

# DealMakers<sup>®</sup>

RENEWABLE ENERGY

2022



# FOREWORD



MARYLOU GREIG

Over the next two weeks, global leaders will gather in Sharm el Sheikh, Egypt, to discuss climate-related topics, as countries address the struggle to cut greenhouse gas emissions amid a global energy crisis, war in Europe and rising inflation.

Africa is home to some 17% of the world's population, but contributes only 2% to 3% of its carbon emissions, and according to the Energy Democracy Initiative, there are three key drivers for a global energy transition away from fossil fuels. The first is the imperative for all governments and non-state actors to take urgent action to address climate change. The second is the need for energy security. The third is the massive advances made in the past few years, in terms of technology, innovation and affordability by the renewable energy sector. The key challenge for such a transition in South Africa is that the shift away from the dependence on coal is managed in a manner that addresses the most pressing socio-economic challenges, namely poverty and inequality.

Last year, South Africa, the continent's most industrialised economy, secured \$8.5 billion in loans and grants from a group of rich countries. However, President Ramaphosa told Parliament days before flying out to Egypt to attend COP27 that the money was not enough, with the release of a just transition investment plan suggesting that South Africa would need \$83bn over the next five years for its plans to cut carbon emissions, harness economic opportunities from the energy transition, and support affected communities. Earlier, the World

Bank indicated that South Africa would need around \$500bn by 2050 to achieve carbon neutrality.

The Renewable Energy Independent Power Producer Procurement Programme (REIPPPP) was announced in August 2011, and has since allocated projects to over 92 Power Producers, injecting over 6,300MW of power into the power grid, mainly from solar and wind generation. These sources currently make up about 8% of South Africa's energy mix, but a target of 50% electricity from renewables is perfectly feasible and is the minimum that the country should aspire to.

In South Africa, companies are using M&A to accelerate shifts in their portfolios. Fluid M&A market dynamics will continue to provide a myriad of opportunities for resilient companies to transform their portfolios and reposition themselves for the great energy transition, which will involve both divestments of high-carbon assets and investments in the energy transition.

Articles carried in this feature give insightful information on this topical issue, and the "Meet the Specialists" section introduces some of those individuals who have made dealmaking in the energy space their passion. ♻️



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# PRACTICE MAKES PERFECT



- **South Africa Law Firm of the Year**  
Chambers Africa Awards, 2021 & 2022
- **ESG Initiative of the Year**  
African Legal Awards, 2021 & 2022
- **Tax Firm of the Year: South Africa**  
International Tax Review EMEA Tax Awards,  
2021 & 2022
- **Environment, Energy & Natural  
Resources Team of the Year  
(Mid-Large Sized Practice)**  
African Legal Awards, 2022
- **M&A Firm of the Year: South Africa**  
International Financial Law Review  
Africa Awards, 2021

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# Appropriate regulation is needed to help address SA's power crisis



MZUKISI KOTA AND JASON VAN DER POEL, PARTNERS, WEBBER WENTZEL

**A**ction is urgently needed to create enabling policies and regulations to liberalise South Africa's energy market and kickstart major investment

Over the next eight to 12 years, it is estimated that South Africa will have to build between 50 and 60 gigawatts (GW) of new energy capacity to replace its retiring coal-fired fleet, to meet forecast growth and demand. This will require investment of an estimated R1,8 to R3trn, without factoring in the cost of expanding the transmission infrastructure.

As advisers to government on various Independent Power Producers Procurement Programmes, and to the private sector on many private generation power projects, Webber Wentzel is well-versed in some of the structural issues that will have to be resolved if there is to be any hope of solving the power crisis.

## 1. COHERENT POLICY AND IMPLEMENTATION

Although South Africa has published two iterations of the Integrated Resource Plan (IRP), setting out expected demand and the ideal energy mix for the future, these plans have not been accompanied by a coherent overarching energy policy, nor have they been implemented at the required pace to avoid the current supply gap. South Africa's main source of power remains Eskom, a vertically integrated monopoly with mainly coal assets. The IRP needs to be urgently updated to increase the proportion of other forms of energy, such as renewables, storage and gas in the mix.

