building for your business premises, for example, you may need to be approved for zoning and inspected by health and fire officials from the municipality.

Consumer rights

All organisations now have to pay more attention to the rights of consumers. The Consumer Protection Act (CPA) prohibits certain marketing practices and has rules on how to deal with customers. Operating in a customer-focused sector such as tourism, the route and its members need to be especially careful.

There are standards to be met when it comes to reservations and cancellations and marketers must make sure they do not mislead consumers in any way. The law also deals with deposits paid, the displaying of prices, the use of vouchers, and the importance of quality service.

Liquor laws

Many tourism operators want to serve liquor on their premises; this requires a licence that is issued by the liquor board in

each province.

Who is involved with compliance

The functionaries within a route will need to ensure that the route is fully compliant with the laws that apply to it so that it can engage as a full and respectable partner with stakeholders like local businesses, municipalities and larger funding agencies. But it should not stop there: each route member should be looking at improving their compliance levels, so that there is no risk of legal or other problems affecting or bringing down their operations.

How to apply compliance to the route

It is vital that all route members recognise the importance of being fully compliant, since the route is only as strong as its weakest member. The route's reputation can be damaged if a few members are guilty of treating customers or staff badly, evading tax or of trading without the necessary licenses.

The route needs to take an active role in ensuring that all its members are aware of laws they must comply with and how they should do it. Sharing information and experience between members is a great way to tackle this sometimes difficult task. Arrange a series of workshops to tackle each matter in detail and get a member who knows his or her way through this issue to lead the discussion.

Also consider bringing in experts to help members become compliant; some government agencies such as SARS may even send a representative to your meeting to share information and answer questions.

Open Africa emphasises that success can only come from commitment and professionalism, both of which are vital in the

tourism sector. Compliance will help every member of every route to improve their systems and get better at what they do. This is how a successful route is built – on the success of each of its members.

Practical tips

- **Start early** with implementing systems for the organisation that will administer your route. Don't wait until you start growing. It is easier to grow when there are systems in place. So get registered with SARS after you have registered as a legal entity and ask them what regulations apply to you at that stage.
- **Keep good financial records** of all your transactions. Keep your bank statements safe and check them each month against your invoices and proof of payments.
- **Talk to the municipality early** on to make sure that you can operate from the house or building you have in mind; there may be bylaws that apply.
- **Make your applications** (for registrations, permissions and licences) as early as you can; they may take longer than you expect.

Use of this Guide

The Route Forum can use this Guide – particularly the administration and financial portfolios on the Route Forum – to check whether there are any important compliance issues outstanding. This Guide also provides the Route Forum with some guidance on how to deal with these.

Route members can also use this information in their own businesses, because all enterprises must comply with most or all of the issues herein.

Remember that the Open Africa Charter emphasises “integrity, honesty and complete transparency in maintaining impeccable

credibility” as one of its core values. It is much easier to ensure this transparency and credibility when you have compliance systems in place; it also simply makes your enterprise less risky and more sustainable.

Other Guides

Several Guides will help make your route more compliant. These include:

- Guide: [How And When To Register For Tax](#)
- Guide: [How To Develop And Manage A Route Budget](#)
- Guide: [How To Open A Route Bank Account](#)
- Guide: [How To Adopt A Constitution As A Voluntary Association](#)
- Resource: [Template: Constitution Of A Voluntary Association](#)

Other resources and contacts

The SME Toolkit is a useful website to find information on running a small enterprise. Try the section on Best Practice and Compliance at <http://southafrica.smetoolkit.org/sa/en/category/3020/Best-Practice-Compliance>

SARS

Tel: 0800 00 72 77

Fax: 012 670 6880

Website: www.sars.gov.za

Department of Labour

Website:

www.labour.gov.za/contact/center_offices_display.jsp.

Tel: 012 309 4000

Fax: 012 320 2059

Website: www.labour.gov.za

The Companies and Intellectual Property Commission (CIPC)

Tel: 086 100 2472

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