SPECIAL FEATURE
ESG in dealmaking

DealMakers®

SOUTH AFRICA'S CORPORATE FINANCE MAGAZINE

Volume 22: No. 3

3rd Quarter 2021 M&A Rankings plus all Corporate Finance Transactions

incorporating **Catalyst** magazine

The pathway from farm to Big Four

Pathfinder perspective
Graham Stokoe
Head of Private Equity,
EY Africa

"You know you're making a difference, that's what has kept me going."

Graham's fascination with business started in an unlikely place: on his parents' farm in South Africa. Growing up on the farm, he was always interested in the business side of things – the numbers, the analysis, and what made it successful.

Graham went to London to actively seek out a role in the transactions space and joined the EY team in 2004. He returned to Africa in 2010 at a time when private equity was booming amid an exciting 'rising Africa' narrative.

PE activity drives growth

"PE is growing businesses faster than the listed environment," says Graham, "growing them in the medium-sized market where access to capital is more constrained, particularly in the developing world and the rest of Africa."

"In bringing more capital into Africa and driving high growth businesses – that keeps me satisfied. You know you're making a difference, that's what has kept me going."

Keeping up with the pace of change

"From a PE perspective, the pace of change has increased rapidly and that's where Ansarada is providing the technology – the platform – to enable advisors to really get into the detail of what's going on, what does this mean, what are the insights."

"Companies selling their businesses are suddenly surprised at the questions being asked by buyers," says Graham. "Because the volume of information needs a high level of sophistication that is being demanded – that is available – people are really getting into a lot of detailed insights. It's challenging the future rationale, the future plans for the business they plan to buy."

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OUT OF THE ORDINARY

Editor's Note

With the local elections behind us, albeit with a low voter turnout, focus can once again return to the business of getting back to 'normal', and while life is unlikely to be so again, South Africans are good at making the best of the situation at hand.

Analysis of local deal activity for the year to end-September 2021 speaks to this point. Advisers in the M&A space have been busy. The total value of deals recorded by SA exchange-listed companies for this period was a whopping R559,3bn from 332 deals. That compares with R195,2bn (284 deals) over the same period in 2020 (unsurprising) and R346,39bn (369 deals) in 2019. In fact, this year's total deal value for the period is the highest since DealMakers started doing the comparison in 2009. Breaking the deals down into value categories (pg 10), it is interesting to note that 57 of the deals each have a value of R1bn plus, representing 92,3% of the total deal value for the period.

MARYLOU GREIG

An analysis of the target sectors shows real estate (91 deals), technology (49) and financial services (29) as the most active. Of the 332 deals announced (three have since failed), 289 of these involved companies with primary listings on one of the local exchanges. Of these, 81 were cross border deals executed by SA domiciled companies, with the top regions being Africa (29), where the targets were primarily energy, mining and logistics, followed by Europe and the UK (each with 20 deals), with property the main focus.

The top three local deals by value for the period were the sale by Northam Platinum of a 26,5% stake to a BEE consortium (R33,1bn); the buyout by DP World Logistics of Imperial Logistics (12,95bn); and the acquisition by Standard Bank of the remaining stake in Liberty (10,71bn).

Repurchases continued to dominate activity in the equity capital markets, with the likes of Anglo, Quilter and Prosus, as well as many of the smaller companies returning value to shareholders.

In this issue of **DealMakers**, we carry a feature on ESG in dealmaking and financial markets. With ESG factors becoming increasingly important in the assessment and valuation of potential merger and acquisition opportunities, ignoring ESG is no longer an option for companies, and is now considered a risk factor alongside reputational risk. Articles carried in this feature give insightful information on this topical issue and the section titled, "Meet the Specialists" introduces some of those individuals who have made ESG their passion.

It is that time of the year again when **DealMakers** gears up on the planning of the **Ansarada DealMakers Annual Awards**, which will be held on February 22, 2022. It is our hope that we will hold a physical event once again, even if on a smaller scale. The submission of nominations for the 2021 subjective awards will close on November 26.

DealMakers wishes you all a safe and restful break over the festive season. Hope to see you all in February. ■

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SPECIAL FEATURE
ESG IN DEALMAKING AND FINANCIAL MARKETS

Catalyst – the Private Equity and Venture Capital magazine

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Representatives of the firms make up DealMakers' Editorial Advisory Board which meets half yearly.

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CORPORATE AND INVESTMENT BANKING

MERGERS & ACQUISITIONS ANALYSIS Q1 – Q3 2021 (excludes unlisted M&A)

	Q3 2021			Q1 - Q3 2021			Q1 - Q3 2020			Q1 - Q3 2019		
DEAL ACTIVITY	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**
Local Deals	98	(0)	78 117	292	(3)	205 961	253	(15)	139 141	329	(23)	159 912
Foreign Deals	13	(0)	303 994	40	(0)	353 344	31	(1)	56 150	40	(0)	186 473
	111	(0)	382 111	332	(3)	559 305	284	(16)	195 291	369	(23)	346 385
DEAL ACTIVITY (excluding failed deals)	**No.**		**Value R'm**	**No.**		**Value R'm**	**No.**		**Value R'm**	**No.**		**Value R'm**
Local Deals	98		78 117	289		201 736	238		118 723	306		140 233
Foreign Deals	13		303 994	40		353 344	30		48 463	40		186 473
	111		382 111	329		555 080	268		167 186	346		326 706

BEE AND PRIVATE EQUITY ACTIVITY Q1 – Q3 2021 (includes listed and unlisted M&A)

	Q3 2021			Q1 - Q3 2021			Q1 - Q3 2020			Q1 - Q3 2019		
BEE ACTIVITY	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**
Listed M&A	3	(0)	3 631	11	(1)	48 912	15	(2)	9 294	20	(2)	10 508
Unlisted M&A	5	(0)	5	10	(0)	1 093	12	(0)	undisclosed	21	(0)	3 827
	8	(0)	3 636	21	(1)	50 005	27	(2)	9 294	41	(2)	14 335

	Q3 2021			Q1 - Q3 2021			Q1 - Q3 2020			Q1 - Q3 2019		
PE ACTIVITY	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**	**No.**	*****	**Value R'm**
Listed M&A	12	(0)	19 930	30	(0)	23 324	29	(0)	16 149	23	(2)	4 895
Unlisted M&A	23	(0)	2 200	74	(0)	6 361	61	(0)	2 292	47	(1)	2 625
	35	(0)	22 130	104	(0)	29 685	90	(0)	18 441	70	(3)	7 520

* No of failed deals

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BIGGEST DEALS Q1 – Q3 2021

NATURE OF DEAL	PARTIES	ASSET	ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE	VALUE R'M
Acquisition by ■	Woodside Petroleum from BHP	BHP Petroleum International (BHP shareholders will receive shares representing 48% of the enlarged business)	A$18,5bn	Aug 17	199 800
Acquisition by ■	PayU Payments (Prosus) from existing shareholders	BillDesk (Indialdeas.com)	$4,7bn	Aug 31	68 620
Disposal by	Northam Platinum to BEE consortium	26,5% effective stake in Northam Platinum	R33,1bn	Mar 23	33 100
Acquisition by ■	Prosus	further 2% stake in Delivery Hero	$1,7bn	Aug 31	24 820
Disposal by	Investec to Metrics Credit Partners	acquisition finance loan-book	A$1,2bn	Mar 25	13 560
Acquisition by	DP World Logistics from Imperial Logistics minority shareholders	all issued ordinary in Imperial Logistics (including deferred shares held by Ukhamba)	R12,95bn	Jul 8	12 949
Acquisition by	Standard Bank from Liberty minority shareholders	remaining 46,3% stake in Liberty plus all preference shares	R10,71bn	Jul 15	10 714
Disposal by ■	Quilter plc to Utmost Holdings Isle of Man (Utmost Group)	Quilter International	£483m	Apr 1	9 757
Acquisition by	Sibanye-Stillwater from ioneer	50% stake in Rhyolite Ridge Lithium-Boron Project (jv) in Nevada	$490m	Sep 16	7 056
Acquisition by	SOF-12 Cambridge Bidco from RDI REIT minority shareholders	entire issued share capital of RDI REIT (excluding the 29,59% stake (112 597 728 shares) already owned by Starwood Funds)	£329,45m	Mar 1	6 670

■ Foreign Deal – not included for ranking purposes (unless local adviser's role verified)

BIGGEST BEE DEALS Q1 – Q3 2021

NATURE OF DEAL	PARTIES	ASSET	ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE	VALUE R'M
Disposal by	Northam Platinum to BEE consortium	26,5% effective stake in Northam Platinum	R33,1bn	Mar 23	33 100
Disposal by	Anheuser-Busch InBev to BEE parties (SAB Zenzele Retail Shareholders, The SAB Foundation and qualifying SAB employees)	AB InBev shares held in SAB Zenzele Kabili (to be listed)	R5,4bn	Apr 7	5 400
Disposal by	Sasol to consortium of black investors (Reatile Group and the Ideas Fund [managed by AIIM - Old Mutual])	30% stake in the Republic of Mozambique Pipeline Investments (Rompco)	R4,15bn	May 14	4 145
Disposal by	Dis-Chem Pharmacies to BEE Consortium (Royal Bafokeng Holdings and the Black Panther Consortium [GloCap Empowerment Private Equity Fund, Zungu Pharmaceuticals and Temo Capital])	86 468 741 Dis-Chem Pharmacies shares (10,05% [6,63% and 3,42% respectively])	R2,25bn	Aug 30	2 253
Acquisition by	Shoprite Supermarkets (Shoprite) from Massmart	Rhino Cash and Carry and Cambridge Food businesses, the Fuitspot business and Massfresh Meat business and 12 Masscash Cash and Carry stores	R1,36bn	Aug 21	1 360

– Failed deal

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M&A Q1 - Q3 2021 IN NUMBERS

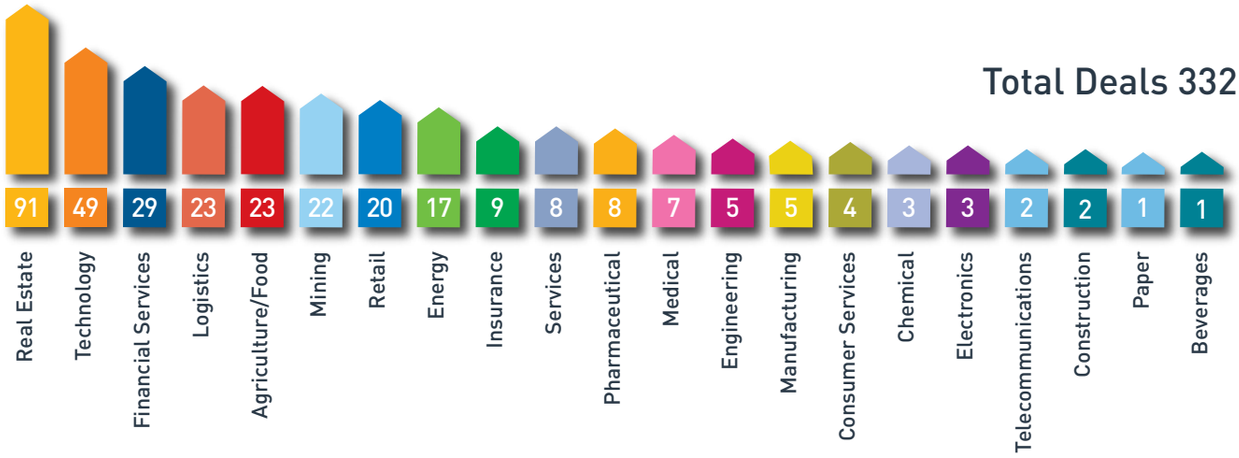
Sourced from DealMakers online

Of the 332 deals 81 deals were cross border deals by SA domiciled companies.

Africa	Australia	Europe	UK	US	UAE
29 deals	3 deals	20 deals	20 deal	6 deals	3 deals
13 acquisitions 15 disposals	2 acquisitions 1 disposal	13 acquisitions 8 disposals	8 acquisitions 12 disposals	5 acquisitions 1 joint venture	1 acquisition 2 disposals
• Agriculture/ Food 3 • Energy 6 • Financial Servics 3 • Insurance 2 • Logistics 4 • Mining 2 • Pharma-ceuticals 1 • Real Estate 2 • Retail 2 • Technology 2 • Telecoms 2	• Financial Servics 1 • Logistics 1 • Medical 1	• Engineering 2 • Logistics 2 • Medical 1 • Mining 2 • Retail 1 • Technology 4 • Pharma-ceutical 2 • Real Estate 6	• Automotive 1 • Financial Services 2 • Insurance 1 • Logistics 1 • Real Estate 9 • Retail 1 • Services 4 • Technology 1	• Financial 2 • Food/Agric jv 1 • Logistics 1 • Mining 1 • Real Estate 1	• Construction 1 • Logistics 2

Sector analysis of deals (target)

Total Deals 332



Deals look by value category

Size of transaction	Q1 - Q3 2021 No. of deals	Q1 - Q3 2021 Value Rm	Q1 - Q3 2020 No. of deals	Q1 - Q3 2020 Value Rm	Q1 - Q3 2019 No. of deals	Q1 - Q3 2019 Value Rm
> R5bn	17	427 899	12	95 261	7	234 727
> R1bn	40	88 571	30	65 955	32	66 759
> R500m	34	24 223	22	14 472	25	17 362
> R200m	34	11 242	34	10 708	43	14 739
> R50m	55	6 168	70	7 576	102	11 202
> R20m	27	954	28	1 046	38	1 298
< R20m	27	248	34	273	50	298
Total with value	234	559 305	230	195 291	297	346 385
Total without value	98		54		72	
Grand total	332	559 305	284	195 291	369	346 385

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RANKING THE SOUTH AFRICAN TOMBSTONE PARTIES

RANKINGS BY DEAL VALUE

RANKINGS BY DEAL FLOW (ACTIVITY)

INVESTMENT ADVISERS*

No	Company	Deal Values R'm	Market Share %
1	One Capital	35 065	19,32%
2	Standard Bank	18 960	10,45%
3	Java Capital	16 754	9,23%
4	Morgan Stanley	12 949	7,14%
5	Rothschild & Co	12 644	6,97%
6	Goldman Sachs	10 714	5,90%
	Merrill Lynch	10 714	5,90%
8	Absa CIB	8 285	4,57%
9	Questco	7 862	4,33%
10	Macquarie Advisory and Capital Markets South Africa	7 056	3,89%

No	Company	No of Deals	Market Share %	Deal Values R'm
1	Investec Bank	12	12,90%	6 719
2	Java Capital	10	10,75%	16 754
3	PSG Capital	9	9,68%	3 229
4	Standard Bank	7	7,53%	18 960
	Rothschild & Co	7	7,53%	12 644
	Questco	7	7,53%	7 862
7	Birkett Stewart McHendrie	5	5,38%	217
8	Absa CIB	3	3,23%	8 285
	Nedbank CIB	3	3,23%	6 707
	Rand Merchant Bank	3	3,23%	6 485

SPONSORS

No	Company	Deal Values R'm	Market Share %
1	UBS	213 062	36,87%
2	Investec Bank	129 882	22,48%
3	Deloitte	35 409	6,13%
4	One Capital	35 065	6,07%
5	Rand Merchant Bank	30 490	5,28%
6	Java Capital	29 293	5,07%
7	Standard Bank	26 762	4,63%
8	JPMorgan	21 628	3,74%
9	Questco	13 781	2,38%
10	Merrill Lynch	10 784	1,87%
11	Absa CIB	9 365	1,62%
12	Nedbank CIB	9 008	1,56%

No	Company	No of Deals	Market Share %	Deal Values R'm
1	Investec Bank	29	15,34%	129 882
	Java Capital	29	15,34%	29 293
3	Rand Merchant Bank	16	8,47%	30 490
	PSG Capital	16	8,47%	6 874
5	Questco	12	6,35%	13 781
6	Standard Bank	11	5,82%	26 762
7	Merchantec Capital	10	5,29%	1 536
8	UBS	8	4,23%	213 062
	Nedbank CIB	8	4,23%	9 008
10	JPMorgan	7	3,70%	21 628
	Grindrod Bank	7	3,70%	1 413
	Sasfin Capital	7	3,70%	1 152

* Investment Advisers incorporate Financial Advisers and others claiming this category

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RANKING THE SOUTH AFRICAN TOMBSTONE PARTIES (CONTINUED)

RANKINGS BY DEAL VALUE

LEGAL ADVISERS

No	Company	Deal Values R'm	Market Share %
1	Webber Wentzel	139 315	46,50%
2	Cliffe Dekker Hofmeyr	58 838	19,64%
3	Bowmans	46 835	15,63%
4	ENSafrica	13 070	4,36%
5	Werksmans	10 445	3,49%
6	Allen & Overy (South Africa)	8 268	2,76%
7	Vani Chetty Competition Law	3 975	1,33%
8	CMS	3 322	1,11%
9	Tugendhaft Wapnick Banchetti	2 374	0,79%
10	Dentons	1 460	0,49%

TRANSACTIONAL SUPPORT SERVICES

No	Company	Deal Values R'm	Market Share %
1	EY	46 814	29,95%
2	BDO	43 194	27,64%
3	PwC	24 587	15,73%
4	UBS	12 949	8,29%
5	KPMG	10 714	6,86%
6	PSG Capital	7 541	4,82%
7	Mazars	4 772	3,05%
8	Nodus Capital	1 900	1,22%
9	Questco	1 656	1,06%
10	Deloitte	1 410	0,90%
11	SNG Grant Thornton	714	0,46%

RANKINGS BY DEAL FLOW (ACTIVITY)

LEGAL ADVISERS

No	Company	No of Deals	Market Share %	Deal Values R'm
1	Cliffe Dekker Hofmeyr	35	21,47%	58 838
2	Webber Wentzel	24	14,72%	139 315
3	Werksmans	22	13,50%	10 445
4	ENSafrica	17	10,43%	13 070
5	Bowmans	16	9,82%	46 835
6	Vani Chetty Competition Law	7	4,29%	3 975
7	Tugendhaft Wapnick Banchetti	4	2,45%	2 374
8	Allen & Overy (South Africa)	3	1,84%	8 268
	CMS	3	1,84%	3 322
	Falcon & Hume	3	1,84%	953

TRANSACTIONAL SUPPORT SERVICES

No	Company	No of Deals	Market Share %	Deal Values R'm
1	PwC	10	19,23%	24 587
2	BDO	9	17,31%	43 194
3	PSG Capital	6	11,54%	7 541
4	EY	5	9,62%	46 814
	Mazars	5	9,62%	4 772
6	Nodus Capital	3	5,77%	1 900
	Deloitte	3	5,77%	1 410
8	Questco	2	3,85%	1 656
	SNG Grant Thornton	2	3,85%	714
	Moore	2	3,85%	22
	Suez Capital	2	3,85%	17

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RANKING THE SOUTH AFRICAN TOMBSTONE PARTIES

RANKINGS BY TRANSACTION VALUE

RANKINGS BY TRANSACTION FLOW (ACTIVITY)

INVESTMENT ADVISERS*

No	Company	Transaction Values R'm	Market Share %
1	Morgan Stanley	1 368 905	43,09%
2	Goldman Sachs	1 363 713	42,92%
3	Citigroup Global Markets	211 700	6,66%
4	One Capital	115 697	3,64%
5	Rand Merchant Bank	32 152	1,01%
6	Merrill Lynch	16 494	0,52%
7	Investec Bank	11 142	0,35%
8	Nedbank CIB	10 693	0,34%
9	PSG Capital	10 645	0,34%
10	JPMorgan	7 854	0,25%
11	Java Capital	6 784	0,21%

No	Company	No of Transactions	Market Share %	Transaction Values R'm
1	Java Capital	11	10,48%	6 784
2	Goldman Sachs	9	8,57%	1 363 713
3	Morgan Stanley	8	7,62%	1 368 905
	One Capital	8	7,62%	115 697
	Rand Merchant Bank	8	7,62%	32 152
	Nedbank CIB	8	7,62%	10 693
7	Investec Bank	6	5,71%	11 142
	PSG Capital	6	5,71%	10 645
9	Merrill Lynch	4	3,81%	16 494
	Pallidus Capital	4	3,81%	2 866
	Standard Bank	4	3,81%	2 738

SPONSORS

No	Company	Transaction Values R'm	Market Share %
1	Investec Bank	1 476 480	79,39%
2	One Capital	116 519	6,27%
3	Deloitte	115 841	6,23%
4	Rand Merchant Bank	39 280	2,11%
5	Merrill Lynch	30 923	1,66%
6	Java Capital	14 088	0,76%
7	Nedbank CIB	12 630	0,68%
8	JPMorgan	11 833	0,64%
9	PSG Capital	11 447	0,62%
10	UBS	5 861	0,32%
11	Absa CIB	5 815	0,31%
	Tamela	5 815	0,31%

No	Company	No of Transactions	Market Share %	Transaction Values R'm
1	Java Capital	27	13,50%	14 088
2	Investec Bank	22	11,00%	1 476 480
3	Rand Merchant Bank	18	9,00%	39 280
4	Nedbank CIB	16	8,00%	12 630
5	PSG Capital	14	7,00%	11 447
6	Deloitte	13	6,50%	115 841
7	UBS	11	5,50%	5 861
8	One Capital	10	5,00%	116 519
	Merchantec Capital	10	5,00%	566
10	Standard Bank	9	4,50%	4 623
11	Questco	6	3,00%	1 215
	AcaciaCap Advisors	6	3,00%	236

* Investment Advisers incorporate Financial Advisers and others claiming this category

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2020 1st by M&A Deal Flow.
2020 1st by BEE Deal Flow.
2020 1st by BEE Deal Value.
2020 2nd by General Corporate Finance Deal Flow.
2020 2nd by General Corporate Finance Deal Value.
2020 3rd by M&A Deal Value.
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RANKING THE SOUTH AFRICAN TOMBSTONE PARTIES (CONTINUED)

RANKINGS BY TRANSACTION VALUE

LEGAL ADVISERS

No	Company	Transaction Values R'm	Market Share %
1	**Webber Wentzel**	**1 530 474**	**91,59%**
2	Allen & Overy	59 091	3,54%
3	Cliffe Dekker Hofmeyr	41 532	2,49%
4	ENSafrica	18 039	1,08%
5	Bowmans	9 449	0,57%
6	Werksmans	9 136	0,55%
7	Baker McKenzie	1 109	0,07%
8	Herbert Smith Freehills South Africa	825	0,05%
9	Falcon & Hume	412	0,02%
	Poswa	412	0,02%
	Tugendhaft Wapnick Banchetti	412	0,02%
12	Bernadt Vukic Potash & Getz	160	0,01%

TRANSACTIONAL SUPPORT SERVICES

No	Company	Transaction Values R'm	Market Share %
1	**EY**	**104 022**	**69,10%**
2	Deloitte	16 812	11,17%
3	BDO	16 014	10,64%
4	PwC	10 843	7,20%
5	Mazars	1 800	1,20%
6	PSG Capital	576	0,38%
7	KPMG	223	0,15%
	SM Xulu	223	0,15%
9	Moore	25	0,02%
10	Andersen	2	n/a

RANKINGS BY TRANSACTION FLOW (ACTIVITY)

No	Company	No of Transactions	Market Share %	Transaction Values R'm
1	**Webber Wentzel**	**22**	**31,43%**	**1 530 474**
2	Cliffe Dekker Hofmeyr	15	21,43%	41 532
3	ENSafrica	7	10,00%	18 039
4	Bowmans	6	8,57%	9 449
5	Werksmans	4	5,71%	9 136
	Baker McKenzie	4	5,71%	1 109
7	Allen & Overy	3	4,29%	59 091
	Bernadt Vukic Potash & Getz	3	4,29%	160
9	Herbert Smith Freehills South Africa	2	2,86%	825
	Falcon & Hume	2	2,86%	412
11	Poswa	1	1,43%	412
	Tugendhaft Wapnick Banchetti	1	1,43%	412

No	Company	No of Transactions	Market Share %	Transaction Values R'm
1	**BDO**	**7**	**25,93%**	**16 014**
2	EY	5	18,52%	104 022
3	PwC	4	14,81%	10 843
4	Deloitte	2	7,41%	16 812
	Mazars	2	7,41%	1 800
	Moore	2	7,41%	25
7	PSG Capital	1	3,70%	576
	KPMG	1	3,70%	223
	SM Xulu	1	3,70%	223
	Andersen	1	3,70%	2

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It's one thing being in Africa.
It's another being African.

Africa. Everyone wants a piece of it.
Everyone wants to be a part of it.

But just having a footprint in Africa doesn't mean you know how to walk the talk.

When Imperial Logistics approached us about enabling their South African operations to become a gateway to the continent, we knew they needed so much more than just a solution that ticks all the boxes – they needed a trusted partner.

A partner with on-the-ground insight that would help them become a company that connects trade flows into and out of Africa, as it supports the development of the continent and her people.

Using our vast network and local knowledge, we connected Imperial Logistics with two homegrown companies rooted in African soil, Afropulse and Willowton Group.

Acting as their transaction advisor, JSE sponsor and settlement agent for the transaction – while also being the equity funder to the partners – we helped deliver a B-BBEE deal that strengthened their South African operations with a 51% black ownership and 30% black women ownership.

A deal that will enable active economic participation. A deal that is aligned to Imperial's purpose of connecting Africa and the world as it improves lives with access to quality products and services.

A deal that will empower Africa's people.

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GENERAL CORPORATE FINANCE ANALYSIS Q1 – Q3 2021

	Q3 2021		Q1 - Q3 2021		Q1 - Q3 2020		Q1 - Q3 2019	
	No	Value R'm	No	Value R'm	No	Value R'm	No	Value R'm
Share Issues	22	587 176	62	597 550	75	42 109	75	42 085
Share Repurchases	36	51 204	78	75 101	64	46 786	61	45 587
Restructurings	1	90 022	2	90 434	6	117 384	10	9 357
Unbundlings	5	23 530	19	55 897	14	168 312	15	594 196
Open Market Transactions	8	565 156	19	613 106	12	38 442	11	11 270
Off Market Transactions	5	4 372	21	268 845	9	13 231	22	12 966
SA Exchange Listings	6	2 738	14	39 429	13	31 761	12	2 004 653
Total	83	1 324 198	215	1 740 362	193	458 025	206	2 720 114

BIGGEST TRANSACTIONS Q1 – Q3 2021

NATURE TRANSACTION	COMPANY	DETAILS	ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE	VALUE R'M
Specific Issue	Prosus	448 991 535 'N' shares at R1 294,23 per share	R581,1bn	Jul 12	581 098
Open Market Acquisition by	Prosus	up to 45,33% stake (197 408 377 shares) in Naspers in a voluntary share swap	$37,69bn	over 3rd quarter	554 200
Off Market Disposal	Prosus	191 890 000 shares in Tencent (2% stake) at HK$595 per share	$14,6bn	Apr 7	211 700
Restructuring	Northam Platinum	restructure of group whereby Northam Platinum Holdings will acquire 100% of Northam Platinum (excluding treasury shares) on a 1:1 basis and list on the JSE to replicate listing of Northam Platinum	R90bn	Sep 7	90 022
Off Market Acquisition	Prosus	20,37 million shares in Delivery Hero (8,18% stake)	$2,6bn	Mar 31	38 220
Open Market Acquisition by	Prosus	7 727 487 Naspers shares at an average price of R3,509.35 per share	R27,18bn	over 1st quarter	27 179
General Repurchase	Prosus	16 797 155 shares at an ave €72,30 per share	€1,21bn	over 3rd quarter	20 834
Open Market Acquisition by	Prosus	5 682 647 Naspers shares at an average price of R3,242.03 per share	R18,15bn	over 2nd quarter	18 149
JSE Listing (Secondary)	Karooooo	30 926 600 shares at R525,00 per share	R16,24bn	Apr 21	16 236
Unbundling by	Anglo American	special dividend of $0,80 per share	$1bn	Jul 29	14 500

Q1 - Q3 2021 IN NUMBERS

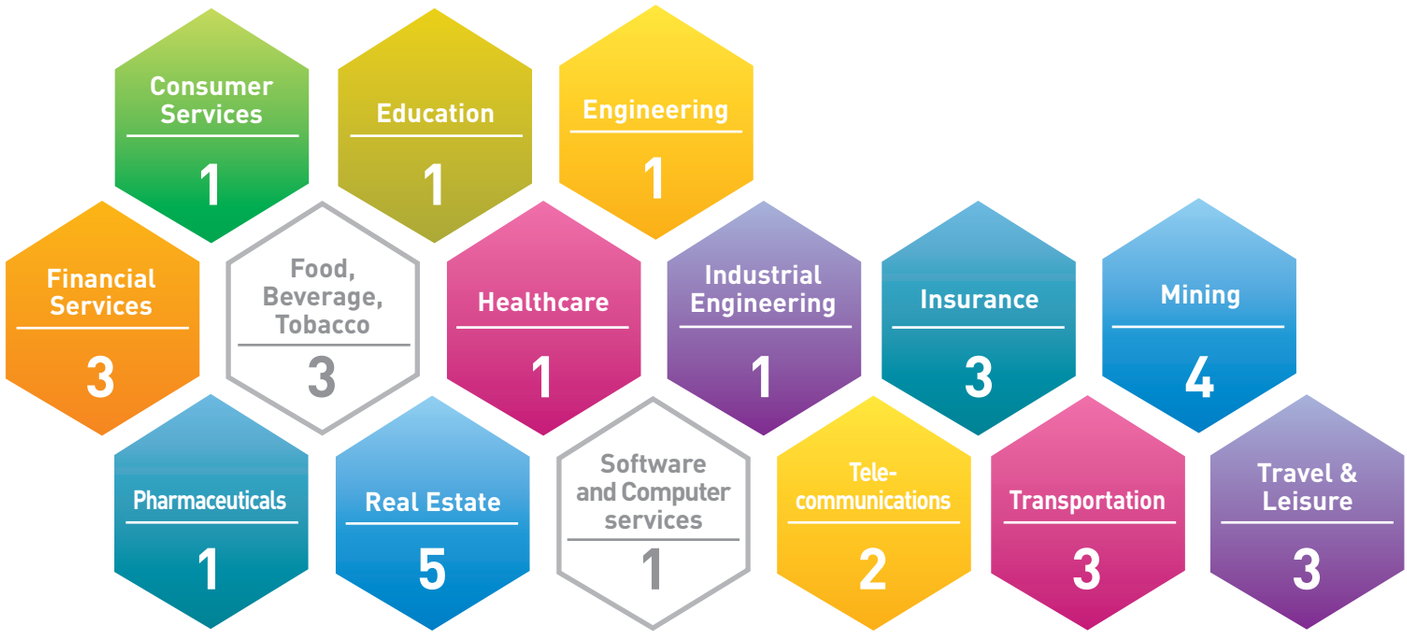
Sourced from DealMakers online

Company Listings Analysis 2017 - 2021

* excludes convertible bonds, preference shares and other instruments

	Q1-Q3 2021	2020	2019	2018	2017
JSE	7	5	5	12	21
A2X	4	8	11	10	5
CTSE (4AX)	1	3	-	2	3
ZarX	-	2	2	-	3
EESE	1	-	-	3	1
Total	13	18	18	27	33

Profit Warnings Sector Analysis Q3



Company Delistings Analysis 2017 - 2021

* excludes convertible bonds, preference shares and other instruments

** across all five SA exchanges

	2021	2020	2019	2018	2017
Q1	11	4	10	8	5
Q2	4	8	5	5	4
Q3	6	4	6	5	18
Q4	-	5	5	0	5
Total	21	21	26	18	32

