

KNOWLEDGE MANAGEMENT

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INTRODUCTION:

NATIONAL KEY POINTS

On 3 December 2014 the High Court of South Africa (Gauteng Local Division, Johannesburg) handed down judgment in the matter of *The Right2Know Campaign & Another v the Minister of Police and Another* (case number 32512/2013).

The Court upheld the application brought by The Right2Know Campaign (R2K) and the South African History Archive (SAHA) to enforce a request for the disclosure of the places that have been declared as National Key Points (Key Points) under the National Key Points Act, No 102 of 1980 (the Act).

Our pro bono practice represented both R2K and SAHA.

These are civil society organisations whose objectives are to serve the public interest.

"Both have an interest in advancing constitutional values, the first by promoting transparency, a free media, effective governance of public and private bodies, and a human rights

culture and the second by the collection and preservation in accessible mode of materials of importance to the history of and an understanding of South African society".

The respondents in this matter (the Minister of Police and the National Information Officer of the South Africa Policy Service) alleged that, "beyond disclosing that there are 200 national key points, that most are privately owned by juristic and by natural persons, and that key points can be categorised as banks, munition industries, petro-chemical industries, water supply, electricity, communications,

continued

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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:

Legal developments for the year ahead with specific reference to, for example:

- *Alternative dispute resolution: arbitration and mediation*
- *Black Economic Empowerment*
- *Business rescue provisions*
- *Energy and infrastructure*
- *Financial Intelligence Centre Act*
- *Government Shareholder Management Bill*
- *Legal profession*
- *Licensing of Business Bill*
- *Mining*
- *Promotion and Protection of Investment Bill*
- *Protection of Personal Information Act (POPI)*
- *Regulation of the hedge fund industry*
- *Regulation of the financial sector*

Specific sectors and industries

transport government institutions, data processing, research or chemical information systems, no more information can appropriately be disclosed".

In a judgment which makes some important findings concerning the application of the Promotion of Access to Information Act, No 2 of 2000 (PAIA) and the proper interpretation of the Act, the court dismissed the request of the Minister of Police for him to take a judicial peek of the records in issue before ordering their disclosure. Given "the grave policy considerations that attend upon its use" Sutherland J found that a judicial peek is "never available for the asking, but must be seriously motivated as the only appropriate mechanism to avert a failure of justice." In making this finding Sutherland J made extensive reference to both the majority and minority judgments of the *Constitutional Court in RSA v M&G Media*, and cautioned that the remedy should not be used merely to require a court to perform the very exercise that respondents were themselves obliged to undertake in terms of PAIA, namely to go through the records in issue and decide what should or should not be disclosed.

Having found that no case had been made out by the respondents for a judicial peek, Sutherland J went on to dismiss the respondents' contention that the Act prohibited disclosure of the identity of the places declared as Key Points under its auspices. He found that had the Act intended for the identity of Key Points to be kept secret, it would have contained express provisions to this effect.

On the contrary, the court accepted the submission of the amicus curiae or friend of the court in this matter (M & G Media Limited) that any finding that the Act prohibited disclosure of the identity of Key Points, would render s10 of the Act which makes it a criminal offence to perform

various acts related to Key Points unconstitutional. The principle of legality required full disclosure of the places so declared in order that people could know what conduct may be unlawful.

With regard to the respondents' defence that the requested information could not be revealed in the interest of national security, Sutherland J held that no evidence had been adduced to support the respondents' bald allegations about threats to national security. According to Sutherland J the "rationale offered by the respondents [was] spoilt by the conduct of the Government itself, because evidence was adduced of ministers having furnished details of key points to Parliament for the whole world to know...". Reiterating the principle established in various other precedents of both the Constitutional Court and the Supreme Court of Appeal, Sutherland J reaffirmed that it was insufficient for a respondent wishing to rely on a PAIA exemption to merely recite the provisions of the relevant exemptions without adducing evidence supporting the applicability of the exemption in the particular circumstances.

Sutherland J concluded that given the serious allegations concerning abuse of the Act and the failure to set up a special account for the recovery of public moneys expended on securing Key Points of owners (who by law were required to bear the costs of securing them) there was a need for transparency in order to repair public confidence.

