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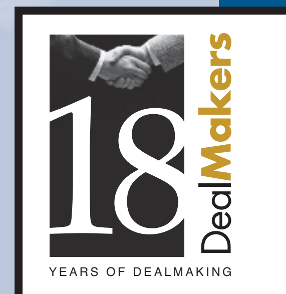


## THE OVAL TABLE

Membership of the Oval Table, which is by invitation only, comprises six of the corporate finance players and four corporate law firms; membership is held on a one-year cycle.

Representatives of the firms make up DealMakers' Editorial Advisory Board which meets half yearly.

When we first launched DealMakers back in the year 2000, the first job we set ourselves was to be a journal of chronological record for all deals in each quarter involving public companies listed on the JSE, and where possible to list and rank as many, if not all, the firms involved in advising parties to those transactions. The following year this was extended to include the selection of the Deal of the Year and the DealMakers of the Year, whose success was celebrated at an annual Gala Awards Dinner.

The idea of starting such a publication came from conversations had with people in the industry and David Gleason, as editor and publisher, was both well connected and controversial – he happily walked where angels feared to tread. This ensured that when DealMakers came across opposition either to the inclusion, or not, of certain deals and transactions, we were able to make independent decisions.

Looking back in the library files in which the listed companies Sens (Stock Exchange News Service) announcements and newspaper articles are housed, it is quite startling to see how far things have come over the past 18 years from a disclosure perspective. Information on M&A activity in the early days of the new millennium was gleaned from the announcements made by companies in the local newspapers and from articles written by seasoned journalists. Changes in JSE listed requirements obliged companies to disseminate any corporate news or price-sensitive information on the service prior to using any other media outlet. Announcements carried little in the way of added information and some companies proved remarkably unwilling to disclose or confirm information already lodged somewhere in the public domain. In particular, a handful of companies declined to release information on how long a deal took to conclude, the identities of the corporate financiers, the legal and accounting advisers and the value of the deal.

What we did find was that, in the lengthy process of checking and re-checking the information contained in the deal tables, disclosure was highly erratic as there was, at the time, no acceptable yardstick for reporting and the information given was often irregular in nature. In the following years DealMakers extended its reach to recording deals between unlisted company and information covering a wide range of corporate finance activity, such as capital raising, restructuring, unbundling and JSE listings which has recently been expanded to include listings on the three new local exchanges.

On this journey of almost two decades, DealMakers has seen just how resilient the South African M&A industry is. Activity has continued within an environment affected by the terrorist attacks on the World Trade Center and the Pentagon, the dot.com bubble explosion, the 2011 revolutions in North Africa and the 2008/09 global economic and financial crisis. Despite these global challenges and including the maladministration under President Zuma's watch, particularly during his second term, the country has retained its position as an investment destination on the continent with a growing middle class, and good financial and consumer industries. This was boosted by the fact that, as the continent became increasingly connected and reforms implemented by African governments produced a more business-friendly environment, South Africa played an important role in attracting and channelling investment into neighbouring countries.

Tough times have seen a shake-out of advisory firms with firms either disappearing or absorbed by stronger competitors. In 2002 no fewer than 74 financial advisers were listed in the DealMakers ranking tables, by 2016 this had fallen to 50 advisory firms in this category. Some JSE listed companies experienced a similar fate; 668 were listed in 2000 and as at the end of 2016 this had fallen to 383.

By and large in that first year, in which DealMakers itself was on a high learning curve, we encountered considerable co-operation and friendliness from those involved in the industry and from most of the companies in which we approached in the course of clarifying and supplementing the information publicly available. Interaction with advisory firms was instrumental in ensuring that DealMakers developed into a relevant publication and out of this a few years later evolved the DealMakers' editorial advisory board, The Oval Table. The relationships and friendships built up over the years have provided DealMakers with a strong foundation on which it continues to grow. The support and guidance of the industry has been truly remarkable and this was made possible by the industry's open door policy with the DealMakers team, for which we are enormously appreciative. ■

***Marylou Greig***
***Editor***

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# Some personal reflections

## . . . from a Corporate Finance viewpoint

DealMakers is celebrating its 18th anniversary, having launched half way through my career which started at Standard Merchant Bank 36 years ago!

In those early days, theoretical corporate finance and the valuation of companies were still in their infancy and it was very difficult to collate information about companies and sectors. There were no central repositories and definitely no Google. You had to go to the library, look for a box file and, hopefully, inside the box file would be annual reports, brokers' reports and some press cuttings. You then had to "write" your document, with the assistance of a good typist, and, if you made any mistakes the entire paragraph had to be retyped. Photocopiers were a new thing and, if you wanted to send a document somewhere by fax, you had to make sure the recipient's fax machine was the same brand as yours. The back office still used adding machines, there were no PC's and calculators were rudimentary. Proof-reading prospectuses meant many late nights at the printing company, which still used hot metal characters in printing trays that had to be manually rearranged if you changed a single word. As a young member of the department, many of your key tasks were largely administrative and secretarial in nature.

By the time DealMakers launched 18 years later in 1999, the Corporate Finance world had moved on substantially, but websites were still a new thing and the number of internet users in SA were only around 2 million.

I will never forget 1999, because it was the year in which Nedcor launched its attempt to merge with Standard Bank, eventually resulting in South Africa's highest profile hostile bid. Earlier in the same year, Standard Bank had also acquired control of Liberty Life from Donald Gordon and unravelled the complex circular control structure (in much the same way as Anglo American and de Beers had controlled each other). SA was coming to the end of the period of conglomerates which were so fashionable in the exchange control dominated apartheid era. In an article "Two decades of financial markets' success in South Africa", Muitheri Wahome cited research reflecting that in 1994, 83 of the top 100 companies in South Africa were owned or controlled by six conglomerates. Ten years later, the number had dropped to 47, reflecting the growing maturity of South Africa's equity markets.

JACKO MAREE

Soon after the first democratic elections in 1994, we started seeing significant financial sector reforms that have, since then, completely transformed local financial markets.

Wahome traced how the Johannesburg Stock Exchange embarked on a process of modernising South African equity markets, and how our stockbroking industry was fundamentally changed as foreign bank entrants acquired local firms, variable commissions replaced fixed commissions, stockbrokers were allowed to trade stocks and bonds as principals, and electronic screen trading and settlement replaced the trading floor and "open outcry" system. Foreign ownership of the JSE increased from an estimated 9% in 1996 to 47% in 2014, according to Bank of America Merrill Lynch. In the late 1990's we also saw the internationalisation of companies like Anglo American, South African Breweries, Old Mutual and Didata and Investec, all of which elected to diversify their investor base to fund their international expansion.

In 1996, the Bond Exchange of South Africa (BESA) was granted an exchange licence. Wahome points out how structural improvements since then have seen the development of the yield curve, the rise of a vibrant secondary bond market, the creation of bond indices, the introduction of inflation-linked bonds, the rise of corporate bond issuance, and the development of securitisation and derivatives and over-the-counter products.

Over this period of time, the major global investment banks all established a presence in South Africa and by 1999 it had become much tougher for smaller advisory firms to survive. As a defensive mechanism, and to be able to compete with the foreign entrants, Standard Bank merged its Merchant Bank and Corporate Banking division to form Standard Corporate and Merchant Bank (SCMB) in 1995, combining the specialist skills of its investment bankers with the

large balance sheet and client base of the commercial bank. Most other large local banks followed suit.

### So, how has Corporate Finance changed over the last 18 years?

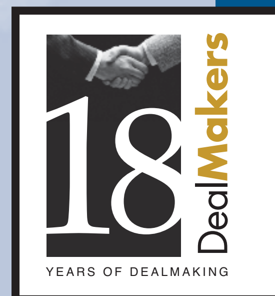
- Focus: The entry of international competitors challenged all of us to change the way we think about our clients and to offer more innovative solutions, leveraging our strengths to best effect.
- Specialisation: It is no longer sufficient for a corporate finance team to consist of generalists. The pace at which our clients' businesses have evolved, and the industry insight that they now demand, has forced us to specialise.
- Deeper insight: As information has become commoditised and research material has proliferated, we are required to demonstrate much deeper insight in order to build "trusted adviser" relationships with our clients.
- Distribution critical: When the institutional investor base was mostly domestic, it was easy to identify and keep in contact with the major investors. As the international investor base has grown, we have had to establish our own presence or form partnerships in the most important global financial centres.
- Combining debt and equity financing: Financial institutions are increasingly having to bring not only their distribution capabilities, but also their balance sheet strength to bear to structure and win mandates.
- Private Equity: These firms are now significant drivers of M&A activity, as seen in recent years in the categories of transactions recognised by DealMakers.
- Importance of BEE: BEE considerations have significantly boosted activity in the market, and added regulatory complexity.
- Compliance: The increased complexity of relationships with clients, local and international legislation, and reputational risks, have forced all firms to institute much more rigorous internal processes and procedures.
- Longer working hours: Globalisation has brought with it clients in other time zones and electronic communication means that corporate financiers are always "available". Documents can be generated instantaneously for reproduction and transmission, and clients expect much more rapid turnaround times than in the past. It all adds up to longer working hours.

### What has stayed the same?

- Finding answers to complex financial problems: There is no industry like Corporate Finance to stretch the limits of your intellectual capacity, and to pull together a team of multi-skilled individuals to deliver a transaction.

**There were no central repositories and definitely no Google. You had to go to the library, look for a box file and, hopefully, inside the box file would be annual reports, brokers' reports and some press cuttings.**

- Understanding clients' strategic needs: In Corporate Finance, we have the privilege of spending every day working with the top business people. There is nowhere to hide in a strategic conversation with a CEO about whether or not a specific transaction will add value to his or her business.
- Creativity, innovation: Just when you think there is nothing new to be unlocked, a competitor delivers a transaction that delivers a new solution for an old problem.
- Understanding the rules and constraints: Corporate Finance always has been and always will be about achieving a specific goal within set parameters, be they legal, financial or otherwise, within the context of a specific industry.
- Partnering with lawyers, other advisers: We deliver our best results when we work in teams, and those teams are not restricted to the people within our own organisations.




- Working in a professional environment with smart people around you: I loved my years in Corporate Finance, and enjoy being able to step into that world again, from time to time. The field draws some of the brightest people, and they are challenged on an ongoing basis by their colleagues, clients and peers.
- Some colleagues become clients: In the teams that I have worked in, I have seen my friends and colleagues become the CEO's of large South African and multi-national companies, and I see that trend continuing today.
- The adrenalin rush when the deal comes together: Finally, as all those in the Corporate Finance industry will know, the process of delivering a successful transaction for a client is mostly not a very glamorous affair. It entails long conference calls and deal meetings, exhaustive debates on transaction issues and constraints, countless pages of PowerPoint, and many sheets of Excel. But, every now and again, when you receive that perfect offer, when you get an acceptance of your proposal, when the shareholder vote goes through, or when the regulators sign off, you feel on top of the world, and ready to go back to work and to do it all over again. ■

***Jacko Maree is Deputy Chairman, Standard Bank.***

# . . . from a Legal perspective

It is a great pleasure to contribute this article as part of DealMakers' 18th birthday celebration. The take-over industry is a very important contributor to a country's economy; DealMakers has, through its research and statistics, as well as its various publications, added value to this "industry" – for this, my heartiest congratulations.

