

24 LEGAL DEVELOPMENTS

FOR BUSINESSES TO MONITOR IN 2024



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01

COMPANY LAW

BENEFICIAL OWNERSHIP AND BENEFICIAL INTEREST FILINGS

Amendments to the Companies Act, 2008 (Companies Act) and Companies Regulations, 2011 (Companies Regulations) requiring companies to maintain and disclose beneficial ownership and beneficial interest information took effect in 2023.

The Companies and Intellectual Property Commission (CIPC) will likely closely monitor compliance with these new disclosure requirements. In February 2024, the CIPC issued an enforcement [notice](#) reminding companies of their obligations to file securities registers and beneficial ownership information. This notice follows a similar notice in 2023. In March 2024, the CIPC issued a [notice](#) informing companies, among other things, that from 15 April 2024, companies will not be able to file their annual returns if they have not first complied with the beneficial ownership filing requirements.

Companies should ensure that their company registers are up to date with beneficial ownership and beneficial interest information (as relevant) and file the required information with the CIPC to the extent they have not done so already.

COMPANIES AMENDMENT BILLS, 2023

On 26 March 2024, the National Council of Provinces (NCOP) passed final versions of the Companies Amendment Bill, 2023 (CAB 2023) and Companies Second Amendment Bill, 2023 (CSAB 2023): (collectively, the Companies Amendment Bills, 2023), which introduce changes to the Companies Act, 2008 (Companies Act). The final Companies Amendment Bills, 2023 passed by the NCOP are essentially the same as the versions the National Assembly passed in November 2023. The final Bills have now been sent to the President for assent.

The passing of the Companies Amendment Bills, 2023 brings to a close a legislative process that began in August 2023 but has been several years in the

making, given previous iterations of the Companies Amendment Bill published by the Department of Trade, Industry and Competition, most recently in 2021.

Objectives of the CAB 2023 include to: (i) enhance transparency and disclosure by companies; (ii) make provision for more disclosure of executive remuneration and enable shareholders to have a greater say on executive remuneration through binding votes; (iii) cut unnecessary red tape to enhance the ease of doing business in South Africa; and (iv) address gaps and clarify certain technical provisions. The CSAB 2023 follows from the recommendations made by the Zondo Commission of Enquiry into State Capture and aims to extend the time bars applicable to applications for director delinquency and proceedings to recover loss due to director liability.

Among other things, the CAB 2023 proposes:

- new provisions dealing with executive director remuneration in public and state-owned companies;
- new provisions relating to a company's social and ethics committee (SEC);
- that amendments to the MOI (other than a name change) will take effect only ten business days after receipt by the CIPC (unless endorsed or rejected with reasons sooner) or a later date specified in the Notice of Amendment;
- that third parties be given access to a company's MOI, the records in respect of directors, the annual financial statements (AFS), and the register of disclosure of beneficial interests (where required). This is in addition to the securities register and register of directors to which a company must currently give third parties access. Certain companies below a specified public interest threshold will be exempted from providing access to their AFS;

- to exempt a company which provides financial assistance to its subsidiary (as defined in the Companies Act; essentially South African incorporated subsidiaries) from the financial assistance provisions in the Companies Act;
- that all share repurchases will require the passing of a special resolution by shareholders unless the repurchased shares are acquired as a result of (i) a pro-rata offer made to all shareholders or a particular class of shareholders; or (ii) transactions effected on a recognised stock exchange (being a licensed exchange in terms of the Financial Markets Act, 2012) on which the shares are traded – the proposed amendments seek to remove the current provision that a repurchase of more than 5% of the shares is subject to the requirements of sections 114 and 115 of the Companies Act; and
- to alter the scope of application of the takeover provisions to apply to private companies that (i) have ten or more shareholders with a direct or indirect shareholding in the company; and (ii) meet or exceed a determined financial threshold of annual turnover or asset value.

Executive remuneration

The CAB 2023 goes further than King IV and the JSE Listings Requirements by requiring the remuneration policy and remuneration report of a public company and state-owned company to be approved by shareholders (as opposed to being put to non-binding advisory votes).

Among other things, the provisions also:

- require wage gap disclosures;
- require that where there is non-approval of the remuneration report, the remuneration committee explain at the next AGM how shareholder concerns have been taken into account;

- require that the non-executive directors on the remuneration committee stand for re-election as committee members (in the first instance of non-approval of the report);
- require that the non-executive directors on the committee stand for re-election as directors to the board (in the second consecutive instance of non-approval of the report); and
- envisage a two-strike rule in terms of which non-executive directors on the remuneration committee will become ineligible to serve on the committee for a period of two years where there are two consecutive instances of non-approval of the report.

The requirements to stand for re-election and the two-year ineligibility period will not apply to committee members who have served for less than 12 months in the year under review.

The amendments in the Companies Amendment Bills, 2023 are not yet effective. However, we expect that the President will sign the Bills into law imminently.

Companies should familiarise themselves with the relevant amendments that may affect their corporate and strategic operations (such as the new remuneration provisions, the SEC requirements, and amendments to the provisions on financial assistance, share repurchases, the scope of application of the takeover provisions to private companies and lodgement of MOI amendments) and prepare accordingly. Where needed, they should seek expert advice to help them navigate the new amendments and their impact on their businesses.

Read the insight: [A snapshot of the key amendments in the Companies Amendment Bills, 2023.](#)



BLACK ECONOMIC EMPOWERMENT

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, 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. Read the insight: [B-BBEE Commission explains its investigation process.](#)



EQUITY CAPITAL MARKETS

The Johannesburg Stock Exchange (JSE) has continued to progress amendments to its Listings Requirements in line with international developments and to make listings on the JSE more attractive.

RECENT EFFECTIVE AMENDMENTS

In 2023, several amendments to the Listings Requirements took effect, including:

- amendments, as part of the JSE's 2022 consultation paper proposals, (a) regulating the listing of companies with dual or weighted voting share structures, (b) amending the free-float requirements, and (c) updating the JSE's current Special Purpose Acquisition Company (SPAC) offering;
- amendments reworking the financial reporting provisions; and
- amendments removing the JSE's auditor accreditation model and simplifying the auditor-related provisions.

