



SOUTH AFRICA



EVERYTHING MATTERS

INTRODUCING CLIFFE DEKKER HOFMEYR AND THE SOUTH AFRICAN LEGAL ENVIRONMENT



I am Chris Ewing, a Director and CEO of DLA Piper Group's member firm in South Africa, Cliffe Dekker Hofmeyr. I hope that you find this background on South Africa and Cliffe Dekker Hofmeyr of interest.

KEY INFORMATION ON SOUTH AFRICA

The Republic of South Africa occupies the southernmost portion of the African continent, covering an area of 1,219,090 km². It is a nation of over 49 million people of diverse origins, cultures, languages and beliefs. A little over half the population lives in the cities.

English is the language of choice in most government departments and in official publications and documents of national importance.

Since 1994, the economy has grown rapidly, with mining, manufacturing, oil and gas, chemicals, agriculture and tourism being the major contributors.

South Africa is one of the most sophisticated and promising emerging markets in the world, offering a unique combination of a highly developed first world economic infrastructure with a vibrant emerging market economy. It is one of the most advanced and productive economies in Africa.



SECTOR/SUB-SECTOR KEY FACTS AND SIGNIFICANT DEVELOPMENTS

The scale of the firm allows our lawyers to specialise in a particular practice area. In addition, we are able to harness the specialist expertise of lawyers across the various practice areas in order to provide seamlessly coordinated services to clients in almost any industry or business sector.

We have sector-led teams focusing on a variety of industries and sectors including: aviation, Black Economic Empowerment, energy, infrastructure, insolvency, Islamic finance, mergers and acquisitions, mining, workplace health and safety, outsourcing, pensions, projects and PPPs, public sector law and private equity, among others.

AVIATION

The aviation sector is made up of manufacturers, assemblers and distributors of aircraft and aircraft parts primarily used in commercial or private transport. South Africa's strategy for aerospace industry growth is to establish international partnerships with overseas aircraft manufacturers in the component sub-system repair and maintenance area. The country is becoming increasingly important as a regional hub for maintenance repair organisations (MROs) serving operators flying in sub-Saharan Africa. The South African government is therefore encouraging companies to take on international partners.

BANKING AND FINANCE

South Africa's financial services sector, backed by a sound regulatory and legal frameworks boasts dozens of domestic and foreign institutions providing a full range of services – commercial, retail and merchant banking, mortgage lending, insurance and investment.

South Africa's banking sector compares favourably with those of industrialised countries. Foreign banks are well represented and electronic banking facilities are extensive, with a nationwide network of automatic teller machines (ATMs) and internet banking facilities available.

The Financial Services Board oversees the regulation of financial markets and institutions, including insurers, fund managers and broking operations but excluding banks, which fall under the South African Reserve Bank.

Many foreign banks and investment institutions have set up operations in South Africa over the past decade. The Banks Act is primarily based on similar legislation in the United Kingdom, Australia and Canada.

The Johannesburg Stock Exchange (JSE) Limited is the one of the largest exchanges in the world by market size. With approximately 400 listed companies and a market liquidity of around 31.2%, South Africa's exchange is only marginally smaller than Stockholm's and larger than no fewer than nine exchanges officially classified as "developed".

World-class systems allow the JSE to offer leading technology, surveillance and settlement on a T+5 basis.

The JSE is an essential cog in the functioning of South Africa's economy, providing an orderly market for dealing in securities and so creating new investment opportunities in the country.

BLACK ECONOMIC EMPOWERMENT

A significant focus of contemporary corporate activity in South Africa is Black Economic Empowerment (BEE).

BEE has had a profound effect on the South African economy, with BEE transactions representing R200-billion in the past decade.

BEE is a key driver of corporate activity, such as mergers and acquisitions' and it is forecast that this trend will continue, with 52% of South African privately held businesses expected to experience a change in ownership in the next 10 years.

An integral part of BEE is a sector-wide generic scorecard, which measures companies' empowerment progress. This scorecard, as well as a scorecard for multinational companies, is defined and elaborated in the BEE Codes of Good Practice.

