

South Africa

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South Africa's legislative landscape

Roger Rudolph and Clinton van Loggerenberg
Edward Nathan Sonnenbergs
Cape Town and Johannesburg

South Africa has the largest and most developed economy in sub-Saharan Africa and, based on purchasing power parity, South Africa's GDP generally sees it ranked at around the world's 20th largest economy.

Financial services and banking sector

Although considered an emerging market, South African banks generally conform to first-world market principles and so invoke the confidence of local and international investors alike. The sector is highly concentrated, with four or five major banks clearly dominant in retail banking. A number of international banks and security firms have investment banking operations in South Africa.

The Financial Services Board (FSB) and the South African Reserve Bank (SARB) are primarily responsible for regulation of the sector. Robust and sophisticated regulations applied by these bodies along with a measured approach to exchange control liberalisation has provided a degree of insulation to the domestic financial sector from the effects suffered by other major economies as a result of the global credit crisis.

As of January 1 2008, the amended Banks Act 1990 incorporated the Basel Committee on Banking Supervision's amended Core Principles for Effective Banking Supervision and its revised Capital Framework (Basel II), placing South Africa among the ranks of the earliest adopters of Basel II. The three-pillared framework proposed in Basel II aims to improve the banking system worldwide by ensuring that banks hold sufficient capital in relation to their risks. Accordingly, banks are required to report their risks and capital adequacy to SARB, a measure intended to dimin-

ish the risk of bank failures and enhance the soundness of the financial system.

Exchange control

Exchange control in South Africa is regulated by SARB's exchange control department, Excon. Issues overseen by Excon include foreign investments made by residents above designated limits as well as financing and/or security transactions between residents and non-residents. Authorisations are generally granted if such investments are considered to be economically beneficial to South Africa in the long-term. Policymakers have embarked on a gradual process of exchange control relaxation and liberalisation, and non-resident investors may generally freely invest and repatriate their returns.

The JSE

In 2001, South Africa's largest stock exchange, the JSE, acquired the South African Futures Exchange (Safex) and so became the country's market leader in both equities and derivatives trading. In 2005 Yield-X was launched by the JSE, providing a platform for the trading of interest rate-related and currency products. In the same year, in conformity with international trends, the JSE demutualised and subsequently listed its shares on the main board of the JSE.

To enhance its global competitiveness, the JSE announced in October 2008 that it had made a conditional offer to acquire the entire ordinary share capital of the Bond Exchange of South Africa (Besa). In addition to the approvals already obtained from the FSB and SARB, in June 2009 the competition tribunal granted its approval for the proposed merger of the two entities, thereby satisfying the regulatory consent required for the merger. If the scheme of arrangement is sanctioned by the High Court of South Africa, Besa will become a wholly-owned subsidiary of the JSE. The expressed intention behind the merger is to provide increased liquidity, functionality and a broader range of services and products to

market participants, bond issuers and investors.

Corporate Law Reform

The Companies Act 2008, expected to become operative in mid-2010, marks the pinnacle of the corporate law reform process in South Africa. Noteworthy aspects of the new Companies Act include the following:

(i) The final jettisoning of an outdated system of capital maintenance and the introduction of a regime based on solvency and liquidity. The new regime has the potential to facilitate financing by a company for the purchase of shares in the company itself, which may prove to be particularly useful in the context of black economic empowerment transactions.

(ii) The replacement of judicial management with a new business rescue regime for companies in financial distress, to be largely self-administered by the company in conjunction with a business rescue practitioner.

(iii) Codification and clarification of the common law fiduciary duties of directors.

The reform process will streamline and modernise South Africa's corporate law, aligning it with international best practice.

Consumer Protection Act 2008 (CPA)

The CPA, signed into law on April 29 2009 and expected to come into force in October 2010, significantly promotes the rights of consumers in South Africa by introducing a single, comprehensive legal framework for the protection and enforcement of consumer rights. The CPA applies to transactions between suppliers of goods or services and consumers in South Africa (subject to various exemptions), as well as the advertisement, marketing and promotion of goods or services. Implementation of the CPA will potentially make South African consumers among the best protected in the world.

Taxation

With effect from October 1 2007, the first phase of reform to Secondary Tax on Companies (STC) was implemented with a revision of the tax base on which STC relies and a reduction in STC from 12.5% to 10%. Phase two will see the replacement of STC with a new tax on distributions of companies, to be levied at a shareholder level.

In 2008 the corporate income tax rate was reduced from 29% to 28%, effectively reducing the cost of capital for new investment.

In July 2008 the Securities Transfer Tax Act 2007 replaced stamp duties and uncertificated securities tax with a single tax in respect of any transfer of listed or unlisted securities – thereby significantly simplifying the country's securities tax regime.

Overview

Recent legislative and market developments in South Africa are born out of South Africa's continuing efforts to facilitate and encourage investment and trade in accordance with international best practice. An awareness of these developments and an understanding of the relevant legislation should help to facilitate a broader range of transactions in an environment that enjoys clear regulation underpinned by legal certainty.

Capital markets**Recommended firms****Tier 1**

Deneys Reitz
Edward Nathan Sonnenbergs
Webber Wentzel

Tier 2

Bowman Gilfillan
Cliffe Dekker Hofmeyr
Werksmans incorporating Jan S de Villiers

Tier 3

Brinks Cohen Le Roux
Glyn Marais

Tier 4

Bell Dewar
Prinsloo Tindle & Andropoulos
Tabacks

The South African legal market has seen a number of large mergers over the past year. Webber Wentzel merged with Cape Town firm Mallinicks, Cliffe Dekker with Herbstein & Gihwala Hofmeyr, and Werksmans with Jan S de Villiers. Most recently, in March

2009, Glyn Marais announced a formal association with Denton Wilde Sapte.

Another development yet to have an impact in the rankings is Eversheds' partnership with small firm Routledge Modise. The trend of mergers, which began with Edward Nathan & Freidland and Sonnenberg Hoffman Galombik combining in 1999, has provided leading firms with critical mass and surer footings in commercial centres Johannesburg and Cape Town. Notably, White & Case leaves the rankings this year following retrenchments and a considerably lower profile in the market.

