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**Year in review,  
Year to come**  
South Africa Law

December 2018



# Year in review

## South Africa in 2018

South Africa's outlook was significantly shifted by the appointment of a new President to lead the country into 2018. New leadership has fostered greater investor confidence.



### Cross-Border Investment & Trade:

South Africa is in the process of ratifying the agreement establishing a Tripartite Free Trade Area, to create a free trade area between the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Southern African Development Community (SADC). South Africa also signed the agreement establishing the African Continental Free Trade Area. These agreements will come into force once ratified by sufficient jurisdictions. The Protection of Investment Act came into effect in 2018

[Read more...](#)

### Company Law:

A Companies Amendment Bill was published for public comment. [Read more...](#)

An important High Court decision also clarified the scope of application of appraisal rights of minority shareholders.

[Read more...](#)

### Johannesburg Stock Exchange (JSE):

Amendments were made to the Listings Requirements, including in relation to the conditions for listing pertaining to the transferability of securities. Following amendments to the Debt Listings Requirements, the JSE began listing project bonds to allow institutional investors to invest in infrastructure projects. The JSE also relaxed some of its requirements in relation to the disclosure document to be issued by companies seeking a primary listing on the London Stock Exchange simultaneously with a secondary listing on the JSE. In late 2018, the JSE also released a consultation paper suggesting more possible amendments to the Listings Requirements.

[Read more...](#)

### Tax:

The Value-Added Tax rate increased from 14% to 15%. Anti-avoidance income tax provisions were widened to deem a zero or low interest loan to a company which is connected to a trust to be a donation; the abuse of "contributed tax capital" provisions through certain structures was addressed; measures were enacted to

target certain share buy-back and dividend stripping arrangements; and the debt reduction rules were expanded.

### Employment:

An important decision impacting labour brokers, effectively narrowing the scope of use of temporary employment services was handed down.

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A National Minimum Wage Bill has been passed into law and paid parental leave benefits have been broadened..

### Competition/Anti-trust:

Far-reaching amendments to the Competition Act were proposed. These have been the most significant amendments to the legislative framework to date.

[Read more...](#)

### Hate Speech & Crimes:

A revised version of the Prevention and Combating of Hate Crimes and Hate Speech Bill was published. The Bill can be viewed

[Here...](#)

### Environment:

Renewable Energy Development Zones were identified to allow large scale wind and solar photovoltaic developments within these areas to follow a truncated form of environmental assessment in order to obtain an environmental authorisation. A Climate Change Bill was introduced.

[Read more...](#)

### Intellectual Property (IP):

The Copyright Amendment Bill, which will significantly affect copyright laws in South Africa, has been introduced and is under consideration by the National Assembly. It has been highly criticised and stakeholders have recommended that certain sections of the bill be redrafted. Government has also approved the first phase of the long awaited IP Policy, the policy is one of the core elements needed to thrust South Africa towards a knowledge economy.

## 2018 highlights

The appointment of a new President, namely Cyril Ramaphosa. Markets rallied strongly the day after Ramaphosa assumed the presidency.

## 2018 highlights

Mining Charter III was published bringing greater certainty to regulation of this key sector to the South African economy.

## 2018 highlights

A new Arbitration Act was passed into law to promote South Africa as a prime arbitration and investment hub.

**Land & Property:**

Land ownership and expropriation remains topical in South Africa. A draft Regulation of Agricultural Land Holdings Bill was passed prohibiting the sale of agricultural land to foreign persons and only permitting foreign persons to enter into long-term lease agreements. The Bill also introduces statutory pre-emptive rights in that any agricultural land would in future first be offered to black people or to the Minister of Agriculture. The Expropriation Bill, passed in Parliament in 2016, intended to provide a way for the Government to expropriate property for public purposes or in the public interest and to provide for a procedurally fair process in doing so, but it did not provide for the possibility of expropriation without compensation and required just and equitable compensation. The Bill has now been withdrawn pending conclusion of the parliamentary process to review the merits of changing the Constitution to allow for expropriation of land without compensation.