NATURE OF DEAL	PARTIES	ASSET	JSE LISTING		
			ACQUIRER	SELLER	ASSET
Acquisition by	Guardrisk (Momentum Metropolitan)	Inniu Underwriting Services	Life Insurance	not listed	not listed
Disposal by	Imbalie Beauty to iBLOOM	subsidiaries Dreamnails Beauty, Enjoy Beauty, Placecol Fresh Beauty, Imbalie Beauty Training Academy and Placecol Skin Care Clinic	not listed	AltX - Personal Products	not listed
Acquisition by	Rhodes Food (RFG Holdings) from Pioneer Foods Wellingtons (PepsiCo)	frozen food business excluding operations in Botswana and eSwatini	Farming Fishing Ranching & Plantations	Foreign - US	not listed
Disposal by	Attacq Waterfall Investment (Attacq) to Equites Property Fund	50% stake in two logistics properties (the Amrod and Massbuild distribution centres) and undeveloped land within the Waterfall Logistics Hub	Industrial REITs	Diversified REITs	not listed
Disposal by †	Ellies to Imvula Education Empowerment Fund Trust	185 242 070 Ellies shares	not listed	Electrical components	Electrical components
Acquisition by	Stenprop from HIMOR (Property)	Bradley Hall Trading Estate in Wigan, UK	Industrial REITs	Foreign - UK	Foreign - UK
Acquisition by	DP World Logistics from Imperial Logistics minority shareholders	all issued ordinary in Imperial Logistics (including deferred shares held by Ukhamba)	Foreign - UAE	not listed	Transportation Services
Disposal by °	Vukile Property Fund to Windfall 121 Properties	Shoprite Lethlabile Mall	not listed	Retail REITs	not listed
Disposal by	Motus to Shahil Prestige Car Sales	Nissan, Datsun and Renault Durban motor dealership in Durban, KZN	not listed	Specialty Retailers	not listed
Disposal by	Sasol to Draslovka	sodium cyanide business	Foreign - Czech Republic	Specialty Chemicals	not listed
Acquisition by	Huge from MIA Family Trust	an additional 24,88% of Huge Distribution	Telecommunication Services	not listed	not listed
Disposal by	Sebata	30% stake in Kyostax	not listed	Computer Services	not listed
Acquisition by	Standard Bank from Liberty minority shareholders	remaining 46,3% stake in Liberty plus all preference shares	Banks	not listed	Life Insurance
Acquisition by	RMB Corvest (RMB Holdings)	equity interest in Insulation Thermal Acoustic Security (ITAS)	Real Estate Holding & Development	not listed	not listed
Disposal by	Ascendis Health SA (Ascendis Health) to Acorn Agri & Food	Animal Health Division (Ascendis Vet, Ascendis Animal Health, Kyron Prescriptions)	not listed	Pharmaceuticals	not listed
Acquisition by	WeBuyCars (Transaction Capital) from the Sasol Pension Fund	Ticketpro Dome	Consumer Lending	not listed	not listed
Acquisition by	Naspers Foundry (Naspers)	investment in Ctrl	Internet	not listed	not listed
Acquisition by ■	PayU (Prosus)	Celo	Internet	Foreign - US	Foreign - US
Disposal by	Property Lodging Investments (City Lodge Hotels) to Ukarimu (Actis Africa Real Estate 3 LP)	Hotel portfolio in Kenya consisting of the Fairview Hotel, City Lodge Hotel at Two Rivers and The Town Lodge Upper Hill	not listed	Hotels and Motels	Foreign - Kenya
Disposal by	City Lodge Hotels Africa (City Lodge Hotels) to Faraja (Actis)	City Lodge Hotel Dar es Salaam, Tanzania	not listed	Hotels and Motels	Foreign - Kenya
Disposal by	Acucap Investments (Growthpoint) to Helderberg Property Investments (Heriot REIT)	Helderberg Centre	AltX - Retail REITs	Diversified REITs	not listed
Acquisition by	Grindrod Shipping Pte (Grindrod Shipping) from Bain Capital Credit	remaining 31,14% stake in the IVS Bulk joint venture	Marine Transportation	Foreign - US	Foreign
Acquisition by	Lighthouse Capital from Wereldhave Retail France	75% stake in a portfolio of four French retail shopping centres (Le Havre, Rouen, Strasbourg)	Real Estate Holding & Development	Foreign - France	Foreign - France

* Investment Advisers include Financial Advisers and others claiming this category
■ Foreign transaction – deals by secondary listed companies transacting outside of South Africa. Not included for ranking purposes (except sponsors)
° Property deal – excluded for ranking purposes
† BEE deal

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	ATTORNEY/ LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
				R41m	Jul 6
	Exchange Sponsors	Werksmans	Suez Capital	R7,6m	Jul 6
	Rand Merchant Bank	Oosthuizen & Co		undisclosed	Jul 6
	Java Capital	Vani Chetty Competition Law; Cliffe Dekker Hofmeyr		R444,5m	Jul 6
Khanda Capital; CapitalGate Corporate Advisors; Agilequity	Deloitte	Baker McKenzie		R18,54m	Jul 6
Numis Securities	Java Capital			£20,6m	Jul 7
Morgan Stanley (SA); Deutsche Bank Int	Rand Merchant Bank	Bowmans; Webber Wentzel; Clifford Chance; Desai Law Group; HRA Advogados (Mozambique); Engling, Stritter & Partner (Namibia); Aluko & Oyebode (Nigeria)	UBS	R12,95bn	Jul 8
				undisclosed	Jul 8
				undisclosed	Jul 8
PwC Corporate Finance		Bowmans; Dentons; Dentons Int		R1,46bn	Jul 13
				undisclosed	Jul 14
				R22,3m	Jul 14
Merrill Lynch (SA); Standard Bank; Goldman Sachs (SA)	Merrill Lynch (SA); Standard Bank; Investec Bank; Simonis Storm	Bowmans; Webber Wentzel; Davis Polk & Wardwell London	EY; PwC; KPMG	R10,71bn	Jul 15
				undisclosed	Jul 15
Absa CIB; Questco	Questco	ENSafrica; Webber Wentzel; Werksmans	PwC	R770,19m	Jul 19
		Cliffe Dekker Hofmeyr		undisclosed	Jul 21
				R34m	Jul 22
				undisclosed	Jul 22
	Nedbank CIB	ENSafrica Kenya		R140,97m	Jul 23
	Nedbank CIB	ENSafrica Kenya		R319,22m	Jul 23
		Vani Chetty Competition Law		not publicly disclosed	Jul 23
	Grindrod Bank			$46,3m	Jul 27
Java Capital; BNP Paribas Real Estate	Java Capital; Perigeum Capital			€288,75m	Jul 27

NATURE OF DEAL	PARTIES	ASSET	JSE LISTING		
			ACQUIRER	SELLER	ASSET
Acquisition by ■	BHP Lonsdale Investments via subsidiary BHP Western Mining Resources (BHP) from Noront Resources minority shareholders	outstanding shares in Noront Resources for C$0.75 per share in a take-over bid	General Mining	Foreign - Canada	Foreign - Canada
Acquisition by	Imperial Capital (Imperial Logistics) from CSSAF Holdings I (The Carlyle Group), IAFPEF JJ (Ethos Private Equity), Lift Acquisitions, ITL Trustees and founders, certain individuals and key management	51% stake in J&J Group	Transportation Services	Foreign	Foreign - Mozambique
Disposal by	Sasol	shale gas assets	Foreign - Canada	Specialty Chemicals	Foreign - Canada
Acquisition by	Visual International from Agilitee (Mandla Lamba)	Agilitee SA	AltX - Real Estate Holding & Development	not listed	not listed
Acquisition by	Master Drilling Mining Services (Master Drilling)	25% stake in A&R Group	Industrial Machinery	not listed	not listed
Acquisition by	Sibanye-Stillwater from Eramet	the Sandouville nickel hydrometallurgical processing facility in Normandy, France	Platinum & Precious Metals	Foreign - France	Foreign - France
Acquisition by	Fairvest Property from H Datnow, the Marcus Family Trust, the Wilder Family Trust, the Labora Trust, the Gelz Trust and the Universal Long Term Investment Trust	internalisation of management company	Retail REITs	not listed	not listed
Acquisition by	Orion Minerals from Southern African Tantalum Mining, Nababeep Copper Company and Bulletrap Copper	mineral rights and other assets of the Okiep Copper Complex (exercise of option)	Gold Mining	not listed	not listed
Acquisition by	Zarclear from minority shareholders	shares in Zarclear	Closed End Investments	not listed	Closed End Investments
Disposal by ■	Universal Partners to Daimler UK (Mercedes Benz AG)	21.95% stake in YASA	Foreign - Germany	AltX - Diversified Financial Services	Foreign - UK
Acquisition by	Naspers Foundry (Naspers)	investment in Naked	Internet	not listed	not listed
Acquisition by	McCarthy (Bidvest)	Melrose Motor Investments	Diversified Industrials	not listed	not listed
Joint Venture	Absa Bank (Absa) and African Rainbow Energy and Power	African Rainbow Energy	Banks; not listed		not listed
Acquisition by	TFC Operations (70% owned by Kaap Agri)	The Engen False Bay 1 Stop	Specialty Retailers	not listed	not listed
Acquisition by	RMB Corvest (RMB Holdings)	Inscape Education Group	Real Estate Holding & Development	not listed	not listed
Acquisition by ■	Mast Energy Developments (Kibo Energy)	Pyebridge Power (SPV) based in Somerset, Derbyshire	General Mining	Foreign - UK	Foreign - UK
Acquisition by	Irongate	34 Southgate Ave, Cannon Hill in Queensland	Industrial & Office REITs	Foreign - Australia	Foreign - Australia
Joint Venture	Sanlam and MTN	insuretech alliance to roll out insurance and savings products	Life Insurance; Telecommunications	not listed	
Disposal by	Equites Newlands Group (60% held by Equites Property Fund) to Promontoria Logistics UK 7	undeveloped land in Barnsley, UK	Industrial & Office REITs	Foreign - UK	Foreign - UK
Acquisition by ■	Mast Energy Developments (Kibo Energy) from Balance Power Projects	Rochdale Power (SPV)	General Mining	Foreign - UK	Foreign - UK
Acquisition by ■	Woodside Petroleum from BHP	BHP Petroleum International (BHP shareholders will receive shares representing 48% of the enlarged business)	Foreign - Australia	General Mining	Foreign - Australia

* Investment Advisers include Financial Advisers and others claiming this category

■ Foreign transaction – deals by secondary listed companies transacting outside of South Africa. Not included for ranking purposes (except sponsors)

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	ATTORNEY/ LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
BMO Capital Markets; TD Securities	UBS (SA)	Blake, Cassels & Graydon; Bennett Jones		C$443,18m	Jul 27
	Rand Merchant Bank	Tugendhaft Wapnick Banchetti; Webber Wentzel; Nortons		R988,5m	Jul 29
				C$33m	Jul 29
	AcaciaCap Advisors			R22,5m	Jul 30
Investec Bank	Investec Bank			R78,6m	Jul 30
Ondra France	JPMorgan (SA)	Cliffe Dekker Hofmeyr; Clifford Chance Europe	EY & Associés	€65m	Jul 30
Java Capital	Java Capital; PSG Capital	Werksmans	Mazars; BDO	R133m	Aug 2
	Merchantec Capital			R76,5m	Aug 2
Java Capital	Java Capital		Nodus Capital	R917,83m	Aug 4
	Java Capital			£42,8m	Aug 4
				R120m	Aug 4
		Werksmans		undisclosed	Aug 4
Absa CIB; UBS (SA)		Bowmans		R6,5bn	Aug 6
		Werksmans		not publicly disclosed	Aug 8
				undisclosed	Aug 11
River Group (Cyprus)	River Group			£2,5m	Aug 11
	Investec Bank			A$36m	Aug 12
				$100m	Aug 12
Java Capital	Java Capital			£17,02m	Aug 12
River Group (Cyprus)	River Group			£222 000	Aug 16
JPMorgan Int; Barclays plc; Goldman Sachs Int; Gresham Advisory Partners; Morgan Stanley Australia	UBS (SA)	Herbert Smith Freehill; King & Wood Mallesons; Vinson & Elkins LLP		A$18,5bn	Aug 17

NATURE OF DEAL	PARTIES	ASSET	JSE LISTING		
			ACQUIRER	SELLER	ASSET
Acquisition by	HomeChoice International	85% stake in a financial services company	Diversified Retailers	not listed	not listed
Acquisition by	Sirius Real Estate	four German business parks located in Oberhausen, Frankfurt, Heiligenhaus and Öhringen and one land parcel	Real Estate Holding & Development	Foreign - Germany	Foreign - Germany
Acquisition by °	Emira Property Fund	Northpoint Industrial Park, Cape Town	Office REITs	not listed	not listed
Acquisition by	Cape Harvest Food (Sea Harvest)	BM Food	Farming Fishing Ranching & Plantations	not listed	not listed
Disposal by	Redefine Properties to Pacific Paramount Properties	Shoprite Park in Parow, Cape Town	not listed	Diversified REITs	not listed
Acquisition by	The Spar from Anadon Foods CC	Kuilsriver Superspar & Tops	Food Retailers & Wholesalers	not listed	not listed
Acquisition by †	Shoprite Supermarkets (Shoprite) from Massmart	Rhino Cash and Carry and Cambridge Food businesses, the Fuitspot business and Massfresh Meat business and 12 Masscash Cash and Carry stores	Food Retailers & Wholesalers	Diversified Retailers	not listed
Disposal by	Constantia Risk and Insurance (Conduit Capital) to Trustco Capital (Trustco)	51 769 633 Trustco shares	Diversified Financial Services	Full Line Insurance	Diversified Financial Services
Disposal by °	Texton Property Fund to RI UK SA 1 (Realty Income Corporation)	B&Q in Cornwall, UK	Foreign - UK	Diversified REITs	Foreign - UK
Acquisition by	Dis-Chem Pharmacies from Kaelo	25% stake in Kaelo	Drug Retailers	not listed	not listed
Acquisition by	Resilient REIT from Wereldhave Retail France SAS	25% stake in a portfolio of four French retail shopping centres (Le Havre, Rouen, Strasbourg)	Retail REITs	Foreign - France	Foreign - France
Acquisition by	Onelogix	Agritrans	Transportation Services	not listed	not listed
Acquisition by °	Stenprop from M&G Real Estate	the Duke portfolio consisting of five multi-let industrial estates	Industrial REITs	Foreign - UK	Foreign - UK
Acquisition by °	Stenprop	Whitacre Industrial Park	Industrial REITs	Foreign - UK	Foreign - UK
Acquisition by	Spanjaard Group from minority shareholders	all Spanjaard shares not already held	not listed	not listed	Chemicals
Acquisition by	Grindrod	49% stake in Innovative Strategic Investments 1	not listed	Marine Transportation	not listed
Acquisition by	The Prepaid Company (Blue Label Telecoms)	remaining 12% stake in Glocell Distribution	Telecommunications Services	not listed	not listed
Acquisition by	Stellar Capital Partners from minority shareholders	shares in Stellar Capital Partners (not exceeding 47,26% or 412 371 134 shares)	Equity Investment Instruments	not listed	Equity Investment Instruments
Disposal by	Tiger Brands to UAC Nigeria	49% stake in UAC Foods	Foreign - Nigeria	Food Products	Foreign - Nigeria
Disposal by †	Dis-Chem Pharmacies to BEE Consortium (Royal Bafokeng Holdings and the Black Panther Consortium [GloCap Empowerment Private Equity Fund, Zungu Pharmaceuticals and Temo Capital])	86 468 741 Dis-Chem Pharmacies shares (10,05% [6,63% and 3,42% respectively])	not listed	Drug Retailers	Drug Retailers
Acquisition by	Ladismith Cheese (Sea Harvest)	Mooivallei Suiwel	Farming Fishing Ranching & Plantations	not listed	not listed
Disposal by	Bidvest Financial Services (Bidvest) to Seriti Capital Partners	Cannon Asset Managers	not listed	Diversified Industrials	not listed
Acquisition by ■	PayU Payments (Prosus) from existing shareholders	BillDesk (IndiaIdeas.com)	Consumer Digital Services	Foreign - India	Foreign - India
Acquisition by ■	Prosus	further 2% stake in Delivery Hero	Internet	Foreign	Foreign - Germany

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° Property deal – excluded for ranking purposes
† BEE deal

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	ATTORNEY/ LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
				R45m	Aug 17
	PSG Capital			€84,8m	Aug 18
				R103m	Aug 18
		Webber Wentzel		undisclosed	Aug 19
		Vani Chetty Competition Law		not publicly disclosed	Aug 19
				undisclosed	Aug 19
Investec Bank; Standard Bank; Barclays Bank plc	Investec Bank; JPMorgan (SA)	DLA Piper; ENSafrica; CMS		R1,36bn	Aug 21
	Merchantec Capital; Vunani Sponsors; Simonis Storm Securities; JP Galda			N$93,7m	Aug 21
Investec Bank	Investec Bank			£8,96m	Aug 23
	Standard Bank			R120m	Aug 24
Java Capital	Java Capital			€76,25m	Aug 26
		Cliffe Dekker Hofmeyr		R18,6m	Aug 26
	Java Capital			£13,6m	Aug 26
	Java Capital			£2,6m	Aug 26
	AcaciaCap Advisors		Suez Capital	R8,9m	Aug 27
				undisclosed	Aug 27
				R11m	Aug 27
	Rand Merchant Bank	Cliffe Dekker Hofmeyr	PSG Capital	R400m	Aug 27
	JPMorgan (SA)			undisclosed	Aug 30
	Standard Bank	Werksmans		R2,25bn	Aug 30
				undisclosed	Aug 30
				undisclosed	Aug 31
	Investec Bank	Webber Wentzel		$4,7bn	Aug 31
	Investec Bank			$1,7bn	Aug 31

NATURE OF DEAL	PARTIES	ASSET	JSE LISTING		
			ACQUIRER	SELLER	ASSET
Acquisition by	African Infrastructure Investment Managers, a member of Old Mutual Alternative Investments (Old Mutual) from Amethis	22% stake in Sodigaz APC	Life Insurance	Foreign - France	Foreign - Burkina Faso
Acquisition by	Fortress REIT from Element Industrial and Paval Holding	Eli Park 1 in Buftea-Chitila, Romania	Diversified REITs	Foreign - Romania	Foreign - Romania
Disposal by	Stenprop to ARC Global [Guernsey] (Global Net Lease)	Trafalgar Court, Guernsey	Foreign - Guernsey	Industrial REITs	Foreign - US
Acquisition by	Argent Industrial from SE Palmer, DJ Snyman and KM Palmer	American Shutters	Industrials Suppliers	not listed	not listed
Disposal by	Grindrod Property Private Equity (Grindrod) to Gripon	entire holding in Select Industrial Real Estate UK Fund	Foreign - Jersey	Marine Transportation	Foreign - UK
Acquisition by	Vector Logistics (RCL Foods)	additional 40% stake in L&A Logistics	Farming Fishing Ranching & Plantations; Foreign - US	Foreign - Zambia	Foreign - Zambia
Disposal by	Aveng Africa (Aveng) to a consortium of private investors	Automation & Control Solutions (ACS)	not listed	Construction	not listed
Acquisition by ■	Prosus Ventures (Prosus)	investment in commerce platform ShopUp	Internet	Foreign - Bangladesh	Foreign - Bangladesh
Acquisition by	Growthpoint Properties from Feenstra Group	Joburg Stay - portfolio of three properties in the student accommodation sector	Diversified REITs	not listed	not listed
Acquisition by ■	Capital & Regional	Snowzone and Ocio y Nieve (joint operators of Snowzone Madrid)	Retail REITs	Foreign - Spain	Foreign - Spain
Disposal by	Sanlam UK (Sanlam) to Chesnara plc	100% shareholding in Sanlam Life & Pensions UK	Life Insurance	Foreign - UK	Foreign - UK
Joint Venture	Vodacom with other consortium members Safaricom (55,7%), Sumitomo Corporation (27,2%), CDC Group (10,9%) and Vodafone (nominal)	6,2% stake in newly formed Safaricom Ethiopia plc Telecommunications	Telecommunication Services	Foreign - Ethiopia	
Acquisition by	AngloGold Ashanti Holdings plc (AngloGold Ashanti) from minority shareholders	outstanding shares in Corus Gold (80,5%)	Gold Mining	Foreign - Canada	Foreign - Canada
Acquisition by	Karooooo	70,1% stake in Picup Technologies	Computer Services	not listed	not listed
Acquisition by	Stor-Age Property REIT	two trading self storage properties (Silver Park Self Storage) in Cape Town	Storage REITs	not listed	not listed
Joint Venture	Stor-Age Property REIT and Nedbank Property Partners (Nedbank)	joint venture to develop new self-storage properties	Storage REITs; Banks	not listed	
Disposal by	Shoprite Checkers Uganda (Shoprite) to Majid Al Futtain	six stores in Uganda to trade under the Carrefour banner	Foreign - United Arab Emirates	Food Retailers & Wholesalers	Foreign - Uganda
Acquisition by	Sibanye-Stillwater from ioneer	50% stake in Rhyolite Ridge Lithium-Boron Project (jv) in Nevada	Platinum & Precious Metals	Foreign - Australia	Foreign - US
Acquisition by ■	Kibo Energy from EQTEC plc	54,54% interest in proposed 25 MWe Billingham waste gasification and power plant at Haverton Hill, Teesside in UK	General Mining	Foreign - UK	Foreign - UK
Disposal by	Afhco (SA Corporate Real Estate) to Firstmile Properties JHB CBD Crown Mines (Lonsa Group)	portfolio of nine properties in the Johannesburg inner-city consisting of residential, commercial rental businesses and development land	not listed	Diversified REITs	not listed
Disposal by	Steinhoff Africa Property Services (Steinhoff International) to Kilokox Precision	Lurand Investments (property portfolio)	not listed	Diversified Retailers	not listed

* Investment Advisers include Financial Advisers and others claiming this category

■ Foreign transaction – deals by secondary listed companies transacting outside of South Africa. Not included for ranking purposes (except sponsors)

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	ATTORNEY/ LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
				undisclosed	Aug 31
				€31,4m	Sep 2
Numis Securities	Java Capital			£55m	Sep 3
	PSG Capital			R56,9m	Sep 3
Nedbank CIB	Nedbank CIB			£17,39m	Sep 6
				undisclosed	Sep 6
	UBS (SA)	Webber Wentzel		R70m	Sep 6
				undisclosed	Sep 8
				undisclosed	Sep 8
				undisclosed	Sep 9
Rothschild & Co (SA); Rothschild & Co Int	Standard Bank			£39m	Sep 13
	UBS (SA)			undisclosed	Sep 13
RBC Capital Markets; BMO Capital Markets	Standard Bank	Stikeman Elliott; Cravath, Swaine & Moore; Hogan Lovells US; Cassels Brock & Blackwell; Dorsey & Whitney		$370m	Sep 13
	Merrill Lynch (SA)			R70m	Sep 13
	Investec Bank			R108,1m	Sep 14
		Cliffe Dekker Hofmeyr		undisclosed	Sep 14
				undisclosed	Sep 15
Macquarie Advisory and Capital Markets South Africa	JPMorgan (SA)	Davis Polk & Wardwell; Ashurst		$490m	Sep 16
River Group (Cyprus)	River Group; Hybridan; RFC Ambrian			£3m	Sep 16
	Nedbank CIB	Cliffe Dekker Hofmeyr		R546m	Sep 16
		Werksmans		not publicly disclosed	Sep 16

NATURE OF DEAL	PARTIES	ASSET	JSE LISTING		
			ACQUIRER	SELLER	ASSET
Disposal by	Sanlam UK (Sanlam) to funds managed by Oaktree Capital Management	Sanlam Private Investments (UK) and Sanlam Wealth Planning (UK)	Foreign - US	Life Insurance	Foreign - UK
Acquisition by	Standard Bank	25% equity interest in HelloChoice	Banks	not listed	not listed
Acquisition by °	Transcend Residential Property Fund from IHS Fund II SA Rental Trust 2	the Block Portfolio consisting of 253 residential units situated in Bester Road in Unclear, Cape Town	Residential REITs	not listed	not listed
Acquisition by °	Transcend Residential Property Fund from Renico Construction	the Stoneleigh Portfolio consisting of 189 residential units located in North Boundary Road in Helderwyk, Brakpan, Gauteng	Residential REITs	not listed	not listed
Acquisition by	Sanlam from NSIA	Malian life and non-life activities and will cede its non-life insurance activities in Congo	Life Insurance	Foreign - Côte d'Ivoire	Foreign - Mali
Disposal by	Sanlam to NSIA	non-life insurance activities in Congo and Guinea and life insurance activities in Togo and Gabon	Foreign - Côte d'Ivoire	Life Insurance	Foreign - Togo; Foreign - Gabon; Foreign - Congo; Foreign - Guinea
Disposal by °	Putprop to Brits Hardware	1 - 25 Piet Rautenbach Street, Brits	not listed	Real Estate Holding & Development	not listed
Disposal by	Hystead (60% owned by Hyprop Investments) to Balkans Real Estate	Delta City in Belgrade	Foreign - Serbia	Retail REITs	Foreign - Serbia
Reverse takeover	Fairvest Property of Arrowhead Properties	Arrowhead Properties [merged entity to be named Fairvest]	Retail REITs	not listed	Diversified REITs
Acquisition by	York Agri (York Timber)	PVT Timber Products, Twycross Farms and Twycross Packers	Paper	not listed	not listed
Acquisition by	AfroCentric Health (AfroCentric Investment) from Sanlam Health Solutions (Sanlam)	Gap Cover business	Health Care Services	Life Insurance	not listed
Acquisition by ■	South32 from MCA Metals (Mitsubishi)	additional 25% stake in Mozal Aluminium (exercise of pre-emptive right)	General Mining	Foreign - Austria	Foreign - Mozambique
Disposal by ■	Deutsche Konsum REIT-AG to a German institutional fund	portfolio of seven retail park assets in Germany	Foreign - Germany	Retail REITs	Foreign - Germany
Acquisition by	Bid Corporation from various vendors	Craven Foods (Bunbury, Western Australia), COAR (Milan, Italy), Leão Marinho (São Sebastião, Brazil) and Fein Feinkost (Ingolstadt, Germany)	Food Retailers & Wholesalers	Foreign	Foreign
Disposal by	enX to CFAO Holdings South Africa	the southern African handling business EIE Group (including Saficon Industrial Equipment, 600SA Holdings and Uni-Cape Equipment)	not listed	Diversified Industrials	not listed
Acquisition by	Super Group	Regional Wholesale Service	Transportation Services	not listed	not listed
Disposal by	Georgem Holdings to One Spire	3 000 000 Karooooo shares	not listed	not listed	Computer Services
Acquisition by	Standard Bank from Qondo AI	45% stake in Qondo AI	Banks	not listed	not listed
Disposal by	SA Retail (SA Corporate Real Estate) to various parties	nine properties (retail and residential)	not listed	Diversified REITs	not listed
Disposal by	Olympus (Hosken Consolidated Investments) to Dorpstraat Capital Growth Fund	65% stake in Olympus Village	not listed	Diversified Financial Services	not listed
Disposal by	Hosken Consolidated Investments to West Property Fund	80% stake in HCI Westlake	not listed	Diversified Financial Services	not listed
Disposal by	Redefine Properties to Refinery Property Investment	Wingfield Park	not listed	Diversified REITs	not listed

* Investment Advisers include Financial Advisers and others claiming this category
■ Foreign transaction – deals by secondary listed companies transacting outside of South Africa. Not included for ranking purposes (except sponsors)
° Property deal – excluded for ranking purposes

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	ATTORNEY/ LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
Rothschild & Co (SA); Rothschild & Co Int	Standard Bank	White & Case (London)		£140m	Sep 20
				undisclosed	Sep 21
Birkett Stewart McHendrie	Questco	Tonkin Clacey	KPMG	R150,5m	Sep 22
Birkett Stewart McHendrie	Questco	Tonkin Clacey	KPMG	R102,5m	Sep 22
				undisclosed	Sep 22
				undisclosed	Sep 22
	Merchantec Capital			R17m	Sep 23
	Java Capital			€69m	Sep 23
Java Capital; Nedbank CIB; Ferryman Capital Partners	Java Capital; Nedbank CIB	Werksmans; Cliffe Dekker Hofmeyr	Mazars; BDO	R2,22bn	Sep 27
				R64m	Sep 28
	Sasfin Capital			undisclosed	Sep 29
	UBS (SA)	Cliffe Dekker Hofmeyr		$250m	Sep 30
	PSG Capital			€47,2m	Sep 30
				undisclosed	Sep 30
	Java Capital		EY	R700m	Sep 30
				undisclosed	Sep 30
		Werksmans		not publicly disclosed	not announced
		Werksmans		undisclosed	not announced
		Cliffe Dekker Hofmeyr		R281,15m	not announced
		ENSafrica		R105,3m	not announced
		ENSafrica		R232m	not announced
		Vani Chetty Competition Law		undisclosed	not announced

DEALMAKERS LEAGUE TABLE CRITERIA

1 – INCLUSION CRITERIA

1.1 A merger or acquisition results in new parties acquiring exposure to new revenue/earnings streams or an exposure to new growth opportunities that they did not have prior to the conclusion of the transaction in question. The economic substance of the entity shareholders are exposed to must change.

General Corporate Finance covers transactions where this is not the case, regardless of the mechanism used to implement the transaction. If there is no agreement concluded with a third party that achieves new economic exposure for the entity in question then the transaction falls under General Corporate Finance.

1.2 For a deal to qualify for ranking:

- at least one entity involved (buyer, seller or target) must be listed on one of SA's stock exchanges (JSE, ZARX, A2X, 4AX or EESE); or
- the entity is a subsidiary (50% + 1 share) held by a South African Exchange listed firm; or
- if the entity is an associate (less than 50% + 1 share) and triggers an announcement on Sens by the listed company, then the transaction will be considered for inclusion in the ranking tables under the listed entities name.

1.3 For deals to be included in the database and used for ranking purposes, the following information must be provided for each submission:

- the name of the target <u>and</u> at least one party to the transaction.
- deal description.
- advisory role and client name.
- date of announcement.
- deal value. If this is not publicly disclosed, the value may be submitted confidentially and used for ranking purposes only; otherwise the deal will count only towards deal flow.

1.4 (i) Deals and transactions which are classified as affected transactions where the Takeover Regulations apply will be captured only when

- a firm intention or other regulatory announcement has been issued accompanied by
- a price, and
- a timetable or financial effects

(ii) Any other deals and transactions submitted by advisory firms which are not classified as an affected transaction or where the Takeover Regulations do not apply will be captured only when submitted with proof of

- the transaction i.e. front page of the contract
- role undertaken, and
- price

1.5 The acquisition and disposal of properties by SA Exchange listed property companies will be included for ranking purposes if:

- a category 2 announcement is issued and one side has an external financial adviser. Where large listed property companies use their own internal counsel, deals will be assessed on a case by case basis; or
- if below R200m, the deal will only be included if there is an external financial adviser to one party.
- If several transactions are announced simultaneously, these will be recorded separately (it is necessary to set this out because of complaints regarding the occasional multiplicity of property deals announced simultaneously but involving different principals). However, in the case of the acquisition of a property portfolio from a single vendor, the transaction will be recorded as a single deal unless adequate proof is provided demonstrating that the major shareholders of portions of the portfolio differ significantly one from the other.

1.6 Private equity deals will be considered as an M&A transaction if:

- the private equity entity is listed; or
- the target or stake acquired is a South African Exchange listed company; or
- the private equity entity is a subsidiary of a South African Exchange listed company and the deal is transacted 'on balance sheet' (proof of this must be provided). In addition, there must be external advisers to both parties. Where an in-house adviser is used, this adviser must provide a confirmatory letter from the other party.

1.7 Deals that are subsequently cancelled, withdrawn or which are deemed to have failed will not be included for ranking purposes. They will be recorded, nevertheless, for record purposes.

- An exception to this rule is where deals fail as a result of successfully conducted hostile defences. A hostile takeover is defined as one launched against the wishes of management and directors. Credit will be applied only to those acting on behalf of a successful defence.

1.8 Foreign deals defined by **DealMakers** as deals between principals domiciled outside South Africa, but a least one has a dual listing in South Africa, will only qualify for ranking purposes if:

- SA subsidiaries of the contracting parties played a critical role in the deal process; or
- SA service providers can demonstrate the extent to which they played a role in the deal process.
- For any deal to be included for ranking purposes, the deal must have been initiated, managed and/or implemented by the SA service provider/providers. Where the deal is between internationally domiciled and/or listed companies, the deal will only qualify if the SA service provider, or the SA branch/arm of an international service provider, was the prime mover, manager or implementer of the transaction. Proof of the SA service provider's role (or the role of the SA branch of an internationally-based service provider) will depend significantly on the allocation of fees earned in respect of such an international deal and **DealMakers** may request appropriate verification before agreeing to the deal's inclusion for ranking purposes.