While big mergers and high-profile movements of top lawyers have changed the landscape of the market, the slowdown in capital markets activity is acknowledged by all firms to have limited the impact of the moves thus far.

One particularity of the South African market is that due to its size, clients tend to follow individuals. Significant individual movements include Clinton van Loggerenberg, one of the most reputed lawyers in the market, returning from Allan & Overy Tokyo to join Edward Nathan Sonnenbergs, and Jackie King joining Deneys Reitz.

"The last 12 months have been miserable for the debt capital markets," says one peer, while another adds: "Securitisation is dead ... there have been a few corporate programs, debt capital markets have been driven by infrastructural investments, and the big issue has been parastatals accessing local capital markets for big projects; but the corporate bonds side has been very slow."

"We haven't had rights issues in this country for a number of years but I have done four so far," says one peer, while another peer comments that bond issues seem to be holding up better than other debt market transactions. Banks have been very keen to push covered bonds but, says one partner, the capital markets regulator is "jittery and conservative" at this prospect.

Deneys Reitz

Deneys Reitz is one of the top three firms in the capital markets and boasts one of the largest and strongest finance teams in the country, with almost 50 practitioners. The recent recruitment of Jackie King from Edward Nathan Sonnenbergs is a strong addition to the team. King is considered one of the top capital markets lawyers in the country, as is Casper van Heerden. The finance-oriented Lionel Shawe also commands a great deal of respect in the capital markets.

"We use Deneys Reitz on derivative transactions; they have a strong reputation there," says one client. Peers note the firm's top notch

reputation in structured finance and regard King and van Heerden as top in the debt capital markets.

"Casper van Heerden is possibly the best capital markets lawyer down here," says a client. Peers also praise van Heerden's debt issuance expertise.

Shawe and Jackie Midlane acted for Nedbank as the issuer of a \$100 million international Tier II bond issue. The firm advised on the first ever convertible bond transaction for mining company Aquarius, which involved creating new technologies in order to list the bond on the Johannesburg Stock Exchange (JSE).

Deneys Reitz has also been active on all offshore Euro MTN programmes in the country, and recently advised Nedbank and Standard Bank on their Euro MTN programmes.

Leading lawyers

Jackie King
Lionel Shawe
Casper van Heerden

Edward Nathan Sonnenbergs

"ENS is certainly one of the strongest players out there in SA [South Africa] in derivatives," says one client. Against the losses of top lawyers Jackie King and Graeme Tucker, the firm recruited Clinton van Loggerenberg, who recently returned from Tokyo where he was helping develop Allen & Overy's International Capital Markets team.

"Van Loggerenberg certainly seems to have a good grasp on derivatives transactions structures, programs and technologies," says one client. Head of the department Roger Rudolf also has a strong reputation. "For derivatives and banking regulations, I would go for Rudolf, or Clinton, who is very, very good at banking regulatory law. I would rate these two at the top of their game right now," says another client.

The firm can also count on the very active lawyer Steven von Schirnding, who is considered one of the top handful of capital markets practitioners in the country.

According to one client, the team at ENS is "good because they return your phone calls as quickly as possible. They are reasonable and sensible, extremely knowledgeable and very, very good at managing relationships".

A team led by von Schirnding is advising Investec Bank on a \$1.5 billion equipment finance securitisation programme. Von Schirnding also closed a \$620 million equipment finance multi-seller securitisation programme for Sasfin Bank, a \$124 million inward listing on the Bond Exchange of South Africa for the African Development Bank,

and representing Bidvest/Absa on a \$37 million asset-backed note program.

Rudolf assisted Absa Bank on two \$248 million cross-border structured finance transactions with Morgan Stanley and Deutsche Bank, and also led a team on a high value mandate for Macquarie Group.

Leading lawyers

Simon Osborne
Roger Rudolph
Clinton van Loggerenberg
Stephen von Schirnding

Webber Wentzel

Webber Wentzel is most regarded for its strong private-equity practice, where partner Sally Hutton has made a name for herself. Meanwhile, clients and partners recognise Karen Couzyn as possibly the most reputed securitisations lawyer in the country and John Bellew as one of the top private-equity lawyers.

Olga Meshoe-Majola featured with Couzyn on the firm's top deals. "Couzyn is the number one securitisations lawyer in South Africa," says one client. "She is outstanding, and that isn't just my subjective opinion, it is recognised by the market ... and she is brilliant for her knowledge on securitisation regulations ... she has probably acted for all the players in the market for the last five or ten years."

Despite noting a downturn in activity, the firm saw some large capital markets transactions. Couzyn advised Goldfields as issuer of a \$1.2 billion domestic MTN programme arranged by Absa Bank. In another deal, the firm advised the arranger Investec Bank in a \$248 million Domestic MTN issued by Capitec.

The firm also represented the Omnia Group in a \$186 million Domestic MTN programme, and acted for Eqstra Holdings in its issue of a \$991 million domestic MTN.

Leading lawyers

John Bellew
Karen Couzyn
Sally Hutton

Bowman Gilfillan

Big names in the Bowman team include Ezra Davids, David Anderson, Paul Schroder and Alan Keep. The firm is known for demanding a more generalist approach from its lawyers. For example, capital markets deals also feature leaders in the finance and competition fields, such as Anton Barnes-Webb and Robert Legh. Davids and Anderson also bring finance expertise to the practice.

"I would go to Davids for all capital markets work," says one client, and "mainly for ECM equity placing, underwriting, IPO placing and so forth, not the [exotic] stuff like derivatives". The client adds: "Davids is pragmatic, understands the international and domestic perspective and works well with international clients."

The firm advised underwriters Goldman Sachs, UBS and Morgan Stanley in a \$1.7 billion international rights offer by AngloGold Ashanti and acted for Sappi on its \$717 million rights offer to the international equity markets. Metorex also used the firm on a \$92 million domestic clawback rights offer, which included a \$37 million bridging finance facility and the restructuring of \$247 million of debt. Davids, Barnes-Webb, Schroder, Keep and Legh featured on the deals.