CONSTRUCTION

The South African construction industry, encompassing residential, commercial and industrial building, as well as infrastructure development, is robust and in a generally healthy state. The middle and upper residential sector has experienced unprecedented growth and the non-residential building sector has performed well, driven by demands for office space, industrial facilities and retail locations. Between 1994 and 2005, more than 2 million housing units were provided as part of the government's goal of eradicating informal settlements by 2014. Government plans include the development of low-cost housing, the implementation of amenities and the changing of spatial settlement patterns to build multicultural communities.

ENERGY

South Africa's energy sector is critical to the economy, contributing about 15% to the country's gross domestic product (GDP).

Large coal deposits offer cheap electrical power by international standards – the country is one of the cheapest electricity suppliers in the world.

South Africa has no significant oil reserves and relies on coal for most of its oil production. The country has a highly developed synthetic fuels industry, as well as small deposits of oil and natural gas.

OIL AND GAS

In a rationalisation of the state's commercial interests in the oil and gas sector, Mossgas and Soekor were merged into state oil and gas company PetroSA in 2001.

PetroSA converts natural gas into a variety of liquid fuels like petrol, distillates, kerosene and petroleum gas. In 2001, PetroSA completed a project to bring the EM gas fields off shore of Mossel Bay on stream, giving its Mossel Bay plant an additional eight years of gas life.

Parallel exploration have been carried out in other parts of South Africa, creating many multinational consortiums.

South Africa has a well-developed refining and downstream oil sector and is one of the major refining nations in Africa. The country's crude oil refining capacity is 466 547 bbl/d. Products are sold in local markets and exported, mainly to East Africa.

Multinational companies in South Africa include Shell, BP, Caltex and Total Elf Fina. A number of these companies have struck deals to bring black empowered companies in as minority shareholders.

PetroSA manages South Africa's strategic stocks of crude oil, including the Saldanha Bay oil storage facility, one of the largest in the world. South Africa imports crude oil primarily from the Middle East, and is trying to reduce its dependency on Iran by increasing imports from Kuwait, UAE, Saudi Arabia and Nigeria.

COAL

Coal accounts for about 75% of primary energy consumption in South Africa. Most of this is used to generate electricity, while a significant amount is channelled to synthetic fuel and petrochemical operations.

Iscor's steel plants are the main consumers of domestic coking coal, together with the synthetic fuel and petrochemical operators. The gold mining, cement, brick and tile industries are also large users of electricity, generated by steam coal.

Nearly a third of production is exported via the Richards Bay coal terminal, the world's largest coal export facility. Europe is the primary destination.

Sasol and PetroSA are the two major players in the synthetic fuels market. Sasol is the world's largest manufacturer of oil from coal, gasifying the coal and then converting it into a range of liquid fuels and petrochemical feed stocks. Sasol has coal liquefaction plants at Secunda (oil) and Sasolburg (petrochemicals).

ELECTRICITY

Eskom, a parastatal, generates 95% of the country's electricity, as well as two-thirds of the electricity for the African continent, and owns and operates the national transmission system.

Eskom's network is made up of more than 300 000km of power lines, 27 000km of which constitute the national transmission grid. The main generating stations are located in Mpumalanga, where there are vast coal reserves.

Electricity is primarily coal-fired and there is one nuclear power station (Koeberg), two gas turbine generators, two conventional hydroelectric plants and two pumped storage stations.

Eskom exports power to Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe.

Eskom's campaign to improve the availability of its existing hydro-power plants, coupled with the possible advent of gas and further hydro-power generation, has deferred the need for new coal generating plants.

NUCLEAR ENERGY

Nuclear energy does not play a major role in South Africa – accounting for about 3% of all energy – but is being investigated as a future potential energy source and alternative to coal.

South Africa serves on the board of governors of the International Atomic Energy Agency, as it is the most advanced African country in the field of nuclear technology.

ENVIRONMENT

As the importance of green issues steadily increases, the environment, recycling and waste management, are becoming areas of concern for business in South Africa. In tandem with energy companies, waste such as landfill is now being converted into power. Both Gauteng and Cape Town have made the conversion of landfill into

gas a priority, with plans to eventually use this power in townships. A solar water heating system has already been used in the Moshoeshoe eco-village in Kimberley and Khayelitsha in Cape Town.

