

# DISPUTE RESOLUTION ALERT

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On 1 April 2017, revised Preferential Procurement Regulations under the Preferential Procurement Policy Framework Act, No 5 of 2000 came into effect. The Revised Regulations are significant as they recalibrate the balance struck in the PPPFA between attaining value for money and promoting social policy goals and economic transformation.

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The global set of accounting standards known as International Financial Reporting Standards is broadly used and supported in multiple jurisdictions by various organisations such as the International Monetary Fund, the World Bank and the JSE Limited to mention but a few. Section 29(5)(b) of the Companies Act, No 71 of 2008 specifically prescribes that public companies must adopt IFRS, which places all insurance companies within the ambit of this section.

# PUBLIC LAW: CHANGES TO PREFERENTIAL PROCUREMENT LAW IN SOUTH AFRICA

## NEW SERIES

This is the first alert in a new series of five exploring the changes to South African procurement law occasioned by the publication of revised Preferential Procurement Regulations.

*The Constitution also provides for the use of procurement as a means to address past discriminatory practices.*



On 1 April 2017, revised Preferential Procurement Regulations (Revised Regulations) under the Preferential Procurement Policy Framework Act, No 5 of 2000 (PPPFA) came into effect. The Revised Regulations are significant as they recalibrate the balance struck in the PPPFA between attaining value for money and promoting social policy goals and economic transformation.

An examination of these changes is necessitated by the fact that government procurement in South Africa is of huge significance. The procurement of goods, services and works in the public sector will amount to R1.5 trillion over the next three years across all spheres of government. Aside from those instances where government uses private entities for the provision of goods and services for their own purposes, in recent years government has increasingly been making use of private entities for the provision of goods and services to the South African public on their behalf.

The importance of government procurement in South Africa is further illustrated by the fact that it has been afforded constitutional status in s217 of the Constitution. In terms of that section, in the event that government chooses to contract for goods and services, it must do so in accordance with a system which is "fair, equitable, transparent, competitive and cost-effective". These five principles apply to the mechanisms and procedures employed by the government when it contracts for goods and services.

The Constitution also provides for the use of procurement as a means to address past discriminatory practices. In light of this

objective, s217 stipulates that organs of state are not prevented from implementing a procurement policy providing for, among other things, categories of preference in the allocation of contracts; and the protection or advancement of persons or categories of persons, disadvantaged by unfair discrimination.

It was therefore essential for national legislation to prescribe a framework for the implementation of a preferential procurement policy, most importantly in respect of tender awards. Therefore, the legislature enacted the PPPFA, which provides that the Minister of Finance may make regulations in order to give effect to the objects of the PPPFA. The PPPFA provides a framework in which organs of state must implement their preferential procurement policies, which will state that a preferential point system must be followed. In order to give effect to its aims, s2(1)(d) of the PPPFA provides that certain points will be allocated to tenderers who were historically disadvantaged by unfair discrimination on the basis of race, gender or disability.

In order to give effect to the new policy role of government procurement in South Africa, the institutional and regulatory framework for public procurement has

# PUBLIC LAW: CHANGES TO PREFERENTIAL PROCUREMENT LAW IN SOUTH AFRICA

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undergone a number of changes. The latest in this suite of changes are the new Revised Regulations which were promulgated on 20 January 2017 and came into effect on 1 April 2017. This is the second revision since PPPFA regulations were first promulgated in 2001.

The Revised Regulations propose a number of changes which will be discussed in this alert series. In essence, the Revised Regulations were promulgated with the aim to use public procurement as a catalyst

to promote radical socio-economic transformation; the empowerment of small enterprises, rural township enterprises and designated groups; and the promotion of local industrial development. In particular, and for reasons that will be elaborated upon later in this series, businesses that rely heavily on government tenders for their profits should pay careful attention to the Revised Regulations.

*Lionel Egypt, Malerato Motloug and Sabrina de Freitas*

This schedule briefly outlines the focus of the coming instalments in this series. In future it will also include links to previous instalments.

Date of release	Topic
30 August 2017	<b>Key changes to the Revised Regulations – Part 1:</b> a summary of the first three changes to the Revised Regulations, namely the 80/20 and 90/10 Preference Point System; the requirement of a market-related bid price; and sub-contracting as a condition of a tender.
6 September 2017	<b>Key changes to the Revised Regulations – Part 2:</b> a summary of a further three changes to the Revised Regulations, namely the pre-qualification criteria based on B-BBEE levels of contribution; how functionality should be assessed; and the additional ground for the cancellation of a tender.
13 September 2017	<b>Key changes to the Revised Regulations – Part 3:</b> a summary of the final three changes to the Revised Regulations, namely the more circumscribed remedial powers given to an organ of state; the introduction of a conditional preference point system; and the removal of the good planning, tax clearance and declaratory provisions.
20 September 2017	<b>Latest Developments:</b> a discussion on the latest preferential procurement case.



