

# South Africa

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## South Africa's legislative landscape: banking, finance and financial services

Clinton van Loggerenberg and Deborah Carmichael

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South Africa, which has recently successfully hosted the Fifa 2010 Soccer World Cup, has the largest and most developed economy in sub-Saharan Africa supported by a progressive, robust and sophisticated legal system.

### Financial services and banking sector

South Africa's banking and financial services sector is among the finest in the world, conforming to first world market principles, thus invoking the confidence of local and international investors. In 2009/2010 the World Economic Forum Global Competitiveness Index ranked South Africa's banking and financial services sector at 6th out of 133 countries for financial market sophistication and the soundness of its banks. In each of these categories, South Africa ranked ahead of the United Kingdom, the United States of America and Germany.

The South African Reserve Bank (Sarb) and the Financial Services Board (FSB) exercise regulatory oversight of the banking system and non-banking financial services sector respectively.

In 2008 South African banking legislation incorporated Basel II. In 2009/2010 there were a number of legal developments in the financial services sector the most notable of which were new regulations (yet to be promulgated) adopting new investment criteria for pension funds. The new regulations will significantly impact the nature of pension fund investments.

Hedge funds are not comprehensively regulated under South African law although hedge fund managers are regulated as investment managers. Accordingly, although hedge

fund managers do fall under the FSB's regulatory regime, they are not restricted by any specific regulatory requirements other than those applicable to investment managers in general. The FSB has been engaging with hedge fund industry participants with a view to establishing regulatory oversight of hedge funds themselves. Private equity funds are also unregulated but usually an advisory board (composed from the investor base and general partner or trustee) manages potential conflicts of interest, adherence to management obligations and reporting/valuation requirements.

The South African financial sector subscribes to the tenants of broad based black economic empowerment (BEE) and was one of the first industry sectors to voluntarily adopt an industry specific charter to cater for the implementation of BEE in the financial services sector. Qualifying industry participants commit to actively promoting a transformed and globally competitive financial sector that reflects the demographics of South Africa. The sector established targets and responsibilities for industry sector participants in achieving BEE objectives.

### Exchange control

The Sarb still applies a system of exchange control which is designed to prevent the unauthorised transfer of currency abroad and to ensure the repatriation into the South African banking system of currency acquired by South African residents. Exchange controls have been liberalised over the years to encourage foreign direct investments such that non-resident investors may, subject to certain administrative requirements, freely invest in South Africa and repatriate the returns.

### The JSE

The JSE is South Africa's only exchange and ranks among the top 20 exchanges in the world by market capitalisation. The JSE rules and enforcement procedures are based on global best practice, while its automated trading, settlement, transfer and registration sys-

tems are on par with other leading stock exchanges. The JSE also features a futures exchange (Safex) an interest-rate exchange (Yield-X) and a bond exchange, on which debt instruments are listed and traded.

The bond market platform of the JSE was its most recent acquisition having been the result of the acquisition by the JSE of the old Bond Exchange of South Africa (Besa). Investors wishing to list bonds on the bond market platform of the JSE do so currently under the old Besa listing rules. The JSE also has an Africa Board where equities in top African companies can be listed and traded and which allows investors to gain exposure to top African companies without having to negotiate the sometimes challenging task of direct investments into Africa.

### Corporate law reform

The most significant recent legislative development has been the promulgation of a new Companies Act in 2008. The new Companies Act is expected to come into force in the fourth quarter of 2010. Noteworthy changes include the eradication of the 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.

Other notable aspects of the new Companies Act are, 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; and
- 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.

## 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. 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	
<b>Tier 1</b>	Deneys Reitz Edward Nathan Sonnenbergs (ENS) Webber Wentzel
<b>Tier 2</b>	Bowman Gilfillan DLA Cliff Dekker Hofmeyr Werksmans
<b>Tier 3</b>	Glyn Marais in association with SNR Denton Prinsloo Tindle & Andropoulos White & Case

There was a steady increase in capital markets work throughout 2009 and into 2010. Nevertheless, certain areas remained very slow, according to partners.

There has not been any progress in terms of the introduction of covered bonds, although partners believe they would work. "The regulator is quite conservative but there is still an opportunity for covered bonds in the market in relation to banks and off-shore issuers; clients from Europe and Asia are looking to issue in the market," says a partner.

The securities market was dry and activity at the securities exchange low. But, says a partner, "there have been some securitisations and

they were well received, which was surprising as the market has ground to a halt."

Three securitisation programmes stand out: Edcon and OntheCards Investments II's store cards receivables securitisation, Absa Capital's asset-backed securitisations programme, and Gro Capital Financial Services' securitisation of part of its trade receivables book. Firms also restructured securitisations for Sasfin Bank, Investec and Standard Bank.

Practitioners kept busy advising foreign banks on reviewing their securities practices. "After Lehman, a lot of foreign banking institutions were looking very carefully at their practices and making sure secondary capital markets work was done properly," says a partner. Firms also won mandates to ring-fence exposures to derivatives to limit losses.

In the debt markets, Sanral launched the biggest domestic MTN (DMTN) programme in history for \$4.4 billion; the National Treasury established a \$2 billion programme; and Capitec Bank and Land and Agricultural Bank of South Africa also were also establishing DMTN programmes.

"It was active on the corporate bond issuance side and it seems that the government is going to come into the market with a lot of paper this year," says one lawyer. Another agrees: "There were strong bond issues and clients accessing debt capital markets rather than approaching commercial lenders."

A final area of activity was in preparation for the new Companies Act. "The Act is going to affect a number of our transactions as it has implications on how companies are set up, but the new regime will allow for some creativity," says a peer.

## Deneys Reitz

Deneys Reitz has restructured its team in the wake of high-level departures and with the intention of offering greater specialisation.

The firm lost big names in Lionel Shawe and Casper van Heerden, a pre-eminent capital markets lawyer, and up-and-coming talent in Deborah Carmichael and Ulrike Naumann to rivals Bowman Gilfillan and ENS.

"But," says a client, "it is still a premier finance practice; the departures to Bowman's hurt Deneys but that won't stop me briefing them ... they have a very, very strong team - one of the top five in Johannesburg - and are building up their practice again and will get back to top one or two in the next two years or so."

Peers and clients consistently praise head of debt capital markets Jackie King, and one of the market's big names, Kevin Cron, has also been drafted in to bolster the team. The firm also promoted derivatives and securities

lawyers Bridget King and Gareth Weston to senior associate level. Other key individuals include Cape Town-based Robert Driman.

Among its mandates, Deneys provides regular opinions on collateral arrangements to the International Swaps and Derivatives Association.

In a highlight transaction, Jackie King, Sandanathi Gwina and Mary-Ann Mbewe advised the Industrial Development Corporation of South Africa, Nedbank Capital and Basis Points Capital on a \$2 billion domestic MTN Programme (DMTN).

The firm also acted for the dealers on the City of Cape Town's DMTN issue and continued to advise clients including FirstRand Bank, Société Générale, BNP Paribas, Barclays Capital and Barclays Bank, HSBC, RBS, Deutsche Bank and JPMorgan.

## Leading lawyers

Kevin Cron  
Jackie King

## Edward Nathan Sonnenbergs (ENS)

For many, ENS is currently leading the field in capital markets. "To my mind [it] has the top finance lawyers in town at the moment," says a competitor. The firm is traditionally strong in derivatives work and recently recruited six directors and six senior associates to the team led by Roger Rudolph, Sean Lederman, Clinton van Loggerenberg and Stephen von Schirnding.

