

Access | Insights Series



WEBBER WENTZEL

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**AFRICA
LEGAL**

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Access Insights | The BIG Question

Protecting Innovation, Protecting Business



The African continent offers up an abundance of opportunities for businesses; it is rich in natural resources and the climate is conducive to various agricultural initiatives. Increased urbanisation has created opportunities for property investors, transport- and infrastructure development, and digitised financial products that foster financial inclusion. Due to its unique challenges, Africa also provides excellent space for businesses to innovate and make a difference by addressing the hunger crisis, drought and lack of access to energy on the continent, for example.

Local businesses and foreign investors entering the African market will undoubtedly create IP assets as they establish and cement their brand, develop new technologies to solve the continent's challenges, and introduce new products and services to new customer bases.

Unfortunately, far too many of these businesses treat IP protection as a mere afterthought or implement it in a vacuum rather than rightly emphasising their IP as a vital part of their overall business strategy, says Webber Wentzel partner Bernadette Versfeld. "A business's intellectual assets are, in many instances, its most valuable assets."

On numerous occasions, Versfeld has been briefed by companies that failed to adequately identify and protect their IP in their ventures into Africa through the registration of their IP rights and by formalising arrangements by means of appropriately drafted agreements. "For the very reasons that you protect your other business assets, you equally need to protect your IP assets, failing which there are likely to be significant financial implications," says Versfeld.

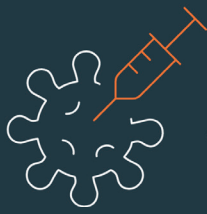
"The legal costs associated with IP litigation, far exceed the costs incurred to protect a business's IP, and if litigation is unsuccessful this has a significant impact on the value of a business because it affects the ability to licence the IP at a favourable royalty rate and in the process decreases the sales price you are likely to achieve," she clarified.

"If your strategy is to get to market first and you fail to first protect your IP, you could very well lose your competitive advantage," Versfeld emphasised. "Many businesses don't realise that IP rights are territorial and that they need to protect their IP in each African country they intend to trade in."

There are a number of other areas that need to be taken into account when considering IP strategy including tax and exchange control consequences; employment issues, for example, the ownership of IP created by employees; and competition issues, to name but a few, explained Versfeld. "Having the benefit of an expert with knowledge not only of the legal issues, but also an appreciation for the idiosyncrasies of the African market is crucial," she says.

"The continent offers many opportunities which are capable of being fully realised provided that the creativity of local and foreign investors and entrepreneurs is appropriately leveraged by an informed IP strategy," Versfeld concluded.

<https://www.africa-legal.com/news-detail/protecting-innovation-protecting-business/>



COVID-19 AFRICA VACCINATION MANDATE

BOTSWANA

Vaccination: mandatory at ports of entry
Corporates: workplace vaccinations are encouraged

COTE D'IVOIRE

Vaccination: not mandatory, but certain professions/high risk groups have been prioritised for vaccination
Corporates: workplace vaccinations encouraged, a health pass system has been introduced

GUINEA

Vaccination: not mandatory but a "health pass" is required for access to certain public establishments. Travellers to present proof of complete vaccination.
Corporates: are urging employees to be vaccinated but cannot make it mandatory

MOROCCO

Vaccination: not mandatory. A "vaccination pass" is required for access to public spaces but this is a government decision, not a law. Entry into Morocco is conditional on presentation of valid vaccination pass
Corporates: must also implement the "vaccination pass" system

SENEGAL

Vaccination: not mandatory
Corporates: actively encourage vaccination but may not make it a condition of employment, health pass or PCR required by travellers at ports of entry

GHANA

Vaccination: not mandatory for the general public, only for certain specified groups
Corporates: actively encourage employees to be vaccinated

KENYA

Vaccination: not mandatory. Vaccination remains optional, although those seeking government services must be vaccinated
Corporates: encourage employees to be vaccinated

MAURITIUS

Vaccination: not mandatory, except for specified professions, vaccine pass/PCR test is required to access certain spaces
Corporates: encourage work from home

MOZAMBIQUE

Vaccination: not mandatory
Corporates: workplace vaccinations are encouraged

NAMIBIA

Vaccination: not mandatory. Requirement for Namibians to present valid vaccination certificate on return to Namibia to avoid quarantine.
Corporates: several have introduced a general vaccination policy, not targeting specific employees and workplace vaccinations are encouraged