**Arbitration:**

A new arbitration Act was passed into law in 2018 to promote South Africa as a prime arbitration and investment hub.

[Read more...](#)

**Interest Rates:**

The rate of interest claimed on a debt under the Prescribed Rate of Interest Act was also changed to 10% (from 10.25%).

**Black Economic Empowerment (BEE):**

Various amendments in relation to targets and measures for entities seeking BEE recognition were proposed. [Read more...](#)

A Youth Employment Service (Y.E.S.) was introduced. [Read more...](#)

The Financial Sector Code which regulates BEE in the financial services sector also came into force.

**Mining:**

The third iteration of Broad-Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry (Mining Charter III) was published. [Read more...](#) Both the President and the Minister of Mineral Resources have requested Parliament to withdraw the controversial Mineral and Petroleum Resources Development Bill, 2002 which has been pending since 2013. The Bill sought to introduce a mandatory beneficiation regime and would have introduced a tender system to the award of mineral rights.

**Financial Services:**

Regulations to the Financial Markets Act were passed into law to govern the provision of securities services and regulate Over-The-Counter (OTC) derivatives. Market participants will be required to comply with new licensing, trade reporting and clearing requirements for OTC derivatives transactions. The Financial Sector Regulation Act (FSR Act) also came into force, resulting the implementation of a dual regulatory regime (Twin Peaks) – establishing two pillars of regulation: the Prudential Authority – responsible for regulating all prudential aspects relating to banks, insurers, cooperative financial institutions, financial conglomerates and certain market infrastructures; and the Financial Sector Conduct Authority—responsible for regulating market conduct of all financial institutions.

**Insurance:**

The Insurance Act came into force (replacing the prudential requirements previously regulated under the Long-term and Short-term Insurance Acts) to provide a uniform legal framework for the regulation of the insurance sector. The new Act makes express provision for micro insurance business, and introduces stricter regulations for foreign insurers soliciting insurance and reinsurance business in South Africa. Together with the commencement of the Insurance Act, a number of Prudential Standards were promulgated under the Insurance Act which sets out the financial soundness and governance requirements. As the prudential and governance requirements of insurers are, as of 1 July 2018, regulated under the Insurance Act, as opposed to its predecessor legislation, the remaining provisions of the Long-term and Short-term Insurance Acts serve the primary purpose of regulating market conduct in the industry. As such, a number of amendments were introduced to the regulations

and policyholder protection rules promulgated under the Long-term and Short-term insurance Acts so as to give effect to the introduction of micro insurers in the Insurance Act as well as the implementation of a number of proposals set out in the Retails Distribution Review conducted in 2014 relating to remuneration structures, product design and development and Treating Customers Fairly outcomes.

**Banks:**

The South African Reserve Bank issued rules regulating cloud computing and data offshoring for banks (Cloud Rules). The Cloud Rules create a framework for the use of cloud computing and data offshoring by banks. Following a liquidity crisis, VBS, a South African mutual bank, was placed under curatorship in March 2018 and the Reserve Bank's Prudential Authority applied for its liquidation in October as the bank was insolvent. An investigation found evidence of fraud, corruption and bribery.

**Healthcare:**

The Competition Commission published [for comment] its provisional findings and recommendations report into the private healthcare sector. The provisional report contains a number of far-reaching recommendations that affect medical funds and healthcare services providers alike. A much anticipated National Insurance Bill was also published. The draft Bill seeks to establish the National Health Insurance Fund, sets out its powers, functions and governance structures and provides a single framework for the public funding and public purchasing of healthcare services and medicines by the fund. The Medical Schemes Amendment Bill, 2018 was also published for public comment. The draft Bill contains certain key amendments which have the potential to significantly impact upon both medical schemes as well as healthcare providers.

