The Mergers & Acquisitions Review

Fourth Edition

Editor
Simon Robinson

Law Business Research

The Mergers & Acquisitions Review

FOURTH EDITION

For further information please email
Adam.Sargent@lbresearch.com

The Mergers & Acquisitions Review

Fourth Edition

Editor
Simon Robinson

Law Business Research Ltd

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Adam Sargent

MARKETING ASSISTANT
Hannah Thwaites

EDITORIAL ASSISTANT
Nina Nowak

PRODUCTION MANAGER
Adam Myers

PRODUCTION EDITOR
Joanne Morley

SUBEDITOR
Charlotte Stretch

EDITOR-IN-CHIEF
Callum Campbell

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

ISBN 978-1-907606-03-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: +44 870 897 3239

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVOKATFIRMAET HJORT DA

ÆLEX

ALLENS ARTHUR ROBINSON

AMARCHAND & MANGALDAS & SURESH A SHROFF & CO

ANDERSON MŌRI & TOMOTSUNE

ARIAS & MUÑOZ

ARIAS, FÁBREGA & FÁBREGA

BATLINER WANGER BATLINER ATTORNEYS AT LAW LTD

BERNOTAS & DOMINAS GLIMSTEDT

BOWMAN GILFILLAN

BREDIN PRAT

BRIGARD & URRUTIA ABOGADOS

CAMILLERI PREZIOSI

CHARLES ADAMS RITCHIE & DUCKWORTH

COULSON HARNEY

CRAVATH, SWAINE & MOORE LLP

DITTMAR & INDRENIUS

DRYLLERAKIS & ASSOCIATES

ELIG ATTORNEYS AT LAW

EUBELIUS

F CASTELO BRANCO & ASSOCIADOS

FONTES & TARSO RIBEIRO ADVOGADOS

GLATZOVÁ & CO., v.o.s.

GLIMSTEDT & PARTNERS

GLIMSTEDT STRAUS & PARTNERS

GORRISSEN FEDERSPIEL

HENGELER MUELLER

KHAN & ASSOCIATES

KIM & CHANG

LAWCASTLES

MAKES & PARTNERS LAW FIRM

MANNHEIMER SWARTLING ADVOKATBYRÅ

MARVAL, O'FARRELL & MAIRAL

MATHESON ORMSBY PRENTICE

MIRO SENICA AND ATTORNEYS, d.o.o.

MONDINI RUSCONI STUDIO LEGALE

MORAVČEVIĆ VOJNOVIĆ ZDRAVKOVIĆ OAD in cooperation with SCHÖNHERR

MORENO BALDIVIESO ESTUDIO DE ABOGADOS

NAGY ÉS TRÓCSÁNYI ÜGYVÉDI IRODA

NAUTADUTILH

NOBLE & SCHEIDECKER

OSLER, HOSKIN & HARCOURT LLP

PAYET, REY, CAUVI ABOGADOS

PENKOV, MARKOV & PARTNERS

QUEVEDO & PONCE

RUŽIČKA CSEKES s.r.o.

S HOROWITZ & CO

SANTAMARINA Y STETA, SC

SCHELLENBERG WITTMER

SCHÖNHERR RECHTSANWÄLTE GMBH

SLAUGHTER AND MAY

STAMFORD LAW CORPORATION

SULLIVAN & CROMWELL LLP

TORRES, PLAZ & ARAUJO

URÍA MENÉNDEZ

VASIL KISIL AND PARTNERS

WINKLER PARTNERS

YOUNG CONAWAY STARGATT & TAYLOR, LLP

CONTENTS

EDITOR'S PREFACE

In response to the financial crisis, the past year has been spent cutting costs and restoring balance sheets while governments have set about overhauling the regulatory landscape. Whether as a result of this approach or in spite of it, we have seen the first signs of a recovery in the second half of 2009. During the financial meltdown, many strong businesses focused on assessing their strategy and restructuring. As the signs of recovery began to emerge, such businesses tentatively started to re-engage in M&A transactions as a means of achieving growth.

