

A bokeh background of city lights at night, with various colored lights (yellow, blue, red, white) blurred into soft circles. The lights are arranged in vertical lines, suggesting a city street or a building facade. The overall tone is dark with vibrant highlights.

RECENT LEGAL DEVELOPMENTS RELEVANT TO **PRIVATE EQUITY**

WEBBER WENTZEL

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The world of private equity is ever-changing. It is therefore important for investors, fund managers, and portfolio companies to stay abreast of these changes.

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



TAX

Reviewing the principles of Practice Note 31

Back-to-back interest-bearing funding arrangements, which were potentially in jeopardy following Government's initial proposed codification of Practice Notice 31 (PN31) through unduly restrictive wording, are no longer adversely affected by the codification of PN31. The Government's revised proposed wording now aligns with that of PN31.

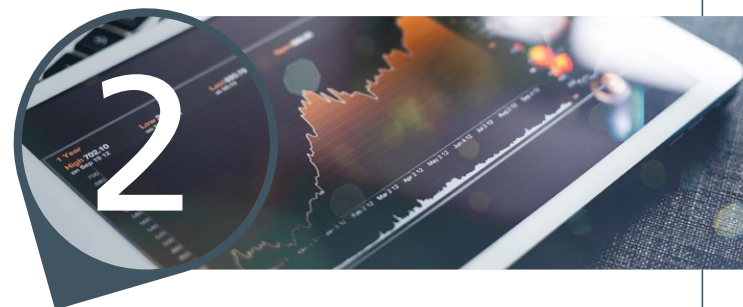
Preference shares – expansion of the anti-avoidance rules dealing with third-party-backed shares

Government has proposed the introduction of an ownership requirement to the preference share qualifying purpose exemption contained in section 8EA of the ITA. This may result in dividends which are declared in respect of preference share structures going forward being tainted.

Interest limitation rules

It is well established that the deductibility of interest paid to persons who are not subject to tax in South Africa is limited. Government intends to clarify

the interest limitation rules by proposing certain amendments to section 23M of the ITA, with a view to strengthening such rules.



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](#).



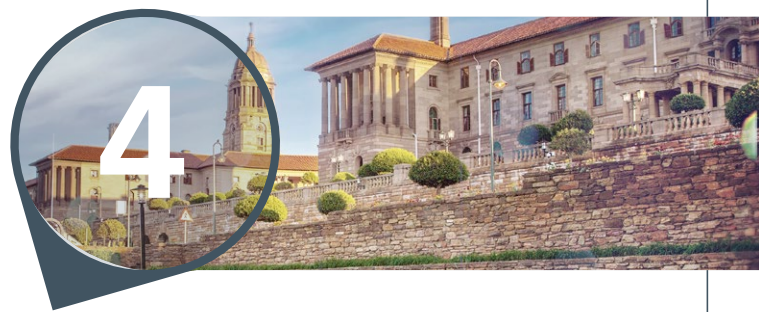
CORPORATE

Mandatory disclosures of beneficial ownership information

The amendments to the Companies Act and the Companies Regulations which came into effect on 1 April 2023 and 24 May 2023 respectively, have introduced the requirement for certain companies to maintain a record of “beneficial owners” and to file this information with the Companies and Intellectual Property Commission (CIPC). A “beneficial owner” is a natural person who, directly or indirectly, ultimately owns or exercises effective control of a company through a chain of shareholdings. In the context of a private equity fund structure, this may result in the requirement to disclose the identity of the ultimate individual shareholders of limited partners and/or the general partner.

The requirement for certain companies to maintain a register of “beneficial interests” of 5% or more has also been introduced.

