

A responsible business | committed to make an impact

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Demonstrable compliance with Environmental, Social and Governance (ESG) principles is no longer a nice-to-have for businesses - it is a must-have. Despite the exponential growth in the mainstream interest in ESG, where there is now an integrated focus on the triple bottom line of 'E', 'S' and 'G', as far as Webber Wentzel is concerned, we have been advising clients on the core themes of 'risk', 'opportunity' and 'impact' for decades.

Our leading cross-disciplinary teams of experts advise clients on ESG and sustainability-linked issues

across all sectors. We help clients to navigate regulatory developments, policy drivers and international benchmarks in pursuit of sustainable development and shared value in the long term.

We guide clients on the relevant industry standards and risks, and bring a laser focus on supporting our clients to know their business, their supply chain, and the broader ecosystem.

At Webber Wentzel, we are committed to making a transformative and sustainable impact through our work and actions, in accordance with the UN's Sustainable Development Goals. We are equally committed to good corporate citizenship across the core ESG principles. We understand that our clients expect us to walk the walk and talk the talk on ESG alongside them. Being a responsible and contributing corporate citizen is a key component of our overall business strategy.

Find out more about our ESG offering and read some of our recent ESG related insights.

Webber Wentzel ESG related accolades
ESG Initiative of the Year
- *African Legal Awards 2021*

Women Empowerment in the Workplace Award
(Overall Winner: Southern Africa)
- *Gender Mainstreaming Awards 2021*

Ranked in Band 1 for Environment: South Africa
- *Chambers Global 2021*

Environmental & Renewables Team of the Year: highly commended
- *African Legal Awards 2020*

CSR, Diversity, Transformation and Economic Empowerment Award
- *African Legal Awards 2018*

Pro Bono Lawyer of the Year
- IBA Pro Bono Award 2016 (a first ever for a lawyer from the African continent- Odette Geldenhuys)

Diversity Initiative of the Year
- *African Legal Awards 2016*

Project of the Year - Africa Renewables: Kathu Solar Project
- *IJ Global Awards 2016*

Project of the Year: Alchemy: Anglo American Platinum's ZAR3.5 billion social development framework for shared ownership
- *IAP2 Core Value Awards for Excellence in Public Participation 2014*



PRACTICE MAKES PERFECT



- **ESG Initiative of the Year**
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African Legal Awards 2018

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Adam Ismail
Partner



Area of speciality

M&A and BEE. I focus on the consumer sector, financial services and real estate.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I led the Webber Wentzel team that advised PepsiCo Inc and its South African subsidiaries, Simba and

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Pioneer Foods, on the implementation of two conditions imposed on them by the Competition Tribunal. These were to establish a trust for the benefit of their 12 000+ South African employees, holding ZAR1.655 billion worth of shares in PepsiCo Inc (listed on Nasdaq); and to create a fund to which PepsiCo/Simba and Pioneer Foods would contribute ZAR600 million for the development of emerging farmers and black SMMEs and to advance education and skills development in the sector. This was a unique and first of its kind B-BBEE transaction, where the South African employees received shares in a foreign listed holding company on such a scale. In addition, the shares were gifted to the employees, there were no funding arrangements.

I also advise listed and unlisted companies on matters of governance, particularly the roles, duties and responsibilities of social and ethics committees. I have also served on one of those committees.

Thoughts on ESG as a whole in the context of SA

In a couple of areas SA is ahead of the game, especially in relation to the rights and protection of employees. The recent amendment to the Competition Act gives the Minister of Trade, Industry and Competition certain legal rights to protect the public interest when approving mergers. The Minister uses that authority to approach a merger approval in a constructive way: firstly to minimise harm and secondly in seeking proactive steps by the merger parties to contributing to SA Inc. The PepsiCo deal was a stand-out example of this approach.

Where I am seeing ESG the most is in a consciousness by boards of directors, probably in keeping with King IV, that their companies' stakeholder base is wider than initially thought. It extends beyond shareholders and customers to other interest groups, both specific and non-specific. A lot of multinationals already have this level of sophistication and are bringing it to SA.