There are various identifiable factors that have a significant impact on the volume and value of transactions in South Africa's M&A industry, including:

1. the health and stability of the external economy;
2. the health of the domestic economy;
3. the strength or weakness of the rand;
4. the regulatory environment, including regulatory certainty;
5. political stability; and
6. technological change.

Over the past 18 years, these factors have varied considerably. They impact almost equally on cross-border take-overs and domestic transactions. Foreigners have a choice of favourite investment destinations and the investment dollar is particularly sensitive to the rule of law, political stability and regulatory certainty.

DealMakers 18 YEARS OF DEALMAKING

On the positive side, South Africa's company laws and take-over regulations are in keeping with the best in the world, and our legal system, courts and regulators have also contributed favourably to a robust, well-functioning take-over industry. Further, our sophisticated banking system and talented investment bankers result in well-structured transactions with excellent access to the required funding.

Factors and events that have impacted on our M&A industry over the last 18 years are numerous and include, firstly, the 2008 global financial crisis. South Africa withstood this financial disaster better than most. This is indeed a tribute to our regulators. Secondly, there was a continuing strengthening of merger control in terms of our Competition Act. In this regard, it is necessary to distinguish between the substance of our merger control laws and the procedure for evaluating mergers after they have been notified. It is respectfully submitted that the process is far too "lawyered" and approximates to a lengthy civil trial. Reform in this regard is much needed. The resultant uncertainty, cost and delay chokes off M&A activity. Thirdly, regulatory uncertainty in the mining industry has been a disappointment and has resulted in mining transactions being lost to South Africa in favour of other, more investment-friendly jurisdictions. Fourthly, changes in laws relating to black economic empowerment have considerably increased M&A activity. Fifthly, the growth of the private equity industry has also significantly increased M&A activity. Sixthly, changes in technology across the board, and particularly the growth of IT companies, has made its mark on the take-over industry. Finally, changes in tax laws impact on the structure of transactions rather than their volume and value. An important innovation introduced in the new Companies Act, the appraisal remedy, does not appear to have had a meaningful impact on the M&A industry. There have been no reported cases involving the appraisal remedy, but this does not mean that the threatened use of this remedy has not resulted in more favourable offers.

**MICHAEL KATZ**

A matter of great surprise is the paltry use being made of the statutory merger introduced into the new Companies Act in terms of s113. There are numerous benefits of utilising this procedure, including obviating the need to obtain the consent of counterparties in the acquisition of a business. In addition, there is a simplified mechanism for transferring immovable property. Practitioners don't appear to recognise these benefits.

A well-functioning, active take-over industry is very valuable to a country. In the first instance, it is to the benefit of a country that non-performing management, which is one of the classic motives for a take-over, should be capable of being replaced by more effective management that will utilise the company's assets more effectively for the benefit of all its stakeholders, including shareholders, employees and financiers. Secondly, corporate governance is enhanced when non-performing management is aware that shareholders can "vote with their feet" and that there will be no protection from overly stringent take-over laws for poor performance or unethical behaviour. Shareholder activism has not, however, been a material driver of M&A activity. Furthermore, hostile bids have been rare in South Africa over this period.■

*Michael Katz is Chairperson of ENSafrica.*

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# A Q&A on the changing M&A landscape

## In your opinion, how has the M&A landscape changed/evolved over the last 18 years?

It is hard to believe it has been 18 years. I remember when I was invited to attend my first Annual DealMakers Gala Awards. Webber Wentzel had been shortlisted for the Anglo American Plc/De Beers transaction and I was scrambling around trying to find a tux to wear to the awards. That year we won both the *Deal of the Year* and the *Legal Adviser of the Year* award. There were principally only 2 partners (John Jarvis and Bruce Cleaver) on the transaction - and I assisted. Today a single transaction can involve more than 50 lawyers. This just goes to show how the complexity of deals has changed over the last 18 years. Where in the past we all played more of a generalist role, the large legal firms gradually saw the emergence of specialist skills and teams.

CHRISTO ELS

The new Companies Act (71 of 2008), which came into effect on 1 May 2011, fundamentally changed the way in which legal firms handle takeovers. One of the most significant changes was that court involvement used to be mandatory when requisitioning and sanctioning a scheme. Nowadays, court oversight and sanction is only required if demanded by shareholders. None of the large takeovers in the recent years involved court oversight. Other regulatory changes included the introduction of a shareholder appraisal right, and the refinement of the requirement for a fair and reasonable report to be provided by an independent expert to the board and distributed to shareholders.

## Is there any particular transaction which has stood out for you?

Webber Wentzel acted as legal advisor and joint tax advisor to Walmart Stores, Inc. in the formation of a strategic partnership and the acquisition of a controlling interest in Massmart Holdings Limited. That transaction stood out for me, not because of the deal value, but because of the complexity of the deal; it also signalled a change in the competition authorities' treatment of large foreign direct investment. The deal was one of the most talked about, analysed and commented on transaction in South Africa at the time. It was also the first time that the Minister of Economic Development intervened in a transaction and we went all the way to the Competition Appeal Court. Based on this experience, we can better anticipate how public interest provisions will be assessed in mergers, and plan transactions accordingly.

Another memorable deal was the acquisition by Industrial & Commercial Bank of China of 20% of the Standard Bank of South Africa. It afforded me a hands-on opportunity to work with Charlie Jacobs (who has recently been elected as Senior Partner at Linklaters) and it was also where I first met Sim Tshabalala who just became Standard Bank's sole CEO.

## What does the future hold for M&A?

The tough economic environment has made investors more conservative and M&A activity has dropped due to the uncertainty that exists in the market, but South African business is resilient.

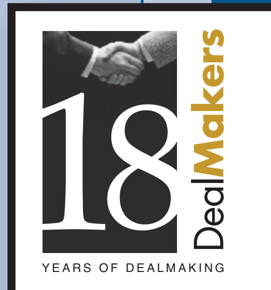
Offshore investments are now mainstream and we see movement into different jurisdictions. In the past, offshore investment by South African corporates happened mostly into Australia, the UK and countries in Africa, but now we see movement into Eastern Europe, the United States and Asia. The downward pressure on the British pound and the euro has made assets in the UK and Europe more attractive. Investors are also looking beyond what a target company is currently doing, to where the future lies. Can they introduce something to the company to make a difference in how they operate, for example, by introducing technology to change the way companies do business.

Foreign direct investment into South Africa remains depressed at present, but this should increase when we see the economy stabilising. What I find interesting is that when you speak to large foreign corporates, they still consider South Africa the gateway to Africa, notwithstanding our challenges - but South Africa can no longer be considered the sole destination for investment in Africa. Every deal comes with a level of risk or complexity and that varies depending on the country and sector being invested in. Historically investment into Africa involved commodities but investors now see the potential in various sectors including retail, telecoms, mining, financial services and consumer goods.

## How do we evolve with the changing landscape?

The world of M&A is constantly changing as companies continue to look for smart, strategic deals to deliver on their growth strategy. Africa remains a growing destination for M&A transactions, and advisors will be well placed to continue to develop and invest in their project management skills and information technology platforms. Clients may anticipate some uncertainty in the markets where they operate, but they would not expect it from their legal or other advisers. This means that advisers should constantly improve the utilisation of skilled human resources, provide better budget certainty for clients and reduced the matter management burden on clients. You need not only to anticipate this evolution, but assume that it is going to happen a lot faster than you think.■

*Christo Els, Senior Partner, Webber Wentzel.*




# Industry Players

DealMakers

## interviewed by DealMakers down the years

# Familiar Faces

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# The then and now of M&A

Eighteen years is a long time, considering that it has only been 23 years since South Africa became a democratic nation. The Mergers & Acquisitions (M&A) landscape in South Africa has seen many changes over this period.

The most notable developments were changes in technology, the introduction of a new Companies Act and Takeover Law, an increase in regulation and the introduction and development of Black Economic Empowerment, all of which have significantly revised the transaction process and landscape.

## The age of technology

Before even considering changes in the legal landscape, a key overall aspect to be appreciated is the increasing role of technology. M&A agreements have developed and evolved over the past years and have become more and more refined to suit particular transaction structures. Technology allows documentation and precedents to be prepared, negotiated and developed more efficiently than ever. Nowadays agreements deal with eventualities and risks that were perhaps previously not adequately dealt with, leading to greater certainty.

Another important area is research, particularly in the area of comparative law. South African company and securities law continues to be developed in line with leading jurisdictions around the world, such as the US and UK. Practitioners often have to do comparative research regarding the interpretation, suitability and applicability of concepts adopted from foreign company law jurisdictions to arrive at technically sound and pragmatic solutions for their clients. Over the years the quality and accessibility of foreign research databases has increased exponentially.

Virtual data rooms are also a big part of this. Much technology has gone into developing and refining virtual data rooms, which has led to due diligence investigations arguably being more comprehensive, structured and time efficient than ever before. This then further informs and determines how warranties and indemnities are to be negotiated, as well as disclosures against those warranties.

## The 'new' Companies Act

When the new Companies Act became effective on 1 May 2011, it marked a new modernised era for corporate law in South Africa and brought it in line with leading jurisdictions around the world. Significant new concepts included the "true" merger mechanism of one merging company ceasing to exist through a merger and a common takeover law regime applicable to all fundamental transactions of major asset disposals, mergers and schemes of arrangement. The statutory merger, however, remains underused other than in the context of intra-group restructurings. Generally the market has yet to become fully au fait and comfortable with its mechanics and tax consequences.

ROUX VAN DER MERWE

DAVID THOMPSON

The Act saw the introduction of a new minority shareholder protection mechanism, namely the appraisal right. If a minority shareholder is not satisfied with a proposed fundamental transaction or adverse amendment to the constitution of the company and votes against it, a minority shareholder can force the company to pay it fair value of its shares. There are no signs, however, that the risk of the exercise of appraisal rights and other new shareholder remedies has in any way slowed merger activity.

Another important alteration in the Act is reduction of the court's involvement in a scheme of arrangement, where the target company board now plays a greater role. Court approval is only required when a significant minority of at least 15% opposed the transaction or if there is material procedural irregularity or manifest unfairness to a class of shareholders. The target board must propose a scheme and report to shareholders on takeover offers, which effectively prevents hostile takeover bids by way of a scheme of arrangement. Previously, under the Companies Act of 1973, an offeror could apply to court to order the convening of a scheme meeting. Offerors in hostile takeover scenarios now have no choice but to resort to making a voluntary tender offer directly to the target's shareholders.

While hostile takeovers were never easy in South Africa (consider for

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example the failed bid by Harmony for Gold Fields in 2004/2005) these are now almost impossible with board opposition (notwithstanding specific prohibition of frustrating action).

The Act also partially codified directors' duties, which include their common law fiduciary duties and their obligation to exercise their duties with reasonable care, skill and diligence. This has had a significant impact on how directors conduct themselves when considering or pursuing an M&A transaction in the best interest of a company.