Elsewhere, Anderson acted for an investor on a \$100 million Tier II bond issuance listed on the LSE by Nedbank.

Schroder and Keep also featured in the debt capital markets, advising Barloworld on a \$93 million domestic bond issue and assisting Standard Bank on an update resulting from changes in banking regulation to a base prospectus for a \$2 billion Euro MTN.

Leading lawyers

Ezra Davids

Cliffe Dekker Hofmeyr

Cliffe Dekker maintains an association with DLA Piper, and the firm's recent merger with Herstein & Gihwala Hofmeyr has given it greater overall mass. The recruitment to directorship of Kieran Whyte in August 2008 from Edward Nathan Sonnenbergs has also bolstered the team, which already had a strong reputation among peers for corporate bond work.

Joz Coetzer and Nathisha Maharaj, who became a senior associate in September 2008, advised Anglo American Finance on an update to a \$2.47 billion domestic MTN programme, and Nampak on an update to its \$93 million commercial paper programme.

Deon Govender has been acting for Mercedes-Benz South Africa on its monthly \$86,500 note issuances under a domestic MTN programme since October 2008, and also assisted Investec Bank in relation to the establishment of Pharmicare's \$247 million domestic MTN and commercial paper programmes.

In another significant transaction, the firm advised Absa Bank as arranger to Gold Fields' \$1.24 billion domestic MTN programme.

Leading lawyers

Joz Coetzer

Deon Wilken
Kieran Whyte

Werksmans incorporating Jan S de Villiers

Richard Roothman and Wildu du Plessis head up the capital markets practice at Werksmans. Du Plessis is highly recommended by peers for debt capital market transactions and is in the top handful of names that are associated with capital markets.

In recent work, du Plessis and Roothman advised Absa Bank, FirstRand Bank and Vunani Capital acting as arrangers and the South African National Roads Agency acting as issuer on the establishment of a \$1.24 billion domestic MTN Programme. In another deal, Du Plessis was joined by Muhammad Sader in assisting Citigroup Global Markets and JPMorgan Securities as underwriters in relation to a renounceable \$718 million rights offer by Sappi.

Werksmans won further mandates representing the Development Bank of Southern Africa (DBSA) and Absa Bank on DBSA's establishment of a \$1.86 billion domestic MTN Programme and its issue of \$124 million notes. Roothman acted on both deals.

Again working with Absa Bank, the firm advised on the amendment and update of a €2 billion Euro MTN Programme. The firm also acted for the City of Cape Town on the establishment of its \$866 million domestic MTN Programme and the issue of \$124 million of notes.

Leading lawyers

Wildu du Plessis
Richard Roothman

Other ranked firms

Brink Cohen le Roux lawyers Johan Brink and Leigh Sedice advised Sallies on an underwritten rights issue of \$9.4 million of unsecured unsecured convertible debentures. "The city of Johannesburg is their big client," says one peer, "and the city is issuing on a repeat basis."

Glyn Marais lawyers Francois Marais and Anastasia Maimonis advised Growthpoint Properties in a \$124 million clawback offer rights issue underwritten by Investec Bank.

Tier three firms **Tabacks, Prinsloo Tindle & Andropoulos** and **Bell Dewar** have good reputations despite their size. On one large deal, Tabacks advised AngloGold Ashanti on its \$1.7 billion issue of an international rights offer. Prinsloo Tindle & Andropoulos name partner Paul Andropoulos receives commendations for his structured finance work, while

peers say Bell Dewar has a niche reputation in the corporate bond market.

Banking and project finance

Recommended firms

Tier 1

Deneys Reitz
Edward Nathan Sonnenbergs
Webber Wentzel

Tier 2

Bowman Gilfillan

Tier 3

Bell Dewar
Cliff Dekker Hofmeyr
Glyn Marais
Werksmans incorporating Jan S de Villiers

Tier 4

Brink Cohen le Roux
Prinsloo Tindle & Andropoulos

“It was a very busy but a strange year; it was a battle to get the deals into closure – deals that were started before the Lehman Brothers crash,” says one partner. Another partner explains that “it has been a bit stop-and-start, but there is a lot in the pipeline; there is a lull at the moment as projects are in the initial stages”.

As well as the firm mergers, an additional trend has been the increasing reach of firms into the rest of Africa, where they have acted on significant deals such as the Bujagali Dam in Uganda and the construction of a hospital in Lesotho, among other projects.

“We are going to see a lot more cross-border deals,” says one peer. Another peer explains: “We have a cross-border deal with Mozambique for gas and coal; Botswana has coal and Namibia theoretically has natural gas, and a pipeline has been talked about for the last eight years ... so maybe.”

Locally, “project finance is still steaming ahead,” says one partner, while a peer adds: “The new government has to be seen to be spending money on roads, schools, health-care, prisons.” Five prisons are to be constructed, two or three new toll roads are to be announced soon, funding has been obtained for widening projects on ports, and there are construction projects in the pipeline.

One significant individual movement has been the departure of public-private partnership (PPP) expert Clare Cork to Australia at a time when the project finance and PPP sectors seem to be holding up well.

“Electricity is the flavour of the month at the moment ... and poor planning in the past now demands a lot of regulatory work in this area,” says a peer. Eskom has provided the

market with large mandates, while Transnet, has committed to spending R18 billion (\$2.29 billion) in the next few years as well. The 2020 World Cup has also created work for firms.

In banking “there has been a slowdown in the small and mid-loan market as banks have tightened up because borrowing is getting more and more stretched” says one partner.

Deneys Reitz

With the largest team in South Africa approaching 50 lawyers, Deneys Reitz is recognised by all commentators as a top-tier firm in finance matters.

“They are very good now in the financial environment, general finance, acquisition finance and structured finance,” says one peer. Another partner says the firm “is really in a tier on its own in project finance”. The market acknowledges that Deneys has made significant efforts to focus on and grow its finance department, and such efforts have made the firm one of three with aircraft finance capabilities.