In 2024, listed companies should experience the benefit of less stringent compliance requirements effected by some of these amendments. Read the insight: [Weighted voting share structures, free float, and SPACs: Amendments to the Listings Requirements effective 17 July 2023.](#)

OTHER PROPOSED AMENDMENTS NEAR FINALISATION

Other proposed amendments expected to be finalised in the first half of 2024 include the repositioned and updated provisions on the BEE segment. Under current requirements, an issuer seeking a listing of BEE securities must meet the basic criteria listed in various sections of the Listings Requirements, and the trading in BEE securities must be restricted to a BEE-compliant person pursuant to the use of a BEE contract or a BEE verification agent. The proposed amendments seek to

consolidate the current provisions into a new stand-alone section and introduce the listing of a BEE special purpose vehicle (BEE SPV) as an alternative to listing as an issuer meeting the criteria mentioned above. A BEE SPV will be a ring-fenced, insolvency remote entity (such as a trust) which holds the underlying securities of the relevant company or issuer looking to facilitate B-BBEE ownership. The amendments also propose to introduce certain requirements and criteria with which the BEE SPV must comply, including that the issuer seeking B-BBEE ownership will be required to be listed on the JSE or another exchange acceptable to the JSE and that the BEE SPV meets the free float criteria applicable to all issuers listed on the JSE.

JSE SIMPLIFICATION PROJECT

In September 2023, the JSE commenced its Simplification Project, identified in its 2022 consultation paper as a key proposal to reform the JSE listings framework. The JSE has stated that the Simplification Project aims to simplify the Listings Requirements by using plain language to record concise regulatory objectives, allowing better understanding and application of the requirements by listed companies, sponsors, shareholders and investors. As an additional benefit of the simplification, there will be a significant reduction in the volume of the Listings Requirements. The simplification will effectively result in a rewrite of the Listings Requirements.

In September and November 2023, and March 2024, the JSE published the first three tranches of simplified sections of the Listings Requirements, namely:

- Tranche 1: simplified Section 1 (General powers of the JSE), Section 2 (Sponsors), Section 9 (Transactions) and Section 10 (Related Party Transactions);
- Tranche 2: simplified Section 4 (Corporate Governance) and Section 5 (Continuing Obligations); and
- Tranche 3: simplified Section 6 (Corporate Actions), which consolidates the current Section 5 (Methods and Procedures to Bringing Securities to Listing), Section 11 (Circulars, Pre-Listing Statements/ Prospectuses and Announcements) and Section 16 (Documents to be Submitted to the JSE) into one simplified section.

The published simplified sections are in various stages of progress, with the publication of further revised and simplified sections expected during 2024. The JSE anticipates that, given its magnitude, the Simplification Project will likely take up to 18 months to complete.

The JSE's reforms of its listings framework aim to attract new listings to the bourse by making listing on the JSE simpler and decreasing the ongoing compliance and administrative burdens of companies listed on the JSE.

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TRADE

AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA

- South Africa began trading under the Agreement Establishing the African Continental Free Trade Area (AfCFTA) on 31 January 2024. South Africa will join the expanded AfCFTA Guided Trade Initiative (Expanded GTI), which allows countries to test commercially meaningful trade under the AfCFTA. The Expanded GTI is a supporting facilitation mechanism to assist countries preparing to commence full trade under the AfCFTA. Currently, 31 countries have joined the Expanded GTI. However, not all of them have started trading under AfCFTA preferences. Further, trade between these countries may have started on a limited number of products, but the expectation ultimately is for all State Parties to the AfCFTA to be able to trade on all products covered under the various Provisional Schedules of Tariff Concessions (PSTC) with agreed Rules of Origin. 45 PSTCS have been adopted by different countries for implementation under the AfCFTA. Of these, 12 countries have concluded their domestic processes (eg, procurement of certificates of origin, gazetting, etc.) to commence preferential trade. The 12 countries are Algeria, Cameroon, Egypt, Eswatini, Ghana, Kenya, Lesotho, Mauritius, Tanzania, Tunisia, Rwanda and South Africa.
- Other State Parties to the AfCFTA, which adopted PSTC, are finalising their respective domestic processes to commence preferential trade. South Africa will, therefore, only trade preferentially with those countries that have concluded their internal processes to enable them to trade preferentially in terms of the AfCFTA. The PSTCs cover 90% of the various tariff books (ie products tradeable under the AfCFTA). State Parties have also reached an agreement on 93.7% of Rules of Origin. Negotiations to finalise the outstanding Rules of Origin are still underway.

CARBON BORDER ADJUSTMENT MECHANISM

The European Union (EU) intends to implement the Carbon Border Adjustment Mechanism (CBAM) to add a price on

the carbon emitted while producing certain goods and to encourage cleaner industries in non-EU countries. In its first phase, the CBAM will focus on goods most at risk of carbon leakage in the following industries – cement, iron and steel, aluminium, fertilisers, hydrogen and electricity. The CBAM is expected to be fully implemented in 2026. The first reporting period for carbon content notifications started on 1 October 2023 and the first report was due on 31 January 2024. From 2026, those sectors under the CBAM will need to use their credits to offset their carbon emissions. Firms must consider how to comply with the CBAM reporting requirements, whether investments are necessary to ensure compliance, and the effect of CBAM on their Environmental, Social and Governance (ESG) and export strategies.

AFRICAN GROWTH OPPORTUNITY ACT (AGOA)

While it has been reported that the United States has reached a preliminary agreement with South Africa to extend the AGOA by ten years, the renewal is subject to final approval by the United States (US) Congress.

BRICS

Egypt, Ethiopia, Iran, Saudi Arabia and the United Arab Emirates have accepted invitations to join the BRICS bloc. The bloc, a grouping of the world's leading emerging market economies, currently comprises Brazil, Russia, India, China and South Africa. BRICS aims to promote peace, security, development and cooperation. The expansion may benefit South Africa's investment opportunities and trading relationships with the new member states.

