23 LEGAL DEVELOPMENTS

FOR BUSINESSES TO MONITOR IN 2023

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1. COMPANY LAW

- General Laws (Anti-Money Laundering and Combating Terrorism Financing Amendment Act, 2022) (Amendment Act): After it was fast-tracked through Parliament in the last quarter of 2022, the Amendment Act was signed into law by the President in December 2022. It amends five pieces of legislation, including the Companies Act, 2008 (Companies Act), to attempt to prevent South Africa's then potential greylisting (see Financial Compliance section for further detail). Among other things, the amendments introduce a mechanism to enable the Companies and Intellectual Property Commission (CIPC) to maintain beneficial interest/ beneficial ownership information on companies. Generally, the following is required:

  - a company that is an affected company: an affected company (a regulated company under the Companies Act and a private company that is controlled by, or a subsidiary of, a regulated company) must establish and maintain a register of persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the company. It must ensure that this register is updated within a prescribed period; and

  - a company that is not an affected company: a company that is not an affected company must record in its securities register prescribed information about the natural persons who are beneficial owners and must ensure that this information is updated within a prescribed period. A "beneficial owner" is an individual who, directly or indirectly, ultimately owns a company or exercises effective control of it.

The beneficial interest/beneficial ownership information must be submitted to the CIPC.

Aside from inserting new definitions into the Companies Act and including additional grounds for disqualifying directors, which took effect in December 2022, the amendments place greater obligations on companies to maintain and record beneficial interest/ beneficial ownership information with effect from 1 April 2023. Click here to read more about this development.

On 15 March 2023, draft Companies Amendment Regulations as a result of the Amendment Act were published for public comment. The deadline to submit comments is 29 March 2023. Clients should seek advice to understand the impact of the Amendment Act and the draft Companies Amendment Regulations (once in force) on their businesses going forward.

- Companies Amendment Bill: We anticipate that a revised draft of the Companies Amendment Bill will be published and tabled in Parliament this year. In the revised draft, among other revisions, we expect a reworking of the proposed amendments relating to disclosure and reporting of beneficial ownership and beneficial interests, given the amendments in the Amendment Act.

2. BLACK ECONOMIC EMPOWERMENT

In May 2022, President Cyril Ramaphosa announced the appointment of a new Broad-Based Black Economic Empowerment (B-BBEE) Advisory Council (Council). The Council, established in terms of the B-BBEE Act, consists of 14 members (representing government, business, and labour), who will serve for five years. The Council's purpose is to provide guidance on and monitor the overall state of B-BBEE performance in the economy.
The primary functions of the Council are to:
- advise government on B-BBEE;
- review progress in achieving B-BBEE;
- advise on draft Codes of Good Practice and draft Transformation Charters, upon request;
- advise on the development, amendment, or replacement of the B-BBEE strategy referred to in the B-BBEE Act; and
- promote partnerships between organs of state and the private sector that will advance the objectives of the B-BBEE Act.

3. EQUITY CAPITAL MARKETS

In 2022, the JSE introduced proposals to reform its listings framework in light of international developments and to make listings more attractive. After publishing a consultation paper identifying works in progress and proposed reforms for public comment, and a response paper setting out the market's appetite to proceed with these reforms, the JSE published proposed amendments to the Listings Requirements in October 2022. It set a deadline of end-November 2022 to submit public comments. These proposed amendments relate to: (i) regulating the listing of companies with dual or weighted voting share structures; (ii) amending the free-float requirements; (iii) amending the JSE's current Special Purpose Acquisition Company offering; and (iv) reworking the financial reporting provisions. Click here and here to read more about these developments. On 10 March 2023, the Financial Sector Conduct Authority published revised proposed amendments relating to these aspects and set a deadline of 24 March 2023 to raise any objections to the proposed amendments. We expect these proposed amendments to be finalised in the first half of 2023.