The new business rescue provisions in Chapter 6 of the Companies Act have added a new angle to mergers in the context of financially distressed companies. Instead of going into liquidation, financially distressed companies now have the option of getting much-needed breathing space and recovery time by entering into business rescue proceedings. This has become a frequently used and viable alternative to liquidation, with the important aim of saving jobs and restoring the solvency of the company. Business disposals by companies in business rescue need not go through the same shareholder approval processes as generally apply to fundamental transactions; they need only be approved by creditors pursuant to a business rescue plan proposed by the business rescue practitioner, to the exclusion of a shareholder vote. This has served to facilitate restructurings and rescues of ailing businesses.

## New takeover law

The new Companies Act brought with it an overhauled takeover law regime with a much expanded scope in the context of private company transactions. Previously under the SRP Code, it was only public companies and certain large or substantial private companies that were subject to the SRP Code. Private companies were subject to the SRP Code only where the shareholders' interests valued at the offer price, and the shareholders' loan capital, exceeded R5m and there were more than ten beneficial shareholders. Under the new takeover laws, the position with regard to private companies is very different. The new takeover laws are concerned with the movements in the private company's voting securities in its recent past, i.e. how many of its shares were transferred in the past 24 months, preceding the affected transaction or offer, amongst persons that are not related or inter-related shares (the triggering threshold is 10%). There is no regard for the size of the company or the number of its shareholders.

## Black Economic Empowerment

Since 2003, the South African government has been on a legislative journey which seeks to redress the inequalities of South Africa's past through Broad-based Black Economic Empowerment (B-BBEE). As such, the majority of M&A deals over the past 18 years have been greatly influenced by B-BBEE legislation and this is set to continue for the foreseeable future.

Any business that wishes to ensure long-term sustainability as a participant in the South African economy and contribute to the country's growth must address all aspects of the B-BBEE legislative framework applicable to it. Although the initial focus was on transferring ownership in businesses to the previously disadvantaged, this has since changed to also focus on skills development and enterprise and supplier development as priority elements of B-BBEE.

Most recently, the Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 (Charter) was published and became effective on 15 June 2017. Whilst mining companies will surely wait with bated breath for the outcome of the legal challenges to the controversial Charter by the Chamber of Mines, they will also need to start considering what it means for their legal and corporate structures if the challenges are unsuccessful.

Also in 2017, the Department of Trade and Industry issued a notice setting the financial threshold for the registration of all major B-BBEE transactions with the Broad-based Black Economic Empowerment Commission. In terms of the notice, any "Major" B-BBEE transaction, meaning a transaction with a value of at least R25m, must be registered with the B-BBEE Commission.

Once a transaction has been registered, the Commission is entitled to advise the parties to the proposed transaction of any concerns that the Commission has regarding the transaction, and the parties must then take steps to address the Commission's concerns. If adequate steps are not taken, the Commission can then initiate an investigation in terms of the B-BBEE Act into the transaction for compliance with applicable B-BBEE legislation. Further, a requirement has recently been enacted that companies listed on the JSE must publish an annual BEE compliance report. This will undoubtedly lead to an enhanced focus on, and prosecution of, "fronting practices" and will also likely foster further growth in the BEE M&A space.

The ease of implementing BEE deals has been markedly improved by developments around the rules concerning the giving by a company of financial assistance in connection with the acquisition of shares of that company or a related company. For decades in company law there was an outright prohibition on this, based on the old capital maintenance doctrine. Then in 2006 important amendments to s38 of the Companies Act 1973 substantially relaxed the rules in this regard, allowing such financial assistance if shareholders approved it by special resolution and the board was satisfied with the company's solvency and liquidity. Essentially the same regime has

been carried through in the new Companies Act. Vendor financing in BEE deals, whether of the traditional or "notional" kind, has become almost standard. Additionally, the new Companies Act introduced a mechanism whereby shares could be issued for future consideration, subject to certain requirements – something totally different to the previous company law regime which strictly required shares to be fully paid up before being issued. Now subscribers with limited readily-available capital can acquire shares up-front and pay for same over the course of time. This has also expanded the scope and use of "sweat equity" structures.

## Representation and warranty insurance

The continuing quest for purchasers in M&A transactions to obtain maximum comfort and security has seen the increasing prominence of warranty and indemnity insurance in the local M&A landscape. The purchaser obtains insurance from an underwriter in respect of breaches of certain warranties or indemnities as contained in the transaction agreements. However, there are typically certain exclusions as to what an insurer would be prepared to cover.

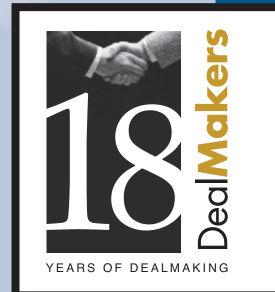
## The Competition Commission

From a Competition Law perspective, the landscape has become far more regulated over the last 18 years, with the coming into effect of the Competition Act and the formation of the Competition Commission and Tribunal in 1999. The role of the Competition authorities is to investigate, control and evaluate restrictive business practices, abuse of dominant positions and M&A transactions in order to achieve equity and efficiency in the South African economy.

In 2015/2016, the Commission initiated a staggering 133 cartel investigations. Thirty-eight investigations were completed, of which 22 were referred to the Tribunal for prosecution. Ten Corporate Leniency Policy applications were received, of which four were granted and six are still being considered.

From an M&A perspective, the focus of the Competition authorities on the promotion of employment and social and economic welfare considerations has had a material impact on some of the substantial M&A transactions and often resulted in conditions being imposed on the parties to a transaction in order to safeguard such important objectives. Unfortunately, the pursuit of these objectives has resulted in increased costs and time delays which enhances transaction execution risk – parties need to take these into considerations when structuring their transactions.

From an advisory perspective, M&A has become far more challenging in terms of structuring of transactions to achieve commercial and timing objectives whilst at the same time addressing public interest objectives.




## The next 18 years

South African companies are shifting focus to the rest of Africa to ensure growth. Most North-American, European and Asian investors are looking into expanding into Africa and are using South Africa as a stepping stone to do so. With this, we foresee more international M&A activity in South Africa with a general progression into the rest of Africa. This will undoubtedly lead to increased cross-border regulation.■

***David Thompson is a Director and Cape Town Regional Practice Head and Roux van der Merwe a Director in Corporate and Commercial at Cliffe Dekker Hofmeyr.***

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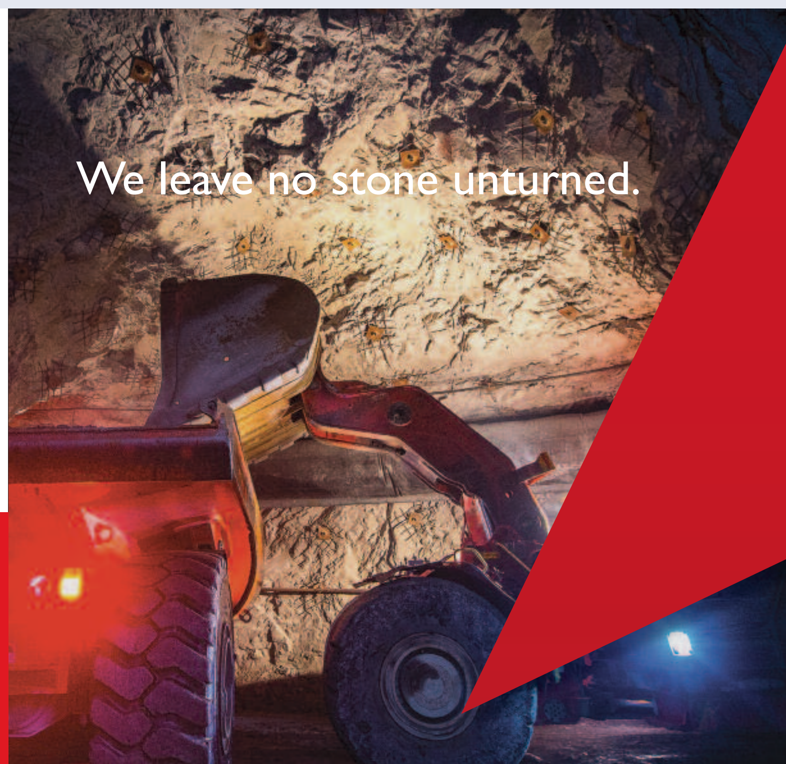


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# Best of the best down the years

## Investment Advisers

| BY DEAL VALUE | | | BY DEAL FLOW | |
|---|---|---|---|---|
| Credit Suisse First Boston | (R28,51bn) | 2000 | Investec<br>Brait Advisory Services | (35 deals)<br>(35 deals) |
| UBS Warburg | (R162,18bn) | 2001 | Investec<br>Nedcor Investment Bank | (32 deals)<br>(32 deals) |
| BoE Merchant Bank | (R21,03bn) | 2002 | Corpcapital Corporate Finance | (41 deals) |
| JP Morgan | (R35,28bn) | 2003 | Investec Corporate Finance | (82 deals) |
| Rand Merchant Bank | (R43,78bn) | 2004 | Java Capital | (74 deals) |
| Rand Merchant Bank | (R55,34bn) | 2005 | Investec Bank | (94 deals) |
| Rand Merchant Bank | (R75,15bn) | 2006 | Investec Bank | (88 deals) |
| Standard Bank | (R109,03bn) | 2007 | Investec Bank | (63 deals) |
| Rand Merchant Bank | (R90,19bn) | 2008 | Investec Bank | (43 deals) |
| Goldman Scahs | (R259,27bn) | 2009 | Investec Bank | (30 deals) |
| Rand Merchant Bank | (R88,74bn) | 2010 | Investec Bank | (24 deals) |
| Standard Bank | (R45,73bn) | 2011 | Investec Bank | (34 deals) |
| Rand Merchant Bank | (R41,51bn) | 2012 | Rand Merchant Bank | (33 deals) |
| Rand Merchant Bank | (R31,29bn) | 2013 | Nedbank Capital | (52 deals) |
| Investec Bank | (R102,48bn) | 2014 | Investec Bank | (56 deals) |
| Standard Bank | (R1,57trn) | 2015 | Investec Bank | (35 deals) |
| Java Capital | (R119,95bn) | 2016 | PSG Capital | (37 deals) |

## Sponsors

| BY DEAL VALUE | | | BY DEAL FLOW | |
|---|---|---|---|---|
| Merrill Lynch | (R39,63bn) | 2000 | Merrill Lynch | (39 deals) |
| HSBC | (R147,42bn) | 2001 | Investec Bank | (29 deals) |
| UBS Warburg | (R26,97bn) | 2002 | Corpcapital Corporate Finance | (36 deals) |
| Deutsche Securities | (R30,38bn) | 2003 | Investec Securities | (68 deals) |
| Deutsche Bank | (R37,21bn) | 2004 | Investec Bank | (77 deals) |
| Merrill Lynch | (R160,81bn) | 2005 | Investec Bank | (99 deals) |
| Merrill Lynch | (R73,59bn) | 2006 | Investec Securities | (105 deals) |
| Merrill Lynch | (R79,63bn) | 2007 | Investec Bank | (101 deals) |
| JP Morgan | (R128,84bn) | 2008 | Investec Bank | (64 deals) |
| Deutsche Securities | (R213,31bn) | 2009 | Investec Bank | (40 deals) |
| Deutsche Securities | (R77,43bn) | 2010 | Rand Merchant Bank | (37 deals) |
| Absa Capital | (R121,65bn) | 2011 | Investec Bank | (45 deals) |
| Absa / Barclays | (R66,11bn) | 2012 | Java Capital | (54 deals) |
| Investec Bank | (R52,27bn) | 2013 | Java Capital | (62 deals) |
| Investec Bank | (R104,98bn) | 2014 | Investec Bank | (70 deals) |
| JPMorgan | (R1,54trn) | 2015 | Investec Bank | (64 deals) |
| UBS | (R693,82bn) | 2016 | Java Capital | (64 deals) |