SECTOR MASTER PLANS

There has been slow progress in implementing the government's master plans. While master plans have been published to formulate action-orientated policies, they are struggling to meet their intended objectives, particularly in ailing industries such as steel. An exception has been the Retail–Clothing Textile Footwear Leather Master Plan, which has led to an increase in skills training initiatives, local manufacturing and employment creation.

05

PRIVACY

The Information Regulator (IR) issued several enforcement notices regarding alleged non-compliance by entities with the Protection of Personal Information Act, 2013 (POPIA) and the Promotion of Access to Information Act, 2000, which indicates that the IR has adopted a more aggressive stance concerning compliance. We anticipate that there will be further enforcement notices issued in 2024.

The IR has adopted a process whereby it responds to data breach notifications and requires remedial measures based on a risk assessment conducted by the IR.



06

CYBERSECURITY

The Cybercrimes Act, 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. Over 2024, 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.





07

TELECOMMUNICATIONS

The Minister of Communications and Digital Technologies issued a draft Electronic Communications Amendment Bill for public comment. This Bill is significant, as it:

- would require electronic communications facilities providers to obtain licences (where this was previously not the case);
- seeks to grant the Independent Communications Authority of South Africa (ICASA) the power to regulate pricing; and
- seeks to grant ICASA enhanced powers to address competition-related matters.



08

COMPETITION – MERGERS

REVISED PUBLIC INTEREST GUIDELINES

The South African Competition Commission (SACC) published Draft Revised Public Interest Guidelines (Draft Guidelines) for public comment in late 2023. On 20 March 2024, the SACC published revised Public Interest Guidelines relating to merger control (Revised Guidelines). Although it is unclear, we assume this is the final version of the Revised Public Interest Guidelines since there are no further calls for comments. These Revised Guidelines are intended to specify the SACC's approach and the type of information the SACC may require when evaluating the public interest factors in section 12A(3) of the Competition Act, 1998.

While the Revised Guidelines discuss the SACC's approach to each public interest consideration, potential merger parties will be particularly interested in the SACC's interpretation of section 12A(3) (e), which stipulates that a merger must actively promote a greater spread of ownership by historically disadvantaged persons (HDPs) and workers. When structuring their transactions, merger parties intending to pursue notifiable mergers in South Africa will need to consider the impact of the merger on this transformational imperative in particular.

New merger notification forms, which are anticipated to require that merger parties submit detailed information on the effect of the merger on each public interest factor, are also likely to be published later this year.

PROHIBITED MERGERS

The SACC prohibited several mergers during 2023 (in the industrial and gas/energy sectors) due to the likely impact of the mergers on competition. The SACC was concerned about the mergers resulting in increased concentration and coordination between competitors, loss of competition between rivals, self-preferencing, and foreclosure in the market.



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COMPETITION – MARKET CONDUCT

- Market inquiries were a focus area in 2023 and will continue to form an important component of the SACC's work in 2024. The final report in the SACC's Online Intermediation Platforms Market Inquiry was published in July 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. In March 2023, the SACC launched the Fresh Produce Market Inquiry and will continue with public hearings in 2024 (with a report expected in the last quarter of 2024). The Media and Digital Platforms Market Inquiry and Steel Market Inquiry were also launched. In 2024, the SACC launched the Poultry Market Inquiry, which aims to examine potential features in the poultry value chain that may impede, distort or restrict competition. These inquiries require substantial input from industry participants, including customers and suppliers.
- 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 the government) and a ruling from the Constitutional Court on the alleged forex cartel matter (if the SACC's leave to appeal proceeds).

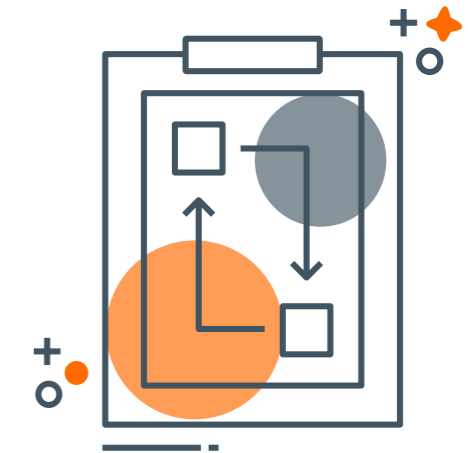


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TRANSPORT

Parliament passed the Economic Regulation of Transport Bill, 2023 (Transport Bill) in February 2024 and it has been sent to the President for assent (after which it will become an Act of Parliament). The final Transport Bill is a culmination of deliberations and refinements by both the National Assembly and NCOP over the last four years. 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.

For recent rail-related developments, read the insight: [Rail reform and liberalisation: Where we are and what it means for the South African rail sector](#)



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ENVIRONMENT

NATIONAL ENVIRONMENTAL LAWS AMENDMENT ACT, 2022 (NEMLA IV ACT)

With most provisions of the NEMLA IV Act having come into effect on 30 June 2023, implementation and enforcement of these updated laws, comprising the most significant piece of environmental legislation since the implementation of the One Environmental System (OES) in 2014, will be crucial in the coming year. These include the potential for industries other than mining to be subject to financial provisioning obligations, increased regulator enforcement powers, and more stringent rectification processes. With the provisions relating to financial provisioning (both mining-specific and general) now operational, this sets the scene for the replacement Financial Provisioning Regulations to be finalised to replace the 2015 regulations. In addition, changes to the definition of waste and the regulation of mining residue stockpiles and deposits, which did not come into force under the NEMLA IV Act, will be areas to keep an eye on.

CLIMATE CHANGE BILL, 2022

The National Assembly passed the Climate Change Bill, 2022 in October 2023 and transmitted it to the NCOP, which is currently deliberating on the Bill. It is expected to be assented to by the President this year. The Bill aims, among other things, to formalise South Africa's carbon budget market and establish sectoral emission targets linked to the country's Nationally Determined Contribution (NDC) under the UNFCCC Paris Agreement. It will be a key puzzle piece in the Cabinet-approved Just Transition Framework and Just Energy Transition Partnership Investment Plan. In his 2023 Budget Speech, the Minister of Finance also unveiled a ZAR 9 billion tax-relief programme to support South Africa's clean-energy transition.

