

KNOWLEDGE MANAGEMENT

INTRODUCTION:

MOOT COURT: TRAINING AND LEARNING

Cliffe Dekker Hofmeyr has been recently been involved in a number of Moot Court competitions for scholars and law students across the country.

One of these, is the National Schools Moot Court Competition (NSMCC).

The NSMCC is a nationwide, non-profit initiative aimed at facilitating access to legal education by providing practical training to aspirant lawyers. This is achieved through the hosting of a nationwide, high-school level moot court competition on an annual basis. The competition connects learners with the legal industry and South African law.

Cliffe Dekker Hofmeyr, through its Pro Bono and Human Rights and Knowledge Management teams played an active role in supporting this year's competition.

During the course of the year, Cliffe Dekker Hofmeyr hosted training workshops for learners from a variety of backgrounds. A legal research and writing workshop was hosted at the firm's Johannesburg offices for participating

Gauteng learners and an oral advocacy workshop was later hosted at the Cape Town office for participating Western Cape learners. These workshops stood testament to the firm's commitment to training and skills development, legal education and pro bono work.

Cliffe Dekker Hofmeyr also supported the NSMCC with lawyers from various practice areas availing themselves to serve as judges in both the provincial and national rounds of the competition. The responsibilities of a judge included presiding over participating learners' arguments and scoring them based on various grounds of competency. More importantly, judges also provided valuable feedback and encouragement to participating learners following their arguments. This crucial part of the process aims to develop practical skills in aspirant lawyers, with many learners incorporating this advice into their arguments and presentation going forward.

The quality of the learners' performance at the national semi-finals of the competition was testament to the value created by the underlying training processes. Judges sourced from throughout the legal profession were thoroughly impressed with what they observed.

One of the two teams that successfully advanced to the final round of the national competition was Gibson Pillay Learning Academy, a Gauteng school that was part of Cliffe Dekker Hofmeyr's July legal writing and research training

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At Cliffe Dekker Hofmeyr, our Knowledge Management initiatives are aimed at putting law and the combined expertise of the firm at our lawyers' fingertips. In doing so, we enhance the quality of our service to clients.

We offer a range of value-added services to clients.

This KM Alert offers a high level overview of selected recent developments with regard to case law and legislation and reflects the position as at date of publication.

Look out for the next KM Alert for more information on recent developments in regard to:

- Employment law
- Specific sectors and industries



seminar hosted at the firm's Johannesburg offices. They faced Grenville High School, from the North West, at the national finals hosted at the Constitutional Court of South Africa on Sunday, 12 October 2014.

The finalists presented their arguments before a panel of five illustrious judges, including Justice Sisi Khampepe, Justice Mbuyiseli Madlanga, Judge Jody Kollapen, Advocate Mcaps Motimele SC and Professor Ann Skelton.

Proceedings were opened with an address from Professor Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, which was followed

by a speech by Deputy Minister of Basic Education, the Honourable Enver Surty. Finally, Brent Williams, CEO of Cliffe Dekker Hofmeyr addressed the audience and provided some perspective and encouragement to participating learners, emphasising the importance of their NSMCC experience, regardless of whether choose to pursue a career in law.

After a lengthy set of arguments, Justice Khampepe found in favour of Grenville High School. Cliffe Dekker Hofmeyr has subsequently decided to offer financial support to the participating finalists who wish to pursue a career in law.

1. CASE LAW UPDATE:

1.1 A SELECTION OF RECENT CASES

Standard Bank v Winston Wayne Jardine [Case no 46797/2013] (15 October 2014)

The decision in this case brings into sharp focus the need to comply with internal requirements when authorising an attorney to act on your company's behalf. It also highlights the need for precision when drafting and finalising documents that will be submitted to court. A scenario like the one in this case does not occur often, but if it does, be sure to have crossed your "Ts" and dotted your "Is".