In light of the above, Sutherland J declared the decision by the respondents to refuse the requested information to be unlawful and unconstitutional and ordered them to supply all the names of places or areas that have been declared Key Points within 30 days of the judgment.

1. CASE LAW UPDATE:

1.1 A SELECTION OF RECENT CASES

A SELECTION OF RECENT CASES

B Braun Medical (Pty) Ltd v Ambasaam CC (757/13) [2014] ZASCA 199 (28 November 2014)

The question for consideration in this case was whether a demand for performance by B Braun Medical (Pty) Ltd (B Braun) the appellant, directed to the respondent, Ambasaam CC (Ambasaam), constituted a repudiation by B Braun of its obligations in terms of a contract of carriage. Ambasaam succeeded in the High Court and B Braun's counterclaim was dismissed. B Braun appealed the decision (but did not appeal the dismissal of its counterclaim).

Two letters of demand were sent from B Braun's attorney and the one dated 9 March 2011 stated in part "our client

shall proceed to cancel the AOC without further notice to Ambasaam CC and to claim damages from Ambasaam CC, in the event that Ambasaam CC does not timeously adhere to the aforementioned demands". The nature of the demands are not of importance here. In response, Ambasaam's attorney replied stating "... that the allegations levelled against our client objectively leads a reasonable person to the conclusion that your client does not intend to honour the terms of the agreement. Our client regards these actions as repudiation by your client, of the agreement. However, our client will afford your client up to and including 1 April 2011 to withdraw unconditionally, all the allegations and demands made in the two letters under reply. Should your client not avail himself of this opportunity, our client will accept the repudiation and regard the contract as cancelled."

continued

To this B Braun's attorney replied that B Braun *"does not intend to withdraw any allegation and/or demand made by it"* and that *"under the prevailing circumstances [B Braun] confirms that [the agreement] has been cancelled with effect from 2 April 2011."*

Ambasaam pleaded in court that B Braun had breached the agreement by levelling, *inter alia*, false allegations and accusations against Ambasaam, and repudiated the agreement. B Braun admitted the wording of the letters, but denied that they repudiated the agreement, and asserted that Ambasaam had cancelled the agreement in circumstances where it was not entitled to do so. The court *a quo* found that the allegations by B Braun were in fact *"unfounded and unsubstantiated"* and were *"made with the intention not to continue with the agreement"* and had *"objectively created without lawful excuse a perception which placed"* Ambasaam *"in a position to conclude that proper performance of the agreement [would] not be forthcoming."*

The case of *Datacolour International (Pty) Ltd v Intamarket (Pty) Ltd* 2001 (2) SA 284 (SCA) was cited as authority for the proposition that the emphasis when it comes to whether repudiation took place was *"...not on the repudiating party's state of mind, on what he subjectively intended, but on what someone in the position of the innocent party would think he intended to do; repudiation is accordingly not a matter of intention, it is a matter of perception. The perception is that of a reasonable person placed in the position of the aggrieved party. The test is whether such a notional reasonable person would conclude that proper performance (in accordance with a true interpretation of the agreement) will not be forthcoming. The inferred intention accordingly serves as the criterion for determine the nature of the threatened actual breach."*

The SCA found that the court *a quo* had erroneously considered B Braun's subjective intention to get out of the agreement, and had considered Ambasaam's subjective perception that performance was not going to be forthcoming (rather than looking at the objective criterion of the reasonable person), and in short, did not apply the Datacolour decision to the facts of the case.

The SCA held that on the wording of the letters from B Braun's attorneys, a reasonable person placed in the position of Ambasaam could never have perceived that proper performance would not be forthcoming. Nowhere in the letters did it say that B Braun would not perform its obligations – they simply demanded performance by Ambasaam of its obligations.

