

# South Africa

## Chamber of commerce:

South African Chamber of Business  
24 Sturdee Avenue  
2132 Gauteng Rosebank  
South Africa

**Tel:** +27 11 446 3830

**Fax:** +27 11 446 3849

**Email:** [info@sacob.co.za](mailto:info@sacob.co.za)

**Website:** [www.sacob.co.za](http://www.sacob.co.za)

## Professional body:

Law Society of South Africa  
304 Brooks Street  
Menlo Park  
Pretoria  
South Africa

**Tel:** +27 12 362 0969

**Fax:** +27 12 362 0969

**Email:** [anna@lssa.org.za](mailto:anna@lssa.org.za)

**Website:** [www.lssa.org.za](http://www.lssa.org.za)

**Johann Scholtz and Nicole Paige  
Webber Wentzel Bowens  
Johannesburg**

## Securities services

The securities services industry in South Africa was recently overhauled with the enactment of the Securities Services Act 36 of 2004 (the SS Act). The SS Act, which came into operation on February 1 2005, repeals the Custody and Administration of Securities Act 85 of 1992, the Stock Exchanges Control Act 55 of 1985 (the SECA), the Financial Markets Control Act 55 of 1989 (the FMCA) and the Insider Trading Act 135 of 1998, and consolidates their provisions into a single Act. The SS Act also contains many new provisions, some of which relate to previously unregulated matters.

The objects of the SS Act are to increase confidence in the South African financial markets, promote the protection of regulated persons and clients, reduce systemic risk and promote the international competitiveness of securities services in South Africa.

The SS Act regulates securities services, which are services provided in respect of the buying and selling of securities, the custody and administration of securities, the management of securities by an authorized user (that is, a member of an exchange), and the clearing and settlement of transactions in listed securities. The SS Act also regulates market abuse, consisting of insider trading and market manipulation.

The term *securities* is widely defined in the SS Act to include, among other things, shares, stocks and depository receipts in public companies and other equivalent equities, notes, derivatives instruments, bonds, debentures, participatory interests in a collective investment scheme and instruments based on an index. However, it specifically excludes money market instruments (except with regards to the custody and administration of securities).

Under the SS Act, no person can operate as an exchange, central securities depository or clearing house unless it is licensed by the SS Act to do so. Furthermore, no person can act as an authorized user or a participant, unless authorized by an exchange under the exchange rules or accepted as a participant under the rules of a central securities depository.

## Exchanges

There are two exchanges in South Africa. The JSE Limited (formerly the JSE Securities Exchange South Africa, before demutualisation on 1 July 2005) is an equity and derivatives exchange, and the Bond Exchange of South Africa (the Besa) lists loan stock (that is, bonds). The JSE and the Besa were previously licensed under the repealed SECA and FMCA. Under the transitional provisions of the SS Act, however, both the JSE and the Besa are deemed to be licensed exchanges, with effect from February 1 2005.

The JSE recently launched a new interest rate exchange, Yield-X, which began trading on February 28 2005. Yield-X will trade a broad spectrum of interest rate products, with a focus on derivatives (although a limited number of spot bonds will be secondary listed on the exchange to support the value of the corresponding derivatives), and aims to open up the interest rate market to new players and new products, encouraging liquidity and market diversification. Yield-X is hoping to be in a position to list corporate bonds by the end of 2005.

The JSE and the Besa have published separate sets of rules in terms of the repealed SECA and FMCA. In terms of the transitional provisions of the SS Act, the rules of the JSE and the Besa continue in force despite the repeal of SECA and FMCA, so far as they are not inconsistent with the SS Act, provided that the JSE and the Besa must amend or replace their rules by August 1 2005 to comply with the requirements of the SS Act. An exchange rule is binding on an exchange, an authorized user, an issuer and their officers and employees, and on clients.

## Trading in securities

The SS Act restricts the buying and selling of listed and unlisted securities. The term *unlisted securities* includes securities listed on a foreign exchange. In this regard, except in certain prescribed circumstances, a person cannot carry on the business of buying or selling listed securities (that is, securities listed on a South African exchange) unless that person is an authorized user of the relevant exchange, effects such buying or selling through an authorized user, or is a financial institution transacting as principal with another financial institution also transacting as principal.

The Registrar of Securities Services can prohibit a person from carrying on the business of buying or selling unlisted securities if that person carries on such business in a manner that defeats one

or more of the objects of the SS Act. It can also impose conditions for the carrying on of such business, and prescribe conditions under which specified types of unlisted securities can be bought or sold. A person who buys unlisted securities from, or sells unlisted securities to, a person who contravenes or fails to comply with such a prohibition or condition, can cancel the transaction.

## Banking and project finance

### Recommended firms

Tier 1

**Deneys Reitz**

**Webber Wentzel Bowens**

Tier 2

**Bowman Gilfillan**

**Edward Nathan**

**Werksmans**

Tier 3

**Brink Cohen Le Roux**

**Cliffe Dekker**

**Jowell Glyn & Marais**

**Sonnenburg Hoffman Galombik**

Tier 4

**Bell Dewar & Hall**

**Hofmeyr Herbstein & Gihwala**

**Jurgens Bezuidenhout Attorneys**

**White & Case**

### Deneys Reitz

Market commentators again praise Deneys Reitz's banking practice for the quality of its work and the diligence of its lawyers. The firm includes within its sphere a number of UK-qualified lawyers with "vast international experience". Lionel Shawe and Clinton Van Loggerenberg head the banking practice, which has advised clients such as Standard Bank, Nedbank and Rand Merchant Bank this year. The firm has supplemented its international experience by setting up a dedicated pan-African legal practice branded Africa Legal. This arm of the firm has been commended by those in the market, and is successfully meeting its aim of providing legal expertise and advice to the international development finance community and other international investors seeking to invest throughout Africa.