GREEN HYDROGEN COMMERCIALISATION STRATEGY

In October 2023, Cabinet approved the Green Hydrogen Commercialisation Strategy for implementation. It sets out a commercial framework with strategic objectives for a green-hydrogen sector, a definition of the technical value chain, and identifies opportunities to embed local manufacturing and local content to create an attractive and enabling investment environment.

EXTENDED PRODUCER RESPONSIBILITY (EPR) REGULATIONS

With the EPR Regulations coming into force in May 2021, the Department of Forestry, Fisheries and the Environment (DFFE) is likely to ramp up enforcement against non-compliant producers this year. Originally setting out to regulate products in the paper and packaging, lighting, and electrical and electronic sectors, we saw portable batteries, lubricant oils and pesticides brought under regulation last year. Other problematic wastes may see additional sector notices being published in 2024. The DFFE Minister has further indicated that these sectoral EPR schemes are part of the Reconstruction and Economic Recovery Plan recently announced by the President as key contributors towards green and circular economy initiatives.

ENVIRONMENTAL AUTHORISATION EXEMPTIONS FOR RENEWABLE ENERGY SOLUTIONS

A raft of proposed notices will incentivise renewable energy investment. The DFFE has published notices of its intention to exclude the development and expansion of solar photovoltaic facilities, as well as the development and expansion of battery storage facilities, from the requirement to obtain an environmental authorisation in terms of the National Environmental Management Act, 1998 in low and

medium sensitivity areas (as classified by the national screening tool). Hopefully, these notices will be published in final form this year.

PROPOSED OVERHAUL OF WATER LEGISLATION

In November 2023, the Minister of Water and Sanitation published for comment (i) the draft National Water Amendment Bill; and (ii) the draft Water Services Amendment Bill including a number of changes to our principal water legislation. The proposed changes aim to amend SA's principal water legislation to strengthen the Department of Water and Sanitation's role as a regulator of the water and sanitation sector, as the country's water crisis worsens. The draft National Water Amendment Bill also proposes a director liability provision for non-compliance or offences committed by the company that is more onerous than the current provision in the National Environmental Management Act, 1998. The changes proposed by these draft Bills are unlikely to be finalised this year, as much of the comment and parliamentary processes will take precedence. Read the insight: [Proposed amendments in the National Water Amendment Bill: Mining Company Directors take heat](#)

BIODIVERSITY CONSERVATION AND OFFSET GUIDELINES, AND NEW TAX INCENTIVES

In June 2023, both the White Paper on Conservation and Sustainable Use of South Africa's Biodiversity and the National Biodiversity Offset Guidelines were published for implementation. The White Paper was developed to promote the conservation of our rich biodiversity and ecological infrastructure; and is envisaged to provide a significant contribution to achieving a broad range of goals, plans and international agreements. The Biodiversity Offset Guidelines finally offer insight into the requirements and practices to regulate the need to identify and implement offsets. With the introduction of new tax incentives in sections 37C(1) and 37D of the Income Tax Act, 1962, South Africa's efforts to conserve and incentivise the protection of our rich biodiversity are significantly increasing, opening the doors for increased regulation as well as increased opportunities.

The National Assembly passed the Climate Change Bill, 2022 in October 2023 and transmitted it to the NCOP, which is currently deliberating on the Bill. It is expected to be assented to by the President this year.

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ESG

In 2023, a wave of ESG backlash and anti-ESG sentiment emerged, primarily in the United States, which ultimately strengthened and entrenched ESG's importance globally. We anticipate continued international regulatory developments relating to supply chain due diligence, mandatory ESG reporting and disclosures, greenwashing, a carbon border adjustment mechanism, and increased focus on biodiversity and nature. Many of the proposed regulatory measures that are being adopted will only become fully effective after 2024. However, as we have seen with other ESG developments, such as the recommendations of the Task Force on Climate-Related Financial Disclosures, business leaders have taken proactive approaches. Several counsel opinions have also been published globally, advising that the scope of directors' fiduciary duties has expanded to include a duty to consider climate change impacts on and from the business. These international legal developments will affect African businesses.

KEY RECENT ESG DEVELOPMENTS IN SOUTH AFRICA

- Steps are being taken by Financial Sector Regulators to require the incorporation of sustainability and climate change into financial decision-making, including the Financial Sector Conduct Authority issuing its Statement on Sustainable Finance and Programme of Work in March 2023 and the Prudential Authority publishing its proposed guidance note on climate change disclosures and risk management specifically for banks and insurers in August 2023.

- The JSE and Xpansiv launched a new voluntary carbon market platform in October 2023, which will facilitate trade in voluntary carbon credits.
- The Taskforce on Nature-Related Financial Disclosures' recommendations were launched in South Africa in November 2023, which will play a pivotal role in advancing sustainable financial practices and enhancing the transparency of nature-related risks and opportunities in the financial sector.
- There has been growth in transactions spanning African jurisdictions, including a large-scale debt-for-nature swap (Gabon), the E3 Low Carbon Economy Fund for Africa, numerous carbon credit transactions, ESG impact, and renewable energy projects. Climate finance and just energy transition funds are also emerging in sub-Saharan Africa.
- With respect to the Just Energy Transition, the Cabinet approved the Investment Plan for the Just Energy Transition Partnership formed at COP26 in November 2023. In his 2023 Budget Speech, the Minister of Finance also unveiled a ZAR 9 billion tax-relief programme to support South Africa's clean-energy transition.
- In his 2024 Budget Speech, the Minister of Finance acknowledged the need to mainstream climate finance and National Treasury's role in mobilising resources, designing incentives, and influencing policy to mainstream climate change. These statements strongly suggest a continuation of the trends in sustainable finance seen in 2023.

- The Electric Vehicles White Paper was published on 4 December 2023, which outlines the structure of a suite of policy interventions tailored to the automotive industry. According to Minister of Finance (as mentioned in his 2024 Budget Speech), the White Paper aims to transition the automotive industry from primarily producing internal combustion engine vehicles to a dual platform that includes electric vehicles by 2035, and the government will introduce an investment allowance for new investments beginning March 2026, to encourage the production of electric vehicles in South Africa.
- There was a rise in shareholder activism in South Africa in 2023, especially against mining and global energy companies, as well as banks and other listed entities, mainly relating to proposals regarding governance and climate change matters. We expect to see more instances of shareholder activism in 2024 against financial institutions and listed companies regarding a wider range of issues. For example, given international developments in human rights due diligence laws, many transactions are starting to incorporate Human Rights Due Diligence in their scope.