In this matter, Standard Bank (Bank) claimed summary judgment against Jardine on a home loan agreement between the Bank and Jardine that was secured by a continuing covering mortgage bond. Jardine was unrepresented and did not appear at court when the summary judgment hearing was held. Nonetheless, the court still had to consider the defences raised in the affidavit opposing summary judgment that was filed by Jardine (on the strength of the decision in *First National Bank of South Africa Ltd v Myburgh and Another [2002] (4) SA 176 (CPD)*). This is despite the fact that Jardine did not directly dispute the agreement and only vaguely referred to the fact that there was "no evidence" as to when he fell into arrears.

One of the defences raised was a technical one – in terms of Rule 7, Jardine attacked the authority of the Bank's attorneys to act on behalf of the Bank. In essence, Rule 7 allows for the authority of anyone acting on behalf of a party to be challenged provided that the challenge comes within 10 days after the challenging party became aware of the fact that such person was acting. In the ordinary course of events, it is unnecessary for an attorney to file a power of attorney authorising them to act on behalf of a party, but where Rule 7 is invoked, such power of attorney needs to be filed.

In this case, the attorney acting for the Bank filed a power of attorney, but the court found it deficient in that the resolution allegedly proving the authority of the person signing the power of attorney (Van der Walt) was not produced or shown to the Registrar of the court as required by Rule 7(4). Initially the judge stood the matter down to allow the Bank's attorneys to amend this irregularity, and subsequently they produced a number of documents including a "certificate of authority" issued to Van der Walt, signed on 4 April 2014 by the chief executive of the board of directors of the Bank. Unfortunately for the

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Bank, the "certificate of authority" stated that it was "only valid if issued by the group governance officer and [had] a valid reference number" (par 12). The certificate provided to the court had no such reference number and did not purport to be issued by the group governance officer. In addition, the resolution provided to the court and dated 15 August 2012, supposedly empowering the chief executive or any executive director of the Bank to authorise a person to sign a power of attorney on behalf of the Bank, in fact authorised the "chief executive or any executive director of the plaintiff, *inter alia*, to sign any power of attorney in favour of the plaintiff's attorneys or to instruct the plaintiff's attorneys to institute or defend litigation in any court or other appropriate forum or to prosecute or oppose any appeal against any judgment affecting the plaintiff, as well as to sign affidavits in relation to legal proceedings." Nowhere was Van der Walt mentioned.

The court found that "[n]one of the plaintiff's own requirements for validity of the Certificate of Authority has been complied with [sic]. In addition the Certificate of Authority refers to a resolution different to the one provided to [it] as purported proof of Mr Van der Walt's authority." This latter point was occasioned by the fact that the resolution provided to the court was dated 15 August 2012 and the resolution referred to in the "certificate of authority" was said to be dated 14 August 2013.

Furthermore, the "certificate of authority" itself was dated 4 April 2014, which was seven months after the power of attorney was signed by Van der Walt, meaning that on 13 September 2013, when Van der Walt signed the power of attorney, he was not authorised to do so.

To drive the nail a little deeper, the court found that the summons served on Jardine was "confusing and incorrect". The court held that while "[a]bsolute technical correctness of the plaintiff's pleadings is not a pre-requisite for the granting of summary judgment," the Bank's summons lacked most of the pages of Annexure "B" (the terms of the agreement of the home loan) and of Annexure "C" (the mortgage bond terms) making it "utterly confusing" (para. 269 – 27).

The result of these technical errors was that the court granted Jardine leave to defend despite his non-appearance at court.

If you found this case note useful, please also consider the case of *Dean Gillian Rees v Investec Bank Limited* (330/13) [2014] ZASCA 38, handed down on Friday, 28 March 2014, which clarified and affirmed the line of case law relating to affidavits deposed to by legal advisors and filed in support of summary judgment applications by financial institutions.

Midvaal Local Municipality v The Meyerton Golf Club **[Case no A3038/14] (15 October 2014)**

It is often said that possession is nine tenths of the law. A recent decision of the Constitutional Court in *Ngqukumba v Minister of Safety and Security and Others* [2014] (5) SA 112 (CC) highlighted the approach of the courts to self-

helping plaintiffs, stating that "the despoiled person must be restored to possession before all else" (par 2).

