



# CORPORATE & COMMERCIAL ALERT

## IN THIS ISSUE

### TRUMPING PROVISION OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT AMENDMENT ACT

On 30 October 2015, the Minister of Trade and Industry, Dr Rob Davies announced that s3(b) of the Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act, No 46 of 2013), also known as the Trumping Provision, which commenced with effect from the 24 October 2015, will not immediately apply to the Department of Mineral Resources in its application of the requirements of the Minerals and Petroleum Resources Development Act, 2002 to the upstream petroleum industry and the mining and minerals industry.

# TRUMPING PROVISION OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT AMENDMENT ACT

*Section 3(b) of the Act, No 46 of 2013 automatically commenced on 24 October 2015 by operation of law*

*The implications of the Trumping Provision are wide reaching for those sectors that have their own BEE regulations which are not derived from the B-BEE Act.*

It is relatively rare for the high courts in South Africa to pronounce on matters pertaining to insider trading given that such matters are typically addressed and finalised in administrative proceedings before the Directorate of Market Abuse (DMA). It is thus useful to note the recent as-yet unreported Pretoria High Court judgement of *Zietsman and another v The Directorate of Market Abuse and another* (A679/14) (24 August 2015) which sets out a number of principles regarding the offence of insider trading and the definitions used in the legislation. The case involved an application for the review of a ruling of the DMA.

The Trumping Provision stipulates that in the event of any conflict between the B-BBEE Act and any other law in force immediately prior to the date of commencement of the B-BBEE Act, where such conflict relates to a matter dealt with in the B-BBEE Act as amended, the B-BBEE Act shall prevail.

This Trumping Provision was inserted to safeguard the objectives and spirit of transformation and was allocated a 12 month transitional period so as to enable alignment between B-BBEE Act and other pieces of legislation that speak to economic transformation. Section 3(b) of the Act, No 46 of 2013 automatically commenced on 24 October 2015 by operation of law (as confirmed by notice by the Minister of Trade and Industry issued on 23 October 2015).

The implications of the Trumping Provision are wide reaching for those sectors that have their own BEE regulations which are not derived from the B-BEE Act. This is particularly pertinent in regard to the Mining Charter.

The exemption issued by the Minister to the Department of Mineral Resources will

apply for a period of 12 months from the date of publication of the notice and has been given pending the finalisation of the sector charters applicable to the upstream petroleum industry and the mining and minerals industry.

The notice states that the process of alignment and circumstances peculiar to these sectors necessitate more time to finalise alignment with the B-BBEE Act and B-BBEE Codes of Goods Practice.

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