Hurdles | challenges within this sector

There is always the risk of over-regulating a sector and compliance becoming prohibitive from a cost perspective. It is best to target the big players, because even though small South African businesses also have a significant impact on ESG on an aggregated basis, it is unwise to squeeze small business too hard. SA is a unique economy, given its high unemployment rate - people can only earn a living through entrepreneurship and those small businesses help to keep the economy growing.

Some personal information, eg how did you get into this speciality

I trained as an M&A lawyer and entered the market when there was an M&A boom, in the early 2000s. Through that experience, I got access to boards of many significant companies. With the advent of the King Codes on Corporate Governance, I evolved as a practitioner with ESG experience garnered in the trenches. This sector has over the last couple of year become a lot more sophisticated, including new disciplines like environmental compliance.

I feel strongly about inequality in SA, and decided to use my M&A skillset to assist with BEE structuring, to ensure that deals are structured on a responsible and sustainable basis and to advise clients how to structure these types of transactions properly. It is not only about getting maximum points for as little effort as possible, no matter the consequences. It should be tackled rather as creating a structure that is sustainable.

A related passion and skillset for me was being a client representative in discussions with labour unions. I have had a number of really good experiences over the years.

Interesting fact(s) about yourself / your achievements

I love hiking in the mountains around Cape Town as often as I can and serving community-based organisations based on the Cape Flats. ●



Bruce Dickinson

Partner



Area of speciality

Mergers and acquisitions, particularly in the mining industry, as well as the structuring/restructuring of companies, mining transactions and projects, as well as the development and operational aspects thereof, including sustainable development.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I have over 20 years' experience working with both mining companies and com-

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munities on the development and implementation of ownership and sustainability structures, which has included, for example, the corporatisation of the Royal Bafokeng Nation's mineral assets and the renegotiation of their royalty arrangements with Impala Platinum in the 1990s. Another early deal was the establishment of Eyesizwe Coal and working with the Eyesizwe team on several transactions over the years culminating in the creation of Exxaro. I have been involved in many like transactions over the years, including transactions such as Project Alchemy: Anglo Platinum's (AAP) community empowerment transaction, through which it invested c. ZAR3.5 billion to uplift communities around four of its mines, as well as labour-sending areas. The share ownership scheme which underlies Alchemy made the development trusts the second-largest shareholder in AAP at the time. The purpose of the scheme was not only ownership but ensuring the long-term sustainability of the communities post mine closure. Most recently, I lead the team advising Anglo American on the divestment of its SA coal interests to its shareholders through a new entity, Thungela Resources, which was listed in Johannesburg and London on 7 June 2021. The transaction was largely in response to the increasing aversion of leading sovereign wealth funds and other institutional investors to fossil fuels. As part of the transaction an additional 10% was devolved to employees and communities. A current interesting project that we are working on is the tailoring of company's in-house standard commercial contracts, or ad hoc transaction documents, to limit environmental risk and to reduce the company's as well as their business partners' environmental impact. We believe that the updating of supply-chain and other standard form agreements could be critical in terms of assisting companies to reduce Scope 2 and 3 emissions and to ultimately assist in achieving GHG reduction, climate change and net zero targets.

Thoughts on ESG as a whole in the context of SA

Companies' ESG performance and commitments are under the spotlight like never before. ESG is no longer a nice-to-have - it has become a prerequisite to diminishing the social trust deficit; to guaranteeing the responsible sourcing of metals and minerals; to driving policy reform; and,

ultimately, to decarbonising the economy. Companies need to navigate, understand, report against and identify opportunities within the many frameworks which inform the fundamental principles and obligations underpinning ESG performance. The metals and mining industry will experience an even more pronounced acceleration in ESG adoption in the coming years, with the social and governance pillars fast becoming as significant as the environmental pillar - especially in the context of SA. In addition, with the risk of punitive tariffs looming large, access to international markets may well be heavily constrained if SA is unable to decarbonise its economy quickly. This poses a significant risk both to the companies seeking to export, but also to the SA economy, with its heavy reliance on export earnings, particularly its mineral exports.

Where SA is different from many other countries is the elevated importance of the S and the G, particularly having regard to inter alia the country's inequality and unemployment levels - it is essential that we create a more sustainable society that uplifts as many people as possible as quickly as possible.