- There has been an increase in ESG-related disputes, especially with respect to environmental and social aspects (such as challenges to new energy projects on environmental grounds, gender equality cases, and cases relating to occupational health and safety in mining projects).



In his 2024 Budget Speech, the Minister of Finance acknowledged the need to mainstream climate finance and National Treasury's role in mobilising resources, designing incentives, and influencing policy to mainstream climate change.

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TAX

ASSOCIATED ENTERPRISES

In October 2022, 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. The due date for comments closed on 1 January 2023. To date, SARS has not published a revised draft for further comment or the final interpretation note.

REDUCTION IN CORPORATE TAX RATE

The corporate tax rate has been 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 income tax collection from individuals. The proposed implementation date has been postponed to 1 March 2026.

ADVANCE RULINGS

The Customs and Excise Act, 1964 will be amended, with effect from a date yet to be determined, by inserting a new chapter IXA dealing exclusively with advance rulings. This change is intended to allow registered importers to apply for advance rulings on the origin, tariff classification and customs valuation of goods. The amendment aims to enhance predictability, consistency and transparency in the three ruling categories.

DIESEL REFUND REGIME OVERHAUL

Part 3 of Schedule 6 to the Customs and Excise Act, 1964 was amended on 14 July 2023, with retrospective effect from 1 April 2023 up to and including 31 March 2025, to include a diesel refund for manufacturers of foodstuffs. This new refund aims to limit the impact of ongoing power cuts on food prices by providing some relief to food manufacturers (by granting a refund of a portion of the Road Accident Fund Levy incurred on qualifying diesel purchases), subject to certain requirements.

ADVANCE PRICING AGREEMENTS

Multinational businesses can now negotiate bilateral advance pricing agreements with SARS and revenue authorities in OECD member countries. Provisions to implement advance pricing agreements have been introduced into the Income Tax Act, 1962 with effect from 22 December 2023.

FOREIGN BUSINESS ESTABLISHMENT EXEMPTION WITHDRAWN TEMPORARILY

The Budget Review 2023 proposed 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. The proposal in the draft Taxation Laws Amendment Bill, 2023 in July 2023 has been withdrawn from the final Bill pending the outcome of the Constitutional Court appeal of the CSARS v Coronation Investment Management SA (Pty) Ltd Supreme Court of Appeal decision.

INCOME DISTRIBUTIONS BY RESIDENT TRUSTS TO NON-RESIDENT BENEFICIARIES

Income distributions by resident trusts to non-resident beneficiaries will trigger taxation of such income in the trusts, as is currently done for distributions of capital gains to non-residents where such gains are taxed in the trusts.

NON-RESIDENT EMPLOYERS TO REGISTER AS AN EMPLOYER

Non-resident employers must register as employers with SARS and be accountable for all payroll taxes if they have a permanent establishment in South Africa.

SOLAR INCENTIVES IN THE BUDGET REVIEW 2023

From 1 March 2023, businesses can 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 is available for two years. Individuals who installed rooftop solar panels from 1 March 2023 to 28 February 2024 were able to claim a rebate of 25% of the cost of the panels up to a maximum of ZAR 15,000. This can reduce their tax liability in 2023/24.

VAT APPORTIONMENT

Binding General Ruling 16 (Issue 3) was published with effect from all financial years commencing on or after 1 January 2024. It improves the previous versions and specifies, in detail, which types of amounts and income should be excluded or specifically included within the apportionment formula.

Read the insight: [The Challenge of Change: Unpacking Onerous Adjustments to the apportionment formula](#)

THIRD-PARTY DATA

Public benefit organisations (PBOs) and trusts are now third-party data providers required to transmit taxpayer information to SARS. PBOs are required to submit third-party returns on donations received for which section 18A certificates were issued by 31 October (with information from 1 March to 31 August) and by 31 May (with information from 1 March to 28/29 February). Trusts are required to submit third-party returns on distributions to beneficiaries by 30 September each year (with information from 1 March to 28/29 February).

GLOBAL MINIMUM CORPORATE TAX

The draft Global Minimum Tax Bill and its corresponding Explanatory Memorandum were released for public comment on 21 February 2024 together with the draft Global Minimum Tax Administration Bill. Comments are due by 31 March 2024. The draft Global Minimum Tax Bill aims to implement the GloBE Model Rules in South Africa to enable South Africa to impose a multinational top-up tax at a rate of 15% on the profits of in-scope multinational enterprise groups.

RELAXING THE ASSESSED LOSS RESTRICTION RULE

In the 2024 Budget, National Treasury proposed a modification to the 80/20 rule set out in sections 20 and 20A of the Income Tax Act, 1962, recommending an exemption from its application for any company undergoing liquidation, winding-up, or deregistration, allowing the utilisation of the entire assessed loss against taxable income in such circumstances, thereby bringing relief to these companies.

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WORKPLACE

- Equity remains an important theme in 2024 with respect to (i) equitable representation in the top occupational structures of designated employers; (ii) the significance of [public interest](#) considerations in merger transactions, including the obligation to promote employee share ownership structures; and (iii) pay transparency as a corporate governance imperative in the Companies Amendment Bills, 2023.
- The Employment Equity Amendment Act, 2022 (EEAA) was enacted in April 2023. The EEAA enforces sectoral targets, compelling designated employers to include the targets in employment equity plans and to meet those targets or justify non-compliance. Failure to do so may result in fines and exclusion from state contracts. We anticipate that the EEAA's effective date 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.
- Recent legal developments and organisational trends emphasise personal action in structuring work-life balance. [The Van Wyk and Others v the Minister of Employment and Labour and Others](#) judgment advances gender-neutral parental leave policies, impacting both the Basic Conditions of Employment Act, 1997 and the Unemployment Insurance Act, 2001. The judgment, if confirmed by the Constitutional Court, will have major implications for employers.
- Several legislative developments are underway to address employer obligations regarding institutional integrity. A significant development to monitor is the amendment in the Judicial Laws Amendment Act, 2023, targeting the Prevention and Combating of Corrupt Activities Act, 2004 which aims to place a positive obligation on entities to prevent corrupt activities by associated persons through the implementation and maintenance of adequate corruption prevention procedures. The legislation aims, among other things, to proactively encourage good corporate citizenship through

procedures designed to prevent corruption from occurring. In addition, the Department of Justice and Constitutional Development has set public consultations in motion regarding proposed reforms to the whistleblower protection regime in South Africa, including possible reforms to the Protected Disclosures Act, 2000.