1.9 Deals transacted in Africa by SA Exchange listed companies will also be captured in the **DealMakers Africa** and **Catalyst** magazine tables.

2 – EXCLUSION CRITERIA

2.1 Options will not be included until such time as these are exercised. No exceptions to this rule will be permitted.

2.2 Deals and transactions executed in the normal course of business (other than investment holding companies, permanent capital vehicles whose primary objective is to acquire businesses, SPACs and the like):

- Subject to the inclusion criteria, activity undertaken by companies in the normal course of their business will not be recognised by **DealMakers** for inclusion in the ranking tables. If a dispute as to the interpretation of "normal course of business," this will be dealt with in terms of adjudication.

2.3 Announcements made in respect of section 122(3)(b) of the Companies Act are deemed by **DealMakers** as normal course of business and not included.

2.4 The sale by banks and financial institutions of stakes in property which have been developed and on sold will not be classified as an M&A transaction.

2.4 Foreign deals defined by **DealMakers** as deals between principals domiciled outside South Africa will not qualify for rankings unless certain criteria are met (see inclusion criteria). In the case of property deals, the minimum value of R200m applies.

2.5 Deals announced in a listing document prior to a company's listing will be included only in the unlisted tables.

DEALMAKERS LEAGUE TABLE CRITERIA (continued)

3 – TREATMENT OF DEAL/ TRANSACTION VALUE

3.1 All deals and transactions (transactions is the word applied by **DealMakers** to General Corporate Finance activity) are dated for record purposes on the first announcement date (except for listings, for which the record date is the date of the actual listing). Refer to inclusion criteria 1.4 and 3.4 below.

3.2 Only equity value will be used and not the enterprise value. **DealMakers** does not include debt.

3.3 Where discrepancies occur in the deal values claimed, **DealMakers** reserves the right to challenge these, if necessary, by requesting clarity from the clients where this is appropriate.

3.4 Changes in the value at which deals are transacted will be adjusted when the annual rankings are computed.

3.5 Schemes of arrangement, rights issues and share repurchases are valued for record purposes at the maximum number of shares and value that can be purchased or issued until such time as the results are announced.

3.6 Only the value of the SA exchange listed partner's stake in a joint venture will be captured and credited to advisory parties.

3.7 The value of unbundlings will be treated as follows:

- if the asset being unbundled is listed then the market value will be used.
- if the asset(s) is unlisted then the value will only be applied when listed or when details are made available by way of a public announcement.
- if not to be listed then value must be provided by the client.

3.8 Earn-outs or future additional payments based on the ability of the asset acquired to achieve certain financial targets are not included. Should targets be met, the value will be added to the original transaction on date first captured.

3.9 No value will be credited to the listing of companies on a secondary SA exchange if already listed on the JSE and vice versa.

4 – ADVISER CREDITS

4.1 Credit for ranking purposes is recorded for roles performed in respect of:

- Investment advisers
- Sponsors
- Legal advisers
- Transactional Support Services (includes due diligence, independent expert and other financial and bespoke legal advice as well as reporting accountant work)
- PR

4.2 So as to achieve fairness, rankings are recorded in two fields:

- Deal Value
- Deal Flow (activity, or the number of deals)

4.3 Advisers that seek credit for involvement in such deals must be able to demonstrate unequivocally their involvement:

- by the appearance of the adviser name and/or logo on the announcement.
- advisers that claim involvement in a deal or transaction, on which their name and/or company logo does not appear on the published announcement recording their specific role, will be asked to provide confirmation from the principals regarding their role/roles. This may be in the form of a copy of the mandate, an email or letter.
- the same will apply to PR firms but credit will not be awarded on the basis of annual retainers but rather on the specific mandate.

4.4. The role of sponsor will be awarded only to specifically announced deals and transactions. Those deals announced in company results will not automatically be credited. The onus will be on the sponsor firm to provide proof of work carried out on the deal claimed. In addition, where a transactional sponsor is named in addition to the company sponsor, only the transactional sponsor will be given credit unless involvement of both parties can be demonstrated.

4.5 Where internationally-based service providers are acknowledged as having worked on a particular deal, it is a requirement that they produce acceptable evidence that a significant portion of the work involved was conducted by their South African office. Failure to provide this in the form, for example, of a letter or email from a client will result in **DealMakers** not crediting that particular deal to that service provider.

4.6 Where advisers make use of other advisers (secondary advisers), and provided the work undertaken can be verified, secondary advisers will only be credited for ranking purposes to Legal Advisers working on capital markets transactions.

4.7 Advisers on the provision of debt are not included.

4.8 The full value of each deal is credited to each advisory firm providing a service in respect of that deal. However, if a deal involves more than one listed SA Exchange company, the transaction will be split so as to reflect each listed company's stake. Advisers will be credited accordingly.

4.9 Where an advisory firm is advising a member of a consortium, the full value of the deal will be credited – the value will not be pro-rated to the size of the stake of the party advised.

4.10 Where advisers act on both sides of any deal, the deal will be brought to account only once.

4.11 When there is a merger between two service providers, the merged entity may elect to include, as part of the annual rankings, one or the other party's transactions prior to the merger (but not both).

5 – GUIDELINES

5.1 Submissions for the quarter are due by the end of the first week in the following quarter.

5.2 For deals to be included in the database and used for ranking purposes, the following information must be provided for each submission:

- the name of the target and at least one party to the transaction; and
- deal description; and
- advisory role and client name; and
- date of announcement; and
- deal value. If this is not publicly disclosed, the value may be submitted confidentially and will be used for ranking purposes only.

5.3 All deals and transactions are checked by **DealMakers**; any discrepancies that arise will be queried.

5.4 Complaints, queries, objections and adjudication:

- These must be lodged with **DealMakers** not later than the end of the next following quarter, so in respect of Q2 by the end of Q3.
- In respect of Q4, these must be lodged by the close of business on January 21 or the closest business day. No exceptions will be permitted. This is to ensure that all advisers are aware of transactions to be used in the final ranking process.

5.5 The submission of additional deals for quarters prior must follow the same deadlines as in 5.4. In respect of Q4, these must be lodged by January 16 or the closest business day.

5.6 So as to avoid tendentious argument, **DealMakers** has appointed an independent adjudicator before whom matters in dispute may be laid. The adjudicator's ruling will be final in each case and no further submissions will be accepted after a ruling has been made.

- **DealMakers** is conscious that challenges may contain sensitive information. All challenges will be treated, therefore, as highly confidential. Challengers' identities will be protected at all times.
- Challenges may be made only through **DealMakers**. Advisory firms on both sides may submit documentation supporting their arguments to **DealMakers** who will pass on all information to the independent adjudicator.
- **DealMakers** reserves to itself the right to challenge claims similarly.

5.7 All entities involved in deal-making and/or corporate finance transactions are asked to sign off a summary document prepared by **DealMakers** to ensure that no clerical errors have occurred. No response will indicate acceptance.

5.8 Unlisted SA and Africa deal tables have their own set of criteria.

5.9 **DealMakers** does not accept responsibility for any errors or omissions.

UNLISTED DEALS Q3 2021

NATURE OF DEAL	PARTIES	ASSET
Joint Venture by	Ukheshe Technologies and ForexPeople	boostXB
Acquisition by ■	Clayton Dubilier & Rice from Platinum Equity	Multi-Color Corporation
Acquisition by ■	Phoenix Parentco [EQT Private Equity and Goldman Sachs Asset Management] from Pamplona Capital Management	Parexel
Acquisition by	Qatar Petroleum from TotalEnergies	25% of the South Outeniqua block, 30% of the DWOB block and 29,17% of the OBD block
Investment by	Nedbank, Investec and Compass Venture Capital, with new investors Technova, Grand Bay Ventures, Tahseen Consulting and Kepple Africa Ventures	in Omnisient
Acquisition by †	Imbani Private Equity	a stake in Insulation Thermal Acoustic Security Company (ITAS)
Investment by	Enygma Ventures	in Koa Academy
Investment by	Expert DOJO, Oui Capital, Basecamp Fund, Soma Capital, Hustle Fund, Future Africa, LoftyInc and some angel investors	in Akiba Digital
Investment by	Launch Africa	in Strove
Investment by	Knife Capital and Allan Gray E-Squared Ventures	in Kandua [pre-series A]
Acquisition by ■	Stonehage Fleming from Maitland	the Private Client Services business
Acquisition by	Legacy Africa Capital Partners	a 60% stake in Penflex
Acquisition by	Iqbusiness	a controlling stake in ITQ Business Solutions
Investment by	Enygma Ventures	in Feelgood Health
Acquisition by	The Government Employees Pension Fund (GEPF) represented by the Public Investment Corporation (PIC) from Menlyn Maine Investment	stake in Central Square, Menlyn Maine
Acquisition by	The Government Employees Pension Fund (GEPF) represented by the Public Investment Corporation (PIC)	a 35% stake in InvestCo, which holds the food, agro and services businesses of Thebe Investment Corporation
Disposal by	Philafrica Foods (Afgri) to Nedan Oils & Proteins	soya oil crushing plant, trading under the names Nedan, Soya Ya Ka and Promax
Acquisition by ■	ASK Chemicals from SI Group	majority of its global Industrial Resin business
Investment by	Lireas Holdings, the ASISA ESD Fund, E4E, Vunani Capital and the Old Mutual Enterprise & Supplier Development Fund	in Pineapple [Series A]
Investment by	Dragoneer Investment Group, Breyer Capital, HOF Capital, The Raba Partnership, 4DX Ventures, TO Ventures plus existing investors Partech, Velocity Capital Fintech Ventures, Orange Ventures and Quona Capital	in Yoco [Series C]
Acquisition by	Barack Obama	a minority stake in NBA Africa
Acquisition by †	DLO Resources	a 51% stake in Conco Energy Solutions
Acquisition by	ALPLA Group	Verigreen Packaging
Acquisition by ■	Helios Fairfax Partners	a 56.3% stake in Ascendant Learning (parent company of Nova Pioneer)
Investment by	E Squared Investments	in Khula
Investment by	Edge Growth and the ASISA ESD initiative	in I-G3N
Investment by	Founders Factory Africa plus some angel investors	in My Health Africa Group
Acquisition by	Mortimer Motors and Mortimer Thesele Group	Hyde Park Toyota (Sandton South Motors)
Acquisition by	Main Street 1522 t/a TradeOn	Davy Foods (which operates KFC outlets in Secunda, Standerton and Hendrina in Mpumalanga)

* Investment Advisers include Financial Advisers and others claiming this category
■ Foreign transaction – not included for ranking purposes (except sponsors)
† BEE deal

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	INVESTMENT ADVISER – FOREIGN	ATTORNEY/ LEGAL ADVISER	LEGAL ADVISER - FOREIGN		
				undisclosed	Jul 1
	BofA Securities; Barclays, Credit Suisse; Deutsche Bank Securities; RBC Capital Makets; LLC; UBS Investment Bank; Wells Fargo Securities	Bowmans	Latham & Watkins; Debevoise & Plimpton; Keating Muething & Klekamp	undisclosed	Jul 2
	Evercore; Goldman Sachs; Jefferies	Bowmans	Kirkland & Ellis; Simpson Thacher & Bartlett	$8,5bn	Jul 2
				undisclosed	Jul 4
				$1,4m	Jul 6
				undisclosed	Jul 13
				R4m	Jul 14
				$1,1m	Jul 16
				R4m	Jul 16
				undisclosed	Jul 20
	Stonehage Fleming Corporate Finance	Bowmans	McDermott Will & Emery; Cains Advocates; Macfarlanes LLP	undisclosed	Jul 20
				undisclosed	Jul 21
				undisclosed	Jul 21
				R4m	Jul 21
		Cliffe Dekker Hofmeyr		undisclosed	Jul 23
		Lawtons Africa		undisclosed	Jul 23
				undisclosed	Jul 23
		White & Case (South Africa)	White & Case LLP	undisclosed	Jul 23
				R80m	Jul 26
				$83m	Jul 27
				undisclosed	Jul 27
				undisclosed	Jul 28
				undisclosed	Jul 29
				undisclosed	Jul 29
				undisclosed	Aug 3
				R20m	Aug 3
	Stratlink			undisclosed	Aug 4
		Werksmans		undisclosed	Aug 4
				undisclosed	Aug 4

UNLISTED DEALS Q3 2021

NATURE OF DEAL	PARTIES	ASSET
Investment by	The Delta	in Revio
Acquisition by	DGB	a majority stake in Backsberg
Acquisition by	Schurco Slurry	KETO Pumps South Africa
Disposal by	Gattaca plc	SA operations comprising of Kithara Investments, Kula Nathi Investments, Networkers International and Networkers International South Africa
Acquisition by ■	Deutsche Post DHL	J.F Hillebrand Group and its subsidiaries
Investment by	Seed South	myFanPark
Acquisition by	AIH Limited	Kwikspace Modular Buildings
Investment by	Verge Healthtech Fund and angel investors	in VitruvianMD
Acquisition by	Gridworks and New GX	a stake in Sustainable Power Solutions Investments
Acquisition by	Gridworks from Trigen Group and Genfin	an additional stake in Sustainable Power Solutions Investments [now has a majority stake]
Acquisition by	Zip Co	the remaining shares in Payflex, not already owned [initial shareholding was 26,25%]
Acquisition by	iStar [Avnon Group]	ALTI
Acquisition by	Andermatt Group	a majority stake in Vital Bugs
Acquisition by	Furniture Removals South Africa (SAFR)	Basingstoke Moves
Acquisition by	LeapServe Renewable Investments	a stake in Solar Saver SA
Acquisition by	Morpho Investment Company One and Morpho Investment Company Two [IDEMIA]	a stake in Afiswitch
Acquisition by	Isipho Capital Motors t/a Bates Motors	a stake in Integrated Auto Services t/a Isuzu Truck World
Acquisition by	AlphaWealth	a majority stake in Holborn Financial
Acquisition by	Gallo Music Investments	a 45% stake in Content Connect Africa
Acquisition by	Toppan Gravity [Toppan Leefung and Toppan]	a majority stake in Face Technologies
Acquisition by	Accenture	King James Group
Acquisition by	Afrika Tikkun and Maharishi Invincibility Institute	T-Systems ICT Academy
Acquisition by	Amethis	a minority stake in Avacare
Disposal by	Consolidated Building Material [Consolidated Infrastructure Group in business rescue]	Drift Supersand
Disposal by	Consolidated Building Material [Consolidated Infrastructure Group in business rescue]	West End Claybrick
Investment by	Illumina Accelerator	in BixBio
Acquisition by	Warner Music South Africa	Coleske
Acquisition by	Quest Petroleum (Petredec)	a stake in Vryheid Petroleum t/s VP Fuel & Lubricants
Acquisition by	South African Industrial Group (SAIG)	a stake in Paul Bayvel Eyethu Sales
Acquisition by	Nurture Foods Investment (Exeo Capital)	a stake in Fairview Cheese Company
Acquisition by	RH Property Development from Bestgro Investments	a stake in Benchmark Group
Acquisition by	Reset Properties	a stake in Academia Student Accomodation
Acquisition by	Industrial Development Corporation	a 43.7% stake in New Okiep Mining Co

* Investment Advisers include Financial Advisers and others claiming this category
■ Foreign transaction – not included for ranking purposes (except sponsors)

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	INVESTMENT ADVISER – FOREIGN	ATTORNEY/ LEGAL ADVISER	LEGAL ADVISER - FOREIGN		
				R15m	Aug 5
				undisclosed	Aug 11
				undisclosed	Aug 16
		Bowmans		undisclosed	Aug 17
		Bowmans	Gleiss Lutz	€1,5bn	Aug 17
				undisclosed	Aug 19
				undisclosed	Aug 19
				undisclosed	Aug 20
		Webber Wentzel	Addleshaw Goddard; DLA Piper	$22m + $18m	Aug 23
				$9m	Aug 23
	Monash Advisory	White & Case (South Africa)		maximum of R184,4m	Aug 25
				undisclosed	Aug 29
				undisclosed	Aug 31
				undisclosed	Sep 1
				undisclosed	Sep 2
				undisclosed	Sep 2
				undisclosed	Sep 2
				undisclosed	Sep 3
				undisclosed	Sep 6
		Werksmans		not publicly disclosed	Sep 6
		ENSafrica		undisclosed	Sep 7
				undisclosed	Sep 8
				undisclosed	Sep 9
Birkett Stewart McHendrie		Werksmans		not publicly disclosed	Sep 9
Birkett Stewart McHendrie		Werksmans		not publicly disclosed	Sep 9
				undisclosed	Sep 15
				undisclosed	Sep 16
				undisclosed	Sep 16
				undisclosed	Sep 16
		Werksmans		not publicly disclosed	Sep 16
				undisclosed	Sep 16
		Werksmans		not publicly disclosed	Sep 16
				undisclosed	Sep 16

UNLISTED DEALS Q3 2021

NATURE OF DEAL	PARTIES	ASSET
Acquisition by	Finclusion	a strategic stake in HelloHR
Acquisition by †	Joe Public United	a majority stake in newly named Joe Public Durban
Acquisition by	Frogfoot Networks from Link Africa	Western Cape fibre-to-the-home (FTTH) network
Acquisition by †	Sakhumnotho Group	up to 30% of Everlectric
Acquisition by	Kukama Diamonds (Botswana Diamonds)	outstanding third-party interests in Vutomi Mining and Razorbill Properties 12
Disposal by †	Botswana Diamonds to Baroville Trade and Investments 02	a 26% stake in Vutomi Mining
Disposal by	Botswana Diamonds to Red Sky Trust	its stake in Evoid [dormant - holds the Mooikloof and Palmietgat prospecting licences]
Acquisition by	Go Rentals	Quick IT Rentals
Acquisition by	Kazera Gold from Tectonic Gold	a 60% stake in Whale Head Minerals
Acquisition by	One Thousand & One Voices (1K1V)	a minority stake in Digital EcoSystems (DigiCo) [DNI Group]
Disposal by	Unigro Financial Services (Afgri) to Wesbank	CML book for Jul - Sept 2021
Disposal by	Capital Eye Investments to Smollan Group SA	its entire stake in Argility
Acquisition by	Africa Forestry Fund II	an additional stake in Vuka Timbers [will acquire control]
Acquisition by	Izimbiwa Handling Systems	Izimbiwa Coal
Acquisition by	SMSA Transport CJSC	Namlog Group [Namibia Logistics, Mellets Transport, Strategic Logistics Investments and gentex Associates]

* Investment Advisers include Financial Advisers and others claiming this category

† BEE deal

UNLISTED DEALS Q1 – Q3 2021 RANKINGS

LEGAL ADVISERS RANKINGS BY DEAL VALUE

No	Company	Deal Values R'm	Market Share %
1	ENSafrica	2 519	22,90%
2	Werksmans	2 503	22,75%
3	Cliffe Dekker Hofmeyr	1 973	17,93%
4	Webber Wentzel	1 884	17,12%
5	Nortons	884	8,03%
6	Vani Chetty Competition Law	702	6,38%
7	vdma	203	1,84%
8	White & Case (South Africa)	184	1,68%
9	Bowmans	150	1,36%
10	Boy Louw Attorneys	undisclosed	n/a
	Eversheds Sutherland (SA)	undisclosed	n/a
	Falcon & Hume	undisclosed	n/a
	Fasken South Africa	undisclosed	n/a
	Lawtons Africa	undisclosed	n/a
	Shepstone & Wylie	undisclosed	n/a
	Van der Merwe and Robertson	undisclosed	n/a

LEGAL ADVISERS RANKINGS BY DEAL FLOW (ACTIVITY)

No	Company	No of Deals	Market Share %	Deal Values R'm
1	Bowmans	28	26,42%	150
2	Werksmans	23	21,70%	2 503
3	Cliffe Dekker Hofmeyr	16	15,09%	1 973
4	Webber Wentzel	11	10,38%	1 884
5	ENSafrica	7	6,60%	2 519
6	Vani Chetty Competition Law	4	3,77%	702
7	vdma	3	2,83%	203
8	Nortons	2	1,89%	884
	White & Case (South Africa)	2	1,89%	184
	Boy Louw Attorneys	2	1,89%	undisclosed
	Eversheds Sutherland (SA)	2	1,89%	undisclosed
	Fasken South Africa	2	1,89%	undisclosed
13	Falcon & Hume	1	0,94%	undisclosed
	Lawtons Africa	1	0,94%	undisclosed
	Shepstone & Wylie	1	0,94%	undisclosed
	Van der Merwe and Robertson	1	0,94%	undisclosed

TOMBSTONE PARTIES				ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	INVESTMENT ADVISER – FOREIGN	ATTORNEY/ LEGAL ADVISER	LEGAL ADVISER - FOREIGN		
				undisclosed	Sep 21
				undisclosed	Sep 21
		Cliffe Dekker Hofmeyr		undisclosed	Sep 28
				undisclosed	Sep 28
				£627 000	Sep 29
				$316 333	Sep 29
				R320 374	Sep 29
				undisclosed	Sep 30
				£250 000	Sep 30
				R200m	Sep 30
		vdma		R56m	over the 2nd quarter
		Cliffe Dekker Hofmeyr		not publicly disclosed	not announced Q3
		Werksmans		undisclosed	not announced Q3
		Werksmans		not publicly disclosed	
		Werksmans		not publicly disclosed	not announced Q3

UNLISTED RANKING CRITERIA

Ranking the unlisted deals applies, at this stage, to Legal Advisers only.

1. For a deal to qualify for ranking, it must involve at least one SA entity.
2. Legal Advisers that seek credit for involvement in such deals must be able to demonstrate unequivocally their involvement, if necessary by reference to one or several of the principals.
3. The full value of each deal must be confirmed by the client or appear on documentation provided. If confidential, the value will be treated as such, and used only for ranking purposes.
4. Where advisers act on both sides of the deal, the deal will be brought to account only once.
5. So as to achieve fairness, rankings are recorded in two fields:
   Deal Value
   Deal Flow (activity, or the number of deals)
6. Where discrepancies occur in the deal values claimed, **DealMakers** reserves the right to challenge these if necessary, by requesting clarity from the principals where this is appropriate. Changes in the prices at which deals are transacted will be adjusted when the annual rankings are computed.
7. Sale of properties by property companies under a value of R200m will be recorded, but not used for ranking purposes.
8. Foreign deals will only be credited for deal flow ranking purposes if documents provided show sufficient workflow (eg: local competition clearance).
9. Deals that are subsequently cancelled, withdrawn or which are deemed to have failed will not be included for ranking purposes. They will be recorded, nevertheless, for record purposes.
10. All deals are checked by **DealMakers**; any discrepancies that arise will be queried.
11. All entities involved in deal-making are asked to sign off a summary document prepared by **DealMakers** to ensure that no clerical errors have occurred. No response will indicate acceptance.
12. When there is a merger between two service providers, the merged entity may elect to include as part of the annual rankings one or the other party's transactions prior to the merger (but not both).
13. Deals/transactions executed in the normal course of business: Activity undertaken by companies in the normal course of their business will not be recognised by **DealMakers** for inclusion in the ranking tables.
14. **Complaints/queries/objections:**

    These must be lodged with **DealMakers** not later than the end of the next following quarter, so in respect of Q1 by the end of Q2. In respect of Q4, these must be lodged by the close of business at the end of the third week of January, i.e. by Jan 21 or the closest business day.
15. **DealMakers** does not accept responsibility for any errors or omissions.

SHARE ISSUES

DESCRIPTION	COMPANY	SECTOR	NUMBER OF SHARES	PRICE/SHARE
Specific Issue	Ellies	Electrical Components	185 242 070	R0,10
Accelerated Book Build	Equites Property Fund	Industrial REITs	55 555 555	R18,00
Specific Issue	Kore Potash plc	General Mining	2 954 079	R0,20
Accelerated Book Build	Transaction Capital	Consumer Lending	33 093 389	R35,50
Specific Issue	Prosus	Consumer Digital Services	448 991 535 'N'	R1 294,23
Specific Issue	Standard Bank	Banks	58 000 000	to be advised
Specific Issue (Cap Award)	Novus	Forms & Bulk Printing Services	31 258 089	R2,20
General Issue for Cash	PBT Group	Asset Managers	6 900 000	R4,50
Specific Issue	Orion Minerals	Gold Mining	to be advised	to be advised
Specific Issue	Orion Minerals	Gold Mining	4 097 065	$0.034
Specific Issue	Fairvest Property	Retail REITs	939 390 559	to be advised
Specific Issue (Cap Award)	Lighthouse Capital	Equity Investment Instruments	54 982 923	€0,44052
Accelerated Book Build	Lighthouse Capital	Equity Investment Instruments	320 987 654	R8,10
Specific Issue (Cap Award)	Capital & Counties Properties	Real Estate Holding & Development	153 071	R36,14
Specific Issue (Conversion of Debt to Equity)	Purple Group	Investment Services	135 239 128	R0,2287
Specific Issue (Cap Award)	Raven Property	Real Estate Holding & Development	94 169	£1,36
General Issue for Cash	Labat Africa	Venture Capital	46 080 554	R0,31 - R0,50
General Issue for Cash	Union Atlantic Minerals	General Mining	1 545 000 000	R0,0157
General Issue for Cash	Jubilee Metals	AltX - Platinum & Precious Metals	187 149 096	£0,1603/R3,1627
Specific Issue (Cap Award)	Hammerson	Retail REITs	to be advised	R6,62
Specific Issue	Arrowhead Properties	Retail REITs	534 727 073	to be advised
Claw Back Offer	Bauba Resources	General Mining	109 302 842	R0,31

* **Investment Advisers include Financial Advisers and others claiming this category**

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
Khanda Capital	Deloitte	Baker McKenzie		R18,52m	Jul 6
Java Capital	Java Capital			R1bn	Jul 7
	Questco; Canaccord Genuity; Shore Capital			R590 816	Jul 8
Goldman Sachs (SA); Investec Bank	Investec Bank	ENSafrica; Bryan Cave Leighton Paisner		R1,17bn	Jul 8
Goldman Sachs (SA); Morgan Stanley (SA); Goldman Sachs Bank Europe SE; Morgan Stanley International	Investec Bank	Webber Wentzel; Allen & Overy LLP; Cravath, Swaine & Moore LLP		R581,1bn	Jul 12
Merrill Lynch (SA); Standard Bank; Goldman Sachs (SA)	Merrill Lynch (SA); Standard Bank; Investec Bank	Bowmans; Webber Wentzel		to be advised	Jul 15
	Merchantec Capital			R68,77m	Jul 16
	Sasfin Capital	Cliffe Dekker Hofmeyr		R31,05m	Jul 28
	Merchantec Capital			R58,1m	Aug 2
	Merchantec Capital			A$139 300	Aug 4
Java Capital	Java Capital; PSG Capital	Werksmans	Mazars; BDO	to be advised	Aug 10
Java Capital; Perigeum Capital	Java Capital; Perigeum Capital			€24,22m	Aug 10
Java Capital	Java Capital			R2,6bn	Aug 12
	UBS (SA)			R5,53m	Aug 20
	Deloitte			R30,93m	Aug 24
	Java Capital; Singer Capital Markets; Renaissance Capital; Ravenscroft Consultancy			£128 079	Aug 26
	AcaciaCap Advisors			R15,97m	Aug 31
River Group	River Group			R24,26m	Sep 13
WH Ireland; SPARK Advisory Partners	Sasfin Capital; Shard Capital Partners; WH Ireland			£30m	Sep 15
	Investec Bank			to be advised	Sep 27
Ferryman Capital Partners; Nedbank CIB	Nedbank CIB	Cliffe Dekker Hofmeyr		to be advised	Sep 27
Merchantec Capital	Merchantec Capital			R33,88m	Sep 29

SHARE REPURCHASES

DESCRIPTION	COMPANY	SECTOR	NUMBER OF SHARES	PRICE/SHARE
General Repurchase	Acsion	Real Estate Holding & Development	95 827	ave R4,14
Specific Repurchase	Acsion	Real Estate Holding & Development	8 000 000	ave R4,00
General Repurchase	Lewis	Home Improvement Retailers	to be advised	to be advised
Specific Repurchase	Arrowhead Properties	Retail REITs	25 534 700 'B'	R3,41
Specific Repurchase	Liberty	Life Insurance	4 382 756	R84,90
Specific Repurchase	Lighthouse Capital	Equity Investment Instruments	188 809	€0,48/R8,29
General Repurchase	Argent Industrial	Diversified Industrials	831 538	R11,65 - R12,00
General Repurchase	Textainer	Transportation Services	615 680	ave $29,84
General Repurchase	Merafe Resources	General Mining	11 577 378	ave R0,50
Odd-Lot Repurchase	NWK	4AX - Agriculture	804 100	R4,05
General Repurchase	Exxaro Resources	Coal	6 080 823	ave R157,22
General Repurchase	Grindrod Shipping	Transportation Services	91 871	ave R218,15/$14,87
General Repurchase	Fortress Reit	Diversified REITs	26 861 996 A and 25 373 229 B	ave R14,34 and ave R3,02
General Repurchase	Truworths International	Apparel Retailers	4 855 430	ave R55,04
Specific Repurchase	Northam Platinum	Platinum & Precious Metals	57 054 413	R160,00
General Repurchase	Trellidor	Building Materials & Fixtures	4 993 776	ave R2,35
Specific Repurchase	Northam Platinum	Platinum & Precious Metals	649 754	R211,98
General Repurchase	Shoprite	Food & Drug Retailers	3 352 973	ave R153,60
General Repurchase	Bowler Metcalf	Containers & Packaging	567 177	ave R7,94
Specific Repurchase	City Lodge Hotels	Hotels	175 000	R3,28
Specific Repurchase	Invicta	Industrial Engineering	3 900 000	R28,00
Specific Repurchase	Invicta	Industrial Engineering	1 541 823	R31,72
General Repurchase	Texton Property Fund	Office REITs	2 457 839	R3,19
Specific Repurchase	Accelerate Property Fund	Retail REITs	undisclosed	undisclosed
Specific Repurchase	Northam Platinum Holdings	Platinum & Precious Metals	14 571 063	R165,29
General Repurchase	Mustek	Computer Hardware	1 894 015	R10,00 - R13,30
General Repurchase	Spur	Restaurants & Bars	110 000	ave R26,87

* **Investment Advisers include Financial Advisers and others claiming this category**

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
	Nedbank CIB			R396 724	Jul 1
				R32m	Jul 1
	UBS	ENSafrica		to be advised	Jul 6
	Nedbank CIB			R87m	Jul 14
Merrill Lynch (SA); Standard Bank; Goldman Sachs (SA)	Merrill Lynch (SA); Standard Bank; Investec Bank	Webber Wentzel; Bowmans		R372,1m	Jul 15
Java Capital; Perigeum Capital	Java Capital; Perigeum Capital	Bernadt Vukic Potash & Getz; C&A Law; Ganado Advocates	Andersen	R1,6m	Jul 26
	PSG Capital			R9,96m	Aug 4
				$18,37m	Aug 6
				R5,8m	Aug 10
Pallidus Capital	Pallidus Capital			R3,25m	Aug 10
				R956m	Aug 12
	Grindrod Bank			R20,14m	Sep 2
				R461,83m	Sep 2
	One Capital			R267,2m	Sep 2
One Capital	One Capital; Deloitte	Webber Wentzel; Cliffe Dekker Hofmeyr		R9,12bn	Sep 3
				R11,7m	Sep 6
One Capital	One Capital; Deloitte	Webber Wentzel		R137,7m	Sep 7
				R515m	Sep 7
				R4,5m	Sep 7
				R574 000	Sep 10
Nedbank CIB	Nedbank CIB	Bernadt Vukic Potash & Getz		R109,2m	Sep 13
Nedbank CIB	Nedbank CIB	Bernadt Vukic Potash & Getz		R48,91m	Sep 13
				R7,84m	Sep 14
				R300m	Sep 17
One Capital	One Capital; Deloitte	Webber Wentzel; Cliffe Dekker Hofmeyr		R2,4bn	Sep 20
	Deloitte			R22,92m	Sep 20
				R2,96m	Sep 23

SHARE REPURCHASES (Continued)