“Lionel Shawe has a very good reputation in the market,” says one peer, while Kevin Cron comes highly recommended for project finance work from a number of peers and clients. Derek Carmichael receives praise from banking clients as an up-and-comer.

Clare Cork’s move to Australia was a sharp loss: “Cork was one of the most experienced attorneys in the country for public-private partnerships,” says one peer. New co-head of the project finance department Gavin Noeth “is very, very competent and has his own strong practice” according to another peer.

In a project finance highlight deal of the year, the firm advised the National Treasury on a \$7.4 billion subordinated loan transaction to national power provider Eskom. Other deals saw the firm act for Neotel telephone operators, Standard Bank in a mining finance transaction, and Metorex as lender of a loan. The latter deal also involved a subsequent loan restructuring.

The firm acts for all the largest local banks and foreign institutions, among them JPMorgan and Barclays.

Leading lawyers

Kevin Cron
Gavin Noeth
Lionel Shawe

Edward Nathan Sonnenbergs

Edward Nathan Sonnenbergs (ENS) has gone through some notable personnel changes in its core strengths of banking and finance. The losses of leading lawyers Graeme Tucker and

Kieran Whyte have been balanced out by the recruitment of well regarded project finance expert Biddy Faber.

Eric le Grange is also very active on project finance transactions, while other big names at the firm include Simon Osborne, Khurshid Fazel and Diana Messerschmidt, who are all very active in banking. Sean Lederman has a top reputation as the joint practice head in Cape Town.

Large project finance deals saw le Grange act for Eskom on a \$7.4 billion hybrid subordinated debt from the National Treasury for its capital expansion project. Le Grange also won two mandates from the Development Bank of Southern Africa, advising on a \$111 million public-private partnership financing for a hospital in Lesotho, and on a \$186 million financing to the OR Tambo, Cape Town and Durban Airports.

The firm advised Absa Bank on a number of high-value project finance deals, including an \$800 million cross border loan facility for the Bujagali hydro power station project in Uganda.

ENS was active representing banks, including HSBC in a term facility for the construction of the Taj Hotel and Investec Bank on a range of aircraft and acquisition finance deals. Sasfin Bank also instructed the firm on a \$111 million equipment finance facility, as did Standard Bank on a \$173 million refinancing for the Pepkor Group.

Leading lawyers

Biddy Faber
Eric le Grange
Sean Lederman
Simon Osborne

Webber Wentzel

Webber Wentzel is a top firm “for quality of work, quality of transactions and internal organization” says one competitor. “The firm has a very good project finance team and is also strong in general finance,” says another.

Brigitte Baillie is regarded as possibly the top project finance lawyer in the country. “Baillie is excellent,” says one peer who specifically recommends her for energy related work. “She is extremely knowledgeable on project finance and public-private partnerships and is pleasant to work with,” says another peer.

Clients also speak well of Johan de Lange and banking and bank regulatory expert Johan Scholtz. Xolani Hlatswayo also receives praise from clients.

In recent transactions, the firm advised the Imbumba-Aganang Consortium in relation to an office accommodation PPP (public-private partnership) project for the Department of

Foreign Affairs. Baillie and Jason van der Poel acted on the deal, and again paired up to represent Standard Bank on the refinancing of the Sasol Mozambique gas pipeline.

Sally Hutton represented Actis and Old Mutual in the \$639 million secondary buy-out of Alstom South Africa

The firm fielded a large team to advise a consortium consisting of Old Mutual, the Industrial Development Consortium of South Africa and Guma Investment in a \$248 million arrangement between the Tourism Investment Corporation and its shareholders. The firm also assisted on the subsequent reorganisation and debt push down of the Tourism Investment Corporation (Tourvest).

Leading lawyers

Brigette Baillie
Johan de Lange
Johann Scholtz

Bowman Gilfillan

"Although other firms may have more specialist project finance expertise, the Bowman's team is still better, as it has better lawyers who pay more attention to the deals ... and across the board, that is the case," says one peer.

"They know very well how banks operate; they have all worked on massive cross-border transactions and work in Africa so they have the skills, exposure and networks in the rest of Africa," says one client.

In top deals, David Anderson and Nadisha Singh advised Deutsche Bank in relation to a \$37.2 million re-financing of loan notes issued by a special purpose vehicle and secured by shares in a company listed on the Johannesburg Stock Exchange (JSE).

Robert Legh and Charles Douglas represented Metorex, a mining company listed on the JSE and the LSE, in respect of a \$371 million debt and equity raising exercise, while Lance Fleiser, Anton Barnes-Webb and David Anderson teamed up to advise Mvelaphanda in a \$260 million re-financing arranged by Deutsche Bank.

Barnes-Webb assisted Eskom (one of South Africa's most significant parastatals) in relation to a €250 million loan facility provided by KfW. Alongside Daryn Webb, the pair also advised Matola Gas in relation to a \$31 million re-financing of its gas pipeline.

Elsewhere, Anderson and Dana Serchuk acted for the Export Development Corporation of Canada in relation to a \$100 million subscription for certain Euro MTNs issued by Nedbank.

Leading lawyers

David Anderson
Anton Barnes-Webb

Daryn Webb

Other ranked firms

Cliffe Dekker Hofmeyr recently recruited Kieran Whyte from Edward Nathan Sonnenbergs as a director of the finance team. "Whyte has good energy, electricity, and gas experience," says one peer. "We are starting to see Dekker playing a role in some of the top market deals where we would not have seen them before," says another competitor.

The firm acted for both Transet and Eskom, assisting the Department of Public Enterprises in relation to a \$7.4 billion loan facility to subsidiary Eskom for new building projects, and representing Transet in its \$804 million club loan funding with various banks and financiers and a \$495 million financing to widen Durban Port.

