19 - 26 June 2026

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The Legal Team

19 - 26 June 2026

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B-BBEE ARTICLES

SOUTH AFRICA

High Court emphasises true spirit of B-BBEE compliance, not just a black face

The Mpumalanga High Court highlighted the importance of engaging in Broad-Based Black Economic Empowerment (B-BBEE) on genuine terms and in accordance with the Act's intent.

An acting judge commented that being B-BBEE compliant is not merely a "tickbox" exercise for a company in securing certain contracts if the person appointed is not empowered to also participate in the running of the company.

The matter landed before the Middelburg seat of the high court after Ntimeng Johannes, a shareholder of a company called Waterzone, was replaced with a black woman after being used for 14 years to uplift their B-BBEE status.

Johannes contested this and made a range of demands, including the provision of certain company records. The court dismissed several of his prayers but ordered that the company must provide him with certain documents.

Acting Judge HF Fourie criticised the company for not acting in the spirit of the B-BBEE Act by involving Johannes over the years in the running of the company but simply using him as a face. Johannes, on the other hand, was also criticised for not trying to become involved over the years.

Judge Fourie commented that this is an application in which a B-BBEE arrangement has gone awry. It also highlights the importance of transparency and bona fides between shareholders and directors as seen in the light of the Act.

Johannes (the applicant) was years ago appointed to the company so that it could be B-BBEE compliant and continue securing certain work and contracts within the mining industry. Judge Fourie commented that it is unfortunate that it seems the only reason why Johannes was approached was because of his race and to serve as a proverbial "tick-box" for the company to secure certain contracts.

He was given 26% of the shares held in the company, which the court found to be "nothing other than a gift".

At a stage, the B-BBEE rating of the company was held to be insufficient by certain of its contractors. This led to the parties entering into what was phrased as a Share Option Agreement. The status of the agreement was one of the contentious issues in the application. Johannes, meanwhile, complained that, as a minority shareholder, he had been oppressed through the actions of the company as he was kept in the dark regarding its operations.

Judge Fourie pointed out that the Act was not intended solely for historically white-owned companies to hand over money to black individuals, thereby entitling such companies to continue securing contracts because they had now met certain compliance requirements.

The judge said besides serving for the redistribution of wealth, the Act was designed to redistribute knowledge, experience, business acumen, and practical know-how about how certain companies operate.

This is to enable previously disadvantaged groups to acquire such experience that would enable them to perform on the same footing as other individuals who secured some sort of advantage previously to which other individuals were excluded.

“After 23 years, it is inexcusable and unfortunate that a court is required to address what can only be regarded as an irregular application of the B-BBEE Act,” the judge said. He commented that it is clear Johannes was not involved in the operations of the company in a manner in which he ought to have been.

The only reasonable inference to be drawn is that the respondents found it convenient for the applicant to be used for his status in order to secure certain work without seriously giving effect to his involvement in the business, the judge said. Judge Fourie, however, added that Johannes is not without blame as for 14 years he was happy in not becoming involved in the operations of the company.

Zelda Venter
The Star

GAMBLING ARTICLES

SOUTH AFRICA

MPs told of online gambling rules challenges

The National Gambling Board (NGB) says it is compiling a report concerning the challenges surrounding the regulation and advertising of online gambling in SA, which it will share with the policy council soon, reports Business Day.

Board CEO Lungile Dukwana told Parliament's Portfolio Committee on Trade, Industry & Competition that the NGB was engaging with the National Gambling Policy Council (NGPC) on the challenges the board had experienced around online gambling. 'We have now written a report to the NGPC to have this matter deliberated on, especially around online gambling, the issues of bet exchanges, and historical loss tracing.'

Advertising for online platforms has also increased in visibility for SA users. Research has highlighted disturbing trends, including consumers recklessly borrowing money and even using state grants to gamble.