DESCRIPTION	COMPANY	SECTOR	NUMBER OF SHARES	PRICE/SHARE
General Repurchase	Nvest Financial	AltX - Asset Managers and Custodians	57 298 908	R1,96 - R2,10
General Repurchase	Anglo American	General Mining	10 467 825	ave £29,77
General Repurchase	Glencore	General Mining	to be advised	to be advised
General Repurchase	Prosus	Consumer Digital Services	16 797 155	ave €72,30
General Repurchase	Trustco	Specialty Finance	to be advised	to be advised
General Repurchase	Sibanye-Stillwater	Gold Mining	147 700 000	R54,71
General Repurchase	DRA Global	Construction	20 746	A$3,60 - A$3,80
General Repurchase	Quilter	Asset Managers	15 887 022 and 9 450 134	ave £1,48 and ave R29,95
General Repurchase	South32	General Mining	10 316 860	A$2,83 - A$3,04

UNBUNDLING

COMPANY	SECTOR	ASSET UNBUNDLED
Anglo American	General Mining	special dividend of $0,80 per share
Glencore	General Mining	special cash distribution of $0,04 per share
ARB	Electrical Components & Equipment	special dividend of 10 cents per share
South32	General Mining	special dividend of R0,2899 per share
Sygnia	Asset Managers and Custodians	capital distribution of 48c per share

RESTRUCTURING

COMPANY	SECTOR	ASSET UNBUNDLED
Northam Platinum	Platinum & Precious Metals	restructure of group whereby Northam Platinum Holdings will acquire 100% of Northam Platinum (excluding treasury shares) on a 1:1 basis and list on the JSE to replicate listing of Northam Platinum

* **Investment Advisers include Financial Advisers and others claiming this category**

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
	AcaciaCap Advisors			R121m	Sep 30
Goldman Sachs (SA); Goldman Sachs International	Rand Merchant Bank			£293,8m	over 3rd quarter
Citigroup Global Markets (SA); Citigroup Global Markets Int	Absa CIB			to be advised	over 3rd quarter
	Investec Bank			€1,21bn	over 3rd quarter
	Vunani Sponsors; Simonis Storm Securities; J.P. Galda & Co			to be advised	over 3rd quarter
Morgan Stanley (SA)	JPMorgan (SA)			R8,1bn	over 3rd quarter
	Pallidus Capital			A$76 088	over 3rd quarter
Goldman Sachs International	JPMorgan (SA); JPMorgan Securities plc			£23,6m + R282,7m	over 3rd quarter
	UBS (SA)			A$30,29m	over 3rd quarter

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
	Rand Merchant Bank			$1bn	Jul 29
				$530m	Aug 5
	Grindrod Bank			R23,5m	Aug 19
	UBS (SA)			R1,36bn	Sep 6
	Standard Bank			R71,82m	Sep 28

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
One Capital	One Capital; Deloitte	Webber Wentzel; Allen & Overy	EY	R90bn	Sep 7

GENERAL CORPORATE FINANCE

COMPANY LISTINGS

DESCRIPTION	COMPANY	SECTOR	NUMBER OF SHARES	PRICE/SHARE
JSE Listing (Secondary)	DRA Global	Construction	54 227 777	R50,50
A2X Listing (Secondary)	EOH	Computer Services	176 544 961	n/a
A2X Listing (Secondary)	Investec Ltd	Banks	318 904 709	n/a
A2X Listing (Secondary)	Investec Plc	Banks	696 082 618	n/a
JSE Listing	Northam Platinum Holdings	Platinum & Precious Metals	362 216 153	n/a
4AX Listing	TWK Investments	Agriculture	38 951 986	n/a

MAJOR OPEN MARKET TRANSACTIONS

DESCRIPTION	COMPANY	SECTOR	DETAILS
Open Market Disposal by	Zarclear	Equity Investment Instruments	3 405 038 Stenprop shares at R33,93 per share
Open Market Disposal by	Resilient REIT	Retail REITs	11 976 247 NEPI Rockcastle shares
Open Market Disposal by	Ivlyn Local Investments	Drug Retailers	64 506 336 Dis-Chem shares at R30.30 per share
Open Market Disposal by	Steinhoff International	Diversified Retailers	370 million shares (c.9,9% stake) in Pepkor at R19,75 per share
Open Market Acquisition by	Maitlantic 10	Office REITs	976 006 Emira Property Fund shares
Open Market Disposal by	Grindrod	Marine Transportation	1 841 926 (c.9,6%) Grindrod Shipping shares at $13,50 (R199,94) per share
Open Market Acquisition by	Volaris	Closed End Investments	300 839 Adapt IT shares at R7,00 per share (as per scheme of arrangement)
Open Market Acquisition by	Prosus	Consumer Digital Services	up to 45,33% stake (197 408 377 shares) in Naspers in a voluntary share swap

OFF MARKET TRANSACTIONS

DESCRIPTION	COMPANY	SECTOR	DETAILS
Off Market Acquisition by	Remgro	Diversified Industrials	followed rights to subscribe for an additional shares offer by 55,2% subsidiary Community Investment Ventures
Off Market Acquisition by	Resilient REIT	Retail REITs	144 510 258 Lighthouse Capital shares at R8,10 per share in terms of LTE's equity raise
Off Market Acquisition by	Sibanye-Stillwater	Platinum & Precious Metals	shares in ioneer equal to 7,12% at a price of A$0,655 per share
Off Market Disposal by	SA Corporate Real Estate Fund	Retail REITs	20 million Safari Investment shares at R6 per share
Off Market Disposal by	London Finance & Investment	Asset Managers and Custodians	750 000 Finsbury Food Group plc shares at an average price of 93,346 pence per share

* **Investment Advisers include Financial Advisers and others claiming this category**

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
Pallidus Capital	Pallidus Capital			R2,74bn	Jul 9
	Java Capital			n/a	Aug 13
	Investec Bank			n/a	Sep 16
	Investec Bank			n/a	Sep 16
One Capital	One Capital; Deloitte	Webber Wentzel	EY	n/a	Sep 21
Pallidus Capital	Pallidus Capital	Cliffe Dekker Hofmeyr	PKF	n/a	Sep 30

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
	Java Capital			R115,54m	Aug 3
	Java Capital			R1,2bn	Aug 23
Investec Bank; Standard Bank; Goldman Sachs (SA)	Standard Bank	Bowmans; Davis Polk & Wardwell London		R1,95bn	Aug 26
Goldman Sachs (SA); Investec Bank	Investec Bank	Werksmans; Linklaters; Davis Polk & Wardwell London		R7,3bn	Sep 13
Java Capital	Questco	ENSafrica		R8,93m	Sep 21
Jefferies; Noble Capital Markets	Nedbank CIB			$24,87m	Sep 23
PSG Capital	Merchantec Capital	Cliffe Dekker Hofmeyr		R2,11m	Sep 27
Morgan Stanley (SA); Goldman Sachs (SA); Goldman Sachs Bank Europe SE; Morgan Stanley International	Investec Bank	Webber Wentzel; Allen & Overy LLP; Cravath, Swaine & Moore LLP		$37,69bn	over 3rd quarter

TOMBSTONE PARTIES				TRANSACTION VALUE	ANNOUNCEMENT DATE
INVESTMENT ADVISER*	SPONSOR	LEGAL ADVISER	TRANSACTIONAL SUPPORT SERVICES		
	Rand Merchant Bank			R2,05bn	Jul 19
	Java Capital			R1,17bn	Aug 13
Macquarie Advisory and Capital Markets South Africa	JPMorgan	Davis Polk & Wardwell; Ashurst		A$95,6m	Sep 16
				R120m	Sep 17
	Sasfin Capital			£700,093	Sep 27

COMINGS & GOINGS

LISTINGS

EXCHANGE	COMPANY	SECTOR	ANNOUNCEMENT DATE	EFFECTIVE DATE
Zar X Listing	Big Tree Copper	to be advised	May 17 2021	to be advised
JSE Listing	Cilo Cybin Pharmaceuticals	to be advised	Aug 24 2021	to be advised
JSE Listing	Coca Cola Beverages Africa	to be advised	Mar 31 2021	to be advised
JSE Listing (Secondary)	DRA Global	Engineering & Contracting Services	May 28 2021	Jul 9 2021
A2X Listing (Secondary)	EOH	Computer Services	Aug 5 2021	Aug 13 2021
A2X Listing (Secondary)	Investec Limited	Banks	Sep 9 2021	Sep 16 2021
A2X Listing (Secondary)	Investec plc	Banks	Sep 9 2021	Sep 16 2021
JSE Listing	Northam Platinum Holdings	Platinum & Precious Metals	Mar 23 2021	Sep 15 2021
JSE Listing	Swiftnet (Telkom)	to be advised	Sep 22 2021	to be advised
4AX Listing	TWK Investments	Agriculture	Jul 14 2021	Sep 30 2021
A2X Listing (Secondary)	TWK Investments	to be advised	Jul 14 2021	to be advised

DELISTINGS

EXCHANGE	COMPANY	SECTOR	ANNOUNCEMENT DATE	SUSPENSION DATE	TERMINATION DATE	COMMENT
JSE Delisting (failed)	Adapt IT	Computer Services	Jan 27 2021	n/a	n/a	Scheme of arrangement (Huge)
JSE Delisting	Adapt IT	Computer Services	Apr 7 2021	to be advised	to be advised	Scheme of arrangement (Volaris)
JSE Delisting (BRP)	Consolidated Infrastructure Fund	Engineering and Contracting Services	Jul 9 2021	Nov 25 2020	Jul 26 2021	Business Rescue - no longer comply with JSE listing requirements
JSE Delisting	Fairvest Property	Retail REITs	Sep 27 2021	to be advised	to be advised	Scheme of arrangement (Arrowhead Properties)
JSE Delisting	Freedom Property Fund	Real Estate Holding & Development	Jul 9 2021	Jul 1 2016	Aug 2 2021	Voluntary termination due to JSE listing requirements
JSE Delisting	Imbalie Beauty	AltX - Personal Products	Feb 26 2021	to be advised	to be advised	Delisting a condition to bank COVID-19 loan
JSE Delisting	Imperial Logistics	Transportation Services	Jul 8 2021	Feb 9 2022	Feb 15 2022	Scheme of arrangement (DP World Logistics)
JSE Delisting	Northam Platinum Limited	Platinum & Precious Metals	Mar 23 2021	Sep 15 2021	Sep 21 2021	Scheme of arrangement (Northam Platinum Holdings)
JSE Delisting	PSG Financial Services	Preference Shares	Apr 20 2021	Aug 4 2021	Aug 11 2021	Scheme of arrangement (PDG Group)
Zar X Delisting	Senwes	Food Products - Agricultural	Sep 20 2021	Aug 23 2021	Sep 30 2021	Zar X Trading suspended by FSCA
Zar X Delisting	Senwesbel	Food Products - Agricultural	Sep 20 2021	Aug 23 2021	Sep 30 2021	Zar X Trading suspended by FSCA

DELISTINGS (Continued)

EXCHANGE	COMPANY	SECTOR	ANNOUNCEMENT DATE	SUSPENSION DATE	TERMINATION DATE	COMMENT
JSE Delisting	Spanjaard	Chemicals: Diversified	Aug 27 2021	to be advised	to be advised	Scheme of arrangement (Spanjaard Group)
JSE Delisting	Stellar Capital Partners	Closed End Investments	Aug 27 2021	to be advised	to be advised	Scheme of arrangement (Stellar Capital Partners)
Zar X Delisting	TWK Investments	Food Products - Agricultural	Jul 14 2021	Aug 23 2021	Sep 29 2021	Moving of listing to 4AX (Cape Town Stock Exchange)
JSE Delisting	Zambezi Platinum	Preference Shares	Mar 23 2021	Aug 18 2021	Aug 24 2021	Scheme of arrangement (Northam Platinum)
JSE Delisting	Zarclear	Closed End Investments	Apr 12 2021	Oct 20 2021	Oct 26 2021	Scheme of arrangement (Zarclear)

SUSPENSIONS

COMPANY	SECTOR	ANNOUNCEMENT DATE	EFFECTIVE DATE	COMMENT
Basil Read	Heavy Construction	Jun 20 2018	Jun 20 2018	Subsidiary - Basil Read Limited in voluntary business rescue Jun 15 2018
Delta Property Fund	Office REITs	Dec 15 2020	Dec 15 2020	JSE listing requirements. Suspension lifted Jul 29 2021
Efora Energy	Integrated Oil & Gas	Oct 12 2020	Oct 12 2020	JSE listing requirements - failure to submit annual financial statement
Erin Energy	Oil: Crude Producers	Apr 26 2018	Apr 26 2018	Delisting of shares on the New York Stock Exchange
Firestone Energy	Coal	Mar 19 2015	Mar 19 2015	Request of directors: Waterberg Coal financing arrangements
Hwange Colliery	Coal	Nov 5 2018	Nov 5 2018	Company placed under Administration
Middle East Diamond Resources	General Mining	Dec 6 2016	Dec 6 2016	JSE listing requirements
Mine Restoration Investments	AltX - Machinery: Industrial	Jul 29 2016	Jul 29 2016	Request of directors
New Frontier Properties	AltX - Real Estate Holding & Development	Jan 27 2021	Jan 27 2021	JSE listing requirements. Provisional report
Nutritional	AltX - Pharmaceuticals	May 26 2021	May 26 2021	JSE listing requirements
PSV	AltX - Machinery: Industrial	Sep 1 2020	Sep 1 2020	JSE listing requirements - failure to submit prov report. Placed into BRP March 16 2020
Resource Generation	Coal	Oct 22 2020	Oct 26 2020	Trading halt requested Oct 22 - Funding requirements. Voluntary suspension requested Oct 26 2020
Soapstone Investments	AltX - Diamonds & Gemstones	Nov 21 2016	Nov 18 2016	Suspension of Diamondcorp - Guarantor on Notes
Total Client Services	AltX - Computer Services	Dec 23 2013	Dec 23 2013	Voluntary suspension due to business rescue application
Union Atlantic Minerals	General Mining	Sep 23 2014	Sep 23 2014	Request of directors. Company financially distressed
WG Wearne	AltX - Building Materials : Other	Jul 2 2018	Jul 2 2018	JSE listing requirements: non submission provisional results

COMINGS & GOINGS

LIQUIDATIONS

COMPANY	SECTOR	ANNOUNCEMENT DATE	STATUS
Pembury Lifesyle	AltX - Consumer Services : Misc	Feb 14 2020	Moore Stephens served Provisional Liquidation papers on Pembury Lifestyle Group, Pembury Schools, PLG Retirement Villages and PLG Properties. Suspended Jul 1 2020
Resource Generation	Coal	Jul 5 2021	Voluntary administrators appointed Jul 2 2021. Suspended Oct 26 2020

BUSINESS RESCUE PROCEEDINGS

COMPANY	SECTOR	ANNOUNCEMENT DATE	STATUS
Sail Minerals | (Chrometco)	AltX - General Mining	Jul 5 2021	Currently applying for BRP
Mango Airlines	not listed	Jul 28 2021	Sipho Sono of Opis Advisory appointed as BRP.

FOREIGN LISTINGS & DELISTINGS

COMPANY	SECTOR	TYPE	COUNTRY	ANNOUNCEMENT DATE	EFFECTIVE DATE
FOREIGN LISTINGS					
Huge Group	Telecommunications Services	Secondary	UK (AIM)	Jan 25 2021	to be advised
Lighthouse Capital	Real Estate Holding & Development	Primary	Malta (MSE)	Jul 26 2021	to be advised
FOREIGN DELISTINGS					
Lighthouse Capital	Real Estate Holding & Development	Primary	Mauritius (SEM)	Jul 26 2021	Oct 29 2021

ADMINISTRATIVE MATTERS

NAME CHANGE

COMPANY	NEW NAME	SECTOR	ANNOUNCEMENT DATE	EFFECTIVE DATE
Allied Electronics	Altron	Computer Services	Jun 18 2021	Aug 25 2021
Mas Real Estate	MAS PLC	Real Estate Holding & Development	Jan 15 2021	to be advised
Stenprop	Industrial REIT	Industrial REITs	Jul 29 2021	Sep 21 2021
Arrowhead Properties	to be advised	Diversified REITs	Sep 27 2021	to be advised

CHANGE IN SECTOR

COMPANY	SECTOR	NEW SECTOR	ANNOUNCEMENT DATE	EFFECTIVE DATE
RMB Holdings	Real Estate Holding & Development	Diversified Financial Services	not announced	Sep 20 2021

ADMINISTRATIVE MATTERS

SHARE CONSOLIDATION

COMPANY	SECTOR	NUMBER OF SHARES	RATIO	NEW NO OF SHARES	ANNOUNCEMENT DATE	EFFECTIVE DATE
Afristrat Investment	Diversified Financial Services	142 262 487 153	120 : 1	1 185 520 726	May 18 2021	to be advised

INCREASE IN AUTHORISED SHARE CAPITAL

COMPANY	SECTOR	NO OF SHARES	PRICE PER SHARE	AUTHORISED CAPITAL	ANNOUNCEMENT DATE
Ellies	Electrical Components	50 000 000	no par	850 000 000	Jul 6 2021
Fairvest Property	Retail REITs	3 000 000 000	no par	6 000 000 000	Aug 10 2021

PROFIT WARNINGS

COMPANY	SECTOR	ANNOUNCEMENT DATE
4Sight	AltX	Sep 23
Advanced Health	AltX	Aug 25
Ascendis Health	Pharmaceuticals	Sep 20
Astral Foods	Farming Fishing Ranching & Plantations	Sep 15
Attacq	Diversified REITs	Sep 13
AVI	Food Products	Jul 27
Bauba Resources	General Mining	Sep 23
City Lodge Hotels	Hotels and Motels	Sep 10
Conduit Capital	Full Line Insurance	Jul 27
Conduit Capital	Full Line Insurance	Sep 29
Curro	Education Services	Aug 3
Grand Parade Investments	Diversified Financial Services	Sep 28
Growthpoint Properties	Diversified REITs	Sep 10
Hyprop Investments	Retail REITs	Aug 30
Labat Africa	Venture Capital	Jul 2
Middle East Diamond Resources	General Mining	Sep 21
Mine Restoration Investments	AltX	Aug 11
Momentum Metropolitan	Life Insurance	Aug 17

COMPANY	SECTOR	ANNOUNCEMENT DATE
MTN	Telecommunications Services	Aug 2
Murray & Roberts	Engineering and Contracting Services	Aug 23
NEPI Rockcastle	Real Estate Holding & Development	Aug 18
Old Mutual	Life Insurance	Aug 18
Onelogix	Transportation Services	Jul 26
Pembury	AltX	Sep 30
Randgold & Exploration	Gold Mining	Aug 20
Sebata	Computer Services	Jul 12
Spur	Restaurants & Bars	Sep 17
Sun International	Casinos and Gambling	Aug 24
Telemasters	AtlX	Aug 25
Telemasters	AltX	Sep 28
Tongaat Hulett	Sugar	Jul 1
Tower Property Fund	Diversified REITs	Aug 4
Tower Property Fund	Diversified REITs	Aug 18
Trencor	Transportation Services	Jul 22
Union Atlantic Minerals	General Mining	Sep 8
Zarclear	Closed End Investments	Aug 30

DEALS THAT DIDN'T

NATURE OF DEAL	PARTIES	ASSET	ESTIMATED DEAL VALUE	ANNOUNCEMENT DATE
Disposal by	Stefanutti Stocks to Akhona Mining Services	the Mining Services Division comprising the Materials Handling and Tailings Management sub-division (excludes the Contract Mining sub-division)	R80m	Apr 1 2021

CAUTIONARIES Q3

COMPANY	FIRST CAUTIONARY	NO OF SUBSEQUENT CAUTIONARIES	ANNOUNCEMENT	TERMINATED
AVI	16.9.2021			
Acsion	29.9.2021			
Advanced Health	11.6.2021	3		
African Equity Empowerment Investments	1.10.2020	10		
Afrocentric Investment	20.8.2021	1		
Arden Capital	24.6.2021	3		
Argent Industrial	5.8.2021		3.9.2021	
Arrowhead Properties	30.4.2021	4	27.9.2021	
Ascendis Health	10.3.2021	5	30.8.2021	
Aspen Pharmacare	9.9.2021			
Bell Equipment	10.3.2021	4		
Blue Label Telecoms	26.8.2021			
City Lodge Hotels	19.11.2020	6	23.7.2021	
Conduit Capital	15.4.2021	4		
Delta Property Fund	21.9.2020	9	29.7.2021	
Dipula Income Fund	27.8.2021	1		
Distell	18.5.2021	4		
Fairvest Property	29.4.2021	4	27.9.2021	
Go Life International	3.7.2020	9	8.9.2021	
Grindrod	17.8.2021		6.9.2021	
Growthpoint Properties	14.4.2021	2	13.8.2021	
Hulisani	2.7.2021	16.8.2021	28.9.2021	
Imbalie Beauty	28.6.2021	3.8.2021	15.9.2021	
Imperial Logistics	20.7.2021		29.7.2021	
Invicta	13.9.2021			

COMPANY	FIRST CAUTIONARY	NO OF SUBSEQUENT CAUTIONARIES	ANNOUNCEMENT	TERMINATED
Labat Africa	8.5.2020	11		28.9.2021
Lighthouse Capital	27.7.2021		26.8.2021	
Mahube Infrastructure	26.4.2021	3		
Massmart	25.8.2021			
Nedbank	21.9.2021			
Novus	13.9.2021			
Nutritional Holdings	3.6.2021	4		
Nvest Financial	26.8.2021			
Omnia	30.9.2021			
PSV Holdings	26.2.2020	16	suspended	
Pembury Lifestyle	14.2.2020	23	suspended	
Premier Fishing and Brands	1.10.2020	9		
Rebosis Property Fund	7.4.2021	4		
Spanjaard	16.4.2021	3	23.9.2021	
Stefanutti Stocks	24.6.2021		3.8.2021	
Stellar Capital Partners	18.11.2020	6	27.8.2021	
Tongaat Hulett	29.4.2021	1	19.7.2021	
Tower Property Fund	25.3.2021	5		
Transcend Residential Property Fund	22.9.2021			
Universal Partners	8.7.2021	1	4.8.2021	
Visual International	28.5.2021	3		
Zarclear	12.4.2021	2	4.8.2021	
Zeder Investments	14.4.2021	4		

Interpreting contracts – what has happened to the parol evidence rule?

Julius Oosthuizen

Dale Hutchison

Our courts have recently issued two judgments regarding the interpretation of contracts which contain important guidelines and some salutary lessons for legal practitioners, namely the Constitutional Court's (ConCourt) decision in *University of Johannesburg v Auckland Park Theological Seminary* [2021] ZACC 13 ("UJ"), and the decision of the Supreme Court of Appeal (SCA) in *Capitec Bank v Coral Lagoon Investments* [2021] ZASCA 99 (Capitec).

Both *UJ* and *Capitec* dealt with the parol evidence rule, which has long been one of the cornerstones of the contractual interpretation in South African law, and grappled with the tricky question of how to reconcile the rule with the new, more expansive approach endorsed by our courts to the admissibility of extrinsic evidence (i.e. anything other than the terms contained in the document itself) when interpreting a contract.

Our courts have traditionally held that there are two legs to the parol evidence rule, namely (i) what evidence may be led to determine the terms or contents of the contract, known as the integration rule, and (ii) what evidence may be led to determine the meaning of those terms, known as the interpretation rule. Under the integration rule, the document itself represents the final version of the agreement and supersedes all that has gone before it (meaning that all previous drafts and discussions between the parties are legally irrelevant). It is generally accepted that the integration rule remains a part of South African law.

The focus of both *UJ* and *Capitec* was the interpretation rule, however, and in order to appreciate their implications, it is necessary to understand the current approach adopted by our courts to the task of contractual interpretation in general. This approach (applied initially to statutory interpretation, but extended to contracts in subsequent judgments) is summarised in the 2012 decision of the Supreme Court of Appeal in *Natal Joint Municipal Pension Fund v Endumeni Municipality ("Endumeni"),* which established that the terms of a contract must be interpreted holistically, and (even in the absence of ambiguity) the approach must, from the outset, have

regard to the "triad" of text, context and purpose. The approach is objective, rather than subjective, and involves attributing meaning to the words used in a document, rather than a search for the intention of the parties or the legislature. The point of departure is the language of the provision itself ('in the light of the ordinary rules of grammar and syntax'), but with due regard to the broader context of the provision, which is established by reading the document as a whole, in light of the circumstances attendant upon its coming into existence; the background to its preparation and production; the material known to those responsible for its production; and the apparent purpose to which it is directed. A sensible interpretation is to be preferred to one that leads to insensible or unbusinesslike results, or which undermines the apparent purpose of the document, but judges must resist the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used: they must not "make the contract" for the parties.

What *Endumeni* left unclear, however, was what extrinsic evidence of context remained inadmissible in interpreting the terms of the contract. Subsequent decisions of the SCA prior to *UJ* and *Capitec* held that (i) evidence of the parties' intentions and their prior negotiations remained inadmissible, even if the language of the agreement was ambiguous, but (ii) evidence of the conduct of the parties in implementing the agreement is admissible, since their conduct in adopting the same approach provides clear evidence of "how reasonable business people situated as they were and knowing what they knew, would construe the disputed provision". Notwithstanding these decisions, the SCA remained critical of the tendency of courts to admit too much extrinsic evidence, which, in its view, resulted in the written text of the contract being "relegated" in the process of interpretation.

In reaching its decision, the SCA provided some useful guidelines on the admissibility of extrinsic evidence for purposes of interpreting a contract, noting that the parol evidence rule is likely to become a residual rule that does little more than to identify the written agreement (its content), the meaning of which must be determined.

In *UJ*, the Concourt had to determine whether the rights of a lessee under a long-term lease were so personal as to render them incapable of cession (a so-called *delectus personae*), and whether extrinsic evidence was admissible for the purpose of making this determination. The matter involved a lease concluded in 1996, between the University of Johannesburg (UJ) and the Auckland Park Theological Seminary (APT), in terms of which APT leased premises owned by UJ for a period of 30 years, for the purpose of building a theological seminary, against payment of a once-off rental of R700,000. UJ and APT had also concluded a separate cooperation agreement, in terms of which students registered for theological degrees at the seminary would be taught certain courses by UJ and others by APT. In 2011, APT ceded its rights under the lease to a third party for an amount of R6.5 million, to establish a religious-based school for primary and secondary education. Although the lease did not contain a "no cession or assignment" clause, UJ regarded the cession as a repudiation of the lease on the basis that the rights granted were personal to APT, cancelled the lease, and applied for APT to be evicted from the premises.

Although a single judge and full bench of the Gauteng High Court ruled in favour of UJ (finding that the lease constituted a *delectus personae*), the SCA took the view that the rights of a lessee under a long-term lease are by their very nature not personal, and the introduction of extrinsic evidence to show otherwise was thus inadmissible. The Concourt disagreed, finding that the long-established test for a *delectus personae* is whether the contract is so personal that it can make any reasonable or substantial difference to the other party (in this case, UJ), whether the cedent or the cessionary is entitled to enforce it – this is a

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matter of contractual interpretation (not an issue to be determined simply by the nature of the right in the abstract), and hence, the *Edumeni* approach should be followed from the outset. The parties would thus have to adduce extrinsic evidence, which the Concourt held *"could include the pre-contractual exchanges between the parties leading up to the conclusion of the contract".* While such evidence should be used 'as conservatively as possible', it is essential for the court to consider evidence of context and purpose, and where reasonable people may disagree on admissibility, the court should err on the side of admitting the evidence, which can thereafter be disregarded on the basis of weight – it is important not to conflate admissibility and weight of evidence. Applying this approach to the facts, the Concourt held that various contextual factors (such as the statutory context, the fact that the premises could only be used for tertiary education, the references to the co-operation agreement in the negotiations between the parties) would have shown that the lease was, in fact, personal to APT. The Concourt thus found that UJ had validly cancelled the lease for repudiation.

The Concourt in *UJ* appears to have found that only the first leg of the parol evidence rule (i.e. the integration rule) survives in our law, by holding that the rule "is concerned with cases where the evidence in question seeks to vary, contradict or add to (as opposed to assist the court to interpret) the terms of the agreement. The decision of the SCA in Capitec supports this, although the SCA also added some important commentary on the extent to which extrinsic evidence should be permitted for purposes of interpreting the terms of the agreement.

The dispute in *Capitec* involved the interpretation of a subscription agreement concluded between Coral Lagoon and Capitec, in terms of which Coral Lagoon subscribed for 10 million shares in Capitec in order to enable Capitec to fulfil its BEE obligations. Clause 8.3 of the agreement provided that, should Coral dispose of any of its shares in Capitec to any person that does not comply with the BEE Act and Codes, Capitec would be entitled to compel Coral Lagoon to acquire an equal number of Capitec shares in order to restore its black ownership. In implementing this clause subsequent to the conclusion of the agreement, the parties read it to mean that Capitec's consent was required for any sale by Coral Lagoon of its Capitec shares (although this did not appear from the wording of the clause itself). When Coral Lagoon subsequently undertook to transfer its Capitec shares to the Transnet Second Defined Benefit Pension Fund ('the Fund') as part of a settlement agreement, the transfer was thus made subject to Capitec's consent. When Capitec refused to give its consent, Coral Lagoon approached the High Court for an order compelling Capitec to give such consent on the basis that withholding such consent was unreasonable in the circumstances, and contrary to good faith.

The High Court granted the order, finding that the way in which the parties had previously interpreted and implemented clause 8.3 meant that *'justice can only be dispensed if the matter is approached on the basis that Capitec's consent is required for the sale",* and that Capitec had breached its duty to act in good faith and reasonably by refusing its consent. The decision was heavily criticised by the SCA on appeal, which found that the departure point must remain the words of the clause, to be read with regard to the context and the purpose (i.e. applying the *Endumeni* test). Importantly, the SCA noted that the *Endumeni* approach does not *'license judicial interpretation that imports meanings into a contract so as to make it a better contract, or one that is ethically preferable'.* In this case, neither the text nor the context, nor the purpose of clause 8.3 prevented Coral Lagoon from selling its shares without Capitec's consent, and the SCA thus held unanimously that such consent was not required for the transfer of Coral Lagoon's shares to the Fund.

In reaching its decision, the SCA provided some useful guidelines on the admissibility of extrinsic evidence for purposes of interpreting a contract, noting that the parol evidence rule is likely to become a residual rule that does little more than to identify the written agreement (its content), the meaning of which must be determined. In allowing extrinsic evidence, however, the courts' aversion to receiving evidence of prior negotiations and what the parties

intended or understood the contract to mean remains an important limitation on what could be said to be relevant to context or purpose, and previous decisions were also not an invitation to *"harvest evidence, on an indiscriminate basis, of what the parties did after they concluded their agreement."* Ultimately, interpretation continues to begin with the text and structure of the document, and context is *"not a licence to contend for meanings unmoored in the text and its structure".*

The lesson for us as commercial lawyers is that the words of the contract continue to matter, and we would be well served to make the context and purpose of those words as clear as possible in the document itself. ■

Oosthuizen and Hutchison are Executives, Corporate Commercial | ENSafrica.

The Imperial empowerment partnership: Highlighting the potential of B-BBEE transactions

Zaid Moola

Since the enactment of B-BBEE (BEE) legislation in 2003, we have seen a marked shift from corporates in striving to truly transform the economy and deliver value for the broader society.

A recent BEE deal that Standard Bank facilitated with JSE-listed Imperial Logistics (Imperial) illustrates this shift well. The strategic driver of the deal was that it be linked to the Group's broader strategy and strengthen Imperial's South African operations, enhancing its business focus as a 'Gateway to Africa'. The BEE transaction undertaken is synergistic and value additive for all parties – Imperial, its shareholders, and its strategic BEE partners – while delivering on not just the regulatory requirements, but the intended spirit of BEE.

Imperial is an African focused provider of integrated market access and logistics solutions. The Group's purpose is to connect Africa and the world, and to improve people's lives through enhanced access to quality products and services, which is evidenced by their commitment to sustainable empowerment.

Imperial's commitment to sustainable empowerment and transformation was the touchstone in choosing to partner with Afropulse and Willowton Group, partners who support not only the strategic objective of making Imperial more competitive locally, but also contributing to their broader 'Gateway to Africa' strategy. Successful transactions, not just BEE transactions, have always emanated from the bedrock of strategically aligned partnerships, allowing for significant value creation for all stakeholders.