4. TRADE ACROSS AFRICA

The African Continental Free Trade Area (AfCFTA) Secretariat launched the AfCFTA Guided Trade Initiative (GTI) in October 2022. The launch of the GTI is a significant milestone that marks the commencement of 'commercially meaningful' trade in terms of the AfCFTA agreement. As at February 2023, 46 of the 54 signatories have deposited their instruments of ratification. Negotiations to finalise the rules of origin are still taking place on certain products, such as motor vehicle parts and tobacco. Businesses should consider taking advantage of the AfCFTA in 2023 to facilitate trade – in some instances, between countries that have not traded with each other before. Businesses are particularly encouraged to understand the offers of preferential/reduced tariff rates and the eventual possibility of zero tariffs. After the state visit by President Ramaphosa to Kenya in November 2022, the agreements signed and subsequent actions, the prospects for growth in trade between South Africa and Kenya are good. During the visit, both countries committed to procure the ratification of the Tripartite Free Trade Agreement (TFTA) by a sufficient number of member states to bring this agreement into force. This will enable exporters in the two countries to benefit from the preferential trade terms in the TFTA.

5. PRIVACY

Data breaches, such as cyber-attacks or ransomware incidents, were widespread in South Africa throughout 2022. The Information Regulator (IR) noted the prevalence of these incidents and has begun to proactively exercise its powers under the Protection of Personal Information Act (POPIA). This includes prescribing additional guidelines for notifying data breaches. The IR also:

- approved codes of conduct for lawful processing of personal information by the Credit Bureau Association and the Banking Association of South Africa;
- issued summons against the South African Police Service (SAPS) for suspected POPIA violations; and
- established its Enforcement Committee to consider matters related to POPIA and the Promotion of Access to Information Act (PAIA).

In 2023, we expect there will be further enforcement by the IR. We also expect our courts will develop case law on POPIA, which will help with its interpretation.

6. CYBERSECURITY

The Cybercrimes Act 19 of 2020 (Cybercrimes Act) came into force, but only partially, on 1 December 2021. It is intended to advance the protection of information and reduce and prevent cybercrime in South Africa.

In 2022, the SAPS published its draft Standard Operating Procedures for the Investigation, Search, Access, or Seizure of Articles in terms of the Cybercrimes Act. The IR has also taken steps to reinforce the interrelationship between POPIA and the Cybercrimes Act.

South Africa's Parliament has published a notice in the Government Gazette on its intention to introduce the Constitution Eighteenth Amendment Bill, 2022, which would establish the Office of the Cyber Commissioner.

In 2023, we expect:

- continued developments in cybercrime regulation;
- the commencement of prosecutions of cybercrimes (now criminalised by the Cybercrimes Act); and
- potentially, the commencement of the remaining sections of the Cybercrimes Act.

7. TELECOMMUNICATIONS

South Africa concluded its first high-demand spectrum auction in March 2022 - a milestone achievement in the South African telecommunications sector. The auction was for the award and allocation of high-demand IMT spectrum for:

- rolling out new technologies, such as fifth generation (5G) technology; and
- increasing internet connectivity across South Africa.

In August 2022, the Independent Communications Authority of South Africa (ICASA) announced its intention to start a second phase of the licensing process for additional spectrum. Based on previous commitments made by ICASA, we expect that this licensing process will be completed in 2023.

8. COMPETITION: MERGERS

New Small Merger Guidelines (effective from December 2022) propose that, if certain criteria are met, the South African Competition Commission (SACC) must be informed of all small mergers and acquisitions. This new requirement is particularly relevant in digital and technology markets, as the SACC has expressed concern that acquisitions in this sector often escape regulatory scrutiny.

Public interest will continue to play a significant role in merger assessments. The SACC is mainly focused on the potential dilution of B-BBEE/historically disadvantaged persons' ownership structures, due to merger transactions. We also expect amendments to the merger filing forms will be finalised in 2023. Firms will have to provide extensive information about the effect of the merger on all public interest considerations and more detailed information on their proposed transactions.