In essence, the general principle of law at play where spoliation is concerned is that "[a]ll persons are required to preserve public order and are prohibited from taking the law into their own hands and are required to follow due process" (par 8). The spoliation order is available to a possessor dispossessed of property without due process even if that possessor is a fraud, robber or thief. The fact that the possessor may be breaking, or may have broken, the law does not remove the spoliation validity.

In the case under discussion, the municipality was the owner of land leased to the respondent. Several advertising signs were erected on the land (which is used as a golf course) in contravention of the municipality's by-laws. The municipality relied, *inter alia*, on section 14(10) of the Outdoor Advertising By-Law to justify the removal, without further notice to the golf club, of the advertising signs without a court order authorising the municipality to do so.

Section 14(10) reads:

"If advertisements, advertising signs and advertising structures are not removed as contemplated in this policy or not removed by the expiry of period specified in this policy or if advertisements, advertising signs and structures constitute in any respect a contravention of the provisions of this policy, the Council shall be entitled, without giving notice to anyone, to itself remove the advertisement, advertising sign or advertising structure." (par 3)

Notice was given to the golf course that it was in breach of the by-law, which it failed to heed. Subsequently, the signs were removed by the municipality. The golf course then obtained an order from the Magistrates' Court at Meyerton to be placed in possession of its advertisements in the state they were prior to their removal. The justification for the order was that the municipality had "failed to apply its own by-law properly, failed to adhere to the principles contained in [the Promotion of Administrative Justice Act, No 3 of 2000], offended the rights of the respondent enshrined in the Constitution and spoliated the respondent" (par 5). The municipality appealed to the High Court on the basis of the authority it had to remove the signs in terms of the language of the by-laws.

The High Court held that a possessor has a well-established and recognised right to be protected against self-help. Indeed, in the notice to the golf course, the municipality had in effect confirmed its awareness of the principles against self-help stating "failing which further legal action against you will forthwith be taken...order of court forcing you to remove such advertisement..." (par 4).

The court held that the "by-laws do not abolish the duty upon the appellant to obtain a court order should it wish to act pursuant to the provisions of the by-laws" (par 13). In particular, the court referred to the fact that when interpreting any legislation a court must promote the spirit, purport and objects of the Bill of Rights, which includes

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the following two provisions in sections 25(1) and 34 respectively:

"No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property."

"Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate, another independent and impartial tribunal or forum."

The court found that there was nothing in the by-law that allowed the municipality to avoid the law against self-help and that the courts have, as a matter of policy, set themselves against self-help. The fact that a notice may provide a party with 14 days (for example) to remove advertisements in and of itself does not place the onus on the offending party to approach a court to prevent self-help by the other party, and a failure to do so by the offending party cannot be said to be acquiescence to the removal without further notice. Consequently, the municipality's appeal was dismissed as it had acted unlawfully by removing the advertisements without resorting to legal process.

1.2 ANOTHER INTERESTING DECISION

Country Cloud Trading CC v MEC, Department of Infrastructure Development, Gauteng (CCT 185/13) [2014] ZACC 28

The factual matrix in this case is complex, but in essence, the Department of Infrastructure Development (Department) entered into a contract with iLima Projects (Pty) Ltd (iLima), which Country Cloud Trading (Country Cloud) alleged was unlawfully cancelled by the Department. Country Cloud had lent R12 million to iLima on the strength of the contract to be concluded between the Department and iLima after iLima was awarded the contract to complete the Zola Clinic in Soweto. This was subsequent to iLima's three partners, who originally formed a joint venture with iLima to complete the hospital, abandoned it. The loan contract between Country Cloud and iLima was made subject a suretyship being signed by the CEO of iLima and was made conditional on the awarding of the completion contract by the Department to iLima. Finally, the loan was also made subject to the agreement of the Department's official managing agents, the Tau Pride/Mateko Consortium (Consortium), in writing to the payment of the sum of R12 million to Country Cloud from the remobilisation fee agreed upon between the Department and iLima (a fee agreed to provide financial assistance to iLima to continue with the contract in the face of its three joint venture partners abandoning it).

