PRIVATE EQUITY SECTOR TREND REPORT 2023

WEBBER WENTZEL

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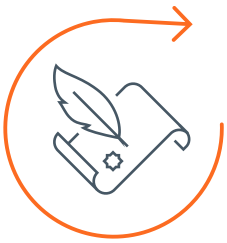
LET OUR LEGAL EXPERTISE MITIGATE THE RISKS AND NAVIGATE THE COMPLEXITIES OF THE PE SECTOR FOR YOU!



Get ready for a regulatory shake-up!

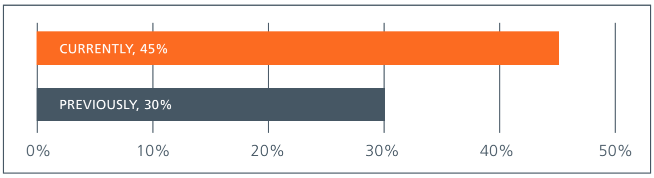
The change is imminent and likely to hit home,
as COFI is going to license and regulate new and established managers of alternative investment funds.

The game has changed, thanks to the new Reg 28

Regulation 28 of the Pension Funds Act now imposes limits on infrastructure investments that have to be reported to the Financial Sector Conduct Authority.

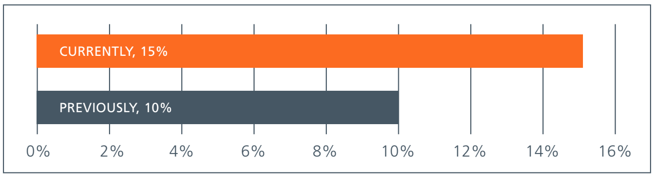
- Direct infrastructure exposure across all asset categories cannot exceed 45% of a fund's total assets.

New limitations on direct asset infrastructure exposure across all categories of a fund's total assets



- PE asset allocation has been increased to 15%.

Changes in PE asset allocation



The increasing prominence of Merger Clearance for PE transactions

Merger clearance for private equity deals in Africa is no longer a checkbox exercise, as regulators are scrutinizing PE firms acquiring extensive investments in multiple companies and intentionally structuring deals to avoid merger clearance obligations, particularly in priority sectors and involving foreign investors. Public interest considerations, such as job preservation and participation of historically disadvantaged persons, are now formally analyzed and introduce further complexity. To avoid unexpected and onerous conditions, a commercially feasible merger clearance strategy should be formulated early on during the planning phase. Public interest challenges can be addressed through **creative solutions** that deliver **symbiotic benefits.**

The Great Resignation and its impact on PE

Portfolio companies are at a high risk of losing valuable personnel and confidential information to competitors. Carefully-drafted employment agreements are key. Many incentive schemes are under water and will need to be reset to align key personnel. The tax consequences of resetting incentive schemes should be carefully assessed.

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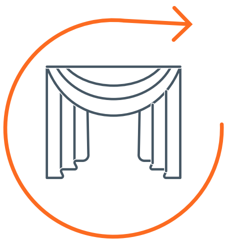
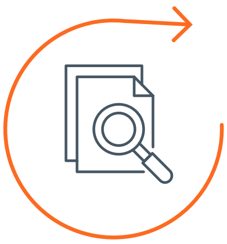


Who’s behind the curtain?

Our laws are evolving to ensure we know exactly who we're dealing with. FICA now requires fund managers to conduct deeper due diligence on all beneficial owners, which could include due diligence on the ultimate beneficial owners of the investors in a fund.



POPIA speaks for itself

Asset managers are accountable institutions and subject to new obligations to collect and retain certain records relating to the screening and monitoring of current and prospective employees.

The B-BBEE Commission is cracking down on fronting

The B-BBEE have been taking an increasingly active role in addressing what it believes to be fronting practices. It tends to take an extremely restricted interpretation of the B-BBEE legislation. The B-BBEE Commission’s restrictive interpretation has flowed through to its assessment of major B-BBEE ownership transactions. It has been scrutinising the terms of transaction documents more closely, sometimes without referring to the provisions of the applicable B-BBEE legislation. If you're involved in B-BBEE transactions, it's more important than ever to stay in the know and ensure you're compliant!

Public-Private Partnership procurement is on the rise

Changes to the electricity regulations allow for an electricity trading platform and private equity firms can expect to see increased opportunities in this space. In addition, the development of water and sanitation infrastructure is poised to become even more important and these opportunities are bound to increase, particularly for asset managers who are ready to seize the opportunities.

WHERE ARE YOU AND WHERE DO YOU WANT TO BE?

LOCATION IS ONE OF THE MOST IMPORTANT CONSIDERATIONS FOR FUNDS IN THE PE SECTOR

Does Pillar Two apply to you?

If you intend to undertake cross-border acquisitions, the OECD Pillar Two may have an impact on your transaction. For PE acquisitions, it's key to ensure your fund structure and location allows your group of entities as a whole to be optimally assessed when determining whether the global minimum tax revenue threshold has been met.

Ransom attacks and fund managers?

As ransom attacks become more frequent, it is essential to take reliable advice to ensure that notification obligations, business continuity plans and ransom payments stay on the right side of the law, given recent legal developments on liability for fraudulent electronic transactions.

No-one wants to go back to the office, but now we have to…

International remote work can create compliance risks (including adverse tax and regulatory obligations) which are important to understand when considering a local presence in a foreign jurisdiction. Global mobility policies may be the solution to ensure key personnel can maintain flexible work arrangements.

Focus on arbitration clauses!

It's generally easier to enforce an arbitral award in a foreign jurisdiction than a court judgment - this is critical, particularly in a cross-border context. A well-crafted clause can help to avoid significant procedural delays if a dispute arises.

- Pay attention to the selection of the seat of your arbitration – some jurisdictions are much better choices than others.
- The location of your counterparties' assets is important. If there is a dispute, enforcement can become difficult when parties are no longer co-operating.

STILL TRENDING...

WE'RE STILL SEEING A STRONG SECTOR FOCUS ON:

- FINTECH
- LOGISTICS
- HEALTHCARE
- ENERGY / INFRASTRUCTURE
- GENERATIVE AI

Many of our PE clients have also invested in their own innovation labs and incubator programmes

The potential of the renewable energy sector is being unlocked, with the recent expansion of the renewable energy incentive

ESG applies across all sectors and should be considered when structuring transactions, to ensure sustainable and socially-responsible business operations

Data centre investments are increasing. There's an underlying focus on investment in power supply, given the power-intensive nature of these businesses and the energy supply constraints across the continent

We're also seeing the continued consolidation of fibre network providers coupled with increased investment in data centres by international players

The acquisition of IP from South African-resident companies by companies in foreign jurisdictions is continuing, and it requires sophisticated IP and exchange control structuring

B-BBEE transactions are leading the charge, with employee share ownership programmes (ESOPs) and black private equity funds increasingly being considered as viable B-BBEE partners

While market conditions make exits challenging, and several disposal processes have been halted in their early stages, PE firms are undertaking active portfolio management to ensure their assets are exit-ready

In the current difficult economic climate, fund raising has become more challenging. We are seeing more frequent consolidations of fund managers, as local managers partner with offshore fund managers to try to attract capital

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Scan here to find out more about our private equity team and expertise.

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