Currently, buyers are conscious of scrutiny from shareholders with regards to how much is being paid for assets and whether the deals that are going ahead represent value for money (particularly in light of Warren Buffett's publicly voiced concerns during the course of Kraft's bid for Cadbury and shareholder reaction to the proposed acquisition of part of AIG by Prudential). Consequently, most potential buyers are treading carefully. On the other hand, there were also a number of quick deals in 2009 where a speedy resolution was necessary to allow distressed sellers to obtain cash promptly but the number of these should decrease throughout 2010 if we continue through to recovery.

Many are still cautious about the outlook for M&A activity for the remainder of 2010 and beyond. A rise in M&A activity is hugely dependent on the willingness of banks to increase lending. Access to credit plays a vital role in supporting the economy by helping businesses to create jobs and growth, both of which are necessary if we are to find our way out of recession and towards recovery. In the short term, M&A activity will depend heavily on boardroom confidence and such confidence will only be achieved if boards perceive that the few new M&A deals around have proven profitable for shareholders. Such confidence and optimism is slow to build; therefore, while pockets of activity suggest that the worst of the financial crisis is behind us, the signs of recovery are tentative with buyers urging caution. The journey to recovery will be slow and difficult, but as lending increases and confidence rises, economists expect the sluggish growth of 2010 to develop into greater stability into 2011. That said, the recent problems of the euro, European government finances and the European banking sector could yet bring a renewed lapse into recession or worse. Only time will tell which progression turns out to be correct.

I wish again to thank all the contributors for their continued support in producing this book – one would hope that in this uncertain time the following chapters should at least provide some food for thought.

Simon Robinson
Slaughter and May
London
July 2010

Chapter 51

SOUTH AFRICA

Ezra Davids and Ashleigh Hale[*]

I OVERVIEW OF RECENT M&A ACTIVITY

South Africa continued to feel the effects of a sluggish global economy, albeit on a more limited basis compared to the rest of the world. This was reflected in a spike (albeit from a low base) in M&A activity in South Africa in the early part of 2010. The first quarter of 2010 was particularly active and total M&A deal value was up about 110 per cent compared to the first quarter of 2009. The upturn was more pronounced in cross-border deals in South Africa and general corporate restructurings. There were relatively fewer black economic empowerment ('BEE') deals, which for a number of years have provided great impetus to the South African M&A market.

Ironically, increased infrastructure spend, for the 2010 FIFA World Cup and beyond, had no meaningful impact on M&A activity in the relevant sectors.

Mainly due to the higher cost of debt, the private equity market in South Africa is still slow in both the number and value of deals.

It will be interesting to see how the rest of 2010 pans out, but all signs point to increased activity in the M&A market.

II GENERAL INTRODUCTION TO THE LEGISLATIVE M&A FRAMEWORK

The cornerstone of the South African M&A legislative framework is the Companies Act 1973 ('the Companies Act'). A new Companies Act 2008 ('the New Companies Act') was, however, promulgated in 2008 and is set to take effect in late 2010 or early 2011. This will significantly overhaul the existing company law regime and the M&A legislative framework.

---

* Ezra Davids and Ashleigh Hale are partners at Bowman Gilfillan.

Among other things, the Companies Act regulates schemes of arrangement (a statutory procedure, which is the most commonly used method of implementing a recommended takeover), tender offers and a 'squeeze-out' mechanism when a bidder acquires 90 per cent of the shares in the target company. The Companies Act also regulates a disposal by the target of a greater part or all of its assets or business.

South African mergers and acquisitions are also governed by the Securities Regulation Code on Takeovers and Mergers ('the Code') (which is largely based on the UK City Code on Takeovers and Mergers) and the Rules of the Securities Regulation Panel ('the Panel'). Unlike the UK City Code, the Code is statutory and is enforced by the courts rather than through self-regulation. The Code applies to both public transactions and private transactions of a certain value, and seeks to regulate those transactions that are deemed to be 'affected transactions' (which includes those that involve a disposal of the whole or substantially the whole of the business of the company or that result in a person acquiring 35 per cent or more of the voting rights in a company).