In September 2004 Jackie Midlane joined the firm from Absa Corporate and Merchant Bank to take up a new position of partner, bringing the total number of partners handling banking work to 13. Avania Maharaj, who joined the practice from the banking and finance group of Trilegal in Mumbai, further contributes to Deneys Reitz's wealth of international experience, becoming the firm's 10th banking associate.

Deneys Reitz has recently been involved in numerous high level deals, including the R12.6 billion (\$1.85 billion) negotiation of finance facilities for Anglo American Platinum Corporation with nine local and international counterparties. The "excellent" Clinton Van Loggerenberg and "outstanding" new associate Sarah Browning advised Anglo American in the

negotiation. The firm also advised six lenders (Rand Merchant Bank, Investec Bank, The Standard Bank of South Africa, Old Mutual Specialised Finance, Old Mutual Life Assurance Company (South Africa) and Sanlam Capital Markets) on the R3.6 billion buyout of Afrox Health.

Over the past year Deneys Reitz has also acted on two notable black economic empowerment deals. The first involved the funding of a black economic empowerment transaction Standard Bank granted to Mondi in respect of its packaging division, Denys Reitz advising the bank on the R2.4 billion deal. In the second transaction of this kind, Deneys Reitz advised Nedbank in relation to funding the acquisition by a black economic empowerment trust of 14% of the share capital of African Rainbow Minerals from the Harmony Gold Mining Company.

Numerous clients recommend Gavin Noeth for his "good turnaround time and experience". Lawyers to look out for, say peers and clients, include Shawn Barnett and Kevin Cron, both praised by those in the field as "conscientious hard workers".

### Leading lawyers

Kevin Cron

Clinton van Loggerenberg

Lionel Shawe

### Key contact partners

Mark Kyle

Clinton van Loggerenberg

Lionel Shawe

### Webber Wentzel Bowens

In one of the biggest black economic empowerment transactions in South Africa to date, Webber Wentzel Bowens acted for the senior lenders in a transaction valued at about R7.9 billion (\$1.2 billion). A group including "outstanding lawyer" Julia Boltar, Stephen Meltzer, John Jarvis, Ian MacKenzie and Xenia Kritsos have been advising the senior lenders in relation to the proposed acquisition by the Kagiso Charitable Trust, the Mineworkers' Investment Trust, the Women's Development Group and the FirstRand Empowerment Foundation of an effective 10% interest in the issued ordinary share capital of FirstRand Limited.

The firm is connected in Europe to Maitland & Co, which has offices in London, Luxembourg, Geneva, Paris, the Isle of Man and Dublin. Market commentators say that Johan Scholtz and David Lancaster are "workaholic" and "diligent" lawyers at the firm, as is leading lawyer Lisa Botha. Another leading lawyer, Bruce Cleaver, is recommended as "very active for his clients". Other lawyers who are recommended highly by clients include Linda Bailey and Brigitte Baillie.

### Leading lawyers

Lisa Botha

Bruce Cleaver

David Lancaster

Johan Scholtz

## **Bowman Gilfillan**

Bowman Gilfillan retains a favourable reputation for its banking work and has been involved in a number of large deals this year. The firm recently advised Afrox on the disposal of its listed subsidiary, Afrox Healthcare, in a deal valued at R3.7 billion (\$548 million). In a R3.1 billion transaction, the firm advised Nedbank, Absa Bank, Standard Chartered Bank, and Standard Bank of South Africa in a loan to Incwala Platinum.

David Anderson, who one client described as “a sharp lawyer who will go out of his way for his clients,” and Shahid Sulaiman were part of a team that advised Investic Bank in R160 million financing with Parmalat South Africa, while in July 2004 the firm also acted for the Standard Bank of South Africa on a black economic empowerment transaction with Shanduka worth R3.5 billion.

Clients also speak highly of the “extremely knowledgeable” Ezra Davids, who is deemed to be “an excellent lawyer, with concise legal views”. One client spoke of this prominent partner as a lawyer who “is not afraid to put his head on the block”. Allen Keep is another member of the team who those in the market suggest is “extremely good at what he does”.

### **Leading lawyers**

David Anderson  
Ezra Davids

### **Key contact partners**

David Anderson  
Ezra Davids  
Heather Duffey

## **Edward Nathan**

On November 1 2004, the 47 directors of Edward Nathan & Friedland broke away from its parent company, Nedcor Investment Bank, reorganizing the corporate law advisory business into a new firm, Edward Nathan. The decision marks a return to the firm’s original name, and reflects Edward Nathan’s history that extends back 100 years. Edward Nathan has been commended by clients and competitors alike for its wealth of “great banking talent”.

It was suggested by one market commentator that Edward Nathan’s association with Nedcor limited the firm’s capacity to work for other banking clients, thus compromising the strength and reach of its practice. However, the reorganization has now regained a favourable reputation for banking work.

