

# Agriculture, Aquaculture & Fishing Sector

**ALERT**

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CLIFFE DEKKER HOFMEYR

INCORPORATING  
KIETI LAW LLP, KENYA



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**DWS clarifies the transformation requirements in the proposed new water license regulations**

On 19 May 2023, the Department of Water and Sanitation (Department) published the Revision of the Regulations Regarding the Procedural Requirements for Water Use Licence Applications (draft Regulations).



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## DWS clarifies the transformation requirements in the proposed new water license regulations

On 19 May 2023, the Department of Water and Sanitation (Department) published the Revision of the Regulations Regarding the Procedural Requirements for Water Use Licence Applications (draft Regulations).

Promulgated in terms of section 26(1)(k) of the National Water Act 36 of 1998 (National Water Act), the draft Regulations provoked a significant amount of negative reaction and media attention insofar as they contain various proposed transformation requirements relating to water use licence applications.

These transformation requirements have been interpreted to require certain sectors (the mining sector is exempted) to, when applying for water use licences to take or store water, allocate shares of up to 75% to Black South Africans for such water use licences to be granted. Considering many companies within the agricultural and other sectors, including the forestry sector, are lawfully operating under the auspices of historical rights to use water that were issued before the National Water Act came into effect, there was an immediate concern that any future

obligation that may be placed on such companies to apply for water use licences would result in the need to allocate shares in such companies of up to 75% to Black South Africans.

On 15 June 2023, the Department issued a media statement to clarify the extent of the transformation requirements in the draft Regulations which confirmed that:

*"... the transformation requirements categories as envisaged in the current review of Regulations are only applicable to applications for new water use licenses and are not applicable to renewal of existing water use licenses, nor to the water use applications which will arise out of compulsory licensing (compulsory licensing refers to the process of re-licensing water use allocations which were made prior to the National Water Act coming into effect)."*

The Department further confirmed that 98,5% of the available water resources in South Africa are currently allocated and that the transformation requirements would only apply in the context of new water use licence applications relating to the remaining 1,5% of water resources. To the extent that the wording of the draft Regulations remains a concern, the Department has encouraged the public to submit comments on these and other provisions in the draft Regulations and how such provisions can be amended and/or worded better.

The public has 60 days from the date of publication (19 May 2023) of the draft Regulations to submit comments.

**Alistair Young, Margo-Ann Werner, and Andre de Lange**

## OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



### André de Lange

Sector Head:  
Agriculture, Aquaculture & Fishing  
Director: Corporate & Commercial  
T +27 (0)21 405 6165  
E [andre.delange@cdhlegal.com](mailto:andre.delange@cdhlegal.com)



### Sammy Ndolo

Partner | Kenya  
T +254 731 086 649  
T +254 204 409 918  
T +254 710 560 114  
E [sammy.ndolo@cdhlegal.com](mailto:sammy.ndolo@cdhlegal.com)



### Emil Brincker

Practice Head & Director:  
Tax & Exchange Control  
T +27 (0)11 562 1063  
E [emil.brincker@cdhlegal.com](mailto:emil.brincker@cdhlegal.com)



### Chris Charter

Practice Head & Director:  
Competition Law  
T +27 (0)11 562 1053  
E [chris.charter@cdhlegal.com](mailto:chris.charter@cdhlegal.com)



### Jackwell Feris

Sector Head:  
Industrials, Manufacturing & Trade  
Director: Dispute Resolution  
T +27 (0)11 562 1825  
E [jackwell.feris@cdhlegal.com](mailto:jackwell.feris@cdhlegal.com)



### Tobie Jordaan

Sector Head: Business Rescue,  
Restructuring & Insolvency  
Director: Dispute Resolution  
T +27 (0)11 562 1356  
E [tobie.jordaan@cdhlegal.com](mailto:tobie.jordaan@cdhlegal.com)