RWANDA

Vaccination: mandatory
Corporates: encourage employees to be fully vaccinated

SOUTH AFRICA

Vaccination: mandatory
Corporates: some corporates and most universities, have introduced compulsory vaccination

TANZANIA

Vaccination: not mandatory
Corporates: encourage vaccination for employees

UGANDA

Vaccination: not mandatory but required for certain professions and to access certain government spaces
Corporates: actively encourage vaccination and/or working from home

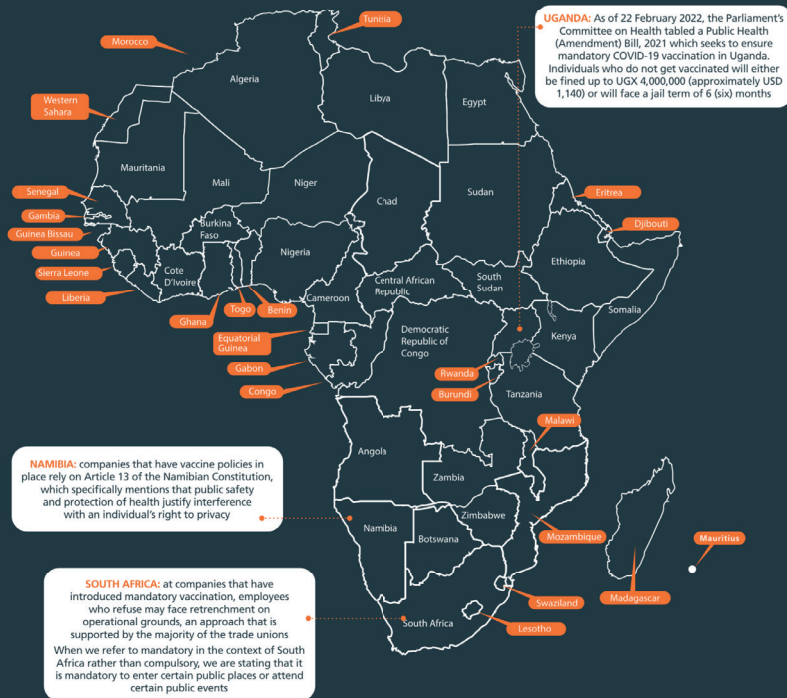
ZAMBIA

Vaccination: not mandatory but from 30 November 2021 it became a requirement for entry to government buildings and for civil servants
Corporates: introduced a policy that requires unvaccinated employees to be tested for COVID-19 every two weeks at their own expense

ZIMBABWE

Vaccination: not mandatory, but encouraged
Corporates: encourage vaccination for employees

- This infographic is based on information provided by our alliance and key relationship firms as at February 2022
- Some countries have mandatory vaccination to access certain public places or attend certain events and other countries refer to this as a health pass, but the effect is the same
- This analysis doesn't constitute legal advice and should not be interpreted as such



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Countries require vaccination and/or health pass to enter the country and/or access certain (public) facilities



06

countries have no mandatory vaccination but encouraged

Many thanks to our alliance and key relationship firms for their input:
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Balancing rights in a global pandemic



The Covid-19 pandemic has led to several African nations introducing a variety of vaccine mandates which affect some individual rights and freedoms while aiming to protect public health, says Michael Evans, partner and former head of Public Law at Webber Wentzel.

“A number of countries have introduced either partially or fully mandatory vaccinations,” said Evans, citing a recent survey that Webber Wentzel conducted in collaboration with its alliance and key relationship firms across 16 African countries.

“Probably the strongest when I looked at these other countries and what they were doing was Mauritius, which is a very successful country from a business perspective,” he commented.

In Mauritius, vaccines or weekly negative PCR tests are mandatory for police and fire rescue officers, employees working in the health sector and visitors to health care facilities, as well as employees in educational or training institutions, residential care homes, airports and ports. Vaccine passes or negative PCR tests are also required before one can go to restaurants, hairdressers, beauty salons, cinemas and malls.

Vaccine mandates have also been introduced in some sectors (like healthcare and education) and large businesses in Morocco, Ghana, Namibia and South Africa. In other nations such as Tanzania, Uganda, Cote d’Ivoire and Botswana there are no vaccine mandates, but governments and companies have taken steps to make vaccination easier and better understood, and to strongly encourage citizens and employees to get vaccinated.