Ultimately, the SCA found that B Braun's letters were in compliance with the agreement between the parties and that a reasonable person could not have perceived *"a deliberate and unequivocal intention on the part of Braun not to be bound by the agreement."*

The SCA then made one additional interesting observation. It stated that a great deal of inadmissible evidence about the parties' intentions in concluding, and their interpretation of,

the terms of the agreement of carriage, was admitted in the court *a quo*. It cautioned that *"interpretation is a matter of law and not of fact and, accordingly, interpretation is a matter for the court and not for witnesses"*. In addition, so the court continued *"...to the extent that evidence may be admissible to contextualise the document (since 'context is everything') to establish its factual matrix or purpose or for purposes of identification, 'one must use it as conservatively as possible'."*

The court remarked that this remains the principle and a later decision (*Bothma-Batho Transport (EDMS) Bpk v S Bothma & Seun Transport (EDMS) Bpk* 2014 (2) SA 494 (SCA)) did not - in the opinion of the court - constitute a departure from these principles.

Contracts - Cancellation of a contract by email?

***Spring Forest Trading v Wilberry* (735/13) [2014] ZASCA 178 (21 November 2014)**

This appeal concerned a series of emails purporting to consensually cancel written agreements between the parties. The agreements required any such consensual cancellation to be in writing and signed by the parties. The question before the SCA was whether the exchange of emails between the parties met the requirements of writing and signature in terms of the Electronic Communications and Transactions Act, No 25 of 2002 (ECTA) and therefore constituted consensual cancellation.

The respondent denied that the agreements in question were validly cancelled after a volley of emails between the parties. The appellant argued that the emails between the parties offered it one of four options, and it accepted the second of those – that is, to cancel the agreements and walk away – and this it did in writing via email. The appellant's case is that this met the requirements for the information to be recorded in writing and signed in terms of s13(3) of the ETCA. The respondent denied that the emails evinced a cancellation of the agreements, and argued that even if they did, the emails did not comply with s13(1) of the ETCA, because the section requires an 'advanced electronic signature' to be used when a signature is required by law – in this case as specified in the non-variation clause in the parties' agreements.

The SCA found that the emails did evince a cancellation and *'emphatically'* and *'unambiguously'* did so (subject to the conditions mentioned in the emails being met, which they were). The question that remained then was whether cancellation by email fulfilled the requirements of the non-variation clauses to be in writing and signed by the parties.

Sections 13(1) and (3) of the ECTA read as follows:

- (1) *Where the signature of a person is required by law and such law does not specify the type of signature, that requirement in relation to a data message is met only if an advanced electronic signature is used.*
- (2) ...
- (3) *Where an electronic signature is required by the parties to*

continued

an electronic transaction and the parties have not agreed on the type of electronic signature to be used, that requirement is met in relation to the data message if:

- (a) a method is used to identify the person and to indicate the person's approval of the information communicated; and*
- (b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated."*

The SCA found that the relevant section to consider was s13(3) since the parties imposed this obligation of writing and signature on themselves – it was not imposed by any law. Furthermore, the SCA found that imposing the onerous criteria for accreditation (the process by which a person could obtain an advanced electronic signature) on the parties in this case would have a *"detrimental effect on electronic transactions, and the obligations of the courts, when interpreting the [ECTA], to recognise and accommodate electronic transactions and data messages in the application of any statutory law or the common law. In addition, it would render s13(3) – which provides for private agreements between the parties – superfluous."*

The respondent, in the face of this, argued (i) that the emails did not and could not constitute a separate electronic transaction because they pertained to oral negotiations about the written agreements; (ii) that even if they did constitute a separate electronic transaction, the parties did not require an electronic signature as envisaged in s13(3); and (iii) that there was no reliable method used whereby the parties were identified and indicated their approval of the information communicated in the emails.

On the first point, and relying on s22(1) of the ECTA which provides that *"an agreement is not without legal force and effect merely because it was concluded partly or in whole by means of data messages"*, the SCA held that the emails reduced the oral negotiations to writing and constituted an agreement to cancel the parties' written agreement.

The SCA noted that the courts' approach to signatures has been pragmatic and not formalistic, looking at whether the method of signature fulfils the function of a signature – namely to authenticate the identity of the signatory – rather than the form of the signature. Bearing in mind that s13(3) does not require an advanced electronic signature, all that is required to form an electronic signature is that the data in the email is intended by the user to serve as a signature and is logically connected with other data in the email. Consequently, the SCA found that the *"typewritten names of the parties at the foot of the emails, which were used to identify the users, constitute 'data' that is logically associated with the data in the body of the emails, as envisaged in the definition of an 'electronic signature'".*

There was, in this case, no dispute as to the identity of the senders of the emails so the third point raised by the respondent – that there was no reliable method used whereby

the parties were identified and indicated their approval of the information communicated in the emails – also failed.