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EMPLOYEE HEALTH & SAFETY

- Amendments to the Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA) were signed into law in 2023. However, an effective date is yet to be announced. The changes to COIDA include provisions for the introduction of facilities, services, and benefits to assist in the rehabilitation of employees dealing with occupational injuries or diseases. The objective is to support such employees' return to work or minimise any resulting disabilities. [Draft regulations](#) were released for public comment in June 2023, which will impose obligations on employers to facilitate employee access to clinical, vocational and social rehabilitative support. Once the amendments and associated draft regulations take effect, it is anticipated that employers will need to revise their existing incapacity policies and procedures to align with the updated regulations.
- The amended Major Hazard Installation (MHI) regulations introduced in January 2023 apply to MHI establishments with the prescribed quantities of listed substances and major pipeline establishments. They require the duty holder (the employer, self-employed person, user or pipeline operator in control of an establishment) to manage health and safety risks. [The MHI regulations impose specified timelines](#) for duty holders to comply with various obligations. Such obligations include the need to have updated emergency plans in line with SANS 1514 by 31 January 2024, as well as update and submit the notification of an existing establishment, providing extensive information to the Chief Inspector, Chief Director, and local government by 31 January 2025.
- Draft legislation seeking to effect changes to South Africa's major occupational health and safety legislation remains on the horizon as the Occupational Health and Safety Amendment Bill (OHS Bill) and Mine Health and Safety Amendment Bill (MHSA Bill) remain in draft form.
 - The OHS Bill proposes substantial shifts, including formalised internal processes for health and safety management and increased recognition of the roles played by occupational hygienists

and safety practitioners. The OHS Bill seeks to remove the "reasonability and practicability" standard, potentially imposing strict liability on employers. Other proposed changes include limited administrative fining powers for inspectors and higher penalties for violations.

- The MHSA Bill also proposes significant amendments, broadening the definition of an employee and mandating employer compliance with Codes of Practice. Noteworthy changes included a higher threshold for inspectors to issue stoppage notices, stricter training obligations, and vicarious liability amendments.



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PENSIONS

- On 20 February 2024, the National Assembly passed a revised version of the Revenue Laws Amendment Bill, 2023 (RLAB) and transmitted it to the NCOP for concurrence. The RLAB introduces the two-pot retirement savings system, which intends to provide members of retirement schemes the flexibility to access one-third of their savings before retirement while preserving the other two-thirds for retirement. The revised version confirms 1 September 2024 (changed from 1 March 2024) as the implementation date of the two-pot system, following timing challenges and concerns raised by the Minister of Finance and industry stakeholders, including that:
 - the effective date of the RLAB cannot predate the implementation of the Pension Funds Amendment Bill (PFAB) as retirement funds may not amend their fund rules to cater for the two-pot system until the PFAB is tabled in Parliament;
 - once these Bills have been tabled, funds must submit their amended fund rules to the Financial Sector Conduct Authority (FSCA) for registration. Funds must also communicate the proposed amendments to the fund rules and their impact on members.
- Another key focus area for the regulator has been inclusion and transformation. On 30 March 2023, the FSCA published its final strategy for promoting the transformation of the financial sector, in line with its Regulatory Strategy 2021-2025.

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FOREIGN EMPLOYEES

In response to the need to attract skilled foreigners to South Africa, the Department of Home Affairs issued a Government Notice in October 2023 inviting corporate employers to submit an expression of interest to participate in a pilot of the trusted employer scheme. The trusted employer scheme seeks to facilitate a pre-approval process for corporate employers looking to attract foreign employees for skilled positions, including senior executives, technical personnel, corporate employees and investors. The scheme aims to enhance efficiency by vetting and approving corporate employers before visa applications are submitted.

Under the auspices of Operation Vulindlela, it has been proposed that a points-based system for work visa applications may be implemented in 2024. This system seeks to streamline the visa application process for applicants with critical skills. In addition, South Africa is looking at introducing new visa categories tailored for remote workers and startup businesses. The initiative aims to attract “digital nomads” to reside and work remotely in South Africa and to simplify administrative processes for startup foreign businesses establishing a presence in South Africa.

In November 2023, the Department of Home Affairs published the ‘White Paper on Citizenship, Immigration, and Refugee Protection’ which proposes a complete overhaul of the suite of migration legislation in South Africa. The white paper outlines a framework to facilitate the acquisition of residency permits and citizenship for foreign nationals in South Africa while updating legislation that protects refugees and asylum seekers.

Zimbabwean and Lesotho nationals in possession of either a Zimbabwean Exemption Permit (ZEP) or a Lesotho Exemption Permit (LEP) have been granted an extension for the validity period of the respective exemption permits. The affected Zimbabwean and Lesotho nationals will be entitled to apply for new

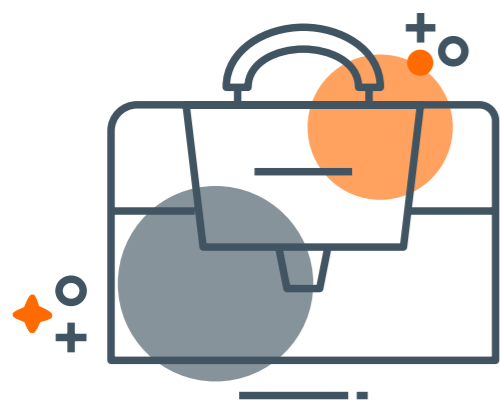
exemption permits under certain terms and conditions. Applications for the new exemption permits must be submitted through VFS Global. All ZEP and LEP holders are permitted to continue working and residing in South Africa until at least 29 November 2024, unless they obtain new exemption permits allowing them to reside and work in South Africa until 29 November 2025.