Kelle Gagné and recent Deneys Reitz recruit Deborah Carmichael have near-leading practices, especially in derivatives, while Vivien Chaplin and Kaple Sauje have up-and-coming practices.

Rudolph is consistently praised by clients and peers. "He is very approachable, easy to work with [and] practical," says one client. Another recommends Van Loggerenberg as "probably the leading expert in banking regulatory", while Carmichael is recommended as "younger and more junior but very, very helpful and approachable".

Rudolph and Lederman worked on a long list of deals, including a rights offer-funded aircraft financing for Comaire, a restructuring through a renounceable claw-back for Vunani and a number of cross-border structured finance deals. Rudolph has also been advising foreign banks on capital markets and securities matters and, along with Gagné, the South African Securities Lending Association.

In highlight deals, von Schirnding and Chaplin advised the National Treasury on a \$2 billion capital raising exercise under a bond programme (the largest ever), and acted

for Investec Bank, Sasfin Bank and Standard Bank on securitisation restructurings.

Van Loggerenberg advised FirstRand Bank on a \$1.5 billion EMTN update, Umgeni Waters on a \$409 million domestic MTN (DMTN) programme and RCS Investment Holdings on a three issues totalling \$315 million as part of a domestic MTN programme.

#### Leading lawyers

Clinton van Loggerenberg  
Sean Lederman  
Roger Rudolph  
Stephen von Schirnding

#### Webber Wentzel

Webber Wentzel is recommended by competitors for its derivatives and securitisations expertise. The big name at the firm in securities is Karen Couzyn.

Lindi Marais wins numerous accolades for her practice, especially in the debt markets, while Sally Hutton is “very strong in derivatives”, according to a peer. M&A expert Christo Els is well regarded in the equity markets and Janine Lamb and Kathy Shepherd also come recommended by clients.

In top deals, Couzyn advised first-time issuer Omnia Group on the establishment of a \$205 million domestic MTN (DMTN) programme and assisted Standard Bank of South Africa in an update of its \$2 billion MTN Programme. Investec Bank sought her advice on the establishment of a DMTN programme for Capitec Bank.

Marais advised the lead arrangers on a \$2 billion global MTN Programme for Transnet to raise capital and fund projects.

In securitisations, Marais advised Absa Capital on a \$104 million Asset-Backed Securitisation Programme connected with a home loans securitisation by Eskom Finance Company and Shepherd won a mandate from Rabobank International on the structuring and arranging of a \$341 million securitisation programme in which Gro Capital Financial Services securitised part of its trade receivables book.

Christo Els led a team advising Anglo American on a \$1.7 billion underwriting of a rights issue by its Johannesburg Stock Exchange-listed subsidiary.

Sally Hutton and Marais acted for Super Group on a \$164 million in relation to the underwritten recapitalisation and debt restructuring transaction between Super Group and its lenders and bondholders.

#### Leading lawyers

Karen Couzyn  
Christo Els  
Sally Hutton

#### Bowman Gilfillan

The firm made some high-profile recruitments to make up for what one peer calls “a strategic gap” in finance. “Bowman’s is now developing a structured finance and specialist banking practice,” says a client. The key recruits in to the capital markets team are partners Casper van Heerden and Ulrike Naumann from Deneyts Reitz.

Peers predict that van Heerden in particular will make a big impact in terms of specialist expertise, especially in areas such as corporate bonds and derivatives. Van Heerden is consistently named as one of the top lawyers in the field.

In key mandates, David Anderson and Ross McKay advised Associated British Foods on a \$409 million renounceable rights offer of Illovo Shares.

Charles Douglas led a team advising JSE (Johannesburg Stock Exchange)-listed Metorex on a \$53 million book build process and sale of a 53% shareholding in AIM (London Alternative Investment Market) and JSE AltX listed Pan African Resources to various US, UK and South Africa based investors.

Modise also advised ACSA (the Airport Company of South Africa) in relation to two \$82 million issues of Senior Unsecured Fixed Rate Notes under their domestic MTN Programme, and Jon Schlosberg and Plessis advised Standard Bank on a \$409 million scrip distribution to enhance the bank’s Tier I capital adequacy.

#### Leading lawyers

David Anderson  
Ezra Davids  
Casper van Heerden

#### DLA Cliffe Dekker Hofmeyr

Cliffe Dekker is especially strong on the debt side of the capital markets. Joz Coetzer is the main name in the firm for capital markets and comes highly recommended by competitors and clients for equity and debt work.

Other key figures include M&A expert Ian Hayes in the equity markets, and directors Deon Wilken and Craig Whitley for a wide spread of finance work and securities. Senior associate Nathisha Maharaj also manages an active practice.

The firm recently recruited well-established general finance lawyer Ludwig Smith, former partner of Tugendhaft Wapnick Banchetti & Partners, to director level and his colleague and Anli Koen, a structured finance lawyer, to associate. The moves partly counter the departures of two partners and associates from the firm.

Deon Govender and Maharaj continue to provide advice to Mercedes-Benz South Africa

on various note issues under a domestic MTN Programme, some of which were commercial paper issues and some of which were listed on Besa (the Bond Exchange of South Africa), valued at \$115 million annually. The work has been ongoing since October 2008. Other key clients of the firm include Absa Capital.

#### Leading lawyers

Joz Coetzer  
Ian Hayes  
Deon Wilken

#### Werksmans

The main name at Werksmans for all finance work and capital markets is Wildu du Plessis, who one client recommends for “debt capital markets and leveraged finance, general finance but not structured finance or derivatives.”

The firm has a good track record, having been involved in all synthetic securitisations to date, four of six asset-backed conduits and the first issue of callable bonds by an insurer.

Co-head of the practice is Richard Roothman, who leads on many of the top deals. Also of note are Muhammad Sader, Chris Moraitis, Tracey-Lee Janse van Rensburg and Astrid Berman.

On one of the high-profile deals of the year, du Plessis, Moraitis, Roothman and Van Rensburg advised the South Africa National Roads Agency on the establishment of a \$4.4 billion Guaranteed domestic MTN (DMTN) programme and a subsequent notes issue.

Roothman, Sader and Van Rensburg acted for Edcon and OntheCards Investments II on the establishment of an \$889 million store card receivables securitisation programme and the two subsequent issues.

Roothman also advised the City of Cape Town Municipality on a \$438 million issue under its DMTN programme while du Plessis and Berman were mandated by Citigroup Global Markets, JPMorgan and financial institutions to advise on a \$150 million notes issue by PE Paper Escrow.

Roothman and van Rensburg were also advising Absa Capital, Rand Merchant Bank and Vunani Capital on an ongoing deal as arrangers and dealers in connection with the establishment of a \$1.4 billion DMTN Programme for the Land and Agricultural Bank of South Africa.

#### Leading lawyers

Wildu du Plessis  
Richard Roothman

#### Other ranked firms

At Glyn Marais in association with SNR Denton, Willem de Villiers and Francois

Marais led on all the firm's capital markets transactions. The firm recently promoted capital markets lawyer Lisa Wake to partner.

In top deals, Marais and Anastasia Maimonis advised Growthpoint Properties in a \$270 million rights issue clawback offer underwritten by Investec Bank. The firm also provided advice in respect of the full spectrum of derivatives in the context of individual acquisitions by black economic empowerment (BEE) consortia of interests varying from 26% to 49% in mining sector companies.