**Oil & Gas:**

Power Purchase Agreements were entered into between South Africa's electricity public utility (Eskom) and 27 projects in Round 4 of the Renewable Energy Independent Power Procurement Programme (REIPPP), marking an end to several years of standstill in the programme and breathing new life into the secondary market in relation to these projects. The much awaited Integrated Resources Plan (IRP), which forms the basis for energy planning in South Africa, was released in August for public comment. The IRP outlines the proposed energy mix up to 2030 and introduces embedded generation capacity for own use (up to 10MW) as well as additional capacity dominated by renewable technologies such as solar PV, hydro and wind as well as a significant proportion of gas.

# Year to come

## South Africa Law in 2019

General elections will be held in South Africa in 2019 to elect a new National Assembly and new provincial legislatures. The outcome of the elections will be a key determinant in the economic trajectory of the country and its policies.



### Cross-Border Investment & Trade:

The number of countries who will ratify the agreement establishing a Tripartite Free Trade Area among the COMESA, EAC and SADC and the agreement establishing the African Continental Free Trade Area will determine whether these agreements will come into force and will be monitored closely.

### Credit ratings:

South Africa's 2019 national election may have an impact on credit ratings. State-Owned Enterprises' (SOEs) financing will also remain in the spotlight in 2019. Most South African SOEs are supported by substantial government guarantees - SOE's debt redemptions over the medium term are expected to average ZAR 66 billion per year. A failure to reform SOEs may have significant negative consequences for the economy.

### Company Law:

The consultation process on the Companies Amendment Bill will continue and amended legislation will become effective in 2019.

### JSE:

Public consultation on possible amendments to the Listings Requirements aimed at enhancing investor confidence will continue. Robust corporate governance oversight of listed companies will remain a key focus area of the JSE.

### Tax:

To combat perceived tax avoidance, changes may be made to prevent the use of foreign trusts to defer tax or recharacterise the nature of income ([Read more...](#)), refine the dividend stripping rules, mitigate against the abuse of collateral arrangement provisions, and curb abusive schemes using the venture capital company regime. Amendments have also been proposed to the tax treatment of secondary adjustments

[Read more...](#)

### BEE:

Further amendments to the BEE Generic Codes of Good Practice are expected.

### Employment:

Employers could expect the Labour Relations Amendment Bill to be enacted. Changes will include: the extension of collective agreements concluded at bargaining councils; the prohibition of pickets without picketing rules in place; Commissioners will also have the power to establish rules where the parties are unable to agree; conducting secret ballots of members by trade unions before embarking on strikes; and state intervention in protracted and violent strikes with the establishment of an advisory award panel to facilitate the resolution of unresolved disputes.

### Competition/anti-trust:

Extensive amendments to the Competition Act are expected to be enacted - [Read more...](#) It is anticipated that there may be legal challenges in 2019 arising after enactment.

### Data Protection & Cybercrimes:

The Protection of Personal Information Act may come into force over the coming year. Legislation to regulate cybercrimes and cybersecurity may also be introduced. The Independent Communications Authority of South Africa has issued a discussion paper for public comment into its role in the regulation of cybersecurity.

### Financial Services:

The Financial Sector Laws Amendment Bill amends several financial sector laws and proposes to establish a framework for the orderly resolution of banks, systemically important non-bank financial institutions and holding companies of banks or systemically important non-bank financial institutions that are designated by the Governor of the South African Reserve Bank as systemically important. The Amendment Bill will strengthen the ability of the South African Reserve Bank to manage the orderly resolution or winding-down of a failing financial institution, with minimum disruption to the broader economy.

## 2019 highlights

We may see better investment conditions in 2019 following the elections. Key sectors which could see a subsequent upturn are upstream oil & gas and mining in particular.

In addition, the Amendment Bill will ensure that depositors' funds are protected in the event of a bank failure, and that depositors' funds will be paid out speedily to protect the most vulnerable customers through the establishment of a deposit insurance scheme. The National Treasury has set up a panel to develop the Conduct of Financial Institutions Bill (COFI Bill) and it is anticipated that the first draft will be distributed for comment around the middle of 2019. The COFI Bill will deal with market conduct regulation of all financial institutions, and will therefore see a repeal of significant parts of existing pieces of financial services legislation dealing with market conduct regulation, such as the Financial Advisory and Intermediary Services Act, as well as the Long-and Short-term Insurance Acts. Notice was given to Parliament during the first quarter of 2018/2019 to introduce the Banks Amendment Bill (Banks Bill).