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BUSINESS CONTINGENCY PLANNING

We expect that there will be an increase in restructuring activity in 2024. Given that 2024 is an election year and that loadshedding has remained with us, we expect that it will become harder to rescue businesses in distress, which will lead to an increase in liquidations. We also expect to see more financially distressed state-owned entities entering business rescue which should generate opportunities for private investment.



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RISK MITIGATION

Power supply interruptions continue to constrain South Africa's economic growth and affect infrastructure and the delivery of services such as health and education. Weak growth and the Covid-19 pandemic have exacerbated socio-economic challenges, most notably, rising unemployment and persistently high inequality. Mitigating actions, such as implementing fair and sustainable business policies and practices, should be taken. We expect to see a continued upward trend in ESG-related litigation, not only relating to climate risk but also investments and disclosures. Insurers have also warned of significant premium increases due to climate risk. Increased attention to meaningfully complying with ESG requirements will be crucial. Companies should pay particular attention to their business practices to manage their risk profile.

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20

PROCUREMENT

PREFERENTIAL PROCUREMENT REGULATIONS, 2022

The "new" Preferential Procurement Regulations, 2022 have been in effect since 16 January 2023. Briefly, the 2022 Procurement Regulations 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, the 2022 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 based on 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. Notably, the 2022 Procurement Regulations (made in terms of the Preferential Procurement Policy Framework Act, 2000) will be repealed and replaced with new regulations when the Public Procurement Bill, 2023 is promulgated into law unless the Bill is amended to include transitional or other provisions preserving them.

THE PUBLIC PROCUREMENT BILL, 2023

The Public Procurement Bill, 2023 which the National Assembly passed in December 2023, was sent to the NCOP for concurrence in December 2023 and is currently under consideration. This version of the Bill is significantly shorter than the prior iteration, leaving many of the matters dealt with under previous provisions to be dealt with in regulations to be published by the Minister of Finance. The Bill recognises, amongst other things, that the legislation regulating procurement by organs of state is fragmented.

The purpose of the Bill is to create a single framework regulating public procurement (including preferential procurement) by organs of state. The Bill envisions that a procuring institution will implement a procurement policy, providing for categories of preference in the allocation of contracts and the protection or advancement of persons disadvantaged by unfair discrimination. The Bill also establishes a dispute resolution mechanism, which allows for an application to be submitted to a procuring institution for reconsideration if a bidder is dissatisfied with a decision to award a bid. A Public Procurement Tribunal is established to, among other things, review reconsideration decisions taken by a procuring institution. Should this mechanism be retained when the Bill is passed into law, unsuccessful bidders wishing to challenge a tender process would be required to follow the dispute resolution procedures in the Bill, before approaching the courts. The Bill also precludes the implementation of the awarded tender while the decision is under reconsideration, which may negate the need for interim interdicts to halt implementation.



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ELECTRICITY REGULATION

DRAFT INTEGRATED RESOURCES PLAN PUBLISHED FOR COMMENT

The Minister of Mineral Resources and Energy published the Integrated Resource Plan 2023 (IRP 2023) for public comment on 4 January 2024. The deadline for comments was extended to 23 March 2024. The IRP 2023 accounts for changes in the energy sector and regulatory environment since the last review of the IRP in 2019 and considers two horizons: 2024 to 2030 and 2031 to 2050. It outlines the government's approach to ensuring the security of electricity supply while considering costs to the environment and the fiscus. A key objective is the enablement of a diversified energy mix: the IRP 2023 advocates for extending the life of coal power plants, constructing clean coal plants, introducing small modular nuclear reactors, importing and producing oil and gas, expanding renewable energy, and installing more than 14 000 km of new transmission lines. Public comments submitted to date have highlighted serious deficiencies in the IRP 2023, including, among other things, a lack of detail and a failure to consider the implications of the curtailment of grid connectivity in some provinces. These comments are intended to inform future iterations of the IRP.

ELECTRICITY REGULATION AMENDMENT BILL, 2023

The Electricity Regulation Amendment Bill, 2023 is currently before the National Assembly. The Bill is intended to facilitate sector competitiveness, ensure long-term stability and drive modernisation. Key roles established by the Bill include a market operator (to provide a trading platform and market rules), a system operator (to operate the integrated power system introduced in the Bill), a transmitter (to oversee the transmission networks), and a central purchasing agency (responsible for procurement). Eskom currently undertakes transmission and procurement. The Bill also vests the Minister of Energy and Mineral Resources with the power – in cases of market

failure, emergencies or national interest – to make determinations regarding additional electricity and new generation capacity after consulting with the Minister of Finance and the National Energy Regulator (NERSA). This removes the encumbrance imposed by the current Electricity Regulation Act, 2006, which provides that the Minister's determination is without force and effect absent concurrence by NERSA. It is hoped that the Bill will galvanise much-needed development in the sector by promoting the growth of independent power producers.

INTERIM GRID CAPACITY ALLOCATION RULES

Pending the finalisation of the Electricity Regulation Amendment Bill, Eskom has introduced Interim Grid Capacity Allocation Rules. The amendments to Schedule 2 of the Energy Regulation Act, 2006, in January 2023, lifted the licencing threshold for generation, which has increased the demand to access the transmission grid and, in turn, created severe grid constraints. The Allocation Rules are designed to ensure that generation projects with demonstrable readiness to supply energy to the grid receive prioritised access to grid capacity. The Generation Connection Capacity Assessment 2025, published by Eskom in January 2024, indicates that Eskom will deliberately reduce output from its power plants in the Western Cape and Eastern Cape by 10%. This will facilitate increased access to the grid by private generation projects in 2024 and improve the sector's competitiveness while deliberations continue on the Bill.