The agreement between Country Cloud and the Consortium was concluded in due course, as was the completion contract between the Department and iLima. Shortly after, the Department came under pressure from the media for not having put the completion contract up to tender, which ultimately led to the cancellation of the Department's completion contract with iLima without any

payment being made in terms thereof. The stated reasons for the cancellation were two "misrepresentations" on the part of iLima, being that its tax clearance certificate "could not be trusted, as information from ... SARS [the South African Revenue Service] showed it had considerable outstanding tax" and that the authenticity of iLima's building accreditation was apparently "questionable" (par 10).

Subsequent to the cancellation of the completion contract iLima was placed in liquidation.

Country Cloud sued the Department in the High Court for R20,5 million in delictual damages (being the loan amount and the service fee thereon) on the basis that the Department owed a duty to Country Cloud not to repudiate the completion contract prior to the payment of the remobilisation fee. They argued that had it not been for the repudiation by the Department, iLima would have been able to repay Country Cloud.

The High Court decided that there was no valid completion contract between iLima and the Department and therefore no question of a wrongful breach by the Department to the detriment of Country Cloud. The Supreme Court of Appeal (SCA) found that the completion contract was valid and that the Department's conduct repudiated the completion contract, that it acted with intent to do so (at least in the form of *dolus eventualis*), and caused loss to Country Cloud in so doing, but held that "the case did not fall under the established delict of intentional interference with a contract. Nor was there sufficient positive policy considerations justifying a novel finding of wrongfulness." (Par 16).

Ultimately, the SCA found that allowing such a claim might have opened the flood gates for other such cases and would lead to a risk of indeterminate liability for those who breach contracts (where the breach may affect others). Furthermore, the SCA held that Country Cloud could have claimed from the insolvent estate of iLima or taken cession of iLima's claim against the Department.

The case was then appealed in the Constitutional Court (CC). The question to be answered before the CC was whether the Department's conduct was wrongful vis-à-vis Country Cloud. The question of wrongfulness was aptly crystallised in the recent case of *Loureiro and Others v Imvula Quality Protection (Pty) Ltd [2014] (3) SA 394 (CC)* where the CC held that the focus of the enquiry is on:

"the [harm-causing] conduct and goes to whether the policy and legal convictions of the community, constitutionally understood, regard it as acceptable. It is based on the duty not to cause harm – indeed to respect rights – and questions the reasonableness of imposing liability." (par 53)

Where pure economic loss is at issue (such as in this case) the wrongfulness enquiry can become a complex one.

Pure economic loss refers to purely financial loss without attendant physical harm to property or a person. The CC

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noted that our law is generally reluctant to recognise pure economic loss claims. This is especially so where such recognition extends the ambit of the law of delict as it stands at the time.

Country Cloud argued that the SCA had mischaracterised its claim when suggesting that its claim was based on the Department repudiating its completion contract with iLima. In fact, Country Cloud said, the relevant interference was perpetrated on its loan contract with iLima – the Department knowing that Country Cloud would suffer economic loss in terms of that loan agreement, as a result of the Department's repudiation of the completion contract.

The CC agreed with this characterisation, that fault was present on the part of the Department and that Country Cloud's loss was caused by that conduct but it refused to find in favour of Country Cloud because Country Cloud could not prove (but rather assumed) that the Department had wronged it (par 48).

This finding was partly based on the fact that the state could have been held accountable via a claim by iLima (or its executors) in terms of the breached completion contract (Country Cloud having alleged that it was vital to hold the state liable for such behaviour as a pillar of its argument for the liability of the Department), and partly because Country Cloud had another avenue available to it, ie suing on the suretyship entered into with the CEO of iLima. Added to this was the fact that Country Cloud must also have appreciated that the loan contract was a risky one.

In summation, these factors pointed to the conclusion that legal and policy considerations did not warrant the extension of the law of delict to such a claim – especially where the claimant was non-vulnerable in the sense of having further avenues available to it to prevent its own loss which avenues it did not pursue (in this case, the failure to sue on the suretyship).