#### **Banks:**

Currently, in terms of the Banks Act no person may conduct the business of a bank unless such person is a public company and is registered as a bank in terms of the Banks Act. The Banks Bill seeks to amend the Banks Act to make it possible for state-owned companies to register in terms of the Banks Act to conduct the business of a bank.

#### **Credit:**

The National Credit Amendment Bill (NCDR Bill) is currently undergoing the parliamentary process for adoption. The NCDR Bill seeks to extinguish the debt of consumers who earn a gross monthly income of less than ZAR7 500 that have unsecured debt amounting to ZAR 50 000 and who have been found to be critically indebted, are unable to repay the debt "at all" or unable to repay it "within 60 months". It is estimated by the National Treasury that between ZAR13bn and ZAR 20bn could be written-off. The NCDR Bill will empower the Magistrate's Courts to lower interest rates and to deal with illegal lenders, based on a debt counsellor's recommendation on behalf of a debt review applicant, as well as to criminalise illegal lending.

#### **Environment:**

New Financial Provisioning regulations which will govern the mining and Oil & Gas industries are expected to come into force in early 2019, if not sooner [Read more...](#)

Additional amendments relevant to financial provisioning will be brought into force with the promulgation of the National Environmental Management Laws Amendment Bill [Read more...](#)

An overhaul of current laws which regulate water resources and the provision of water and sanitation services are expected in 2019. The Carbon Tax Bill, which will require certain businesses who carry out carbon intensive activities to pay carbon tax to the South African Revenue Service, is expected to be implemented in June 2019 [Read more...](#)

#### **Oil & Gas:**

In 2019, general elections will be held in South Africa to elect a new National Assembly and new provincial legislatures in each province. This, together with the foreign public and private sector investment commitments, may facilitate better investment conditions in the South African upstream Oil & Gas sector. A number of companies will commence drilling programmes offshore from South Africa in 2019. We anticipate some deal activity to ensure that current rights holders meet the minimum historically disadvantaged ownership requirements.

#### **ICT:**

Following comments from the public, the Electronic Communications Amendment Bill has been amended and approved by Cabinet. Once signed by the President, the Bill will introduce significant changes to the ICT sector. These changes may be expected during 2019.

#### **Mining:**

The general elections to be held in 2019 may affect facilitate better investment conditions in the mining industry. Further, we anticipate some deal activity to ensure mining companies comply with the requirements of the new Mining Charter.

#### **Land & Property:**

A revised Agricultural Land Holdings Bill is scheduled to be published in late 2019. Related to land expropriation, and particularly expropriation without compensation, the Expropriation Bill may be reintroduced into Parliament in 2019 to allow for expropriation without compensation and to provide more clarity on the process.

#### **Transport:**

The National Land Transport Amendment Bill (NLT Bill) may be passed into law next year. If passed in its current form it will have a big impact on public land transport. For example, Uber and other E-hailing companies will now be regulated as a distinct category.

#### **Agriculture:**

The Tobacco Bill may be passed into law next year. If passed in its present form it will have a huge impact on the tobacco and E-cigarette markets. It will bring South Africa in line with other countries like Britain and the UK, for example in relation to plain packaging and point of sale display, and could result in South Africa having one of the strictest anti-tobacco regimes in the world.

#### **Public Procurement:**

Wide-ranging changes to the regulatory framework for public procurement are anticipated in 2019 to consolidate and simplify the fragmented legal and policy environment and to introduce a greater degree of flexibility into the public procurement framework. The new regulatory framework will regulate, modernise and transform public procurement and will include preferential targeting, local-content, supplier development and set-aside measures to achieve equity, job creation and local industrialisation. It will also introduce stricter sanctions for wrongdoing and non-compliance with public procurement rules.

## What now?

### Your contacts

We hope that you have found this guide useful. Please contact your usual Linklaters adviser or one of the people listed below, if you would like to discuss any of these matters further.



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