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## in 60 jurisdictions worldwide

**Contributing editor: Casey Cogut**

# 2011

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**Mergers & Acquisitions 2011**
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

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First published 2000
Twelfth edition 2011
ISSN 1471-1230

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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# South Africa

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### 1 Types of transaction

How may businesses combine?

The primary methods whereby businesses can combine in South Africa are:

- a scheme of arrangement, which is a statutory procedure whereby a company makes an arrangement with its members for the acquisition of its shares by another (proposer);
- a tender offer;
- a sale of all or a greater part of the assets or undertaking of the target; and
- a merger or amalgamation, where two or more corporate entities merge or amalgamate into a combined entity or entities. The merger procedure is a very recent introduction to South African law (having been brought in by the new South African Companies Act 2008 (the Companies Act) on 1 May 2011).

### 2 Statutes and regulations

What are the main laws and regulations governing business combinations?

The main laws and regulations governing business combinations are the following:

- the Companies Act, which governs, inter alia, the compulsory acquisition of minority shareholdings, schemes of arrangement, mergers and amalgamations, disposals by a company of its business and affected transactions;
- the Takeover Regulations promulgated in terms of the Companies Act (which regulate takeovers and affected transactions, and which replace the Securities Regulation Code on Takeovers and Mergers);
- the Securities Services Act, which, among other things, regulates insider trading and market manipulation practices;
- the Listings Requirements of the JSE Limited (the JSE), which apply if the offeror's or target's shares are listed on the JSE (Johannesburg Stock Exchange);
- the Competition Act, which requires mergers of a certain size to be approved by the relevant competition authorities;
- the Exchange Control Regulations, which are enforced by the Financial Surveillance Department of the South African Reserve Bank (SARB);
- certain industry-specific regulations, for example in the banking, mining and communications industries; and
- the rules of the Takeover Regulation Panel (the Panel).

### 3 Governing law

What law typically governs the transaction agreements?

The laws and regulations set out in question 2 are the primary laws which regulate the transaction agreements in a business combination. This means that the transaction agreements are typically governed by South African law. The parties are, however, free to choose any other law to govern the transaction agreements, subject to compliance with the aforementioned South African laws. However, any transaction agreement specifically relating to real estate must be governed by South African law.

### 4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

Depending on the nature of the business combination, approvals may be required from one or more of the following regulatory bodies:

- the Competition Commission or Competition Tribunal (or both), in respect of large and intermediate mergers (in respect of which a fee will be payable);
- the Panel in respect of transactions subject to the Takeover Regulations (a fee will be payable);
- the JSE in respect of transactions involving listed companies (a fee will be payable);
- SARB, where the transaction requires exchange control approval (no fee will be payable) and National Treasury (no fee will be payable) if the transaction is not within established exchange control policy;
- court approval may be required for schemes of arrangement, sales of all or a greater part of the assets or undertaking of the target or mergers in certain limited circumstances (a nominal fee will be payable); and
- the relevant sector-specific regulator, if applicable (a fee might be payable).

Transfer taxes are payable in respect of the disposal of shares in an unlisted South African company at the rate 0.25 per cent of whichever is highest out of the sale consideration or the market value of the shares. For listed shares, 0.25 per cent is applied to the consideration declared by the acquirer or, where a consideration is not declared or is lower than the lowest price of that share, the closing price of that share is used.

### 5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

The information that is required to be made public in relation to business combinations is regulated, inter alia, by the Listings Requirements (listed entities) and the Companies Act (including the Takeover Regulations). This includes the consideration payable, the asset that is being acquired, special dealings (arrangements), the effect on listing, conditionality and timing.