The firm’s admirable standing in the South African market is confirmed by the numerous large deals that it has advised on during the year. In an \$840 million (\$124 million) transaction, the firm advised the purchasers and leaser in the purchase and lease of seven ATR 42-500 aircraft for ACL Leasing Ltd (Ireland), on lease to Czech Airlines. Recently Edward Nathan also advised on a scheme of arrangement between Afrox Healthcare and its shareholders in relation to funding Business Venture Investments No 790. Lawyers advising on these deals included Michael Katz, Jackie King, Sean Lederman and Graeme Tucker, who clients described as being

“specialists in the field”. Michael Katz was further described by one competitor as “very impressive” and an “extremely prominent lawyer”.

### **Leading lawyers**

Michael Katz  
Sean Lederman  
Graeme Tucker

### **Key contact partners**

Emil Brincker  
Angela Itzikowitz  
Sean Lederman

## **Werksmans**

Werksman’s banking and finance department is headed by the renowned Wildu du Plessis and advises banks, financial institutions and other clients in most aspects of banking and finance. Werksmans is regarded well by clients and peers alike for the quality of its banking work, Gareth Driver being recommended by one competitor as “an extremely competent practitioner”.

In one R4.1 billion (\$606 million) black economic empowerment transaction, Werksmans advised Mvelaphanda Resources in relation to the financing of its acquisition of 15% of the beneficial interest in Goldfields’ gold mining assets. The firm also acted for Herculite Ferrochrome in obtaining senior debt funding for the R372 million construction and financing of a fourth furnace and pelletizing plant. And in another standout matter, Werksmans represented Andisa Capital and Andisa Capital Investment, Dema Capital and Dema Resources, Vantage Capital Group and Vantage Capital Investments in relation to the acquisition of a collective 48.66% equity stake in newly formed Incwala Resources. This transaction created one of South Africa’s largest broad-based black-owned and controlled mining companies, worth an estimated R4.5 billion.

A regular and noteworthy client of Werksmans is the South African Reserve Bank. The firm recently advised the bank in relation to its delisting from the JSE Securities Exchange South Africa, as well as on its involvement in the Myburgh Commission of Inquiry into the rapid depreciation of the Rand. Werksmans also continues to represent the South African National Roads Agency in regards to its public-private partnership projects. Over the past year the firm has been involved in both the N3 toll road project and the N4 toll road project that extends into Mozambique.

### **Leading lawyers**

Gareth Driver  
Wildu du Plessis

### **Key contact partners**

Chris Moraitis  
Wildu du Plessis  
Kevin Trudgeon

### **Brink Cohen Le Roux**

Johan Brink and his banking team are lauded by one competitor as “competent and excellent lawyers,” and remain highly visible within the banking market. The firm is the South African member firm of Interlaw, an international association of about 5000 lawyers in 64 independent law firms, across 120 business centres worldwide.

This year Brink Cohen Le Roux has been involved on two major bond issues for the City of Johannesburg Metropolitan Municipality, each worth R1 billion (\$148 million). In both cases Brink Cohen Le Roux advised the issuer, with Absa Corporate and Merchant Bank and Barclays Bank acting as joint-lead managers. It also acted for Trans-Caledon Tunnel Authority on its R600 million commercial paper issue in November 2004.

The firm has also advised the Standard Bank of South Africa in relation to setting up a domestic medium-term note programme and the subsequent increase in that programme’s aggregate nominal value. Brink Cohen Le Roux advised the arrangers and the dealers – Deutsche Bank and JP Morgan Securities South Africa – on the increase of the programme from R10 billion to R20 billion.

#### **Leading lawyers**

Johan Brink  
Andrew Hume  
Alison de Villiers

#### **Key contact partners**

Johan Brink  
Andrew Hume

### **Cliffe Dekker**

Cliffe Dekker boasts an enviable list of clients that includes Nedcor, Barclays, Absa, Shell International, and Old Mutual. The firm’s Johannesburg office handles most of the banking work, with Joz Coetzer heading the firm’s banking practice. Cliffe Dekker represents all four major banks in South Africa, and has staff on secondment to Barclays and Nedbank.

In one high-profile deal, a team from Cliffe Dekker advised on the R815.5 million (\$118.4 million) preference share funding granted to Incwala.

#### **Leading lawyers**

Joz Coetzer  
Deon Wilken

#### **Key contact partners**

Joz Coetzer  
David Thompson  
Deon Wilken

### **Jowell Glyn & Marais**

Jowell Glyn & Marais lawyers continue to be well regarded among its peers. Don Jowell and Richard Glynn are the firm’s

two most prominent lawyers, and one competitor stated that François Marais also “does very good work for the firm”.

Jowell Glyn & Marais is part of the Ernst & Young network, and it is viewed by those in the market as a very “dedicated” organization with excellent expertise in the corporate finance, structured finance and project finance sphere.

#### **Leading lawyers**

Richard Glyn  
Donn Jowell

#### **Key contact partner**

François Marais

### **Sonnenburg Hoffman Galombik**

Sonnenburg Hoffman Galombik has made noteworthy inroads into the South African banking market this year – a move that has not gone unnoticed by the market. Many peers commented that the firm has been building its profile. This is serving Sonnenburg Hoffman Galombik well and the banking practice, headed by the “notable and talented” Deon de Klerk, advises the Public Investment Commission (the PIC), the Treasury and the South African government on certain issues. Sonnenburg Hoffman Galombik also has a strong client base in the UK, working for such clients as CSFB, Deutsche Bank, Barclays and Standard Chartered.