Other key pieces of legislation include the Securities Services Act (which, among other things, regulates the South African insider-trading and market manipulation legislation) and the Competition Act. In M&A transactions involving companies listed on South Africa's securities exchange the JSE Limited, the JSE Listing Requirements are of relevance.

For many years, South Africa has had a system of exchange controls in place aimed at regulating the flow of capital in and out of the country. These controls (which are set out in the Exchange Control Regulations 1961) have often played a significant role in the manner in which M&A transactions in South Africa, particularly cross-border transactions, are structured. Recently, these exchange controls have been gradually relaxed, with the intention that they will ultimately be abolished. Examples of changes that have been made to the system include the reduction of size of the minimum equity stake that South African corporates are required to hold in their foreign investments, and allowances being made for foreign companies to use their non-South African shares as acquisition capital for M&A transactions by means of a secondary listing on the JSE.

Over and above the statutory framework outlined above, the South African law of contract also obviously plays a significant role in regulating M&A transactions. This is derived primarily from South African common law, which is not codified.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

A new Companies Act has been promulgated, which will significantly overhaul the South African company law regime. The new Companies Act is expected to take effect in the fourth quarter of 2010 or the first quarter of 2011.

Key changes in the M&A sphere include:

a provision for a new statutory merger procedure allowing for the merger of one entity into another or the amalgamation of two entities into a new separate entity (currently there is no provision in South African law for mergers in the true sense of the word, and mergers and acquisitions in South Africa are generally effected through the acquisition by one company of the shares in or business of another company);

b the introduction of a shareholder appraisal rights regime for dissenting minority shareholders in the context of schemes of arrangement, mergers, a disposal of substantially all of the assets or business of undertaking or material changes to the constitutive documents;

c the limitation of the role of the court in schemes;

d the introduction of a new regulator for M&A to replace the Securities Regulation Panel with the Takeover Regulation Panel;

e a new regime for affected transactions; and

f the introduction of a new business rescue procedure.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

After relatively slow cross-border M&A activity in 2009, signs are pointing to a relative upturn, symbolised by the recently announced takeover bid by Japan's NTT Corporation for one of South Africa's leading IT companies, Dimension Data.

There are also numerous investments by mainly Chinese, Indian and Korean companies in South Africa, often focused on the resources sector.

South African companies are investing more and more in Africa in addition to the traditional investment hubs.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

i Black economic empowerment transactions

One of the main drivers of local M&A activity in recent years has been a type of transaction that is unique to the South African environment, namely BEE transactions.

Over the past 10 years or so, the South African government has put in place a regulatory framework aimed at ensuring the economic empowerment of previously disadvantaged black South Africans. It has become a key commercial imperative for companies aiming to do business in South Africa to ensure that they have sufficient empowerment credentials.

From an M&A perspective one of the key elements of the government's BEE policies has been the targets prescribed in respect of black equity ownership, and most of the major companies in South Africa have concluded transactions in terms of which they have disposed of a significant equity stake (generally up to 25 per cent) to black shareholders.

Such transactions have created their own challenges, particularly as BEE investors often do not have access to sufficient funds to pay for the stake that they are acquiring. Previously, the prohibition in South African company law on a company providing financial assistance for the purchase of its shares made vendor financing of such transactions more difficult, but as discussed in greater detail below, this prohibition has recently been relaxed.

The BEE equity ownership requirements have also proved challenging for multinational entities doing business in South Africa. In recognition of this, exceptions have been made for multinationals in this regard in terms of which, in lieu of disposing of an equity interest in their local operation, they can invest in equity equivalent programmes or dispose of a stake in the offshore parent company. Hewlett Packard, for example, has an established an HP Business Institute for the purpose of skills development in the ICT sector as an equity equivalent programme. Other multinationals such as Cisco and Merrill Lynch have concluded empowerment transactions whereby empowerment shareholders acquired shares in the ultimate listed offshore parent companies of those corporations.