Consequently, on these facts the SCA found that the contracts were validly cancelled via email.

Jurisdiction - the appeal jurisdiction of the Supreme Court of Appeal in Competition matters

The Competition Commission v Computicket (853/13) [2014] ZASCA 185 (26 November 2014)

In this matter the SCA dealt with an application for leave to appeal against a judgment of the Competition Appeal Court (CAC). The genesis of the present appeal was to be found in an order by the CAC directing the Competition Commission (Commission) to discover certain reports and evidence that had led to its decision to refer complaints against Computicket to the Competition Tribunal in terms of the Competition Act, No 89 of 1998 (Competition Act). The Commission applied for leave to appeal to the SCA, at first to the CAC and, when leave was refused by the CAC, to the SCA itself.

The question was whether, after the amendments to s168(3) of the Constitution of the Republic of South Africa, 1996 in terms of the Constitution Seventeenth Amendment Act, 2012 (Constitutional Amendment), the SCA had the jurisdiction to hear the appeal proposed by the Commission.

The SCA considered the position prior to the Constitutional Amendment which was that, despite the expressed intention of the legislature in s62 of the Competition Act to vest final appellate jurisdiction in the matters envisaged in s62(1) of the Competition Act in the CAC, and the apparent intent to confine the appellate jurisdiction of the SCA and Constitutional Court to matters referred to in s62(2), the SCA nonetheless could hear matters contemplated in s62(1). This was also the case in the context of the provisions of s183 of the Labour Relations Act, No 66 of 1995 - the SCA having previously held that final appellate jurisdiction (other than for Constitutional matters) rested with it, since *"[a]ny legislative endeavour to vest final appellate jurisdiction in an appeal Court other than [the SCA] has to be judged in light of the appellate structures created by the Constitution."*

But, so the SCA held, the Constitutional Amendment has now materially changed the SCA's appeal jurisdiction in Competition matters. Section 168(3) of the Constitution now reads –

"The Supreme Court of Appeal may decide appeals in any matter arising from the High Court of South Africa or a court of a status similar to the High Court of South Africa, except in respect of labour or competition matters to such extent as it may be determined by an Act of Parliament.

The Supreme Court of Appeal may decide only:

- *appeals;*
- *issues connected with appeals; and*
- *any other matter that may be referred to it in circumstances defined by an Act of Parliament."* [SCA's emphasis]

continued

The SCA referred with approval (although this is to be regarded as *obiter dictum*, as it was not central to the decision in this case) to the case of *National Union of Public Service and Allied Workers obo Mani & others v National Lottery Board* 2014 (3) SA 544 (CC) where, also in *obiter*, the Constitutional Court held that as a result of the Constitutional Amendment the possibility of an appeal against the judgment of the Labour Appeal Court to the SCA, no longer exists.

In the present matter, as to whether the SCA could hear this appeal from the CAC, the SCA held that owing to the Constitutional Amendment it must determine whether it has jurisdiction to entertain the appeal by looking at the Competition Act. If the dispute was one that, in terms of the Competition Act, fell under the exclusive jurisdiction of the CAC (ie a matter in s62(1) of the Competition Act) there would be no final appeal right to the SCA anymore. Only if the matter is one which falls under s62(2) of the Competition Act, is there still a possibility that the SCA may be vested with appeal jurisdiction. One such reason for a matter to constitute a matter referred to in s62(2) is if it concerns a constitutional matter arising in terms of the Competition Act (section 62(2)(b)).