Any information that must be publicly disclosed in the context of a takeover offer is done through, inter alia:

- a cautionary announcement when a tender offer, scheme, merger or significant transaction is under discussion;
- a firm intention announcement of the terms of the tender offer, scheme, merger or transaction:
  - in the case of a tender offer, the offer circular that is sent by the offeror to the target shareholders;
  - in the case of a scheme, the circular that is sent by the target company to its shareholders setting out details of the proposed scheme and convening the shareholders meeting to approve the scheme;
  - in the case of a merger or amalgamation, the circular that is sent to shareholders of each merging company convening the shareholders' meeting to approve the merger, which must include, inter alia, a summary of the merger agreement;
  - in the case of a sale of all or a greater part of the assets or undertaking of the target, the circular that is sent to shareholders setting out the details of the transaction and convening the shareholders meeting to approve the disposal;
- the board of the target company must circulate its views on the offer, scheme, merger or disposal transaction to the shareholders (including advice from external advisers and any independent fairness opinion that might have been required).

Depending on the size of the transaction, if the offeror or offeree is a listed company it may need in terms of the Listings Requirements to publish an announcement regarding the transaction and/or in the case of larger transactions (so-called Category 1 transactions) obtain shareholder approval (in which case a circular will need to be sent to shareholders setting out the details of the transaction and convening a meeting).

### 6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

The Companies Act has introduced new shareholder disclosure requirements into South African law. A person who acquires a beneficial interest in securities, such that they hold 5 per cent or any further multiple of 5 per cent of that particular class, is required to notify the issuer within three business days of such acquisition. Similarly, a person must notify the issuer within three days if a disposal of securities results in them dropping below a threshold which is a multiple of 5 per cent. An issuer must notify the Panel and shareholders of such disclosures unless less than 1 per cent of the class was disposed of. Under the Listings Requirements, an issuer must publish the information provided in a disclosure notice within 48 hours on the Securities Exchange News Service. The disclosure requirements apply irrespective of whether the acquisition or disposal was made directly, indirectly, individually or in concert with any other person and options and other interests in securities must be taken into account.

A listed company must disclose shareholdings of 5 per cent or more in its annual report and its shareholders' circulars.

In addition, a nominee shareholder of a listed company must disclose to the company the identity of the beneficial holder every month. The company can also oblige the nominee shareholder to disclose the identity of the beneficial holder at any time.

In terms of the Companies Act and Listings Requirements, certain disclosures are required to be made in respect of the shareholders of the combining companies and their directors. Also, any dealings by the offeror and target in their respective shares or in each other's shares during the offer period must be disclosed.

### 7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

The boards of the offeror and the target (and their respective advisers) have a statutory duty under the Companies Act to act in the best interests of the relevant company. The Companies Act and Takeover Regulations also impose duties on the boards to act in the best interests of the security holders and ensure compliance with the applicable legislation (which, as discussed below, includes a no-frustration obligation).

The board of the target company must circulate its views on any tender offer or scheme or applicable disposal or merger or amalgamation to its shareholders (together with appropriate independent external advice).

Shareholders, be they controlling or otherwise, are not subject to the above duties and can generally act in their own interests.

### 8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

A scheme of arrangement requires the consent of disinterested shareholders holding at least 75 per cent of the relevant class of shares of the target company present at the shareholders meeting convened to consider the scheme (with a 25 per cent quorum requirement).

In the case of a tender offer, the approval by the target's shareholders is not required, except in the case of a partial offer, mandatory offer or specific exemption from the provisions of the Companies Act. In so far as the offeror is concerned, shareholder approval will only be required if it is a category 1 transaction (being a transaction where any listed entity makes an acquisition or disposal the size of which constitutes 25 per cent or more of the market capitalisation of the acquiring entity), or if the offeror wishes to issue shares as consideration.

A sale of a business which constitutes a sale of the greater part or all of the assets or undertaking of the relevant company requires 75 per cent approval by the seller's disinterested shareholders (with a 25 per cent quorum requirement). The purchase of the target's assets or undertaking by the acquiring company does not require shareholder approval (unless it is a category 1 transaction), and the directors will have the power to make such acquisition.

A merger or amalgamation requires the consent of 75 per cent of the disinterested shareholders of each of the companies involved (with a 25 per cent quorum requirement).