Marais advised Decillion and Absa Bank on the ring-fencing of exposure resulting from derivative transactions executed between Absa and Decillion, and teamed up with Maimonis to assist Absa Bank in the \$270 million unwinding of various single-stock futures contracts and related issues.

In early 2009 Willem de Villiers and Lisa Brussow advised Absa Commercial Property Finance on funding to numerous listed and unlisted property companies for the acquisition or redeveloping property portfolios.

*Leading lawyers:* Francois Marais and Willem de Villiers

At **Prinsloo Tindle & Andropoulos** lawyer Paul Tindle receives commendations for his structured finance work and for securities transactions.

In a notable deal, the firm was advising ABE Construction Chemicals in its scheme of arrangement and delisting, to allow Chryso Southern Africa to acquire 100% of ABE's listed shares.

*Leading lawyers:* Paul Tindle

**White & Case** is beginning to appear on big transactions in the capital markets, according to competitors. The firm recently brought partner Joshua Parbhu from London to head the South Africa banking and finance department and support local partner Steve Raney and Imogen Harding. Global partner David Barwise also lends support to the capital markets practice.

Parbhu is especially strong in capital markets work, and in large mandates advised Investec in establishing a \$3 billion multi-issuer, asset-backed MTN programme and a first issuance under the programme of \$64 million Class A Notes, \$96 million Class B Notes, \$6 million Class C Notes and \$1.3 million Class D Notes.

Parbhu acted for Investec Bank on a redemption of \$165 million notes which had been issued under its RMS Multi Issuer Asset. Other clients include Weather Investments, Tamarin Securities and Murray & Roberts.

The firm has also recently won notable instructions from Investec on a number of issuances and redemption, as well as Eskom.

## Other notable firms

**Bell Dewar** has a solid reputation in the corporate bond market.

**Brink Cohen le Roux** has reputable capital markets expertise and advises one of its key clients, the City of Johannesburg, on a variety of issues. The firm is especially strong on securitisations.

## Banking

Recommended firms	
<b>Tier 1</b>	Deneys Reitz Edward Nathan Sonnenbergs (ENS)
<b>Tier 2</b>	DLA Cliffe Dekker Hofmeyr Webber Wentzel Werksmans
<b>Tier 3</b>	Bowman Gilfillan Glyn Marais in association with SNR Denton
<b>Tier 4</b>	Brink Cohen Le Roux

## Project finance

Recommended firms	
<b>Tier 1</b>	Deneys Reitz Webber Wentzel
<b>Tier 2</b>	Bell Dewar Bowman Gilfillan Edward Nathan Sonnenbergs (ENS) Werksmans
<b>Tier 3</b>	DLA Cliffe Dekker Hofmeyr White & Case
<b>Tier 4</b>	Brink Cohen Le Roux

"We have seen transactions that you would not normally find because of the recession, banks are OK but there are changed behaviours," says one partner.

Other partners tend to agree. According to one, "lenders are now really scrutinising bids to see whether funding is committed or should be withdrawn and there is more discussion of alternative financing," while another says that the "deal flow has been affected ... bigger leveraged deals fell away as banks were not taking the indiscriminate positions as in the past."

However one firm noted that there were "a number of large financings which you would

not have expected to see". Big mandates came in acquisition financing, black economic empowerment (BEE) transactions (unique to the South African market), restructurings and regional financings.

"Banks and investors are reporting good results in the rest of Africa and dented results in the domestic market," says a partner. Big mandates included financings for the Lekki Toll Road in Nigeria, for MTN Uganda, the Moatize coal project in Mozambique and the Bakwena Platinum Corridor Concessionaire.

Key Africa practices with UK law practitioners include Julian Jackson and Stephen Gamble from Deneys Reitz's Africa Legal network, DLA Piper's network through Cliffe Dekker Hofmeyr, Roddy McKean from Webber Wentzel and Jonathan Lang from Bowman Gilfillan. ENS has also recently recruited Scott Nelson. Deneys' Lance Roderick and Webber's John Bellew were also active in pan-Africa funds work.

On a local level banking is a very diverse practice, encompassing funds work, private-equity funds and financial regulatory, and is the bigger brother to project financing. However, there were some large projects in power, infrastructure and public-private partnerships (PPP) for government buildings.

"The thing is that everybody is focused on the new companies act, it is a big part of what we are all busy with and the changes are profound with lots of new fundamental legal mechanisms to get around," says a partner. While another adds that "there are a lot of opportunities to restructure in the new act".

The big news of the market was the move of Lionel Shawe and a team of finance lawyers to Bowman Gilfillan with a brief is to establish a leading banking and structured finance practice the firm.

## Deneys Reitz

Deneys Reitz has traditionally had the leading banking and finance practice but recently lost some key lawyers to Bowman Gilfillan, most significantly former head of practice Lionel Shawe and seven lawyers at associate level and above.

Nevertheless, many of the key names remain. Riza Moosa heads up the department and both Jackie Midlane and Mark Kyle receive commendations from clients and competitors in finance matters. Kevin Cron and the fully integrated Africa Legal lawyers Julian Jackson and Stephen Gamble, formerly of Clifford Chance and Norton Rose, all manage leading finance practices. Michael Dale brings mining expertise to the firm.

Among large finance deals, the firm advised Rio Tinto, BHP Billiton and Richards Bay Minerals on \$2.1 billion of financing for

its black economic empowerment (BEE) transaction and Absa Capital, Barclays Uganda and Standard Chartered Bank the largest syndicated loan for a Ugandan corporate borrower to date: a \$100 million multi-tranche and currency syndicated term loan and revolving facilities for MTN Uganda.

Gavin Noeth is consistently regarded as one of the top project finance experts around. "The difference is the individual lawyer who knows about how the government works and has depth on the very specific issues which can make the crucial differences ... Noeth is one of these," says a client.

In one mandate, the Siza Bantu Consortium instructed the firm on its bid for a \$274 million public-private partnership (PPP) with the National Department of Correctional Services for new correctional centres.

#### Leading lawyers

Kevin Cron  
Mark Kyle  
Jackie Midlane  
Riza Moosa  
Gavin Noeth

### Edward Nathan Sonnenbergs (ENS)

"ENS to my mind has the top finance lawyers in town at the moment," says a competitor. Its pure finance team, led by Sean Lederman and Roger Rudolph, is consistently rated by peers and clients as one of the best.

The firm hired three new directors in May 2009: Clinton van Loggerenberg from Allen & Overy Tokyo, Anina Boshoff from Allen & Overy Singapore and Deborah Carmichael from Deneys Reitz, as well as five new associates.

"ENS is pretty integrated, it is a one-stop-shop in relation to all forms of banking and corporate finance work," says a client. The firm has a growing project finance team under Eric le Grange and unique expertise in pension funds under partner Arabella Bennett.

In significant mandates, Lederman, Rudolph, Van Loggerenberg and Diana Messerschmidt have been appointed by three out of five of the country's biggest banks to advise on the impacts of the new Companies Act.

Bennett and Rudolph advised on a number of large pension-related transactions for companies in a variety of sectors and deals for a number of other funds and management companies. Simon Osborne and van Loggerenberg advised the Public Investment Corporation (PIC), DBSA and Sanlam Capital Markets on \$164 million of funding

to Batho Bonke Capital for a BEE (black economic empowerment) exercise.

Van Loggerenberg and Stephen Lewis advised Sasfin Bank on a \$30 million Tier II qualifying loan, equity investment and a trade finance facility. Osborn is also advising Absa Capital in respect of Super Group's restructuring and recapitalisation regarding its \$410 million debt.