Most BEE transactions are dependent upon the dividend flow from the underlying shares and the growth in value of the underlying shares. Due to the economic downturn, dividend proceeds and share growth have been low. This means that a number of BEE transactions are now 'under water'. This may result in a need for the refinancing or restructuring of a number of BEE transactions.

One of the more significant recent BEE transactions was the South African Breweries broad-based empowerment transaction worth 7.7 billion rand. MTN has also recently announced its revised BEE deal with a value of 8 billion rand.

ii Private equity

Prior to the global 'credit crunch', South Africa experienced a significant increase in large private equity deals. Examples of large deals that have taken place include the acquisition by Bain Capital of Edcon Limited, a major South African retailer, for $4.5 billion and the acquisition by Actis of Alexander Forbes, a major player in the South African insurance and financial services industry. Mainly due to the higher cost of debt, the private equity market in South Africa is still slow in the number and value of deals. Recently, a bid by Brait and Management for Freeworld Coatings failed because it was voted down by shareholders.

iii Corporate restructuring

Another key driver of M&A activity in South Africa has been corporate restructurings in the form of demergers (unbundling) of non-core assets by major South African companies. A recent example of this is the unbundling by the Mvela Group and Brimstone Investment Corporation Ltd to its ordinary shareholders of their interests held in Life Healthcare upon the listing of Life Healthcare on the JSE on 10 June 2010.

iv Inward investment

Inward investment is likely to continue to play a significant role in the South African M&A market going forward. A recent example is the takeover bid announced by Japan's NTT Corporation for one of South Africa's leading IT companies, Dimension Data.

v Other significant transactions

In the leisure sector, Gold Reef Resorts acquired Tsogo Sun Holdings for $2.7 billion. In the first half of 2010, the leisure sector made up the largest proportion of M&A in South Africa by deal value.

Another large deal announced in the first quarter of 2010 was the merger of the Momentum Group and Metropolitan Life to create a major new South African insurance group. The deal value is $2.4 billion.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

The South African acquisition finance market has continued seeing a movement away from the borrower-friendly market that existed at the end of 2007 to a loan market that has favoured lenders in 2010. In keeping with the European trend, borrowers have not been able to obtain lending terms comparable with those achievable a couple of years ago. However the local leveraged acquisition market is sector-specific and, for example, borrowers in the resources and allied sector have continued to attract favourable terms from lenders. In other sectors, though, borrowers have struggled to obtain leveraged credit and lenders in this sector have experienced difficulties in syndicating their participation in leveraged deals. Many acquisitions, in particular private equity acquisitions, were financed using offshore 'high-yield' bonds in preference to bank debt financing. This avenue of financing has ceased to be used in the South African market and historical high-yield debt financings have come under pressure.

Due to market volatility certain deals have required modification in order to achieve successful hold positions and in some instances syndications have been postponed as the prevailing market conditions have been deemed unfavourable. In addition market flex terms and market disruption events have become much more prevalent in leveraged finance transactions, something that was fairly uncommon two years ago. There has also been an increase in debt covenant defaults or potential defaults. As a result, many transactions concluded over the past four years have had to be restructured or refinanced.

The number of private equity transactions, including public-to-private takeouts, has decreased substantially during the year.

VII EMPLOYMENT LAW

From an employment law perspective, one of the key legislative provisions in the context of M&A is Section 197 of the Labour Relations Act, which provides for the automatic transfer of employment contracts from seller to a purchaser where there is a sale of a business (or a portion thereof) as a going concern. The effect of this is that the new employer is automatically substituted in the place of the old employer in respect of all the relevant contracts of employment in existence immediately. The employees who are transferred must be employed on terms that are 'on the whole not less favourable', the purchaser is bound by collective agreements that relate to conditions of service and by relevant arbitration awards and any conduct of the seller, such as discriminatory practices, is deemed to be the conduct of the purchaser. Therefore, proper due diligence is key for the acquirer of any business and appropriate warranties and indemnities are advised. In a recent case, it was held that the dismissal of an employee for a reason related to a transfer was held to constitute an unfair dismissal, and the employer was required to compensate the employee therefore.

