EXECUTIVE SUMMARY

In this month's eFile, we discuss the newly published B-BBEE regulations and the impact they will have on the reporting of results and major BEE transactions. We also discuss how recent labour disputes have shone a spotlight on the regulation surrounding companies undergoing legal proceedings. Any business that produces content will be interested in our take on the Film and Publication Board's revised Online Regulation Policy.

While we have shared the salient points in this eFile, more detailed versions of each of these articles can be found on our Web site.

RECONCILING THE BUSINESS RESCUE MORATORIUM WITH LABOUR DISPUTES

A company undergoing business rescue proceedings has the right to a moratorium on all legal proceedings against it. However, the impact this has on recent employment-related disputes has resulted in conflicting jurisprudence.

While this moratorium does serve to provide balance in most cases, it has given rise to inconsistent outcomes in three matters under consideration by the Labour Court. In the matters of *Fabrizio Burda v Integcomm (Pty) Ltd.* (unreported case no. JS539/12, 29 November 2013; *NUMSA v Motheo Steel Engineering* (unreported case no. J271/14, 7 February 2014) and *Sondamase and another v Ellerine Holdings Limited (in business rescue) and another* (unreported case no. C669/14, 22 April 2016), the Labour Court considered the moratorium in their outcome.

This has led the Labour Court reflect on the purpose of the moratorium. Henochsberg explains:

> *"Section 133 makes provision for a general moratorium (in some jurisdictions and [sic] moratorium is known as a 'stay' or a 'stay of proceedings') on legal proceedings...against the company...while the company is subject to business rescue proceedings. The moratorium granted by this section is designed to provide the company with a breathing space while the business rescue practitioner attempts to rescue the company by designing and implementing a business rescue plan."*

The issue of section 133's applicability to arbitrations and Labour Court disputes can only be finally determined by a higher court. However, it appears that the precedent-setting decisions of recent cases will be followed by the Labour Court in the future for similar matters, and that section 133 will be held to apply to all employment disputes in the CCMA and the Labour Court.

For more details on the individual cases and how they led to this outcome, read the full article on our Web site.

FILM AND PUBLICATION BOARD RELEASES REVISED ONLINE REGULATION POLICY

The Film and Publication Board's final draft of its Online Regulation Policy retains some problematic elements, but is a significant improvement on its previous version. This final version was submitted to the Minister of Communications for approval and publication in the Government Gazette. The

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policy comprises four sections: online distribution of "television films" and games, user-generated content (UGC), complaints, and self-classification.

The Board intends that the Policy will constitute an effective regulatory framework for the classification of digital content. The Policy also seeks to create a basis for a form of co-regulation between the Board and industry for the classification of digital content distributed on mobile and digital platforms.

The Policy applies to any person who distributes or exhibits online any film or game or publication (excluding newspapers and magazines falling under the Press Council).

For more details on what User Generated Content (UGC) stands to be regulated, read the full article on our Web site.

NEWLY PUBLISHED REGULATIONS IMPACT IMPLEMENTATION OF THE B-BBEE ACT

The final Broad-Based Black Economic Empowerment Regulations in terms of the Broad-Based Black Economic Empowerment Act (B-BEE Act) are set to regulate the administration and implementation of the B-BEE Act and the functions of the B-BBEE Commission as a whole. The Minister of Trade and Industry published the Regulations in the Government Gazette on 6 June 2016, and they came into effect on the same day.

The Regulations address the registration of major BEE transactions and annual BEE reporting requirements for listed companies and government entities. The B-BBEE Commission will maintain a registry of "major" BEE transactions, which are defined as those that fall above a certain threshold. While the Minister is required to publish this threshold notice, this has not yet taken place. Unfortunately, this lack of information translates into an inability to comply with this registration requirement, despite the BEE Regulations having taken effect. A definition of a "B-BBEE transaction" is also yet to be expanded on in the Regulations.

For more information on the registration of major BEE transactions and the regulations for B-BBEE reporting, read the full article on our Web site. You can also read the notice in the Government Gazette here.

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