We expect regulations will be published setting out how the Department of Trade, Industry and Competition will work with merger parties to craft public interest conditions during merger proceedings. We are hopeful that revised public interest guidelines will be issued urgently.

9. COMPETITION: MARKET CONDUCT

For the first time in almost five years, the SACC conducted dawn raids at the premises of eight large insurance companies in August 2022. Post-pandemic, it appears that the SACC is building up its resources to pursue prohibited practice cases more aggressively. We anticipate that in 2023 there will be an increase in dawn raids across a range of industries.

The final report in the SACC's Online Intermediation Platforms Market Inquiry is expected to be published in 2023. It will be important to monitor how the SACC's recommendations (relating to self-preferencing, the regulation of commission fees, etc.) will be implemented. We can also expect a decision in the prohibited practice matter against Meta (brought by a local chat platform used by citizens to engage with government) and further progress on the challenge by local publishers to be compensated for their content used on digital platforms.

10. TRANSPORT

The Economic Regulation of Transport Bill (Transport Bill) was passed by the National Assembly in September 2022. It is currently with the National Council of Provinces for approval and will then proceed to the President for assent (after which it will become an Act of Parliament). The timing is unknown.

The Transport Bill seeks, among other things, to integrate economic regulation of the transport of passengers and goods, by air or through airports or ports, and by road or rail. The Transport Bill envisages that economic regulation of this sector will be consolidated within a single framework and policy under a single regulator, the Transport Economic Regulator.

11. ENVIRONMENT

- Promulgation of the National Environmental Laws Amendment Act, 2 of 2002 (NEMLAA IV Act): This is undoubtedly the most significant piece of environmental legislation since the implementation of the One Environmental System (OES) in 2014. The NEMLAA IV Act has finally been published but will only become law on a date to be proclaimed by the President. Once the Act comes into operation, it will introduce a major shift in South Africa's environmental legislative landscape. Many of these changes are intended to clean up a range of issues associated with the roll-out of the OES which, among other things, overhauled how environmental issues are regulated on mine sites. Overall, the changes imposed by the NEMLAA IV Act aim to deter non-compliance with environmental laws, such as by introducing new offences, increasing the quantum of fines and administrative penalties where laws or licences have been contravened, and extending regulators' enforcement powers.
- Climate Change Bill: The Climate Change Bill was re-tabled in Parliament in February 2022. We expect that this Bill, which aims (among other things) to formalise South Africa's carbon budget market and establish sectoral emission targets linked to the country's NDC under the UNFCCC Paris Agreement, will be enacted this year.
- Changes to carbon tax rates: In the Budget 2022 speech, government announced its intention to ramp up the carbon price and strengthen price signals to promote behavioural changes in the short, medium, and long term. The Carbon Tax Act, 2019 will be amended to provide for a gradual USD-denominated carbon tax rate adjustment for the 2023, 2024, and 2025 tax periods, increasing to at least USD30/tCO_2e in 2030. In December 2022, the National Council of Provinces assented to the Taxation Laws Amendment Bill seeking to effect these changes, which now awaits Presidential signature. The proposed amendments came into operation on 1 January 2023.
- New policy on biodiversity conservation: The Draft White Paper on Conservation and Sustainable Use of Biodiversity was gazetted in July 2022 for public comment. The White Paper aims to address

the policy gap that exists due to the lack of an approved, overarching policy on biodiversity in South Africa. It sets out a "new deal" on the conservation and sustainable use of biodiversity.

- Green Hydrogen Commercialisation Strategy: In December 2022, the draft Green Hydrogen Commercialisation Strategy was released for public comment. It is intended to create an attractive and enabling investment environment. The Green Hydrogen Commercialisation Strategy sets out a commercial framework for the strategic objectives and demand drivers for a green hydrogen sector, as well as the technical value chain and related delivery supply chain options, and opportunities to embed local manufacturing and local content.