The SCA applied a narrow interpretation of what a constitutional matter is and therefore found that the present appeal did not raise such a matter. The SCA also expressed the view that "even if the present matter does fall within the ambit of 'constitutional' as contemplated by s62(2)(b) – which in my view, it does not – the jurisdiction of [the SCA] to hear the proposed appeal would in any event be excluded by s63(2) [of the Competition Act]" which according to the SCA's interpretation reserves appeals on constitutional matters exclusively for the jurisdiction of the Constitutional Court – s63(2) reading:

*"An appeal in terms of section 62(4) may be brought to the Supreme Court of Appeal **or, if it concerns a constitutional matter**, to the Constitutional Court, only:*

- *with the leave of the Competition Appeal Court; or*
- *if the Competition Appeal Court refuses leave, with the leave of the Supreme Court of Appeal **or the Constitutional Court**, as the case may be."* [Our emphasis].

The case also reiterates the view (although not definitively decided yet - since the pronouncements on the matter have been *obiter*) that after the Constitutional Amendment there no longer exists the possibility of an appeal from the Labour Appeal Court to the SCA.

2. LEGISLATION UPDATE

2.1 ACTS PUBLISHED

Legal Aid

Legal Aid South Africa Act, No 39 of 2014 (GG 38315; 9 December 2014)

This legislation aims "to ensure access to justice and the realisation of the right of a person to have legal representation as envisaged in the Constitution and to render or make legal aid and legal advice available; for that purpose to establish an entity called Legal Aid South Africa with a Board of Directors and to define its objects, powers, functions, duties and composition; to provide for the independence and impartiality of Legal Aid South Africa; to provide for the appointment of the Board of Directors and qualification for membership thereof; to provide for the appointment of a chairperson and a deputy chairperson; to provide for the term of appointment of a member of the Board of Directors; to provide for the termination of membership of the Board of Directors; to provide for meetings of the Board of Directors, quorum and procedure; to provide for the establishment of committees by the Board of Directors; to provide for the delegation of powers and the assignment of duties or functions of the Board of Directors; to provide for the appointment of a chief executive officer and his or her functions; to provide for the appointment of employees

and the designation of certain officials as agents of Legal Aid South Africa and their terms and conditions of employment; to provide for the protection of client privilege in certain circumstances; to provide for the recovery of costs by Legal Aid South Africa; to provide for the finances of Legal Aid South Africa; to provide for the provision of legal aid by direction of courts in criminal matters; to provide for the making of regulations; to provide for the compilation of a Legal Aid Manual; to provide for the amendment or repeal of laws and to provide for transitional arrangements".

Commencement date:

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

Attorneys Profession

Attorneys Amendment Act, No 40 of 2014 (GG 38316; 9 December 2014)

This legislation aims "to amend the Attorneys Act, 1979, as an interim measure, pending the enactment of legislation aimed at rationalising the legal profession, so as to address disparities in relation to attorneys and candidate attorneys in the territories comprising the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, and, for that purpose, repeal the laws of the former territories in so far as they are still applicable to attorneys and candidate attorneys in these territories; to further regulate the engagement of candidate attorneys and their right of appearance in courts; to give effect to a Constitutional Court judgment; to further regulate juristic persons conducting a legal practice; to enable actions against the Attorneys Fidelity Fund to be instituted in other courts than the High Court; to change the names of certain law societies; to restructure the areas of jurisdiction of law societies; to amend or delete certain obsolete provisions and expressions and to provide for transitional arrangements".

Commencement date:

This Act comes into operation on a date to be proclaimed by the President in the Government Gazette

2.2 IMPORTANT COMMENCEMENT DATES**Local Government: Municipal Property Rates Amendment Act No 29 of 2014**

Proclamation R 77; GG 38259; 28 November 2014

Commencement date: **1 July 2015**

Summary:

This legislation aims "to amend the Local Government: Municipal Property Rates Act, 2004, so as to provide for the amendment and insertion of certain definitions; to delete the provisions dealing with district management areas; to provide that a rates policy must determine criteria for not only the increase but also for the decrease of rates; to delete the provisions of s3(4) and to provide for a rates policy to give effect to the regulations promulgated in terms of s19(1)(b); to provide that by-laws giving effect to the rates policy must be adopted and published in terms of the Municipal Systems Act; to provide for the determination of categories of property in respect of which rates may be levied and to provide for a municipality to apply to the Minister for authorisation to sub-categorise property categories where it can show good cause to do so; to regulate the timeframe of publication of the resolutions levying rates and what must be contained in the promulgated resolution; to provide for the Minister to make a decision in terms of s16(2) with the concurrence of the Minister of Finance; to provide for the exclusion from rates of certain categories of public service infrastructure as well as mining rights or mining permits, to provide that infrastructure above the surface in respect of mining property is rateable and the rates are payable by the