In December 2003 the firm advised the Treasury, the PIC and Transnet in relation to the R4.3 billion (\$211 million) funding of the acquisition of publicly traded mobile phone operator MTN Limited. In March 2005 the PIC, Transnet and the entities representing the interests of management signed an agreement to unwind the funding structure early, by effectively distributing about 193 million MTN shares to the PIC and Transnet, and Sonnenburg acted on this transaction too.

Before this, in September 2004, Sonnenburg acted for Investec Bank and Standard Chartered Bank (as third-party financiers) in relation to the sale of an effective 18% in Western Platinum and Eastern Platinum to historically disadvantaged investor groups, through Incwala Resources and Incwala Platinum. The transaction was financed by a mix of vendor and third-party financing, and was named deal of the year 2004 by *Dealmakers* magazine. At the time of writing, the firm is working on another black economic empowerment transaction, involving FirstRand Empowerment Trust’s acquisition of 6.5% of FirstRand by a scheme of arrangement and an issue of shares at par, as well as the acquisition of a further 3.5% of FirstRand by current and future black employees and non-executive directives through staff trusts. Sonnenburg acted for Barclays Bank, the senior lender on the project.

#### **Leading lawyers**

Che Lue  
Simon Osborne

**Key contact partners**

Deon de Klerk  
Simon Osborne  
Roger Rudolph  
Stephen von Schirnding

**Bell Dewar & Hall**

Bell Dewar & Hall's financial services department has an experienced team working across the full range of finance matters, including certain specialist areas such as the financial and other related aspects of the new mining legislation and mining charter. Bell Dewar has recently been involved in numerous high-level finance deals, acting for TRAC, the South African National Roads Agency, Opic and Trans-African Concessions.

Among the year's highlights, the firm advised the Kwazulu Development Corporation on the registration of Ithala Bank as a bank, and acted on financing issues in relation to the bid for the Department of Transport's national traffic information system.

The firm's project finance credentials are also worthy of mention. On the R5 billion (\$739 million) Corridor Sands project, the firm advised the sponsors and project company, and on another high-value transaction, Bell Dewar acted as legal advisor to the lead arrangers and lenders in relation to the R2.7 billion Bakwena Platinum toll road project.

**Key contact partners**

Lara Bezuidenhout  
Andrew Mitchell  
Blaize Vance  
Mike van Vuren

**Jurgens Bezuidenhout Attorneys**

Jurgens Bezuidenhout Attorneys is a small firm, but a strong one in certain niche areas – indeed, its peers have commented that it has “monopolized the derivatives markets” this year. The firm's senior partner, Jurgens Bezuidenhout, is held in high esteem by his competitors, and associate lawyer Sorelle Gross has been earmarked as one of the rising stars of the South African financial market.

The firm has a respectable list of clients that includes leading local and international banks, such as the Standard Bank of South Africa, FirstRand Bank, BoE Bank, BNP Paribas and Deutsche Bank.

**Leading lawyer**

Jurgens Bezuidenhout

**Key contact partners**

Jurgens Bezuidenhout  
Travis Green  
Sorelle Gross

**Capital markets****Recommended firms**

Tier 1

**Deneys Reitz**

**Edward Nathan**

**Webber Wentzel Bowens**

**Werksmans**

Tier 2

**Bowman Gilfillan**

**Jowell Glyn & Marais**

**Jurgens Bezuidenhout Attorneys**

Tier 3

**Brink Cohen Le Roux**

**Cliffe Dekker**

**Sonnenburg Hoffman Galombik**

Tier 4

**Prinsloo Tindle & Andropoulos**

**Tabacks**

**White & Case**

**Deneys Reitz**

Deneys Reitz is viewed as one of the most active firms in South Africa's growing capital markets industry. The firm acted for ABSA in a R6.4 billion (\$936 million) asset-backed arbitrated securities securitization, and was also involved in the R5 billion OntheCards securitization transaction that took place in June 2004. Leading lawyer Casper van Heerden acted on both these transactions. The highly regarded Lionel Shawe and Clinton van Loggerenberg are also dedicated to capital market's work.

Among the year's other highlights, Deneys Reitz served as legal counsel to the Public Investment Commission in two bond issues by Transnet (for R4 billion and R2 billion respectively). It also advised the Standard Bank of South Africa as lead manager on two bond issues – the first, Eagle Bonds One (Proprietary) Limited's R431 million issue of instalment notes, and the second, Barloworld's R1.5 billion senior unsecured registered bond issue.

**Leading lawyers**

Shawn Barnet  
Casper van Heerden  
Clinton van Loggerenberg  
Lionel Shawe

**Key contact partners**

Casper van Heerden  
Clinton van Loggerenberg  
Lionel Shawe

**Edward Nathan**

Edward Nathan has been highly recommended this year by peers and clients, in particular for the quality and quantity of its equity work. The firm has strengthened its capital markets practice over the past year, having hired four new associates to bring the number of lawyers dedicated to this area to 11.

Recently Graeme Tucker led an Edward Nathan team that

advised Woolworths Holdings on a R5 billion (\$731.5 million) securitization transaction. The team also included the “outstanding” Jackie King, who subsequently advised Kagiso Sizanani on setting up its R1 billion capital domestic note and redeemable preference share programme.