The three fundamentally important pieces of South African environmental legislation are:

- The Constitution of the Republic of South Africa Act, 1996
- The National Environmental Management Act, 1998
- The Environment Conservation Act, 1989

South Africa's fragmented environmental legislation has resulted in problems of comprehension and enforcement. Although there remains much to be accomplished in educating the private and public sectors in their responsibilities to the environment and in creating a policing and enforcement procedure, the National Environmental Management Act and the specific legislation promulgated under it is a significant and positive step forward.

Certainly, the trend in South Africa has turned towards environmental awareness and planning and environmental issues are increasingly under the spotlight. Given the consequences of a historically hands-off attitude towards environmental matters, few transactions in South Africa do not require environmental expertise.

The National Environmental Management Act places the responsibility of environmental degradation firmly at the door of directors of companies in certain instances, which goes a long way towards heightening the profile of the conservation of the environment. Transgressors of environmental laws are being identified and exposed through the media, and now, increasingly, the implementation of the National Environmental Management Act's objectives and policing of transgressors is being secured by the Department of Environmental Affairs and Tourism's Enforcement Directorate, colloquially termed the "green scorpions".

INFRASTRUCTURE

Africa's current infrastructure, which has long been identified as a key requirement for economic growth, needs to be developed to an adequate and efficient standard.

The sector offers significant investment opportunities for long term investors, even in time of the global financial crisis.

The South African Government is committed to promoting the development of the country and the region as a whole. Development to them, is about the people. In South Africa, the government is investing in infrastructure to eliminate service backlogs in under-serviced areas, especially the black townships and rural areas, in order to meet the people's basic needs. Basic infrastructure services can also reduce poverty and contribute to job creation.

HOSPITALITY AND LEISURE

Tourism is one of the fastest growing industries in South Africa and contributed 8.15% or over R124-billion to GDP in 2009. Foreign tourist arrivals reached a record high of 9.4 million in 2009. The growth exceeds the estimated average global growth rate of tourism of 6.5%. The tourism industry is potentially regarded as the largest provider of jobs and the greatest earner of foreign exchange. Eco-tourism is the fastest growing segment of tourism in South Africa.

MEDIA

South Africa benefits from a free and flourishing press, vibrant community radio stations and a rapidly expanding internet presence.

The country has a growing film industry that is increasingly competitive internationally and liberalised public and commercial radio and TV, which will be further served by the proposed roll out of Digital Terrestrial Television (DTT) by 2010.

South Africa has 20 daily and 13 weekly newspapers, most in English. Some 14.5 million South Africans buy the urban dailies, while community newspapers have a circulation of 5.5 million. There is also a range of general and specialised news websites which, in terms of the speed and breadth of their coverage, are on a par with the best in the world. The SABC's television broadcasting monopoly ended in 1986 when the subscription-based MNet was launched. DSTV carries more than 100 channels, ranging from South African produced content, to international content, sports and news.

All of this makes South Africa's media sector an attractive area for investment opportunities.



MINING

South Africa is a world leader in mining. The country is internationally renowned for an abundance of mineral resources, accounting for a significant proportion of both world production and reserves, and South African mining companies dominate many sectors in the global industry. South Africa is one of the world's biggest producer's of gold and platinum and one of the leading producers of base metals and coal. The country's diamond industry is one of the largest in the world. While holding the world's largest reserves of gold, platinum-group metals and manganese ore, the country has considerable potential for the discovery of other world class deposits.

Mining as a sector remains crucial to the South African economy, with precious metals generally contributing 65% to the country's mineral export earnings and 21% of total exports of goods. The country supplies about 80% of the world's platinum.

The mining industry is also South Africa's biggest employer, with around 460 000 employees and another 400,000 employed by the suppliers of goods and services to the industry.

The country has world scale primary processing facilities covering carbon steel, stainless steel and aluminium, in addition to gold and platinum. It is also a world leader of new technologies, such as a groundbreaking process that converts low grade superfine iron ore into high quality iron units.

This kind of beneficiation, or adding of value to raw mineral materials before export, has been identified by the government as a major growth area. There are lucrative opportunities for downstream processing and adding value locally to iron, carbon steel, stainless steel, aluminium, platinum group metals and gold.

PUBLIC PRIVATE PARTNERSHIPS

A Public Private Partnership (PPP) is a contract between a public sector institution/municipality and a private party, in which the private party assumes substantial financial, technical and operational risk in the design, financing, building and operation of a project.