Pension funds are primarily regulated by the Pension Funds Act. Many South African employers still subscribe to private retirement funds, whose membership is restricted to employees of a particular company or group of companies, although multi-employer 'umbrella' retirement funds are more common among smaller and newer companies. In a merger or acquisition a new employer may only become a participating employer if the rules of the fund allow for the new employer's participation, which may necessitate rule amendments or transfer of business to the acquiring entity's fund. Such a transfer would need to be approved by the Registrar of Pension Funds, which would involve a delay of some months, although retrospective approval is usually permitted on application. Therefore, proper due diligence of the existing fund is advisable, whether it remains the applicable vehicle or transfers its business to a new fund.

Other employee benefits, such as medical insurance, share incentive schemes, housing and building loans, HIV/AIDS education and treatment programmes and post-employment medical subsidisation, among others, are generally dealt with in accordance with the ordinary common law principles of contract or trust law, but in a number of important respects they are subject to the provisions of the Labour Relations Act, the Employment Equity Act, the Basic Conditions of Employment Act and the Constitution, especially in regard to anti-discrimination provisions. Due diligence in these respects is always advised.

VIII TAX LAW

i Secondary tax on companies ('STC'), withholding tax on dividends and value extraction tax

South Africa has an unusual form of taxation known as STC. STC is a second level of corporate tax, which is currently levied at the rate of 10 per cent on the 'net amount' distributed by a South African-resident company, as a dividend. As STC is borne by the company declaring the dividend rather than by the shareholder, STC is not a withholding tax in the true sense of the word.

It has been announced that STC will be replaced with a withholding tax on dividends in the near future. The rate of withholding will be 10 per cent of the amount of the dividend, although such rate could be reduced in terms of some of the double-tax treaties concluded by South Africa to 5 per cent in the case of a shareholding of at least 10 per cent. Although some treaties provide for a zero per cent rate of withholding, the tax authorities have announced that the new dividend withholding tax will not be introduced until such time as the tax treaties have been renegotiated to ensure that at least a 5 per cent rate of withholding tax can be imposed on the dividend by South Africa. These negotiations are taking place. Furthermore, a new Value Extraction Tax ('VET') will also come into effect, probably in 2011. The VET forms part of the new regime which is set to replace STC. The VET will be payable by a company which is a SA resident at the rate of 10 per cent and must be paid by the end of the month following the month in which the value extraction took place. The VET essentially replaces the deemed dividend anti-avoidance rules found in the STC legislation. Four types of transactions will attract the VET, namely loans granted by a company to a connected person at an interest rate below a deemed market related interest rate, the waiver of any loan obligation owing by a connected person to the company, the settlement by the company of any debt owing by a connected party of the company to a third party and when the company ceases to be a South African tax resident.

i Interest exemption for non residents – changes

Currently, interest received by or accruing to non-residents is exempt from South African income tax, provided that the non-resident does not carry on business in South Africa at any time during the course of the tax year, through a permanent establishment. If a non resident receives interest income that does not qualify for the income tax exemption, the tax payable does not take the form of a withholding tax and the recipient of the interest will have to account for the tax.