On a pro bono basis, Webber Wentzel has advised Business Unity SA in its review of the Electricity

Regulation Act Amendment Bill, which was expected to come into force by the end of this year – a deadline which is looking increasingly unlikely to be met. The Bill will restructure the electricity supply industry in some fundamental and necessary ways. It takes the transmission function out of Eskom and into a separate entity, the Transmission System Operator (SOC) Ltd, which will set up a central purchasing agency to buy and sell power to customers under contracts.

This will create a step change in electricity regulation in SA. It will decentralise and liberalise the market to bring more private power onto the grid, together with whatever Eskom has to offer.

## 2. CONTINUE TO LIBERALISE THE ENERGY MARKET

Despite interventions in the last two to three years, steps taken to liberalise South Africa's electricity supply have been too small and too reluctant. Caps on the size of exempted private generation plants were gradually lifted, but the focus was on retaining central

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KOTA



VAN DER POEL



government planning. Even with the latest touted measures to completely remove the caps in respect of private parties, municipalities still need ministerial determinations and feasibility studies in order to directly procure generation capacity.

It should be possible for a municipality that can secure project finance to procure its own power, without having to overcome further regulatory hurdles. If municipalities were enabled to get utility-scale power directly, it would help to tackle the power crisis.

For the private sector, renewable energy ticks all the boxes: it helps businesses to decarbonise, shows that they are good corporate citizens, and helps them to manage cost and security of supply.

As the private sector seizes the opportunity to generate its own power, Webber Wentzel is advising on some of the biggest projects currently under way, like Anglo American's joint venture, Envusa Energy, with EDF Renewables. Envusa will procure about 600MW of solar and wind power for Anglo and De Beers sites in Southern Africa.

Webber Wentzel is also acting for Sasol in the procurement of about 900MW of renewable energy from independent power producers, as well as advising Exxaro Coal on its procurement of 80MW of solar power for its Grootegeluk Mine; Coca-Cola on its procurement of rooftop renewable energy at sites elsewhere in Africa; and MTN on its carbon neutrality strategy, including rooftop, ground mounted and wheeled renewable energy generation.

A lot of our work at present is advising on private

power deals and assisting bidders involved in the REIPPP Programme.

On the just energy transition, we are advising on new regulations and assisting parties involved in the energy procurement plans of some of the larger municipalities.

### 3. RESOLVE TRANSMISSION BOTTLENECKS

One of the criticisms of the REIPP Programme was that it did not limit or otherwise delineate where projects could be situated – this was a missed opportunity. We still need to address issues like re-using the infrastructure around obsolete coal-fired power stations, as South Africa moves to net zero and faces bottlenecks in transmitting power from grid constrained areas in the country, such as the Northern Cape (solar) and the Eastern Cape (wind).

Regulatory change is needed as a matter of urgency, to address municipal wheeling rules and tariffs. A number of projects in the pipeline may not happen in the near future because they need to be wheeled through municipal distribution infrastructure, and there are no clear and consistent rules on wheeling at this level. Nersa needs

to develop a coherent, consistent set of rules that allow for transparency on tariffs, and in a way that is economic for end-users. Under the Constitution, national government has powers to “impinge” on some municipal competencies when required in the national interest. Under the ERA Amendment Bill, the transmission system operator (TSO) will be in charge of grid development and has proactive obligations to ensure that the grid works as well as possible. ♻️

For the private sector, renewable energy ticks all the boxes: it helps businesses to decarbonise, shows that they are good corporate citizens, and helps them to manage cost and security of supply.