BY DEAL VALUE | BY DEAL FLOW

## Legal Advisers

| By deal value | | Year | By deal flow | |
|---|---|---|---|---|
| Edward Nathan & Friedland | (R33,39bn) | 2000 | Edward Nathan & Friedland | (54 deals) |
| Webber Wentzel Bowens | (R147,80bn) | 2001 | Edward Nathan & Friedland | (49 deals) |
| Sonnenberg Hoffman Galombik | (R31,68bn) | 2002 | Edward Nathan & Friedland | (50 deals) |
| Cliffe Dekker | (R30,11bn) | 2003 | Java Capital | (66 deals) |
| Edward Nathan & Friedland | (R50,63bn) | 2004 | Java Capital | (64 deals) |
| Webber Wentzel Bowens | (R120,59bn) | 2005 | Java Capital | (48 deals) |
| Bowman Gilfillan | (R61,40bn) | 2006 | Werksmans | (51 deals) |
| Webber Wentzel Bowens | (R121,91bn) | 2007 | Werksmans | (46 deals) |
| Werksmans | (R195,21bn) | 2008 | Werksmans | (42 deals) |
| Edward Nathan Sonnenberg | (R281,82bn) | 2009 | Cliffe Dekker Hofmeyr | (70 deals) |
| Edward Nathan Sonnenberg | (R153,86bn) | 2010 | Cliffe Dekker Hofmeyr | (60 deals) |
| Cliffe Dekker Hofmeyr | (R104,73bn) | 2011 | Cliffe Dekker Hofmeyr | (77 deals) |
| Edward Nathan Sonnenbergs | (R53,55bn) | 2012 | Cliffe Dekker Hofmeyr | (98 deals) |
| Cliffe Dekker Hofmeyr | (R46,11bn) | 2013 | Cliffe Dekker Hofmeyr | (96 deals) |
| Cliffe Dekker Hofmeyr | (R155,64bn) | 2014 | Cliffe Dekker Hofmeyr | (108 deals) |
| Webber Wentzel | (R1,60trn) | 2015 | Cliffe Dekker Hofmeyr | (79 deals) |
| Webber Wentzel | (R195,44bn) | 2016 | Cliffe Dekker Hofmeyr | (77 deals) |

## Reporting Accountants

| By deal value | | Year | By deal flow | |
|---|---|---|---|---|
| KPMG | (R12,52bn) | 2000 | Deloitte & Touche | (24 deals) |
| Ernst & Young | (R14,16bn) | 2001 | Deloitte & Touche | (17 deals) |
| KPMG | (R12,66bn) | 2002 | PricewaterhouseCoopers | (32 deals) |
| PricewaterhouseCoopers | (R21,85bn) | 2003 | Deloitte & Touche | (32 deals) |
| PricewaterhouseCoopers | (R28,53bn) | 2004 | PricewaterhouseCoopers | (29 deals) |
| KPMG | (R74,71bn) | 2005 | PricewaterhouseCoopers | (33 deals) |
| PricewaterhouseCoopers | (R89,89bn) | 2006 | PricewaterhouseCoopers | (24 deals) |
| KPMG | (R55,14bn) | 2007 | KPMG | (15 deals) |
| PricewaterhouseCoopers | (R54,78bn) | 2008 | KPMG | (12 deals) |
| PKF | (R13,26bn) | 2009 | KPMG | (15 deals) |
| PricewaterhouseCoopers | (R75,35bn) | 2010 | PKF<br>KPMG | (13 deals)<br>(13 deals) |
| Deloitte | (R40,80bn) | 2011 | Deloitte | (16 deals) |
| KPMG | (R39,54bn) | 2012 | PKF | (20 deals) |
| PwC | (R19,48bn) | 2013 | KPMG | (18 deals) |
| PwC | (R78,36bn) | 2014 | PwC | (16 deals) |
| KPMG | (R65,13bn) | 2015 | KPMG | (13 deals) |
| KPMG | (R42,43bn) | 2016 | Deloitte | (15 deals) |

# The necessary evolution of BEE deals

## From sharing wealth to sharing the responsibility for creating wealth

The evolution of Black Economic Empowerment deals over the past two decades has taken place in three distinct phases. When South Africa first became a democracy in 1994, there was a level of simplicity to economic empowerment that made BEE deals relatively straightforward. Participants in these deals largely agreed on their intention and purpose, which was primarily to afford people of previously disenfranchised races in the country the opportunity to gain a measure of ownership of businesses through equity participation.

The resulting slew of fairly simplistic transactions was driven mainly by new black-owned organisations that were established purely to participate in BEE deals. The way those early deals were structured was completely different from the make-up of BEE deals and mergers and acquisitions today. For one, there was little to no equity requirement of the participating BEE entity or its owners. In addition, no guidelines existed around the level of participation required of these new business owners in the strategy or day-to-day operations of the organisation they became part of. These were purely deals built on the need for South African businesses to comply with new empowerment codes and legislation.

DealMakers 18 YEARS OF DEALMAKING

As a result, the main outcome of this first phase of BEE deal activity was, arguably, the concentration of value in a relatively few set of beneficiaries with little participation in driving the strategy of their underlying investments. So while the first phase of BEE deals performed a vital function in terms of getting the SA transformation ball rolling, stakeholders quickly recognised that a change in approach was needed in order to ensure the spirit of BEE translated to real economic empowerment for all South Africans.

This ushered in the second phase of BEE, which saw the focus shift towards ensuring that empowerment delivered broad based benefits. The resulting legislative changes meant that these B-BBEE transactions became more complex and largely share-based. But as these share-based transactions matured, participants increasingly came to realise that share ownership was not a guarantee of personal financial wellbeing where such ownership was obtained through highly geared structures with third party funders. In fact, the 2008 global financial crisis was a hard lesson in the effects of market volatility on share values for a great many newly 'empowered' BEE shareholders.

Consequently, the years that followed were characterised by widespread introspection on how to mitigate the risk of failed B-BBEE transactions while maintaining the cost of transactions palatable to shareholders. There was a large-scale move away from exclusively bank-funded deals towards company facilitated schemes that offered greater levels of flexibility and protection from market movements.

TAPIWA SHAMU

By 2012, the third phase of the evolution of BEE deals had begun. While the past five years have been a period of massive change on both the BEE and M&A landscape, it has also been a period of rising uncertainty about the purpose of BEE and the role it has to play in driving the economic transformation of the country. While businesses recognise the moral and business growth imperatives for BEE, over the past 20 years the way this form of transformation has been approached has not come close to delivering the required growth in numbers of black entrepreneurs and industrialists that SA desperately needs.

**It's clear that the time has now come for BEE deals in SA to enter the next phase in their evolution.**

Add to this the current perceived lack of clear economic transformation policy, the mining sector being a good example of this challenge, and the immense difficulties being experienced in funding BEE deals as a result of the country's somewhat dire economic circumstances, it's not surprising that the number of BEE deals has slowed dramatically in recent years.

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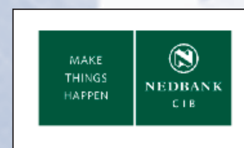
It's clear that the time has now come for BEE deals in SA to enter the next phase in their evolution. The success of black economic empowerment in the future hinges on the ability that BEE deals have to raise up a new generation of entrepreneurs and industrialists of all races, who have the capacity to create sustainable prosperity and the social conscience to effectively share that wealth by creating opportunities for people and communities who need them.

But for this fourth phase of evolution to take place, policy clarity is urgently needed.

When businesses in this country have a BEE policy that is workable, commercially viable and clear in its economic transformation objectives, I have no doubt that they will be eager to be a part of the solution. Particularly, if that legislation demonstrates a commitment to leveraging BEE as a way of enabling all South Africans to share in the responsibility and process of reigniting sustainable economic growth for the benefit of all. ■

***Tapiwa Shamu is a Principal in Corporate Finance at Nedbank CIB.***




# Has the landscape for hostile takeovers changed over the past 18 years?

Hostile takeovers in South Africa are not common, as they are tainted with red tape, prolonged time tables, large legal bills and significant deal uncertainty. This is evident in the list of failed hostile takeovers, which far exceeds the one or two successful hostile deals in South Africa over the past 18 years. Arguably the most notorious failed bid in South Africa was Harmony Gold's bid for Goldfields, which went hostile and failed after Goldfields' lawyers and advisors left no stone unturned in defending the hostile bid.

In South Africa, the various legislation favours the target company, and in addition to this, the target board has a range of defensive techniques at its disposal, which are not deemed as frustrating actions. Combined with a range of legal options, the target board also has at its disposal the ability to influence shareholders and regulators by playing on emotions and conjuring up all kinds of obstacles or consequences that could arise because of the deal, a technique that has often proved effective. The emotional approach has been especially effective when dealing with large groups of retail and agri investors who have invested their life's work into the target company, or whose social environment may be affected in a particular way by a takeover. The defensive techniques allow for management and/or the target board to kick up a lot of dust and make a lot of noise, ultimately making it tough for investors to assess a deal based on the true economic value and potential future economic benefits.

In 2011 the new South African Companies Act ("New Act") came into effect and for the first time included a statutory merger procedure and shareholder appraisal rights. A scheme of arrangement no longer required court sanctioning, but remained the prerogative of the target company's board, still making it a potentially frustrating process, although it made the process on the face of it less onerous for hostile bidders to affect a takeover. As an alternative, hostile bidders can still utilise the riskier s124 tender offer process where they reach out to shareholders directly. A tender offer requires 90% of the shareholders to accept the offer to enable the acquirer to get to 100% ownership, whereas a scheme of arrangement requires 75% of shareholders to vote in favour of the scheme to affect a 100% ownership. Bernard Swanepoel, ex-CEO of Harmony Gold, was quoted in the press to say that *"those who drafted the new Companies Act missed a trick. It still provides too much protection for incompetent or under-performing managers"*. The topic of appraisal rights needs to be further explored and the pending outcome of the KWV appraisal rights court case will shed further light on the impact of this. Although it will not necessarily stop a deal from succeeding, it can potentially add another layer of costs and complexity to a hostile bid should a shareholder wish to exercise his appraisal rights.