In other noteworthy deals, Edward Nathan advised Nedcor in relation to its R5.2 billion recapitalization, and acted for Tiger Brands and Spar on the R3.4 billion unbundled investment in Spar to Tiger Brands shareholders.

#### **Leading lawyers**

Jackie King  
Graeme Tucker

#### **Key contact partners**

Sean Lederman  
Jackie King  
Graeme Tucker

#### **Webber Wentzel Bowens**

The market continues to consider Webber Wentzel Bowens one of the premier South African capital markets practices. Sally Jane Hutton is said by one peer to be “one of the top people for derivatives,” while the market singles out Karen Couzyn as an “outstanding lawyer” who is “excellent in her field”.

Webber Wentzel Bowens was recently involved in Woolworths Holdings’ R5 billion (\$731.5 million) securitization, and also acted for the Export-Import Bank on Eagle Bonds One (Proprietary) Limited’s R431 million issue of instalment notes. The firm includes the Johannesburg Stock Exchange and BMW among its clients.

#### **Leading lawyers**

Karen Couzyn  
Sally Jane Hutton

#### **Werksmans**

Werksmans has continued to perform well, and is regarded by peers and clients as one of the leading South African capital markets law firms. This year Werksmans has advised a variety of banks, other financial institutions and corporates on the legal aspects relating to the conclusion of various derivatives contracts. From among the team, the market picked out Amelia Heeger, a rising star who “has done a substantial amount of work in this area”.

In one standout deal, the firm recently acted for Edgars Consolidated Stores (Edcon) in relation to its OntheCards Investments securitization, and later acted for Edcon again in relation to the conversion of that programme into a domestic medium-term note programme and the successful issue of further notes under the new programme. Werksmans has also been advising South African and international insurance companies and asset managers with regard to the regulatory issues that apply to setting up collective investment schemes and hedge funds, in accordance with the Collective Investment Schemes Control Act.

It also represented FirstRand Bank, acting through its division Rand Merchant Bank, in relation to two securitizations: the R15 billion iNdwa asset-backed multi-seller conduit securitization and

the R1.1 billion Fresco securitization, South Africa’s the first synthetic collateralized loan obligation securitization structure.

#### **Leading lawyer**

Wildu du Plessis

#### **Key contact partner**

Wildu du Plessis

#### **Bowman Gilfillan**

Bowman Gilfillan has had an active 12 months in the capital markets, working on a range of transactions including acting as South African counsel for issuers and underwriters on a number of cross-border deals. Bowman Gilfillan has built strong relationships with an esteemed group of investment banks, and credits its success in the capital markets to these contacts. As well as having an ongoing relationship with Barclays, Bowman Gilfillan has nurtured relationships over the years with clients such as UBS, Merrill Lynch, Goldman Sachs, Credit Suisse First Boston and Citigroup.

Bowman Gilfillan advised Transnet in two large bond issues this year, valued at R4 billion (\$5.8 million) and R2 billion respectively. The firm has worked on numerous other high-profile deals, one of the firm’s clients saying that it is an “exceptional firm that has dealt with numerous sensitive transactions well”. The team, meanwhile, is regarded as “highly experienced, very professional and positive”. And there is good news for the firm’s future standing in the capital markets area, as the market notes “a good depth of talent” in the firm. No-one comes recommended more highly than Patrick Hershe, though, who one client describes as “an outstanding lawyer” who “does an exceptional job on complex deals”.

#### **Leading lawyer**

Patrick Hersche

#### **Key contact partner**

Jonathan Schlosberg

#### **Jurgens Bezuidenhout Attorneys**

Jurgens Bezuidenhout Attorneys is a boutique firm specializing in capital markets work. Sorelle Gross was recently made up to partner, and is recommended highly by those in the industry.

The firm has an impressive client base for such a small firm, working this year for such high-end companies as Deutsche Bank.

#### **Leading lawyers**

Jurgens Bezuidenhout  
Sorelle Gross

#### **Key contact partner**

Jurgens Bezuidenhout

#### **Brink Cohen Le Roux**

Brink Cohen Le Roux continues to be highly visible advising on capital markets deals, its clients including Standard Bank, the City of Johannesburg and Telkom. The firm was recently instructed to act as arrangers’ counsel in relation to setting up the Standard Bank

of South Africa's R10 billion (\$1.5 billion) domestic medium-term note programme, and the subsequent increase of the programme's aggregate nominal value to R20 billion.

In May 2004 Brink Cohen Le Roux acted as legal advisors to the Standard Bank of South Africa on the Anglo-American Platinum Corporation rights offer. The Brink Cohen Le Roux team acting on this R4 billion transaction was led by the "competent and excellent" Johan Brink and Alison de Villiers. The following month, Brink and de Villiers were busy again, acting for the City of Johannesburg Metropolitan Municipality on its R1 billion unsecured partially guaranteed bonds. And at the end of 2004 the firm advised the Trans-Caledon Tunnel Authority on its R600 million commercial paper issue.

Past accolades have included undertaking one of the first municipal bond issues in South Africa, which involved advising the structurer, issuer and rating agency, and which was granted an award for innovation.

#### Leading lawyers

Johan Brink  
Andrew Hume  
Alison de Villiers

#### Key contact partners

Johan Brink  
Andrew Hume

#### Cliffe Dekker

Cliffe Dekker has six partners and two associates dedicated to capital markets work, and is regarded by market commentators as one of the premier firms in this area. Willem Jacobs is singled out in particular as an "excellent lawyer," one client noting that he is "very thorough and professional".