If the consideration is to be in shares, the issue of the consideration shares will not require shareholder approval unless it is so required under the memorandum of incorporation of the offeror or the consideration shares constitute more than 30 per cent of the issued share capital of the offeror. The approval threshold, if applicable, would be 75 per cent. Under the new Companies Act, the board of directors has a general authority to issue shares on behalf of a company, subject to certain instances where shareholder approval will still be necessary, such as set out above.

Without limiting the above requirements, shareholder approval of 50 per cent plus one is required for any category 1 transaction or for any related-party transaction which constitutes greater than 5 per cent of the applicable percentage ratio defined in the Listings Requirements.

In terms of the Companies Act and Takeover Regulations, if an acquirer that previously held less than 35 per cent of the voting rights in the target, is able, as a result of the acquisition and whether acting alone or concert, to then exercise 35 per cent or more of the voting rights in the target, such acquisition will trigger a mandatory offer to

the minority shareholders. Such mandatory offer may be waived if the holders of 50 per cent plus one of the independent shares of the target vote in favour of such waiver.

The Companies Act has introduced, for the first time in South Africa, appraisal rights for shareholders. This provision allows dissenting minority shareholders who vote against a scheme of arrangement, merger or sale of all or a greater part of the assets or undertaking of the target to require the target to purchase their shares at fair value (which can be determined by a court if the parties do not agree).

Furthermore, if 15 per cent or more of shareholders vote against a resolution proposed for implementing a scheme of arrangement, merger or sale of all or a greater part of the assets or undertaking of the target, any dissenting shareholder may within five days of the resolution being passed require the company at its expense to obtain court approval before implementing the resolution. Even if less than 15 per cent vote against, a shareholder who can satisfy a court that there is a prima facie case for review may within 10 days apply to court for a review of the resolution. Such shareholder should first have indicated prior to the meeting that it intended voting against such resolution and subsequently indeed voted against such resolution. A court may only set aside the resolution if is satisfied that there is manifest unfairness to shareholders or a material procedural irregularity.

### 9 Hostile transactions

What are the special considerations for unsolicited transactions?

Hostile transactions have not traditionally been common in South Africa (although this is changing) and there are no special considerations for hostile transactions. However, an approach with a view to an offer being made, can only be made to the board of the target

As noted in question 10, however, there are restrictions on what the board of the target can do once it receives a genuine offer in order not to frustrate the offer. The directors, in any action they take, should at all times properly discharge their fiduciary duty to act in the best interest of the company. Any information disclosed to a preferred bidder should be disclosed to a bona fide non-preferred bidder.

### 10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

Although break-up fees are not formally regulated in South Africa, the Panel has developed a common market practice of imposing 1 per cent of the offer consideration as a cap for break-up fees. This would presumably apply equally to reverse break-up fees, which are not common in the South African market.

Once a target's board receives a genuine offer or believes that a genuine offer may be imminent, it may not, without shareholder and Panel approval, do anything which may result in the frustration of a genuine offer, including, inter alia, the issuing of any new securities or the sale or acquisition of assets of a material amount.

In addition, any dealings by the target in its own securities must be disclosed to the Panel, the JSE (if the entity is listed) and in a press release to the public, and such dealings are subject to certain limitations.

Companies are permitted to provide financial assistance in connection with the purchase of or subscription for its shares or the shares of its holding company, subject to certain requirements, including the passing of a special resolution (requiring the support of 75 per cent of the voting rights exercised on that resolution) by shareholders, certain solvency and liquidity requirements and the board being satisfied that the proposed terms are fair and reasonable to the company.

Any information disclosed to a preferred bidder should be disclosed to a bona fide non-preferred bidder.

### 11 Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

Business combinations may be influenced or restricted by: SARB, if they do not comply with the Exchange Control Regulations or the National Treasury if it deems it to be in the national interest to do so; the Panel, if they do not comply with the Companies Act and Takeover Regulations; and the JSE, if they do not comply with the Listings Requirements. The Departments of Economic Development and Trade and Industry may also make public interest representations during the competition approval process.

In certain industries such as broadcasting there is a cap on foreign shareholding in a local regulated entity.