Dukwana said the board was working towards a national policy on the regulation of online gambling**.** The board was also holding discussions with the Department of Trade, Industry & Competition. He said in terms of section 11 of the current National Gambling Act, the NGB was of the view that legislation prohibited interactive gambling. The NGB was thus obliged to ensure it did not allow the practice to continue unabated.

Dukwana said the NGB was also working with Google and Meta with the aim of blocking websites of illegal online gambling platforms after identifying unlicensed operators. He told the committee that gross gambling revenue across all gambling modes showed strong growth, per annum, of 25.7%, 25.6%, and 13.2%, year-on-year, between 2022/23 and 2025/26. Online betting was identified as the primary growth driver, increasing from R23.7bn in 2022/23 to R62.1bn in 2025/26. Casino gaming revenue remained stable over the same period, generating between R16bn and R17bn.

The NGB is working with authorities in countries where illegal offshore gambling sites operate as it fights to shut down the digital platforms, which are taking billions of rands out of SA each month and adding to the country's gambling problem. According to Business Day, non-compliant gambling platforms, generated an estimated R5trn in turnover, while revenue from legal online gambling amounted to R75bn in 2025.

Online gambling platforms not based or licensed in SA make billions from local punters but do not pay tax. A study by AI-powered research group Yazi found 57% of 1 028 respondents sacrificed essential spending to gamble, while 29% borrowed money to gamble.

Full Business Day report
Second Business Day report

LABOUR ARTICLES

SOUTH AFRICA

South Africa: Immigration Compliance Is No Longer Just a Visa Check

For many South African employers, foreign national hiring has traditionally been managed as a visa issue: check the visa, keep a copy, move on. That approach is no longer good enough.

The existing Employment Services Act of 2014 already places labour law duties on employers who hire foreign nationals. The Employment Services Amendment Bill goes much further and, if enacted in its current form, moves foreign national employment into a much more active compliance environment with labour market testing, skills-transfer planning, employment quotas, record keeping, inspections and potential high Labour Court fines.

Current Immigration Obligations

The starting point remains the Immigration Act. An employer may not employ:

- an illegal foreign national.
- a foreigner whose status does not allow employment by that employer.
- a foreigner working in a capacity that is not permitted under their status.

In practice, this requires more than checking whether a visa is valid. Employers must review the visa type, employer alignment, occupation, expiry date, and any conditions attached to the visa. Promotions, role changes, and transfers between entities can create risk if the visa conditions are not aligned.

The Immigration Regulations already require employer undertakings, including responsibility for deportation costs, ensuring passport validity, and notifying Home Affairs of changes to employment.

Employers must also keep records including passports, visas, capacity of employment, earnings records and job descriptions.

This highlights that labour legislation does not sit neatly alongside the immigration framework.

What the Bill May Change

The Employment Services Amendment Bill introduces a more structured compliance framework under a new Chapter 3A, *Employment of Foreign Nationals*. While some provisions reflect existing immigration requirements, the Bill significantly expands the scope of employer obligations.

The Bill introduces a broad labour market expectation. Employers may be required to satisfy themselves that there are no suitably skilled South African candidates before recruiting a foreign national. This resembles the historic labour-market test, but it does align comfortably with the current points-based system for general work and critical skills work visas.

Under the existing framework, Home Affairs now assesses applications on a 100-point framework, with factors including critical skills, qualifications, salary, experience, language, and trusted-employer status. If the Department of Employment and Labour separately requires a local-skills search for all foreign appointments, employers may face two overlapping gateways, each controlled by a different department. Most importantly, this additional requirement may undermine the purpose of the point-based system, which is designed to attract skilled foreign workers in a clear and defined way.

In the new section 12A (2c), the Bill would introduce a general requirement for a transfer of skills plan. While current Immigration legislation limits this requirement to Intra-Company Transfer visas, the proposed change would extend across any work visa category. Potentially including a short-term work visa in terms of section 11 (2) of the Immigration Act.

The Bill does give the Minister of Employment and Labour the right to exclude certain employers from such a requirement. Still, while I know that the Minister of Home Affairs tries to use Immigration to grow the economy, the interest of previous Ministers of Labour was to protect existing employees.