Cliffe Dekker's capital markets team is equally capable of acting for issuers and arrangers, and the firm's top deals of the past year bear testament to this. On the City of Johannesburg's R6 billion (\$879.4 million) inaugural domestic medium-term note programme, Cliffe Dekker advised the lead arranger. And leading lawyers Joz Coetzer and Deon Wilken acted for the issuer, Unitrans, on setting up its R1.5 billion domestic medium-term note programme.

Following on from its work on the City of Johannesburg's debt programme, the firm was instructed again to advise the lead manager of the City's first bond issue (worth R1 billion), as well as providing advice to the lead manager on the City's first unsecured partially guaranteed bond issue, which was also worth R1 billion. Deon Wilken and Joz Coetzer advised on both deals.

#### Leading lawyers

Joz Coetzer  
Deon Wilken

#### Key contact partners

Joz Coetzer  
David Thompson  
Deon Wilken

#### Sonnenburg Hoffman Galombik

Peers and clients spoke extremely well of Sonnenburg Hoffman Galombik's capital markets work this year. The firm is "still gaining experience" according to clients but is an "up and coming" player in the capital markets. It is recommended highly for its work on "a broad range of transactions," and is commended for having "very nice people to work with". One client said that firm is "very user friendly" and the staff "exceptionally responsive".

In early 2005 the firm advised Standard Bank, acting through its corporate and investment banking division on a R15 billion (\$2.2 billion) residential mortgage warehousing securitization for South African Home Loans and Standard Bank. This complex securitization transaction involved setting up a residential mortgage warehousing conduit for South African Home Loans, and featured a number of innovations never attempted before in the South African market.

In 2004 the firm was party to the second City of Johannesburg R1 billion (\$146.5 million) municipal bond issue, with partner Simon Osborne leading the Sonnenburg Hoffman Galombik team. The firm advised the trustees to the bond issue, which involved taking part in the negotiation of all of the main pieces of documentation, including the relevant trust deed and the guarantee agreement.

#### Leading lawyers

Vivien Chaplin  
Simon Osborne

#### Key contact partners

Simon Osborne  
Stephen von Schirnding

### Mergers and acquisitions

#### Recommended firms

Tier 1

**Cliffe Dekker**

**Edward Nathan**

**Webber Wentzel Bowens**

**Werksmans**

Tier 2

**Bowman Gilfillan**

**Deneys Reitz**

**Sonnenburg Hoffman Galombik**

Tier 3

**Brink Cohen Le Roux**

**Fluxmans**

**Jowell Glyn & Marais**

**Prinsloo Tindle & Andropoulos**

**Tabacks**

Tier 4

**Bell Dewar & Hall**

**Hofmeyr Herbstein & Gihwala**

### Cliffe Dekker

Cliffe Dekker has 18 partners and 12 associates dedicated to M&A work, and has enjoyed another successful year. As well as handling a large number of high-level deals, the firm was awarded the top accolade at March 2005's *Professional Management Review Intelligence* awards, which highlighted the firm's quality of service, knowledge of its clients' business and business environment, ability to make deals happen and ability to use innovative solutions to solve its clients' business problems.

A truly multilingual firm, Cliffe Dekker's lawyers speak six of the official languages of South Africa: English, Afrikaans, Xhosa, Zulu, Tswana, Setho and Shangaan. The firm, described by one market commentator as a "very good resource and competition law firm," was this year involved in South Africa's second ever major hostile takeover. In this transaction, the firm acted for Harmony in acquiring the entire issued share capital of Goldfields for R52.9 billion (\$7.7 billion). The Cliffe Dekker team included Willem Jacobs and David Pinnock and was led by the "solutions-driven" Ian Hayes.

The firm also acted on behalf of Lonmin in relation to Incwala Resources' acquisition of 18.1% of the Lonmin-controlled Western Platinum and Eastern Platinum from Impala Platinum. The transaction was valued at \$554 million. Leading lawyer Chris Ewing, Ryan Butler, Deon Wilken and Jean Meijer advised on this deal, which was one of the most complex transactions to take place in South Africa during 2004, involving eight other law firms and 93 agreements and security documents.

On the sale by Rand Merchant Bank Holdings of its 48.4% shareholding in Global Resorts to a consortium, Cliffe Dekker acted on behalf of Rand Merchant Bank, in its capacity both as seller and senior lender on the transaction. The sale was valued at R527 million, and represents the first major disposal since the inception of the South African gaming industry.

The firm's other top M&A deals of the past year included advising Ellerin Holdings on its R1.45 billion share-for-share merger with Relyant to create South Africa's largest furniture and other household goods retailing business, and acting for M-Web Holdings on its R320 million acquisition of the entire issued share capital of Tiscali (Proprietary) Limited, the South African subsidiary of Italian internet service provider Tiscali.

#### Leading lawyers

Chris Ewing  
Willem Jacobs

#### Key contact partners

Chris Ewing  
Ian Hayes  
Jo Nesper

### Edward Nathan

Edward Nathan's Johannesburg corporate department has 19 partners and 12 associates dedicated to mergers and acquisitions work, and has been involved in a number of noteworthy black

economic empowerment transactions over the past year. One such transaction was the merger between Sasol Liquid Fuels and Engen, in a joint venture with their black economic empowerment partners, former Excell shareholders and Worldwide African Investment Holdings. The firm acted as legal adviser to Sasol regarding the documentation of the transaction, and as competition law adviser to Petroliam Nasional.