2. LEGISLATION UPDATE

2.1 ACTS PUBLISHED

Environment

National Environmental Management: Integrated Coastal Management Amendment Act, No 36 of 2014 (GG 38171; 31 October 2014)

This legislation aims "to amend the National Environmental Management: Integrated Coastal Management Act, 2008, so as to amend certain definitions; to clarify coastal public property and the ownership of structures erected on and in coastal public property; to remove the power to exclude areas from coastal public property; to clarify and expand the provisions on reclamation; to clarify definitions and terminology; to simplify the administration of coastal access fee approvals; to simplify and amend powers relating to coastal authorisations; to replace coastal leases and concessions with coastal use permits; to extend the powers of MECs [Members of the Executive Council] to issue coastal protection notices and coastal access notices; to limit the renewal of dumping permits; to simplify the composition and functions of the National Coastal Committee; to clarify the powers of delegation by MECs; to revise offences and increase penalties; to improve coastal authorisation processes; to provide for exemptions; to provide for transitional matters; to effect certain textual alterations and to provide for matters connected therewith".

Commencement date:

The Act comes into operation within six months of the date of publication in the Government Gazette as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996, or such earlier date as determined by proclamation by the President in the Gazette.

Housing

Rental Housing Amendment Act, No 35 of 2014 (GG 38184; 5 November 2014)

This legislation "to amend the Rental Housing Act, 1999, so as to substitute and insert certain definitions; to set out the rights and obligations of tenants and landlords in a coherent manner; to require leases to be in writing; to extend the application of Chapter 4 to all provinces; to require MECs to establish Rental Housing Tribunals; to extend the powers of the Rental Housing Tribunals; to provide for an appeal process; to require all local municipalities to have Rental Housing Information Offices; to provide for norms and standards related to rental housing; to extend offences and to provide for matters connected therewith".

Commencement date:

The Act comes into operation on a date to be proclaimed by the President in the Gazette.

2.2 IMPORTANT COMMENCEMENT DATES

Broad-based Black Economic Empowerment

Broad-based Black Economic Empowerment Amendment Act, No 46 of 2014

(Proclamation N72; GG 38126; 24 October 2014)

Commencement date:

This Act took effect on 24 October 2014. Section 3(b) take effect at a later stage.

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Summary

The Broad-based Black Economic Empowerment (BB-BEE) Amendment Act No 46 of 2013 was published on 27 January 2014. The amendments contained in the Act focus on improved compliance, establishes a BB-BEE Commission (Commission), and amends and adds some definitions, the most notable possibly being the definition of a "fronting practice". This increased focus on fronting is in line with the intention to tighten compliance with BB-BEE legislation.

The amendments to the Act did not take immediate effect, but, in the proclamation published on 24 October 2014, the effective date for the amendments has now been determined. All provisions of the Act will come into effect on 24 October 2014, except for the trumping clause (section 3) which has been deferred for 12 months, and will come into force in October 2015.

The Presidential Black Economic Empowerment Advisory Council (Council) held its last meeting at the Union Buildings in Pretoria on 21 October. The outgoing Council, through its recommendations that were tabled to Cabinet, has set the groundwork for the establishment of both the Commission, and a BB-BEE Verification Professional Regulator (another body to be created for the accreditation of rating agencies or rating professionals). The Council indicated that the target date for setting up a Commission is 31 March 2015.

The revised Codes of Good Practice (revised Codes), published in 2012 was initially intended to come into operation 12 months after the date of publication, ie on 11 October 2013. The transitional period has since been extended until 30 April 2015, and a new set of Amended Broad-Based Black Economic Empowerment Codes were published on 10 October 2014, for public comment by 14 November 2014.

For more information about this Act and the Codes of Good Practice, please refer to our **Client Alert** (3 November 2014):

<http://www.cliffedekkerhofmeyr.com/en/news/publications/2014/bee/bee-alert-3-november-bee-amendment-act-and-draft-codes-of-good-practice.html>

2.3 BILLS

Bills before Parliament (recently introduced)

Auditing Profession

Auditing Profession Amendment Bill [B15-2014]

This Bill was tabled in Parliament on 4 November 2014.

The Bill aims "to amend the Auditing Profession Act, 2005, so as to provide for the regulation of candidate auditors and to update references to the Companies Act, 2008 and to provide for matters connected therewith".