Two types of PPPs are specifically defined:

- where the private party performs an institutional/ municipal function
- where the private party acquires the use of state/ municipal property for its own commercial purposes

A PPP may also be a hybrid of these types.

PPPs are not a simple outsourcing of functions where substantial financial, technical and operational risk is retained by the institution, nor are they donations by a private party for a public good or the 'commercialisation' of a public function by the creation of a state-owned enterprise.

PPPs are good for BEE because their long-term nature provides an instrument to grow black equity and black management over time. Risks are clearly identified in PPPs, clearly costed and appropriately allocated, so black participants know in advance what they are committing to.

The formation of private consortia in the form of special purpose vehicles (SPVs) for many PPPs facilitates long-term beneficial partnerships between new black enterprises and experienced, resourced companies – both as equity partners and in project management, and both at the private party SPV and subcontracting levels.

Where government is the buyer of a service, and insofar as the service is provided to the agreed standards, there is a steady revenue stream to the private party, reducing risk to new black enterprises.

Principal equity sponsors in a PPP are often also first-tier Subcontractors, building incentives for optimal risk management. They furthermore provide significant subcontracting opportunities for black enterprises, where early cash flow benefits can be derived as delivery commences. PPPs create jobs and allow skills transfer.

TECHNOLOGY

South Africa is the 20th largest consumer of IT products and consumer products in the world, and leads information and communication technology (ICT) in Africa.

South Africa's IT industry is characterised by technology leadership, particularly in the field of electronic banking services. South African companies are world leaders in pre-payment, revenue management and fraud prevention systems, and in the manufacture of set-top boxes, all exported successfully to the rest of the world.

South Africa's ICT products and services industry is well positioned to penetrate an African market that is growing fast as economic and regulatory conditions improve.

South African companies and South African based subsidiaries of international companies have supplied most of the new fixed and wireless telecoms networks that have rolled out in Africa in recent years.

TELECOMMUNICATIONS

Telecommunications is one of the fastest growing sectors of South Africa's economy, reflecting the rapid growth of mobile telephony in the country. The communications sector, together with transport and storage, accounts for almost 10% of gross domestic product (GDP).

With a network that is 99.9% digital and includes the latest in fixed-line, wireless and satellite communication, the country has the most developed telecoms network in Africa.

The fixed-line monopoly of Telkom, a listed company in which the government is the largest shareholder, expired with the licensing of Neotel as South Africa's second national operator. Neotel is licensed to provide the entire range of telecoms services with the exception of full mobility.



ABOUT CLIFFE DEKKER HOFMEYR

Cliffe Dekker Hofmeyr is the DLA Piper Group member firm in South Africa. It is a leading South African full service, commercial law firm with regional practices in South Africa's main financial centres, Johannesburg and Cape Town. With some 130 directors and 300 lawyers, Cliffe Dekker Hofmeyr is one of the largest business law firms in South Africa. The scale of the firm allows our lawyers to specialise in a particular practice area.

Our core areas of practice are:

- Corporate and Commercial, including Intellectual Property
- Competition
- Dispute Resolution: Litigation and Arbitration and Mediation
- Employment
- Environmental
- Finance, Projects and Banking
- Real Estate
- Tax
- Technology, Media and Telecommunications
- Trusts and Estates

We have a wealth of experience across a variety of sectors and industries which enables us to assist you with your specific business challenges. We have teams that focus on aviation, Black Economic Empowerment, energy, infrastructure, insolvency, Islamic finance, mergers and acquisitions, mining, workplace health and safety, outsourcing, pensions, projects and PPPs, public sector law and private equity, among others.

Cliffe Dekker Hofmeyr, is regularly ranked as a first-rate firm in authoritative legal directories and many of our lawyers are highly recommended in their respective fields.

We have been rated in the top two large law firm rankings over the past seven years and ranked No.1 over four years in the PMR.Africa annual survey in which clients rate the top legal firms across a range of service criteria.