On another deal of this nature, Edward Nathan advised Incwala on its acquisition of 18% of the issued share capital of Eastern Platinum and Western Platinum from LSA, Andisa, Dema, Mirror Ball and Vantage, for R3 billion (\$4.4 billion). The firm was also involved in negotiating the R3 billion scheme of arrangement by Business Venture Investments No 790 between Afrox Healthcare and its shareholders. Edward Nathan also acted as competition law adviser to both parties on the funding of the acquisition.

The firm's leading M&A lawyers include corporate department head Michael Katz and Miranda Feinstein, who are held in high esteem in the industry by clients and peers alike. One client lauded Katz's "good conceptual and strategic abilities," explaining that the reason he and Feinstein are such a good team is that "Katz sees the big picture while Feinstein provides very good detail work ... her drafting skills are exceptional ... they are both seasoned professionals".

#### Leading lawyers

Miranda Feinstein  
Michael Katz

#### Key contact partners

Miranda Feinstein  
Michael Katz

### Webber Wentzel Bowens

This year Webber Wentzel Bowens confirmed its status as one of South Africa's premier law firms by advising the Absa Group on the recommended acquisition of a majority stake by Barclays Bank, for R33 billion (\$4.9 billion). Clients have lauded Webber Wentzel Bowens as being "a good all-round firm".

Bruce Cleaver comes highly recommended by his peers, and indeed has been praised for "turning around the firm's M&A practice". Recently, together with Alessandra Cox, he has been advising Anglo American in relation to its agreement with BHP Billiton to sell Samancor Chrome to the Kerma Group for \$469 million.

In a R295 million transaction, Stephen Meltzer and Xenia Kritsos have been advising Johnnic Holdings in relation to its acquisition of a 50% interest in Fabvest Investment Holdings, resulting in an effective 9.7% interest in Tsogo Sun. Tsogo Sun is a holding company with gaming and hotel interests, including the renowned Montecasino and Suncoast Casinos.

#### Leading lawyers

Bruce Cleaver  
Michael Fleischer  
Johann Scholtz

## Werksmans

Werksman's mergers and acquisitions practice has had an active year, winning mandates on a large number of multibillion-rand transactions. Competitors commended the broad experience offered by the firm's partners, which is complemented by the talents of emerging associates. One such lawyer is Gareth Driver, director of the corporate and commercial department, who one peer referred to as a "young chap, very good and upcoming".

At the beginning of 2004, Werksmans advised Xstrata in relation to a R8.2 billion (\$1.2 billion) transaction, where-by Xstrata created a joint venture with SA Chrome after each contributing their respective South African chrome and ferrochrome assets.

On the merger between Mvelaphanda Holdings and Reberve to create one of South Africa's pre-eminent black-controlled, -owned and -managed diversified industrial groups, Werksmans advised Mvelaphanda. The merger amounted to R3 billion, and the resulting company represents interests in almost every mainstream part of the economy. Werksmans also advised Mvelaphanda Resources in relation to its R4.1 billion acquisition of 15% of the beneficial interest in Goldfields' gold mining assets.

### Key contacts

Gareth Driver  
Gerhard Johannes  
Carl Stein

### Leading lawyers

Gareth Driver  
Carl Stein

## Bowman Gilfillan

With 18 partners and 33 associates working on mergers and acquisitions work, and "a good spread of big clients," Bowman Gilfillan is well placed to handle the high volume of M&A business that the black economic empowerment (BEE) laws are generating. To handle this increase in work, the firm has hired three new partners and two associates. One of the new partners, Jonathan Lang, joined the firm from Allen & Overy in January 2005, and another, Penuell Maduna, is a former legal adviser to the South African minister of justice. From among the team, Ezra Davids is "without doubt one of the firm's leading M&A lawyers" although he modestly "chooses to keep a low profile".

The firm recently advised BEE consortium Ubuntu-Botho on its R1.5 billion (\$224.5 million) acquisition of a 10% interest in Sanlam. In another high-profile BEE transaction, Bowman Gilfillan advised Standard Bank on a recent R4.5 billion transaction where Standard Bank and a BEE consortium jointly created Andisa Capital, a new empowerment-focused financial services company. The firm's other deal highlights of the past year included advising ARMI in relation to the R10.8 billion merger of the non-gold assets of ARMI, Avmin, and

Harmony, and acting for SA Chrome on its R8.2 billion joint venture with Xstrata.

### Leading lawyers

Allen Keep  
Neil Rissik  
Charles Valkin

### Key contact partners

David Anderson  
Ezra Davids  
Jonathan Schlosberg

## Deneys Reitz

In one of the biggest deals of the year in the South African market, Deneys Reitz advised FirstRand Bank in relation to a R7.9 billion (\$1.1 billion) black economic empowerment transaction. The team was spearheaded by the "widely admired" Kevin Cron, who one market player praised for his "great breadth of experience".

In some of the year's other highlights, Actis turned to the firm for advice when Peter's Papers bought its Nampak division for R250 million. The firm acted for Anooraq and Anglo Platinum in the reverse takeover of Anooraq Resources by Pelawan Investments in a deal worth \$134 million, and Cron led another team that represented Tullow Oil when it acquired the entire issued share capital of Energy Africa for R3.4 billion in May 2004.