### Mashudu Mphafudi

Practice Head & Director:  
Finance & Banking  
T +27 (0)11 562 1093  
E [mashudu.mphafudi@cdhlegal.com](mailto:mashudu.mphafudi@cdhlegal.com)



### David Thompson

Deputy Practice Head & Director:  
Corporate & Commercial  
T +27 (0)21 481 6335  
E [david.thompson@cdhlegal.com](mailto:david.thompson@cdhlegal.com)



### Albert Aukema

Director:  
Competition Law  
T +27 (0)11 562 1205  
E [albert.aukema@cdhlegal.com](mailto:albert.aukema@cdhlegal.com)



### Roy Barendse

Executive Consultant:  
Dispute Resolution  
T +27 (0)21 405 6177  
E [roy.barendse@cdhlegal.com](mailto:roy.barendse@cdhlegal.com)



### Tessa Brewis

Director:  
Corporate & Commercial  
T +27 (0)21 481 6324  
E [tessa.brewis@cdhlegal.com](mailto:tessa.brewis@cdhlegal.com)



### Simone Franks

Director:  
Real Estate Law  
T +27 (0)21 481 6464  
E [simone.franks@cdhlegal.com](mailto:simone.franks@cdhlegal.com)



### Andries Le Grange

Director:  
Competition Law  
T +27 (0)11 562 1092  
E [andries.legrange@cdhlegal.com](mailto:andries.legrange@cdhlegal.com)

## OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



### Gillian Lumb

Director:  
Employment Law  
T +27 (0)21 481 6315  
E [gillian.lumb@cdhlegal.com](mailto:gillian.lumb@cdhlegal.com)



### Lucinde Rhoodie

Director:  
Dispute Resolution  
T +27 (0)21 405 6080  
E [lucinde.rhodie@cdhlegal.com](mailto:lucinde.rhodie@cdhlegal.com)



### John Webber

Director:  
Real Estate Law  
T +27 (0)11 562 1444  
E [john.webber@cdhlegal.com](mailto:john.webber@cdhlegal.com)



### Richard Marcus

Director:  
Dispute Resolution  
T +27 (0)21 481 6396  
E [richard.marcus@cdhlegal.com](mailto:richard.marcus@cdhlegal.com)



### Belinda Scriba

Director:  
Dispute Resolution  
T +27 (0)21 405 6139  
E [belinda.scriba@cdhlegal.com](mailto:belinda.scriba@cdhlegal.com)



### Charl Williams

Director:  
Corporate & Commercial  
T +27 (0)21 405 6037  
E [charl.williams@cdhlegal.com](mailto:charl.williams@cdhlegal.com)



### Burton Meyer

Director:  
Dispute Resolution  
T +27 (0)11 562 1056  
E [burton.meyer@cdhlegal.com](mailto:burton.meyer@cdhlegal.com)



### Roux van der Merwe

Director:  
Corporate & Commercial  
T +27 (0)11 562 1199  
E [roux.vandermerwe@cdhlegal.com](mailto:roux.vandermerwe@cdhlegal.com)



### Lauriene Maingi

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [lauriene.maingi@cdhlegal.com](mailto:lauriene.maingi@cdhlegal.com)



### Susan Meyer

Sector Head:  
Healthcare & Pharmaceuticals  
Director: Competition Law  
T +27 (0)21 481 6469  
E [susan.meyer@cdhlegal.com](mailto:susan.meyer@cdhlegal.com)



### Clarice Wambua

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [clarice.wambua@cdhlegal.com](mailto:clarice.wambua@cdhlegal.com)



### Hugo Pienaar

Sector Head:  
Infrastructure, Transport & Logistics  
Director: Employment Law  
T +27 (0)11 562 1350  
E [hugo.pienaar@cdhlegal.com](mailto:hugo.pienaar@cdhlegal.com)

**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

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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**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](mailto: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](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E [cdhstellenbosch@cdhlegal.com](mailto:cdhstellenbosch@cdhlegal.com)

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