Sustainable and shared value creation is achieved through active participation and contributions that strengthen and enable the growth of the company, with a knock-on benefit of growing the economy – which is the real driver. It is also achieved through genuine partnerships with shared visions and objectives amongst all partners, a factor all too often overlooked.

When it comes to deals, it's easy to become fixated on the financial aspects, but this can distract from the all-

important human elements that underpin transactions. These range from the relationships built, and trust painstakingly earned before anyone signs on the dotted line, to the new jobs and business opportunities created when the transaction begins to bear fruit. Scratch the surface of any acquisition and you'll discover an intricate web of prior connections and smaller deals that opened the doors to the smiles and handshakes making headlines.

Although the Imperial deal was filled with many intricate details, the long and the short of it is that it culminated in three entities – Willowton Group, Afropulse and Converting Trade – taking a 25% stake in Imperial Logistics Group SA, which houses most of the Group's operations in the country. Each of the entities will be represented on the Board of Imperial Logistics South Africa and will be intimately involved in defining and driving the strategic growth of the business.

BEE deals are not all the same, and each transaction has its own complexities and nuances. For example, while discussions on the transaction had commenced in early 2019, no one could have foreseen the oncoming COVID-19 pandemic and its impact on economies and life. The conclusion of the transaction is testament to the unwavering commitment and effort from each of the partners to work through these unforeseen and unparalleled circumstances and conclude a transaction that was aligned to each parties' objectives.

Successful BEE deals are about so much more than a regulatory compliance exercise. It's about intimately understanding the ambitions and pain points of the parties involved. It's about forging strategic relationships, backing the right people and integrating the complexities of the regulatory environment with the strategic imperatives of all parties to create true value.

This doesn't happen overnight; it takes years to cultivate. However, it all pays off when you are able to unite people in an alliance that not only benefits the entities they represent, but the wider community, the country and the African continent, as is the case with the Imperial empowerment partnership. ■

Moola is Head: Wholesale Clients, South Africa | Standard Bank Group.

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ESG in dealmaking and financial markets

F E A T U R E

FOREWORD

ESG investing has become topical over the past few years, with primary emphasis on the E (environmental) and G (governance) elements. Since the impact of the pandemic, investor attention has been sharpened to focus on the S (Social) of the acronym. In the past, investments have, for the most part, been made in terms of risk and reward. Now a third dimension of oversight has been added – that of impact. Once largely the preserve of direct private-market investments, impact investing has moved from a niche approach to a significant market segment. Hand in hand with this has been the evolution of ESG related regulation, which has matured from soft law recommendations to, in some cases, hard law obligations.

Marylou Greig

ESG is not a new phenomenon; initiatives have been around for many years, but much of it was just lip service or what has been termed 'green washing'. More recently there has been an on-the-ground willingness to ensure that the ESG agenda is adhered to and, as such, ESG is becoming an important driver of deal activity, particularly with increasing evidence that a strong ESG proposition can create value for investors.

Locally, there has been an uptick in ESG reporting by exchange listed companies. In September, Mediclinic reported that it had secured a sustainability-linked loan, with the linking of ESG targets to the cost of debt, while Sasol announced that it had raised its emissions reduction targets for 2030 to 30% from 10%. Earlier this year, in response to increasing aversion to fossil fuels by investors, Anglo American divested its local coal interests to shareholders through a new entity, Thungela Resources.

ESG factors are likely to become an important part of the assessment and valuation of potential merger and acquisition opportunities, particularly in Africa. The lack of transparency in disclosure may impact on the relative valuation of the company, with ESG now also considered a risk factor, alongside reputational risk. Adhering to ESG is no longer just an option – if companies are to retain not only investors, but also suppliers and customers, they will have to ensure that they meet the necessary standards. The articles in this feature give insightful information on ESG in deal making and financial markets, and introduces some of the specialists in this space.

The dynamics of grouping the three ESG elements together has created interesting discussions, particularly where these elements do not necessarily align. As the feature was being finalised, the 2021 United Nations Climate Change Conference (COP26) was taking place in Glasgow. But the belief of some ESG investors that one plan fits all is, unfortunately, not realistic. For the African continent, the transition to renewable and clean energy sources will take longer, with government priorities focused on alleviating poverty and providing access to affordable energy. ●

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The mainstreaming of ESG investing through policymaking

THEA UTOFT HØJ JENSEN AND GABRIELLE MUHLBERG

ESG, Sustainable Finance and Green Investments have been some of the biggest buzz words in finance in the last few years. What used to be a niche topic has now taken centre stage. And investors' almost insatiable appetite and legislative innovation will keep it there for quite some time to come. Staying on top of local developments is not enough; reading the international trend 'tea leaves' will be the only way for investors to answer, "What next?".

On the global stage, the EU has positioned itself as the Sustainable Finance frontrunner. Boasting the world's first ever climate law, an action plan on sustainable finance in 2018, and its recent unparalleled green bond issuance, the EU green agenda has been travelling at a rate of knots. As seen with other high-profile initiatives, the EU is 'setting the standard'. EU data protection and privacy laws (the famous GDPR) are a prime example, and versions have appeared across the continent, with South Africa's Protection of Personal Information Act (POPIA) epitomising this trend.

Utoft Høj Jensen

With the green transition as a top priority, the EU is pushing even harder to drive the progress on Sustainable Finance, through numerous international fora and initiatives. With the EU's Green Taxonomy already disseminating, it appears to work. Local models of the Taxonomy are emerging in the US, UK, China and, of course, South Africa (which has relied heavily on EU legislation).

What is going on in the EU, and why we should care?

The EU ESG investing case study

A strong EU regulatory framework is the primary reason for the EU's global leadership in the ESG space. The EU laid the first brick in the Sustainable Finance foundation with its Green Taxonomy. It is a tool to determine whether activities are environmentally sustainable, based on clear science-based criteria. Investors and investee companies are subject to comprehensive and standardised disclosure rules on their activities and sustainability performance, building on the classifications. Standards and labels acting as a mark of quality – for example, an EU Green Bond Standard – will form the third pillar. Combined, these measures aim to prevent greenwashing, and remedy the acute ESG data shortage in the market.

Muhlberg

The next phase is already taking shape in the EU, aiming for inclusion of sustainability considerations in every aspect of finance. ESG integration in prudential frameworks and easier data access are high on the agenda. Two horizontal tracks are already active: firstly, an EU Social Taxonomy which, through classification, aims to direct capital to entities and activities which operate with respect for human rights, good corporate governance, and support social objectives. Secondly, an overhaul of directors' duties and due diligence is to come later this year, possibly integrating remuneration tied to ESG performance, and incorporation of ESG considerations and stakeholder interests (e.g. of workers and civil society) into business decisions and oversight.

Alongside EU legislative developments, private institutional investors are increasingly emerging as a key driving force for Sustainable Finance. Institutional investors will continue to probe companies on their ESG approach, as they see a positive correlation between ESG performance and company valuation. Investee companies, too, will need to swiftly demonstrate sustainability leadership, or at least, transition efforts. With increased scrutiny of governance and supply chain processes, transparency alone is not enough to guarantee long-term growth. With markets being global, these considerations are already having a significant spill-over effect on other jurisdictions, leading to tangible ESG business transformations to attract investors.

South Africa carving its own path

As more organisations recognise the need to integrate ESG at the heart of business strategies, industry is helping to lead the way. In SA, the industry's influential voluntary standards and innovative initiatives, such as the JSE's sustainability index, are and will continue to be indispensable in local standard setting.

Globally – and especially amongst emerging economies – SA has impressive Sustainable Finance credentials. Alongside the significant sector efforts, the Treasury's plans in 'Financing A Sustainable Economy' would likely increase work on classification, ESG integration and disclosures. In short, this will provide the building blocks for a more robust and comprehensive Sustainable Finance Framework.

With the immediate direction of travel more or less mapped out, naturally, the question for the industry is: what comes next? Here, upcoming EU initiatives on Directors' Duties and the development of a Social Taxonomy – classifying activities by social impact – could be particularly interesting as inspiration. SA already has socially-focused legislation in place – Broad-Based Black Economic Empowerment (B-BBEE), a key and unique example.

Nevertheless, the EU work could provide ideas and structures, with a tremendous potential for adaptation to a local context. With SA's unique socio-economic background and keen interest in Sustainable Finance, and in light of President Ramaphosa's recent comments indicating an upcoming B-BBEE Review, an increased focus on the Social and Governance elements of ESG appears to be a natural next policy step. A Social Taxonomy could be a strong starting place; a tool which redirects capital to reach social objectives would have the potential for tangible social transformation. As such, this could prove highly attractive to government, civil society and investors.

ESG will evidently only continue to grow in importance, with new industry and legislative initiatives continually emerging, and staying on top of these developments, with one eye on the global horizon, is the only way to remain competitive. ●

Utoft Høj Jensen is Managing Director and Head of Financial Services and Muhlberg a Consultant | FTI Consulting Brussels.

ESG looms larger in dealmaking

WEBBER WENTZEL
in alliance with > Linklaters

NOMSA MBERE AND BRUCE DICKINSON

For many years, shareholders and funders have expected that the companies in which they invest should demonstrate Environmental, Social and Governance (ESG) responsibility. But more recently, high standards of corporate behaviour in actively promoting and pursuing ESG goals have started to become integral to dealmaking.

Companies with a demonstrable commitment to ESG are favoured by socially-conscious customers; are more appealing to investors, both private and institutional; and are more attractive to financiers.

In a recent article, KPMG noted that "a strong ESG proposition can help create value and drive deal activity – and this will only increase in the coming years".

ESG principles have become central to measuring sustainability and societal impact. Implementing ESG standards into corporate strategy is recognised as integral to social trust, responsible business practices and decarbonisation, all of which align with the UN Sustainable Development Goals.

For example, global mining companies are focusing on internalising and embedding an integrated approach to ESG. We expect that this trend will continue and intensify. Webber Wentzel has advised on prominent ESG-related transactions in this sector, as well as others, for more than a decade. Most recently, we advised on the high-profile separate listing of Anglo American's South African coal assets in mid-2021. Our experience in ESG-driven transactions dates back even further, to Anglo American Platinum's (AAP) Alchemy transaction c. 2010.

Alchemy

Alchemy is Anglo American Platinum's community empowerment transaction, through which it invested c. R3,5bn to uplift communities around four of its mines, as well as labour-sending areas. The share ownership scheme which underlies Alchemy made the development trust the second-largest shareholder in AAP at the time. The purpose of the scheme was not only ownership, but ensuring the long-term sustainability of communities after mine closure.

Alchemy is fully paid up.

A particularly important aspect of Alchemy was that it was built from the "ground-up", based on a detailed stakeholder mapping exercise, followed by discussions about the proposals in relevant forums, and then the creation of the necessary community structures. The emphasis was on having proper governance structures to ensure proper accounting, transparency, and that trustees represent the broader community, rather than specific groupings, as in the past.

Mbere

Alchemy won, amongst others, the Project of the Year category in the 2014 regional Core Value Awards for Excellence in Public Participation, hosted by IAP2 Southern Africa (IAP2 SA), the local affiliate of the International Association for Public Participation.

Thungela

In response to the increasing aversion of leading sovereign wealth funds and other institutional investors to fossil fuels, Anglo American divested its South African coal interests to its shareholders through a new entity, Thungela Resources, which was listed in Johannesburg and London on 7 June 2021. Webber Wentzel advised Anglo American on the transaction.

Dickinson

The restructuring covered all aspects of ESG. The sustainability of Thungela as a coal miner is important to the South African power system, which will be heavily dependent on coal for several years, and to communities around the coal mines.

Anglo American has ensured that Thungela is fully capitalised and, on top of Thungela's existing black ownership holdings, has granted employees and communities each a near-immediate and unencumbered perpetual 5% interest in the group. Shareholder dividends will be distributed from 2021 – exceeding the requirements of the Mineral and Petroleum Resources Development Act (MPRDA).

From a governance perspective, Thungela has a management team with long experience in the Anglo American group. Both the CEO, July Ndlovu, and the CFO, Deon Smith, held the same roles in Anglo American's thermal coal business in SA. The Group's management team has an average of 20 years' experience in the mining industry.

Thungela also houses the eMalahleni Water Plant, which uses reverse osmosis to turn mining effluent into potable water, which helps to address a critical water shortage in the area. The availability of good-quality water in the area is critical for any future economic development in Mpumalanga.

Other projects

Beyond water and mining, Webber Wentzel is advising various project developers, lenders, sponsors and investors in the renewable energy bidding rounds. The firm is also actively involved in the private captive power market, which was recently given a boost through the 100MW exemption decision.

Over many years, Webber Wentzel has advised, and is currently advising various mining companies, both in South Africa and elsewhere in Africa, on integrating, consolidating and transforming splintered community initiatives, community shareholding structures or socio-economic development schemes to make them more manageable and relevant. A central element of these projects will be to ensure that appropriate, fit-for-purpose legal and governance structures are in place to manage social projects effectively and transparently, for long-term sustainability post-mine closure. These strategic imperatives also drive policy development on mine closure from an environmental impact management perspective, to ensure that the transition of mining communities to more sustainable economies is justly implemented and does not leave ghost towns and stranded communities in its wake.

Conclusion

From the days of ensuring that a company had a "licence to operate", through sustainable development initiatives, and now ESG (in its various guises and standards), companies have had to evolve and engage proactively. Investors and stakeholders demand it and they, in turn, are demanding it of their suppliers and service providers. ESG is consequently becoming ever more important in M&A and capital markets, whether as a result of investor pressure, driving long-term shared value, to become an attractive target for investment and/or acquisition, or as an acquirer. ●

Mbere and Dickinson are Partners | Webber Wentzel.

Driving ESG and Sustainable Finance is core to RMB's solutionist thinking for clients

NIGEL BECK

The future of ESG

While ESG (Environmental, Social, and Corporate Governance) is not a new topic, the very definition and role that ESG plays in the dealmaking environment is shifting. Banks are accustomed to considering ESG criteria in their risk assessments, and institutional investors have incorporated ESG factors as a screening tool. Yet, as sustainability issues assume centre stage globally, so ESG and sustainability considerations are being integrated into companies' core strategic priorities, with board oversight and C-suite focus.

Beck

Gearing up for COP26

The UN Climate Change Conference (COP26) will bring parties together between 31 October and 12 November to accelerate action towards the goals of the Paris Agreement and the UN Framework Convention on Climate Change. In the run up to the event, we at RMB have seen a number of sovereigns, as well as a number of South African companies, making net zero commitments. This includes scope 1, 2 and 3 emissions (with scope 3 capturing indirect emissions like those from the supply chain). So, while many B2B companies may not be feeling the consumer pressure, those in large corporate supply chains are starting to experience increasing pressure from their customers, as well as shareholders and other stakeholders, to align to net zero and, therefore, need to start thinking about their own sustainability strategy and the financial solutions (including advisory and funding) available to support their journey.

The state of the sustainable finance market

Sustainable finance has transitioned to the mainstream. According to data from Bloomberg NEF, the global sustainable finance market (including loans and bonds) was valued at about US$983m YTD (to September 2021), already a 30% increase on 2020, and 73% up on 2020 on an annualised basis. The Sustainable Finance market in South Africa is relatively nascent, with limited issuances in the years up to 2018. The local market has, however, seen an explosion of activity in 2021, both in scale and diversity of issuers and instruments. As at September 2021, loan and bond issuances totalling over R25bn have been concluded in sectors as diverse as SOCs, real estate and healthcare – a three-fold increase on 2020, with close to a quarter of 2021 to go! It has become clear that investors are increasingly willing to support companies with a clear sustainability strategy.

Transition finance – a trend to note

Transition finance is a new "segment" of sustainable finance that we expect to deliver significant growth in the coming years, providing sustainable funding solutions to traditionally "brown" or fossil fuel intensive companies that have, to date, not materially benefited from the growth in the Sustainable Finance market. Companies that have committed to net zero by 2050 need to start delivering on their strategies to achieve short and medium term goals that demonstrate progress on this commitment, and identify organic and inorganic opportunities to improve their sustainability profile. Transition finance will be an important mechanism to enable them to achieve this. As part of the Paris Agreement of 2015, developed countries pledged to mobilise at least US$100bn a year in climate finance for emerging economies between 2020 and 2025. This funding hasn't fully materialised. However, in the run up to COP26, several developed countries have reaffirmed or even increased their commitments. We at RMB are hopeful that increasing flows from developed countries to support the "just transition" through transition finance mechanisms will be one of the outcomes of the conference.

A shift in ESG measurement

Many institutional investors have fully integrated ESG factors into their investment decision-making process, adjusting valuations for

those factors that can be quantified, and modifying portfolio construction for more intangible ESG factors. Measurement is growing to encapsulate short, medium and long term targets. Environmental factors can be more easily measured, compared with social factors that are more complex, but increasingly focused on by debt and equity investors alike. While, traditionally, measurement has been used to quantify risk, the industry is fast evolving to a place in which companies with a clear sustainability strategy and a positive environmental and social impact will emerge as leaders.

Important ESG trends

To ensure companies benefit appropriately from their leadership in this space, we believe it is important that they consider some of the following key ESG trends:

- Expectation that sustainability is core to their overall company strategy, and that ownership of that strategy is driven by the non-executives and executive management team.
- Increasing transparency to demonstrate progress on their sustainability journey and the impact that it is expected to have on its broad set of stakeholders.
- Independent verification of key short, medium and long term key performance indicators (KPIs), with executive remuneration linked to the achievement of these KPIs.
- Greater standardisation of reporting to enable comparison between companies and across sectors, like reporting aligned to the Taskforce on Climate-Related Financial Disclosure ("TCFD"), with science-based targets.
- Integration of ESG and sustainability considerations throughout the investment process as a value creation opportunity.
- Pre-IPO candidates and publicly listed companies providing comprehensive ESG disclosure and adequately addressing ESG risks and opportunities as part of their strategies, to ensure that investors recognise their sustainability credentials, in order to access sustainability-focused investors.

In conclusion, ESG is fast assuming a central role for companies the world over. As regulatory, consumer, stakeholder and investor interest in sustainability intensifies, this is not a trend that companies can ignore. ●

Beck is Head: Sustainable Finance and ESG Advisory | RMB.

Is the climate of shareholder interests changing?

LOGAN HUFKIE

World leaders have faced significant criticism in the run up to November's COP26 climate talks in Glasgow, for their lack of action to prevent climate change and to meet the targets set in the Paris Agreement. The Paris Agreement, which came into force in 2016 and has 191 signatories (including South Africa), sets long-term emission reduction goals aimed at limiting the rise in global temperatures.

In recent years, corporates have increasingly also made commitments towards meeting the goals enshrined in the Paris Agreement. While such commitments initially seemed to satisfy shareholders, a growing international trend towards more ambitious climate change proposals has since emerged, due in no small part to shareholder campaigns and activism.[1]

It is no wonder that mounting climate change concerns have also impacted on views of what constitutes shareholders' interests. While the notion that a company's overriding social responsibility is to increase its profits, (as propounded by Milton Friedman and others) has been challenged in the past as being too narrow, this subject has gained urgency in light of the growing climate emergency.[2] It is becoming more apparent that shareholders have diverse interests, which are not only economic, but also extend to environmental and social aspects. While profitability remains a key factor, it is no longer the case that shareholders are only interested in the profitability of companies.

Even if this change in the climate of shareholder interests ultimately proves to be overstated, it is clear that there will be an eco-

nomic cost for companies that are unwilling to adapt to the emerging new reality, including the reduction in available financing avenues, as banks and other financial institutions come under increased public, shareholder and, possibly, regulatory pressure to limit funding for projects that would lead to carbon emissions. Financial institutions are starting to link climate change targets to the costs of debt, with one recent example being Mediclinic's refinancing of existing debt through a sustainability-linked facility, where the cost of finance is subject to Mediclinic meeting certain carbon and water usage targets.[3]

The pressure on banks is evident from shareholder resolutions proposed and approved at recent annual general meetings. By way of example, a recent 2021 shareholder resolution requiring the Investec group to take action to address its "financed emissions" (greenhouse gas emissions associated with its lending and investment portfolio) was supported by 99.95% of votes cast.[4] Various other South African banks have also included climate change-related resolutions, and there is clearly a greater recognition of these concerns by banks and, consequently, there will be a larger focus in future on sustainability-linked lending.

To date, proposals for climate change resolutions in the United States have focused mainly on "a say on climate change", which allow shareholders an annual vote on a company's publicly disclosed climate change plans.[5] This trend has been mirrored in South Africa, with climate change resolutions making headlines in 2021, and more shareholders demanding increased accountability and commitments from companies. This focus on expanded corporate responsibility is in keeping with the spirit of King IV, which requires companies to be responsible, ethical, and good corporate citizens, recognising their responsibility to a variety of stakeholders.

While some companies have resisted calls by shareholders for additional sustainability-linked resolutions to be tabled at annual general meetings, it should be borne in mind that, subject to certain thresholds being met and procedures being followed, shareholders are entitled, in terms of the South African Companies Act, to propose resolutions at general meetings or to require the board to convene meetings for such resolutions to be proposed. In future, disputes between companies and shareholders regarding such resolutions could result in litigation, which, while regrettable, would have the benefit of ultimately providing greater certainty on such resolutions, companies' obligations to propose them, and their enforceability, particularly in the context of climate change. While companies who resist this may be able to weather the ire of smaller activist shareholders, pressure will increase on them as large institutional shareholders become more assertive in this regard, with the latter wishing to display their sustainability credentials to their own clients.

It does not appear that the pressure for companies to make climate change commitments will decrease any time soon. As this goes to the root of shareholders' interests, it will be interesting to see whether, in future, legislatures or stock exchanges will codify requirements for compliance with the Paris Agreement or its successors. If not, the public perception of companies being viewed as "good" or "bad" corporate citizens may perhaps serve as informal regulation, with negative publicity, market perception, employee morale, and potentially even consumer boycotts or campaigns, pushing companies to adopt a more sustainable approach.

Hufkie

Given the rise in shareholder activism, the role played by shareholder activist groups and calls by institutional shareholders, we expect to see additional climate change resolutions proposed in future, and it will be interesting to evaluate companies' and the market's responsiveness to these and future changes in the climate of shareholder interests. Although not imminent, we believe that, in time, early adopters in specific sectors may benefit. ●

Hufkie is a Corporate Financier | PSG Capital.

1 https://corpgov.law.harvard.edu/2021/09/29/proxy-season-climate-related-voting-trends-report/

2 https://fortune.com/2020/09/13/milton-friedman-anniversary-business-purpose/

3 https://www.mediclinic.com/en/media-news/news-and-stories/new-sustainability-linked-banking-facility-at-mediclinic-souther.html

4 https://www.investec.com/en_za/welcome-to-investec/press/sa-shareholders-vote-overwhelmingly-in-favour-of-investecs-climate-risk-related-resolution.html

5 https://corpgov.law.harvard.edu/2021/09/29/proxy-season-climate-related-voting-trends-report/

ESG – no longer for show

CDH
CLIFFE DEKKER HOFMEYR
INCORPORATING
KIETI LAW LLP, KENYA

MARGO-ANN WERNER AND ALECIA PIENAAR

A vital custom to be maintained by corporate society to achieve sustainable economic development

Environmental impacts, together with the risks and opportunities associated therewith, have become fundamental to economic development, both internationally and in South Africa. This is especially in the light of the climate change crisis, and an appreciation for the need to urgently respond to the challenges arising from its impacts, which are far-reaching across environmental, social, economic and political spheres. This spotlight on environmental considerations is evidenced by the increasing prominence of Environmental, Social and Governance ("ESG") criteria in investment decisions, corporate conduct and general appreciation around the role of ESG in aiding the global transition to more sustainable economic practices.

Whilst ESG, in its infancy, may have seemed somewhat abstract, it is becoming an increasingly tangible and vital custom in corporate society, capable of swaying investor appetite and developer innovations towards the "greener" and socially more responsible projects. The more investment capital is reserved for "greener" developments, the more developers will focus on developing projects that align accordingly.

Werner

Today, ESG criteria, and what should be the progressive development thereof, is underpinned and supported by several ESG-related frameworks, including international environmental principles (such as the principle of sustainable development); the blueprint provided by the Sustainable Development Goals; the standards prescribed by the IFC's Environmental and Social Performance Standards; and Equator Principles IV. In South Africa, which boasts an entrenched constitutional right to an environment that is not harmful to health or wellbeing, and a well-developed suite of environmental legislation, corporate ESG criteria and policies are encouraged to incorporate or align with the provisions and sentiments of this regulatory framework.

Although the application of ESG criteria appears to primarily feature at the investment decision level, it also plays a vital role in any company's day-to-day operations. Robust corporate ESG policies are a necessary foundation to influence a company's way of doing business, and to guarantee more sustainable outcomes. Offering a competitive advantage, ESG observance at business level will naturally also be more attractive to ESG-committed investors and lenders.

Pienaar

At the risk of simplifying ESG to the mere practice of "policy-adoption", the true value of ESG will only be realised off the back of actual commitment by all stakeholders to make a concerted effort to achieve defined environmental and social benefits. This is important to note as, although ESG may have reputational benefits, it also bears the risk of reputational harm if the ESG goals or outcomes are overstated or otherwise misrepresented. Thus, the commitment to incorporating and realising ESG should not be undervalued. Stakeholders, including environmental and community interest groups, are already holding investors and corporates accountable, scrutinising environmental and social monitoring reports, publicly critisising failures to provide transparent disclosures, and instituting ESG-related litigation. In South Africa, in particular, with its development needs and just-transition approach, these challenges are likely to arise irrespective of the robustness of an ESG-led investment decision.

The above realities, although daunting, should inform and be proactively incorporated into ESG policies, with investors and the broader corporate community in South Africa encouraged to supplement, revise or implement (if they have not already done so), an ESG policy or framework that takes these South African elements into consideration. It is also recommended that ESG-related covenants in transaction documents be amplified to hold parties more accountable to meeting specific KPIs in respect of ESG performance.

The observance of ESG in practice will not only achieve long-term returns for investors and contribute to actual sustainable development at a business level, but will likely also encourage innovation in environmental management, planning, project design and technology. With such potential for true sustainable growth, ESG can no longer be underplayed, but should be recognised and implemented as a vital custom to be maintained across corporate society. ●

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Increasingly competitive IPP sector set to catalyse M&A activity

NEDBANK CIB

ROY RICHARDSON

It's no secret that clean energy has become a global priority in recent years. And while the impetus for clean power is undoubtedly coming primarily from the global north, the achievement of green economies is now also a priority for the developing world.

However, across much of Africa, power generation of any sort remains a massive challenge due, primarily, to a combination of infrastructure backlogs, rapidly increasing populations, ongoing urbanisation, and extensive industrialisation.

As has been so painfully obvious in South Africa over the past 14 years, since rolling blackouts began, reliable power supply is a cornerstone of economic growth. What's more, this link between energy and economic sustainability is set to become even more significant as global trade pressure on emissions reduction and net zero commitments increases in the coming months and years.

Richardson

Given the abundance of supply and the significant cost effectiveness of renewable energy compared to fossil fuel-based generation, the potential for clean energy to be at the forefront of meeting Africa's growing demand is undeniable. And in South Africa's case, essential.

With a national energy provider that is almost half a trillion rand in debt, suffering from ailing and fast-deteriorating transmission and distribution infrastructure, and under pressure to exit 'dirty' fuels, South Africa has no option but to turn more deliberately to renewable energy sources to meet its future power requirements. Despite the lingering reticence in some political circles, this is no longer a negotiable transformation; if for no other reason than the achievement of its plan for a just transformation to a viable green economy, it could soon find itself once more on the sidelines of the international trade playing field.

Of course, fiscal constraints and rising debt to GDP remain just two of the massive speedbumps on the road to such a green South African economy, but, in some ways, these challenges are also blessings in disguise. That's because public sector budgetary shortcomings will effectively force a situation in which a significant amount of current and future energy supply capacity will have to be funded and produced by the private sector and Independent Power Producers (IPPs).

Increasing IPP momentum is a catalyst for M&A

The good news is that this move towards private sector involvement in ensuring a sustainable renewable energy sector appears to already be well underway. The appeal of the Renewable Energy Independent Power Producer Procurement programme (REIPPPP) continues to grow, both in national and international investment and development circles, with the most recent bid window 5 being massively oversubscribed, receiving 102 bids for the 2600MW of generation capacity on offer.

The relaxation of the self-generation license cap to 100MW is another significant step in the right direction, especially given that the regulatory easing provides a framework for energy wheeling and distribution to multiple offtakers, which has created immense interest for the development of self-generation facilities amongst municipalities, and in many corporate sectors.

Importantly, this clear emergence of a more competitive and sustainable IPP sector in South Africa will almost certainly be a

catalyst for significant merger and acquisition interest and activity within renewables going forward.

For one, IPPs that established operations on the back of winning bids in the first few REIPPPP rounds are now in a situation where they need to find innovative ways of recycling their balance sheets in order to sustain their growth via the development, acquisition or operation of new projects.

As the renewables sector matures in South Africa, there is also a natural separation taking place between the ownership of projects and facilities and the ongoing development and operational functions. While ownership is typically high yielding, it is also capital intensive and delivers relatively low average returns. As a result, IPPs are likely to increasingly look to consolidate their market position through the acquisition of going concerns that provide them with greater operational control.

The sector has now also reached a point where investors in the very early projects may start looking for opportunities to take profits. And the prioritisation of black economic empowerment within the maturing sector is sure to be another contributing factor to increasing M&A activity levels, as the need to demonstrate ownership by historically disenfranchised individuals and entities becomes a core business sustainability and opportunity creation requirement.

Renewable deals are increasingly fetching higher valuations compared to traditional 'dirty' generation installations, as a result of their lower operational risks, coupled with government funding support and sustainability imperatives. Supported by South Africa's green economy vision, the burgeoning South African clean energy sector can only fuel the investment appeal and impetus for M&A, particularly in a country facing continued rolling blackouts and well-above-inflation price increases for the foreseeable future. ●

Richardson is a Principal | Nedbank Corporate and Investment Banking.

Green financing is an opportunity for Africa

Standard Bank

SASHA COOK AND ANNEKE LUND

Over the past couple of years, we've seen a marked increase in ESG focus on deal making across Africa. This has led to more African banks, particularly in South Africa, establishing centres of excellence, with dedicated sustainable finance teams. This is a very exciting move, which will lead to further growth in the market.

Globally, we are seeing the volume of sustainable finance deals in the market growing fast. While African and other developing markets are still somewhat lagging developed markets, there is an increased focus on African markets due to the exposure to physical and transition climate risks, as well as social challenges, including the need to finance the infrastructure gap across the continent.

This has resulted in an increase in the number of syndicated loans being structured with sustainability-linked features. Some examples include the recently concluded transactions for Oceana Group and Greenlight Planet, where multiple funders participated in these structures.

In the debt capital markets, we have seen increased liquidity for sustainable finance deals through increased appetite from institutional investors and a widening of the investor base.

The investor community, and lenders alike, are applying increased scrutiny to these structures to promote standardisation and avoid greenwashing. The refinement of voluntary global principles, such as the International Capital Market Association (ICMA) and the Loan Market Association (LMA) principles covering the use of proceeds and sustainability-linked instruments, is helpful in guiding market best practice.

Trends moving forward

The COVID-19 pandemic has amplified the scale of global social challenges as countries grapple with the consequences of this crisis. As a result of this, together with the pre-existing social challenges faced by developing countries, we expect to see social key performance indicators (KPIs) emerge alongside the importance of environmental KPIs, and for these challenges to be addressed through the use of both proceeds instruments and performance-based instruments, such as sustainability-linked loans.

As the market continues to improve on reporting and trans-

parency, we expect to see clearer and more detailed target setting. Tighter regulation is also expected over the coming months, with an increase in the establishment of taxonomies and policy making.

Cook

We may also see more activity at the sovereign, sub-sovereign, financial institution and corporate level in green bonds and loans, post-COP26, and funding the "energy leapfrog" for Africa.

Africa will require significant investment in energy projects and other basic infrastructure in the near future. This presents a great opportunity for sustainable finance, which can assist in unlocking these opportunities and support the mobilisation of development funds and other forms of capital towards these initiatives and projects.

Green financing is a foremost opportunity for Africa, both in the loan and capital markets. Currently, there is a wave of global funding ready to invest in renewables, but we lack bankable projects in scale. The solution lies in sector reform initiatives, and developing policy frameworks that enable rapid market growth in both centralised and decentralised energy.

