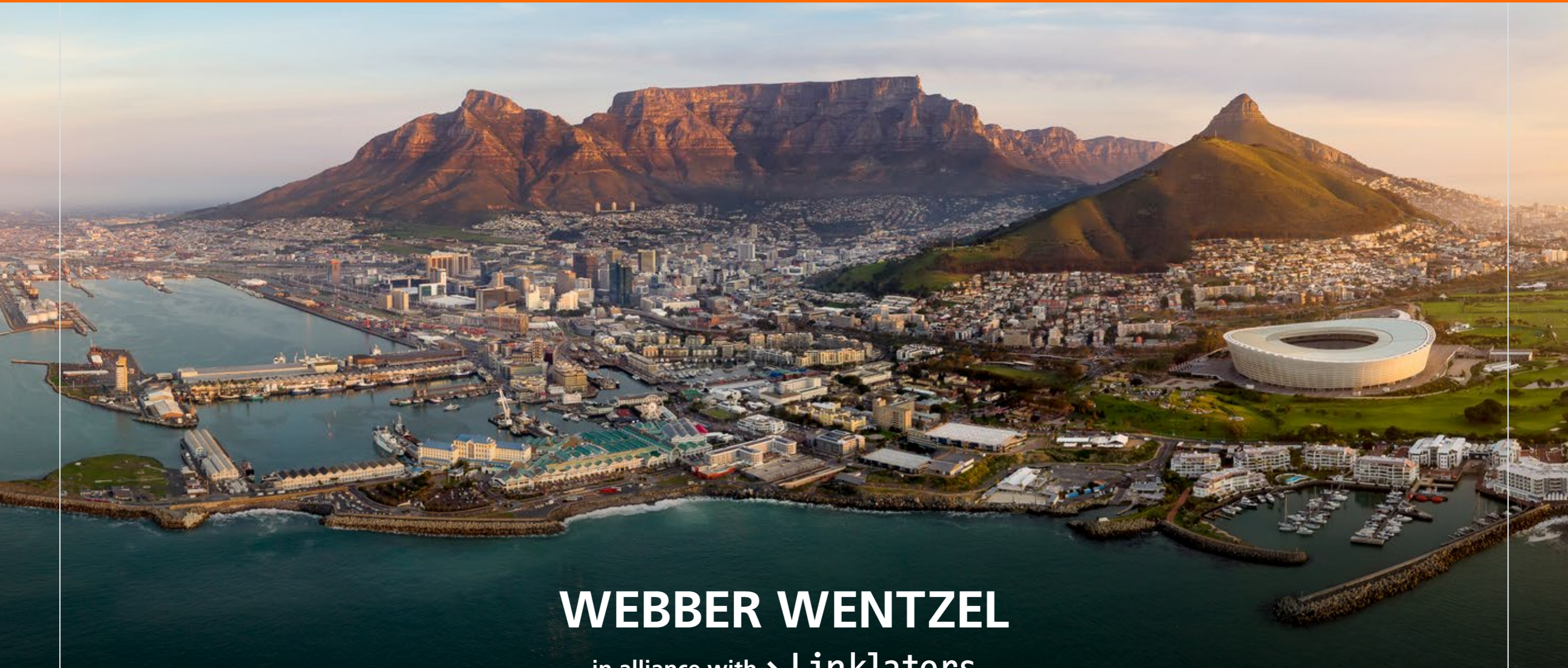


COMMERCIAL AND LEGAL DEVELOPMENTS IN SOUTH AFRICA'S HOSPITALITY, LEISURE, AND SPORTS INDUSTRIES



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COMMERCIAL AND LEGAL DEVELOPMENTS IN SOUTH AFRICA'S HOSPITALITY, LEISURE, AND SPORTS INDUSTRIES IN 2023

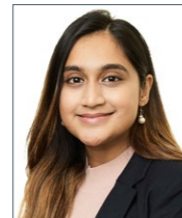
South Africa, a nation renowned for its diverse landscapes, rich cultural heritage, and vibrant economic activities, stands at the crossroads of commercial and legal evolution. South Africa's commercial landscape is a complex tapestry of opportunities and challenges from the bustling hospitality sector that caters to tourists and locals alike, to the dynamic sports industry that captures the nation's passion, and the ever-expanding leisure sector offering diverse recreational opportunities.