Family Law/Maintenance

Maintenance Amendment Bill [B16-2014]

This Bill was tabled in Parliament on 5 November 2014.

The Bill aims "to amend the Maintenance Act, 1998, so as to further regulate the lodging of complaints relating to maintenance and the jurisdiction of maintenance courts; to further regulate the investigation of maintenance complaints; to further regulate the securing of witnesses for purposes of a maintenance enquiry; to further regulate maintenance enquiries in order to make provision for the granting of interim maintenance orders; to further regulate the making of maintenance orders; to further regulate the making of maintenance orders by consent; to further regulate the circumstances in which maintenance orders may be granted by default; to further regulate the granting of cost orders; to regulate the effect a maintenance order made by a maintenance court has on a maintenance order made by another court; to further regulate the transfer of maintenance orders; to regulate the reporting of a maintenance defaulter to any business which has as its object the granting of credit or is involved in the credit rating of persons; to further regulate the attachment of emoluments; to increase the penalties for certain offences; to create certain new offences; to further regulate the conversion of criminal proceedings into maintenance enquiries and to provide for matters connected therewith".

Tax

Taxation Laws Amendment Bill [B13 -2014]

This Bill aims "to amend the Income Tax Act, 1962, so as to amend, delete and insert certain definitions; to make corrections; to repeal certain provisions; to amend provisions; to make new provision; and to make textual and consequential amendments; amend the Value-Added Tax Act, 1991, so as to amend certain provisions and schedules; repeal the Tax on Retirements Funds Act, 1996; amend the Securities Transfer Tax Act, 2007, so as to amend a provision; amend the Taxation Laws Amendment Act, 2011, so as to amend a provision; amend the Employment Tax Incentive Act, 2013, so as to amend certain provisions; amend the Taxation Laws Amendment Act, 2013, so as to amend certain provisions and to provide for matters connected therewith".

Tax Administration Laws Amendment Bill [B14 – 2014]

The Bill aims "to amend the Income Tax Act, 1962, so as to effect consequential and textual amendments; to delete a provision; and to amend certain provisions; amend the Customs and Excise Act, 1964, so as to effect consequential amendments; to amend certain provisions; to insert certain provisions; and to effect technical corrections; amend the Value-Added Tax Act, 1991, so as to effect consequential amendments; and to amend certain provisions; amend the South African Revenue Service Act, 1997, so as to amend a provision; amend the Securities Transfer Tax Administration Act, 2007, so as to effect a consequential amendment; amend the Tax Administration Act, 2011, so as to amend certain provisions; to effect technical corrections; and to effect textual and consequential amendments; amend the Tax

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Administration Laws Amendment Act, 2012, so as to effect technical corrections; amend the Tax Administration Laws Amendment Act, 2013, so as to postpone an effective date; amend the Customs Duty Act, 2014, so as to effect technical corrections; to effect consequential amendments; and to insert a provision; amend the Customs Control Act, 2014, so as to amend certain provisions; to effect consequential amendments; and to insert a provision and to provide for matters connected therewith".

Draft Bills published for comment

Road Accident Fund

Draft Road Accident Fund Amendment Bill, 2014

Published in Government Gazette no 38173 of 3 November 2014 for comment within 30 days from the date of publication.

The draft Bill aims "to amend the Road Accident Fund Act, 1996 so as to insert a new definition; to provide the Fund with the power to determine and amend the forms; to regulate the manner in which a final court order sounding in money against the Fund must be satisfied; to require the Minister to prescribe a list of injuries that are deemed serious; to authorise the Fund to offer a cost contribution with the offer of compensation; to require the Fund to pay compensation for accommodation, treatment and the rendering or supplying of a service, on a no-fault basis, for an initial period; to require the Fund to pay compensation for accommodation, treatment and the rendering or supplying of a service in accordance with the tariff prescribed by the minister; to require the Fund to pay only specified funeral expenses, on a no-fault basis, limited to a maximum proven amount; to harmonise the prescription regime for claims; to require the minister to make regulations to prescribe a list of injuries that will be deemed serious; the require the minister to prescribe a single tariff and to provide for matters connected therewith".