A further significant development is the proposed introduction of a quota system under section 12B, which South Africa currently operates but which the Immigration Act does not provide for.

The Bill gives the Minister of Employment and Labour the right to introduce sectoral, occupational or even national quotas. If quotas are applied too broadly, they could undermine the purpose of the critical skills visa route and the 100-point framework.

Finally, the amendments introduce materially higher financial penalties for non-compliance, with potential fines of up to ZAR 100.000 for the first offence and ZAR 200.000 for a second offence within three years, and a maximum penalty of ZAR 1 Million or 10% of turnover.

These penalties are materially higher than those currently set out under the Immigration Act.

The practical response is not to stop hiring foreign talent. That would be commercially short-sighted. The better response is governance.

Practical Steps for Employers

The response is not to reduce international hiring, but to strengthen governance.

Employers should:

- should maintain a foreign national register
- verify visa conditions before appointment and at every role change
- track visa expiry dates
- retain records for at least the required period
- document the rational for hiring foreign nations
- keep evidence of recruitment efforts and skills requirements
- evidence of the skills needed and skills transfer, where applicable.

Compliance Risk is Increasing

The direction of travel is clear: South Africa still wants skills, investment and lawful foreign employment, but expects employers to demonstrate that they do not undermine local labour protections. In this environment, good immigration compliance is not paperwork. It forms part of workforce risk management.

Written by Andreas Krensel, *Senior Director, Africa and Europe*

SECOND-HAND GOODS ARTICLES

SOUTH AFRICA

Major VAT win for SARS

The South African Revenue Service (SARS) has scored a major win in the Constitutional Court against companies that sell second-hand gold at zero VAT rates.

The apex court delivered its unanimous ruling on the issue, ending a protracted years-long legal battle over interpretations of South Africa’s VAT laws.

The matter involved Lueven Metals, a company that trades in and refines precious metals, including gold. The group is a buyer and reseller of second-hand gold, such as scrap jewellery.

Lueven entered into an agreement with banking group Absa to supply gold bars that it refined to a purity level of at least 99.5%, or pure gold.

However, to produce the bars, the group would deposit its less pure gold scrap and bars with Rand Refinery, which would melt and refine the bars along with other depositors.

Crucially, Lueven had for years treated its sales to Absa as zero-rated for VAT. This also allowed the group to deduct input tax paid to suppliers of the second-hand gold it purchased.

Between 2018 and 2020, the group expected a tax refund of over R51 million, which triggered an audit from SARS.

The audit, which concluded in 2021, found that VAT declarations and tax invoices provided by Lueven reflected zero-rated supplies of over R4 billion had been made to Absa and Rand Refinery.

SARS determined that the gold purchased by the group had previously undergone a previous manufacturing process, rendering it ineligible for zero-rating.

According to South Africa’s tax laws, for gold to qualify for zero-rating, it must meet three requirements—the third of which is that it has not undergone any manufacturing process other than refining, manufacturing, or producing bars.

Lueven disagreed with SARS’ findings and launched a legal challenge in the High Court in June 2021.

The court dismissed the application, leading to an appeal being launched by Lueven at the Supreme Court of Appeal in 2023.

The SCA ultimately ruled in favour of SARS, dismissing the appeal on a preliminary point, never pronouncing on the actual issue before it.

This led to the matter being referred to the highest court of the land, with the Constitutional Court hearing it in November 2025 and delivering its ruling this week.

SARS going for gold

According to the ConCourt, the main argument presented against SARS' interpretation of Section 11(1) of the South African Value-Added Tax (VAT) Act—which deals with zero-rating—was unconvincing.

In its litigation, Lueven had argued that the wording of refined gold, and particularly "which has not undergone any manufacturing process other than the refining thereof", was open to interpretation beyond its simple reading.

It argued that refining 'eradicates' historical manufacturing processes, and that refining processes mix and comingle both newly mined and recycled gold, making it impossible to distinguish afterwards.