### 12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

Conditions that are permissible in the context of business combinations include, inter alia, the obtaining of regulatory approvals; the obtaining of any shareholder approvals for the offeror to make the offer; material adverse change clauses; and the obtaining of a specified level of acceptances in the case of tender offers.

Conditions must generally be transaction-specific. In terms of the Takeover Regulations, offers may not be made subject to conditions which may be deemed to have been satisfied or not at the subjective discretion of the bidder. However, offers can be made subject to the fulfilment of certain preconditions, the most common being the completion of a satisfactory due diligence.

As to financing conditions, see question 13.

### 13 Financing

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

Financing conditions are generally not permitted as the Takeover Regulations require proof of sufficient funding before an offer is made. Under the Takeover Regulations, an acquirer is required to provide the Panel either a bank guarantee for the purchase price or place or a third party confirmation that the purchase price is held in escrow. Concerns have been expressed regarding this proposal, inter alia, because the cost of procuring a bank guarantee, particularly for large transactions, is likely to be significant, and therefore may act as an impediment to transactions. As a result, when an offer is wholly or partially for cash, the offer document must state that the Panel has been provided with such proof of funds.

Transaction-specific conditions which are relevant to the financing can be included, such as regulatory approvals (for example, exchange control approval) which may be necessary for the financing to be provided.

There are no obligations on the seller to assist in the buyer's financing. See question 10 above in relation to a target providing financial assistance in relation to an acquisition of its securities.

### 14 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

In terms of the Companies Act, if a takeover offer has been accepted by 90 per cent of the target's shareholders (excluding the offeror) within four months, the offeror may at any time within two months thereafter, on notice in the prescribed manner, compulsorily purchase the shares of the non-accepting shareholders.

A non-accepting shareholder can apply to the courts within 30 business days for an order prohibiting the compulsory acquisition. If there has been no such application, or when the application is dismissed, the offeror shall acquire the outstanding shares after payment of the consideration to the relevant shareholder.

Where the takeover is effected by a scheme, once the scheme has been approved by 75 per cent of the target's shareholders represented at the scheme meeting, the shares of dissenting shareholders can be compulsorily acquired by the bidder.

A disposal of all or a greater part of the assets or undertaking of the target will require shareholder approval with a 75 per cent threshold and will result in a transfer of the assets or undertaking without the consent of the remainder of the minority shareholders. However, the minority shareholders might seek recourse through their appraisal rights.

In terms of the Companies Act, the shareholders of merging companies in a statutory merger may be compensated with cash. This creates the possibility that it may be used as a mechanism to expropriate or 'freeze-out' minority shareholders. As noted above, the approval of 75 per cent of disinterested shareholders of the target present at the relevant meeting will be required for a merger, which means that, similar to a scheme, it has a lower threshold then that required to squeeze out the minority in the case of a tender offer. Given that the cooperation of the target company is required, however, it will generally only be able to be used in the case of a friendly offer.

### 15 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

There are no specific laws or regulations that apply to cross-border transactions, other than the Exchange Control Regulations. In terms of these regulations, no South African resident is entitled to enter into any transaction in terms of which capital (whether in the form of funds or otherwise) or a right to capital is directly or indirectly exported from South Africa without prior SARB approval. Further, prior SARB approval is required for any transaction where the consideration is foreign shares or a South African entity wishes to acquire a non-South African company.

In general, there are no restrictions on foreign ownership of shares. However, certain specific industries (including banking, insurance and broadcasting) have specific statutory or policy restrictions on the percentage of holdings that a foreign shareholder can hold in a South African company. In some instances where policy issues are involved, National Treasury approval might be required.

A person cannot transfer any shares to a non-resident without SARB approval. Approval is usually given, provided that the SARB is satisfied that fair consideration for the shares has been received in South Africa. In public deals, the approval is a mere formality.

### 16 Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

In business combinations regulated by the Takeover Regulations, a strict timetable is imposed.