12 ENVIRONMENT, SOCIAL AND GOVERNANCE (ESG)

ESG has evolved from being seen merely as an investment metric to a strategic management tool for achieving / driving impactful sustainable development (in line with international frameworks such as the UN Sustainable Development Goals and the UN Guiding Principles on Business and Human Rights). More stakeholders are demanding that companies acknowledge, consider and report on ESG impacts from and on their business. In some jurisdictions, this has also become a regulatory issue.

Various South African laws regulate E, S and/or G components, and companies need to understand the full scope of their obligations and how they interact in the company's risk and impact frameworks.

The ESG reporting landscape is fast evolving. Mandatory disclosure is on the horizon for South Africa, and voluntary frameworks/guidance has been published and implemented across the globe. In South Africa, recent developments include:

- The JSE Disclosure Guidance, 2022: In June 2022, the JSE released its Sustainability Disclosure and Climate Disclosure Guidance documents. These aim to promote transparency and good governance, and guide listed companies on best practice in ESG disclosure. The Sustainability Disclosure Guidance will assist companies to understand which issues are relevant, in both the local and global landscape and start disclosing them. The separate Climate Disclosure Guidance aims to clarify current global best practice in climate-related disclosure and provides a step-by-step guide to get issuers started on this journey.
- Prudential Communication 10 of 2022: In August 2022, the Prudential Authority published Communication 10 of 2022 on climate-related risks and their potential impact on financial institutions. It highlights (among other matters) the role of boards and senior management in considering climate-related risks. It also describes the Prudential Authority's current climate risk initiatives and approach to climate-related oversight.
- Recently, the South African Financial Sector Conduct Authority (FSCA) published Guidance Note 1 of 2019, entitled: "Sustainability of investments and assets in the context of a retirement fund's investment policy statement". It provides guidance to pension funds on the FSCA's expectations relating to ESG reporting and disclosure.
- The South African Reserve Bank will shortly issue a draft ESG disclosure framework for the financial services organisations that it supervises.
- South Africa's first national Green Finance Taxonomy (GFT) was launched on 1 April 2022 by the Taxonomy Working Group as part of the country's Sustainable Finance Initiative. The GFT promotes sustainable finance and encourages green private sector initiatives.
- The Second Code on Responsible Investing in South Africa (CRISA2) was published in 2022. CRISA2 is a voluntary code that recommends practices for, among other things, ESG integration; collaboration and capacity building, and ensuring transparency and meaningful disclosures. CRISA2 applies to asset owners, asset managers and service providers to institutional investors. Other organisations within the investment value chain are encouraged to apply its principles. The effective date for reporting publicly on the application of CRISA2 is 1 February 2023.

13. TAX

- Associated enterprises: The South African Revenue Service (SARS) released a draft interpretation note for comment on the definition, interpretation, and application of 'associated enterprise'. The South African transfer pricing rules have been expanded to include an 'associated enterprise' with effect from 1 January 2023, applicable to years of assessment commencing on or after that date. Looking at the examples provided by SARS in the draft interpretation note, this may significantly broaden the scope of South Africa's transfer pricing rules.
- Reduction in corporate tax rate: The corporate tax rate will be reduced from 28% to 27% for years of assessment ending on or after 31 March 2023. However, setting off assessed losses will be limited to an 80:20 split.
- Vision 2024: SARS proposes to have third-party returns submitted on a "real-time" basis (currently, annually) to enable more accurate and efficient collection of income tax from individuals.
- Advance rulings: The Customs and Excise Act will be amended to allow registered importers to apply for advance rulings on the origin, tariff classification and customs valuation of goods. This framework aims to enhance predictability, consistency and transparency in the three ruling categories.
- Diesel refund regime overhaul: Rules and Schedules to the Customs and Excise Act will be amended to take into account comments from industry-specific workshops.
- Advance pricing agreements: Multinational businesses will be able to negotiate bilateral advance pricing agreements with SARS and revenue authorities in OECD member countries, once enabling legislation for the pilot project is passed.
- Cross-border intra-group loans: SARS released interpretation note on how the arm's length principle would apply to multinationals' intragroup loans.
- Foreign business establishment exemption: The Budget Review 2023 proposes to amend the policy on the foreign business establishment exemption for controlled foreign companies (CFC) to require that all important functions for which a CFC is compensated must be performed by the CFC in that country or another company with facilities and taxation in the same country and which also forms part of the same group as the CFC.
- Income distributions by resident trusts to non-resident beneficiaries: The Budget Review 2023 proposes to have income distributions by resident trusts to non-resident beneficiaries be subject to tax in the trusts, the same as is currently done for distributions of capital gains where such gains are taxed in the trusts.
- Non-resident employers to register as an employer: The Budget Review 2023 proposes to require non-resident employers to register as employers with SARS and be accountable for all payroll taxes.
- Solar incentives in the Budget Review 2023: From 1 March 2023, businesses will be able to reduce their taxable income by 125% of the cost of an investment in renewables, with no thresholds on generation capacity for qualifying projects. This incentive will be available for two years. Individuals who install rooftop solar panels from 1 March 2023 to 28 February 2024 will be able to claim a rebate of 25% of the cost of the panels up to a maximum of ZAR15 000. This can reduce their tax liability in 2023/24, and will only be available for one year.