#### Leading lawyers

Sean Lederman  
Diana Messerschmidt  
Simon Osborn  
Roger Rudolph

### Webber Wentzel

Webber Wentzel keeps its position in banking thanks to the strength of its individual practitioners, most notably Johan de Lange, Kathy Shepherd and Renee Kruger.

Janine Lamb and Scott Edmundson featured highly on deals and John Bellew is regarded by many as the leading private equity fund lawyer. The firm is noted for being especially strong on the borrower side.

Among its large deals, de Lange and Kruger advised Tsogo Sun Group on a \$684 million term loan and revolving credit facility and de Lange, Shepherd and Lamb acted for Absa Capital on a \$594 million syndicated facility to Lexshell 44 General Trading, the owner of the V&A Waterfront in Cape Town.

Edmundson advised Airstcastle Administrators on a \$600 million leasing transaction with South African Airways while financial regulatory head partner Johann Scholtz represented the JSE (Johannesburg Stock Exchange) in its merger with the Bond Exchange of South Africa.

Webber's is especially strong in projects under Bridget Baillie. "The most experienced in public-private partnerships (PPP) in the market is Baillie," says a client. "But the thing about Webbers is that they have a very good number of great individuals around Baillie."

Baillie advised the lenders on the \$400 million Lekki Toll Road in Nigeria and on the \$492 million refinancing for Bakwena Platinum Corridor Concessionaire - one of the biggest South African infrastructure deals to date.

Jason van der Poel acted for the Department of Public Enterprises on a \$24 billion sovereign guarantee programme to support Eskom Holdings' Medupi Power Project.

#### Leading lawyers

Brigette Baillie  
Renee Kruger  
Johan de Lange

Kathy Shepherd  
Johann Scholtz

### Bowman Gilfillan

The firm recently brought in Lionel Shawe, one of the pre-eminent finance lawyers in the country, with a mandate to build a leading finance practice. "They didn't have a banking practice before so he has free reign," says one peer.

Peers point out that teamwork is a key factor in banking and argue that it may take some time for the practice to become fully established. The firm also recruited eleven lawyers to associate level and above, including six partners, primarily from Deneys Reitz, but also from rivals Dewey & LeBoeuf and Bell Dewar.

Key finance lawyers at the firm include Anton Barnes-Webb and Daryn Webb, who, says a client, is "a solid chap, very pragmatic and very down to earth".

In top deals, Shawe and Alexandra Cockburn advised Rand Merchant Bank on a \$136 million financing of Redefine Properties' acquisition of Hyprop Properties, and Lodewyk Meyer advised Standard Chartered Bank on the \$34 million structuring and execution of a Structured Agricultural Input Finance facility.

In addition Shawe and Joanne Pretorius advised Investec Bank, Investec Asset Management and Sanlam Capital Markets with their participation in the \$272 million refinancing of the FirstRand BEE (black economic empowerment) transaction.

Patrick Hirsch is recommended as a leading projects lawyer by direct competitors, and in large mandates advised African Rainbow Minerals in relation to a \$238 million financing and the Overseas Private Investment Corporation on a \$70 million financing of Blue Financial Services.

Barnes-Webb acted for Eskom on its \$672 million floating facility partly to fund the Medupi Power Station.

#### Leading lawyers

Anton Barnes-Webb  
Lionel Shawe  
Daryn Webb

### DLA Cliffe Dekker Hofmeyr

Cliffe Dekker has a mixed banking and finance practice headed by Joz Coetzer in Johannesburg and Jerome Veldsman in Cape Town. Deon Wilken, and Jackie Pennington have active finance practices and Claire Barclay, Deon Govender and Kieran Whyte have expertise in projects and public-private partnerships (PPP).

Practitioners consistently recognise Coetzer, Wilken and Pennington as a key reason for a high ranking for the firm. "We come across a lot in banking and finance with Coetzer and Wilken," says a peer, who recommends Pennington as "an assertive negotiator". Barclay is recommended by fellow leading project finance experts.

The firm also recently recruited well-established general finance lawyer Ludwig Smith, former partner of Tugendhaft Wapnick Banchetti & Partners, to director level and colleague Anli Koen to associate.

#### Leading lawyers

Joz Coetzer  
Jackie Pennington  
Deon Wilken

#### Werksmans

Werksmans moves up in finance after recommendations from peers and clients. Richard Roothman and Wildu du Plessis are the stallwarts of the practice which recently hired senior associate Shaun Browne and promoted Tracey-Lee Janse van Rensburg to director.

Clients praise director Amelia Heeger as "very good and definitely sound, though slightly overshadowed in meetings by Du Plessis", while Browne also receives positive feedback. "They give good service and the rates are more affordable than some others," says a client.

Among the firm's significant recent mandates, Du Plessis and Heeger worked with Astrid Berman and Lize Louw to advise FirstRand Bank and Nedbank on a \$2.6 billion loan to Richards Bay Titanium and Richards Bay Mining, and with Muhammad Sader and Browne to assist Standard Bank of South Africa, Absa Bank, FirstRand Bank and Nedbank as joint arrangers to MTN Holdings in its proposed \$2.2 billion acquisition in an international telecoms company.

Roothman is especially strong in projects. "He is very professional, understands the market and the key documents from the lenders and borrowers perspective and he has a good understanding of our approach," says a client. Another adds that he "is very up on PPPs (public-private partnerships) and PFIs (private finance initiative), has good commercial knowledge, and good experience."

Roothman and Sader advised Absa Bank on a proposed \$684 million loan to Siza Bantu Consortium in relation to a PPP with the Department of Correctional Services to build five prisons.

Chris Moraitis advised the South African National Roads Agency in respect of the \$6 billion Gauteng freeway improvement project.

#### Leading lawyers

Wildu du Plessis  
Richard Roothman

#### Other ranked firms

**Bell Dewar** is a specialist in project finance. According to a leading projects finance lawyer, the firm "is the most experienced of all and has been the market the longest". Peers consistently comment that the firm especially strong in the mining and energy sectors.

The main name at the firm is Lara Bezuidenhout, recently advised a consortium of lenders on an ongoing deal to provide \$602 million of financing to Neotel, and a consortium of lenders of the \$506 million re-financing of the N4 west toll road.

*Leading lawyers:* Lara Bezuidenhout

**Brink Cohen Le Roux** has a notable projects and finance practice thanks in part to regular large mandates from the City of Johannesburg, one of its biggest clients.

In a recent high-profile deal, Johan Brink, Kim Wyness and Joe Fine advised the City of Johannesburg Metropolitan Municipality on the successful funding, establishment and operation of the Rea Vaya Bus Rapid Transit System (BRT). The firm negotiated a \$59 million loan from the Brazilian Development Bank for the project which is the first BRT project of its kind in Africa.

**Glyn Marais in association with SNR Denton** is especially strong in investment banking. The firm's strategy is to focus on matters with a degree of complexity.

"Glyn is not as massive as the others but it is just as good on any day of the week and actually better on turnaround times," says a client. "Wonderful, really good," says another client, "we have a number of [leading] firms which we use on a panel system and to get onto the panel there are very strict criteria and a firm has to have a certain amount of critical mass, and Glyn Marais does."

The firm has developed a strong footing in finance thanks in part to Richard Glyn, Francois Marais and Willem de Villiers. "De Villiers is good, on a number of transactions he has really gone the extra mile for us and finalised things on a very tight timeline," says a client.