In respect of a tender offer, the timetable begins when the firm intention announcement is published, after which the offeror has 20 business days to post the offer document to the target's shareholders. A tender offer must be open for acceptance for at least 30 business days after the offer document is posted. The target's board must advise its shareholders of their views of the tender offer within 20 business days of the posting of the offer document. The offer must be declared unconditional as to acceptances within 45 business days from the posting of the offer document, or the tender offer will lapse unless the independent board agrees otherwise. The consideration payable by the offeror must be posted to those shareholders of the target who have accepted the offer within six business days of the offer becoming or being declared unconditional, or the offer being accepted, whichever is the later. These are obviously general guidelines. Issues such as regulatory approvals will affect the final timetable.

In respect of a scheme of arrangement or the sale of all or a greater part of the assets or undertaking of the target, the circular convening the shareholders' meeting must be posted within 20 business days of the firm intention announcement being published. At least 15 business days' notice (10 in the case of a private company) must be given to the shareholders of the meeting. Once the statutory majority of 75 per cent is obtained at the scheme meeting and all the other conditions are met, including regulatory approvals, the scheme can be implemented.

In respect of a merger or amalgamation, the circular convening the shareholders' meeting must be posted within 20 business days of the firm intention announcement being published (which must include a summary of the merger agreement). At least 15 business days' notice (10 in the case of a private company) must be given to the shareholders of the meeting. After the resolution has been adopted, each amalgamating or merging company must give notice to every known creditor of that company. Within 15 business days of delivery of the notice, a creditor may apply to court on grounds that it will be materially prejudiced and it has no other remedies. If there are no court challenges to the merger by shareholders or creditor within the required periods, the merger can be implemented through the filing of a notice of amalgamation or merger with the Companies and Intellectual Property Commission.

### 17 Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Companies which are controlled in terms of the Banks Act, the Long-Term Insurance Act and the Short-Term Insurance Act need approvals, respectively, from the minister of finance or the registrar of banks, the registrar of long-term insurance and the registrar of short-term insurance for any change in control in such companies. Approval is needed from the Department of Mineral Resources for a change of control in any companies which hold mining or prospecting rights. Other industries also have industry specific regulations and statutes such as the telecommunications industry and the gambling industry, where approval may be required for a change of control. In certain industries, such as mining, one of the factors that it taken into account in granting approval for a change of control is the level of shareholding by previously disadvantaged South Africans in the target post-acquisition.

### 18 Tax issues

What are the basic tax issues involved in business combinations?

**Acquisition of shares**

As noted above, securities transfer tax will be payable in respect of the transfer of shares.

The transfer of the shares may result in the seller being liable for either income tax (if the shares were held as trading stock or for the purposes of a profit-making scheme) or capital gains tax (CGT) (if the shares were held as a long term or capital investment) on

**Update and trends**

The key change in relation to the South African regulatory framework has been the introduction of the new Companies Act and its accompanying regulations on 1 May 2011. Although this legislation is now in force and effect (and accordingly this submission deals with its provisions) it is still very new, and it remains to be seen what impact it will have in practice. The new Companies Act has introduced a number of new concepts into South African law that will have a key impact on M&A transactions going forward, including, for the first time, a statutory merger procedure and shareholder appraisal rights. Other existing procedures, such as the scheme of arrangement, have been greatly simplified under the new Companies Act, and in general, one can expect that business combinations may be easier and quicker to implement.

Although the credit crisis undoubtedly had an effect on the South African M&A market, South Africa on the whole has emerged relatively unscathed, and there has been a significant uptick in M&A activity over the past year. The key drivers that have fuelled M&A activity are resource-related transactions, black-economic empowerment transactions and general foreign direct investment (from India and China in particular), which have ensured a steady stream of M&A activity in 2010–2011.

the profits arising from the transfer. Shares held for at least three years from the date of acquisition will be deemed to constitute capital investments.

**Sale of business as a going concern**

The tax consequences of the sale of a business as a going concern depend on the nature of the assets being sold. The transfer of immoveable property may result in a liability for transfer duty, on the part of the purchaser, unless the transfer is subject to value-added tax (VAT). In certain circumstances, even if the transfer is subject to VAT, it may be zero-rated, meaning that VAT is levied at zero per cent. This will only be the case if the requirements of the VAT Act entitling a taxpayer to the zero rate are satisfied.