Lund

Key challenges

Collaboration in the sector is key to achieving global goals, such as limiting global warming to within 1.5°C above pre-industrials levels. While the cost of a Just Transition for South Africa is estimated at R6bn[1], the broader cost of transitioning South Africa's power system to net zero by 2050 is estimated at R3trn. This is a mammoth sum, and clearly cannot be funded through our fiscus alone.

In many of our key markets, there is a short-term dependency on fossil fuel revenue streams, and funding of the energy transition will need to be prioritised over other crucial fiscal spend.

The importance of blended finance cannot be stressed enough. Private and public sector partnerships call for closer engagement and planning between these parties, and prioritising the application of these funds.

The next decade is going to be "the decade of blended finance", where significant energy transition funding is going to be needed, particularly in emerging markets. Public-private partnerships, with a significant pooling of capital from developed markets, will be required to unlock the transition pathway.

The momentum has really increased with regards to client interest and demand in sustainable finance and solutions that embed sustainability in their structuring. Standard Bank has been fortunate to close a number of market leading transactions in 2021, continuing our success of 2019 and 2020 in the sustainable finance space, where:

- We partnered with Woolworths to conclude the first sustainability linked loan in the retail sector. This highlights Woolworths' commitment to making a meaningful difference for the greater good of the planet and its people, with the funding embedding KPIs linked to reducing store electricity consumption, local sourcing in FBH and continued focus on sustainability attributes in Woolworths Food Products.
- Standard Bank South Africa's first social bond was arranged by Standard Bank in August. The R2bn issuance was significantly oversubscribed and cleared at a preferential price. Proceeds will be allocated to mortgage bonds in the affordable housing market, with a focus on female borrowers. It was apt that we closed this momentous transaction during Women's month!
- Green Light Planet – Standard Bank acted as sustainability coordinator on a deal that saw Stanbic Bank Kenya, Citibank, Norfund and CDC Group fund GLP facilitate expansion of access to off-grid solar solutions to low-income communities in Kenya. The deal embedded KPIs linked to financial inclusion, clean energy, and gender equality.

Given the heightened focus on ESG factors and sustainability, global investors continue to pursue opportunities that make a positive environmental and social impact.

Africa is well placed to become a major player in the global sustainable finance market. And given the continent's massive funding needs, sustainable finance will play an important role in bolstering capital for high-impact projects. ●

Cook and Lund are Executives, Sustainable Finance | Standard Bank.

[1] https://www.tips.org.za/images/report_Estimating_the_cost_of_a_just_transition_in_South_Africas_coal_sector.pdf

ESG obligations leading to the risk of increased litigation for African businesses

DARRYL BERNSTEIN

As African businesses begin to recover and build the resilience needed to successfully navigate COVID-19 disruption, a focus on Environmental, Social and Governance (ESG) strategies is proving to be essential for long-term success. In order to stay competitive, organisations based in Africa are engaging meaningfully in ESG to build robust sustainability strategies that meet stakeholder expectations and enable compliance with global and domestic mandatory and voluntary ESG standards and codes.

ESG encompasses a broad range of issues across the spectrum of Environmental (climate change, biodiversity, waste, water and resource use, pollution), Social (human rights, labour practices, HSE, diversity); and Governance (corporate governance, ethics, compliance) matters.

As climate change impacts become clearer and nearer, there is an increasing emphasis on the Environment aspect of ESG. After the pandemic, initiatives in Africa are expected to have a heightened focus on green, low-carbon and sustainable development via, for example, clean energy production, community care initiatives, green transport and sustainable water projects, wildlife protection programmes and low-carbon development projects.

There is a major role for ESG policies to play in mitigating some of the effects of climate change, through planning and building for hotter temperatures, higher sea levels and more extreme weather conditions, for example. Organisations are adopting new strategies that address climate change risk and identify the sustainable opportunities that arise from addressing climate concerns. To regulate this, in the near future, there are likely to be developments from African regulators that address climate risk disclosure requirements for businesses operating on the continent.

Post-pandemic, the discussions around ESG are also resulting in an added emphasis on the Social aspect which, among other things, focuses on protecting an organisation's workers and the wider local populations in which these businesses are based. Organisations are looking at ways to build better social programmes that are more resilient to future pandemics and ensure good business practice. A focus on issues such as enhancing considerations around the health and safety of employees and communities, implementing diverse and inclusive workplace cultures, and building good management teams that can pull employees together in all kinds of remote, physical workplace and hybrid settings, puts companies in a strong position to move forward.

The Governance aspect has also been emphasised by the pandemic, with an increased focus on due diligence around compliance with regards to anti-bribery and corruption, data privacy and cyber security legislation, for example.

Some of the larger African jurisdictions have already implemented mandatory ESG and sustainability reporting frameworks and, going forward, more African regulators are expected to replace current voluntary frameworks with mandatory ones, or to adopt new mandatory frameworks. In turn, organisations operating in Africa will seek guidance and more detail from corporate regulators on how they want to see ESG reported, and the practices behind the reporting process.

Bernstein

In South Africa, there are many laws that govern ESG factors, including business and financial sector conduct, economic and social empowerment, and environmental protection. Voluntary codes such as the King IV Code on corporate governance and the Code for Responsible Investing in South Africa also serve as a guide to businesses on ESG considerations. Other examples include Kenya, where the Capital Markets Authority introduced Stewardship and Corporate Governance Codes in 2017, and Nigeria, where the Nigerian Code of Corporate Governance was introduced in 2019. Globally, in addition to numerous country-specific laws, there are a plethora of voluntary sustainability-focused codes and standards, including the UN Guiding Principles on Business and Human Rights, and the UN Guiding Principles Reporting Framework.

ESG risk management has become a mainstream component of corporate due diligence programmes, and corporate boards are

being held accountable for their ESG practices by their shareholders, stakeholders and management teams. Risks for non-compliance with the multitude of global and local laws, voluntary codes and best practices governing ESG factors range from criminal prosecution and hefty fines to reputational risk and business failure as a result of not fulfilling ESG commitments.

Actual and perceived non-compliance with ESG regulations and best practices have engendered activist shareholder protests and action against the parent companies of global groups. A key challenge for businesses is navigating where the laws end, and where business strategy and market expectations begin. This is especially the case when navigating the major global issues of, for example, environmental standards and human rights responsibilities. Such issues often lead to activism, litigation and class actions if a business falls short of sustainability standards or appears to be breaking publicly made promises.

Contractual liabilities around ESG must be carefully considered, as contracts that stipulate compliance with certain standards can trigger a breach of contract claim if there is seen to be any violation of the terms. It would be better for businesses to ensure in advance that they can fulfil specific ESG obligations before agreeing to them contractually. Limitations of liability should also be agreed upon to mitigate the risks.

Further, if companies have made public promises regarding their ESG obligations and they are seen not to be fulfilling such obligations, they could be vulnerable to the threat of class actions brought by consumers and shareholder activists. Companies should identify which ESG goals can be properly measured and which goals should be clearly defined as being aspirational, and ensure that this is accurately communicated in the public domain. Reputational damage from ESG non-compliance escalates quickly and can be difficult to recover from.

For African organisations, maintaining a long-term sustainability strategy ensures sound financial performance, full compliance with local and global laws and frameworks, and substantially increased resilience in a challenging post-pandemic environment. In the current global environment, ESG is no longer just about doing the right thing – the dial has shifted; having a legally sound and comprehensive approach to ESG considerations is a prerequisite for business success. ●

Bernstein is a Partner and Head of the Dispute Resolution Practice at Baker McKenzie in Johannesburg.

Giving the green light to green deals in Africa

JASON WILKINSON

Environmental, social and governance (ESG) initiatives are key market drivers for governments and corporate leaders, given the overwhelming need to advance sustainable investing. It is rewarding to see that such a key global initiative is being driven from a number of critical pressure points: from regulatory to investor and consumer. We think of this as the sandwich effect.

The regulatory regime

Regulatory requirements are a driving force behind sustainability in the lending market. It is expected that market practice will evolve as regulators enhance rules on disclosure and risk management, and develop green taxonomies. Key to this is the Paris Agreement, and one of its critical parameters is to reduce greenhouse gas emissions by 40% by 2030, to levels in the 1990s. This is only nine years away.

From a South African perspective, several foundational documents inform the domestic regulatory framework to achieve the country's ESG goals, including the Paris Agreement on Climate Change and the UN's 2030 Sustainable Development Goals.

However, in May 2020, National Treasury released a technical paper, entitled Financing a Sustainable Economy, that aimed to increase access to sustainable finance and stimulate the allocation of capital to support a development-focused and climate-resilient economy. Critically, it also recommended the enactment of a taxonomy similar to the EU Sustainable Finance Taxonomy (EU Taxonomy), in force since 12 July 2020.

In line with this recommendation, in June 2021, National Treasury published the Draft Green Finance Taxonomy (Draft Taxonomy), which sets out a more concrete regulatory framework for South Africa's ESG goals.

The Draft Taxonomy is an official classification document that defines a minimum set of assets, projects and sectors that are eligible to be defined as 'green', in line with international best practice and national priorities. It can be used by investors, issuers, asset owners and other financial sector participants (as 'users' of the Draft Taxonomy).

This project aims to adapt international best practice to South Africa's context and needs. In particular, South Africa's green economy should be viewed from two perspectives:

- economic activities that are intrinsically aligned to and/or are expected to make a substantial contribution to the future South African green economy; and
- economic activities that presently have significant detrimental environmental impact, but are needed as part of the future South African green economy and for which there are presently no known alternatives.

Investor appetite

Due to its role in capital distribution, the financial services sector is integral to achieving sustainable development. Generally speaking, institutional investors and asset managers in South Africa recognise the importance of ESG, and are taking steps to improve the integration of ESG into their operations.

Wilkinson

A revised draft Code for Responsible Investing in South Africa (CRISA) 2.0, a voluntary initiative that seeks to guide institutional investors in developing and implementing sustainable, responsible and long-term investment strategies, was published for comment in November 2020. It sets out various principles and practice recommendations with a clear emphasis on ESG and broader sustainable development issues. It also proposes a shift from an 'apply or explain' to an outcomes-based, 'apply and explain' application regime.

It is clear that investors are able to influence ESG conduct through their investment mandates and investment management agreements concluded with investment managers. The majority of investors and asset managers support CRISA and apply its principles, though the manner in which they do so varies considerably. Many institutional investors will regularly publish ESG policies and sustainability reports dealing with ESG issues. There are also a growing number of ESG-related products being provided by the various asset managers.

Consumer considerations

International lending markets have embraced green loans and sustainability linked loans (SLLs). Over the past four years alone, the volume of sustainable finance has grown 15 times. In South Africa, green and ESG initiatives and the related financings are no longer a theoretical aspiration, but are very much at the forefront for the Government, banks and corporates.

Ultimately, sustainable finance transactions depend on the nature (and the measure) of each key performance indicator or sustainable performance target, as agreed between the borrower and lenders. The finance providers will likely look at several factors when assessing potential financings, with reporting and verification being of primary importance.

ESG initiatives are being prioritised by the younger generation, both in terms of value-based investing and keen job satisfaction. The next few decades will see the largest generational wealth transfer in history, from the baby boomers to millennials. With this will come newly prioritised investment criteria, notably in where they choose to work, how they invest their funds, and who they select for business relations.

Conclusion

The main issue of concern for proponents of ESG is to move beyond virtue signalling and bare minimum compliance to a more proactive approach to ESG. Different approaches to ESG, both across a range of industries and within an industry, make it difficult to compare ESG performance. Added to this is a lack of capacity and expertise in ESG, requiring training on ESG integration.

However, ESG will become a core strategic concern for corporates, driven by exogenous and endogenous factors and pressures, including a shift towards a more stakeholder-inclusive capitalism.

Climate change is the key ESG challenge of the coming decades, which we expect will be a dominant theme as governments, investors, regulators and pressure groups increase engagements around climate change.

The trend of increasing pressure on companies and institutional investors to tackle ESG issues is likely to continue. Stakeholders are becoming increasingly proactive in engaging with institutional investors and asset managers on the integration of ESG factors into their decision-making, and companies are facing increasing scrutiny of their investment activities and AGM voting records. They, in turn, are taking a more proactive stance on ESG, and in holding management to account on ESG issues.

Wilkinson is a Partner | Bowmans South Africa.

D is for Disclosure

SAMMY NDOLO AND CLARICE WAMBUA

CDH
CLIFFE DEKKER HOFMEYR
INCORPORATING
KIETI LAW LLP, KENYA

A Review of Corporate Sustainability Reporting Requirements for Listed Companies in Kenya

Companies in Kenya have made sound progress on the disclosure of information relating to sustainability, often referred to as environmental, social, and governance (ESG) concerns, and many of the larger companies have been publishing annual sustainability reports and other ESG-relevant content. This is largely attributable to changes in the law following the enactment of the Code of Corporate Governance for Issuers of Securities to the Public, 2015, the Capital Markets (Securities) (Public Offers, Listing and Disclosures) (Amendment) Regulations, 2016, and the Companies Act, 2015, in which greater attention is paid to corporate sustainability disclosure, as well as company efforts to keep in line with global sustainability trends.

What the law says

Under the Companies Act, 2015, directors of a company (whether public or private) are required to have regard for the impact of the operations of the company on the community and the environment. This is an improvement on the previous and now repealed Companies Act, 1948, which did not make provision for environmental concerns. However, although the Companies Act, 2015 recognises impacts to the environment, its provisions do not go far enough to provide clarity on the director duties and standards to be applied in this regard.

Ndolo

The Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 (the Code), contains more far-reaching provisions on ESG issues and the duty for corporate disclosure. The Code repealed the Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya, 2002. The Code applies to, among others, listed companies in Kenya (Issuers).

The Code defines "sustainability" to mean conducting operations in a manner that meets existing needs without compromising future needs, and calls for company strategy to promote sustainability. It also recommends actions to be taken by the Board to enhance the well-being of the economy, society and the environment. The Code contains provisions that are mandatory minimum standards, as well as those upon which the 'apply or explain' standard is imposed.

Mandatory duties of the board of a listed company (the Board) that require full compliance include a duty on the Board to ensure that:

- The Board protects, enhances and invests in the well-being of the economy, society and the environment.
- The Issuer, with shareholder approval, develops formal and transparent policies and procedures on corporate disclosure, including disclosure on ESG concerns.
- The Board develops a Code of Ethics and Conduct (which includes sustainability) and promotes its application by all directors, management and employees.
- The Board, in accounting, considers not only the financial performance but also the impact of the company's operations on society and the environment.

For other duties, Issuers are to explain instances of non-application of the recommendations set out in the Code, and set out the steps being taken towards full application of the relevant requirements. These include duties on the Board to:

- Provide disclosures on compliance with laws, regulations and standards; ethical leadership, conflict of interest, corporate social responsibility and citizenship.
- Promote integrated reporting that provides material information on the commercial, social and environmental context within which the organisation operates.
- Incorporate ethical and sustainability risks and opportunities in the risk management process, and establish an effective risk management framework which is inclusive of key risks, foreseeable risks, and environmental and social risks and issues.

To provide bite and an avenue for enforcement of the Code, the Capital Markets (Securities) (Public Offers, Listing and Disclosures) (Amendment) Regulations, 2016 (the CMA 2016 Regulations) now make it mandatory for every Issuer to disclose in its annual report whether it is applying the recommended corporate governance practices, and where it is not, to indicate the steps

being taken to achieve the application of such practices.

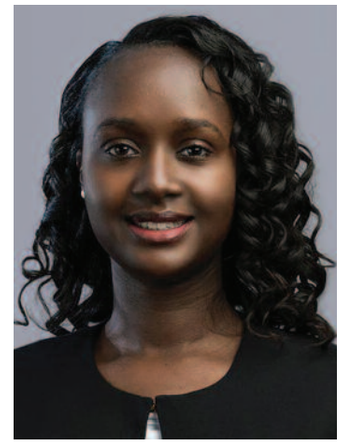
The CMA 2016 Regulations enhance the requirement for corporate governance by prescribing the composition of Boards, including the establishment of committees and the number of appointments applicable to a chief executive officer or chairperson of a listed company. The Board of a listed company must consist of executive and majority non-executive directors (who, together with the independent directors, constitute at least one third of the board), and the chairperson must be independent. The performance of the Board (including its chairperson, chief executive officer and company secretary) and committees of the Board must be evaluated on an annual basis. Any person appointed as a chairperson or executive director cannot serve in that capacity in more than two listed companies at the same time. The Regulations also prohibit the appointment of a body corporate as an alternative director. To ensure that shareholder participation is encouraged, and to protect their interests, the Board is required to facilitate the effective exercise of the rights of shareholders and to ensure that there is equitable treatment for all holders of the same class of issued shares.

Mid this year, the Nairobi Securities Exchange (the NSE) published its draft ESG Disclosures Guidance Manual (NSE Guidance Manual) for NSE listed companies, which provides direction to listed companies on how to collect, analyse and publicly disclose and report ESG performance consistently, transparently and based on a principled approach that satisfies the expectations of stakeholders. The NSE Guidance Manual recommends the application of the Global Reporting Initiative (GRI) Sustainability Reporting Standards, 2018 as the common framework for ESG reporting by Kenyan-listed companies. The NSE Guidance Manual is aimed at assisting listed companies to meet the reporting requirements of the Code.

The NSE Guidance Manual also identifies the integration of sustainability into business strategies as a core component of good corporate governance practices, and the Board is expected to ensure that the long-term sustainability of the organisation is assured. Recommendations are made for the appointment of a focal point for sustainability within the listed company (the sustainability manager), although the Board retains overall accountability for ESG performance and disclosure to stakeholders.

To enhance the credibility of the publicly disclosed ESG information, the NSE Guidance Manual identifies the International Standards on Assurance Engagements (ISAE) 3000 as the suitable standard, but recommends that a listed company must first pass its own self-assessment before procuring external assurance services.

There are also sector-level differences emerging with regards to ESG reporting requirements. This is, for example, in the case of institutions licensed under the Banking Act, such as commercial banks and mortgage finance companies (Institutions). The Central Bank of Kenya (the CBK) has more recently (in October of this year), published guidance on climate-related risk management (the Guidance). The Guidance requires Institutions (whether publicly listed or not), to monitor and report (both internally as well as externally, to the CBK), exposures to climate-related risks. These Institutions are also to develop an appropriate approach to disclosing, climate-related information to stakeholders to enhance transparency. The Guidance highlights the Task Force on Climate related Financial Disclosures' recommendations as a desirable framework for institutions to benchmark their disclosure frameworks.


Wambua

Putting it all together

Any Issuer must understand these transparency and disclosure requirements of the Code, as read with the CMA 2016 Regulations, as they relate to sustainability and ESG concerns, and put in place policies, procedures and controls that enable it to establish and regularly review compliance with the Code and the CMA 2016 Regulations. The prescriptions on the compositions of the Board, attempts to limit instances of conflict of interest, and the requirements for ESG transparency and disclosure are expected to enhance the protection of the interests of shareholders and those of other stakeholders that are impacted by the operations and activities of the Issuer.

In addition, an Issuer must also be cognisant of the sector-specific requirements on climate and sustainability-related reporting set out by other regulators, such as the CBK, as highlighted above.

There are overlaps and elements of duplication between the Corporate Governance Reporting Template published by the CMA and the NSE Guidance Manual (should it be approved for use), and Issuers will likely have difficulty addressing these inconsistencies, although compliance with the Code has been anchored by the CMA 2016 Regulations and is likely to prevail in the event of doubt.

Developments in Kenya so far indicate that, as far as ESG is concerned, D is for disclosure. Requirements on both public and private entities are bound to become increasingly detailed as the legal and regulatory framework continues to rapidly take shape. ●

Ndolo is Managing Partner and Wambua a Partner, Environmental Law | CDH Kenya.

Labels - Green is the new Black

CARLYN FRITTELLI DAVIES AND NJABULO MCHUNU

"Sustainability" is used as the foundation for motivating positive change in aged industries, and inspiring the establishment of new ones. The focus on Environmental, Social and Governance (ESG) imperatives for the clothing, textile, apparel and footwear industry can lead to investment in the ailing local fashion industry. "Sustainable development" is defined as "integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations". The elements clearly include humans, the economy and the environment to achieve a harmony of sorts, to ensure longevity of all three elements in a developing country. While the global fashion industry wrestles with the definition of "sustainable fashion", the unregulated use of environmental jargon could lead to greenwashing. Greenwashing is a term used to describe an instance where an entity provides misleading information to deceive its customers into believing that their products are more environmentally-friendly than they actually are. Voluntary initiatives through factual labelling may be needed to unify the fashion industry and its embodiment of sustainability.

What's in a label?

Brand Identity. Often a second label is found hidden inside and towards the bottom of a garment. It indicates the fabric content, origin of manufacture and care instructions. The information enables a consumer to make informed decisions. This is a basic requirement for transparency and authenticity in an age where greenwashing is likely to entice, rather than impede, sales.

How to label?

In terms of the Merchandise Marks Act, 1941 (the Act), an item of clothing is required to indicate the country of origin where the item was manufactured. This basic requirement, if contravened, will be met with a fine and/or imprisonment. In either instance, the court is also empowered by section 20(2) of the Act to order the confiscation of the goods to which the offence relates, in addition to any other penalty that may be imposed. The South African National Standards additionally require the fibre content and care labelling of the garment to be indicated. Experience has shown that there are often no secondary labels, or the information is insufficient, particularly in e-commerce. It is unclear whether this relates to indifference, cost-cutting or an inability by the merchant to obtain this information from its supply chain. The fashion industry would be wise to remove this supply chain gap, since the South African Sustainable Finance Initiative often follows the movement of the European Union. Recently, the European Parliament received recommendations to adopt legislation to prescribe due diligences for responsible supply chains in, among others, the garment and footwear sector.

Frittelli Davies

Why do we need labels?

Originally, union labels were used by labour groups in the United States of America to show their strength and, in 1874, cigar-makers used the origin to indicate higher product quality. Later, legislation was introduced to compel manufacturers to indicate care instructions, due to the creation of new synthetic fabrics, to ensure consumers could wash items without damaging them. Today, the care instructions are as important as ever with new fabrics being designed at a rapid rate. As for origin, it is required for import tax purposes and, as initially used, to promote support for local economies.

Labels of support

Additional labels are also used to support campaigns and initiatives. The well-known South African flag in the shape of a tick, Proudly South African, was established in 2001, resulting from the 1998 Presidential Job Summit assembled by the late former President Nelson Mandela. Its purpose is to work to combat the triple chal-

Mchunu

lenges of poverty, inequality and, above all, unemployment, by encouraging local investment and consumption of local products. The global pandemic has increased these triple challenges. Additional labels have been developed such as: "Made in South Africa", "Local is Lekker", "Cotton SA" and "Better Cotton South Africa." These words on labels aim to strengthen an industry that, in turn, creates and sustains employment, thereby addressing poverty, inequality and unemployment. However, consumer awareness and buy-in is required for the success of these initiatives on a large scale.

The future of labels

While the focus of labels has been based on those who make the clothes and how to care for clothes, the conscious aspects of purchasing clothes and the impacts on the environment are coming to the fore. South Africa does not have eco-label legislation yet, but the extended producer responsibility has recently been implemented in the electronic and packaging industries, indicating a shift of responsibility from consumers to producers, which aligns with eco-labels. The global clothing industry is designing various labelling systems, indicating the true cost of the industry on the environment through eco-labelling, such as the Nordic Swan Eco-label. Larger corporates tend to look to technology and technological measuring systems in order to determine their impacts. More examples emerge each year, including the Fair Trade Movement, Global Organic Textile Standard (GOTS) and OEKO-TEX® certification, to name a few. Smaller, slow fashion brands look to include information such as the carbon footprint of an item, or the true production cost thereof. The traditional label is too small to include sufficient detail to communicate cost and impact transparency, but technological developments such as QR codes will aid this endeavour. The ingenuity required in the label industry is being led by consumers' needs. As a result, the global label industry is forecasted to grow from $1,9170bn in 2020 to $3,1857bn by 2028.

So, look for the labels, consider and question their content and make a choice that will support the local economy, increase employment and, if you like, protect our environment for those who will one day walk in our shoes. ●

Frittelli Davies is a Consultant and Mchunu a Candidate Legal Practitioner, Natural Resources and Environment | ENSafrica.

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Nigel Beck

Head of Sustainable Finance and ESG Advisory at Rand Merchant Bank

The route I have followed to become the Head of RMB's Sustainable Finance and ESG Advisory business was undoubtably an unconventional one – falconer, personal assistant, game ranger, banker. But one that originated from a lifelong passion for society and conservation. A passion I have followed long before sustainability was at the forefront of everyone's mind.

While at school I was a member of the Gaia Society and at university I studied a master's in environmental technology. But the first step in my sustainability journey began in high school with birds - where I was trained as a falconer and began rehabilitating injured raptors. Falconry taught me to understand ecosystems and the fine balance of nature, but it also opened new experiences and opportunities. In the late 1990's while I was based in the UK working for the UK Government as a Consultant leading on Sustainability Appraisal and Strategic Environmental Assessment, I came across an opportunity at the British School of Falconry in Scotland. I jumped at the opportunity and moved in 1999 to GlenEagles, Scotland, to become the Head of the British School of Falconry.

But when finally trying to get into the "real" workforce after achieving my MSc from Imperial College in the UK, I landed up taking a job as a personal assistant just to get into Environmental Consulting. After that I worked for the Countryside Agency in the UK and contributed to the development and implementation of the National Park policy. I was also part of the team that designated the New Forest as a National Park in the UK.

In 2001, I moved back to South Africa and started to work more with the amazing wildlife and people we have on the continent. I became a Contract Ecologist in the Kalahari, on the private game reserve Tsawalu. I was responsible for modelling wildlife populations, looking at the optimum mix for financial and ecological viability.

I had some incredible experiences in the Kalahari that have shaped who I am. We would track black rhino on foot, resulting in the occasional charge by the rhino, and we would have to run for the nearest tree (very scarce in the Kalahari) and often land up in a bush not much taller than the rhino itself. We also captured game for relocation to other reserves, which was a real logistical challenge. At the time I lived in a small house more than 50km from any other sign of civilisation, so I got to know myself very well. During that stage of my journey I soon realised that to get traction and make a real impact, I needed to add the financial overlay to my qualification. This inspired me to do my MBA in 2007 to develop and mainstream the financial aspect of ESG.

I have questioned my career decisions many times over the years. ESG was not popular prior to 2015, and it was always a challenge to convince companies and society of its relevance. Once I was in the Financial Services sector, I pushed hard to establish an ESG capability in 2008, but it was only in 2015, after the Paris Agreement, that ESG entered mainstream corporate conversation, which justified my career path to that point.

It's been tough swimming upstream for most of my life, but I stuck with it, even when those close to me were achieving success in their chosen fields while I was still chasing animals around the Kalahari! But my passion will always be in sustainability and it is satisfying that I can now see the tide turning in the right direction globally.

All of this experience has equipped me for my current role as Head of RMB's Sustainable Finance and ESG Advisory business. My team and I, partner with clients to advise on sustainable products and services solving for access to financial capital, to provide support on developing a sustainability funding strategy, identifying strategic opportunities and to keep clients abreast of the latest developments in the local and offshore sustainable financial markets.

I have a reputation for building strategic business partnerships that maximise emerging market opportunities in the ESG space. This includes in-

The route I have followed to become the Head of RMB's Sustainable Finance and ESG Advisory business was undoubtably an unconventional one – falconer, personal assistant, game ranger, banker. But one that originated from a lifelong passion for society and conservation. A passion I have followed long before sustainability was at the forefront of everyone's mind.

novating award-winning sustainable growth and green product solutions that align with internationally recognised standards, corporate due diligence and client requirements.

Over the years I have pioneered the development of sustainable finance on the continent, executing several innovative and award-winning products including:

- the first Sustainability Linked Loans in Africa (bi-lateral and syndicated),
- the first Green Bond in East Africa,
- the first Green Bond in South Africa,
- the first Social Bond in South Africa,
- the first Sustainability Linked Bond in Africa,
- the first Green Infrastructure Bond issued by a corporate in Nigeria, and
- Africa's Largest Offshore Green Bond.

Within the last six months I have a concluded a sustainability-linked bond for Rand Water (the first for a state-owned entity), and the first syndicated sustainability-linked loan in Africa for Mediclinic.

My passion for sustainability has led me to many professional bodies. I am a Member of the Institute of Environmental Management and Assessment (MIEMA) and a Chartered Environmentalist (UK). I was previously the lead at the International Chamber of Commerce (Sustainable Trade Finance) and member of the Impact Investing National Task Force. I have held the longest Chairmanship of the Global Equator Principles steering committee.

My education included a BSc from the University of Cape Town, a BSc (Hons) from the University of Pretoria, MSc & DIC (Environmental Technology) from Imperial College, London, an MBA (Finance) from Wits Business School and Executive Leadership Programme from Duke Fuqua School of Business.

Prior to working at RMB, I was the Global Managing Director of Sustainable Finance & ESG Advisory at Standard Bank, and before that, I was a consultant on large and small infrastructure and resource transactions and worked within the British Public sector.

My experience has shown me that there a few primary challenges we need to overcome to accelerate ESG in this country:

Lack of awareness

There is a lack of awareness of sustainable finance opportunities in Africa. Corporates are not aware of all the products like Green Bonds, Sustainability-linked bonds and loans amongst others. Supporting funding of corporate transition strategies by committing companies to work towards attaining various ESG benchmarks. It's a great opportunity, but not many treasurers are up to speed yet. That's where ESG Advisory comes in – we are working hard to educate our clients. We can show a client all the options they have at their disposal, based on their business and transition strategy, sector and available investor interest in the market.

Lack of technical understanding

In South Africa we have a skill deficit when it comes to technical expertise in structuring Sustainable Finance transactions. We spend a lot of time guiding our clients, providing advisory services through the structuring of these deals around strategies aimed at reaching Net Zero. For example, if a client is exploring a green bond, we can provide support in asset mapping, developing the framework and facilitating the independent verification.

It's often difficult to reconcile the costs

Independent ESG rating agencies are based in Europe, the UK and US this results in additional costs in rand terms, which can be difficult to justify. We can overcome this challenge in the longer term by creating local capacity and capability to undertake ESG ratings and verification, so that the costs are more aligned to the local market.

There is a lack of awareness of sustainable finance opportunities in Africa. Corporates are not aware of all the products like Green Bonds, Sustainability-linked bonds and loans amongst others. Supporting funding of corporate transition strategies by committing companies to work towards attaining various ESG benchmarks. It's a great opportunity, but not many treasurers are up to speed yet.

In closing, there is massive opportunity for sustainable finance in South Africa. However, we are tracking behind the global market. We have raised significant awareness over the past two years and are seeing increasing interest from investors. If we can collaborate as a private and public sector to address the challenges above and seize the opportunity, we can make a significant impact in the years to come. ●

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Demonstrable compliance with Environmental, Social and Governance (ESG) principles is no longer a nice-to-have for businesses - it is a must-have. Despite the exponential growth in the mainstream interest in ESG, where there is now an integrated focus on the triple bottom line of 'E', 'S' and 'G', as far as Webber Wentzel is concerned, we have been advising clients on the core themes of 'risk', 'opportunity' and 'impact' for decades.

Our leading cross-disciplinary teams of experts advise clients on ESG and sustainability-linked issues across all sectors. We help clients to navigate regulatory developments, policy drivers and international benchmarks in pursuit of sustainable development and shared value in the long term.

We guide clients on the relevant industry standards and risks, and bring a laser focus on supporting our clients to know their business, their supply chain, and the broader ecosystem.

At Webber Wentzel, we are committed to making a transformative and sustainable impact through our work and actions, in accordance with the UN's Sustainable Development Goals. We are equally committed to good corporate citizenship across the core ESG principles. We understand that our clients expect us to walk the walk and talk the talk on ESG alongside them. Being a responsible and contributing corporate citizen is a key component of our overall business strategy.

Find out more about our ESG offering and read some of our recent ESG related insights.