It also argued that none of the prevailing Acts contain a distinction between newly mined gold and recycled gold, requiring only that they be in a prescribed form and sold to prescribed groups.

However, SARS submitted that the ordinary meaning of the words in the Act was clear:

- The sale must be to the prescribed purchasers
- The gold must be in one of the prescribed forms
- The gold must not have undergone a process other than that of the refining thereof or manufacturing or production of the prescribed forms.

The Revenue Service said that the last clause expressly excludes second-hand gold from zero-rating, and that Lueven's interpretation of the laws would effectively render the entire clause redundant.

It also rejected the notion that "refining" eradicated historic manufacturing, saying that it is a process to remove unwanted materials from gold to improve its purity levels.

This does not remove the fact that second-hand gold has undergone previous manufacturing processes, it said.

Regarding the mixing and comingling of gold, SARS added that it is up to the supplier to properly declare its taxable supplies. Both the refiner and supplier track the volume and have knowledge of these supplies.

The ConCourt ultimately agreed with SARS in the matter, describing Lueven's arguments as "fallacious", "untenable" and "unconvincing".

"The High Court's interpretation of the section was correct: Section 11(1)(f) of the VAT Act excludes the supply of second-hand gold," the ConCourt said.

The appeal was dismissed with costs.

While SARS has ended years of litigation with a win, the victory comes just as Section 11(1)(f) of the VAT Act has been placed on the chopping block.

Presenting the 2026 National Budget in February, Finance Minister Enoch Godongwana proposed that section 11(1)(f) of the VAT Act be repealed.

If the section is repealed, the domestic supply of gold bullion to SARB, SA Mint and SA Banks will be subject to VAT at the standard rate, currently 15%.

Legal experts have warned that this will increase the cost of acquiring such gold in the South African market and will have other serious consequences for the economy.

The full ruling can be found here:

Businesstech

TOBACCO ARTICLES

SOUTH AFRICA

Strict new smoking laws for South Africa are coming

After years of delays, amendments, lapses, and revivals, South Africa is finally moving closer to implementing new smoking laws.

The Portfolio Committee on Health has voted in favour of the desirability of the Tobacco Products and Electronic Delivery Systems Control Bill.

Broadly, the bill seeks to tighten regulations on smoking and vaping in South Africa by:

- Banning indoor smoking and vaping in public spaces;
- Enforcing plain packaging with graphic health warnings;
- Removing all retail product displays;
- Prohibiting advertising, sponsorships, and promotion of tobacco and e-cigarette products;
- Restricting sales through vending machines, including at certain private spaces where children or non-smokers are present;
- Treating vaping products the same as traditional cigarettes.

Violations of the law will carry penalties such as fines and lengthy jail terms.

However, the implementation of the proposed laws is still some way off, with the committee only greenlighting the next phase of the lawmaking process.

This follows an extensive public consultation process, which was reissued upon the formation of the seventh administration following the 2024 National Elections.

The bill, which has been in process for several years, concluded its last round of public consultations at the end of 2025.

The committee conducted hearings in 27 municipalities across all nine provinces, with almost 7,900 people attending, 1,113 oral submissions, and about 40,000 written submissions.

Members of the committee voted in support of the bill, but made it clear that this support was contingent on significant amendments being made before it is eventually presented to the National Assembly.

These would be to address various points of concern raised during the public consultation process, such as differentiating between combustible cigarettes and non-combustible nicotine products.

The bill, in its current form, treats combustible and non-combustible products through the same regulatory approach.

"It has become unmistakable, through the scientific submission and through our own deliberations as a committee, that not all tobacco and nicotine products carry the same risk," the committee said.

The Department of Health, in its March 2026 responses to public comments, has also officially accepted differentiation as a guiding principle.

While the motion of desirability is an important step forward, the bill will still take some time to be processed before becoming law.

It will now move to clause-by-clause deliberations where MPs will consider amendments, including those that address the concerns raised.

From here, the committee will finalise its report and send it to the National Assembly for further debate.

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