holder of the mining right or mining permit; to provide that the exclusion from rates in respect of land belonging to a land reform beneficiary is extended to the spouse and dependants; to provide that an exclusion from rates in respect of the seashore lapses if any part thereof is alienated; to provide that a municipality may levy different rates on vacant residential property; to provide that a municipality may not recover rates in respect of a right of exclusive use registered against a sectional title unit from the body corporate; to provide that a person liable for a rate must furnish the municipality with his or her postal address; to provide that municipalities are not required to value properties fully excluded from rates; to provide for the period of validity of a valuation roll to be four years in respect of a metropolitan municipality and five years in respect of local municipalities; to provide for the MEC for local government to extend the period of validity of valuation rolls by two additional years where the provincial executive has intervened in terms of s139 of the Constitution and by one financial year and two financial years for metropolitan and local municipalities respectively on request by a municipality in any exceptional circumstances; to provide that a body corporate, share block company or managing association is required to provide information to a valuer; to delete the requirement for the payment of interest in specific instances; to delete the requirement for the establishment of a valuation appeal board in every district municipality; to provide that a professional associated valuer may be appointed to the valuation appeal board if a professional valuer cannot be appointed; to amend the quorum of an appeal board to include the valuer member of the valuation appeal board; to amend the dates on which a supplementary valuation takes effect; to provide for the notification of owners of property affected by a supplementary valuation; to limit condonation by the MEC for local government through the framework to municipalities only; to provide for more effective monitoring and reporting by municipalities and provinces on critical areas of the implementation of the Act; to extend the Minister's regulatory powers; to provide for the phasing in of certain regulations; to provide for the phasing in of the prohibition on the levying of rates on certain types of public service infrastructure; to provide for transitional arrangements in respect of municipalities that have been affected by the determination of municipal boundaries to provide for transitional arrangements for the implementation of s8".

Sheriffs Amendment Act No 14 of 2012

Commencement of s7, 8 and 9 of the Act

Proclamation R 84; GG 38307; 11 December 2014

Commencement date: **1 March 2015**

continued

Summary:

This legislation aims "to amend the Sheriffs Act, 1986, so as to substitute certain definitions and to insert a new definition; to provide for the establishment of Advisory Committees to assist the Minister of Justice and Constitutional Development in the appointment of sheriffs and to provide that the conditions on which sheriffs may be appointed may be prescribed by regulation; to provide for allowances payable to members of the Advisory Committees; to further regulate the appointment of acting sheriffs and the appointment of sheriffs for a particular suit in certain circumstances; to empower the Minister of Justice and Constitutional Development to designate persons to serve process of court in certain circumstances and to appoint sheriffs or acting sheriffs to perform certain functions of sheriffs in areas where no sheriff or acting sheriff has been appointed in certain circumstances; to further regulate the objects of the South African Board for Sheriffs; to amend the constitution of the South African Board for Sheriffs; to further regulate the filling of vacancies of, and the vacating of office by, members of the South African Board for Sheriffs; to further regulate the allowances payable to members of the South African Board for Sheriffs and of committees of that Board; to provide for the dissolution of the South African Board for Sheriffs and the appointment of an interim Board; to further regulate the general functions of the South African Board for Sheriffs; to further regulate the utilisation of the moneys in the Fidelity Fund for Sheriffs; to further regulate the auditing of records and financial statements of the Fidelity Fund for Sheriffs; to further regulate improper conduct by sheriffs and to extend the matters in respect of which regulations can be made".

2.3 BILLS**Bills approved awaiting signature****Tax****Taxation Laws Amendment Bill, No 13 of 2014**

The 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, No 14 of 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 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".

Bills before Parliament (recently introduced)**Banks****Banks Amendment Bill [B17-2014]**

The Bill was tabled in Parliament on 28 November 2014.