Webber Wentzel ESG related accolades

ESG Initiative of the Year
- African Legal Awards 2021

Women Empowerment in the Workplace Award (Overall Winner: Southern Africa)
– Gender Mainstreaming Awards 2021

Ranked in Band 1 for Environment: South Africa
- Chambers Global 2021

Environmental & Renewables Team of the Year: highly commended
- African Legal Awards 2020

CSR, Diversity, Transformation and Economic Empowerment Award
- African Legal Awards 2018

Pro Bono Lawyer of the Year
- IBA Pro Bono Award 2016 (a first ever for a lawyer from the African continent- Odette Geldenhuys)

Diversity Initiative of the Year
– African Legal Awards 2016

Project of the Year - Africa Renewables: Kathu Solar Project
- IJ Global Awards 2016

Project of the Year: Alchemy: Anglo American Platinum's ZAR3.5 billion social development framework for shared ownership
- IAP2 Core Value Awards for Excellence in Public Participation 2014

PRACTICE MAKES PERFECT

- **ESG Initiative of the Year**
  African Legal Awards 2021
- **Women Empowerment in the Workplace Award (Overall Winner: Southern Africa)**
  Gender Mainstreaming Awards 2021
- **Ranked in Band 1 for Environment: South Africa**
  Chambers Global 2021
- **Environmental & Renewables Team of the Year: highly commended**
  African Legal Awards 2020
- **CSR, Diversity, Transformation and Economic Empowerment Award**
  African Legal Awards 2018

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Adam Ismail
Partner

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Area of speciality

M&A and BEE. I focus on the consumer sector, financial services and real estate.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I led the Webber Wentzel team that advised PepsiCo Inc and its South African subsidiaries, Simba and Pioneer Foods, on the implementation of two conditions imposed on them by the Competition Tribunal. These were to establish a trust for the benefit of their 12 000+ South African employees, holding ZAR1.655 billion worth of shares in PepsiCo Inc (listed on Nasdaq); and to create a fund to which PepsiCo/Simba and Pioneer Foods would contribute ZAR600 million for the development of emerging farmers and black SMMEs and to advance education and skills development in the sector. This was a unique and first of its kind B-BBEE transaction, where the South African employees received shares in a foreign listed holding company on such a scale. In addition, the shares were gifted to the employees, there were no funding arrangements.

I also advise listed and unlisted companies on matters of governance, particularly the roles, duties and responsibilities of social and ethics committees. I have also served on one of those committees.

Thoughts on ESG as a whole in the context of SA

In a couple of areas SA is ahead of the game, especially in relation to the rights and protection of employees. The recent amendment to the Competition Act gives the Minister of Trade, Industry and Competition certain legal rights to protect the public interest when approving mergers. The Minister uses that authority to approach a merger approval in a constructive way: firstly to minimise harm and secondly in seeking proactive steps by the merger parties to contributing to SA Inc. The PepsiCo deal was a stand-out example of this approach.

Where I am seeing ESG the most is in a consciousness by boards of directors, probably in keeping with King IV, that their companies' stakeholder base is wider than initially thought. It extends beyond shareholders and customers to other interest groups, both specific and non-specific. A lot of multinationals already have this level of sophistication and are bringing it to SA.

Hurdles | challenges within this sector

There is always the risk of over-regulating a sector and compliance becoming prohibitive from a cost perspective. It is best to target the big players, because even though small South African businesses also have a significant impact on ESG on an aggregated basis, it is unwise to squeeze small business too hard. SA is a unique economy, given its high unemployment rate - people can only earn a living through entrepreneurship and those small businesses help to keep the economy growing.

Some personal information, eg how did you get into this speciality

I trained as an M&A lawyer and entered the market when there was an M&A boom, in the early 2000s. Through that experience, I got access to boards of many significant companies. With the advent of the King Codes on Corporate Governance, I evolved as a practitioner with ESG experience garnered in the trenches. This sector has over the last couple of year become a lot more sophisticated, including new disciplines like environmental compliance.

I feel strongly about inequality in SA, and decided to use my M&A skillset to assist with BEE structuring, to ensure that deals are structured on a responsible and sustainable basis and to advise clients how to structure these types of transactions properly. It is not only about getting maximum points for as little effort as possible, no matter the consequences. It should be tackled rather as creating a structure that is sustainable.

A related passion and skillset for me was being a client representative in discussions with labour unions. I have had a number of really good experiences over the years.

Interesting fact(s) about yourself / your achievements

I love hiking in the mountains around Cape Town as often as I can and serving community-based organisations based on the Cape Flats.

Bruce Dickinson
Partner

WEBBER WENTZEL
in alliance with > Linklaters

Area of speciality

Mergers and acquisitions, particularly in the mining industry, as well as the structuring/restructuring of companies, mining transactions and projects, as well as the development and operational aspects thereof, including sustainable development.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I have over 20 years' experience working with both mining companies and communities on the development and implementation of ownership and sustainability structures, which has included, for example, the corporatisation of the Royal Bafokeng Nation's mineral assets and the renegotiation of their royalty arrangements with Impala Platinum in the 1990s. Another early deal was the establishment of Eyesizwe Coal and working with the Eyesizwe team on several transactions over the years culminating in the creation of Exxaro. I have been involved in many like transactions over the years, including transactions such as Project Alchemy: Anglo Platinum's (AAP) community empowerment transaction, through which it invested c. ZAR3.5 billion to uplift communities around four of its mines, as well as labour-sending areas. The share ownership scheme which underlies Alchemy made the development trusts the second-largest shareholder in AAP at the time. The purpose of the scheme was not only ownership but ensuring the long-term sustainability of the communities post mine closure. Most recently, I lead the team advising Anglo American on the divestment of its SA coal interests to its shareholders through a new entity, Thungela Resources, which was listed in Johannesburg and London on 7 June 2021. The transaction was largely in response to the increasing aversion of leading sovereign wealth funds and other institutional investors to fossil fuels. As part of the transaction an additional 10% was devolved to employees and communities. A current interesting project that we are working on is the tailoring of company's in-house standard commercial contracts, or ad hoc transaction documents, to limit environmental risk and to reduce the company's as well as their business partners' environmental impact. We believe that the updating of supply-chain and other standard form agreements could be critical in terms of assisting companies to reduce Scope 2 and 3 emissions and to ultimately assist in achieving GHG reduction, climate change and net zero targets.

Thoughts on ESG as a whole in the context of SA

Companies' ESG performance and commitments are under the spotlight like never before. ESG is no longer a nice-to-have - it has become a prerequisite to diminishing the social trust deficit; to guaranteeing the responsible sourcing of metals and minerals; to driving policy reform; and, ultimately, to decarbonising the economy. Companies need to navigate, understand, report against and identify opportunities within the many frameworks which inform the fundamental principles and obligations underpinning ESG performance. The metals and mining industry will experience an even more pronounced acceleration in ESG adoption in the coming years, with the social and governance pillars fast becoming as significant as the environmental pillar - especially in the context of SA. In addition, with the risk of punitive tariffs looming large, access to international markets may well be heavily constrained if SA is unable to decarbonise its economy quickly. This poses a significant risk both to the companies seeking to export, but also to the SA economy, with its heavy reliance on export earnings, particularly its mineral exports.

Where SA is a different from many other countries is the elevated importance of the S and the G, particularly having regard to inter alia the country's inequality and unemployment levels - it is essential that we create a more sustainable society that uplifts as many people as possible as quickly as possible.

Hurdles/challenges in this sector

The many legal frameworks underpinning ESG remain a minefield – increased global standardisation of ESG requirements and reporting will assist companies navigate, understand and report against the requisite ESG standards. The lack of standardisation and certainty as to which frameworks and standards to adopt and report against has led to a relatively muted uptake of solutions and structures seeking to address ESG, although we are seeing larger corporates starting to take important steps in driving ESG initiatives. Mining companies and banks are amongst the most prominent players leading the charge. This will lead to a trickle-down effect throughout the economy, particularly as companies seek to reduce Scope 2 and 3 emissions.

Another important challenge is how companies engage in a constructive and meaningful manner with their local communities – involving them in the conceptualisation, development and implementation of proposed projects and ensuring broad support will certainly go a long way in ensuring the legitimacy and success of such projects. We have over many years developed best practice methodologies to assist companies successfully navigate these engagements.

Some personal information, eg how did you get into this speciality

I have been fortunate to work with both mining companies and communities for over two decades in seeking to achieve win-wins – from ensuring a license to operate, to broader ambitions under the SDGs and through to our current ESG initiatives.

Interesting fact(s) about yourself / your achievements

As a young lawyer I worked with a team of lawyers in assisting the Khulumani support group to gather witness statements from victims and relatives of victims of apartheid atrocities, which were subsequently presented at the TRC hearings. Much of what is in those statements is incorporated into Jacques Pauw's book, *"Into The Heart of Darkness"* (Jonathan Ball, 1997). The experience had a profound effect on me as a person and on what I have sought to achieve throughout my career. ●

Khurshid Fazel
Partner

WEBBER WENTZEL
in alliance with > Linklaters

Area of speciality

Banking and finance, and within that, debt funding and hybrid funding, i.e. hybrid debt with equity-like features.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I recently started becoming involved in matters which have sustainability-linked loans. A new spin on financing and an area I have just had to skill up on.

I was involved in advising a syndicate of banks and financial institutions that advanced sustainability-linked facilities to Mediclinic Southern Africa. The funders and Mediclinic agreed upon certain environmental and social key performance indicators (KPIs) and annual targets in respect of the KPIs. The relevant targets are independently verified every year, and if they are met, the margins applicable to these facilities will be reduced.

Each sustainability-linked loan has bespoke KPIs and targets and the interest rate adjustments are equally bespoke and as such these provisions need to be formulated on a deal by deal basis. In addition, the extent of the sustainability agent's role is constantly evolving (including in the global market) which makes these provisions quite heavily negotiated.

This was a great matter to be involved in and landmark within the SA context. What was interesting to me on this matter as well was that when discussing it with our global alliance partner, Linklaters – they hadn't done an akin deal. It was quite gratifying to see that this SA led deal was a bit ahead of what is happening in global markets in this instance.

Thoughts on ESG as a whole in the context of SA

I am very impressed with the strides that have been made on ESG particularly in the financial services sector in SA, with banks putting a lot of emphasis on it. One of my biggest clients is RMB, which has been building its ESG capacity and hiring people with expertise in this area. They have an internal drive to build knowledge and skills.

In global M&A, ESG is very much on board agendas. While banks are very aware of these issues, larger and smaller corporations are also following the global trends. It's all quite new but gathering lots of momentum.

Hurdles | challenges within this sector

There is a shortage of knowledge and experience in the market in some areas, although we are all learning fast. We have to learn a new language, new concepts and principles. Some of the challenges include how to verify information to ensure companies are meeting their sustainability targets.

Auditing compliance is an issue, as we have found there is really a shortage of experts in SA who are qualified to audit ESG compliance. But the auditing firms are also ramping up their capabilities in this area.

> There is a shortage of knowledge and experience in the market in some areas, although we are all learning fast. We have to learn a new language, new concepts and principles.

Some personal information, eg how did you get into this speciality

It wasn't my plan to become a corporate lawyer. I had started my early career wanting to be a human rights lawyer. But the path was diverted, and I found myself at a large corporate law firm specialising in banking and finance. It's very different from where I started, but it has been a fulfilling career and an interesting area of law. I'm also finding the big drive on ESG within the area to be exciting – the social and environmental impact aspects resonate with my early career aspirations – and desire to make a meaningful impact through my work.

Interesting fact(s) about yourself / your achievements

I previously worked with orphaned children, through the international organisation War Child, and spent time in Jordan in the refugee camps. I also walked for six days in the desert to help raise awareness for War Child.

I love to be in nature and to walk. I have done lots of multi-day walks in the Kruger National Park and completed the Otter trail.

Michael Denenga
Partner

WEBBER WENTZEL
in alliance with > Linklaters

Area of speciality

I am an investment funds and finance specialist, working in the financial services sector and specifically in the fund formation team. Most of my work is in establishing private equity fund vehicles.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

ESG has become top of mind for our clients. I advise them on their ESG policies, reporting requirements and compliance frameworks. This also involves having to negotiate ESG policies with investors. There may be numerous investors in a fund, each with their own reporting timelines and requirements. It is important to try to streamline these requirements, to make sure clients do not face onerous obligations on ESG reporting. We are currently compiling a checklist of compliance requirements and reporting formats to help clients to comply.

Thoughts on ESG as a whole in the context of SA

I believe SA is reasonably advanced in ESG adoption . Fund managers realise it is not "a nice to have", it is a competitive issue. Clients are taking it seriously at both fund level and portfolio company level and South Africa has incorporated the governance aspect into the King IV on Corporate Governance. The "G" in ESG has been fuelled by South Africa's adoption of various transformation agendas designed to advance inclusivity across all sectors including employment equity, black economic empowerment and historically disadvantaged groups. Investors are allocating more funding to managers that are female-owned or that invest in portfolio companies that are female owned. There is still a lot that we need to do but I think most people realise by now that an investment that is impactful does not have to be unprofitable.

> ESG regulations are still evolving and many different reporting standards are applied by different regulators. Some of the ESG metrics are not easily measurable, making it very challenging, especially at portfolio company level, to comply.

Hurdles | challenges within this sector

ESG regulations are still evolving and many different reporting standards are applied by different regulators. Although there are initiatives under way to standardise them, at the moment, clients have to consider various different requirements and thresholds. Some of the ESG metrics are not easily measurable, making it very challenging, especially at portfolio company level, to comply.

> ESG has become top of mind for our clients. I advise them on their ESG policies, reporting requirements and compliance frameworks. This also involves having to negotiate ESG policies with investors.

Some personal information, eg how did you get into this speciality

As a fund formation specialist . I am regularly called upon to advise clients on ESG. I have seen ESG gathering momentum and realised that as lawyers we must understand ESG better to help our clients to navigate through it. I am improving my skills mostly through one-day workshops, run by some of our investors and general partners. The South African Venture Capital Association has also been quite active in promoting classes on ESG.

Interesting fact(s) about yourself / your achievements

In my previous life I was a professional soccer player, and part of me feels I should have pursued that career. Perhaps I would have had a more glamorous life.

Nomsa Mbere
Partner

WEBBER WENTZEL
in alliance with > Linklaters

Area of speciality

Mining corporate and commercial. The corporate aspect covers M&A, transaction structuring and related transactions. I have expertise in the mining sector.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I do a lot of work with mining clients, where there is now a pressing need to include sustainability goals as an integral part of the mining company strategy. This includes, among other things, promoting thriving communities, protecting the natural world and promoting equal opportunities. These goals all lead to a sustainable future, through and beyond mining, for host communities. We are now having to include more clauses in agreements to comply with certain compliance laws and ESG requirements imposed upon the entities by their international customers, for example clauses on compliance with the applicable laws on (i) the protection of women and children, (ii) equal treatment and prohibition of discrimination, abuse and harassment; and (iii) prohibition of hard labour and forced labour practices. In this regard, my focus is on social and governance areas.

Thoughts on ESG as a whole in the context of SA

SA has quite a way to go on ESG. It is still seen as a separate item, and not being fully integrated into companies' key strategic objectives or into all the various business unit activities. People tend to still work in silos, each concerned with their areas of expertise, resulting in ESG principles being implemented in various splintered initiatives. As a result, money and resources are not efficiently utilised. This could be avoided if a single, holistic approach throughout a group of companies was adopted.

I look forward to a time when it would become the norm for mining companies to create a community umbrella structure (HoldCo) holding several different subsidiaries with their own investments. Over time, HoldCo could generate enough capital through collecting dividends for its subsidiaries and develop enough competency that ultimately the whole structure could become self-sustaining, comparable to a fully mature investment company. This could then be used as a tool by the mining company to invest in various initiatives for the benefit of the community. As the investments continue to pay dividends, HoldCo would grow its investment portfolio and, at the same time, be able to finance community development projects– rather like the role that the Public Investment Corporation (PIC) plays as a government investment body. The problem tends to be that companies often have a limited view of the community trust rather than looking at the bigger picture and thinking how they can grow the community trust to become a self-sustaining investment vehicle, with the necessary competencies and strong corporate governance structures to enable it to make its own investment decisions. Granted this will require commitment on all sides.

Hurdles | challenges within this sector

There is a lack of innovative ideas on empowering and growing community trusts. Rehabilitation guarantees or funds are often put aside for mine rehabilitation, which is good, however we need to start creating long-term, sustainable community industries such as large agricultural concerns, or enable local communities to participate effectively and in their own right as independent power producers (IPPS) in the renewable energy sector. What tends to happen is that some mining companies wait for the mine closure to be imminent before starting to plan waysin which they can help the community left behind. The regulatory environment also does not necessarily support innovative ideas, as the DMRE continues to require sizeable rehabilitation guarantees instead of enabling alternative ways to use the funds much earlier to create sustainable industries and projects to prepare in advance for mine closures.

Some personal information, eg how did you get into this speciality?

I have always been concerned about the sustainability of host communities in Africa. Companies have in the past come and mined and then departed, having made a small contribution to host communities thus leaving ghost communities behind. Many of us do not have the option to emigrate abroad, so we are left to deal the consequences of social instability in our communities when the mining companies move elsewhere.

Interesting fact(s) about yourself / your achievements

Rather than just seeing my work as a series of transactions, I have always worked casting one eye on the community. Therefore in giving legal advice, that passion for economic development of our communities is strong.

Before I became a lawyer, I was a dentist. What attracted me to law was that during the height of the HIV pandemic, academics from Harvard came to Botswana (where I lived) to conduct patient trials for ARVs and at that time we had no patient codes. I decided to study law, aiming to assist in protecting patients' rights by developing patient codes. Later, I became involved in charity work, including for the Botswana Red Cross, and it made me realise that without capital we will always be beholden to the person with the money. I started a foundation to raise funds to support communities in areas where my friends and I thought would make most sense. ●

Robert Appelbaum
Partner

WEBBER WENTZEL
in alliance with > Linklaters

Area of speciality

I started my career as a M&A and healthcare lawyer. I did pretty much everything that one could do within healthcare, including healthcare regulation, and after 30 years I transitioned into oil, gas and energy. With the advent of Covid-19, my love for healthcare was rekindled and I now head up the healthcare team at Webber Wentzel.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I led the team that advised Business for South Africa, the Department of Trade, Industry and Competition and the South African Radio Astronomy Observatory on a pro bono basis on the National Ventilator Programme. We helped procure non-invasive ventilators from foreign manufacturers and then advised on the choice of outside experts, drafting, negotiation and settlement of the prototype and manufacturing agreements required for the NVP. Webber Wentzel helped to ensure the non-invasive ventilators were registered by the South African Health Products Regulatory Authority.

Shortly afterwards, I also led the Webber Wentzel team that advised the National Department of Health in drafting all the vaccine-related agreements, including those between the NDOH and the African Union where the AstraZeneca/Serum Institute vaccines were sold to the African Union, the agreement with Jansen (Johnson and Johnson) and that with Pfizer.

On the dealmaking side, I am currently helping a major international client to set up their oncology, vaccine and pharmaceutical business in SA. I also have extensive involvement in deal making in mine tailings and retreatment technology. These new technologies will substantially lessen pollutants in the mining industry.

Thoughts on ESG as a whole in the context of SA

I think in general businesses are paying lipservice to ESG in SA, but it will happen where there is money to be made from it. For example, companies are finding it makes more sense to rework mine tailings rather than starting new mines – this is both positive for the environment and hugely profitable, as some of those dumps are very old and contain high grade ores.

> In SA - and it seems in other countries as well – companies don't seem to fully understand what ESG means.

Hurdles | challenges within this sector

In SA - and it seems in other countries as well – companies don't seem to fully understand what ESG means. They are only doing it because their shareholders require it.

Some personal information, eg how did you get into this speciality?

I wanted to train as a doctor. For me, returning to the healthcare sector, which I never thought I would, is wonderful. It is my first love, and I am enthusiastic about cutting edge, lifesaving work, especially where it is not necessarily profit-driven.

> ... in general businesses are paying lipservice to ESG in SA, but it will happen where there is money to be made from it. They are only doing it because their shareholders require it.

Interesting fact(s) about yourself / your achievements

I was very involved in starting the cultural boycott of SA. I was counsel and spokesman for Artists United Against Apartheid and their founders, Steven van Zandt and Arthur Baker.

Safiyya Patel
Partner

Area of speciality

Social impact and governance in the corporate sector, with a focus on BEE and employee trusts. I work with a range of companies, including financial services, telecoms, renewables, multinationals, listed and unlisted entities.

WEBBER WENTZEL
in alliance with > Linklaters

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

ESG is still quite nascent in SA. Advising corporates on governance policies has always been an integral part of corporate work, and ESG, in different forms, has been part of corporate policy for many years. But ESG as a holistic approach is still relatively new. We are particularly conscious of how important it is becoming in the M&A space, and particular for inward investors, who scrutinise a company's ESG closely before they make an acquisition.

For example, we are involved in a potential acquisition of a South African company, acting for the foreign buyer. A key qualification to their decision is whether the practices of the target company, in terms of the fees they are charging to underprivileged clients, could be considered unfair or excessive. They do not want to be seen to be investing in a company that is treating customers unfairly.

There are some good examples of South African companies that are very aware of ESG and put it at the forefront of their decisions. One in the retails space is Woolworths, which is very careful in its supply chain to ensure that the materials its suppliers use are sustainable and that their suppliers have empowerment policies in place.

Thoughts on ESG as a whole in the context of SA

SA cannot turn a blind eye to the concept of ESG. There is a need for partnership and collaboration between public and private sectors and this is an opportunity for everyone to achieve a win-win solution.

Hurdles/challenges within this sector

There is a great need for educating South African companies to understand the benefits of ESG and take a forward-looking approach. We need to do a lot more work in getting companies to understand how their actions impact communities, rather than having a selfish, profits-first approach.

South African businesses need to move away from the traditional, top-down way of decision making and become more inclusive. This entails, for example, consulting more with employees and communities and thinking beyond factors like age, gender and race.

One of the biggest problems that SA faces is youth unemployment – it has so many knock on effects, including increased levels of crime. A company like Woolworths has the understanding that if it doesn't contribute to job creation, its business suffers too because its market is not growing. Forward-looking companies appreciate that issues like this affect the success of their businesses. They know they must think harder about how to create opportunities for the youth by listening to them and understanding the hurdles they face.

> ESG is still quite nascent in SA. ... ESG as a holistic approach is still relatively new. We are particularly conscious of how important it is becoming in the M&A space, and particular for inward investors, who scrutinise a company's ESG closely before they make an acquisition.

Some personal information, eg how did you get into this speciality?

I feel very passionate about social impact. I have advised on a lot of BEE regulatory work and impact work and that is how I moved in this direction. There is a lot of overlap between those two areas. I couldn't do this work if I were not passionate about it. It gives me purpose and fulfilment, and keeps me interested in what I do.

Interesting fact(s) about yourself / your achievements

If I wasn't a lawyer I might have done something in the creative arts, probably become a comedienne.

Catalyst

SA's quarterly Private Equity & Venture Capital magazine

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SEPTEMBER QUARTER 2021

Private equity finds (renewable) energy

PE builds antifragile companies

Date is the new leverage in buyouts

FROM THE EDITOR'S DESK

At the time of writing this note, just over half of the local government election's votes had been counted, but the predictions were being proffered by the psephologists, with high degrees of certainty that the ANC would see its share of the vote nationally fall below 50% for the first time in our young democracy's history.

In conversation with political analyst Moeletsi Mbeki, he characterised this as "the beginning of the end of an era" for the ANC. "For me as a businessperson," he stressed, "we now have an opportunity for new economic policies."

The bottom line is, can those coalitions that emerge post this local government election, and indeed into 2024, as is now being predicted, provide the kind of stable, better quality and more honest and responsive political leadership and government that the country is clearly yearning for? That is the big question.

The irony, according to Mbeki's incisive observation, is that business has increasingly leaned left of the centre of South Africa's politics.

"They are the ones who are very concerned about poverty levels; they are the ones who are casualties of the July riots. They want the population to be better housed, better fed, to become an effective real market for them," he points out.

It seems to me, though, that the country and the ANC have far bigger problems to worry about than who to form partnerships with, in which municipalities. The ANC is now facing a slow death as it is being abandoned by the black working class in the country's core commercial heartland of Gauteng. I suspect that the black middle and upper class in the private sector, who live in former white suburbs, are also not voting for it.

This leaves the ANC dependent on rural and urban poor, public sector middle and upper class, and traditional leaders. This is what happened to the ZanuPF, who eventually had to be kept in power by the army. Aren't these the real issues, rather than coalitions, that the country, and especially business, should be talking about?

Interestingly, Cyril is making the army more and more active and visible in national life. He had an army guard of honour at his inauguration, he uses it to police elections, to enforce lockdowns, et cetera. Maybe he and his advisors know something the rest of us don't know? ◆

Michael Avery

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ITSMO of the same – as Eskom expects to miss DPE Roadmap date for transmission unbundling

Technically insolvent state power utility, Eskom, revealed in its 2021 integrated annual report that it is projecting to miss the target date for the proposed unbundling of its transmission division as part of the Department of Public Enterprises (DPE) Roadmap, which promised to oversee the unbundling of Eskom into three separate stand-alone businesses.

Tucked away on page 48 of the Report it states that"[r]egrettably, a number of delays are being encountered in preparation for the legal separation of Transmission. A number of dependencies are lagging behind, and this puts the finalisation of the separation by 31 December 2021 at significant risk. Guidance is awaited from DMRE regarding licensing and internal market operations of the Transmission entity. **At the moment, our projection is that separation will not be achieved by the target date**. Our intention remains to comply with the timelines set out in the DPE Roadmap, despite the obstacles encountered."

DPE's Roadmap sets out timelines for the restructuring of Eskom from a vertically integrated utility into an unbundled state, with three wholly owned separate legal entities in the form of Transmission, Generation and Distribution, as follows:

- Divisionalisation by March 2020
- Functional separation by March 2021
- Legal separation of the Transmission entity by December 2021
- Legal separation of the Generation and Distribution entities by December 2022

Eskom's debt remains unsustainable, attracting a net finance cost of R31,5 bn, turning an operating profit of R5,8 bn into a loss of R18,9 bn after tax. It reduced its gross debt by R81,9 bn – a 16,9% reduction – to an outstanding debt of R401,8 bn.

The utility's finances have been a binding constraint on economic growth since load shedding first started in 2008.

As part of the country's economic reconstruction and recovery in the wake of the pandemic, Busi Mavuso, CEO of Business Leadership SA, revealed that finance minister Enoch Godongwana told the Business Unity SA annual general meeting that the state was working to strengthen the security of supply, including the unbundling of Eskom into three separate units, while implementing a just energy transition towards a low-carbon economy. "These developments pose serious policy questions about the future of the electricity supply industry," he said. "This will effectively introduce competition in the sector."

The delay poses serious questions about the urgency with which government is trying to tackle the problem.

Anton Eberhard, a University of Cape Town (UCT)

Anton Eberhard

professor who heads its Power Futures Lab, called it "a very disappointing statement".

"I don't see any impediments around NERSA transferring the licence to a Transmission subsidiary," said Eberhard. "Of course, there are a number of issues around the internal market, for example, the novation of IPP contracts, setting up contracts with Eskom generators, etcetera, but one would have expected more progress on this by now."

It is a requirement, and key dependency, that bondholders and financial instrument holders approve any unbundling of Eskom.

While Eskom's Annual Report states that, "[b]ased on engagements with investors, they question the ability of the business separation to bring about financial sustainability for the company", Eskom bondholder, Futuregrowth says that it has not had any discussions with Eskom about the unbundling yet.

Olga Constantatos, Head of Credit at Futuregrowth, says it's not clear to her what is meant by "engagements with investors".

"Certainly, to our knowledge, Eskom's unbundling has only been discussed in results presentations and other general market updates. There has not, to our knowledge, been a specific engagement with investors to discuss any plans or proposals for the unbundling and the resolution of the debt problem, nor to discuss any concerns we may or may not have on these issues."

"The issue of negotiations with lenders is, of course, tricky," says Eberhard, "but not impossible. 106 countries around the world have unbundled transmission."

"Lenders, in general, look forward to a separate transmission company. It's a well understood, stable and easily regulated business with a predictable, steady income. What lenders are worried about is generation, which carries most of Eskom's debt. Again, we need more leadership and urgency in resolving these issues."

Olga Constantatos

"We welcome the idea of Eskom's unbundling as a move to a decentralised, competitive and efficient energy ecosystem for South Africa," says Constantatos, "but recognise that the detail of how this is done, and the allocation of assets, cashflows and debt to the generation, transmission and distribution subsidiaries is important to understand. The unbundling on its own is not going to restore Eskom to financial and operational sustainability – Eskom's debt problem needs to be urgently resolved, as well as its high cost base addressed, and these are key determinants of Eskom's return to financial sustainability. As regards the ITSMO unbundling – from an investor's perspective, we would need to have a degree of certainty that this entity is indeed

"Certainly, to our knowledge, Eskom's unbundling has only been discussed in results presentations and other general market updates. There has not, to our knowledge, been a specific engagement with investors to discuss any plans or proposals for the unbundling and the resolution of the debt problem, nor to discuss any concerns we may or may not have on these issues"
Olga Constantatos

"independent" of Eskom – and that it will buy electricity on a least cost basis from any electricity generation provider, regardless of who the electricity generator may be – be it Eskom, an IPP or some other generation entity. We cannot have a situation where the ITSMO is favouring Eskom's generation capability as a means to 'cross subsidise' a sister subsidiary."

Eberhard points out that transmission accounts for roughly 10% of Eskom's total assets.

"It's really not a big deal, taking an Independent Transmission System and Market Operator (ITSMO) out of Eskom. Lenders will agree and welcome new opportunities for funding much needed new transmission assets," says Eberhard.

Constantatos says there are two concerns though.

"The first is that any material transaction, and we would argue that fundamentally changing Eskom's operating model and group structure is material, that effectively strips assets and cashflows out of the entity we as investors have lent money to, has the consequence of degrading our investment and increasing our credit risk. There needs to be protection for our clients' money (the nations' savings) against this."

"The second concern is in the ITSMO's ability (or not) to buy electricity at the cheapest cost, regardless of the identity of the generator of that electricity. In a decentralised energy world, the generation of electricity would be done by any one of a number of entities (Eskom, the IPPs, big industrial companies that set up self-generation and sell back excess electricity to the grid etc) and the role of the ITSMO is to procure that electricity "blindly", as it were – on a least cost basis and with no preference to anyone. We cannot have a situation where Eskom's generation subsidiary is being subsidised by some sort of preferred arrangement with the transmission entity – that would be a conflict of interests; is inefficient. It goes against the very idea of decentralising the energy eco-system and providing electricity as cheaply as possible to the nation."

What does the Eskom bondholder make of this revelation of yet further delays around this critical unbundling process?

"To be frank, it is to be expected," says Constantatos in an almost nonplussed fashion. "We're used to plans and dates being published to much fanfare, and then experiencing significant slippage on the actual execution of the plans. This is a general problem and not isolated to Eskom. Furthermore, this is a complex matter requiring a cohesive and dedicated response, and likely requiring significant corporate finance, tax and legal advice. The unbundling is but one of the problems that needs to be solved – it goes hand-in-hand with resolving the debt problem which has not yet (to our knowledge) been meaningfully addressed with investors."

But, more generally, at a 'status-of-the-system' briefing in late October 2021, Eskom COO, Jan Oberhlozer, provided a worrying overview of the utility's poorly performing generation business. He acknowledged that Eskom's weak performance had already resulted in 32 days of load-shedding so far in the current financial year, a concerning trend compared with 47 days for the entire previous financial year. Eskom again emphasized that to eliminate load-shedding and stimulate the economy, there is an urgent need for additional capacity. But where are we going with all these promises and with Eskom's poor performance taking longer and longer to fix? It's a question that sits uncomfortably with an administration trying to sell South Africa to investors on a reform ticket. ◆

Revego stays private, for now

South Africa's power crisis was the subject of intense focus during another period of incessant rolling blackouts in October, as the economy started to open up from the pandemic induced lockdown levels.

But there is some light at the end of the dark loadshedding tunnel. Mineral Resources & Energy Minister Gwede Mantashe, who has been under fire, has breathed new life into the long delayed Renewable Energy Independent Power Producer Programme – six years have elapsed between bid window 4 and 5 – with the awarding of 25 new renewable energy projects that will deliver wind and solar energy at record low prices for the country. A further R50bn will be invested adding to the roughly R200bn that has already been invested to date.

