

# DISPUTE RESOLUTION ALERT

SPECIAL EDITION

## IN THIS ISSUE

### **ADMINISTRATIVE AND PUBLIC LAW: A CONTRACT WHETHER YOU LIKE IT OR NOT**

In our analysis on the hearing of the matter of Black Sash Trust v Minister of Social Development and Others, we cautioned that private entities would be well-advised to seek guidance and advice regarding the obligations they intend to undertake in terms of public sector tenders. On Friday, 17 March 2017 the Constitutional Court (Court) delivered judgment in the case and illustrated how far a private company's obligations may reach when acting as an organ of state and performing constitutional obligations.

### **INTERNATIONAL ARBITRATION: INTERNATIONAL ARBITRATION BILL, MOVING ON SWIFTLY**

The Minister of Justice and Correctional Services on 15 March 2017, pursuant to cabinet approval, gave notice in Government Gazette No. 40687 of the intention to introduce the International Arbitration Bill in the National Assembly.

# ADMINISTRATIVE AND PUBLIC LAW: A CONTRACT WHETHER YOU LIKE IT OR NOT

*The Court found that the constitutional obligations on SASSA and Cash Paymaster Services (Pty) Ltd (CPS) do not terminate together with the current contract for the payment of social grants to beneficiaries on 31 March 2017.*

*The Court extended the validity of the extant contract between SASSA and CPS for a further 12 months on the same commercial terms.*



In our [analysis](#) on the hearing of the matter of *Black Sash Trust v Minister of Social Development and Others*, we cautioned that private entities would be well-advised to seek guidance and advice regarding the obligations they intend to undertake in terms of public sector tenders. On Friday, 17 March 2017 the Constitutional Court (Court) delivered [judgment](#) in the case and illustrated how far a private company's obligations may reach when acting as an organ of state and performing constitutional obligations.

The Court was asked to make an order to ensure that the South African Social Assistance Agency (SASSA) complies with its constitutional obligation to provide social assistance to the beneficiaries of social grants. In its judgment, the Court found that the constitutional obligations on SASSA and Cash Paymaster Services (Pty) Ltd (CPS) do not terminate together with the current contract for the payment of social grants to beneficiaries on 31 March 2017.

The threatened breach of the right to social security of the beneficiaries engages the Court's remedial power to make a just and equitable order under s172(1)(b) of the Constitution. In exercising this power to protect the right, the Court extended the validity of the extant contract between SASSA and CPS for a further 12 months on the same commercial terms.

The extension of the contract is a significant finding for private sector companies tendering for public sector

work. It shows that where a company assumes constitutional powers and obligations, the Court may step into the commercial arrangement and order fulfilment of those obligations, notwithstanding the company's commercial interests. More specifically, the company will be liable for costs for which it may not have budgeted and, as is the case here, there may be no certainty regarding price escalation.

In its order, the Court made provision for CPS to approach Treasury to renegotiate the financial terms of the contract. In retaining its supervisory jurisdiction, Treasury must report its recommendations to the Court for approval. Ultimately though, the price escalation lies in the hands of the Court. This is not an ideal commercial arrangement for private companies in this position.

*Lionel Egypt, Sarah McGibbon and Yana van Leeve*



**CLICK HERE** to find out more about our Administrative and Public Law team.

# INTERNATIONAL ARBITRATION: INTERNATIONAL ARBITRATION BILL, MOVING ON SWIFTLY

## UPDATE: INTERNATIONAL ARBITRATION BILL, MOVING ON SWIFTLY

The Minister of Justice and Correctional Services on 15 March 2017, pursuant to cabinet approval, gave notice in Government Gazette No. 40687 of the intention to introduce the International Arbitration Bill in the National Assembly.

For our take on the Bill, feel free to follow the links to our previous updates:

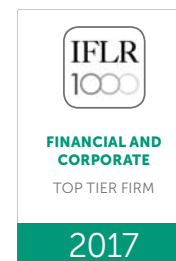
**[International Arbitration Act, take two;](#)** and

**[A new dawn of international arbitration law on the horizon.](#)**

A copy of the Bill with an explanatory note can also be found on the following websites:

**[Department of Justice & Correctional Services;](#)** and

**[Parliamentary Monitoring Group.](#)**



CHAMBERS GLOBAL 2017 ranked us in Band 1 for dispute resolution.