It aims "to amend the Banks Act, 1990, so as to expand the basis on which a curator may dispose of all or part of the business of a bank to enable an effective resolution of a bank under curatorship and to provide for matters connected therewith".

Criminal law**Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B18-2014]**

The Bill was tabled in Parliament on 5 December 2014.

It aims "to amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to ensure that children of certain ages are not held criminally liable for engaging in consensual sexual acts with each other; to give presiding officers a discretion in order to decide in individual cases whether the particulars of children should be included in the National Register for Sex Offenders or not; to provide for a procedure in terms of which certain persons may apply for the removal of their particulars from the National Register for Sex Offenders and to provide for matters connected therewith".

Draft Bills published for comment**Judicial matters****Judicial Matters Amendment Bill, 2014**

The Bill aims "to amend the Magistrates' Courts Act, 1944, so as to further regulate the period of acting appointment of judicial officers; to amend the Criminal Procedure Act, 1955, so as to repeal an obsolete provision; to amend

continued

the Prescribed Rate of Interest Act 1975, so as to further regulate the calculation of interest on certain debts; to amend the Magistrates Act, 1993, so as to further regulate the pension benefits of a magistrate who is appointed to the office of judge; to amend the Judicial Service Commission Act, 1994, so as to amend the position regarding accountability for the receipt and payment of money in respect of the administration and functioning of the Judicial Service Commission; to amend the Special Investigating Units and Special Tribunals Act, 1996, so as to further regulate the reporting responsibilities of the head of the Special Investigating Unit; to amend the Promotion of Access to Information Act, 2000, the Promotion of Administrative Justice Act, 2000, and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to further provide for the training and designation of presiding officers for purposes of court proceedings as contemplated in these Acts; to amend the Judges' Remuneration and Conditions of Employment Act, 2001, so as to substitute references to the Director-General: Justice and Constitutional Development with references to the Secretary-General of the Office of the Chief Justice; to amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to further regulate reporting on the implementation and training programmes of the said Act; to amend the South African Judicial Education Institute Act, 2008, so as to amend the position regarding accountability for the receipt and payment of money in respect of the administration and functioning of the South African Judicial Education Institute; to amend the Child Justice Act, 2008, so as to further regulate reporting on the implementation of the said Act and to further regulate the expungement of records of certain convictions and diversion orders in respect of children; to amend the Prevention and Combating of Trafficking in Persons Act, 2013, so as to further regulate protective measures for foreign victims of trafficking, and to further regulate matters in respect of which regulations can be made; and to provide for matters connected therewith

Airports Company

Draft Airports Company Amendment Bill, 2014

The Bill aims "to amend the Airports Company Act, 1993 so as to insert new definitions; to substitute

certain expressions; to provide for the appointment and disqualification of members of the Committee; to provide for the vacation of office of members of the Committee; to provide for the meetings of the Committee; to amend the period for the issuing of the permission; to provide for decisions of the Committee; to provide for the establishment of the Appeal Committee; to provide for the appointment and disqualification of members of the Appeal Committee; to provide for the vacation of office of members of the Appeal Committee; to provide for appeals against the decisions of the Committee and to provide for matters connected herewith".

Air traffic

Draft Air Traffic and Navigation Services Company Amendment Bill, 2014

The Bill aims "to amend the Air Traffic and Navigation Services Company Act, 1993 so as to insert new definitions; to substitute certain expression; to provide for appeals against the decisions of the Committee; to provide for offences and to provide for matters connected herewith".

2.4 MISCELLANEOUS

Electronic Communications Act (36/2005): Final International Mobile Telecommunications Roadmap 2014 (GN 1009; GG 38213; 14 Nov 2014)

Independent Communications Authority of South Africa Act (13/2000): Code for persons with Disabilities Regulations (GN 1007; GG 38211; 14 Nov 2014)

Independent Communications Authority of South Africa Act (13/2000): Explanatory Memorandum on the decision to amend the draft Code for persons with Disabilities Regulations for Public Comments (GN 1019; GG 38211; 14 Nov 2014)

The Department of Telecommunications and Postal Services published the **National Integrated ICT Policy Discussion Paper** for general comments.