Significant mandates included advise to Absa Bank on limiting exposure to bad investments. De Villiers advised a commercial bank on a \$684 million financing for the acquisition and redevelopment of property portfolios, and acted for Absa Bank on a \$137 million financing for a BEE (black economic empowerment) transaction.

The firm won further large mandates on acquisition financing, BEE funding and private equity funds. In projects, De Villiers

advised a leading investment bank on a \$4 million cross-border financing of the construction and operation of water treatment plants in the mining

*Leading lawyers:* Richard Glyn and Willem de Villiers

**White & Case** has a strong project finance practice under partner and office head Steve Raney and project finance head Shamilah Grimwood.

In highlight mandates, Raney advised Weather Investments II in relation to a \$1 billion sale of a minority stake in Weather Investments to various private-equity consortia, and assisted Rand Uranium with an export credit agreement.

Grimwood handled a number of high value finance deals, especially for Investec Bank, who, with Standard Bank, sought her advice on the project financing of the Department of Correctional Services Prisons PPP (public-private partnership), and with Nedbank instructed her on financing for the Department of Rural development and Land Affairs PPP for a new head office.

#### Other notable firms

**Dewey & LeBoeuf** is recommended in project finance for the expertise of partner Scott Brodsky. Brodsky has experience of advising clients including Anglo American and Calyon Bank and has an active practice in energy related work.

Recent large projects include the Moatize Power Plant in Mozambique, advising power developers on a range of matters and the Peaker oil-fired power station projects.

Partner Ben Donovan, who splits time between Johannesburg and London, also has a strong project finance practice.

**Fasken Martineau** has good project finance expertise especially for mining finance in partners Al Gourley and Tanneke Heersche.

**Read Hope Phillip** is recommended for having a strong practice in funds and private equity.

## Mergers and acquisitions

### Recommended firms

#### Tier 1

Bowman Gilfillan  
Edward Nathan Sonnenbergs (ENS)  
Webber Wentzel  
Werksmans

#### Tier 2

DLA Cliffe Dekker Hofmeyr

#### Tier 3

Bell Dewar  
Deneys Reitz  
Eversheds  
Glyn Marais in association with SNR Denton  
Tabacks

#### Tier 4

Fluxmans  
Prinsloo Tindle & Andropoulos  
Read Hope Phillips

“M&A has been a bit of a dead duck”, says a local lawyer, “and the space left by leveraged deals has been taken up with BEE (black economic empowerment) restructurings.” This is what the market looked like for much of 2009 according to a number of peers.

“The value of underlying equity triggered a lot of restructuring work,” says a peer, while other firms report a lot of general corporate work. In some respects potential opportunities were not taken: “I would have expected portfolio companies to be doing more acquisitions of distressed companies,” says a partner.

According to another partner deals “dropped quite considerably; last year was not great, there were about five or so big transactions in the pipeline and only one or two coming through but now there are only one or two in the pipeline with nothing coming through, but it is picking up.”

There were a few huge M&A deals in the market. Bharti Airtel’s acquisition of MTN and Xtrata’s proposed merger with Anglo American were both abandoned, however billion-dollar deals were completed including Momentum’s Group’s acquisition of Metropolitan, MTN’s unwinding of the Newshelf and Alpine Trust structure, Telkom’s sale of a 15% stake in Vodacom Group, Gold Reef’s acquisition of Tsogo and Richards Bay Minerals’ BEE restructuring.

Things were starting to look up in 2010. There has been an increase of interest in private equity and venture capital, and firms have seen interest from India and China.

“It has picked up considerably since last year and the situation now compared to then is like chalk and cheese ... [there is] an

appetite to do big deals”. On the horizon the M&A markets should pick up, while BEE deals will most likely fall, say firms, as many have been done, and new transactions will “become increasingly difficult to conclude especially with shares losing their value”.

Africa “is the next frontier for all kinds of things” says a partner. Firms across the board are deepening their Africa networks and niche practices for investment funds and private equity.

Firms have been advising on the new Companies Act which will have “have a dramatic affect, much more onerous with very generous rights to minority shareholders,” says one lawyer. Another firm dismissed this idea arguing that “the act hasn’t prevented anyone from doing business and it is actually a huge opportunity”.

### Bowman Gilfillan

Bowman Gilfillan won some of the highest profile mandates of the year. “The firm catches some nice big transactions”, says a competitor. Bowman’s generalist approach, with big names leading transactions across the practice areas, is effective, and one international client recommends the firm for “turnaround time, availability and access to senior partners and their ability to deliver results.”

“We were satisfied with the services provided by the firm and its knowledge of the industry,” says a client recommending Ezra Davids. Davids is recognised as one of the country’s top M&A lawyers.

The firm has depth and David Anderson, Anton Barnes-Webb, chairman Jonathan Schlosberg and Carl Stein all have broad practice remits but come recommended by peers for M&A, however the key M&A specialists include Robert Cohen and Charles Valkin. The firm is also developing an Africa practice under Jonathan Lang.

In a highlight deal, Davids and Charles Douglas advised SABMiller in respect of a \$999 million BEE (black economic empowerment) transaction being implemented by South African Breweries. In another high-profile deal, Davids, Anderson and Rudolph du Plessis acted for Bharti Airtel in its proposed but abandoned \$27 billion acquisition bid for MTN Group.

Schlosberg and Cohen advised Supergroup in its \$178 million sale of a controlling stake to a foreign buyer and Lance Fleiser, Barnes-Webb and Cohen advised Mvelaphanda Resources in exercising its right to require the exchange of its \$287 million 15% interest in GFI Mining South Africa.

Elsewhere, Jonathan Lang led a team to advise Philip Morris International Management in an agreement with Swedish

Match to purchase its South African affiliate, Swedish Match South Africa, for \$30 million.

### Leading lawyers

Ezra Davids  
Jonathan Schlosberg  
Charles Valkin

### Edward Nathan Sonnenbergs (ENS)

ENS has a solid tier one position, boasting one of the strongest Cape Town offices and an active Africa practice. Michael Katz is widely accepted as one of the foremost M&A lawyers in the country. “He has a big reputation and is a very strong commercial lawyer, an outstanding lawyer,” says a client.

Cape Town partner Koos Pretorius has a strong reputation even in Johannesburg circles and Kevin Markman, Stephen Lewis and practice co-head Doron Joffe all receive praise from peers; the latter is seen by the market as an up-and-coming leading lawyer in the field. Other key individuals include the semi-retired Miranda Feinstein, who continues to lead on top deals, and up-and-comers Jason Valkin, Lawrence Helman and Adam Ismail.

“ENS is fantastic,” says a client, adding: “very knowledgeable, very responsive to the client, very fast on following up on the different aspects of the transaction.” Another client says: “We are extremely pleased. ENS helps us find legal support in the rest of African jurisdictions and what is good is that if they do not know anyone there they say straight away”.

In high-profile deals, Pretorius, Katz, Joffe and Tony Lee advised Hoskin Consolidated Investment Holding and Consolidated Investments (HCI) on Gold Reef’s \$2.9 billion acquisition of Tsogo from Tsogo Investment Holding Company (a subsidiary of HCI) and Sabsa Holdings.

Feinstein and Katz led a team to advise Nedbank on its \$242 million acquisition of Imperial Financial Holdings’ 49.9% interest in Imperial Bank, and Lewis advised Mutual & Federal Insurance on a \$248 million acquisition of Mutual & Federal by Old Mutual.

The firm also advised Sinapor Telecom, a shareholder of Bharti Airtel, on Bharti’s attempted \$27 billion acquisition of MTN Group.