In 2023, we witnessed a wave of significant legal developments impacting South Africa's hospitality, leisure and sports sectors. It is important to note that these developments, such as the National Health Insurance Bill, Expropriation Bill, VAT Act, Employment Equity Amendments Bill, National Sport and Recreation Amendment Bill, and Anti-Doping Regulations, will continue to shape the regulatory framework for the hospitality, leisure and sport sectors in 2024 and beyond.

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NATIONAL HEALTH INSURANCE BILL

This bill aims to provide universal access to quality health care services in South Africa by establishing a national fund that will purchase health care services on behalf of users. The Bill has a long way to go before it is ready for promulgation, but it is worth considering the contentious effects that it will have on the hospitality industry. The cost of healthcare is set to reduce, but the quality may suffer. From a medical tourism perspective, South Africa is particularly known for its expertise in cosmetic surgery, cardiology, and fertility treatments. The affordability of these procedures, compared to countries like the United States and the United Kingdom, combined with the skills of South African surgeons is a major draw card for tourists. However, the National Health Insurance Bill might result in a drain of skilled medical professionals, which will inadvertently impact the medical tourism industry.



EXPROPRIATION BILL

This bill seeks to provide for the expropriation of property for a public purpose or in the public interest, and to regulate the procedure and compensation for expropriation. The bill also allows for land expropriation with no compensation under specific circumstances, such as abandoned land, state land, or land held for speculative purposes. This could have implications for the hospitality, leisure, and sports industries, as it may affect the security and value of property rights and the ability to invest and expand operations. The bill also requires the government to consider the impact of expropriation on the environment, tourism, and heritage. The hospitality industry may benefit from the Expropriation Bill as property expropriation could be done for the public purpose of encouraging tourism and could attract investors.

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VAT ACT

In a significant move impacting the hospitality sector, a change was introduced to the VAT regime – if commercial accommodation (including any domestic goods and services) is supplied for an unbroken period of more than 28 days at a VAT-inclusive charge, then a special value of supply rule is applicable. In such a case, the consideration in money is deemed to be 60% of such an all-inclusive charge. Therefore, VAT vendors who supply commercial accommodation can benefit by paying the South African Revenue Service (SARS) output VAT on 15% of 60% of the value of the taxable supplies made, instead of 15% on the full value of the taxable supplies made. The input tax rate remains the same. The change was implemented to stimulate tourism, provide financial relief to businesses, and make South Africa a more attractive destination. The imposition of VAT creates cash flow issues, especially for small businesses that do not have sufficient expenses. The reduction in output VAT payable to SARS in the hospitality industry means that the risk of cash flow issues is reduced, and more financial security is obtained.



EMPLOYMENT EQUITY AMENDMENT BILL

The Employment Equity Amendment Act No. 4 of 2021 was assented to in 2023. Whilst the commencement date of the Act is yet to be determined, employers should take note of section 15A, which grants the Minister of Employment and Labour the authority to determine sectoral numerical targets to ensure equitable representation at all occupational levels in the workforce. Employers will be required to align their employment equity targets with those prescribed by the Minister for economic sectors subsectors and geographic regions. The definition of designated employers has also been limited in application to exclude small businesses with less than fifty employees irrespective of their annual turnover. Thereby reducing the number of employers exempt from affirmative action measures in the Act. Companies wishing to provide services or the supply of goods to the State will be required to obtain Employment Equity Act compliance certificates as confirmation of adherence to the legislation and the national minimum wage.

This may prompt several adjustments in hiring practices within the hospitality, leisure, and sports industries, such as:

- **ALIGNMENT WITH SECTORAL TARGETS:** Employers in these sectors will need to closely monitor and align their hiring practices with the sector-specific numerical

targets set by the Minister. This could involve adjusting recruitment strategies to ensure a more equitable representation at all occupational levels.