The firm advised HSBC in relation to the financing for the acquisition of a fleet of buses in the Rea Vaya Johannesburg Bus Rapid Transit System, and Enviroserv Holdings, Enviroserv Waste Management, Parchment Trading 72 and Absa Bank on the debt and equity financing of a \$260 million leveraged buyout of Johannesburg Stock Exchange-listed Enviroserv.

Claire Barclay is working on a number of PPP (public-private partnership) road projects and one PPP navy project. Joz Coetzer, Craig Whitley, Kieran Whyte and Deon Wilken all receive high praise in the market.

Wildu du Plessis and Richard Roothman appear on almost all of **Werksmans incorporating Jan S de Villiers'** top deals.

In recent acquisition finance transactions, the firm advised Standard Bank of South Africa and FirstRand Bank on the financing of a \$3.14 billion equity participation in Sasol, and acted for FirstRand Bank and Old Mutual Specialised Finance on the financing of a \$203 million acquisition by Primetime Trading 6 of Tourism Investment Corporation (Tourvest). The firm also advised Aspen Holdings and Global on a \$385 million loan by Standard Bank, Nedbank and Absa Bank to acquire certain assets from Glaxo Group.

One further deal includes acting for Telkom on its \$618 million senior unsecured term loan and revolving credit facilities by a syndicate of banks.

Bell Dewar is a specialist in mining and project finance. The firm "is great in project finance" says one peer, while competitors consistently praise partners Andrew Mitchell and Lara Bezuindhoudt.

In recent transactions, **Glyn Marais** acted for a commercial bank on the \$620 million financing of the acquisition of property portfolios and redevelopment of existing proper-

ties for a variety of listed and unlisted companies.

The firm also advised a leading investment bank in respect of the financing of a \$3 million low-cost housing project.

Brink Cohen Le Roux advised Citibank as lender on a \$6.18 million term loan facility agreement with JDG Trading.

Other notable firms

Small firm **Tugendhaft Wapnick Banchetti & Partners** was established in 2004 and was joined in 2005 by partner Ludwig Smith. Despite its size, firm is well regarded and partner Ludwig Smith has developed a strong individual reputation.

Mergers and acquisitions

Recommended firms

Tier 1
Bowman Gilfillan Edward Nathan Sonnenbergs Webber Wentzel Werksmans incorporating Jan S De Villiers
Tier 2
Cliff Dekker Hofmeyr Deneys Reitz
Tier 3
Brink Cohen Le Roux Glyn Marais Tabacks
Tier 4
Bell Dewar Fluxmans Prinsloo Tindle & Andropoulos

M&A has had a slower year than normal. The drop in activity has been "in the realm of 40%," says one peer, "although the press has quoted much higher figures." Another peer says: "There is still some activity but we have definitely felt a drop and we are not out of the woods yet ... and the failure rate in deals is much higher."

"It was a strange year, like I suppose it was everywhere – though we are certainly busier than London, in the M&A perspective," says another peer. "The number of transactions that people work on that never happen ... I have never had so many deals pulled."

However, there were a number of landmark deals through the year. Most notably, Werksmans had an outstanding year, acting on a number of sought-after deals for Liberty Holdings, Telkom and M-Real Corporation. One of the roles of the year went to Cliffe Dekker, which advised Remgro on its high-

profile restructuring – the highest valued transaction in the market.

Other highlight transaction included the restructuring of the BHP Billiton and Rio Tinto joint venture, a proposed acquisition by Tiger Brands, and the acquisition by Vodafone of a controlling stake in Vodacom. Black economic empowerment (BEE) corporate work provides complex and high-value work to firms, and notable deals in this area were closed for Vodacom, MTN and Remgro.

Another notable development is a new Companies Act, which is in the pipeline and aims to modernise business laws.

Bowman Gilfillan

Clients recommend partners Ezra Davids and David Yuill from Bowman Gilfillan. “Davis is brilliant on M&A,” says one, while Jon Schlosberg also has a good reputation among competitors. “Davids is very good, a very good rainmaker, while Yuill had very good technical expertise,” says another client.

Another client says that “the individual partners compare well with the top individual lawyers in the US”.

Schlosberg, Alan Keep and Rudolph du Plessis advised Standard Bank Group in a number of transactions, including assisting on its offer to acquire all issued share capital in Liberty Holdings and subsequently advising on an offer to Liberty Group shareholders to exchange their shares for shares in Liberty Holdings.

Robert Legh led a team that included Keep, Charles Douglas, Daryn Webb and Rudolph du Plessis to represent Pretoria Portland Cement Company in a \$334 million black economic empowerment (BEE) transaction in which 15% of the company’s issued share capital was sold back or issued to black shareholders.

In another top deal, Anton Barnes-Webb and Paul Schroder advised Sappi as on its \$1.83 billion acquisition of M-Real Corporation’s coated graphic paper business rights. Sappi also sought advice on a rights issue to help fund the acquisition.

Davids led a team including Yuill, Wally Horak and Barry Garven to act for Verizon Communications on the disposal of its subsidiary, Verizon South Africa, to MTN for \$225 million.

Leading lawyers

Ezra Davids
Jon Schlosberg
David Yuill

Edward Nathan Sonnenbergs

Michael Katz, Kevin Markman, Doron Joffe, Mark Garden, Stephen Lewis, Alan Feinstein and Miranda Feinstein all featured heavily on the firm’s highlight M&A transactions last year. Edward Nathan Sonnenbergs (ENS), with top lawyer Scott Nelson, is also developing its networks into the rest of Africa through a joint venture with Eco Bank.

The big name in the firm is Katz, who “has many, many years of experience” according to one peer. The firm “provides a comprehensive service, they are efficient” says one client, who adds that “their strength is in M&A work, and they understood my company very well”. “The ENS people are knowledgeable,” adds another client.

Miranda and Alan Feinstein recently retired from partnership, but will stay on as consultants to the firm.

Mark Kemp advised on the South African leg of the \$19.7 billion global acquisition by Royal Bank of Scotland of ABN Amro. Katz and Joffe also represented BHP Billiton on a \$560 million restructuring of its joint venture with Rio Tinto in respect of Richards Bay Minerals, plus the disposal of 26% of the restructured business to black economic empowerment (BEE) parties.