Private Members Bills published for comment

Employment

Draft Labour Relations Amendment Bill, 2014

Published in Government Gazette no 38180 of 5 November 2014 for comment within 30 days of publication in the Gazette.

The draft Bill aims "to amend the Labour Relations Act, 1995, so as to provide for the accountability of trade unions in the event of violence, destruction to property and intimidation by union members during a protected strike; to empower the Labour Court to declare the cessation of a protected strike or to refer the protected strike for arbitration in the event of riot damage and to provide for matters connected therewith".

2.4 MISCELLANEOUS

■ **Amended Broad-Based Black Economic Empowerment Codes of Good Practice**

Notice calling for public comments (published in GG 38076; GN 876; 10 Oct 2014):

- a) Qualifying Small Enterprise statements Code 600
- b) Development and gazette of Sector Charters Code 000 Statement 003
- c) Scorecard for Specialised Enterprises Code 000 Statement 004
- d) Recognition in the Sale of Assets Code 100 Statement 102
- e) Recognition of Equity Equivalents for Multinationals Code 100 Statement 103

The Public commentary period has been extended to 9 December 2014 (GG 38202; GN 1001; 12 Nov 2014).

■ **Consumer Protection Act, No 68 of 2008: Draft Consumer Goods and Services Sector Code of Conduct**

Notice calling for public comments (published in GG 38059; GN 850; 3 Oct 2014).

Comments to be submitted no later than 30 days after publication in the Gazette.

■ **Consumer Protection Act, No 68 of 2008**

Prescription of the South African Automotive Industry Code and Accreditation of the Alternative Dispute Resolution Scheme Administered by the Motor Industry Ombud of South Africa as an accredited industry ombud (published in GG 38107; GN 817; 17 Oct 2014).

This will come into effect three months after publication in the Gazette.

■ **Criminal Law (Forensic Procedures) Amendment Act, No 37 of 2013: Forensic DNA Regulations, 2014**

Notice calling for public comments (published in GG 38074; GN 875; 9 October 2014).

Comments to be submitted with 21 days of publication in the Gazette.

■ **Employment Equity Act, No 55 of 1998: Draft Code of Good Practice on Equal Pay for Work of Equal Value**

Notice calling for public comments (published in GG 38031; GN746; 29 September 2014).

Comments to be submitted no later than 30 days after publication in the Gazette.

■ **Guideline on Need and Desirability in terms of the Environmental Impact Assessment (EIA) Regulations, 2010** (published in GG 38108; GN 891; 20 Oct 2014)

■ **Final Call Termination Regulations, 2014** (published in GG 38042; GN 844; 30 September 2014).

Commencement date 1 October 2014.

continued

- **Spatial Planning and Land Use Management Act No, 16 of 2013): Draft regulations in terms of the Act**

Notice calling for public comments (published in GG 38077; GN 897; 10 Oct 2014).

Comments to be submitted in writing on or before 10 November 2014.

3. STATUS OF EMPLOYMENT LEGISLATION UPDATES

The legislative process surrounding employment legislation is almost complete.

Employers should note that the amendments to the **Employment Equity Act, No 55 of 1998** and the **Basic Conditions of Employment Act, No 75 of 1997**, have already come into effect, on 1 August 2014 and 1 September 2014 respectively.

The effective dates of the amendments to the **Labour Relations Act, No 66 of 1995**, and the **Employment Services Act, No 4 of 2014** remain unknown, but other than publication of such effective dates, the legislative process is complete.

The **Draft Labour Relations Amendment Bill** was published on 5 November 2014. The Bill hopes to address the problem of violent strikes, and strikes that endure far beyond what most would consider to be reasonable.

The Bill aims "to amend the Labour Relations Act, 1995, so as to provide for the accountability of trade unions in the event of violence, destruction to property and intimidation by union members during a protected strike; to empower the Labour Court to declare the cessation of a protected strike or to refer the protected strike for arbitration in the event of riot damage and to provide for matters connected therewith".