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# INSURANCE LAW: A LAWYER TALKS ACCOUNTING: INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS) 17 INSURANCE CONTRACTS

*The ultimate purpose of financial reporting is to provide the most accurate financial position of an entity and its state of affairs.*

*The purpose of IFRS17 is to standardise insurance company reporting frameworks across the globe and increase their consistency, comparability and transparency.*



The global set of accounting standards known as International Financial Reporting Standards (IFRS) is broadly used and supported in multiple jurisdictions by various organisations such as the International Monetary Fund, the World Bank and the JSE Limited to mention but a few. Section 29(5)(b) of the Companies Act, No 71 of 2008 (Act) specifically prescribes that public companies must adopt IFRS, which places all insurance companies within the ambit of this section.

This is due to the fact that insurance companies are either registered public companies or are considered to be public companies under the provisions of the Short-term Insurance Act, No 53 of 1998 and the Long-term Insurance Act, No 52 of 1998 and are required to comply with financial reporting standards applicable to public companies. Furthermore, Regulation 27 published under the Act provides financial reporting frameworks for different companies. Most companies are required to adhere to IFRS. The ultimate purpose of financial reporting is to provide the most accurate financial position of an entity and its state of affairs.

The International Accounting Standards Board (IASB) recently published the latest standard for the insurance industry, IFRS 17 Insurance Contracts (IFRS 17) which will be effective for financial years starting on 1 January 2021. An insurance contract is defined in the standard as:

A contract under which one party (the issuer) accepts significant insurance risk from another party (the policyholder) by agreeing to

compensate the policyholder if a specified uncertain future event (the insured event) adversely affects the policyholder.

Since insurance contracts are reliant on numerous assumptions and contingencies, profit and loss is difficult to quantify for many insurers. In addition, some insurance contracts regularly pay out savings to policyholders regardless of whether the insured event occurs. These factors pose challenges for measuring insurance contracts for accounting purposes and reporting on their financial performance.

At the core of financial reporting is the ability for information to be comparable across various entities and jurisdictions in order to attract investors and assess risk exposure and profitability. The purpose of IFRS17 is to standardise insurance company reporting frameworks across the globe and increase their consistency, comparability and transparency. In contrast, the previous insurance standard IFRS 4, relied on a myriad of national accounting standards. IFRS 4 also fell short in that it did not reflect a complete

Tim Fletcher was named the exclusive South African winner of the **ILO Client Choice Awards 2017** in the litigation category.



# INSURANCE LAW:

## A LAWYER TALKS ACCOUNTING: INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS) 17 INSURANCE CONTRACTS

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*To mitigate the risks of non-compliance, companies should take the ensuing changes seriously by considering the possible interplay regarding other relevant accounting standards and performing in-depth financial and business impact assessments.*



view of an entity's underlying financial position. Consequently, IFRS 4 did not effectively mitigate the potential investors' risk of obtaining a fair and true view of the company's financial position and skewed decision making as the analysis of company financials became quite complex and varied.

Some notable changes introduced by IFRS 17:

- i. the standard creates a consistent accounting framework for insurance contracts within the same group and between other insurance companies;
- ii. companies will be required to provide information about current and future profitability arising from insurance contracts as well as estimates used to measure insurance contracts; and
- iii. the value of insurance contracts will be measured at current value and to reflect estimated future payments to settle incurred claims on a discounted basis. Furthermore, entities will be required to calculate and disclose an explicit risk margin or adjustment in the measurement of insurance contracts.

The introduction of a new standard always brings a risk of non-compliance. When the standard comes into force, failure to comply with these standards *inter alia* may also result in companies being in breach of their contractual obligations. The responsibility of compliance cannot be fully delegated to the auditors of the company since Principle 5 of the King IV Code on Corporate Governance places a responsibility on boards of directors to set the approach and direction of reporting:

The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance, and its short, medium and long-term prospects.

To mitigate the risks of non-compliance, companies should take the ensuing changes seriously by considering the possible interplay regarding other relevant accounting standards and performing in-depth financial and business impact assessments. Taking such steps may ensure that the full impact of compliance is understood and that processes are put in place to meet the implementation deadline.

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### BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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