A director is required to act in the best interest of a company. The business judgement rule generally protects a director if he has taken reasonable steps to be informed, has no personal conflict and has a rational basis to believe his decisions are in the best interest of the company. A board that has failed in its attempt to defend a hostile takeover would in most cases be fired by the acquirer as soon as the takeover is approved. The independent board making the decision on whether to propose a scheme of arrangement would generally not be conflicted by the possibility of losing their position on the board, but management who ultimately provides the independent board and independent experts with information used in forming an opinion, might well be conflicted. This is still a clear stumbling block for the acquirer as management, who are normally conflicted, can distort the cold

hard facts with an emotional spin or present facts that suits their argument better, when presenting their case or information to the independent board. Clear guidance on where to draw the line on whether management are being personally conflicted and whether management are acting in the best interest of the company will be crucial to ensure that an independent board receives accurate and appropriate information when deciding on whether to propose a scheme of arrangement to shareholders. The chairman of the independent board also plays a crucial role in the process and the direction that the independent board follows, if he is impressionable, inexperienced or not sufficiently qualified, management could have additional room to argue an emotional one-sided case. We are not saying all management teams will do this, but it is unfortunately a human reality/possibility if they are against the transaction.

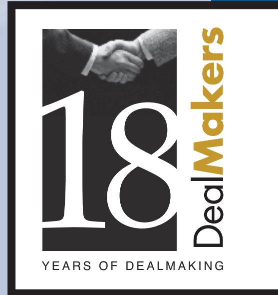
**GIDEON VAN DER SCHYFF**

Given that the majority of shares traded on the JSE are held by large institutions who are deemed to be more educated rational investors, one would not expect emotions to play a big part in their decision-making ability. However, given the context of the South African economy and the large unemployment rate, potential job losses will influence the regulators and could impact the investment decisions of institutional investors.

Potential synergies and optimisation is of utmost importance when assessing a potential takeover, the slightest indication that same will not be achieved and/or the potential of any unexpected costs can cause an acquirer to retreat. If you further combine the above with:

- the risk of not doing a thorough due diligence due to the target company's management not supporting the transaction;
- no deal protection in terms of break fees;
- legal and advisor fees;
- the potential of wasting managements time and loss of focus in attacking the target's defence strategy; and
- countless regulatory hurdles that the target can employ, it becomes clear why hostile takeovers are not common in South Africa.

Has the landscape, therefore, changed for hostile takeovers over the past 18 years? Definitely. We have the New Act, shareholder activism is growing, there are more institutional investors and more educated retail investors. However, our current economy is also more fragile: the Competition Commission Regulations are stringent and there is more political uncertainty. These internal South African factors, combined with managements potential conflict of interest, along with provisions of the New Act still provide independent boards and management enough wiggle room to defend most hostile takeovers.




Therefore, even though the landscape has changed over the past 18 years, it has not changed overwhelmingly in favour of the acquirer in a hostile takeover, and shareholder activism will need to increase to change the landscape from the top down before we see an increase in successful hostile takeovers. ■

***Gideon Van Der Schyff is a Corporate Financier at PSG Capital.***

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# The role of due diligence in M&A activity

In a rapidly changing and globally competitive environment, Mergers and Acquisitions (M&A) have become one of the fastest strategic options for companies to gain a competitive advantage with a view to ultimately increase long term shareholder value.

The majority of deals fail due to inadequacies in the due diligence process, resulting in the potential purchaser either overpaying for the target or assuming significant unknown liabilities and/or experiencing major post-merger integration issues.

The importance of appropriate due diligence not only remains a fundamental factor in any M&A activity, but the process has also progressed significantly over the past 18 years. The concept of due diligence continues to evolve beyond just numbers, inspecting legal records and ensuring tax compliance into a growing awareness of the necessity to consider multiple determinants.

The evolution to considering multiple determinants and ultimately "looking under the hood" includes measuring the strategic fit for the new business, its operations, its customers, suppliers and competition, its physical and IT assets, its human capital and culture, its environmental commitments and ultimately its post-merger integration plan.

In a recent KPMG M&A Outlook survey, acquiring managers were asked what they would do differently next time. The three recurring themes were:

- Better due diligence and planning;
- Faster implementation and post – merger integration; and
- More attention to Human capital matters and cultural plans.

What this means for a potential purchaser taking over or merging with another company is that a complete and thorough, independent investigative analysis of every aspect of the target's operation be performed.

AAMENA NAGDEE

The post-merger integration plan has also taken on a new level of strategic importance, especially in the eyes of the operational side of management.

**The fundamental purpose of due diligence is to reveal any risks associated with the transaction.**

Culture is as crucial to the success of any M&A deal. Cultural clashes can seriously undermine one of the most valuable assets in any deal – "Human capital". Cultural considerations have become an inextricable part of a due diligence and any post – merger integration plan.

Recent studies have revealed transaction value is predominantly lost through poor execution of the implementation plan and is mainly related to operational, cultural and governance and integration issues.

More than ever before, global investors are also challenged with the need for Anti-Bribery and Corruption (ABC) compliance. Like traditional financial, tax and legal due diligence, ABC due diligence can be used as a mechanism to potentially identify risks, create value or preserve existing value.

Another evolving and crucial area is the use of technology driven data analytics. Data analytics can be used in the search for potential targets, for scrutinising as well as interpreting financial data providing a level of sophistication and precision not previously known.

Social media definitely offers important insights. Social media provides the potential purchaser with a real understanding of what customers and employees are thinking about the brand and the organisation.

In summary, comprehensive due diligence is vital to the success of all facets of M&A activity. The fundamental purpose of due diligence is to reveal any risks associated with the transaction. These risks can be classified into

(i) deal breakers,
(ii) valuation risks,
(iii) implementation risks,
(iv) contract risks, or
(v) matters to be managed post- merger.

Due diligence challenges should not deter the successful closure of the deal. Once value is agreed upon, the way forward can be mapped to manage risks thereby enhancing value for all stakeholders. ■

*Aamena Nagdee is an Associate Director, Deal Advisory at KPMG Services.*

BARCLAYS



# How the art of dealmaking in Africa has changed in the last 18 years

There have been dramatic shifts in African dealmaking over the last 18 years.

African companies have come of age and some have grown to become players with international aspirations. Further, the continent over the last few years is seeing increased attention from major global players looking to expand their current offerings or explore new opportunities outside their traditional markets.

As a pan-African bank with a presence in 12 markets, Barclays Africa Group Limited (BAGL) has seen first-hand increased deal flow across the continent. Despite occasional headwinds, the continent as a whole has experienced a secular growth trajectory. However, regional differences remain and on the ground expertise remains critical.

**Hasnen Varawalla:** Co-Head of Banking, Corporate and Investment Banking

**We have noticed four major themes in dealmaking that are worth exploring in more detail**

- Growth in capital markets in Africa outside of South Africa – both debt and, increasingly, equity
- African companies expanding into overseas markets through mergers and acquisitions, particularly from South Africa
- Intra-Africa acquisitions driven by local consolidation and regional expansion
- Private equity coming of age in Africa, with significant allocated funds to be put to work.

### Growth in capital markets

Capital markets in Africa are still nascent we are seeing commitment from most governments to driving the growth of stock markets by encouraging companies to list on the local stock exchanges. In Tanzania the recent groundbreaking IPO of Vodacom Tanzania on the stock market in Dar es Salaam is a recent example of this. Initial reactions were that the deal would be challenging, however, the US$213 million IPO ended up being the largest in the country's history.

### The expansion of African companies into overseas markets

It is encouraging to see how South African and more recently, African companies have become confident in their ability to expand beyond the continent. The most recent example is the acquisition of the United Kingdom's leading diagnostics company Alliance Medical Group, by Life Healthcare.

This type of acquisition promotes geographic diversification and over time will bring state-of-the-art diagnostics technology back to South Africa.

An integral part of pulling a deal of this nature together is the ability of African banks to finance across the capital structure in both hard and local currency. Barclays Africa, as a full-service corporate and investment bank, is uniquely positioned to assist corporates with their expansion strategy as we are able to arrange or provide funding and, importantly, access to capital markets.

For Life Healthcare, in addition to bank funding, we jointly underwrote the rights offering, which is one of the top 10 capital raisings ever on the JSE, valued at R9 billion.

### Intra-Africa mergers and acquisitions show growth:

In certain markets and sectors we have started seeing in-country consolidation in certain industries. The African banking sector is ripe for consolidation, with a multitude of banks competing for a restricted client base. A clear example is when Barclays Africa advised on the sale of Mainstreet Bank in Nigeria to Skye Bank in 2014.

### Private equity comes of age in Africa

Africa is no longer an exotic destination for investors. While the private equity funds set up for investing in Africa 18 years ago were worth between US$75 million and US$100 million, we are seeing much more sizeable funds of US$500 million, plus a range focused on both the equity and the credit side.

**Craig Brewer:** Co-Head of Banking, Corporate and Investment Banking

### A view of important sectors in Africa

From a sector perspective it is important to recognise that each sector moves in waves. Telecommunications, for example, is riding its second wave, with more rationalisation in the sector following the first wave when major foreign players were setting up in the market and making acquisitions in Africa.

There is strong and renewed interest in oil and gas as energy prices have stabilised.

There has been an uptick in activity in the renewable energy space as more infrastructure is put down in various parts of the continent.

Regrettably, with increased uncertainty in regulations and legislature, the mining sector has suffered a decrease in interest from outside Africa for African assets.

### What about the next 18 years?

Looking into the future, there is no denying that technology will continue to change the way we do business. Bank and advisory firms will have to embrace concepts such as the internet of things, crypto currencies, open market platforms and digitisation if they want to continue to bring buyers and sellers together or risk being disintermediated by online-accessible market makers.

No doubt the opening up of markets to buyers and sellers of assets and securities will be the proverbial game-changer in Africa for capital raising and crowdfunding. While individually African economies remain relatively small, together, through growth, greater integration and the creation of economic blocs, their importance will continue to increase. We look forward to seeing greater co-operation in the future as countries work together towards the common goal of driving economic prosperity on the continent.

Barclays Africa Group Limited Reg No 1986/003934/06

# Changing landscape results in a stellar year for JSE listings

This year the main board of the exchange operated by the JSE Limited (JSE) saw its largest ever initial public offering. Steinhoff Africa Retail Limited listed with a market cap of R70,7bn and raised R16,4bn in a private placement.

Since the establishment of DealMakers at the turn of century, 2007 had the most main board listings, while 2017 has already seen a record in capital raised on listing. The total quantum equity capital of over R24bn raised on the main board this year to date is more than double the R12bn of equity capital raised on the main board on listing in 2010, which was the second most successful year in terms of equity capital raised.

Equity capital raised on the main board since the start of 2017, also comfortably exceeds the R10bn raised in 2016 (excluding specialist securities), a year that included the highly anticipated listing of Dis-Chem, a family owned business that was the largest retail initial public offering in JSE history. The capital raised in Dis-Chem's initial public offering accounted for approximately 42% of the total capital raised on listing on the main board in 2016.

The larger capital raises over the past few years have been marketed internationally. This has resulted in a material portion of South African companies' shares offered on listing being taken up by international investors.

In addition to the "mega" deals, one of the key changes in the JSE listing requirements during the last 18 years included the establishment of the AltX in October 2003.

The AltX is the JSE's alternative public exchange for small and medium-sized companies in South Africa. This exchange replaced the venture capital and development capital boards established as sub-sets of the main board in the 1980s. Since launching in 2003, 120 companies have listed equity on the AltX of which 38 have migrated to the main board post listing.