However, the new projects will take roughly 36 months to deliver power to the grid and are therefore not expected to alleviate the supply shortfall any time soon. Once connected, they will add 2,583MW of capacity. Each stage of load-shedding is equal to 1,000MW.

The average cost for wind power was 49c/KWh and for solar 42c/KWh. The low prices put paid to any claim that renewable energy is expensive and that it is threatening Eskom's sustainability and costing customers high prices. Eskom's coal costs alone are 42c/KWh, excluding the cost of maintenance and refurbishment of power stations.

It is within this context of a reborn and growing renewable energy market – if the IRP is anything to go by – that the story of Revego Africa Energy Ltd. (this year's biggest IPO that never was) is a real loss not only for retail investors, but also the JSE, which sorely needs some IPO energy. It makes for a compelling investment case.

If we consider that renewables are set to lead the global electricity sector and that cost reductions and sustained policy support are expected to drive strong renewables growth beyond 2022, it is evident that we need to fast track wider liberalisation in Africa's electricity generation sectors. While governments can justifiably retain control over the transmission grid to ensure equitable access to electricity, Africa requires a favourable environment conducive to public-private partnerships that can bring additional generation projects online in a short period of time. Enabling policies and financing from the public and the private sectors, along with new business models, can work in tandem with official development finance to play a catalytic role in Africa's clean energy transition.

Catalyst sat down with Reyburn Hendricks the CEO of Revego Africa Energy (Rael) to talk about the listing false start and his vision for Revego.

Rael is the sole limited partner in the Revego fund, a private equity fund and is structured as an *en commandite* partnership, which is a yield-focused specialist BEE investment vehicle that will participate as an equity investor in, predominantly, operational renewable energy assets in sub-Saharan Africa (SSA), with a track record of generating stable cash flows.

"Effectively, a permanent capital vehicle with the aim of giving institutional investors long-term access to the underlying cash flows," explains Hendricks.

"The fund manager of the Revego fund is called Revego Fund Managers and they are responsible for sourcing deals recommending these to the investment committee, and the

ongoing management of the fund. Revego does have in its mandate the ability to invest a portion of its funds in development assets but, for now, it tends to operate in the secondary market and not the primary market."

It is for this reason that the fund offers an attractive dividend yield through a quality initial portfolio of assets that are currently operational, which lowers exposure to development risk.

The underlying investments are renewable assets in unlisted project companies, with minimum correlation to traditional asset classes. This provides a further diversification benefit to investors.

Ongoing economic expansion in the SSA region has made governments more aware of the need for increased electricity generation, leading to a shift towards attracting private investment.

With an increasing focus on the energy sector locally, the company is well placed to take advantage of opportunities, as electricity demand continues to exceed Eskom's supply capabilities.

Given the high levels of sunshine and wind throughout the year, coupled with vast open land, the SSA region provides great opportunities in the renewable energy space.

The fund's BEE status allows it to acquire stakes from BEE partners in these projects as well as other private equity players.

Hendricks says the targeted return is a 9% to 10% dividend yield with a yield to maturity or IRR in the range of 12% to 14%.

The secondary market is heating up for a host of reasons, from the primary investors looking to realise their investments after the initial three year lock in periods have expired, to funds like African Infrastructure Investment Managers, the Old Mutual Infrastructure fund, following their pre-emptive rights, Globeleq has entered the market and Hendricks says one is seeing some of the South African construction firms sadly exiting their equity to raise liquidity to deal with their own balance sheet issues as a result of the broader construction malaise.

> "I think there are going to more players in time. Already through rounds 1 through 4 you've seen roughly R100bn capital raised in debt and equity has been allocated in this space and that is 6,400 MW and the IRP calls for approximately 20,000MW of renewables up to 2030 and that's excluding the 2,400MW in the RFIPPP (the emergency procurement process running parallel to the IRP)."
> Reyburn Hendricks.

Reyburn Hendricks

"I think there are going to more players in time. Already through rounds 1 through 4, one has seen roughly R100bn capital raised in debt and equity, which has been allocated in this space. That is 6,400 MW and the IRP calls for approximately 20,000MW of renewables up to 2030. This is excluding the 2,400MW in the RFIPPP (the emergency procurement process running parallel to the IRP)," says Hendricks.

The cornerstone shareholders in Rael are Investec Bank, UK Climate Investments (UKCI) and the Eskom Pension Fund (EPPF) which have collectively committed R1,5bn to the fund already.

"UK Climate Investments also recently marked the delivery of its latest project in South Africa – Kruisvallei Hydro – a run-of-river hydropower facility which it part-financed alongside majority black-owned renewable energy investor, H1 Holdings," says Hendricks. "The project takes the total capacity of renewable electricity financed through the partnership in South Africa to 254 MW.

UK Climate Investments LLP is a joint venture between the Green Investment Group and the UK Government's Department for Business, Energy and Industrial Strategy. It forms part of the UK's aid-funded International Climate Finance, which is a UK Government commitment to support emerging markets and developing countries to respond to the challenges and opportunities of climate change.

Managed by Macquarie Asset Management and supported by the wider GIG team, UK Climate Investment's has committed approximately £70m of UK International Climate Finance over three years, to support the development of clean energy and green finance markets in sub-Saharan Africa.

UK Climate Investments fulfilled its cornerstone commitment of R500m (£25m) on the 18th of August 2021, to help establish Rael as Africa's first dedicated renewable energy yieldco.

And the fund manager has also invested in the fund to show skin in the game.

The fund acquired stakes in a number of leading wind assets in August, all of which are helping to build South Africa's clean energy future.

The acquisitions include the Mainstream wind assets, Loeriesfontein 2 Wind Farm, Khobab Wind Farm and Noupoort Wind Farm, situated in the Northern Cape.

Loeriesfontein and Khobab (completed in December 2017) each have capacity of 140 MW and Noupoort (completed July 2016) has a capacity of 80 MW. The assets were built as part of Bid Window 3 of the Renewable Energy Independent Power Producers Procurement Programme (REIPPPP), led by sponsors Mainstream Renewables SA, a leading developer of wind and solar PV projects.

Eskom is the sole off-taker for all power produced by the three wind farms through a 20-year Power Purchase Agreement (PPA) as part of the REIPPP. The PPA is backed by the Government Support Framework Agreement (GSFA), whereby the South African government provides support to Eskom in an event of default.

Revego has purchased the wind assets from Metier, one of Africa's leading private equity fund managers, and Lereko, who jointly manage the Lereko Metier Sustainable Capital fund. The acquisition fits in with Revego's strategy to take stakes in operational renewable energy assets in sub-Saharan Africa that have a track record of generating stable cash flows, and that deliver an above-inflation dividend yield over an extended period.

John Hannig

Metier's Sustainable Capital practice targets investments in energy efficiency, renewables, water and waste management businesses, as well as projects supporting Africa's development objectives and environmental commitments.

"We are pleased to have played a part in three of the largest wind assets in South Africa and their contribution to building a thriving renewable energy sector in the country" said John Hannig, a principal in Metier's Sustainable Capital practice.

Revego's portfolio now consists of three wind and one solar asset, and it has secured a wind and a solar asset, all of which have 20-year PPAs with Eskom, thus providing the long-term, stable cash flows that investors seek. In addition to the three mainstream wind assets noted above, Revego's assets will include:

Aurora Wind Power – a 94MW wind farm located in the Western Cape, built as part of Bid Window 2 of the REIPPPP, and led by sponsor, Engie Energy International, one of the largest energy players globally, with extensive experience in developing and operating renewable energy plants. Aurora became operational in June 2015 and has a PPA with Eskom until June 2035.

Kathu Solar Park – a 100 MW concentrated solar power thermal energy project located in the Northern Cape. It was built as part of Bid Window 3 of the REIPPPP, led by sponsor, Engie Energy International.

The project became operational in February 2019, with a 20-year PPA, valid until February 2039.

Bokpoort CSP – a 50MW concentrated solar power (CSP) thermal energy power plant located in the Northern Cape. It was developed by Metier and built as part of Bid Window 2 of the REIPPPP, led by sponsors ACWA Power, one of the largest energy players globally with extensive experience in developing and operating renewable energy plants. The project became operational in March 2016 with a 20-year PPA, valid until March 2036.

"We are pleased to have rapidly built up scale within Revego in some of South Africa's most important renewable assets, and to be able to provide our investors with the basis to meet their sustainability and return goals," concludes Hendricks.

Hendricks reveals that the reason that the IPO, which was planned for April 2021, was cancelled at the eleventh hour was due to engagements with large institutions indicating that Revego had yet to achieve the sort of scale that would assuage any liquidity concerns that larger institutional investors were expressing reservations about.

But the interest from the market was substantial, according to Chantal Marx, who heads equity research at FNB Wealth and Investments.

Despite the risk of policy uncertainty and regulatory delays to the development of further power capacity in South Africa and in SSA generally, much of the company's success depends on the quality and cash-generating capability of assets acquired; therefore, the risk of making poor investments exists. However, with the quality of the team behind Revego, this is hardly a concern for the market, and investors will be eager to get their chance to invest in this exciting and growing new asset class, hopefully via a JSE listing in the not too distant future. ◆

What's Happening in M&A?

SA's top financial advisers & industry players weigh in.

Read the new DealMakers supplement, M&A Pulse, every Friday.

http://www.inceconnect.co.za/publication/DealMakers

Four Quick Fixes to Spur SA's Entrepreneurial Growth & Job Creation

The recent meeting between President Cyril Ramaphosa and representatives from the South African entrepreneurial community, including start-ups, to discuss issues relating to enabling entrepreneurial growth, holds potential.

Alison Collier

By proactively reaching out to the community, our government is taking a positive step towards the goal of making South Africa a place where entrepreneurship is celebrated and encouraged, rather than being tangled up in red tape. It could also be the antecedent to unleashing latent growth potential and job creation in the economy.

While expectations regarding the implementation of a complete Start-Up Act should be managed – gazetting a new Act is a multi-year process – prioritising a few of the policy amendments proposed in this will achieve the majority of the impact and are implementable in a few months.

Indeed, government has proven that quick and radical change is possible. June's announcement that the threshold for private power generation is increasing from 1 MW to 100 MW caught the sceptics off guard, and a hopeful sign of more actions to come. Similarly, there are four interventions that the government could make that would constitute quick wins and big impact.

These four amendments are by no means the only remedies needed, but they could quickly mediate a number of problems that entrepreneurs and start-ups are experiencing, specifically those in the high growth, high impact, tech space.

1. Provide tax breaks and incentives to all VC investors – making SA the most attractive VC destination globally

Current macros aside, South Africa is far from the preferred destination for venture capital (VC) investors. One of the main reasons is because other countries offer investors massive tax breaks and incentives. South Africa needs to do the same to make us more attractive for VC investors, relative to the best start-up locations globally, such as the Netherlands, Ireland and the US (Delaware). Global VC liquidity is abundant, but South African VC has not been a prime recipient. Provide favourable tax incentives, and it will come.

2. Remove barriers that inhibit skilled talent nationals

These days, few countries can boast all the talent needed to build a company of international standards, especially in the tech space. While the vision is there for exceptional products, South African start-ups often require the skills and expertise only available from foreign nationals. By allowing a small number of highly skilled visas per company, South African start-ups can tap into international know-how

from markets that are far more developed than our own. We need a global 'ubuntu' mindset when it comes to talent.

Also, if a business is investing in local digital apprenticeships, then that business should be given a tax break. These digital apprenticeships are already happening on a small scale, and are helping to correct the digital skills gap in our country. Incentives can be a powerful way to address both youth unemployment and the digital skills shortage.

3. Right size the threshold for B-BBEE level 1 status to R100m

Under current circumstances, small businesses that surpass a revenue of R10m and/or R50m need to adhere to many of the B-BBEE codes, slowing their growth due to increased administrative complexity, amongst other burdens increasing their costs. This is particularly challenging for small businesses in their growth phase. To boost entrepreneurial growth, and thereby job creation, we propose that the government increases the revenue limit to R100m turnover for automatic Level I B-BBEE status.

Collier

4. Remove regulatory barriers that hamper globalisation

Currently, for many high-growth start-ups, there comes a time when the company's intellectual property needs to be moved overseas in order to maximise investment and growth. Recent loop structure reforms to exchange control have helped, but two concerns need to be addressed further.

Firstly, the length of the process to find out if your company qualifies for the move takes too long – anything from three months to up to a year. Many VC firms that are contemplating investing simply cannot wait that long, which leaves many South African start-ups unfairly out of contention. The waiting period for qualifying start-ups must be no more than 30 days.

> "To boost entrepreneurial growth, and thereby job creation, we propose that the government increases the revenue limit to R100 million turnover for automatic Level I BBBEE status."

Secondly, when moving IP overseas, the asset is revalued after transfer, which triggers a capital gains tax. The revaluation doesn't mean that the founder is now cash rich, but it leaves him/her with a burdensome tax bill that is barely payable. This capital gains tax needs to be deferred to when the investment is eventually sold.

With these interventions noted by the Presidency during the meeting, alongside the open reception displayed in initiating the meeting, there are grounds for hope. The private sector must continue to organise itself to work with government and come up with very clear goals for the short, medium, and longer term. And whilst these suggestions may be quick fixes, the reality is that they can provide the medium and longer term secret economic ingredient – business confidence. ◆

Collier is Managing Director, Endeavour South Africa.

Private Equity and Venture Capital Regulatory Review

As part of its mandate the Southern African Venture Capital and Private Equity Association (SAVCA), engages with various regulators and policy makers advocating for changes to the regulatory, policy and legal framework with the objective of making South Africa a more attractive investment destination, as well as increasing the capital flows to private companies in Southern Africa.

Shelley Lotz

This is a snapshot of some of SAVCA's focus areas currently impacting the industry.

Twin Peaks Regulatory reform

As part of the wider Twin Peaks regulatory reform, National Treasury published the second draft of the Conduct of Financial Institutions Bill (COFI bill) which seeks to regulate the market conduct of financial institutions in South Africa. The legislative reform aims to harmonise the legislation and treatment of all financial services firms doing similar types of activities, irrespective of whether they are a bank, asset manager, insurer or private equity firm.

Lotz

The COFI bill, once enacted, is expected to have a significant impact on the private equity industry. Although the COFI bill is not yet finalised, it clearly indicates the regulator's intention in relation to all alternative assets. The explanatory policy paper accompanying the COFI bill clarifies that pooled funds currently regulated under the Collective Investments Schemes Control Act (CISCA), private equity funds and real estate trusts will be licenced under the COFI bill.

SAVCA provided detailed comments on the first and second draft of the COFI Bill, which were followed up by several engagements with National Treasury and the FSCA. SAVCA understands that there will be no further opportunity for public comment on the COFI Bill, and that National Treasury intends to submit the final Bill directly to Parliament for approval by the end of 2021.

Proposed amendments to Regulation 28

National Treasury issued proposed amendments to Regulation 28 for public comment together with an accompanying media statement on 26 February 2021. Regulation 28 is issued under the Pension Fund Act. The main purpose of Regulation 28 is to protect pension fund members from poorly diversified investment portfolios or portfolios which are considered too aggressive or risky. The key aspects covered in SAVCA's submission were as follows:

- SAVCA is supportive of the proposed delinking of hedge funds and private equity and increasing the maximum exposure limit of private equity to 15% as set out previously in SAVCA's Regulation 28 position paper.
- The accompanying media statement includes the detailed explanation of why the amendments were considered, and the rationale for the changes. It was, however, unclear how, the proposed changes to the legislation are supportive of these objectives in some instances, and if they will achieve the desired outcomes as set out in the media statement.
- The definition of infrastructure, as set out in the amendments, was limited to projects that form part of the national infrastructure development plan. This plan only includes public infrastructure. SAVCA proposed that the definition be expanded to include both public and private infrastructure, and discussed in detail the anomalies and uncertainty created as to what the amendments were trying to achieve.
- The other item causing confusion is that once infrastructure is defined, the overall exposure to infrastructure through the various asset classes is limited to 45% for domestic exposure and an additional 10% in respect of the rest of Africa. The limits appeared arbitrary and, as the exposure to infrastructure (however it is defined) is currently not monitored, the market cannot assess what impact the proposed changes would have.

2021 Draft Taxation Law Amendment Bill ("TLAB")

The 2021 Draft TLAB was issued for public comment on 28 July 2021. SAVCA's main concern in respect of the 2021 Draft TLAB was the proposal to 'restrict the off-set of the balance of assessed losses in determining taxable income' and the impact on SMME's and infrastructure projects. The stated purpose for the limitation on assessed loss utilisation is to broaden the tax base to cater for the anticipated lowering of the overall corporate rate in a tax revenue neutral manner.

"The other item which caused confusion, is that once infrastructure was defined, the overall exposure to infrastructure through the various asset classes is limited to 45% for domestic exposure and an additional 10% in respect of the rest of Africa. The limits appeared arbitrary and as the exposure to infra (however it is defined) is currently not monitored, the market cannot assess what the impact would be for the proposed changes."

Unfortunately, even with the attempt by National Treasury to introduce the assessed loss limitation in the least onerous manner possible, by limiting the assessed loss utilisation in a year to 80%, but still allowing the balance to be carried forward to the following year, would result in start-ups, SMMEs and infrastructure projects being disproportionately impacted. SAVCA included detailed comments objecting to this proposal, based on how it could impact South Africa's economic recovery plans, even post recovery, highlighting the detrimental impact it would have on start-ups and SMMEs and the increase in the cost of capital for infrastructure projects.

SA Start-up Act

The World Bank funded an initial position paper to start the consultation process for a South African Start-up Act (SUA) collaboration. The SUA is looking to provide a framework and legislative support for how start-ups, and scale-ups in particular, operate. It will focus on incentives and the removal of barriers for start-ups, including relaxation of Intellectual Property and exchange control restrictions. The SUA received a recent boost when industry collaborators were invited to engage directly with President Ramaphosa on this and other initiatives aimed at reducing the red tape for entrepreneurs and SMEs to help foster job creation opportunities.

SAVCA and its members are committed to increasing investment and job creation, and supporting South Africa's economic recovery. SAVCA invites policymakers/regulators to attend SAVCA events, and would welcome collaboration to achieve SA's growth ambitions. ◆

Lotz is Head of Regulatory Affairs at SAVCA.

Pandemic evidence that active ownership by private equity helps to build antifragile companies

Private equity investment in South Africa is poised for an exciting few years.

The COVID-19 pandemic, and the unprecedented disruption it has caused, has provided a compelling case for how the active ownership model practised by private equity investment managers can help good companies emerge 'antifragile'.

This is the view of Jacci Myburgh, co-head of Old Mutual Private Equity (OMPE), part of Old Mutual Alternative Investments, who says that the pandemic provided evidence that sound strategy and effective management cannot be overemphasised when navigating a crisis. "While the terms resilience or robustness are considered antonyms of the word fragile, relating to a company's quality to resist shocks or disruption, antifragile companies emerge stronger," he says.

A term coined by Nassim Nicholas Taleb in 2012, "antifragile" companies gain strength from stressors thanks to their leadership's ability to learn, grow, strategise, and execute, explains Myburgh. "Supporting, guiding and counselling company leadership teams is precisely where the active investment approach adopted by private equity managers creates the most value," he says.

While private equity managers don't interfere operationally, they work with management to craft a clear strategy that outlines how a business will compete in a particular market or under certain conditions, he says.

Myburgh experienced this first hand in 2020 when some of Old Mutual Private Equity's most significant investments were severely impacted by the hard lockdown imposed to curb the spread of COVID-19.

"Private equity managers had the immediate advantage of seeing how the impacts of the lockdown and pandemic were playing out across many different portfolio companies," explains Myburgh. "As a result, we were able to develop a sort of playbook to support the company leadership teams across various sectors.

"This involved securing the safety of people, managing costs and working capital responsibly

and engaging with important stakeholders such as lenders and landlords, for example."

At one stage, Myburgh says OMPE was holding urgent board meetings with management teams twice a week. "What the team learnt is that the active ownership model works best in periods of crisis," he says. "COVID forced our management teams to implement sometimes drastic measures – like cutting product inventory by half, for example – to survive."

Myburgh says that this is in sharp contrast to listed companies in the public market, which only meet with its board four times and shareholders twice a year. "Our advantage was acting quickly and decisively, based on current information learnt from across the portfolio, allowing our businesses to weather the crisis very well."

He says that this approach naturally translates into significant results for investors of private equity. "Unlisted equity is proven to outperform listed equity over the long term, evidenced across various markets.

"Rather than trying to elevate private equity over listed, we would argue that allocating a portion of a portfolio to this alternative growth asset class helps to diversify investment risk and smooth out volatility over the long term, over and above the return premium that it offers," says Myburgh.

Given the medium-term outlook of a more stable political and economic environment and a balanced supply of capital, Myburgh is optimistic about the outlook for private equity over the next five to 10 years.

"We don't need the economy to grow at four or five per cent for private equity to do well – one or two per cent will suffice," he says.

Add to this the fact that foreign investors are looking to South Africa for new growth opportunities, and Myburgh's belief that "we are in for an exciting phase in the private equity space," provides an optimistic outlook for what has been a tough few years for the industry. ◆

Data - the new leverage for buyouts

Four years ago, The Economist grabbed our collective attention with the headline: *'The worlds' most valuable resource is no longer oil, but data'.*

Chelsea Wilkinson

Accompanied by an image of oil rigs bearing the logos of Facebook, Google, Amazon, …, we all intuitively nodded our heads.

Sure. Big data was big business for big business.

And then, we went back to our day jobs!

But the reality is that data is everyone's business, big and small. None more so than in the private equity sector.

Yet, on the face of it, GPs have been slow to harness the transformative power – and value – of data and advanced analytics. However, momentum is building, driven by heightened competition for capital, deals, regulation, and reporting requirements. Plus, of course, the quest for alpha.

What are the benefits of advance analytics and data science for GPs?

Clearly, there are many approaches and tools which can improve the operations of GP themselves: from origination to due diligence to investor reporting.

For example, EQT Ventures (the venture arm of Swedish parent EQT Partners) have built a

proprietary machine learning platform to support their origination. Aptly named 'Motherbrain', it pulls the structured and unstructured data of over 10 million companies, from multiple sources, into a centralised system – enabling deal and operating teams to identify patterns and themes useful to target investments. Motherbrain has been pivotal in the sourcing of several successful investments, including Peakon, which EQT Ventures sold to Workday for US$700m earlier this year.

Likewise, many GPs are using advanced analytics within their due diligence, to assess a target company's organisational capabilities, customer behaviour, product portfolios, and brand awareness as they seek pre-deal valuation validation.

Furthermore, as more companies and Information Memorandum claim: *'proprietary AI-backed decision making'* and *'advanced automation'* – savvy investors are also diving more deeply into the data ecosystems, datasets, and algorithms themselves to determine reality – and then pricing and value creation strategies.

During these deep-dive data due diligences, prospective investors are asking the killer question: *How effective is the target company at leveraging data and analytics to power its business and operational models?*

Portfolio company optimisation & value creation through data

Data – be it a client list, production line feed, vehicle tracking application, ERP, inventory, or workforce management system – can frequently be leveraged beyond its current use, thanks to data-science techniques. For many private equity-owned businesses – which have been heavily optimised using traditional operating methods – leveraging this data might very well be their 'last mile' in efficiency.

And I use the word *'leveraging'* deliberately. Because opex or capex or both have typically been spent implementing the incumbent system and collecting the data. So, the *leverage* here is that you are using the same data again, just for a different purpose[1]; there's a compounding effect.

In fact, this is one of the extraordinary characteristics of data (as opposed to other assets) – it can be used again and again, without deteriorating or depreciating. In fact, its value multiplies with each new use and use case.

Of course, it's easy to assume that these *mystical* datasets and *alchemic* data-science techniques are the exclusive domain of sexy start-ups or the deep-pocketed giants on our Economist cover. But the benefits hold true for *traditional, analogue* business, too. Arguably, the multiplier potential is greater and value extraction opportunity higher!

It's revelations like these which normally persuade management teams to cross the *analytics chasm:* shifting from traditional, business intelligence outputs (such as rear-view-mirror reporting) to predictive, data-led insights that can optimise operations, enhance top-line performance, and sharpen competitive edges.

Start with the business problem, not the data

Nonetheless, delivering data's value is hard. Gartner research tells us that 80% of data projects are failing.

One of the chief tactics to avoid becoming this statistic is to *tightly* link data-science projects to the portfolio company's business strategy and KPIs, via a data strategy. At a high level, this strategy must frame:

1. **The Busines problem** – for example: a SaaS business' problem might be to increase ARR
2. **The Analytical solution** which solves it – in our SaaS example, this might be a combination of churn, cross-sell and upsell modelling
3. **The Data sources and resources** required – which might be (i) SalesForce and online customer behaviour data sources, and (ii) domain experts from the portfolio company

sales and marketing teams, plus data scientists to build the analytical models

4. **A well-defined roadmap** – comprising the infrastructure, investment required, quick wins, decision making forums, and success measures.

One of the most sophisticated data-science-led GPs, UK-based HG Capital, has published a case study which powerfully demonstrates the outcomes gained by SaaS portfolio company Access, following the roll out of just such a cross-selling algorithm. After only four months, the project delivered a 25% increase in sales pipeline creation and 30% lift in sales conversion – resulting in a 60% uplift in converted sales orders.

Of course, results like this are never guaranteed. But you'll be considerably closer to achieving them if you link your portfolio company data projects to business outcomes.

This is the true unlock of data.

Building data & advanced analytics capabilities

It's true, HG Capital have over 30 in-house data scientists embedded into their investment team! I concede that most GPs don't have the capacity to build such internal capability. Rather, many firms are testing the analytical waters by using specialist data science consultancies to build out their proof-of-concept projects and manage the medium-term outputs, whilst transferring skills.

However, GPs *do* need to build the skill base of their teams to embrace and embed these new techniques.

After all, consider the new data opportunities arising from (radically) accelerated digital transformation at portfolio companies, following the COVID pandemic. As business models were disrupted and digitally recast, IT systems and customer platforms morphed – almost overnight.

And what do all these digitally evolved systems and processes have in common?

They facilitate the collection and curation of more and more data. Meaning, as the volume, velocity, variety, and veracity of company data increases, so does its potential value.

So, assess it. And realise it. ◆

Wilkinson is Co-founder | DataDiligence

[1] (You're not having to pay for it twice – though you may require new investment into a data infrastructure and skills).

PRIVATE EQUITY DEALS Q3 2021

NATURE	PARTIES	ASSET	ADVISERS	ESTIMATED VALUE	DATE
Investment by	Nedbank, Investec and Compass Venture Capital, with new investors Technova, Grand Bay Ventures, Tahseen Consulting and Kepple Africa Ventures	in Omnisient		$1,4m	Jul 6
Acquisition by	RMB Corvest (RMB Holdings)	equity interest in Insulation Thermal Acoustic Security (ITAS)		undisclosed	Jul 13
Acquisition by	Imbani Private Equity	a stake in Insulation Thermal Acoustic Security Company (ITAS)		undisclosed	Jul 13
Investment by	Enygma Ventures	in Koa Academy		R4m	Jul 14
Acquisition by	Standard Bank from Liberty minority shareholders	remaining 46,3% stake in Liberty plus all preference shares	Merrill Lynch; Standard Bank; Goldman Sachs; Investec Bank; Simonis Storm; Bowmans; Webber Wentzel; Davis Polk & Wardwell London; EY; PwC; KPMG	R10,71bn	Jul 15
Investment by	Expert DOJO, Oui Capital, Basecamp Fund, Soma Capital, Hustle Fund, Future Africa, LoftyInc and some angel investors	in Akiba Digital		$1,1m	Jul 16
Investment by	Launch Africa	in Strove		R4m	Jul 16

PRIVATE EQUITY DEALS Q3 2021 (Continued)

NATURE	PARTIES	ASSET	ADVISERS	ESTIMATED VALUE	DATE
Disposal by	Ascendis Health SA (Ascendis Health) to Acorn Agri & Food	Animal Health Division (Ascendis Vet, Ascendis Animal Health, Kyron Prescriptions)	Absa CIB; Questco; ENSafrica; Webber Wentzel; Werksmans; PwC	R770,19m	Jul 19
Investment by	Knife Capital and Allan Gray E-Squared Ventures	in Kandua [pre-series A]		undisclosed	Jul 20
Acquisition by	Legacy Africa Capital Partners	a 60% stake in Penflex		undisclosed	Jul 21
Investment by	Enygma Ventures	in Feelgood Health		R4m	Jul 21
Acquisition by	Naspers Foundry (Naspers)	investment in Ctrl		R34m	Jul 22
Disposal by	Property Lodging Investments (City Lodge Hotels) to Ukarimu (Actis Africa Real Estate 3 LP)	Hotel portfolio in Kenya consisting of the Fairview Hotel, City Lodge Hotel at Two Rivers and The Tomn Lodge Upper Hill	Nedbank CIB; ENSafrica Kenya	R140,97m	Jul 23
Disposal by	City Lodge Hotels Africa (City Lodge Hotels) to Faraja (Actis)	City Lodge Hotel Dar es Salaam, Tanzania	Nedbank CIB; ENSafrica Kenya	R319,22m	Jul 23
Investment by	Lireas Holdings, the ASISA ESD Fund, E4E, Vunani Capital and the Old Mutual Enterprise & Supplier Development Fund	in Pineapple [Series A]		R80m	Jul 26
Investment by	Dragoneer Investment Group, Breyer Capital, HOF Capital, The Raba Partnership, 4DX Ventures, TO Ventures plus existing investors Partech, Velocity Capital Fintech Ventures, Orange Ventures and Quona Capital	in Yoco [Series C]		$83m	Jul 27
Acquisition by	Imperial Capital (Imperial Logistics) from CSSAF Holdings I (The Carlyle Group), IAFPEF JJ (Ethos Private Equity), Lift Acquisitions, ITL Trustees and founders, certain individuals and key management	51% stake in J&J Group	Rand Merchant Bank; Tugendhaft Wapnick Banchetti; Webber Wentzel; Nortons	R988,5m	Jul 29
Investment by	E Squared Investments	in Khula		undisclosed	Aug 3
Investment by	Edge Growth and the ASISA ESD initiative	in I-G3N		R20m	Aug 3
Acquisition by	Naspers Foundry (Naspers)	investment in Naked		R120m	Aug 4
Investment by	Founders Factory Africa plus some angel investors	in My Health Africa Group	Stratlink	undisclosed	Aug 4
Investment by	The Delta	in Revio		R15m	Aug 5
Joint Venture	Absa Bank (Absa) and African Rainbow Energy and Power	African Rainbow Energy	Absa CIB; UBS; Bowmans	R6,5bn	Aug 6
Investment by	Seed South	myFanPark		undisclosed	Aug 19
Acquisition by	AIH Limited	Kwikspace Modular Buildings		undisclosed	Aug 19
Investment by	Verge Healthtech Fund and angel investors	in VitruvianMD		undisclosed	Aug 20
Acquisition by	Gridworks and New GX	a stake in Sustainable Power Solutions Investments	Webber Wentzel; Addleshaw Goddard; DLA Piper	$22m + $18m	Aug 23
Disposal by	Bidvest Financial Services (Bidvest) to Seriti Capital Partners	Cannon Asset Managers		undisclosed	Aug 31
Acquisition by	African Infrastructure Investment Managers, a member of Old Mutual Alternative Investments (Old Mutual) from Amethis	22% stake in Sodigaz APC		undisclosed	Aug 31
Disposal by	Grindrod Property Private Equity (Grindrod) to Gripon	entire holding in Select Industrial Real Estate UK Fund	Nedbank CIB	£17,39m	Sep 6
Acquisition by	Amethis	a minority stake in Avacare		undisclosed	Sep 9
Investment by	Illumina Accelerator	in BixBio		undisclosed	Sep 15
Acquisition by	One Thousand & One Voices (1K1V)	a minority stake in Digital EcoSystems (DigiCo) [DNI Group]	EY	R200m	Sep 30
Disposal by	Capital Eye Investments to Smollan Group SA	its entire stake in Argility	Cliffe Dekker Hofmeyr	undisclosed	not announced Q3
Acquisition by	Africa Forestry Fund II	an additional stake in Vuka Timbers [will acquire control]	Werksmans	undisclosed	not announced Q3

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