

A bokeh background of city lights at night, featuring out-of-focus lights in various colors like blue, yellow, and red, creating a vibrant and abstract pattern.

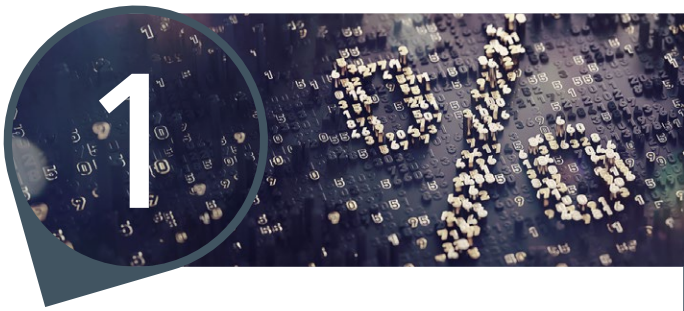
PRIVATE EQUITY: LEGAL DEVELOPMENTS IN 2024

WEBBER WENTZEL

in alliance with > **Linklaters**

The world of private equity is ever-changing, presenting both challenges and opportunities.

In this overview, our experts highlight and provide insights on recent legal developments in tax, corporate, B-BBEE, competition, financial regulatory, infrastructure, energy, and employment that are relevant to private equity.



TAX

Preference shares – expansion of the anti-avoidance rules dealing with third-party-backed shares

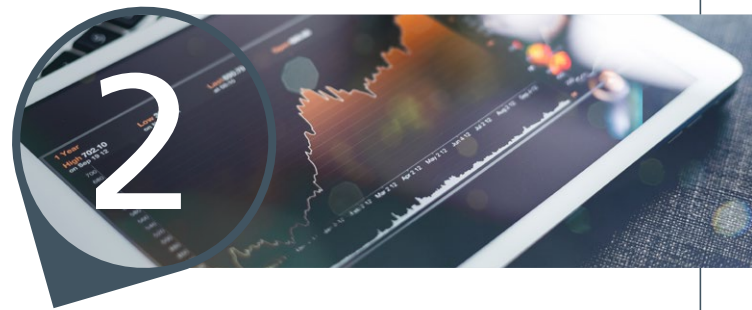
An ownership requirement to the preference share qualifying purpose exemption contained in section 8EA of the Income Tax Act (ITA) has been introduced. Going forward, this may result in the tainting of dividends declared relating to existing preference share structures, to the extent the underlying operating company that the preference share funding was used to directly or indirectly acquire the shares, is no longer held.

Interest deduction limitation for loans used in acquisition or reorganisation transactions

It has recently been proposed that the definition of “adjusted taxable income” and the formula applied to limit an interest deduction in section 23N of the Income Tax Act be reviewed for closer alignment with the changes made to the definition of the adjusted taxable income and the formula applied for the interest limitation rules for debts owed to persons not subject to tax in section 23M of the Income Tax Act.

Infrastructure tax transparent vehicle

To encourage infrastructure investment, government is investigating the feasibility of the introduction of flow-through tax treatment, similar to what is afforded to trusts and other investment vehicles, for certain clearly defined infrastructure projects under specified circumstances.



INVESTMENT FUNDS

Mauritian PCCS and VCCS for superior ringfencing

Mauritius attracts African asset managers and international investors due to its versatile investment options such as Protected Cell Companies (PCCs) and Variable Capital Companies (VCCs).

PCCs enable the segregation of assets and liabilities within a single legal entity and are ideal for prescribed activities such as investment funds or structured finance businesses. PCCs offer numerous advantages, including a secure investment environment, making them an attractive option for insurance companies.

VCCs, on the other hand, provide flexibility in capital management, primarily for collective investment schemes such as mutual funds or hedge funds. Sub-funds of a VCC can function as collective investment schemes or close-end funds and may opt for separate legal identities.

The versatility offered by VCC and PCC structures in Mauritius makes it an attractive hub for diverse investment needs and choosing between these structures depends on specific investment objectives.

Read this insight about [Venture Capital Investment Structures in Mauritius: Protected Cell Companies and Variable Capital Companies](#).

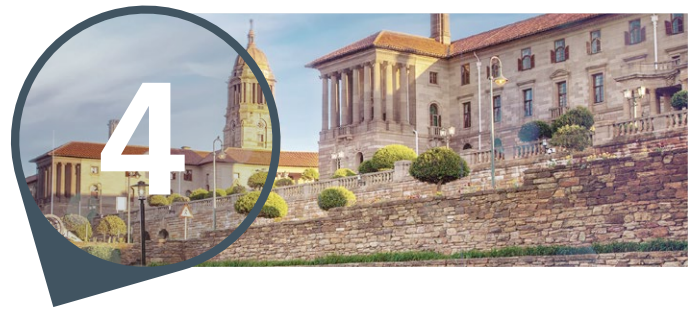


CORPORATE

Mandatory disclosures of beneficial ownership information

The Companies Amendment Regulations, 2023, requires companies to file their beneficial ownership information (BOI) with the Companies and Intellectual Property Commission (CIPC). A beneficial owner must principally be an individual/natural person who, directly or indirectly, ultimately owns 5% or more of the issued shares in a company or exercises effective control of a company. In the context of a private equity structure, a beneficial owner would refer to the limited partner of a partnership, and if the limited partner is not an individual/natural person, then the ultimate shareholder of the limited partner.