**Despite current economic and political uncertainty, 2017 has been one of the most significant years for listings since the start of the millennium.**

Another key change included South Africa's inward listing rules being altered to allow foreign domiciled companies to be treated as domestic listings. This contributed to a total of 36 secondary listings to date, the largest of which is Anheuser-Busch InBev which listed in 2016 with a market capitalisation of c. R3trn. The secondary listings have allowed foreign companies to raise more equity capital from South African investors.

ZANELLE SCHEEPERS

In November 2015, as part of the JSE's commitment to transformation, the empowerment segment of the JSE was launched. The empowerment segment allows participants of broad-based black economic empowerment (B-BBEE) transactions to trade shares. Thus far, MTN, Sasol and Vodacom have listed their B-BBEE schemes on the empowerment segment.

In the past two years, the Financial Services Board granted stock exchange licences to 4 Africa Exchange, A2X, Equity Express Securities Exchange (EESE) and ZAR X. Both 4 Africa Exchange and ZAR X have primary listed companies on its exchanges, while three companies have done secondary listings on A2X, while being primary listed on the JSE. The latest licence was awarded to EESE which will be specialising in issuers with shareholder restrictions such as B-BBEE structures.

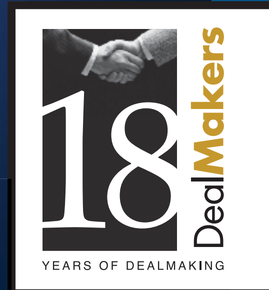
Since the inception of the DealMakers' listing database, the median market capitalisation of companies' listing equities on the main board has grown from c. R250m in 2000, to over R2bn in each of the last five years (excluding specialist securities).

Despite current economic and political uncertainty, 2017 has been one of the most significant years for listings since the start of the millennium. ■

*Zanelle Scheepers is a Corporate Finance Consultant with Investec.*

## Deal of the Year

| | |
|---|---|
| 2001 | Anglo American, Central Holdings & Debswana buy-out of De Beers |
| 2002 | Nedcor takeover of BoE |
| 2003 | Harmony / ARM / Avmin transaction |
| 2004 | Creation of Incwala |
| 2005 | Barclays' takeover of Absa |
| 2006 | Netcare's part acquisition of General Healthcare Group |
| 2007 | Anglo Platinum's BEE deal |
| 2008 | Remgro and Richemont Securities Restructuring |
| 2009 | SA Breweries' Employee Economic Empowerment deal |
| 2010 | Acquisition by Walmart of a 51% stake in Massmart |
| 2011 | Acquisition of Metorex by Jinchuan |
| 2012 | Barclays Africa |
| 2013 | Bidvest's acquisition of Adcock Ingram |
| 2014 | Woolworths acquisition of David Jones |
| 2015 | Acquisition by Anheuser-Busch InBev of SABMiller |
| 2016 | Sibanye Gold's acquisition of Stillwater Mining |



## Individual DealMaker of the Year

| | |
|---|---|
| 2008 | Paul Roelofse |
| 2009 | Ezra Davids |
| 2010 | David Lake |
| 2011 | Christo Els and Brad Webber |
| 2012 | Craig Brewer |
| 2013 | Ernie Lai King |
| 2014 | Cobus Human |
| 2015 | John Gnodde |
| 2016 | Piet Ferreira |

# Winning teams over the years

Deneys Reitz 2005

Rothschild 2001

Hofmeyr Herbstein Gihwala 2005

Merrill Lynch 2005

Grant Thornton 2003

Werksmans 2003

Jowell Glyn & Marais 2002

Rand Merchant Bank 2002

SizweNtsaluba VSP 2006

Deloitte & Touche 2002

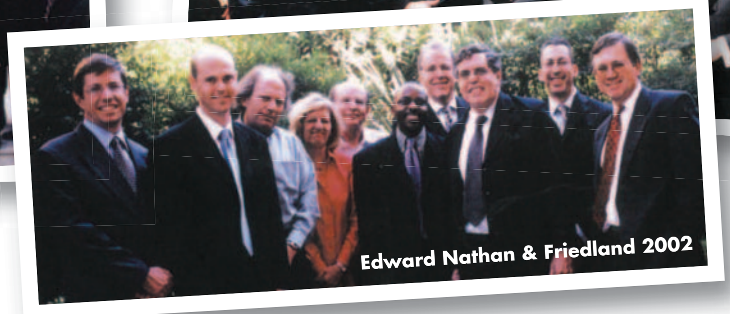
Bowman Gilfillan 2006

Java Capital 2003

UBS 2001

Nedcor Investment Bank 2002

Webber Wentzel Bowens 2002


Edward Nathan & Friedland 2002

JP Morgan 2003

Goldman Sachs 2005

Barnard Jacobs Mellet 2001

Morgan Stanley 2008

PSG Capital 2011

Absa Corporate & Merchant Bank 2005

Mazars 2013

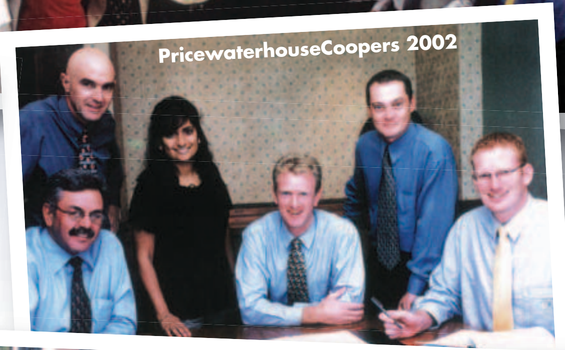
Norton Rose 2012

Deutsche Bank 2003

KPMG 2002

Standard Corporate & Merchant Bank 2001

Ernst & Young 2002


PricewaterhouseCoopers 2002

PKF 2005

Investec 2001

Cliffe Dekker 2002

# Some reflections on the last 18 years of practice as a PE lawyer in SA

In the fourth quarter of 1999 I was a newly promoted corporate partner at Webber Wentzel and a freshly minted private equity (PE) transactional lawyer - one of only three at the firm. Webber Wentzel was the first SA law firm with a specialist PE team, which was established in the mid-eighties to service the needs of FirstCorp Capital Investors Limited (the predecessor to Ethos).

The South African PE landscape was fundamentally different then. There were only two key players - Ethos and Brait. Deals were straightforward and swiftly executed. There was little need for conditions precedent and most deals closed shortly after signature.

Prior to September 1999, when the Competition Act, 1998 first took effect, one did not even need a competition approval for a South African deal. Acquisition agreements were brief - usually not more than about 30 pages long - and the debt agreements not much longer.

In those days, PE lawyers were generalists - handling not only all fund establishment matters but also all aspects of the transactions, including the tax structuring and the debt. We were also making up quite a lot of it as we went along. I remember, as an associate, being asked to draft a suite of South African fund formation documents from scratch - with only some US examples to guide me.

18 years later, there are numerous third party PE funds operating in our market. Brait has become an investment holding vehicle. Ethos is still very active, but with a diversified strategy, with not only a buy-out fund, but also a BEE fund, plans to raise a mezzanine fund after the purchase of Mezzanine Partners from Stanlib and a multi-pronged approach to raising capital (having recently listed Ethos Capital and announced its transaction with RMI Investment Managers and Royal Investment Managers). Other active participants in this market include international PE funds with local deal teams (eg Actis, Carlyle and Abraaj), Rockwood, CapitalWorks, other offshore funds without local deal teams (eg DPI, Denham Capital, KKR) and numerous other niche or specialist funds including infrastructure funds (eg AIIM), debt funds (eg Vantage), financial services funds (eg Leapfrog) and BEE funds (eg Medu Capital and the Ethos Mid Market Fund). There is also an increasing trend towards permanent capital vehicles and alternative capital vehicles. Turning to Africa more generally, in 1997 there were only 12 PE funds that had jointly raised US$1bn to invest on the continent. In 2017, there are more than 200 PE funds managing in excess of US$30bn targeting investments in Africa.

SALLY HUTTON

The complexity of the environment for doing deals has also increased significantly. Not only is there a great deal more competition for scarcer quality assets (deal teams are having to sift through an increasingly long list of potential targets to find viable options and auction processes are becoming commonplace), but dealmakers have also had to navigate many more hurdles around their debt arrangements, competition aspects, BEE legislation, the replacement of the Companies Act in 2008, over and above increased regulation in specific sectors such as healthcare, education, telecommunications and mining. Upstream, increased regulation requires more extensive customer due diligence, which is another layer of work that has to be done each time a deal is concluded. International participants in the market have also brought innovation with them (such as warranty and indemnity insurance which was first used in this market in 2012 but has now become the norm in local PE deals) with which local deal teams have had to familiarise themselves.

The increasing complexity of the South African tax landscape has also had a dramatic impact on the ease of implementing PE transactions during this period, largely because of the significant evolution of the country's tax policy and sophistication. Significant amendments over the past 18 years have included the introduction of the residence basis of taxation (2000), the introduction of CGT and the corporate tax roll-over concessions (2001), the significant widening of the hybrid equity instrument regime (2011), the introduction of the acquisition debt interest limitation rule (2011), which was then completely overhauled again in 2014, the repeal of secondary tax on companies and the introduction of dividends tax

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Investments

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Exits

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44
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Invested in South Africa

5x
Winner of DealMakers Private Equity award

Values Drive Value

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(2014), and the introduction of withholding tax on interest (2015). This is without mentioning the continually changing rules applicable to management arrangements and carry schemes.

The upshot of all of this is greater uncertainty with higher deal execution risk, compounded by the increasingly volatile economic and political conditions. Deals are getting tougher, taking longer and costing more to implement. Regulators can be unpredictable - who can forget the shock moratorium on debt pushdown structures in 2011 - which stopped a number of deals in their tracks - immediately prior to the introduction of s23K (since replaced by s23N) of the Income Tax Act. The lack of clarity of regulation, and lack of responsiveness of some regulators - is also causing additional challenges for deal timelines. By way of example, exchange control approvals are currently taking up to eight weeks, competition approvals in certain African jurisdictions can take months, ICASA approvals can take in excess of six months and backlogs at CIPC and the Master's office are becoming quite routine.

Then of course, post deal execution, PE teams still need to ensure their portfolio companies deliver (often dollar related) returns in a highly volatile and competitive environment.

In this environment, PE clients need the support of advisors who not only have strong technical skills with deep specialisation across multiple sectors, but also who have strongly collaborative teams who are able to work in a seamless fashion across multiple disciplines. Innovative problem solving skills and the ability to anticipate and adapt to change are also key. Strong project management skills are also becoming increasingly important in order to ensure results are delivered as quickly as possible - the longer a deal takes, the higher the risk it will not complete. In response to this, we were the first South African law firm to appoint legal project managers and now formally train all our lawyers in project management skills.