### Leading lawyers

Michael Katz  
Stephen Lewis  
Koos Pretorius

### Webber Wentzel

Webber Wentzel has overall the most consistent feedback in the market for M&A. The

firm is also building an Africa practice under former Lovells partner Roddy McKean.

The firm recently promoted Xolani Hlatshwayo to partner in the M&A teams led by Christo Els and Haydn Davies. Aside from the head partners, a number of the firm's lawyers come highly recommended, above all Johannes Gouws and Colin du Toit.

M&A and international trade expert Stephen Meltzer is a "solid and consistent performer" says a peer, and Madeleine Burger-Van-de-Walt is touted as up-and-coming in M&A and capital markets.

In highlight transactions, Gouws, Peter Bradshaw and Hlatshwayo advised Momentum Group on a \$6.6 billion merger with Metropolitan, and du Toit, Gouws, Kathy Shepherd, Bradshaw and Brian Dennehy acted for MTN in relation to the \$3.3 billion unwinding of the Newshelf and Alpine Trust structure.

Meltzer and Bronwen de Lange also advised Baxter Healthcare on a \$657 million option agreement to buy 50% plus one share of AICC and worked with Davis to assist GlaxoSmithKline on a \$479 million acquisition a 16% stake in Aspen Pharmacare.

The firm also advised Danone in its \$149 million acquisition of Clover's 45% shareholding in the joint venture Danone Clover.

Elsewhere, Sally Hutton, Angela Simpson and Brian Dennehy advised Kagiso Strategic Investments III and Blue Falcon 69 Trading on a \$178 million on a participation in the Adcock Ingram Holdings BBEE (broad-based black economic empowerment) and Peter Bradshaw and James Westgate advised Thebe Investment Corporation and Identity Capital Partners in the BEE transaction.

#### Leading lawyers

Haydn Davies  
Christo Els  
Johannes Gouws  
Colin du Toit

#### Werksmans

Werksmans has one of the strongest deal flows in the market and the firm clinched some of the highest value mandates through the year.

Partner Gareth Driver is the big name at the firm and is considered one of the top M&A lawyers in the market. Peers also praise Kevin Trudgeon and Shaun Teichner, especially for private-equity work, and Morné van der Merwe. The firm recently added nine lawyers at associate level and above to the department.

In high value deals, Driver and van der Merwe advised Xstrata on the \$6.6 billion proposed merger with Anglo American, a deal which if completed would have created one of the biggest mining companies in the world.

Trudgeon and Teichner advised Telkom on a \$4.8 billion three-part transaction to sell a 15% stake in Vodacom Group to Vodafone Holdings, unbundle a 35% stake and list Vodacom Group on the Johannesburg Stock Exchange. The change in government, a large shareholder in Telekom, following elections midway through the deal added an extra complex dimension to the deal.

Teichner also acted Aspen Global Pharmacare Holdings on a series of strategic transactions with GlaxoSmithKline valued at \$643 million, and in a fourth significant mandate, he advised Swedish Match Group on a \$274 million disposal of the entire issued share capital of Swedish Match South Africa to Philip Morris.

#### Leading lawyers

Gareth Driver  
Morné van der Merwe  
Shaun Teichner  
Kevin Trudgeon

#### DLA Cliffe Dekker Hofmeyr

Clients and peers have high praise for Ian Hayes, who is another of the top M&A practitioners in the country, and for the up-and-coming Banzi Malinga. "Look out for him", says one leading M&A lawyer.

Other key names include the very experienced Chris Ewing, Willem Jacobs and David Pinnock. Johan Latsky, an expert in financial sector projects, regularly leads on big-ticket transactions, most notably for Remgro.

In highlight deals, Hayes led a team of Marc Friedman and Lara Fitz-Gibbon to advise Casinos Austria on a \$132 million disposal of a 20.6% stake in Gold Reef Resorts, and Latsky advised Remgro on a \$616 million proposed merger with Venfin.

Malinga helped Batho Bonke Capital exercise a \$342 million option to acquire a large stake in the Absa Group, and Willem Jacobs led a team of Quintin Honey and Priyan Pillay to act for ArcelorMittal on a scheme of arrangement to acquire 10% of the number of issued ArcelorMittal ordinary shares from ArcelorMittal shareholders.

#### Leading lawyers

Chris Ewing  
Ian Hayes  
Willem Jacobs

#### Deneys Reitz

Deneys has a lower presence in the M&A market than in banking and finance. The top flight M&A lawyer Kevin Cron, recognised as one of the best available, continues in the

M&A department but also recently joined the banking and finance practices.

"He is a superb lawyer and great guy, very capable" says a peer of Cron.

Other key individuals in the corporate team include Hugh Bisset, Thato Seroto, Alastair Dixon (especially for financial sector-related work), and Ross Lomax. Peers also praise the M&A expertise of leading project finance expert Gavin Noeth.

However, peers note that the firm has dropped off a bit in M&A "but it still maintains a very strong reputation".

The firm's other trump card is its Africa Legal practice under Julian Jackson and Steven Gamble, which places it in a leading position when it comes to corporate and commercial pan-Africa transactions. Lance Roderick and Gabriele Meyer head up a growing funds practice.

Deneys was very active in BEE (black economic empowerment) restructurings, and in recent highlights, worked on a \$2.3 billion corporate BEE restructuring for Richards Minerals. Bisset also advised Total Coal South Africa on BEE matters.

Dixon helped advise Rio Tinto and BHP Billiton on a BEE shareholder restructuring, the disposal by Chesapeake of their South African businesses and the local aspects of the Hewlett-Packard and 3Com merger.

#### Leading lawyers

Kevin Cron

#### Other ranked firms

**Bell Dewar** is especially strong in mining, metals and minerals and other resource-related M&A deals. Partner David Hoffe heads up the M&A practice and recently acted on mergers, acquisitions and restructurings for mining sector companies with a total value of \$1.4 billion.

Some peers also recommend project finance expert Andrew Mitchell for M&A and corporate matters.

**Eversheds** is "a big firm", says a peer. "They do a lot of mining work and have many clients in the resources sector" says one competitor, adding that the firm has also recently "been very successful in branding".

The firm had a good 2009 and the firm can claim a strong market share, deal volume and turnover. It enters the rankings for the first time and peers and clients note that it has a growing presence.

Peers especially recommend Warren Drue, the firm's practice head. Drue focuses on M&A, restructurings, BEE (black economic empowerment) deals, cross border and private-equity work.

*Leading lawyers:* Warren Drue

Glyn Marais in association with SNR Denton is now the head office for the Africa network of SNR Denton. Francois Marais heads the M&A practice, while Willem de Villiers and the Johannesburg based Roux van der Merwe led on a number of the top transactions.

The firm has a broad spectrum of clients in the corporate commercial area, including the biggest long-term insurance company Sun, which is currently expanding through Africa, and acts as balance sheet attorneys to Growthpoint Properties for acquisitions and disposals.

In highlight deals, De Villiers, Helena Zagaretos and Darren Acres advised Global Trading Company on the \$756 million acquisition of leading manganese mining and processing concern. De Villiers and Darren Acres advised Kermas on the \$607 million disposal of a controlling interest in second largest ferro-chrome producer.

Marais also advised Growthpoint Properties on an outward \$203 million investment into the Australian company and worked with Anastasia Maimonis to advise the Public Investment Corporation on behalf of the Government Employees Pension Fund in the \$756 million acquisition of a portfolio of 50 properties from Zenprop Property Portfolio.

