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The Property Practitioners Act comes into force

The Property Practitioners Act 22 of 2019 (Act) is finally (and unexpectedly) coming into force on 1 February 2022. In 2019, the President Cyril Ramaphosa signed the Act into law, however at the time, the date of commencement had not yet been determined. As recently as a few days ago, the Act was confirmed to come into operation in less than a week's time. Furthermore, the Minister for Human Settlements, Ms Mmamoloko Kubayi, published the Property Practitioners Regulations (Regulations) in terms of section 70 of the Act. As a result, the Act will repeal the Estate Agency Affairs Act 112 of 1976 (EAA Act), in its entirety.



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A Snapshot into the JSE's Sustainability and Climate Disclosure Guidance

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The JSE has a track record in promoting governance, sustainability and ESG disclosure, evidenced by initiatives such as incorporating the King Codes in its listing requirements, being a member and past chair of the World Federation of Exchanges' Sustainability Working Group and its activities as a founding partner of the Sustainable Stock Exchanges initiative. As such, the publication of the Disclosure Guidance comes as a recognition by the JSE for the need to respond to the rapidly evolving landscape of sustainability standards and frameworks.

The Sustainability Disclosure Guidance aims to assist local listed companies in navigating the recent changes in the global reporting landscape and stimulate improved sustainability disclosure and performance. It aims to align with global expectations and best practice and to be tailored for the South African business context. By taking heed of some key global initiatives,

this guidance aims to ensure greater convergence and harmonisation of sustainability reporting standards and overall coherence and consistency.

The Sustainability Disclosure Guidance provides for 'Sustainability Metrics' and 'Narrative Disclosures', which draw from various international sustainability and climate change disclosure initiatives, such as the works of the International Sustainability Standards Board, the Climate Disclosure Standards Board Framework, and the Global Reporting Initiative's Sustainability Reporting Standards, developed by the Global Sustainability Standards Board. The Sustainability Disclosure Guidance is intended to inform a reporting organisation's sustainability materiality process, with the view of enhancing business practice, but without being prescriptive. It ultimately leaves the decision-making in the hands of the organisation, particularly as regards the identification of material sustainability issues.

The Climate Disclosure Guidance is the first sub-topic guidance published alongside the umbrella Sustainability Disclosure Guidance. It notes that investors are beginning to recognise that climate-related risks and the inevitable transition to a low-carbon economy has an impact on all economic sectors and industries and accordingly financial markets are increasingly pricing these risks and looking to identify and measure new investment opportunities. As a result, investors are demanding higher quality, consistent data to inform their investment decisions and this means dramatically improving climate-related disclosures globally. The Climate Disclosure Guidance aims to aid organisations in ensuring that they integrate and effectively communicate climate-related information that is in alignment with best practices to investors.

A Snapshot into the JSE's Sustainability and Climate Disclosure Guidance

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The Climate Disclosure Guidance proposes a three-stage process, namely;

1. disclosure diagnosis and context – the guidance provides an overview of the evolution of climate-related disclosures and the current financial, political and legal landscape and helps organisations evaluate their current disclosure by, amongst other things, providing a checklist to help them determine whether or not they are providing adequate information to investors on the topic;
2. integration of climate-related risks and opportunities – the guidance identifies key climate-related risks and opportunities and provides guidance on practices that can be used to evaluate the risks and opportunities most relevant to an organisation; and
3. disclosure of climate-related practices and data – the guidance draws from the Task Force for Climate-Related Financial

Disclosures' recommendations for more effective climate-related disclosures and guides organisations in communicating their understanding through disclosure of climate-related practices, strategy and objectives to investors and stakeholders.

The Disclosure Guidance is primarily intended to assist JSE-listed companies but may also be of value to institutional investors and the different kinds of entities that they invest in, including non-listed companies. It may also be of use to a range of stakeholder groups who are generally interested in sustainability and ESG disclosure and performance. Given the similarities in the ways in which different entities navigate high-quality disclosure and effective engagement with investors, all entities are encouraged to use the guidelines set out in the Disclosure Guidance, be it large, listed companies with a good history of reporting or smaller private companies.

The Disclosure Guidance is currently open for public comment until 28 February 2022. All interested persons are encouraged to engage with these documents, which can be found on the JSE's website, and are welcome to submit their comments using the online feedback form, which can also be found on the JSE's website.

**AKHONA MGWABA AND
ANDRE DE LANGE**

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When the Act comes into force, it will place several new obligations on property practitioners, not all of which are contained in the EAA Act. The principal obligations placed on property practitioners under the Act are as follows:

- mandatory display of a Fidelity Fund Certificate (FFC);
- property practitioner not entitled to remuneration in certain circumstances;
- maintaining mandatory indemnity insurance;
- complying with a prescribed code of conduct;
- complying with the Property Sector Transformation Charter Code;
- providing certain mandatory disclosures as regards the property in all agreements relating to a property transaction;
- providing a warranty as regards the validity of the property practitioner's FFC in any agreement relating to property transactions;
- inclusion of certain prescribed minimum information on all written communication and marketing material, as well as certain additional information in respect of franchisees; and
- certain limitations on relationships with other property market service providers.

Non-compliance with the provisions of the Act bears the risk of incurring significant penalties, such as repaying any fees received for a property transaction, and practitioners may be issued with a fine. Furthermore, any person convicted of an offence in terms of the Act is liable to pay a fine, or to imprisonment for up to 10 years.

The Act is significantly stricter and more far-reaching than its predecessor, the EAA Act. In light of the serious consequences of non-compliance with the Act, any person who may fall under the broad definition of "property practitioner" is advised to seek guidance from a legal practitioner and ensure strict compliance with the provisions of the Act.

JUSTINE KRIGE AND CHARLES BRITZ

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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