Tim Fletcher ranked by CHAMBERS GLOBAL 2015–2017 in Band 4 for dispute resolution.

Pieter Conradie ranked by CHAMBERS GLOBAL 2012–2017 in Band 1 for dispute resolution.

Jonathan Witts-Hewinson ranked by CHAMBERS GLOBAL 2017 in Band 2 for dispute resolution.

Joe Whittle ranked by CHAMBERS GLOBAL 2016–2017 in Band 4 for construction.



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



## OUR TEAM

For more information about our Dispute Resolution practice and services, please contact:



**Tim Fletcher**  
National Practice Head  
Director  
T +27 (0)11 562 1061  
E tim.fletcher@cdhlegal.com



**Grant Ford**  
Regional Practice Head  
Director  
T +27 (0)21 405 6111  
E grant.ford@cdhlegal.com

**Timothy Baker**  
Director  
T +27 (0)21 481 6308  
E timothy.baker@cdhlegal.com

**Roy Barendse**  
Director  
T +27 (0)21 405 6177  
E roy.barendse@cdhlegal.com

**Eugene Bester**  
Director  
T +27 (0)11 562 1173  
E eugene.bester@cdhlegal.com

**Tracy Cohen**  
Director  
T +27 (0)11 562 1617  
E tracy.cohen@cdhlegal.com

**Lionel Egypt**  
Director  
T +27 (0)21 481 6400  
E lionel.egypt@cdhlegal.com

**Jackwell Feris**  
Director  
T +27 (0)11 562 1825  
E jackwell.feris@cdhlegal.com

**Thabile Fuhrmann**  
Director  
T +27 (0)11 562 1331  
E thabile.fuhrmann@cdhlegal.com

**Anja Hofmeyr**  
Director  
T +27 (0)11 562 1129  
E anja.hofmeyr@cdhlegal.com

**Willem Janse van Rensburg**  
Director  
T +27 (0)11 562 1110  
E willem.jansevanrensburg@cdhlegal.com

**Julian Jones**  
Director  
T +27 (0)11 562 1189  
E julian.jones@cdhlegal.com

**Tobie Jordaan**  
Director  
T +27 (0)11 562 1356  
E tobie.jordaan@cdhlegal.com

**Corné Lewis**  
Director  
T +27 (0)11 562 1042  
E corne.lewis@cdhlegal.com

**Janet MacKenzie**  
Director  
T +27 (0)11 562 1614  
E janet.mackenzie@cdhlegal.com

**Richard Marcus**  
Director  
T +27 (0)21 481 6396  
E richard.marcus@cdhlegal.com

**Burton Meyer**  
Director  
T +27 (0)11 562 1056  
E burton.meyer@cdhlegal.com

**Rishaban Moodley**  
Director  
T +27 (0)11 562 1666  
E rishaban.moodley@cdhlegal.com

**Byron O'Connor**  
Director  
T +27 (0)11 562 1140  
E byron.oconnor@cdhlegal.com

**Lucinde Rhoodie**  
Director  
T +27 (0)21 405 6080  
E lucinde.rhodie@cdhlegal.com

**Jonathan Ripley-Evans**  
Director  
T +27 (0)11 562 1051  
E jonathan.ripleyevans@cdhlegal.com

**Willie van Wyk**  
Director  
T +27 (0)11 562 1057  
E willie.vanwyk@cdhlegal.com

**Joe Whittle**  
Director  
T +27 (0)11 562 1138  
E joe.whittle@cdhlegal.com

**Jonathan Witts-Hewinson**  
Director  
T +27 (0)11 562 1146  
E witts@cdhlegal.com

**Pieter Conradie**  
Executive Consultant  
T +27 (0)11 562 1071  
E pieter.conradie@cdhlegal.com

**Nick Muller**  
Executive Consultant  
T +27 (0)21 481 6385  
E nick.muller@cdhlegal.com

**Marius Potgieter**  
Executive Consultant  
T +27 (0)11 562 1142  
E marius.potgieter@cdhlegal.com

**Nicole Amoretti**  
Professional Support Lawyer  
T +27 (0)11 562 1420  
E nicole.amoretti@cdhlegal.com

### 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.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

### 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@cdhlegal.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@cdhlegal.com

©2017 1566/MAR