Marais and van der Merwe advised an international infrastructure fund on the potential acquisition of an international airport in South Africa, involving various cross-border agreements and regulatory requirements, and acted for Abagold on a proposed \$14 million BEE (black economic empowerment) transaction in the agricultural industry.

The firm also acted for a number of unlisted companies in relation to the acquisition by a BEE consortia of interest varying from 26% to 49% in the mining sector to facilitate, among others, the conversion of their old order mining rights to new order rights.

*Leading lawyers:* Francois Marais and Willem de Villiers

**Prinsloo Tindle & Andropoulos** is “a very competent firm”, according to peers. Danny Andropoulos and Xolisa Beja have strong corporate practices.

The firm has recently been involved in a \$479 million BEE (black economic empowerment) transaction involving a sale by the IDC of some of its shares in Foskor to, among others, the Manyoro BEE Consortium. The firm represented all twelve of the members of the consortium, which will now own 15% of Foskor.

The firm also acted in the \$1.1 billion BEE restructuring for MTN, affecting 4% of the equity ownership in MTN. It is the largest BEE deal in the telecoms sector to date.

Elsewhere, the firm acted for Grindrod in the sale of 25% plus one share of its subsidiary for \$37 million, and China MinMetals Corporation in its acquisition of chromium mining rights in South Africa.

**Reed Hope Philips** “is very strong in private equity work and has a strong M&A practice”, says a peer. “It is actually a very competent firm and handles a lot of private equity work” agrees another leading competitor. Mark Phillips comes highly recommended by peers.

**Tabacks** has a very strong reputation and is consistently rated by peers and clients. Mervyn Tabacks is the name at the firm for M&A. “We see a lot of them,” says a peer, “they are very well liked particularly in the mining sector and we bump into them frequently ... [they’re] very small, really a boutique.”

Key individuals include Mervyn Tabacks, Chris Stevens and Catherine Keene.

The firm was recently involved in a number of large BEE (black economic empowerment) transactions for mining companies including Anglo Platinum with Anooraq Resources and advised on a joint venture between Royal Bafokeng and Anglo Platinum. *Leading lawyers:* Mervyn Tabacks

### Other notable firms

**Brink Cohen le Roux** has a consistent M&A practice handling mid-sized to large transactions.

In highlight deals, Johan Brink, Leroux Odendaal and Kim Wyness advised Tshipi é Ntle Manganese Mining and Ntsimbintle Mining on a \$59 million sale of stakes to Australian company OM Holdings. The deal had complex tax and BEE (black economic empowerment) dimensions.

Johan Brink and Anne Daniel also advised Merz & McLellan in a 100% sale to Mott MacDonald and Paragon Electrical Group on its sale to ARB Holdings and ARB Electrical Wholesalers.

Canada’s **Fasken Martineau** has an active team based in Johannesburg. The main names at the firm for M&A are managing partner Al Gourley and partner Dimitri Cavvadas.

**Fluxmans** is a large and active firm led by CEO Phillip Vallet. The firm handles corporate matters for Super Group.

## Competition

### Recommended firms

#### Tier 1

Bowman Gilfillan  
Webber Wentzel

#### Tier 2

Deneys Reitz  
DLA Cliffe Dekker Hofmeyr  
Edward Nathan Sonnenbergs (ENS)  
Werksmans Incorporating Jan S de Villiers

#### Tier 3

Nortons Inc

#### Tier 4

Bell Dewar

Competition law is becoming an increasingly important area of practice as it is used more and more as a conduit to realign South Africa’s economy. The establishment and growth of boutique competition firm Nortons Inc, where competition is the central stand-alone practice, exemplifies this.

“It is a very, very busy area of law,” says a leading corporate firm, “after the M&A practice, competition is the second biggest contributor to revenue and turnover.” Another partner says: “It is a critical practice area and the work has boomed.”

A key issue is the new Competition amendment act, signed in August 2009 and waiting to be implemented, is the introduction of criminal liability for individuals in companies that fall foul of competition law, and the idea of *complex monopolies*, primarily to tackle oligopolies.

It is “a new grey area of trade association, it does not even need evidence of overtly trying to fix prices or even maybe consciously - economics becomes very important in this case,” says a partner.

One highlight case (which the new regulations would have affected) has been the bread cartel case involving Premier Foods, Pioneer, Tiger Brand and Food Corp. Premier Foods successfully applied for leniency and the three companies testified against Pioneer, which was fined about \$27 million, or 10% of Pioneer’s bread baking division.

The Competition Commission (CC) has developed a strong focus on cartel cases: “The previous spray and pray tactics are moving to a more focussed approach and a hard arsed attitude, the CC will not forgive companies for not knowing,” says a partner.

CC is focussing on infrastructure, super-markets, food (bread, milk, fish, edible fats and oils and poultry), agropecuary (milling and fertilizer), intermediate industrial products (chemicals, steel) and the transport sector.

## Bowman Gilfillan

Bowman Gilfillan has one of the biggest competition teams. "It has emerged as a strong competitor recently," comments one peer, adding that they are "very good from a prohibitive practices perspective".

"Sometimes they can give more practical advice [than other firms]," says a client, "they are more pragmatic but lacking a bit in in-depth knowledge. The senior partners Robert Legh and Derek Lotter are fantastic and if we get a chance to use them it is great." According to another client availability can be an issue: with "Bowman's sometimes [...] you phone up and the partner is not around."

Jean Meijer is a "very fine competition lawyer and impressive individual", says a peer "especially on prohibitive practices", while a peer notes that "Legh is an expert from the old guard".

Lotter is consistently well received by peers and clients and partners Tamara Dini (from the Cape Town practice) and Lulama Mtanga have strong up-and-coming practices. Rudolph Labuschagne and Iona Dhladhla were appointed partners in 2010.

In highlight mandates, Lotter, Dini, Mtanga and Labuschagne advised the Murray & Roberts Group on ongoing compliance audits in relation to several businesses and a potential anti-trust case, while Legh, Lotter and Veronica Cadman helped Pretoria Portland Cement Company secure an application for leniency following a dawn raid by the Competition Commission (CC).

Lotter, Legh, Dini and Labuschagne also advised Sasol on a compliance review and leniency application for an abuse of dominance case and Meijer advised Spar Group in relation to a CC investigation into the super-markets sector.

### Leading lawyers

Robert Legh  
Derek Lotter  
Jean Meijer

## Edward Nathan Sonnenbergs (ENS)

One of ENS' primary strengths is its team work and strong client care. The firm also has good expertise, most notably in the department's head Lee Mendelsohn, widely considered one of the top five competition practitioners in the country.

"Mendelsohn is a very strong practitioner and person" says a peer and according to a client "she has a very effective team; everyone in the team is good and I would not want to single anyone out ... they are very customer-oriented and you always get the partner within five minutes."

"Mark Garden has very in-depth knowledge of the law and good understanding," says a client. Other key practitioners include Justin Balkin, Natalia Lopes and Jocelyn Katz.

According to another client, ENS "gives you fairly practical advice, a bit on the conservative side sometimes, but very helpful, and they respond quickly which is helpful as often we have urgent matters." But "the conservatism is not necessarily a bad thing," adds the client.

In highlight deals, Katz advised Cadbury in its recent merger with Kraft and Balkin advised Gold Reef in its proposed merger with Tsogo Sun. Mendelsohn and Balkin were engaged in ongoing advice to Tiger Brands for anti-competitive conduct in its bread and milling businesses.