14. WORKPLACE

The anticipated effective date for the Employment Equity Amendment Bill (Bill) is 1 September 2023. The Bill is currently before the President for assent. If he has reservations about its constitutionality, he may refer it back to the National Assembly for reconsideration, or to the Constitutional Court to determine the constitutionality of any concerns. The announcement of the effective date, however, suggests that the Bill will be signed into law soon. Four of the most significant changes proposed in the Bill include:

- introducing sector and sub-sector targets;
- obliging designated employers to comply with numerical sector targets;

- requiring compliance with such targets and assessing and reporting against them; and
- requiring that compliance has a significant weighting on designated employers' ability to bid for and be awarded State contracts.

Engagements on sector and subsector targets were set to conclude at the end of 2022.

15. EMPLOYEE HEALTH AND SAFETY

- The draft Occupational Health and Safety Amendment Bill, 2020 (draft OHS Amendment Bill) proposes substantial changes impacting employers. The Chief Inspector has indicated that a subcommittee will be formed in early 2023 to examine stakeholders' comments submitted on the draft OHS Amendment Bill.
  The proposal for a formalised internal process, which contemplates introducing a health and safety management system (encompassing procedures, policies, objectives, and measurement tools, including risk assessments) is welcomed. Another positive change is the inclusion and recognition of the significant health and safety role played by entities such as occupational hygienists and occupational health and safety practitioners.
  The yardstick to test whether an employer has adequately discharged its duties in terms of the OHS Act is currently based on 'reasonability and practicability'. The reference to this standard has been selectively deleted throughout the draft OHS Amendment Bill. If this amendment is enacted, it would have the effect of imposing strict liability on employers, even in cases of negligence. Other proposed changes that would affect employers include the introduction of limited administrative fining powers by inspectors, as well as higher penalties for contraventions.
- The draft Mine Health and Safety Amendment Bill, 2022 (draft MHS Amendment Bill) proposes amendments that are equally onerous. The proposed amendments seek to, among other things, broaden the definition of employee for the purposes of the MHS Act and make employers' compliance with their Codes of Practice mandatory. The Bill envisages:
  - a higher threshold for circumstances when an inspector may issue a stoppage notice. The inspector must physically observe an unsafe act or condition.
  - stricter training obligations in accordance with the work to be performed, and that training records must be readily available.
  - significant vicarious liability amendments. Issuing instructions prohibiting certain conduct will not be sufficient proof that all reasonable steps were taken to prevent it.
  - that it would not be a defence "that the death of a person, injury or illness was caused by the act or omission of an employee of the employer if the act or omission fell within the scope of the authority or employment of the employee". This may be open to legal challenge. It would require employers to deliberately draft each employee's scope of authority and/or job description to ensure that working safely and in compliance with all procedures is specifically included.

