October 2, 2026

UNDERSTANDING THE RISKS OF A COMPANY FAILING TO MEET COMPLIANCE REQUIREMENTS



Operating a business in South Africa can be challenging, particularly in an environment where many entrepreneurs believe that regulations are excessive. As a result, some businesses may be unaware of their compliance obligations or delay addressing them until enforcement action is taken.

This article focuses on the general compliance requirements that affect most businesses. While many sectors also have industry-specific regulations, the consequences of non-compliance are largely the same.

Types of compliance requirements for South African businesses

Businesses generally encounter two categories of compliance:

Mandatory (legaslative) compliance for businesses:

These are legal requirements that organisations must adhere to, including the following:

- *Labour Relations legislation;*
- *Employment Equity Act (EEA)*
- *Unemployment Insurance Fund (UIF);*
- *Occupational Health and Safety Act (OHSA);*
- Workmen's Compensation Assistance (WCA);
- Compensation for Occupational Injuries and Diseases Act *(COIDA)*;
- *Protection of Personal Information Act (POPIA);*
- Promotion of Access to Information Act (PAIA);
- *Consumer Protection Act (CPA).*

Voluntary or strategic compliance for businesses

Although not legally required, these compliance measures can significantly influence business opportunities and competitiveness. Examples include––

- *B-BBEE verification*; and
- *Workplace Skills Plan (WSP) submissions*.

Failure to comply with applicable regulations can expose a company to numerous financial, legal and operational risks.

What are the consequences of non-compliance for businesses?

1. Legal liability, including personal liability for directors

Non-compliance can expose businesses to legal action from multiple stakeholders, including customers, employees, suppliers and shareholders.

Once a business is identified as non-compliant, regulatory bodies often increase their monitoring and auditing activities. In serious cases, the company and its directors may face criminal prosecution.

The Companies Act 71 of 2008 also provides for circumstances under which directors may be held personally liable for losses, damages or costs arising from breaches of their fiduciary duties or other obligations imposed by legislation or the company's Memorandum of Incorporation.

2. Fines and penalties for non-compliance

One of the most immediate impacts of non-compliance is financial loss. Businesses may face––

- fines and penalties imposed by regulators, such as *notices of non-compliance issued by the Department of Employment and Labour* or the Information Regulator;
- compensation claims from customers, clients or third parties, particularly where an ombudsman rules against the business;
- compensation awards to employees resulting from CCMA or Bargaining Council rulings; and
- increased legal and administrative expenses associated with defending claims or resolving compliance issues.

3. Reputational damage

Compliance failures can severely impact an organisation's reputation.

For example, a data breach resulting from inadequate information security controls can erode customer confidence, damage brand credibility, and attract negative media attention. Such events often result in lost business opportunities and long-term reputational harm.

4. Operational interruptions

Regulatory authorities may take action that disrupts business operations, including––

- suspending licences, registrations or permits;
- restricting certain activities until compliance deficiencies are corrected; and
- requiring costly changes to internal processes, policies or systems.

In severe cases, organisations may be forced to suspend operations temporarily or cease trading altogether.

5. Lost revenue, tenders and business opportunities

Customers and business partners are increasingly cautious about engaging with companies that have poor compliance records. Many large organisations, particularly international companies, conduct compliance vetting before appointing suppliers or entering into business relationships. This is also common in tender and procurement processes.

Businesses may lose tenders not because of pricing or capability, but because of compliance shortcomings. In South Africa, a low B-BBEE rating or lack of the necessary *BEE certification* can limit access to contracts and procurement opportunities.

Incorrect or inconsistent *Beneficial Ownership* information may also affect tender eligibility, particularly when dealing with government entities. Discrepancies between information recorded with CIPC, SARS and the CSD can raise compliance concerns and potentially disqualify a business.

Losing tenders, customers and contracts can have lasting financial consequences, and such opportunities may be difficult to recover even after the compliance issues have been addressed.

6. Impact on employees

Failure to comply with employment, health and safety, or anti-discrimination legislation can adversely affect the workforce by leading to––

- employee disputes and *compensation claims*;
- lower morale and reduced productivity; and
- difficulty in attracting and retaining qualified employees.

In addition, management may be forced to divert significant time and resources away from strategic decision-making to address compliance-related issues and administrative burdens.

How to reduce your business’s compliance risk

Non-compliance presents substantial risks to businesses, including financial losses, legal penalties, reputational harm, operational disruptions, and missed business opportunities. Implementing effective compliance management practices enables organisations to mitigate these risks, maintain stakeholder trust, and focus on business growth rather than continually responding to compliance failures.

SERR Synergy provides businesses across South Africa with practical and cost-effective compliance solutions designed to help them meet regulatory requirements and minimise unnecessary risk.

About the Author: Henk Hartman joined SERR Synergy in May 2018 and has served as the Marketing Manager for Cape Town since May 2023. He holds an HED (Tech) Diploma and brings approximately 20 years of experience as a business owner prior to joining SERR Synergy. His extensive business experience has given him a strong understanding of the challenges faced by business owners, and he is passionate about helping entrepreneurs and organisations to unlock their full potential and achieve sustainable growth.

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