Lewis acted for Tiger Brands on its proposed \$994 million acquisition of AVI, while Peter Tshisevhe was similarly mandated by the government in the disposal by Telkom of its remaining stake in Vodacom to Vodafone for \$2.8 billion.

In an additional transaction, Markman advised Gold Reef Casinos in a sale of a \$124 million equity stake, purchased from existing BEE shareholders, to Tsogo Sun. Other clients that sought the firm in high value transactions included Sasol, Primedia and Pallinghurst.

Leading lawyers

Doron Joffe
Michael Katz
Kevin Markman

Webber Wentzel

In a notable change, in October 2008, Webber Wentzel recruited Johannes Gouws from the Royal Bank of Scotland to join the M&A practice and work alongside top lawyers Christo Els, Stephen Meltzer and Collin du Toit.

The firm had another good showing in the market this year by winning some of the biggest mandates across the board. In one deal, Els acted for Vodafone Group in its \$2.8 million acquisition of a controlling interest in Vodacom Group and the subsequent unbundling and listing of the shares of

Vodacom Group on the Johannesburg Stock Exchange (JSE).

Meltzer represented the Pearson group in its \$186 million acquisition of 35% of the issued share capital in Maskew Miller Longman Holdings from Caxton. The deal resulted in the establishment of Pearson Southern Africa.

In another of the highest value deals, Du Toit advised MTN Group in the \$3 billion unwinding of an existing black economic empowerment (BEE) structure. Madeleine Burger acted on the Vodacom BEE transaction, acting as lead adviser to Thebe Investment Corporation in the subscription for \$932 million worth of shares in Vodacom.

Leading lawyers

Christo Els
Johannes Gouws
Stephen Meltzer
Colin du Toit

Werksmans incorporating Jan S de Villiers

Werksmans has had an outstanding year by all counts, and a number of peers agree that the firm has built itself a top-tier reputation after repeatedly appearing on some of the most sought after mandates.

In top deals, Morné van der Merwe advised on a proposed \$8.2 billion offer by Xstrata to acquire the entire issued share capital of Lonmin for £33 per share. The offer was eventually withdrawn. Gareth Driver acted for Liberty Holdings/Liberty Group on a \$1.7 billion transaction for a takeout of minority stakes in Liberty Holdings and the subsequent restructuring of Liberty Group.

In another highlight deal, Kevin Trudgeon and Shaun Teichner represented Telkom’s Vodacom Group on the unbundling by Telkom of 35% of the entire issued share capital of Vodacom Group and a subsequent sale of 15% of the shares. The listing is expected to be valued at between \$2.5 billion and \$6.2 billion.

Gareth Driver again featured on another top deal where he represented M-Real Corporation on a \$1.1 billion sale to Sappi of its European coated graphic paper business.

Leading lawyers

Gareth Driver
Morné van der Merwe
Kevin Trudgeon

Cliffe Dekker Hofmeyr

Cliffe Dekker is well placed through its affiliation with DLA Piper to handle big-ticket transactions, which was proved by its role

advising Remgro in its high-profile restructuring.

The firm recently recruited Peter Prinsloo, founding partner of Prinsloo Tindle & Adropoulos, as director of corporate and commercial department. This appointment will considerably strengthen the team.

“They have a very fluid mechanism. There were no glitches and it was a competent, professional team producing a good result,” says one client, who adds: “In my opinion, they are the number one when it comes to M&A.”

The Remgro deal saw partner Johan Latsky advise on a multi-faceted \$22.4 billion restructuring of Remgro/Richemont which resulted in the establishment of Reinet. The much lauded transaction won a number of accolades in the market, making it one of the most high-profile transactions all year. The firm worked on a rights offer by Richemont as well as various distributions of shareholdings and depository receipts.

“They are dedicated and confident ... you have to know your way round the obstacle course of the various laws you are dealing with and fully understand them, and you also need a good team ... they are all experts in their fields,” says another client.

In one black economic empowerment (BEE) deal, Banzi Malinga, Latsky and Marita van der Walt arranged a \$933 million acquisition by various broad-based black economic empowerment (BEE) groups of a 6.25% shareholding interest in Vodacom. Willem Jacobs also worked on a \$233 million BEE acquisition for Enviroserv Holdings.

Allan Reid, who receives good recommendations from clients as a close second to Ian Hayes, acted for Pallinghurst Resources (to be inwardly listed on the Johannesburg Stock Exchange) on its \$248 million acquisition of a 49% stake in the Bakgatla-Ba-Kgafela tribe’s various platinum metal interests.

Leading lawyers

Ian Hayes
Johan Latsky
Allan Reid

Deneys Reitz

Deneys has a slightly weaker presence in the M&A market than in the finance market, however it does have a handful of well reputed individual practitioners; namely Kevin Cron, who is noted by peers and clients as one of the top M&A lawyers. “Cron is a brilliant M&A and all-round corporate lawyer,” says one competitor.

Co-head of project finance Gavin Noeth also receives praise from some in the market as a good M&A practitioner, while Liza Moosa, Michael Dale and Thato Seroto were active on

the big ticket transactions. A recent notable recruitment is Lance Roderick from the Royal Bank of Scotland.

In one notable deal, Deneys Reitz advised the Public Investment Corporation (PIC), acting on behalf of the Government Employees Pension Fund, in a \$3 billion string of inter-connected transactions related to Mobile Telephone Network’s (MTN) acquisition of Newshef, and knock-on effects regarding outstanding obligations to PIC. The deal featured Riza Moosa, Ernie Lai King and Thato Seroto.

Kevin Cron and Michael Dale advised Anglo Platinum on a \$500 million sale of a 50% stake in the Booyendal Project and a 22% stake in Northam Platinum to Mvelaphanda Resources, and similarly assisted Exxaro Resources on its \$249 million acquisition of Namakwa Sands from Anglo Operations.