Mendelsohn, Katz and in-house economist Lizel Blignaut were advising Metropolitan Holdings with regards to their proposed merger with Momentum.

The firm also provided competition advice to BHP Billiton relating to the restructuring of Richards Bay Minerals and MTN on its aborted bid to acquire Telkom and proposed acquisition of Verizon.

### Leading lawyers

Justin Balkin  
Mark Garden  
Natalia Lopes  
Lee Mendelsohn

## Webber Wentzel

The departures to Nortons Inc have in the short term affected Webber Wentzel's practice, say clients and peers. "It is not as big or in-depth as it was before Nortons broke off," says a client, "but I am sure that in time they will get back to where they were."

According to a peer "it was highly rated in the market and is yet to be tested, but a lot of their reputation was tied to Anthony Norton, so it is a question of wait and see." The firm has been hiring laterally and promoting internally into the competition team and in September 2010 the former head of competition at Deneys Reitz, Lesley Morphet, joined the practice.

The firm still includes former heads of research at the Competition Tribunal and of the mergers at the Competition Commission (CC) and it recently recruited Desmond Rudman from Werksmans. "Martin Versfeld is a very good lawyer," says a client, "and has a very good guy called Robert Wilson who is more behind the scenes but a very hard worker."

In highlight deals, the litigation focussed Versfeld advised BA/Comair in proceedings against South African Airways, and JT

International in proceedings against British American Tobacco.

Daryl Dingley worked with Nkonzo Hlatshwayo to act for Momentum Group in its merger with Metropolitan and won mandates relating to the CCs investigation into the fisheries sector.

Elsewhere, Wilson advised Chemsolve in relation to Crest Chemicals' acquisition of CH Chemicals and acted for Siyanda Resources in the disposal of its controlling interest in the Koorfontein coal mine. Rudman advised United Technologies Corporation in its acquisition of General Electric Security.

### Leading lawyers

Desmond Rudmond  
Martin Versfeld

## Deneys Reitz

Deneys Reitz has had a competition team since 1999. The practice is headed up by Corneli Basson in Cape Town and Craig Woolley in Durban.

In 2010 the head office in Johannesburg lost the head of the competition Lesley Morphet to rival firm Webber Wentzel. However, the replacement, Heather Irvine, has a very strong reputation in the market and is highly regarded by fellow leading competition lawyers.

Irvine "is a great competition lawyer and so is her associate, Lara Granville, very in-depth", says a client. Rivals and clients consistently praise the practice's experience with competition matters related to mergers.

### Leading lawyers

Heather Irvine

## DLA Cliffe Dekker Hofmeyr

Cliffe Dekker has a number of very highly regarded competition lawyers in its department, which is led by Mondo Nthla. Peers recommend Petra Krusche, Nick Altini and Chris Charter.

"Charter is the best guy there in my opinion and he will do very well," says a leading client, while a peer says the firm has a "big commercial client base and handles a steady stream of work in a solid way."

In highlight work, Mondo Nthla, Vishal Koovejee and Janine Simpson were engaged by South African Airways (SAA) in relation to a dawn raid by the Competition Commission (CC) of domestic airlines for alleged collusion regarding airline ticket prices for the 2010 FIFA World Cup.

In a high-profile mandate, Altini and Charter advised Pioneer Foods to oppose the

CCs appeal for an increased fine for anti-competitive behaviour in the bread industry. The firm is also advising on of abuse matters in markets including poultry, eggs, animal feed, maize milling and bread.

Charter was defending Coca-Cola South Africa, Coca-Cola Company and various Coca-Cola Licensed Bottlers against a CC investigation into its cross-border bottling business.

Natalie von Ey advised Harmony Gold Mining Company in its acquisition of certain gold mining assets owned by Pamodzi Gold Free State and Petra Krusche advised Shoprite Checkers against the CC for alleged anti-competitive practices in a number of fields.

Andries le Grange also led a major deal advising Senwes on abuse of dominance issues.

#### **Leading lawyers**

Nick Altini  
Chris Charter  
Petra Krusche  
Mondo Ntlha

#### **Nortons Inc**

Nortons Inc is a boutique competition practice that has considerably changed the look of the legal market in South Africa. Leading firms watch with interest as it develops with competition as the central practice, rather than an adjunct to corporate work.

“It is a very formidable unit,” says a peer, “they have picked up some significant instructions and Anthony Norton must be named individually anywhere he goes.” “They are most definitely in the market,” says another competitor: “They are smart and talented lawyers.”

One client praises the availability of the partners. “I used them recently and quite extensively,” says one client who recommends Warwick Radford as “very attentive; when you cannot get him he always gets back to you or lets you know when he can.” Another key individual at the firm is Paul Russell, former senior legal counsel at De Beers and John Oxenham; both of whom are founding partners.

In merger activity, Anthony Norton represented both parties the Johannesburg Stock Exchange’s acquisition of the Bond Exchange, and Anton Roets acted for both sides in Aspen Pharmacare’s acquisition of a remaining 50% interest in Fine Chemicals Corporation.

Norton advised both parties in Tsogo Sun Gaming’s acquisition of Century Casino and John Oxenham advised Merck & Co and Schering-Plough in a high profile \$5.6 billion acquisition by reverse merger.

The firm is strong on cartel matters and was involved in most key competition cases, and Oxenham and Norton were advising Premier Foods, which won leniency from prosecution for its role in cartel activity in the bread market. Norton and Roets represented both parties in the merger between Imperial Group and Midas Group.

#### **Leading lawyers**

Anthony Norton  
John Oxenham  
Anton Roets  
Paul Russell

#### **Werksmans**

Werksmans has been growing its competition team and moves up a tier in recognition of its increased capacity. The firm also has a long established practice, traditionally strong in merger activity.

“It has been developing for quite few years and there is good expertise in the firm,” says one client.

The firm recruited Paul Coetser as co-head of the team from Brink Cohen LeRoux and director Dominique Arteiro in February 2009. Paul Cleland joined as director in July 2009 and Kendall Turner as associate in 2010, both from Cliffe Dekker Hofmeyr. Key long running competition expertise exists in M&A and competition partner Pieter Steyn. Competitors are waiting to see how the newly bolstered team will shape up.

In highlight work, Coetser and Arteiro advised Aquarius Platinum to get approval for a joint acquisition with Rustenburg Platinum Mines, of the business of First Platinum.

Arteiro also acted for advised Aquarius Platinum on approval for its acquisition of Ridge Mining and worked alongside Irma-Dalene Gouws and Mmadika Moloi to advise Shoprite Checkers on approval for acquisition of Transfarm and six others companies.

In a final significant mandate, Coetser advised DCD-Dorbyl on approval for acquisition of Globe Engineering Works.

#### **Leading lawyers**

Paul Coetser  
Pieter Steyn

#### **Other ranked firms**

**Bell Dewar** has a leading competition lawyer in Stephen Langbridge. The firm won a top mandate advising ArcelorMittal and “even beat Nick Altini from Cliffe Dekker Hofmeyr in a deal”, says a peer.

Langbridge recently acted for a client in the steel industry in a case of alleged excessive pricing, the first matter of its kind in South

Africa. He also advised a cement producer for approval for a merger, Royal Bafokeng Nation in a platinum mining industry merger and Alstom France in a merger.

*Leading lawyers:* Stephen Langbridge

#### **Other notable firms**

**Cheadle Thompson & Haysom** is a slightly smaller firm that is often engaged by the Competition Commission in a range of competition matters.