Compliance with the new beneficial ownership information filing requirements is now being enforced by the CIPC since 1 October 2023

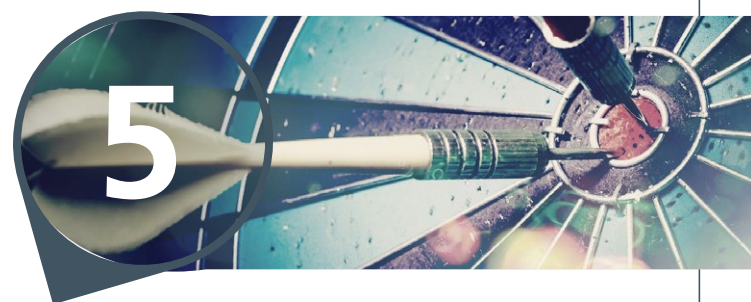


BROAD-BASED BLACK ECONOMIC EMPOWERMENT

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) recently released the [Draft Revised Public Interest Guidelines](#) at its 17th Annual Competition Law, Economics and Policy Conference.

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.



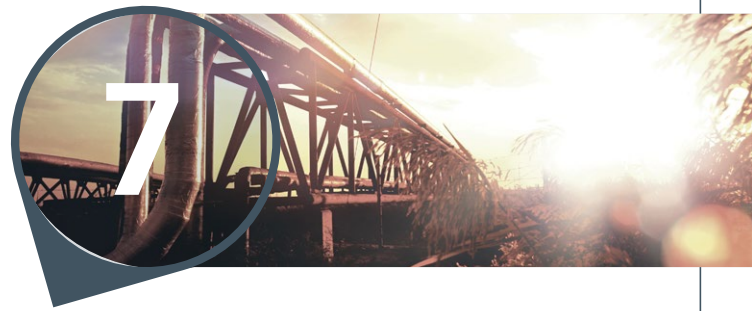
FINANCIAL REGULATORY

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.

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.



PROJECTS

Eskom has introduced Virtual Wheeling

Eskom SOC Limited has introduced Virtual Wheeling, which connects buyers that have multiple offtake sites to generators via Eskom or municipal grids. Electricity wheeling mechanisms play a key role in facilitating the optimal integration of renewable energy resources into the grid. Wheeling across high and medium-voltage lines has been the focus of Eskom’s wheeling strategies to date, but the proposed introduction of virtual wheeling, a new product offering by Eskom, opens opportunities for companies with multiple smaller and low-voltage loads scattered across various geographies in South Africa to participate in the market.

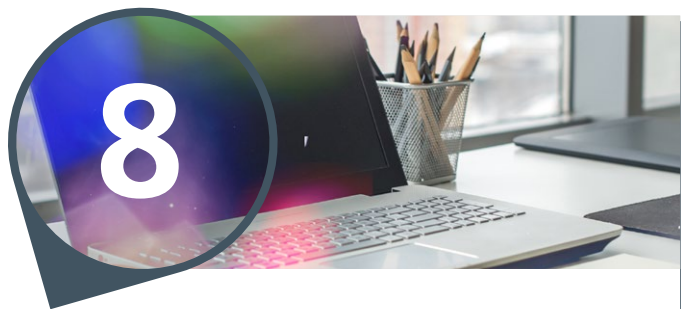
Draft Electricity Regulation Amendment Bill

The Draft Electricity Regulation Amendment Bill was tabled before Parliament on 23 August 2023 for consideration. Significant amendments include a competitive electricity market that enforces third-party access to the transmission and distribution system; streamlining of licencing requirements; and NERSA no longer being required to regulate pricing, but setting and approving tariffs.

Draft Public Procurement Bill

Parliament has introduced the Public Procurement Bill which seeks to create a single procurement framework, including preferential procurement. The Preferential Procurement Framework Act, 5 of 2000 and the procurement provisions contained in the Public Finance Management Act, 1 of 1999 will be repealed.

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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.

Draft Regulations were published in 2018 and 2023, respectively to outline justifiable reasonable grounds for non-compliance with numerical targets and set proposed numerical targets for identified economic sectors.

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.

ABOUT WEBBER WENTZEL

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

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