Hurdles/challenges in this sector

The many legal frameworks underpinning ESG remain a minefield - increased global standardisation of ESG requirements and reporting will assist companies navigate, understand and report against the requisite ESG standards. The lack of standardisation and certainty as to which frameworks and standards to adopt and report against has led to a relatively muted uptake of solutions and structures seeking to address ESG, although we are seeing larger corporates starting to take important steps in driving ESG initiatives. Mining companies and banks are amongst the most prominent players leading the charge. This will lead to a trickle-down effect throughout the economy, particularly as companies seek to reduce Scope 2 and 3 emissions.

Another important challenge is how companies engage in a constructive and meaningful manner with their local communities - involving them in the conceptualisation, development and implementation of proposed projects and ensuring broad support will certainly go a long way in ensuring the legitimacy and success of such projects. We have over many years developed best practice methodologies to assist companies successfully navigate these engagements.

Some personal information, eg how did you get into this speciality

I have been fortunate to work with both mining companies and communities for over two decades in seeking to achieve win-wins - from ensuring a license to operate, to broader ambitions under the SDGs and through to our current ESG initiatives.

Interesting fact(s) about yourself / your achievements

As a young lawyer I worked with a team of lawyers in assisting the Khulumani support group to gather witness statements from victims and relatives of victims of apartheid atrocities, which were subsequently presented at the TRC hearings. Much of what is in those statements is incorporated into Jacques Pauw's book, *"Into The Heart of Darkness"* (Jonathan Ball, 1997). The experience had a profound effect on me as a person and on what I have sought to achieve throughout my career. ●



Khurshid Fazel
Partner



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Area of speciality

Banking and finance, and within that, debt funding and hybrid funding, i.e. hybrid debt with equity-like features.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I recently started becoming involved in matters which have sustainability-linked loans. A new spin on

financing and an area I have just had to skill up on.

I was involved in advising a syndicate of banks and financial institutions that advanced sustainability-linked facilities to Mediclinic Southern Africa. The funders and Mediclinic agreed upon certain environmental and social key performance indicators (KPIs) and annual targets in respect of the KPIs. The relevant targets are independently verified every year, and if they are met, the margins applicable to these facilities will be reduced.

Each sustainability-linked loan has bespoke KPIs and targets and the interest rate adjustments are equally bespoke and as such these provisions need to be formulated on a deal by deal basis. In addition, the extent of the sustainability agent's role is constantly evolving (including in the global market) which makes these provisions quite heavily negotiated.

This was a great matter to be involved in and landmark within the SA context. What was interesting to me on this matter as well was that when discussing it with our global alliance partner, Linklaters – they hadn't done an akin deal. It was quite gratifying to see that this SA led deal was a bit ahead of what is happening in global markets in this instance.

Thoughts on ESG as a whole in the context of SA

I am very impressed with the strides that have been made on ESG particularly in the financial services sector in SA, with banks putting a lot of emphasis on it. One of my biggest clients is RMB, which has been building its ESG capacity and hiring people with expertise in

this area. They have an internal drive to build knowledge and skills.

In global M&A, ESG is very much on board agendas. While banks are very aware of these issues, larger and smaller corporations are also following the global trends. It's all quite new but gathering lots of momentum.

Hurdles | challenges within this sector

There is a shortage of knowledge and experience in the market in some areas, although we are all learning fast. We have to learn a new language, new concepts and principles. Some of the challenges include how to verify information to ensure companies are meeting their sustainability targets.

Auditing compliance is an issue, as we have found there is really a shortage of experts in SA who are qualified to audit ESG compliance. But the auditing firms are also ramping up their capabilities in this area.

Some personal information, eg how did you get into this speciality

It wasn't my plan to become a corporate lawyer. I had started my early career wanting to be a human rights lawyer. But the path was diverted, and I found myself at a large corporate law firm specialising in banking and finance. It's very different from where I started, but it has been a fulfilling career and an interesting area of law. I'm also finding the big drive on ESG within the area to be exciting – the social and environmental impact aspects resonate with my early career aspirations – and desire to make a meaningful impact through my work.

