

# Ludwig Smith

Director



Ludwig Smith is a Director in our Corporate & Commercial practice. He advises clients on typical banking and finance transactions in which banks make funding available to their clients. Ludwig also advises clients on the formation of investment vehicles and advises banks and mining companies on tax issues.

## About Ludwig

### Credentials

#### Education

- B.Com, LLB, University of the Witwatersrand
- HDip (Company Law)
- Year of admission: 1982
- Registered with the Legal Practice Council

### Experience

- **Old Mutual**

Acted for Old Mutual in their demutualisation.

- **Bond obligation fund**

Formed South Africa's first collateralised bond obligation fund (known as Kiwane).

- **Steinhoff International Holdings**

Acted for Steinhoff International Holdings in the issue of Euro denominated convertible bonds (deal value approximately R3 billion).

- **Blue Financial Services**

Restructuring the debt of Blue Financial Services which involved renegotiating the terms of approximately R1,2 billion worth of debt owed by Blue Financial Services to twelve different lenders.

- **Funding agreements**

- RMB and Life Healthcare for funding in excess of R3 billion.
- Standard Bank and Old Mutual Finance for R1 billion.
- Investec and Royal Bafokeng Holdings for preference share funding of R500 million.

### Contact Ludwig

+27 (0)11 562 1500

[ludwig.smith@cdhlegal.com](mailto:ludwig.smith@cdhlegal.com)

### Expertise

Corporate & Commercial Law

Debt Capital Markets

Financial Services

### Location

Johannesburg

### Language

English

- **Housing Impact Fund South Africa**

The formation of the Housing Impact Fund South Africa, a private equity and debt fund, whose committed capital is R9,150 billion.

## News

### [Preference share funding: SARS issues binding private ruling on section 8E and 8EA of the Income Tax Act](#)

Before discussing BRP 379, it is worthwhile revisiting section 8E and section 8EA of the Income Tax Act 58 of 1962 (ITA). A thorough discussion of these sections falls outside the scope of this article. However, we wish to briefly discuss the effect of these sections before discussing BRP 379.

### [Contributed Tax Capital and Preference Shares](#)

On 14 January 2022, President Cyril Ramaphosa assented to the Taxation Laws Amendment Bill, B22 of 2021 (TLAB), which introduced a host of amendments to the Income Tax Act 58 of 1962 (ITA). One such amendment is that, with effect from 1 January 2023, the definition of 'contributed tax capital' (CTC) in section 1 of the ITA will be amended. This article will describe the impact of the amendment to the definition of CTC on preference share funding.

### [Providing security and dispositions without value](#)

In terms of section 26 of the Insolvency Act, 1936, a disposition without value may be set aside by a court if certain requirements are met. Section 2 of the Insolvency Act defines a disposition as any transfer or abandonment of rights to property excluding dispositions made in compliance with a court order.

### [Amendment and restatement of documents: Considerations for security providers](#)

In funding transactions (whether by means of debt or the issue of preference shares), funders typically require security for the funding provided. This security can take the form of guarantees from companies in the same group of the borrower/issuer (Security Providers). Upon the conclusion of the funding documents (Principal Documents) as well as the security documents, the Security Providers are required to adopt financial assistance resolutions in terms of section 44 (if applicable) and section 45 of the Companies Act No 71 of 2008. Debate normally arises upon the amendment of the obligations in terms of the Principal Documents in respect of whether the Security Providers require new financial assistance resolutions.

### [Preference share funding: Crossing bright lines](#)

A typical feature of a preference share funding structure is that the company (Issuer) in which the funder (Funder) will subscribe for preference shares is required to be a ring fenced special purpose vehicle (SPV). Funding preference shares typically do not give the Funder voting rights in the Issuer. However, upon the occurrence of an event of default, the Funder becomes entitled to exercise the majority of the voting rights in the Issuer (Enhanced Voting Rights). The critical question then becomes whether the Funder's entitlement to the Enhanced Voting Rights constitutes a change of control for the purposes of the Competition Act.

[All news by Ludwig Smith →](#)

## Recognition

- **Chambers Global**

- Chambers Global 2024 ranked Ludwig as a 'Senior Statesperson' for banking & finance.
- Chambers Global 2012–2023 ranked him in Band 1 for banking & finance and in 2017–2022 he was ranked in Band 3 for tax.
- The Legal 500 EMEA 2020–2024 included Ludwig in the 'Hall of Fame'.
- The Legal 500 EMEA 2017–2019 recommended him as a leading individual for banking & finance, and recommended Ludwig for tax in 2013, 2017–2023.
- Who's Who Legal 2017 identified Ludwig as a leading lawyer in Banking: Regulatory.
- Who's Who Legal 2011 identified Ludwig as a leading lawyer in Banking: Finance and Corporate Tax: Advisory. Ludwig Smith has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory for 2017 and 2018.
- Ludwig was been named one of the world's leading Banking lawyers by Who's Who Legal: Banking 2018.