- Ranked No.1 M&A Legal Advisor:
 - Ernst and Young Review of Mergers and Acquisitions (M&A) Activity in 2009
 - DealMakers M&A 2009 Awards (1st by number of deals) with 70 deals
- ACQ Global 2010 Awards, winner:
 - Client Care Law Firm – Africa
 - Commercial Law Firm – Africa
 - Technology, Media and Telecommunications Law Firm – Africa
- World Finance 2010 Legal Awards, winner:
 - Best Dispute Resolution Team
 - Best Competition and Anti-Trust Team
 - Best Individual Lawyer: Johan Latsky, Director, Corporate and Commercial
- Winner: International Law Office Client Choice Award 2010



RECENT ACCOLADES

World Tax 2010 – our Tax practice has been singled out as one of South Africa and the world’s finest tax firms claiming a Tier 2 ranking among the top 5 South African law firms with tax practices and the top 4 accounting firms.

Practical Law Company PLC Which Lawyer? 2009/10 has ranked us as the leading South African firm in Capital Markets: debt and equity, and Environmental law. We are a leader in Private Equity, Corporate Real Estate, Restructuring and Insolvency, and Outsourcing and IT. We are highly recommended in Competition; Corporate/M&A, Dispute Resolution, Labour and Employee Benefits as well as being recommended in Banking and Finance and recognised in Construction and Energy.

Chambers Global 2010 (Guide to the World’s Leading Lawyers) has ranked our IT & Telecommunications practice in Band 1. Our Corporate/M&A, Competition/Antitrust, Dispute Resolution and Tax practices are in Band 2. The firm is ranked in six practice areas and 15 individual lawyers have been recognised.

The Legal 500 2009 ranks us in Tier 1 in Corporate/M&A, Dispute Resolution, Mining, and Projects and Infrastructure and in Tier 2 in Banking and Finance and Labour Employment. Our Intellectual Property practice is also highly ranked.

The IFLR1000 – Guide to the World’s Leading Financial Law Firms, 2009 – we are highly recommended, among the top four SA law firms, in Corporate/M&A, Capital Markets, Competition and recommended in Banking and Project Finance.



THE LEGAL SYSTEM

South Africa's legal system was radically transformed as the apartheid-based constitutional system was restructured during the early 1990s. Ultimately, democracy was introduced under the Constitution of the Republic of South Africa Act, 1996.

Within the Constitution is a Bill of Rights, which is interpreted liberally by South Africa's courts with a strong emphasis placed on human rights. Among the rights stipulated are those of equality, freedom of expression and association, political and property rights, housing, healthcare, education, access to information and access to courts.

South Africa's constitutional democracy has a three-tier system of government, and each tier has legislative and executive authority in its own sphere. In addition, there is an independent judiciary. The President of South Africa is chosen by members of the National Assembly, which together with the National Council of Provinces makes up the South African Parliament. Parliament is the legislative authority of the country, and is empowered to make laws for the country in accordance with the Constitution.

Companies investing in South Africa are well protected and regulated by the country's legal system, which is based upon Roman-Dutch law. English law also exercises an influence, especially in public law issues, including legal institutions and the legal profession. South Africa has a progressive legal framework. Legislation pertaining to commerce, labour and maritime issues is particularly well developed, while laws relating to competition policy, copyright, patents, trademarks and disputes conform to international norms and conventions.

Sanctity of contract is protected under common law, and independent courts ensure respect for commercial rights and obligations. The independence of the judiciary is guaranteed by the Constitution.



KEY PEOPLE



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Chris Ewing is the Chief Executive Officer of Cliffe Dekker Hofmeyr and a Director in the firm's Corporate and Commercial practice. Chris is the firm's leading merger and acquisition specialist and has assisted numerous major international and domestic corporations in merger and acquisition transactions, joint ventures, listings and the establishment of new businesses in South Africa. Chris specialises in mergers and acquisitions, transaction structuring and corporate finance.



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Jo Nesper is Managing Partner of the Cape Town office and a Director in the firm's Corporate and Commercial practice. Jo is one of the Cape Town regions' leading merger and acquisition specialists and has assisted a number of multinational and local companies in establishing a presence in South Africa, merger and acquisition transactions as well as joint ventures in South Africa especially in the food, liquor and publishing industry.



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Ian Hayes is a Director and National Head of the firm's Corporate and Commercial practice. Ian has assisted numerous international and domestic corporations in merger and acquisition transactions, take-overs and formation and initial structuring of new business entities. Ian's areas of expertise are mergers and acquisitions, private equity transactions, general corporate finance, take-overs, formation and initial structuring of new business entities and general health care law.

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