16. PENSIONS

We await finalisation of the two-pot system and the governance of retirement funds, and anticipate a focus on the following aspects in the retirement fund area:

- Unclaimed benefits – a discussion paper has been released for public comment on the consolidation of various unclaimed benefits into a single fund and registry under the supervision of the FSCA. We anticipate that this legislation will be formalised, with the FSCA issuing a governance standard on how the retirement fund industry will deal with unclaimed benefits.
- Another key focus area for the regulator has been inclusion and transformation. We anticipate that regulations will be introduced requiring financial institutions to implement a transformation plan aligned to achieving the targets set out in the financial sector code.

- Significant engagement by the Regulator on enhancing governance in funds and trustee conduct, particularly relating to Umbrella Funds.
- On 27 January 2023, the Minister of Finance repealed Regulation 33 which sets out requirements relating to the payment of pension fund contributions by employers to pension funds. Regulation 33 is replaced by the Conduct Standard, which took effect on 20 February 2023.

17. BUSINESS CONTINGENCY PLANNING

We anticipate that several financially-distressed businesses will need to be restructured or liquidated in 2023. The effect of increased load shedding is adding strain to an economy still recovering from the Covid-19 pandemic. We expect there will be a continued focus on the various restructuring options available to corporate SA, including informal restructures, compromises, and business rescues. We also expect to see a continued increase in mergers and acquisitions in the distressed debt space. The restructuring of financially-distressed state-owned entities will generate opportunities for private investment.

18. RISK MITIGATION

In 2022, the World Economic Forum identified "social cohesion erosion" as a top global risk that could potentially be the most damaging risk over the next 10 years. Factors such as inequality, discrimination, unemployment, and the rising cost of living are undermining trust in governments and institutions. Continuing power supply interruptions and other service delivery issues in South Africa play a large contributory role. We saw this risk play out in the July 2021 riots in KwaZulu-Natal, and the risk of further political unrest cannot be discounted. Mitigating actions, such as implementing fair and sustainable business policies and practices, should be taken.
We also expect to see a continued upward trend in ESG-related litigation, not only relating to climate risk, but also to investments and disclosures. Increased attention to meaningfully complying with ESG requirements will be crucial.

Factors such as natural disasters, decaying infrastructure, and public violence in South Africa are raising risks for global reinsurers, and we expect this will have a knock-on effect on the cost of insurance. We recommend that companies pay particular attention to their business practices to manage their risk profile.

19. PROCUREMENT

- Preferential Procurement Regulations, 2022: Government has promulgated the new Preferential Procurement Regulations, 2022 (2022 Regulations). The 2022 Regulations, among other things, no longer provide that an organ of state may apply "pre-qualification criteria" to advance certain designated groups through procurement. They set out:
- the applicable preference point system, namely:
  - an 80/20 preference point system for (i) the acquisition of goods or services with a rand value equal to or below ZAR 50 million; and (ii) tenders for income-generating contracts with a rand value equal to or below ZAR 50 million; and
  - a 90/10 preference point system for (i) the acquisition of goods or services with a rand value above ZAR 50 million; and (ii) tenders for income-generating contracts with a rand value above ZAR 50 million;
  - the "specific goals" which may be included in the tender invitation, for which points may be awarded;
  - that tenders will be awarded to tenderers scoring the highest points under the preference point system;

- criteria for breaking a deadlock in scoring; and
- remedies available to an organ of state if it believes that a tenderer submitted false information on specific goals.

While the concept of "specific goals" appears to overlap with the concept of B-BBEE, a key change is that the new regulations do not expressly refer to "B-BBEE" or its related concepts as defined in the B-BBEE Act. "Specific goals" include contracting with persons, or categories of persons, that were historically disadvantaged by unfair discrimination on the basis of race, gender and disability.
While preference points will still be awarded to a tenderer based on its offered price, additional preference points may be awarded based on whether the tenderer meets the "specific goals" set out in a tender invitation.
The new regulations will come into effect on 16 January 2023. All tenders advertised before this date will be considered in accordance with the Preferential Procurement Regulations, 2017.