Jason van der Poel  
Webber Wentzel

Partner and Head of the  
Webber Wentzel Energy Sector



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**Q** *How long have you focused on energy law?*

**A** Since about 2010. I started my career in law in M&A and studied my Masters in banking and finance law at University College, London, where I was inspired by the concept of using finance to achieve developmental outcomes. After I completed my articles, I worked for Allen & Overy in the Netherlands before returning to South Africa, and Webber Wentzel, in 2005. Having spent some years working on PPP projects, in 2010 we received a mandate to help government with the REIPPP Programme and I started to learn about energy law and regulation. In 2011, because we had experience advising government on the REIPPP, and there were too few law firms to advise all the private sector parties looking to bid, we were permitted to set up a separate ring-fenced team to advise private parties. I headed that team. To date, we have worked on about 60 private projects. Since the August 2021 lifting of the 1MW cap on private power generation, we have seen an avalanche of private procurement.

**Q** *Why do you enjoy this specialty?*

**A** My main motivation is to do work that has an impact on global sustainability. As a father and family person, I want to be able to look my children in the eye and say I help to bring about positive outcomes. That doesn't get more central than the generation of clean energy to grow the economy and for climate sustainability.

**Q** *Do you participate in any sports activities?*

**A** I really enjoy endurance sports. I have run ten Two Oceans Ultras, two Comrades Marathons, and have run in various marathons and half-marathons in South Africa and other countries. Sport is something we all do as a family – my wife, who is from the Netherlands, is a keen hockey player and she co-ordinates the youth section of Wanderers Hockey Club. Our daughter plays hockey and our son plays water polo.

**Q** *Do you think this area of expertise requires any special attributes and if so, what would you say they are?*

**A** Dedication to good outcomes and endurance. I have an incredible team working with me and am very grateful to them, and very grateful to Webber Wentzel for the opportunity to work in this exciting field.

**Q** *Why is this an exciting sector to work in?*

**A** Because it is a very meaningful area that creates positive outcomes. You just have to look at the quality of life and opportunity of someone who has access to cheap electricity compared to someone who doesn't. It has a big multiplier effect on people's lives. Being part of the solution to South Africa's energy crisis makes me feel I am adding something to SA, rather than just complaining about it. ♻️





## Mzukisi Kota

Webber Wentzel

Partner, Public Law and Deputy Head of the Webber Wentzel Energy Sector



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**Q** *How long have you focused on energy law?*

**A** About 12 years. When I was studying for my Masters at Leiden University, I was trying to decide whether to go and work for an international organisation or return to South Africa, because I wanted to have a human rights impact. I had a conversation with Webber Wentzel, at the time that government was formulating its first renewable energy programme and Webber Wentzel was advising on it. The partners convinced me that the programme would have a lasting impact, benefitting the country from a developmental perspective by providing much-needed infrastructure and would grow the economy through the direct foreign investment that would flow from it. So I came back to South Africa to work in this sector, among other things.

**Q** *What are some of the biggest energy deals you have worked on?*

**A** I was part of the team that advised government on the first four rounds of the REIPPP Programme, helping to design the procurement framework and commercial agreements. I helped with formulating policy and drafting a number of legislative amendments over the years. I was also involved in the recent Risk Mitigation IPPP. I've worked on other major energy infrastructure, including

Transnet's New Multi Products Pipeline, various matters for gas traders, and, most recently, on the Anglo American decarbonisation strategy.

**Q** *Do you have any unusual hobbies?*

**A** I am a singer in one of the leading chamber choirs in South Africa, the Chanticleer Singers, which is conducted by Richard Cock.

**Q** *Why is this an exciting sector to work in?*

**A** The energy sector is constantly evolving – particularly because it has a close relationship to technology and innovation. This means that as a participant in this space, you are constantly discovering new ways of thinking about solutions for old and new problems, particularly in light of the latest developments in science and engineering. To be part of this sector at the level at which we operate, means we are part of the crafting and development of new products and strategies to ensure that the measures adopted by our clients are, as far as possible, adaptable and future-proof. In addition, the diversity of clients we serve and the different nuances of their commercial needs – even in relation to the common theme of energy security - means that we are always having to develop bespoke solutions as no two matters are identical. This makes for very exciting work days! ♻️