Interesting fact(s) about yourself / your achievements

I previously worked with orphaned children, through the international organisation War Child, and spent time in Jordan in the refugee camps. I also walked for six days in the desert to help raise awareness for War Child.

I love to be in nature and to walk. I have done lots of multi-day walks in the Kruger National Park and completed the Otter trail. ●

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Michael Denenga
Partner



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ESG has become top of mind for our clients. I advise them on their ESG policies, reporting requirements and compliance frameworks. This also involves having to negotiate ESG policies with investors. There may be numerous investors in a fund, each with their own reporting timelines and requirements. It is important to try to streamline these requirements, to make sure clients do not face onerous obligations on ESG reporting. We are currently compiling a checklist of compliance requirements and reporting formats to help clients to comply.

Thoughts on ESG as a whole in the context of SA

I believe SA is reasonably advanced in ESG adoption. Fund managers realise it is not “a nice to have”, it is a competitive issue. Clients are taking it seriously at both fund level and portfolio company level and South Africa has incorporated the governance aspect into the King IV on Corporate Governance. The “G” in ESG has been fuelled by South Africa’s adoption of various transformation agendas designed to advance inclusivity across all sectors including employment

Area of speciality

I am an investment funds and finance specialist, working in the financial services sector and specifically in the fund formation team. Most of my work is in establishing private equity fund vehicles.

Experience in ESG (focus

being within SA and especially in the deal making / financial market space)

equity, black economic empowerment and historically disadvantaged groups. Investors are allocating more funding to managers that are female-owned or that invest in portfolio companies that are female owned. There is still a lot that we need to do but I think most people realise by now that an investment that is impactful does not have to be unprofitable.

Hurdles | challenges within this sector

ESG regulations are still evolving and many different reporting standards are applied by different regulators. Although there are initiatives under way to standardise them, at the moment, clients have to consider various different requirements and thresholds. Some of the ESG metrics are not easily measurable, making it very challenging, especially at portfolio company level, to comply.

Some personal information, eg how did you get into this speciality

As a fund formation specialist. I am regularly called upon to advise clients on ESG. I have seen ESG gathering momentum and realised that as lawyers we must understand ESG better to help our clients to navigate through it. I am improving my skills mostly through one-day workshops, run by some of our investors and general partners. The South African Venture Capital Association has also been quite active in promoting classes on ESG.

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Interesting fact(s) about yourself / your achievements

In my previous life I was a professional soccer player, and part of me feels I should have pursued that career. Perhaps I would have had a more glamorous life. ●



Nomsa Mbere

Partner



Area of speciality

Mining corporate and commercial. The corporate aspect covers M&A, transaction structuring and related transactions. I have expertise in the mining sector.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I do a lot of work with mining clients, where there is now a pressing need to include

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sustainability goals as an integral part of the mining company strategy. This includes, among other things, promoting thriving communities, protecting the natural world and promoting equal opportunities. These goals all lead to a sustainable future, through and beyond mining, for host communities. We are now having to include more clauses in agreements to comply with certain compliance laws and ESG requirements imposed upon the entities by their international customers, for example clauses on compliance with the applicable laws on (i) the protection of women and children, (ii) equal treatment and prohibition of discrimination, abuse and harassment; and (iii) prohibition of hard labour and forced labour practices. In this regard, my focus is on social and governance areas.

Thoughts on ESG as a whole in the context of SA

SA has quite a way to go on ESG. It is still seen as a separate item, and not being fully integrated into companies' key strategic objectives or into all the various business unit activities. People tend to still work in silos, each concerned with their areas of expertise, resulting in ESG principles being implemented in various splintered initiatives. As a result, money and resources are not efficiently utilised. This could be avoided if a single, holistic approach throughout a group of companies was adopted.