“The team is knowledgeable and has a great work ethic.”
- Legal500

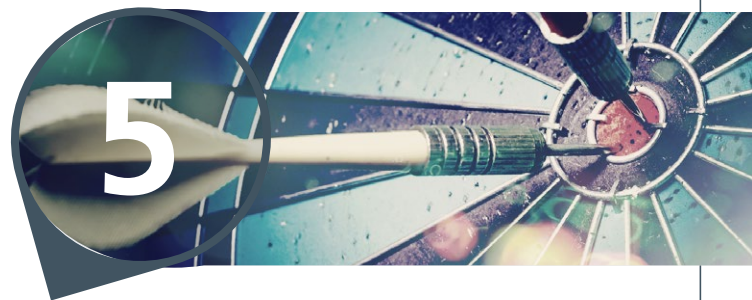


BROAD-BASED BLACK ECONOMIC EMPOWERMENT

B-BBEE Commission publishes an explanatory notice on its investigation process

The Broad-Based Black Economic Empowerment Commission (B-BBEE Commission) recently issued an explanatory notice outlining its process for investigating fronting practices. These investigations can be initiated by the B-BBEE Commission or based on complaints received.

To be considered, complaints must pertain to violations of the Broad-Based Black Economic Empowerment Act, 53 of 2003 (B-BBEE Act) within various elements, including ownership, management control, skills development, enterprise and supplier development, and socio-economic development contributions. Fronting practices, defined broadly by the B-BBEE Act, are transactions or conduct undermining its objectives. Complaints can be filed by affected parties or concerned individuals at no cost, with or without legal representation, and even anonymously.



COMPETITION

SACC Draft Revised Public Interest Guidelines

The South African Competition Commission (SACC) released the [Draft Revised Public Interest Guidelines](#) at its 17th Annual Competition Law, Economics and Policy Conference in September 2023.

These draft guidelines outline the SACC's intended approach when evaluating mergers from a public interest perspective and include some controversial policy shifts. Our competition law team has an [article series](#), unpacking what these guidelines mean and how they can impact businesses.



FINANCIAL REGULATORY

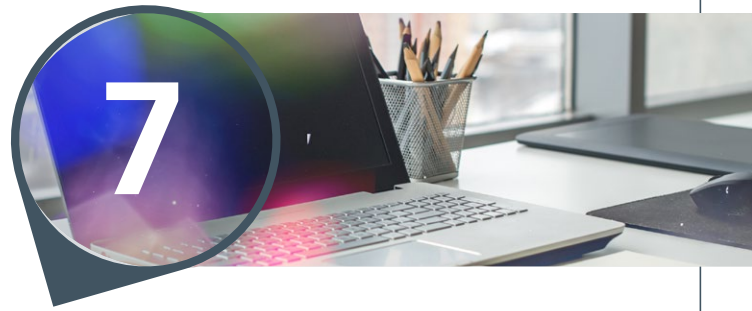
The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022

The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 (GLAA) has amended, and in certain instances introduced, the definition of "beneficial owner" in, amongst others, the Companies Act, 71 of 2008, the Financial Intelligence Centre Act, 38 of 2001 (FICA) and the Trust Property Control Act, 57 of 1988. Investment managers, as accountable institutions, are required to identify all natural persons that satisfy the definition of "beneficial owner" in FICA, including all limited partners, general partners and silent or anonymous partners

The Draft Public Compliance Communication 121 has been issued by the Financial Intelligence Centre to provide guidelines to ascertain the beneficial owner in complex partnership structures.

Asset Spreading Requirements

The amendments to Regulation 28 of the Pension Fund Act, 24 of 1956 became effective on 3 January 2023 and signaled a shift for the local private equity landscape. The final amendments published on 1 July 2022 in Government Gazette 46649 separated the investment limits on hedge funds and private equity assets, and the allocation to private equity funds has increased to 15%, which is a 5% increase from the previous allocation.



