

All private bodies are exempt from having a PAIA manual until at least 31 December 2021, except for:

1. certain large private companies ((Pty) Ltd),
2. personal liability companies (Inc),
3. public companies (Limited),
4. non-profit companies (NPC), and
5. state-owned company (SOC).

Examples of those who **are** exempt are a sole proprietor, close corporation (CC), body corporate, common law association (like a home owners association), private school, private university, and most small and medium-sized enterprises (SMEs).

Example of those who are **not** exempt are a law firm registered as an Inc, a non-profit (some schools and home owners associations (HOAs)) and [Eskom](#).

Find out if you are exempt. If you are exempt, you'll save time and money. Don't let someone convince you that you need one, when you actually don't. You can do a self assessment by asking yourself these questions in the order below. If you are not exempt, we can help you [draft](#) one or [review](#) your existing one. If after doing this self assessment you're not sure whether you are exempt or not, ask Michalsons to do an assessment on your body.

Remember: If you are exempt from having a PAIA manual, it does not mean you are exempt from PAIA itself

## Is my organisation a public body?

A public body is:

- any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government, or
- any other functionary or institution when:
  - exercising a power or performing a duty in terms of the Constitution or a provincial constitution, or
  - exercising a public power or performing a public function in terms of any legislation.

For example, the [National Department of Health](#) (NDOH), the Department of Home Affairs, CIPC and the Information Regulator.

In contrast, a private body is:

- a natural person who carries or has carried on any trade, business or profession, but only in such capacity,
- a partnership which carries or has carried on any trade, business or profession, or
- any former or existing juristic person.

For example, a company, sole proprietor, trust, and close corporation (CC).

Possible answers:

1. If yes, the law requires your organisation to have a PAIA manual.
2. If no, it is a private body, move on to the next question.

## **Is my organisation a private body in the form of a company?**

A company is essentially a juristic person registered in terms of the Companies Act 2008. They are a private company ((Pty) Ltd), personal liability company (Inc), public company (Limited), non-profit company (NPC) and state-owned company (SOC). You can read more about the [five different types of companies](#) in South Africa.

A private body that is not a company includes a sole proprietor, common law association, trust or CC.

Possible answers:

1. If yes, move on to the next question.
2. If no, you don't need a PAIA manual. You're exempt.

## **Is my company a private company?**

A private company has a name ending in (Pty) Ltd – Proprietary Limited.

A company that is not a private company is a personal liability company (Inc), public company (Limited), non-profit company (NPC) and state-owned company (SOC). You can read more about the [five different types of companies](#) in South Africa.

Possible answers:

1. If yes, move on to the next question.
2. If no, the law requires your organisation to have a PAIA manual.

## **Does my private company operate in a prescribed industry?**

### **The prescribed industries**

The notice in the gazette prescribes the major divisions of the industries or sectors. This is all that the notices give us so you might struggle to determine which industry your organisation falls into. What makes it harder is that the major divisions of industries or sectors in the notice are roughly based on [version 5](#) (maybe version 4) of the Standard Industrial Classification (SIC) Coding System (aka SIC Coder). In October 2012, the SIC Coder was updated to [version 7](#) but the minister did not update the industries or sectors in the exemption notices of 2015 and 2020 to bring them inline with version 7. You can read more about the [history](#) of International SIC and SIC codes. The [United Nations](#) seems to have moved away

from them. You can find a full list of the SIC codes (presumably based on version 7) on the SARS [website](#).

To determine whether your private company falls into one of the industries below, we suggest you refer to [version 5](#) of the SIC Coder because this is the one the notice uses. There is, unfortunately, no other guidance. You'll just have to pick the one that is closest to your industry.

1. Agriculture
2. Mining and Quarrying
3. Manufacturing
4. Electricity, Gas and Water
5. Construction
6. Retail and Motor Trade and Repair Services
7. Wholesale Trade, Commercial Agents and Allied Services
8. Catering, Accommodation and other Trade
9. Transport, Storage and Communications
10. Finance and Business Services
11. Community, Special and Personal Services

Many people ask us what is the “finance and business services” major division? See the explanation of the [South African Embassy in the Kingdom of the Netherlands](#) or [Wesgro](#).

## **Other industries**

There are many other industries that are not on the list above. If you're not sure whether your private company falls into one of the major divisions of industries or sectors above, it might help to look at the list of other industries or sectors that are not on this list by using the SARS [website](#) or [version 7](#).

Examples of industries that, in our view, are not included:

1. Hunting, forestry and fishing
2. Insurance
3. Information and communication
4. Real estate activities
5. Professional, scientific and technical activities
6. Administrative and support service activities
7. Public administration and defence; compulsory social security
8. Education
9. Human health and social work activities
10. Arts, entertainment and recreation

An IT company, body corporate, private school and private university are exempt.

Possible answers:

1. If yes, move on to the next question.
2. If no, you don't need a PAIA manual. You're exempt.

## **Does my private company (which operates in a prescribed industry) employ 50 or more employees?**

This is both employees and deemed employees.

Possible answers:

1. If yes, the law requires your organisation to have a PAIA manual.
2. If no, move on to the next question.

## **Does my private company (which operates in a prescribed industry) have an annual turnover greater than a certain amount?**

<b>Major division of industry or sector</b>	<b>Turnover Threshold</b>
Agriculture	R6 million
Mining and Quarrying	R22,5 million
Manufacturing	R30 million
Electricity, Gas and Water	R30 million
Construction	R15 million
Retail and Motor Trade and Repair Services	R45 million
Wholesale Trade, Commercial Agents and Allied Services	R75 million
Catering, Accommodation and other Trade	R15 million
Transport, Storage and Communications	R30 million
Finance and Business Services	R30 million
Community, Special and Personal Services	R15 million

Possible answers:

1. If yes, the law requires your organisation to have a PAIA manual.
2. If no, move on to the next question.

## **Useful resources**

- The SAHRC [guidance](#) on the Submission of a manual (outdated but good)
- The SAHRC [guidance note](#) on the Submission of a manual (outdated but good)
- Notice [39504](#) (December 21015) and notice [44003](#) (December 2020)