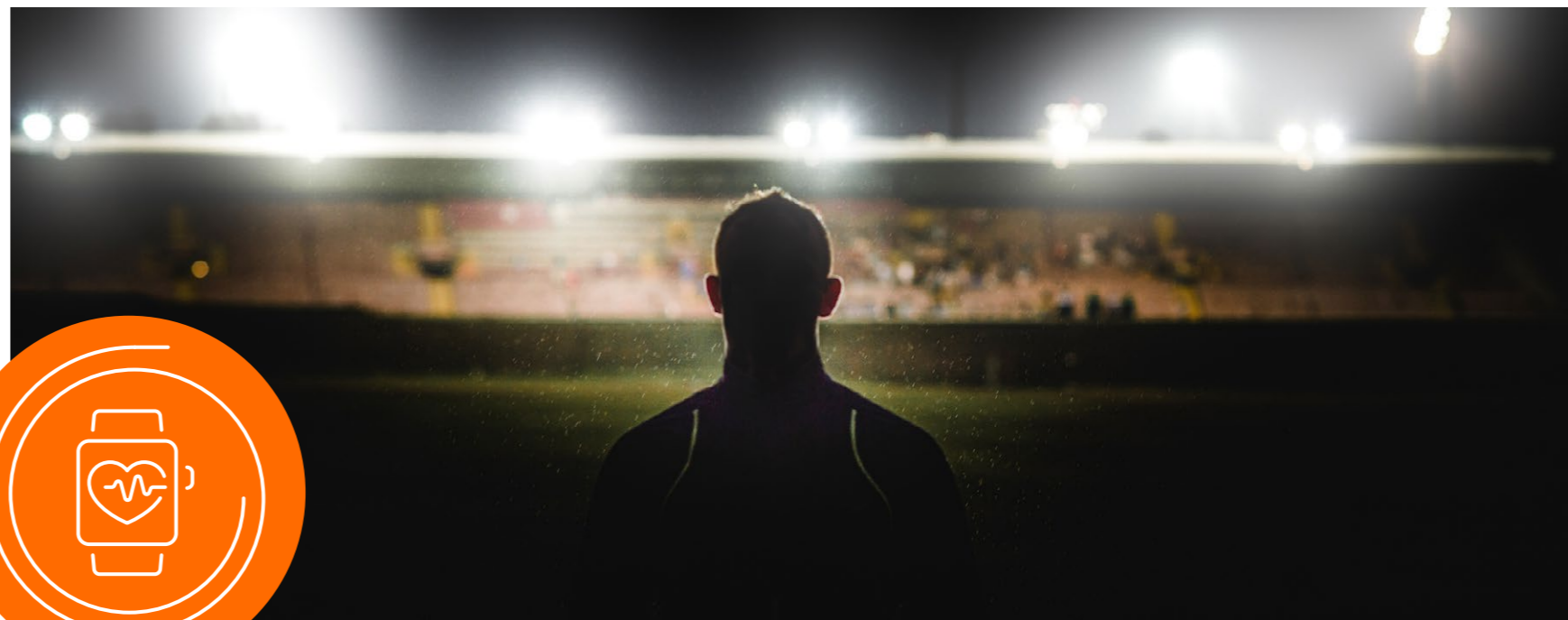
- **AFFIRMATIVE ACTION MEASURES:** With a narrowed definition of designated employers, smaller businesses will now be subject to affirmative action measures. Consequently, hiring practices may need to incorporate targeted efforts to promote diversity and inclusion, including initiatives for underrepresented groups.
- **COMPLIANCE CERTIFICATION FOR STATE ENGAGEMENT:** Companies looking to provide services or goods to the State will need to obtain Employment Equity Act compliance certificates. This requirement may necessitate adjustments in hiring processes to ensure alignment with the legislation, as companies seek certification for engagement with the government.
- **MONITORING AND REPORTING:** Employers may need to enhance monitoring and reporting mechanisms related to employment equity targets. Regular assessment of workforce demographics and progress towards set goals will likely become integral to demonstrating compliance.
- **NATIONAL MINIMUM WAGE CONSIDERATIONS:** Companies will also need to factor in adherence to the national minimum wage in their hiring practices, ensuring that compensation aligns with the statutory requirements.