- The Draft Public Procurement Bill: The 2022 Regulations (see above) are not intended to be a long-term solution, but a "placeholder" until the Public Procurement Bill (the Bill) is finalised. The Bill seeks to consolidate existing statutes, regulations, instructions, guidelines and practice notes that govern public procurement. It also aims to establish the office of the Public Procurement Regulator.
  In terms of the Bill, the Preferential Procurement Policy Framework Act 2000 will be repealed. In addition to maximising value-for-money objectives, the Minister of Finance will be empowered to regulate preferential procurement afresh in the Bill. It will be introduced in Parliament in March 2023

20. ELECTRICITY REGULATION

In September 2022, the Minister of Mineral Resources and Energy published proposed amendments to Schedule 2 of the Electricity Regulation Act, 2006 (ERA) for public comment (the Schedule 2 Notice). The Schedule 2 Notice would, once effective, amend the current licensing exemption and registration requirements for trading, generating, transmitting, and distributing electricity in terms of the ERA. This much-anticipated removal of the 100 MW licensing threshold for embedded generation is the headline change proposed in the Schedule 2 Notice. The notice also proposes changes to the activities exempt from licensing, but those activities must comply with the Code and be registered with the Regulator.

21. NATIONAL HEALTH INSURANCE

The National Health Insurance Bill aims to provide universal access to quality health care for all South Africans, as enshrined in the Constitution. It is currently being considered by the National Assembly.
Clause-by-clause deliberations took place throughout 2022.

22. FINANCIAL COMPLIANCE

Legislative changes: The Conduct of Financial Institutions Bill (COFI) may be submitted to Parliament in 2023 as part of the twin peaks model to reform the sector. COFI, which focuses on treating customers fairly, will replace existing conduct provisions in financial sector laws. It is intended to build a reliable, strong and effective market conduct legislative framework for all institutions carrying out financial activities.

South Africa was greylisted by the Financial Action Task Force on 24 February 2023. The potential impact of the greylisting on South Africa includes less capital flows into South Africa, more intense due diligence of South African entities seeking foreign investment and potential further reclassification of South Africa's risk rating with other jurisdictional bodies such as the EU. Click here to read more about the greylisting implications for the country going forward. The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act (Amendment Act), which was signed into law by the President in December 2022, is a response to the then potential greylisting. The amendments contained in the Amendment Act have cascading commencement dates, which are detailed here. The Amendment Act amends the Financial Intelligence Centre Act, the Companies Act, the Financial Sector Regulation Act, the Trust Property Control Act and the Nonprofit Organisations Act. The Amendment Act introduces the concept of beneficial ownership into the various pieces of legislation and creates obligations to record and maintain beneficial ownership information. Once these amendments take effect, legal persons and entities will be required to keep a register of their beneficial ownership, as well as provide beneficial ownership information to relevant regulators.

23. FOREIGN EMPLOYEES

The draft National Labour Migration Policy (NLMP) and Employment Services Amendment Bill (Draft Bill) was published for comment in February 2022.
The NLMP seeks to address South Africans' expectations of access to job opportunities and the perception that foreign nationals distort labour market access. The NLMP and Draft Bill will impose quotas on the total number of documented foreign nationals with work visas who can work in core sectors such as agriculture, hospitality and tourism, and construction. Employers will be required to satisfy themselves that there are no suitable South African citizens or permanent residence holders for a vacancy before recruiting a foreign national for a position. Multinational corporations and employers with foreign national workers should prepare a skills transfer plan for any position in which a foreign national is employed in anticipation of the policy and legislative changes, which we anticipate will become law in 2023.
In addition, Zimbabwean nationals who hold a ZEP are required to apply for a new visa set out in the Immigration Act on or before 30 June 2023, or leave South Africa. South African employers are encouraged to verify each foreign national's visa status through a Verification of Visa with MIE to, among other reasons, avoid penalties arising from compliance audits that will continue in 2023.

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