However, the tax exemption that currently applies to interest earned by non-residents is in the process of being amended. The proposed amendments will apply in respect of any interest that accrues, is received, becomes payable or which is deemed to have accrued on or after 1 March 2011. The general effect of the proposed amendment will be that all interest received by non-residents will now be taxed, although interest will be exempt from South African income tax if the interest is earned in respect of certain domestic investments such as government bonds, bonds listed on the JSE, collective investment schemes, bank deposits (this exemption for bank deposits does not include back-to-back loan agreements designed to circumvent the general rule of taxation and the exemption will not apply if the bank acts as an intermediary to facilitate the borrowing of funds by a domestic company from a foreign lender), international trade finance, dealer and brokerage accounts, and any interest received or accrued to a non-resident from another non-resident.

ii Thin capitalisation changes

The South African tax legislation contains provisions that limit the tax deduction of interest paid on debt arrangements between certain related parties. The rules specifically apply where a non-resident grants financial assistance to a related South African resident or any other South African resident company in which the non-resident has a direct or indirect interest entitling it to participate in at least 25 per cent of the dividends, profits or capital of the company or to exercise at least 25 per cent of the votes in the South African company. In order for the provisions to apply to a specific transaction, the South African Revenue Service must be of the opinion that, having regard to the circumstances, the total value of the financial assistance is excessive in relation to the fixed capital of the recipient of the financial assistance.

These thin capitalisation rules in are in the process of being amended and the amendments are intended to come into operation when the New Companies Act takes effect in late 2010 or early 2011. The amended rules will apply to financial assistance granted by non-residents to South African residents, and to financial assistance granted by non-residents to other non-residents that have permanent establishments in South Africa. The effect of the amendments is that the South African branches of foreign companies will be treated in the same manner as the subsidiaries of foreign companies.

IX COMPETITION LAW

As the thresholds for mandatory merger notification were raised during 2009, fewer mergers are required to be notified to the competition authorities, allowing the Competition Commission ('the Commission') to focus on those mergers having a substantial effect on competition. During 2009/10, the Commission considered 208 merger notifications (compared to 450 mergers finalised in the previous year). The 208 notifications related to 14 small mergers (11 were approved unconditionally, none were prohibited and two were withdrawn); 140 intermediate mergers (131 of these were approved unconditionally, five were approved conditionally, none were prohibited and four were withdrawn); and 54 large mergers (48 of these were approved unconditionally and two conditionally, one was prohibited and three were withdrawn).

It is not mandatory to notify small mergers unless the Commission requires notification of a small merger. However, a guideline was issued by the Commission in 2009, in which the Commission requires the notification of small mergers if, at the time of entering into the merger, any of the firms, or firms within their group, are subject to an investigation by the Commission in terms of Chapter 2 of the Competition Act (which deals with prohibited vertical and horizontal practices, as well as the abuse of dominance) or if, at the time of entering into the merger, any of the firms, or firms within their group, are respondents to pending proceedings referred by the Commission to the Competition Tribunal in terms of Chapter 2 of the Competition Act.

The majority of mergers are approved but the authorities will use their powers in relation to domestic and foreign-to-foreign mergers where they consider competition concerns are raised. They may prohibit mergers or approve them conditionally or unconditionally. Mergers in the sectors identified by the Commission as priority sectors attract closer scrutiny. The Commission's priority sectors are food and agro-processing, construction and infrastructure, intermediate industrial products and financial services. These are regarded as sectors that have an impact on consumers: an impact on the cost of doing business and an impact on economic growth and development or reflect competition concerns (such as featuring cartel conduct).

In 2009, the M&A Division of the Commission revised its service standards, publishing review periods that the Commission will commit to achieving for phase 1 (non-complex), phase 2 (complex) and phase 3 (very complex) mergers. These review periods do not replace the review periods set out in the Competition Act, but the Commission seeks to adhere to these periods, particularly in the interests of expediting the review of non-complex mergers. The Commission commits to reviewing phase 1 mergers within 20 business days; phase 2 mergers within 45 business days and phase 3 mergers within 60 business days.

The amendments to the Competition Act are also worth noting. The Competition Amendment Act has been passed into law but is only expected to take effect in the second half of 2010. Perhaps the most significant amendment is that which provides for an investigation by the Commission where merging parties have implemented a merger without competition clearance. In terms of the Competition Act, failure to notify the Commission of a notifiable merger or the implementation of a notifiable merger prior to approval being obtained is a contravention, rendering the parties liable to pay an administrative penalty of up to 10 per cent of turnover in South Africa and exports from

South Africa. An investigation into whether parties did implement a merger without necessary clearance may be initiated by the Commission or pursuant to a complaint lodged by a third party.