As lawyers we must continually respond to our clients' needs. In the third quarter of 2017, the small PE team that I was part of in 1999 has grown to a core team of more than 30 lawyers and tax advisors, which draws on many others in specialist areas depending on the sector and business. With the increasing focus on sub-Saharan Africa (SSA) (more than 80% of South African PE deals we advised on in the last 3 years involved an SSA component) and an increasing focus on diversification offshore, we are also finding our alliance with Linklaters and our local networks in SSA increasingly critical to delivering our PE clients the service they need. ■

***Sally Hutton is Managing Partner, Webber Wentzel.***

# Catalyst's Private Equity award winners

DealMakers

## Private Equity Deal of the Year

| Year | Winner |
|---|---|
| 2005 | Ethos for Waco |
| 2006 | Actis for Alexander Forbes |
| 2007 | Bain for Edcon |
| 2008 | Actis for Alstom SA |
| 2009 | Not awarded |
| 2010 | Capitau for Foodcorp |
| 2011 | Actis for Tracker |
| 2012 | Remgro, Carlyle Group and Standard Chartered Private Equity for Export Trading Company |
| 2013 | RMB Corvest for Bluff Meat |
| 2014 | Actis for Compuscan |
| 2015 | Ethos for Plumblink |
| 2016 | Actis for Tekkie Town |

# Private Equity awards gallery



18 DealMakers
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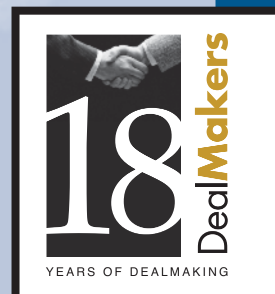
# DealMaker of the Decade
## 2000 - 2009

2009 Deutsche Bank team

## DEALMAKER OF THE DECADE BY VALUE




## DEALMAKER OF THE DECADE BY ACTIVITY

2009 Investec Bank team

### TOP INVESTMENT ADVISERS FOR THE DECADE (2000 – 2009)

#### Rankings by Deal Value

| Rank | Company | Deal Values R'm | Market Share |
|---|---|---|---|
| 1 | Deutsche Bank | 481,950 | 8.11% |
| 2 | Merrill Lynch | 456,365 | 7.68% |
| 3 | Rand Merchant Bank | 422,953 | 7.12% |
| 4 | Goldman Sachs | 422,694 | 7.12% |
| 5 | Absa Capital | 352,238 | 5.93% |
| 6 | UBS | 314,532 | 5.29% |
| 7 | Standard Bank | 306,141 | 5.15% |
| 8 | Rothschild | 283,607 | 4.77% |
| 9 | JPMorgan | 257,289 | 4.33% |
| 10 | Nedbank Capital | 253,918 | 4.27% |

#### Rankings by Deal Flow (Activity)

| Rank | Company | No of Deals | Market Share | Deal Values R'm |
|---|---|---|---|---|
| 1 | Investec Bank | 570 | 13.28% | 231,993 |
| 2 | Nedbank Capital | 393 | 9.16% | 253,918 |
| 3 | Java Capital | 376 | 8.76% | 65,933 |
| 4 | Rand Merchant Bank | 236 | 5.50% | 422,953 |
| 5 | Standard Bank | 201 | 4.68% | 306,141 |
| 6 | PSG Capital | 113 | 2.63% | 22,495 |
| 7 | Sasfin Capital | 101 | 2.35% | 12,960 |
| 8 | Absa Capital | 93 | 2.17% | 352,238 |
| 9 | KPMG | 88 | 2.05% | 81,415 |
| 10 | Deloitte | 84 | 1.96% | 82,476 |

# Dealmaking in Africa

The face of dealmaking in Africa has changed markedly in the past 18 years, bringing new trends and some memorable events into play.

In 1999, the number of reported cross-border mergers and acquisition transactions in Africa was 336. In 2016, the number was 417.

In 1999, the value of the reported cross-border mergers and acquisition transactions in Africa was $3,7bn. In 2016, the value rose to $15,7bn.

During this time, the nature, size, value and complexity of the deals in Africa have changed remarkably. Deals have become larger, and there are now more intra-Africa deals and cross-border transactions across a variety of different sectors. The aggregate value of deals per year for the period from 1999 to 2010 was cyclical, with peaks in 2001 and 2007 and a slowdown from 2008 to 2010 due to the economic slump in the West. However, there was relative growth in the period from 2011 to 2016 (save for a drop in the year 2015).

## New players enter the market

The players have diversified over the period with the entry of non-direct foreign investment (DFI) actors such as multinational corporations, private equity and venture capital firms. Previously, most of the deals in Africa were government driven (mainly privatisations) or involved DFIs. In 2009, the value of private equity (PE) deals in Africa was $1,5bn. In 2014, it was $8,1bn.

Taking East Africa as an example, PE deals represented 45% of the total reported number of deals in 2016 and 8% of the value of the reported deals. This is remarkable considering that PE activity in East Africa has only peaked in the past seven to 10 years.

Multiple factors have contributed to this. There is obviously the "Africa rising" narrative, with economies in most jurisdictions in Africa enjoying relatively stable growth rates compared with traditionally attractive economies in the West and Asia. Democratisation of many jurisdictions in Africa during this period, and the opening up of the business environment, has also contributed. Countries in Africa have generally moved up the ease-of-doing-business rankings, with countries such as Mauritius, South Africa and Rwanda moving into the top quartile of the Doing Business ranking.

## Deals diversify into new directions

Across Africa, the sectors in which deals are being conducted have diversified. In 1999, a large number of deals were done in natural resources. In the year 2007, technology and telecoms was very attractive. Now, with more economies becoming or aspiring to become middle income, more deals have been completed in energy and infrastructure, as most developing economies in Africa are growing their infrastructure. More deals are also being done in the consumer-driven sector (such as in education and hospitals) and service sectors (professional service firms). Technology is still a mainstay and deals in the financial services sector are prevalent.

ALEX MATHINI

## Growing in complexity

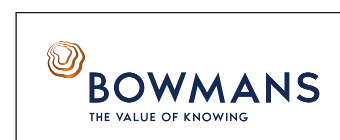
Deals have become more complex and players more sophisticated. This is a factor of deals being multi-jurisdictional, involving multiple parties, developments in the law and regulators becoming more vigilant. For instance, the recently concluded acquisition by Kansai Plascon Africa, a subsidiary of Kansai Paint Co. Ltd, of the entire share capital of Sadolin Kenya, Sadolin Uganda and Sadolin Tanzania, was implemented across various African jurisdictions including Burundi, Kenya, South Africa, Tanzania, Uganda and Zanzibar. Regulatory approvals were required from the COMESA Competition Commission, as well as competition authorities in Kenya and Tanzania.

In 1999, competition approval for such a deal would only have been required from the Monopolies and Prices Commission (the competition authority of Kenya at the time) as the COMESA Competition regulations only came into force in the year 2013.

All in all, these have been exciting times for stakeholders – businesses seeking investments, investors, regulators, government and professional advisers. Picture this: in 1999, there was no law firm in Africa that was established in multiple jurisdictions, and save for South Africa and some countries in North Africa, no international law firm was established in Africa. Now law firms such as Bowmans operate in various countries in Africa and others have entered into strategic networks and alliances. Several international law firms (such as Dentons, DLA Piper, Norton Rose Fulbright and Baker McKenzie) have set up offices in various African countries.

Players can only hope that the next two decades match the levels of development we have seen in dealmaking in the past 18 years! ■

*Alex Mathini is a partner at Bowmans Kenya.*



# DealMakers Africa

DealMakers

| BY DEAL VALUE | | | BY DEAL FLOW | |
|---|---|---|---|---|
| **Investment Advisers** | | | | |
| Rothschild | ($3,87bn) | 2014 | Standard Bank Group | (18 deals) |
| Standard Chartered Bank | ($617m) | 2015 | Standard Bank Group | (12 deals) |
| Standard Bank Group | ($3,95bn) | 2016 | PSG Capital | (10 deals) |

| BY DEAL VALUE | | | BY DEAL FLOW | |
|---|---|---|---|---|
| **Legal Advisers** | | | | |
| Bowman Gilfillan Africa Group | ($4,63bn) | 2014 | Bowman Gilfillan Africa Group | (41 deals) |
| Bowman Gilfillan Africa Group | ($1,15bn) | 2015 | Bowman Gilfillan Africa Group | (24 deals) |
| Bowmans | ($1,64bn) | 2016 | Bowmans | (39 deals) |

Leaders in
Cross-Border Transactions

Botswana | Ghana 2017

GHS 92 M (USD 23 M)
Sole Financial Advisor

Sale of 100% of afb Ghana to Letshego Group Holdings

Namibia 2016

ZAR 450 M
Sole Advisor and Arranger

Debt Capital Raise

Ghana 2016

GHS 60 M (USD 15 M)
Sole Advisor and Arranger

Debt Capital Raise

Norway | Zambia 2016

USD 51 M
Financial Advisor

Sale of 100% of Greenbelt Fertilizers to Yara

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# Don't leave a $50 billion deal to chance: think social media!

Companies planning M&A, whether it's in South Africa or in the US, increasingly need to deal with a growing challenge: the role of digital communications.

In response to a tougher deal making climate, with transaction volumes down sharply in South Africa and the US alike, companies have needed to adapt and nowhere is that truer than in their approach to external M&A communications. In the past one could negotiate a deal over a weekend, then hand an exclusive to the Wall Street Journal or the Financial Times and land the coverage you wanted. That's not the case anymore – the 24-hour digital news cycle and social media have changed all that. Now, in the US one operates in a media environment where 28% of deals are first reported on Twitter and less than 5% of readers of a Wall Street Journal story will read to the end. Leaks are uncomfortably common and every journalist wants to be the first to report on a deal.

This puts companies' communications teams under greater scrutiny and social media has been a real wake-up call for these teams.

In 2017, you either have a digital and social media strategy or you leave a multi-billion-dollar transaction to chance.

Some may think that this sounds farfetched. Facebook is for cat videos and baby photos, not professional investors, who have long been thought to be inactive on social media. Therefore, spending time trying to reach them on social media sounds like a waste of time. Five years ago, that may have been true. But a 2016 Brunswick Group survey of global buy/sell side investors showed that this is not the case anymore. In fact, 96% of respondents said they actively use social media to investigate investment decisions. Even more remarkable, 78% said they made investment decisions based on information they found on social media.

And while South Africa lags the global market in terms of digitisation and social media use, we are not only catching up quickly but are able to anticipate digital trends by paying close attention to overseas markets.

Brunswick sits at the centre of M&A and social media conversations with our clients across the globe. And here's what we've learned from the US M&A market through working alongside many Chief Communications Officers: they don't need to be convinced of the need for a social media strategy. In fact, they need a more efficient way to target messages to these groups -- and social media offers the most cost effective solution.

There is no magic bullet, however. Every deal has a different set of stakeholders who need to be reached and influenced and there's no one single platform to achieve this result. Instead, social media works by understanding the various ways target audiences will hear about and make decisions about a deal. Knowing this, informed choices can be made about the right social media platforms. Typically, a coordinated approach across multiple social networks is required to reach these audiences.

JIM WELLS

GEORGIE ARMSTRONG

When it comes to delivering messages at critical points in the deal process, US-based companies employ highly targeted paid social media campaigns through their long-established and credible social media channels. Doing so means companies can select the specific people they want these messages seen by and make sure they show up in their news feeds.

This poses a huge market opportunity.

Consider a couple of strategies.

Google is still the first information stop for investors. In fact, 81% of them use Google to research deals and 61% make decisions based on what these results show. Google is the perfect platform because it reaches people actively raising their hand for your information.