Leading lawyers

Kevin Cron

Other ranked firms

Glyn Marais “has been involved in some big matters” notes one peer, and the market consistently recognises the firm’s quality. While some commentators note that the firm is lacking in size, its association with Denton Wilde Sapte in 2009 may well push the firm into more big-ticket transactions. Additionally, leading lawyer François Marais is well regarded by the market.

On top deals, the firm advised the Public Investment Corporation, acting on behalf of the Government Employees Pension Fund, in a \$622 million acquisition of 50 properties from Zenprop Property.

Roux van der Merwe advised Principle Capital International Investment Fund on its black economic empowerment (BEE) investment in the oil and gas and energy sectors, while Willem de Villiers represented Sanlam in the \$75 million establishment of MiWay joint venture, involving three listed financial-service providers.

Brinks Cohen le Roux is active in mid-sized M&A transactions with name partner Johan Brink, Paul Coetser, Kim Wyness, and Anne Daniel featuring on the firm’s larger deals.

The firm advised Alstom Management on its \$642 million sale to an Actis consortium of investors, comprising Actis, black economic empowerment (BEE) investors, Old Mutual Private Equity and Alstom Management.

The firm also represented Northam Platinum in its \$2.7 billion sale to Impala Platinum, while Mvelaphanda Resources

instructed the firm on a \$66 million acquisition of a stake in Devine Inspiration Group.

The firm also acted for 0833824 BC – a wholly-owned subsidiary of Pala Investment Holdings – in its \$91 million acquisition offer for Rockwell Diamonds.

Other firms with highly regarded M&A practices are Tabacks which, despite the loss of key lawyer Rupert Smith, has a strong name in the M&A field under Mervin Taback, a well respected practitioner. Prinsloo Tindle & Adropoulos is also praised by peers, with one saying that “Danny Adropoulos is truly superb in M&A.”

Competition

Recommended firms	
Tier 1	Bowman Gilfillan Edward Nathan Sonnenbergs Webber Wentzel
Tier 2	Cliff Dekker Hofmeyr Deneys Reitz
Tier 3	Nortons Inc Werksmans incorporating Jan S de Villiers
Tier 4	Bell Dewar

Competition is a relatively young area of law in South Africa, which was only established in 1999 with the passing of the Competition Law. Since its inception, the market has developed quickly.

“Part of it flows from the structure of South Africa’s economy, which is a closed economy and has allowed the growth of a few very powerful organisations such as Sasol and Mittal, which are both ex-state entities turned private,” says one peer. “Mittal has been hurtful in a policy perspective as it turned from a state-owned monopoly to a monopoly owned by Mr Mittal.”

The government and the Competition Commission have made a huge effort to undo uncompetitive economic structures. While all notable mergers are referred to the Commission, providing much of the work for law firms, the recent drop in merger activity and a possible change in focus from the Commission has translated into a flurry of anti-cartel cases.

Top cartel deals over the past year have involved Mittal, British American Tobacco, Tiger Brands, Sasol, SAB Miller and Impala Platinum. Corporate leniency and whistleblower protection have started to take affect: “Leniency has absolutely taken off and has

resulted in a lot of prosecutions here – there have been several cases and there is no doubt that it has had a huge role to play,” says one peer.

Due to the nature of competition, all firms with strong corporate practices have competition capabilities. A recent exception has been the establishment of boutique competition practice Nortons Inc by former Webber Wentzel lawyers.

In this young area of law, there is only a small pool of competition lawyers. “Firms tend to have few very knowledgeable senior guys ... while a lot of the others who still have things to learn,” says one client. “This is the case,” says a client, “because it is a new and highly-complex field.”

Nevertheless, as competition grows and the value of the deals goes up, so will the importance of this practice area. Some big corporate leniency successes and fines of up to \$70 million mean “companies are trying to pre-empt fines and public opprobrium” according to one peer.

While there has been a proposal for the criminalisation of cartel activity as in other countries, peers seem unanimously to agree that this would undermine corporate leniency successes.

Bowman Gilfillan

Bowman Gilfillan has the largest competition practice in South Africa, boasting big names such as Robert Legh, who is also a leading lawyer in the M&A and finance areas, specialist competition lawyer Jean Meijer, who was recently recruited from Cliffe Dekker Hofmeyr, and the younger Derek Lotter.

“Meijer has a huge reputation,” says one client, while a peer adds that “Bowmans are a stronger force in the market, especially now with Meijer”. “Tamara Dini checks all her work with Derek Lotter, as she should do, but I would very strongly recommend both of them,” says another competitor. Clients agree that “the senior people are all very skilled and highly knowledgeable”.

In critical deals, Lotter successfully advised Merck/MSD on a complaint initiated by the Treatment Action Campaign in relation to the licensing of HIV/Aids antiretroviral drugs.

The firm is advising Murray & Roberts Group in relation to various separate investigations into differing aspects of the steel industry, and the firm also represented Nampak in relation to a long-running case into an alleged cartel in the glass recycling industry. The matter was settled with the Competition Commission and complainant withdrawn.

Legh provides continuing advice to SAB Miller on competition matters in Africa, while

Meijer featured on deals advising Sasol, with Dini, and Standard Bank to provide advice and submissions relating to an enquiry into the banking sector from all major South African banks.

Leading lawyers

Robert Legh
Derek Lotter
Jean Meijer

Edward Nathan Sonnenbergs

Lee Mendelsohn is the face of the practice at Edward Nathan Sonnenbergs (ENS), commanding a strong reputation among all the top firms. Mark Garden, Justin Balkin, Natalia Lopes and Jocelyn Katz feature on the top competition deals, and are beginning to build reputations and receive praise from different parts of the market. The firm also boasts Lizél Blignaut, an economist who supported on a number of transactions.

“ENS’s competition practice was originally guided by the senior partner of the firm Michael Katz in years past, but he is now more of an M&A and corporate lawyer and something of a doyen of the commercial bar in South Africa – but he is key in attracting top clients,” says one peer.