4. LEGAL DEVELOPMENTS ACROSS A RANGE OF PRACTICE AREAS AND SECTORS

Competition

Recent publications covered:

- Commission grants conditional exemption to the National Hospital Network
- Competition Commission approves sanitary and plumbing ware merger likely to bring substantial foreign direct investment
- Settlements with furniture removal service providers
- Cross-shareholdings in the cement industry
- Competition Commission investigates automotive industry
- Invensys exception application fails
- Commission non-refers complaint by Doctors Without Borders
- Exclusivity concerns must be merger specific

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Competition>

Corporate and Commercial

Recent publications covered:

- BEE Amendment Act and draft codes of good practice
- Sale of business agreements: The implied restraint on canvassing customers

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Corporate and Commercial>

Dispute Resolution

Recent publications covered:

- The Constitutional Court declines to recognise a novel extension of the Law of Delict
- A step in the right direction – Courts are going further to establish intention when interpreting contracts
- Attack on the drones
- Lessors and landlords – do they hold all the cards?
- Urgent applications – don't fall into the trap
- Petroleum products and the unlawfulness of the "allocation system"

continued

- Minister of Mineral Resources not empowered to waive the legal requirement to exhaust internal appeal for any adverse administrative decision(s) – the Mineral and Petroleum Resources Development Act
- Use of corporate vehicle by community for application of preference prospecting or mining right in terms of s104 of the Mineral and Petroleum Resources Development Act, 28 of 2002
- Newmont discontinues arbitration against the Republic of Indonesia: Restriction on the export of mineral resources
- China – no justification for the restrictions or prohibitions of exports relating to rare earth minerals, tungsten and molybdenum

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Dispute Resolution>

Employment and Immigration

Recent publications covered:

- The Department of Home Affairs sheds light on the nature of intra-company transfer work visas
- Revisiting the role of the Labour Court and unfair suspensions
- The significance of alternative remedies in urgent interdictory proceedings
- An analysis of the "no work, no pay" principle
- Labour Relations Act: First port of call in employment-related disputes
- Labour Court required to decide on retrospective application of Employment Equity Act amendments
- What does "on the whole not less favourable" mean?
- Immigration: Application for a repatriation deposit refund
- Need a uniform? Can employers still ask for payment?
- The Department of Home Affairs offers clarity on the Zimbabwean Special Dispensation Permit of 2014

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Employment>

Environmental

Recent publications covered:

- The thorn in the property owner's side: The new alien and invasive species regulations
- The risks of the green scorpion's sting increases
- Our environmental system: Reduced time frames for environmental authorization applications

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Environmental>

Projects and Infrastructure

Recent publications covered:

- Grand Inga Hydro Treaty
- Developments in the Southern African Gas sector

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Projects and Infrastructure>

Tax

Recent publications covered:

- Ruling of withholding tax on interest and the application of a treaty
- Proposed modifications to the transfer pricing guidelines relating to low value-adding intra-group services
- SARS guide on the new dispute resolution rules
- Minor delay in the introduction of the interest withholding tax
- Proposed changes to secondary transfer pricing adjustment – further developments
- The future of the international tax landscape
- SARS must choose its remedies
- Preservation orders
- Value-added Tax and entertainment
- The OECD/G20 Base Erosion and profit shifting project leaders shed light on the future of the international tax landscape
- Improvements effected on land not owned by the taxpayer
- Shuttleworth could have "shuttled" his monies out of South Africa without the payment of a levy

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Tax>

Technology, Media and Telecommunications

A recent publication covered:

- Update on the public enquiry launched by ICASA into the state of competition in the ICT sector

For more information, please refer to the following Alerts/publications on our website:

<http://www.cliffedekkerhofmeyr.com/en/news/?type=en/news/publications/&practice-area=Technology, Media and Telecommunications>

TRAINING, LEARNING AND SKILLS DEVELOPMENT

We value training and skills development as an important part of our corporate culture.

We offer various training sessions, presentations, updates and workshops on a range of topics.

We recently hosted seminars on developments in the areas of:

- Competition law
- Corporate and Commercial – The Companies Act
 - Corporate and Commercial – Term sheets
- Dispute resolution – Business rescue proceedings
 - Employment law
 - Environmental law
 - Immigration law
 - Tax law

Please visit our website for more information about upcoming events.

The KM Team



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