X OUTLOOK

Although the global and domestic economic slowdown has undoubtedly had an effect on the South African M&A market, the key drivers that fuelled M&A activity during the past few years (such as BEE transactions, corporate restructurings, resource-related transactions and general foreign direct investment from India and China in particular) have ensured a steady stream of M&A activity in 2009 and 2010 and are likely to continue to play a significant role in coming years. Other key factors that are likely to play a role going forward include the imminent overhaul of the South African company legislation and the continued relaxation of exchange controls. There is also an expectation that the successful hosting of the 2010 FIFA World Cup will result in increased interest in South Africa by multinationals.

The South African economy does, however, continue to face significant challenges (such as infrastructure development, high unemployment and a burgeoning current account deficit) that may have an impact going forward on the growth of the economy and M&A activity. Other areas of concern include a critical shortage of key skills, the high prevalence of HIV/AIDS, the exorbitant cost of telecommunications and chronic poverty. All of these will need to be addressed if the South African economy is to continue on an upward trajectory and to continue to attract significant foreign investment.

EZRA DAVIDS

Bowman Gilfillan

Ezra Davids is a partner in and the head of Bowman Gilfillan's corporate department. He specialises in mergers and acquisitions (M&A, capital markets and securities law). Mr Davids has led the Bowman Gilfillan team in some of the largest M&A deals in the past year, including the disposal by Barrick Gold Corporation of Barrick Gold South Africa to Gold Fields Limited ($1.55 billion), the acquisition by MTN Group of Investcom ($5 billion) and the disposal by Polyus of its entire shareholding in Gold Fields Limited ($2.02 billion). In capital markets he headed the teams in advising Goldman Sachs and UBS as joint global coordinators in the combined offering by Anglo American plc and AngloGold Ashanti of AngloGold Ashanti shares ($1.69 billion) and Witsgold on its IPO on the JSE Limited.

Mr Davids is also the relationship partner for some of the firm's clients like Goldman Sachs, UBS, Deutsche Bank, Merrill Lynch, Kohlberg Kravis Roberts, Eskom, Transnet, Barrick Gold Corporation, Public Investment Corporation, UPS and Merafe Resources.

Who's Who Legal (2010) has named Mr Davids as one of the leading M&A lawyers in South Africa. He is past chairman of the Recent Developments in M&A of the International Bar Association and is a contributor to a number of international publications. Mr Davids is also a member of the faculty advisory board of the Law Faculty of the University of Cape Town.

ASHLEIGH HALE

Bowman Gilfillan

Ashleigh Hale is a partner in Bowman Gilfillan's corporate department. Her practice focuses on mergers and acquisitions and the privatisation and restructuring of state assets. She also has a broad range of general commercial law experience, for example, relating to joint ventures, IT outsourcing and tender submissions and contract negotiations.

Ms Hale has advised a range of multinational and local companies, including, Sumitomo, Sojitz, Nippon Steel, Bureau Veritas, Alcatel-Lucent, Gemalto, Turbomeca, Marsh South Africa, Ericsson South Africa and Amdocs. Ashleigh has also advised in a number of black economic empowerment ('BEE') equity transactions (acting for both BEE consortia and the companies in which they purchase equity).

In relation to the privatisation and restructuring of state assets, Ms Hale was part of the team which advised Transnet in relation to its proposed restructuring of Spoornet during 2000, and was co-lead attorney representing Turbomeca in relation to its acquisition of the Airmotive Division of Denel. Ms Hale has also advised Transnet and Eskom in relation to the disposal of certain of certain non-core assets and the Botswana Telecommunications Corporation in relation to its proposed privatisation.

BOWMAN GILFILLAN
165 West Street
Sandton, 2146
South Africa
Tel: +27 11 669 9000
Fax: +27 11 669 9001
info@bowman.co.za
www.bowman.co.za