For example, if you typed in "Alaska Airlines and Virgin America" around the time of that deal's close, the first result was an ad that took you to the deal site with messaging in favour of the transaction. If you were a consumer or investor with a vested interest in

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the future company, the top Google result drove you to the acquirer's deal story.

Beyond search, investors say they use LinkedIn (46%) and Twitter (39%) to research a deal. Business Insider research shows that business professionals place more trust in information on LinkedIn than any other social network.

But social media in an M&A context can be trickier. For these types of situations, most companies prefer to highly target their posts to investors and related stakeholders, so that they do not appear publicly on a company's timeline. These are called "dark posts," meaning they only appear in the news feeds of selected audiences.

To illustrate how this applies, company management teams can create content to be posted to their relevant social media channels and owned content channels, directly targeting specific stakeholders. LinkedIn and company deal sites can be instrumental in reaching investors and employees and the same content can then be repackaged for distribution through Facebook and Twitter's paid targeting tools, enabling the company to reach a large online audience directly, without any mediation.

So, will social media M&A go mainstream?

We believe it already has. In fact, communicators have applied these strategies to some marquee global deals and it's nearing a critical mass. Future discussions won't be "if" we use social media, but how much more sophisticated can we get?

It is necessary to keep in mind, however, that even though digital enables us to reach the right audiences at the right time and in the right places, we need to be ever cognizant of the importance of transparency and accountability in corporate communica-tions, now more so than ever. Developing trusted corporate digital channels not only benefits all stakeholders but helps combat the growing murky landscape of fake news and twitter bots.

And even though South Africa straggles the more developed markets in terms of social media use, we anticipate digital progressively starting to intersect with local business transaction workflows. South Africa's attractiveness as a destination for cross border transactions could also catapult the country into this more sophisticated digital environment before we catch up locally. Couple this with the fact that the rapidly evolving South African social media landscape is unique in its ability to exert public pressure it would be worthwhile taking this glimpse into the world of "deal future" and ensuring social media is part of M&A plans and strategies now. ■

*Jim Wells is a Director at Brunswick New York and Georgie Armstrong an Associate at Brunswick Johannesburg.*


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# Mergers & Acquisitions Analysis 2000 – 2017

| | Q1 - Q3 2017 | | 2016 | | 2015 | | 2014 | | 2013 | | 2012 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Total Deal Activity (Excl Failed Deals)** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** |
| Local Deals | 312 | 269 445 | 401 | 440 621 | 428 | 1 862 948* | 463 | 293 651 | 485 | 191 190 | 489 | 181 113 |
| Foreign Deals | 45 | 98 727 | 79 | 1 066 561 | 45 | 86 911 | 41 | 194 630 | 35 | 51 798 | 36 | 70 339 |
| | **357** | **368 172** | **480** | **1 507 182** | **473** | **1 949 859** | **504** | **488 281** | **520** | **242 988** | **525** | **251 452** |
| **BEE Analysis** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** |
| Deals | 18 | 39 263 | 15 | 18 136 | 7 | 1 137 | 17 | 13 353 | 14 | 4 694 | 17 | 8 285 |
| Failed deals | 1 | 7 | 1 | 20 | 3 | 841 | 0 | 0 | 0 | 0 | 1 | 59 |
| | **19** | **39 270** | **16** | **18 156** | **10** | **1 978** | **17** | **13 353** | **14** | **4 694** | **18** | **8 344** |

* R1,5bn AB Inbev / SABMiller

| | 2011 | | 2010 | | 2009 | | 2008 | | 2007 | | 2006 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Total Deal Activity (Excl Failed Deals)** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** |
| Local Deals | 424 | 261 482 | 373 | 214 371 | 401 | 144 938 | 456 | 210 272 | 614 | 338 851 | 578 | 226 487 |
| Foreign Deals | 35 | 320 985 | 34 | 67 772 | 30 | 25 391 | 28 | 63 616 | 53 | 158 033 | 45 | 29 600 |
| | **459** | **582 467** | **407** | **282 143** | **431** | **170 329** | **484** | **273 888** | **667** | **496 884** | **623** | **256 087** |
| **BEE Analysis** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** |
| Deals | 22 | 23 492 | 22 | 18 074 | 39 | 21 616 | 69 | 38 140 | 84 | 65 849 | 111 | 41 740 |
| Failed deals | 1 | 1 220 | 2 | 9 875 | 2 | 65 | 5 | 34 416 | 5 | 17 483 | 2 | 220 |
| | **23** | **24 712** | **24** | **27 949** | **41** | **21 681** | **74** | **72 556** | **89** | **83 332** | **113** | **41 960** |

| | 2005 | | 2004 | | 2003 | | 2002 | | 2001 | | 2000 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Total Deal Activity (Excl Failed Deals)** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** |
| Local Deals | 547 | 167 876 | 504 | 190 895 | 533 | 101 452 | 438 | 100 023 | 479 | 212 260* | 501 | 129 867 |
| Foreign Deals | 26 | 163 929 | 27 | 136 347 | 24 | 11 228 | 38 | 101 661 | 50 | 254 647** | 33 | 80 007 |
| | **573** | **331 805** | **531** | **327 242** | **557** | **112 680** | **476** | **201 684** | **529** | **466 907** | **534** | **209 874** |
| **BEE Analysis** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** | **No** | **R'm** |
| Deals | 109 | 42 485 | 97 | 55 841 | 62 | 19 680 | 34 | 7 015 | 37 | 4 263 | 9 | 1 971 |
| Failed deals | 9 | 4 702 | 3 | 322 | 1 | 34 | 3 | 1 661 | 0 | 0 | 0 | 0 |
| | **118** | **47 187** | **100** | **56 163** | **63** | **19 714** | **37** | **8 676** | **37** | **4 263** | **9** | **1 971** |

Source: DealMakers Online

* R144,6bn Anglo / de Beers
** R221,76bn Merger of BHP Billiton

# General Corporate Finance Analysis 2000 - 2017

| | Q1 - Q3 2017 | | 2016 | | 2015 | | 2014 | | 2013 | | 2012 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No | R'm | No | R'm | No | R'm | No | R'm | No | R'm | No | R'm |
| Share Issues | 130 | 132 898 | 206 | 140 404 | 247 | 200 893 | 230 | 203 127 | 185 | 75 041 | 156 | 85 244 |
| Share Repurchases | 38 | 9 693 | 45 | 6 580 | 35 | 9 393 | 30 | 28 680 | 41 | 31 147 | 39 | 21 261 |
| Restructurings | 6 | 49 424 | 12 | 26 262 | 21 | 10 935 | 20 | 23 298 | 11 | 15 807 | 8 | 13 012 |
| Unbundlings | 10 | 9 377 | 8 | 127 749 | 10 | 112 767 | 17 | 118 600 | 7 | 16 019 | 6 | 5 066 |
| Capital Reductions | 1 | 3 | 1 | 6 | 1 | 11 | 2 | 230 | 3 | 332 | 9 | 1 447 |
| Open Market Transactions | 12 | 90 883 | 24 | 46 821 | 27 | 50 195 | 9 | 10 895 | 13 | 4 350 | 13 | 6 058 |
| Specialist Securities | 295 | 9 710 | 260 | 13 569 | 219 | 10 976 | 279 | 21 133 | 184 | 15 152 | 81 | 4 683 |
| Listings | 29* | 202 923 | 19 | 3 381 130* | 27 | 163 776 | 31 | 80 238 | 17 | 754 072* | 24 | 20 816 |
| **Total** | **521** | **504 911** | **575** | **3 742 521** | **587** | **558 946** | **618** | **486 201** | **461** | **911 920** | **336** | **157 587** |

Q1 - Q3 2017: * 3 on ZAR X, 2 on 4AX

2016: * R3,12trn AB Inbev

2013: * R714,5bn Glencore Xstrata

| | 2011 | | 2010 | | 2009 | | 2008 | | 2007 | | 2006 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No | R'm | No | R'm | No | R'm | No | R'm | No | R'm | No | R'm |
| Share Issues | 192 | 71 405 | 197 | 145 709 | 176 | 85 556 | 182 | 93 502 | 302 | 139 660 | 226 | 73 020 |
| Share Repurchases | 41 | 41 739 | 44 | 13 398 | 38 | 8 498 | 68 | 53 418 | 48 | 76 061 | 48 | 68 446 |
| Restructurings | 5 | 2 537 | 0 | 0 | 1 | 0 | 2 | 10 600 | 0 | 0 | 3 | 2 088 |
| Unbundlings | 11 | 30 313 | 14 | 37 151 | 1 | 52 500 | 9 | 183 228 | 9 | 92 354 | 16 | 13 669 |
| Capital Reductions | 25 | 2 101 | 32 | 5 065 | 19 | 4 708 | 16 | 3 578 | 50 | 16 653 | 45 | 10 286 |
| Open Market Transactions | 27 | 8 380 | 27 | 8 001 | 23 | 10 503 | 12 | 7 976 | 35 | 31 253 | 20 | 35 483 |
| Specialist Securities | 59 | 3 418 | 70 | 5 424 | 113 | 9 835 | 71 | 5 299 | 40 | 2 237 | 28 | 1 375 |
| Listings | 25 | 33 634 | 16 | 53 981 | 16 | 97 717 | 31 | 707 210* | 65 | 111 326 | 40 | 67 450 |
| **Total** | **385** | **193 527** | **400** | **268 729** | **387** | **269 317** | **391** | **1 064 811** | **549** | **469 544** | **426** | **271 817** |

2008: * R555bn BAT secondary listing, R109bn Reinert listing

| | 2005 | | 2004 | | 2003 | | 2002 | | 2001 | | 2000 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No | R'm | No | R'm | No | R'm | No | R'm | No | R'm | No | R'm |
| Share Issues | 93 | 21 977 | 83 | 23 751 | 59 | 17 780 | 73 | 14 287 | 43 | 10 663 | 19 | 3 159 |
| Share Repurchases | 41 | 11 544 | 38 | 19 412 | 71 | 3 877 | 125 | 5 358 | 115 | 8 938 | 33 | 1 132 |
| Restructurings | 4 | 21 152 | 2 | 205 | 8 | 1 713 | 10 | 7 398 | 10 | 6 221 | 0 | 0 |
| Unbundlings | 6 | 5 176 | 5 | 6 268 | 8 | 9 014 | 11 | 40 273 | 13 | 30 479 | 2 | 582 |
| Capital Reductions | 35 | 11 260 | 25 | 3 246 | 11 | 2 233 | 6 | 910 | 4 | 3 674 | 5 | 750 |
| Open Market Transactions | 31 | 16 043 | 16 | 13 124 | 0 | 0 | 0 | 0 | 1 | 99 | 0 | 0 |
| Specialist Securities | 11 | 1 201 | | not recorded | | not recorded | | not recorded | | not recorded | | not recorded |
| Listings | 18 | 16 603 | 11 | 11 942 | 6 | 7 477 | 9 | 6 580 | 11 | 15 497 | 17 | 26 266 |
| **Total** | **239** | **104 956** | **180** | **77 948** | **163** | **42 094** | **234** | **74 806** | **197** | **75 571** | **76** | **31 889** |

Source: DealMakers Online