In the South African context, Evans noted that many companies including Discovery Health, MTN and Investec have now introduced mandatory vaccinations. Webber Wentzel has also introduced mandatory vaccinations for staff effective from 17 January 2022. Most of the big trade unions have supported workplace vaccine mandates, as has the statutory organisation NEDLAC which represents labour, government and business.

Despite widespread support in South Africa for workplace vaccine mandates, Evans believes the matter “will almost certainly end up in court”, with interest groups challenging mandates or business organisations looking for a declaratory order from the Constitutional Court.

“Those opposed to mandatory vaccines have been stressing individual rights, like the right to bodily and psychological integrity, the right to freedom of religion and belief, and the right to privacy,” Evans explained. However, he pointed out that the Occupational Health and Safety Act in South Africa specifically requires employers to protect their employees and take steps to avoid risks. Employers must balance such rights and obligations.

Given the widespread effect of the pandemic, the way it’s spread, and the availability and impact of vaccines, Evans believes it’s highly likely the Constitutional Court would rule in favour of protecting employees and customers even though such measures limit some individual rights. The health and safety legislation provides a law of general application needed to limit any constitutional rights.

“In a sense you’re even protecting the right to life, because if people contract Covid badly they are at risk of death,” he said. “You’re also protecting the health system because you’re wanting to limit the number of people in ICU and on ventilators. All the statistics worldwide show that hospitals are dominated by unvaccinated Covid patients.”

While Evans expects workplace vaccine mandates to survive any legal challenge in South Africa, he says that if the government wants to extend mandates to public places, like Mauritius has done, then new regulations will need to be introduced.

“I’d like to see government move more firmly and strongly,” he commented. “They’ll need to amend the Disaster Management Regulations to allow for mandatory vaccinations before people enter public places and public events. Hopefully they’ll start saying if you have a restaurant or a cinema you must have mandatory vaccinations; similarly, if you run a gym or a church you must have mandatory vaccinations. That’s the next step in the process which we will need if we are to develop the herd immunity necessary for the revival of our economy.”

<https://www.africa-legal.com/news-detail/balancing-rights-in-a-global-pandemic/>



Access to Banking and Insurance in Africa and the Role of Technology



CLICK ON THE LINKS BELOW TO LISTEN TO THE PANEL DISCUSSION



With their vast experience in the fields of financial services, insurance law and data protection, Webber Wentzel law firm partners Dawid de Villiers and Zelda Swanepoel, together with senior associates Portia Mashinini and Wendy Tembedza, analyze the opportunities and risks that entities could encounter when accessing the financial services markets.

Dawid says that while Africa's status as the most underbanked continent might be suggestive of it being an obstacle to the evolution of the financial sector, when compared to the level of penetration by telephony, statistics paint a more optimistic picture.

In this vidcast, part of the Access Insights Series, he provides an overview of the trends that have occurred as a consequence of the high penetration of mobile phones, and suggests that Africa is making optimal use, within available resources, of technology. In many instances, innovative people on the continent have managed to leapfrog their competitors.

Tom pointed out that the mobile telephony space is a fascinating one when you have an entire demographic banking via a device that travels with them everywhere they go. Once they are banked, the opportunity to access additional products and services is almost unparalleled.

Zelda in turn highlighted that the insurance industry in South Africa has been subjected to significant changes since 2013 and the evolution process is still ongoing. This is being done with a view to enhancing fair consumer outcomes, but changes to the regulations, specifically in South Africa, come with a high threshold for compliance. She says it will be interesting to see whether the legislative developments stifle or enhance access.

Portia elaborated on the need for regulators not to be too stringent in how they regulate forthcoming changes as this will discourage innovation. There needs to be a sufficient balance between the different interests, she says. This balancing act is however proving to be very difficult in an era of a particular focus on positive consumer outcomes.

Wendy ended the discussion with her views on data protection and ways in which businesses can ensure that their innovations don't see them fall foul of data protection regulations when granting consumers access to financial services through various means.

<https://www.africa-legal.com/news-detail/access-to-banking-and-insurance-in-africa-and-the-role-of-technology/>



RESULTS ARE IN!

What would you consider the more important aspect of financial regulation?