In essence, these adjustments aim to foster a more inclusive and representative workforce, complying with the legislative changes introduced by the Employment Equity Amendment Act.



NATIONAL SPORT AND RECREATION AMENDMENT BILL

The National Sport and Recreation Amendment Bill B43-2018 was tabled in the National Assembly but lapsed in terms of National Assembly Rule 333(2) and hence, will not be proceeding.



ANTI-DOPING REGULATIONS

Although no changes have been made to the Anti-Doping Regulations, the Minister for Sport, Arts and Culture filed a notice introducing the Institute for Drug-Free Sport Amendment Bill in November 2023. The Bill will introduce changes to the Institute for Drug-Free Sport Act 1997 (as amended).

The most notable of the proposed amendments include the repeal of provisions concerning the Doping Control Programme, the consequences of not providing a sample when requested, and the recognition of tests conducted by other sports administration bodies.

Changes have also been made to the section of the Act addressing appeals.

The proposed changes in the sporting industry could manifest in specific examples:

- **REPEAL OF DOPING CONTROL PROGRAMME PROVISIONS:**

Previously mandatory drug testing protocols, such as specific testing frequencies or procedures, may be abolished, allowing for a potential revision of how athletes are tested for prohibited substances.

- **NON-COMPLIANCE WITH SAMPLE REQUESTS:**

Athletes who refuse or fail to comply with sample requests for drug testing could face different consequences or revised penalties, impacting the consequences for non-cooperation in anti-doping efforts.

- **TESTING BY OTHER SPORTS ADMINISTRATION BODIES:**

The amendment might allow for collaboration with other sports administration bodies to conduct drug testing, enabling a more coordinated and comprehensive approach to anti-doping efforts beyond the jurisdiction of a single organisation.

- **CHANGES TO APPEALS SECTION:**

Alterations to the appeals process could involve adjustments in the timeline or procedures for athletes or organisations disputing doping allegations, thus affecting the way appeals are conducted and resolved.

These examples illustrate the potential practical implications of the proposed amendments, emphasising a shift in anti-doping policies and procedures within the sporting industry. The changes aim to enhance the effectiveness and fairness of anti-doping measures while adapting to evolving needs and circumstances.



TOURISM BOOM IN 2023

The hospitality and leisure sectors experienced significant growth in 2023, resulting in the tourism industry thriving. This growth has a direct impact on international trade and investment, as well as South Africa's economic development. Noteworthy developments which contributed to this growth include:

- An extraordinary increase in hotel revenues, with a significant 106% rise from December 2021 to December 2022, primarily due to successful room upgrade upselling.
- A remarkable 12% growth in direct bookings, amassing over 20,000 direct reservations.
- Major events like concerts, sports contests, and large-scale conferences contributed to increased hotel occupancy and Revenue Per Available Room (RevPAR). The Formula-E event in Cape Town, for instance, led to a striking 77% occupancy rate, exceeding the annual average by 21%.
- A 51.8% increase in international tourist arrivals from the previous year (as noted by Statistics South Africa in its international arrival figures for 2023).
- Cape Town is a popular choice for longer stays, with visitors most commonly opting for three days. In December 2023, Cape Town International Airport saw a 20% increase in domestic visitors from the previous year.
- A considerable rise of 188% in Virtual Credit Card (VCC) payments from May 2022 to May 2023.

2023 marked a turning point for South Africa's hospitality, leisure, and sport sectors, with transformative legal changes taking centre stage. The National Health Insurance and Expropriation Bills raised concerns and opportunities, while amendments to the VAT Act aimed at boosting tourism and alleviating financial burdens for businesses. The hospitality sector boomed, generating revenue increases, a surge in direct bookings, and the positive impact of major events on occupancy rates. As South Africa navigates these shifts, 2023 marks a crucial period of evolution, presenting a complex landscape of challenges and opportunities for stakeholders.

Legal practitioners will closely monitor the developments of legislative changes affecting these industries. The upcoming 2024 election year may see a shift in the timelines for the parliamentary processes or even amendments to some of the bills, depending on the structure of the new cabinet.

Overall, the growth and boom of 2023 lays a path for further economic resilience and optimism for the hospitality, leisure and sports industries for the year ahead.

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