Deneys Reitz's M&A team – headed by the "very capable" Cron – has 16 partners and six associates dedicated to M&A work. The team has undergone some personnel changes over the past year, although overall numbers are up. In April 2004 partner Maryanne Middleton left the practice, but since then two partners have been hired (including, in August 2004, Howard Sher from Linklaters), as have three associates. Market participants consider that Mike Dale's "good resource law background" is extremely important to the firm's strength in this area because of recent changes in resource law that the South African government has implemented.

### Leading lawyer

Kevin Cron

### Key contact partners

Kevin Cron  
Peter Simkins  
Andre Visser

## Sonnenburg Hoffman Galombik

In last year's *IFLR1000* we reported the market's comments that Sonnenburg Hoffman Galombik was making "huge inroads" into the M&A sphere. It seems this strategy has paid off, because over the past 12 months the firm has "been spending a lot of money to expand the practice" and become increasingly visible in the market as a result. With more and more

mandates to advise on top-level deals, it has asserted its status as one of South Africa's solid choices for M&A advice.

Like Deneys Reitz, the M&A practice has experienced considerable staffing changes this year, although the overall picture is a rosy one. Four senior associates and one associate have left the firm since May 2004 – although interestingly, none have moved to rival South African firms. But Sonnenburg has negated the effect of the departures by hiring new blood at the senior level – three partners and two senior associates have joined the M&A practice since June 2004. Koos Pretorius and Lawrence Helman are joint heads of the corporate and commercial department, which now comprises 12 partners and 14 associates.

In May 2004 the firm was involved in the R1.5 billion (\$2.2 million) Relyant Retail deal, acting for Relyant on its share-for-share merger with Ellerine Holdings to create South Africa's largest furniture and other household goods retail business. In another high-profile deal, in September 2004, Sonnenburg advised KWV Limited on the R208 million sale of 25.1% of its shares to a wholly black-owned company (Phetogo Investments) and to the KWV Employee Empowerment Trust. The year's other highlights saw the firm act for New Clicks on its sale to Synapse Holdings, and for the Lewis Group on the R2.8 billion initial public offering by Gus in October 2004.

#### Leading lawyer

Koos Pretorius

#### Key contact partners

Rob Appelbaum  
Satiyya Patel  
Koos Pretorius

#### Brink Cohen Le Roux

Brink Cohen Le Roux is regarded as a leader in the South African mergers and acquisitions market. Peers note that the firm has many outstanding people, including name partner Johan Brink, who has "great expertise" and who is "highly respected by the business community". Clients also speak highly of Andrew Hume, who "has a fantastic turnaround time and is always available". The firm's competitors, meanwhile, comment that Brink Cohen is a "very good small niche firm with very good clients".

Brink Cohen's solid M&A practice comprises three partners and three associates, and has had a busy year. In December 2004 Brink, Hume and Alison de Villiers advised AFGRI Operations on the R500 million (\$72.3 million) disposal of its 26.8% undivided stake in its operations and net assets to the Agri Sizwe Empowerment Trust. A few months earlier, in August, Paul Coetser and Viki Rapelas acted for CS Computer Services Holdings on the offer by the Bytes Technology Group to acquire its entire share capital.

Other deals that saw the involvement of Brink Cohen Le Roux included the firm's advice to Imerys South Africa on Nghala Mining's purchase of 26% of Imerys' share capital under

the terms of the Mining Charter and the Mineral and Petroleum Resources Development Act, and its role acting for LeasePlan Corporation when it disposed of its entire share capital in Avena LeasePlan South Africa to Absa Bank.

#### Leading lawyers

Johan Brink  
Andrew Hume

#### Key contact partners

Johan Brink  
Paul Coetser  
Andrew Hume

#### Fluxmans

Fluxmans is a small but reputable outfit, with seven lawyers dedicated to handling the firm's mergers and acquisitions mandates. In May 2004, practice head and "excellent M&A lawyer" Phillip Vallet teamed up with Solly Slom to advise on the R1.3 billion (\$188.2 million) management buyout of Metro Cash and Carry. The same pairing also acted for Metoz on a R5.25 billion reverse takeover in December 2004. In the same month, Mike Bloom acted for Growthpoint when it acquired a property portfolio for R1.08 billion. And a month earlier, a Fluxmans team represented Worldwide African Investments Holdings in structuring a three-way joint venture between Sasol, Petronas and Engen that could be worth up to R33 billion in future revenues.

Lawyers at Fluxmans are fluent in French, Greek, Portuguese and English. The firm is a member of Legalink, a network of independent law firms that covers over 80 business centres in 40 countries.

#### Leading lawyers

Solly Slom  
Phillip Vallet

#### Key contact partners

Marie-Aur lie Girard  
Solly Slom  
Phillip Vallet

#### Other notable firms

**Prinsloo Tindle & Andropoulos** is continuing to establish a firm foothold in the South African mergers and acquisitions market, peers remarking that it "appears more and more in M&A". This drive is spearheaded by "excellent" name partner Peter Prinsloo and the highly respected name partner Paul Tindle. **Tabacks** is a spin-off from Deneys Reitz, and despite being "a small niche firm" it has "very good people," especially the well-regarded Mervyn Taback. And **Jowell Glyn & Marais** is another "very good small niche firm" focusing on corporate and commercial work. It boasts "very good clients" and, in name partner Fran ois Marais, has an "extremely competent lawyer" that "does very good work for the firm".