Garden featured on two high profile deals, defending British American Tobacco against JT International South Africa in an abuse of dominance complaint and advising Gateway Communications on competition matters relating to the sale to Vodacom

The ENS team is also advising Tiger Brands in respect of a bread and milling cartel and a pharmaceutical cartel. The firm conducted a compliance audit of the company’s subsidiaries and represented the company in an offer for the entire share capital of AVI.

Additionally, the firm acted for Nedbank, FirstRand Bank and The Banking Association of South Africa in an investigation into the banking industry by the Competition Commission, and is advising BHP Billiton on South African competition law regarding its acquisition offer of Rio Tinto.

Leading lawyers

Justin Balkin
Natalia Lopes
Lee Mendelsohn

Webber Wentzel

“We have been at a number of competition tribunal hearings, and judging by various appearances of partners with their counsel it was pretty clear that Webber Wentzel is miles ahead of the other guys,” says one client.

Another client says Martin Versfeld and Desmond Rudman “are very smart, pick up very quickly on industry issues, and they are very familiar with industry happenings before we even tell them”.

Until a few months ago, the firm had the largest practice in the country, however the loss of competition head Anthony Norton and top practitioner Anton Roetz to their own practice cut the firm’s size. Nevertheless, “of all the law firms this firm is the strongest at middle and lower levels” says one client, and it remains “probably the best in the country”. Daryl Dingley and Robert Wilson both have strong reputations.

Led by Versfeld, the firm advised Sasol Oil and Sasol Polymers on competition law matters and successfully represented Botswana Ash to achieve a settlement after a nine-year battle against the Ansac cartel of soda ash manufacturers.

Versfeld again featured with Dingley to act for JT International South Africa in complaint proceedings against British American Tobacco. Wilson provided advice to Business Unity regarding amendments to the Competition Act and competition law advice and compliance training to Ethos Private Equity.

In another top deal, the firm was mandated by Piasa and the Hospital Association of South Africa to represent them against the Board of Healthcare Funders.

Leading lawyers

Desmond Rudman
Martin Versfeld
Robert Wilson

Deneys Reitz

Deneys Reitz has two very well regarded lawyers at the helm of the competition team. Practice head and founding partner of the practice Lesley Morphet has an established reputation as a leader in the field, and Heather Irvine “is a very good senior partner and will in time be a very big player in the field,” says one peer.

“Heather Irvine in particular is good ... she is technically solid although not as recognised,” says one competitor. Other top individuals in the team are economist Geoff Parr and Phillip Duramont, who heads the practice in Cape Town.

The firm has represented a number of clients across the board, and most notably recently advised clients Rio Tinto, Rand Merchant Bank, Zurich Insurance, Pepsi subsidiary Simba and Chevron.

The firm also featured in the Botswana Ash/Ansac case regarding the Ansac cartel of soda ash manufacturers and did the filing for

Impala Platinum and Anglo Platinum, advising on competition concerns regarding a high level of concentration in the industry.

Leading lawyers

Heather Irvine
Lesley Morphet

Cliffe Dekker Hofmeyr

According to competitors, Cliffe Dekker's strength in the competition area comes from having a solid team. The firm has "a more capable practice than most, which supports them better and has good underlying exposure, especially following the amalgamation with Hofmeyr, which had a bigger competition team" according to one peer.

The loss of star lawyer Jean Meijer had an effect on the team's clout in the market, but individuals such as Mondo Thla, formerly of the Competition Commission, Nick Altini, Andries le Grange, Nathalie von Ey and Chris Charter all command strong reputations. Recent recruit and specialist competition lawyer Petra Krusche is a notable addition to the team.

Thla "really is hot stuff" says one peer, while Altini, says another peer, "is a very smart partner in competition and somewhat of a face of Dekker".

Altini advised Harmony Gold Mining in the appeal by Arcelor Mittal Steel and MacSteel against a fine of \$86 million following a ruling that Mittal had engaged in excessive pricing. According to one peer, the case constitutes a "very significant piece of litigation regarding unfair pricing".

The firm also acted for Lonmin in a proposed hostile takeover by Xstrata, made complicated by what the commission had deemed uncompetitive concentration in the industry. The transaction is notable also due to the rarity of hostile takeovers. Ntlha, Von Ey and Charter acted on the deals.

Andries le Grange advised Vodacom against claims that its sale to Vodafone would be against the public interest. The transaction was unconditionally approved. In a significant test case, Krusche and Altini represented Pioneer Foods before the tribunal in respect of an alleged cartel in the bread market, following a corporate leniency application.

Other notable deals saw the firm act for South African Airways, Senwes, Sasol Chemical Industries and Investec Bank.

Leading lawyers

Nick Altini
Andries le Grange
Mondo Ntlha

Other ranked firms

Nortons Inc "is small but serious" says one peer. The newly set up boutique competition practice is made up of Anthony Norton, the former head of Webber Wentzel's practice, and former Webber equity partners Anton Roets, Paul Russell and John Oxenham.

"They have many years of experience at the helm of Webber Wentzel," says one peer. "Norton has respect and is regarded as having huge depth of exposure; and he is with people he has developed ... it is a very interesting experiment," adds the peer.

"They will have to earn their credentials," says another peer, who adds that "Norton certainly is an excellent competition lawyer and is excellent at marketing himself, and I suspect they will continue to do well".

Werksmans incorporating Jan S de Villiers has had a troubled year in the competition market with the high-profile loss of star lawyer Desmond Rudman. However, the market believes the firm, though operating with a smaller team, is in a strong position due to the merger with Jan S de Villiers and the strength of its corporate practice.

"They have great corporate clients so I think they will try to grow their competition practice," says one peer. "It is an effective commercial operator in its field," says another peer.

The firm recently recruited Paul Coetser as director of the competition practice. Coetser boasts a strong reputation in competition, as well as having top-flight experience in corporate activities. Specialist competition practitioner Pieter Steyn, also a director at the firm, is recommended by peers.

The market also recommends Steven Langbridge from the smaller competition practice at **Bell Dewar**. The firm won one top mandate advising Mittal.