EMPLOYMENT

The new employment equity landscape

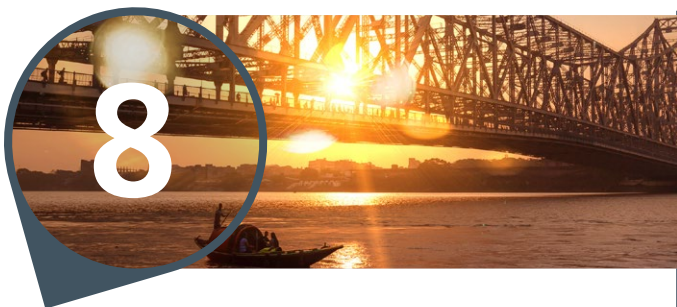
The Employment Equity Amendment Act, 4 of 2022 was signed in April 2023 (EEAA). The EEAA enforces sectoral targets, compelling designated employers to meet them or justify non-compliance. Failure could result in fines and exclusion from state contracts. Employment Equity plans must align with numerical sector targets set by the Minister of Employment and Labour.

We anticipate that the effective date for the EEAA will be published in 2024 once draft regulations associated with the EEAA are finalised. New draft regulations were published on 1 February 2024, starting the period for public comment anew.

Employment Incentive Schemes

The SACC's Draft Revised Public Interest Guidelines place significant emphasis on worker ownership structures when evaluating mergers from a public interest perspective. Reviewing such schemes prior to investment and harmonising the transactions that follow will be important, should the guidelines come into force.

"Webber Wentzel has an outstanding record in big-ticket deals and a particularly fine one in private equity transactions." - [Legal500](#)



INFRASTRUCTURE

Water Services Amendment Bill, 2023

Comments on the Water Services Amendment Bill were submitted on 16 January 2024. The bill includes provisions for the enforcement and rectification of water services by the Minister of Water and Sanitation, the reporting on the provision of water services, as well as operating licences for water service providers.

South African National Water Resources Infrastructure Agency SOC Limited Bill

The National Assembly is currently considering the National Water Resources Infrastructure Agency SOC Limited Bill. The bill establishes the South African National Water Resources Infrastructure Agency SOC Limited as a Schedule 2 entity (Major Public Entities) under the Public Finance Management Act No. 1 of 1999. The purpose of the South African National Water Resources Infrastructure Agency SOC Limited is to acquire, dispose of, fund, provide, maintain, operate, manage and secure funding for national water resources infrastructure efficiently and cost-effectively, to meet the social and economic developmental needs of current and future water users. This will be in accordance with the framework of national government policy and The Constitution of the Republic of South Africa, 1996.

Integrated Renewable Energy and Resource Efficiency Regulations

The Minister of Public Works and Infrastructure has published the Integrated Renewable Energy & Resource Efficiency Regulations (Regulations) in terms of section 20 of the Government Immovable Asset Management Act, 2007.

These Regulations have been developed to implement the Integrated Renewable Energy and Resource Efficiency Programme. The purpose of the Programme is to secure and implement resource and renewable energy efficiencies relating to energy, water and alternative waste management in government buildings across the Department's property portfolio. These Regulations also make provision for departments in the national and provincial governments to participate in the Programme.

Furthermore, the Regulations make provision for the funds that participating departments should commit to, appropriated for utilities such as water and/or electricity and/or waste towards the Department's cost in managing the various projects and relating to the payment of the private sector parties who will undertake the services of the Programme.



ENERGY

Department of Mineral Resources and Energy Determination for Nuclear Energy

On 26 January 2024, the Minister of Electricity issued a determination for the procurement of a new nuclear energy generation capacity of 2 500MW. A notable condition included by the National Energy Regulator of South Africa (NERSA) in its concurrence for this procurement is that the new nuclear power must be procured based on an Engineering Procurement and Construction contract. The buyer of the electricity will be Eskom Holding SOC Limited, or any entity determined through Eskom's unbundling process as the future buyer of electricity.

Draft Integrated Resource Plan 2023

The Draft Integrated Resource Plan (IRP 2023) has been issued and the deadline for public comment was 23 February 2024. The IRP 2023 maps out the future energy mix (including coal, nuclear, gas, hydrogen and renewable energy) for South Africa. It further focuses on prevailing generation capacity constraints and addresses South Africa's long-term (2031 to 2050) electricity pathways to guide long-term policy choices.

NERSA issues licences for the operationalisation of the National Transmission Company of South Africa

Through the Electricity Regulation Act No. 4 of 2006 (ERA), NERSA has published the three licences required for the operationalisation of the National Transmission Company of South Africa (NTCSA). The NTCSA is being established as an independent subsidiary of Eskom Holdings SOC Limited as part of its unbundling process and to facilitate the competitive market structure envisaged in the proposed amendments to the ERA. The NTCSA is expected to commence operation on 1 April 2024.

ABOUT WEBBER WENTZEL

We are the leading full-service law firm on the African continent, providing clients with seamless, tailored and commercially-minded business solutions within record times. Our alliance with Linklaters and our relationships with outstanding law firms across Africa ensure that our clients have the best expertise wherever they do business.



Scan the **QR code** to find out more about our private equity team and expertise.

WEBBER WENTZEL

in alliance with > **Linklaters**