UPSTREAM PETROLEUM RESOURCES DEVELOPMENT BILL, 2021

The Upstream Petroleum Resources Development Bill, 2021 seeks to separate the oversight of petroleum resources from that of mineral resources, both of which currently fall under the Mineral and Petroleum Resources Development Act, 2002, and to expand opportunities for black persons to actively participate in the upstream petroleum sector. This separation sets the stage for a new regulatory framework dedicated

to the upstream petroleum industry. While the Bill is still before the NCOP, having been passed by the National Assembly in October 2023, it holds promise as an instrument for the future acceleration of upstream petroleum activities in South Africa.

The Upstream Petroleum Resources Development Bill, 2021 seeks to separate the oversight of petroleum resources from that of mineral resources, both of which currently fall under the Mineral and Petroleum Resources Development Act, 2002.



22

NATIONAL HEALTH INSURANCE

Parliament passed the National Health Insurance Bill, 2019 (NHI Bill) on 6 December 2023 and it has been placed before the President to be signed into law. The purposes of the NHI Bill include, among others, the provision of universal access to quality healthcare services and the establishment of a National Health Insurance Fund to facilitate this. It is envisaged that the Fund – funded by “mandatory prepayments” by taxpayers – will purchase healthcare services and products from accredited healthcare service providers and health establishments (including hospitals and private service providers that choose to contract with the Fund).

One of the key points of discussion relating to the NHI Bill is its potential effect on medical schemes and their members: the effect of the NHI Bill, on a plain reading, is that, if a healthcare service is reimbursable by the Fund, that service may not be reimbursed by a medical scheme. In other words, medical schemes are envisioned to be limited to providing benefits that the Fund does not provide. Since the NHI Bill's approval by Parliament, several interested stakeholders have approached the Presidency, to raise concerns regarding its constitutionality and its readiness to be signed into law in the light of the seemingly unresolved issues arising from its provisions. The President may, in terms of section 84(2) of the Constitution, return legislation to Parliament for reconsideration if there are concerns regarding its constitutionality.

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FINANCIAL COMPLIANCE

- Legislative changes: The draft Conduct of Financial Institutions Bill (COFI) is expected to be introduced in Parliament in 2024 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. Amendments proposed to the National Payment Systems Act, 1998 may gain traction in 2024.
- The Financial Action Task Force greylisted South Africa on 24 February 2023. South Africa will provide a formal update on its progress in removing itself from the greylist to the Financial Action Task Force in October 2024. Listen to our podcast on the [greylisting implications for the country going forward](#) and read the latest insight: [Greylisting: Unveiling South Africa's AML Efforts and the 2025 Delisting Ambition | Webber Wentzel.](#)



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STATE ENTERPRISES

Severe governance issues within state-owned entities were brought to the fore during the State Capture Commission. On 24 January 2024, the National State Enterprises Bill (NSEB) was introduced in Parliament. The NSEB is a refined version of a draft bill published by the Department of Public Enterprises in September 2023 for public comment. Objectives of the NSEB include, among other things, to (i) enhance the operational efficiency of national commercial state-owned enterprises to achieve the State's National Strategy for these enterprises; (ii) establish the State Asset Management SOC Limited as a holding company incorporated in terms of the Companies Act; (iii) transfer the shareholding of certain state enterprises (listed in Schedule A to the NSEB, including Eskom, Transnet, the Post Office, Denel, South African Airways, South African National Roads Agency, Airports Company South Africa and the Central Energy Fund) to the holding company to ensure that the holding company exercises the ownership function over its subsidiaries in accordance with the Companies Act, the NSEB (once finalised) and any applicable legislation; and (iv) ensure the professionalisation, proper governance and "political insulation" of the holding company and its subsidiaries.

Key proposed provisions in the NSEB include the following:

- the State is the sole shareholder of the holding company, represented by the President, who may transfer the administration of the NSEB or any power or function in the NSEB to a member of Cabinet;
- the shareholder must table a report annually in Parliament on the commercial sustainability, developmental impact and material risks of the investment in the holding company;
- the board of the holding company must comprise a minimum of 3 and a maximum of 9 appointed directors; appointed directors will serve a term of three years and may not be reappointed for more than two additional terms; the CEO and CFO of the

holding company are ex-officio directors;

- the shareholder may only appoint a director to the board of the holding company in accordance with the relevant provisions of the Companies Act on the recommendation of the board after a "prescribed transparent process" contemplated in the NSEB (likely to be set out in regulations to the NSEB);
- the board must, after implementing the prescribed transparent process, recommend the appointment of persons as directors on the grounds of their skills, knowledge, experience and integrity;
- transitional provisions to deal with the appointment of members of the first board, which include that the President must establish an independent panel to call for nominations, interview and recommend board candidates;
- the board must advise the shareholder on, among other things, the phased succession for the transfer of the listed state enterprises to the holding company;
- the board must (i) with the consent of the shareholder, conclude a corporate plan in respect of the holding company; (ii) conclude a corporate plan with each of its subsidiaries; and (iii) establish a reporting framework and a financial and operational performance monitoring framework for its subsidiaries;
- the definition of "state-owned company" in the Companies Act is proposed to be amended with effect from the date of commencement of the NSEB, to include the holding company established in terms of the NSEB, or any of its subsidiaries; and
- provisions to deal with the scope of application of the Companies Act and Public Finance Management Act, 1999 (PFMA).

We expect that the NSEB will progress through Parliament over 2024, particularly since it is an election year. Given the important role state enterprises play in South Africa's economy and the fact that public funds are their lifeblood, we expect keen public interest in the NSEB's progression. Those who do business with major

state enterprises should keep an eye on the impending changes to the governance structures of these entities into a centralised model which departs quite drastically from the current fragmented model.

Further clarity is required on the precise interplay between the Companies Act and the PFMA, particularly where there are conflicts. Concerns still loom over the degree of centralisation of power over state assets in the Presidency as the sole shareholder representative of the State Asset Management SOC Limited. While the refined draft takes steps to address these concerns by, for example, proposing that an expert panel make recommendations as to the first board appointments, rather than the President, governance concerns remain as the President can reject the panel's recommendations. It is also not clear in the current draft how a deadlock will be resolved where the President also rejects panel or board-recommended alternative candidates.

It remains to be seen whether the proposed changes will ease some of the governance and operational challenges state enterprises have faced over the last few decades. Read about the [NSEB](#).

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