Written comments must reach the Department by 15 January 2015 (GN 902; GG 38203; 14 Nov 2014)

3. STATUS OF EMPLOYMENT LEGISLATION UPDATES

The year of 2014 has seen rapid changes to Employment legislation.

The amendments to the Employment Equity Act, 55 of 1998 (EEA) and the Basic Conditions of Employment Act, 75 of 1997, have already come into effect, on 1 August 2014 and 1 September 2014 respectively. In addition, new regulations to the EEA was published and also came into effect on 1 August.

This process of updating employment laws is however not yet complete. While the amendments to the Labour Relations Act 66 of 1995 is ready to come into force at any time (the legislative process being complete) there is currently no indication of when this will happen, nor is it

continued

clear whether the Employment Services Act 4 of 2014 will come into force in 2015.

The Protection of Personal Information Act 4 of 2013 (POPI) will also have a profound effect on employment going forward. POPI regulates the right to privacy and offers protection against the unlawful collection, retention, dissemination and use of personal information. POPI was

assented to 19 November 2013, with a limited number of its provisions (eg the establishment of an Information Regulator and the power for the Justice Minister to make regulations relating to the Regulator), taking effect on 1 April 2014. The majority of its provisions will come into effect on a date still to be proclaimed.

4. RECENT DEVELOPMENTS ACROSS PRACTICE AREAS

Competition

Recent publications covered:

- Commission refers complaint against members of the Association of Electric Cable Manufacturers of South Africa
- Tribunal provides clarity on whether court referrals will be subject to the prescription provisions of the Competition Act
- Mondi granted access to information used by Commission to initiate complaint
- Three transactions approved as part of the move for Nashua Mobile to exit the mobile telecommunication services market
- Competition Commission remains pro-active in ensuring job security in merger transactions
- Determination of administrative penalties in settlements
- Sibanye Gold apparently breaches employment conditions
- Consumer goods and services code published for public comment
- Beware of the fall of the hammer

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>

Dispute Resolution

Recent publications covered:

- Big win for banks against sureties in context of business rescue

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:

- Is reinstatement necessarily retrospective?
- Automotive code of conduct driving us into the future of dispute resolution
- Increase in domestic workers' minimum wage
- Termination by resignation before expiry of fixed term contract constitutes a breach

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>

Projects and Infrastructure

Recent publications covered:

- Gauteng MEC announces plans to focus on infrastructure and transparency in procurement

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:

- Draft ruling on unbundling transactions
- Professional tax advice vital in mitigation of penalties and interest
- No evidence justify penalty
- Interpretation of fiscal legislation
- The treatment of foreign pensions
- What is simulation really
- Ruling on asset-for-share transaction
- McLaren Motor racing team cannot deduct a penalty not incurred wholly and exclusively for purposes of trade

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>

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

<p>2013 1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in Unlisted Deals - Deal Flow.</p> <hr/> <p>2012 1st in M&A Deal Flow, 1st in General Corporate Finance Deal Flow, 1st in General Corporate Finance Deal Value, 1st in Unlisted Deals - Deal Flow.</p> <hr/> <p>2011 1st in M&A Deal Flow, 1st in M&A Deal Value, 1st in General Corporate Finance Deal Flow, Legal Advisor - Deal of the Year.</p> <p>DealMakers</p>	<p>HIGHEST RANKING OF CLIENT SATISFACTION AMONGST AFRICAN FIRMS 2013</p> <p>Legal Week</p>	<p>WE SECURED THE REALLY BIG</p> <p>5</p> <p>WE ARE THE NO. 1 LAW FIRM FOR CLIENT SERVICE EXCELLENCE FIVE YEARS IN A ROW.</p> <p>pmi africa</p>
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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

JOHANNESBURG

1 Protea Place Sandton Johannesburg 2196,
Private Bag X40 Benmore 2010 South Africa
Dx 154 Randburg and Dx 42 Johannesburg
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@dlacdh.com

CAPE TOWN

11 Buitengracht Street Cape Town 8001,
PO Box 695 Cape Town 8000 South Africa
Dx 5 Cape Town
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@dlacdh.com

cliffedekkerhofmeyr.com

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