The transfer of immoveable property may also give rise to a liability for income tax or CGT, depending on whether the immoveable property was held as trading stock or as a capital investment. The same principles would apply in respect of moveable assets.

If the transaction involves the transfer of depreciable assets, the transfer may give rise to recoupments in the transferor's hands, which would be subject to income tax in its hands. Whether or not a recoupment arises will depend on the price at which the assets are transferred (ie, at their book value or an amount in excess thereof).

**Corporate restructuring rules**

Parties to a business combination transaction may be able to avoid the immediate tax consequences that usually arise by utilising any of the corporate restructuring rules contained in the tax legislation. The benefit of the corporate restructuring rules would be the deferral of the tax liability and not its complete elimination.

### 19 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

In terms of section 197 of the Labour Relations Act, where a business (or part of a business) is transferred as a going concern (which includes an outsourcing), the employees of the target entity are automatically, by operation of law, transferred to the acquiring entity on the same terms and conditions of employment and the acquiring entity is automatically substituted as the new employer in the place of the old employer. The Labour Relations Act does permit the contracting-out of this position provided that an agreement to that effect is concluded between the old and new employer on the one hand and the affected employees (or their representatives/trade union) on the other in terms of section 197(6) of the Labour Relations Act. The minimum conditions of employment, such as working hours, overtime and leave are governed by the Basic Conditions of Employment Act. However, a number of sections of the Basic Conditions of Employment Act do not apply to employees who earn above a prescribed threshold. Retirement fund issues (if applicable) are governed by the rules of the particular fund read together with the Pension Funds Act.

### 20 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

If the target company is in formal liquidation, the liquidator is the sole representative of the company. In terms of the Companies Act, every transfer of shares of a company in liquidation is void without the sanction of the liquidator.

By contrast, a liquidator is at liberty to sell the assets or business (or both) of the target company by private treaty. However, where the liquidator sells the business or part thereof of a company in return for consideration in the form of shares in the buyer, the liquidator needs the consent of the shareholders and, if necessary, the creditors, of the target company. Such consent is unlikely to be given where the target company was wound up on the basis that it could not pay its debts.

When buying assets from a liquidator, the buyer has the comfort of knowing that the creditors of the liquidated target company have no claim on assets sold by the liquidator. The liquidator can terminate employment of staff and sell off assets, or he can sell the business as a going concern, inclusive of staff. In the latter case, the transfer of the business and employees will not transfer any claims for arrears of wages that the employees may have had at the time of liquidation – those claims remain in the insolvent estate.

The Companies Act has introduced a new business rescue procedure into South African law, modelled very loosely on US chapter 11 bankruptcy. Business rescue is controversial for a number of reasons, not least that the practitioner is given wide powers to suspend or cancel any provisions of a contract to which the company is a party at the commencement of business rescue. While shareholders may sell their shares during business rescue, the classification or status of the issued shares may not be changed other than in terms of an approved business plan or by court order. In addition, any pre-emptive rights that a shareholder may have shall not apply if shares are issued pursuant to an approved business plan.

Where the target company is not in formal liquidation, but is merely trading normally while its liabilities exceed its assets, any sale by the target company of its assets or business, any sale which is not for market value or has the effect of preferring one creditor over the others, could subsequently be set aside by a liquidator if the target company is then liquidated.

### 21 Anti-corruption and sanctions

What are the anti-corruption and economic sanctions considerations in connection with business combinations?

South Africa has various statutes, such as the Prevention of Organised Crime Act and the Prevention and Combating of Corrupt Activities Act, which provide a legislative framework for the proactive prevention of corruption, as well as reactive measures to be taken in instances of corruption. There is also the King III: Report on

Governance for South Africa which provides a set of good-governance principles for companies, and in particular directors, based on the values of openness, transparency and 'comply or explain'. The new Companies Act is also stricter than its predecessor in imposing penalties on directors who engage in fraudulent activities or who do not comply with their fiduciary duties.

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 **ISSN 1471-1230**