I look forward to a time when it would become the norm for mining companies to create a community umbrella structure (HoldCo) holding several different subsidiaries with their own investments. Over time, HoldCo could generate enough capital through collecting dividends for its subsidiaries and develop enough competency that ultimately the whole structure could become self-sustaining, comparable to a fully mature investment company. This could then be used as a tool by the mining company to invest in various initiatives for the benefit of the community. As the investments continue to pay dividends, HoldCo would grow its investment portfolio and, at the same time, be able to fi-

nance community development projects— rather like the role that the Public Investment Corporation (PIC) plays as a government investment body. The problem tends to be that companies often have a limited view of the community trust rather than looking at the bigger picture and thinking how they can grow the community trust to become a self-sustaining investment vehicle, with the necessary competencies and strong corporate governance structures to enable it to make its own investment decisions. Granted this will require commitment on all sides.

Hurdles | challenges within this sector

There is a lack of innovative ideas on empowering and growing community trusts. Rehabilitation guarantees or funds are often put aside for mine rehabilitation, which is good, however we need to start creating long-term, sustainable community industries such as large agricultural concerns, or enable local communities to participate effectively and in their own right as independent power producers (IPPS) in the renewable energy sector. What tends to happen is that some mining companies wait for the mine closure to be imminent before starting to plan ways in which they can help the community left behind. The regulatory environment also does not necessarily support innovative ideas, as the DMRE continues to require sizeable rehabilitation guarantees instead of enabling alternative ways to use the funds much earlier to create sustainable industries and projects to prepare in advance for mine closures.

Some personal information, eg how did you get into this speciality?

I have always been concerned about the sustainability of host communities in Africa. Companies have in the past come and mined and then departed, having made a small contribution to host communities thus leaving ghost communities behind. Many of us do not have the option to emigrate abroad, so we are left to deal the consequences of social instability in our communities when the mining companies move elsewhere.

Interesting fact(s) about yourself / your achievements

Rather than just seeing my work as a series of transactions, I have always worked casting one eye on the community. Therefore in giving legal advice, that passion for economic development of our communities is strong.

Before I became a lawyer, I was a dentist. What attracted me to law was that during the height of the HIV pandemic, academics from Harvard came to Botswana (where I lived) to conduct patient trials for ARVs and at that time we had no patient codes. I decided to study law, aiming to assist in protecting patients' rights by developing patient codes. Later, I became involved in charity work, including for the Botswana Red Cross, and it made me realise that without capital we will always be beholden to the person with the money. I started a foundation to raise funds to support communities in areas where my friends and I thought would make most sense. ●



Robert Appelbaum

Partner



Area of speciality

I started my career as a M&A and healthcare lawyer. I did pretty much everything that one could do within healthcare, including healthcare regulation, and after 30 years I transitioned into oil, gas and energy. With the advent of Covid-19, my love for healthcare was rekindled and I now head up the healthcare team at Webber Wentzel.

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Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I led the team that advised Business for South Africa, the Department of Trade, Industry and Competition and the South African Radio Astronomy Observatory on a pro bono basis on the National Ventilator Programme. We helped procure non-invasive ventilators from foreign manufacturers and then advised on the choice of outside experts, drafting, negotiation and settlement of the prototype and manufacturing agreements required for the NVP. Webber Wentzel helped to ensure the non-invasive ventilators were registered by the South African Health Products Regulatory Authority.

Shortly afterwards, I also led the Webber Wentzel team that advised the National Department of Health in drafting all the vaccine-related agreements, including those between the NDOH and the African Union where the AstraZeneca/Serum Institute vaccines were sold to the African Union, the agreement with Jansen (Johnson and Johnson) and that with Pfizer.

On the dealmaking side, I am currently helping a major international client to set up their oncology, vaccine and pharma-

ceutical business in SA. I also have extensive involvement in deal making in mine tailings and retreatment technology. These new technologies will substantially lessen pollutants in the mining industry.

Thoughts on ESG as a whole in the context of SA

I think in general businesses are paying lipservice to ESG in SA, but it will happen where there is money to be made from it. For example, companies are finding it makes more sense to rework mine tailings rather than starting new mines – this is both positive for the environment and hugely profitable, as some of those dumps are very old and contain high grade ores.

In SA - and it seems in other countries as well – companies don't seem to fully understand what ESG means.

Hurdles | challenges within this sector

In SA - and it seems in other countries as well – companies don't seem to fully understand what ESG means. They are only doing it because their shareholders require it.

Some personal information, eg how did you get into this speciality?

I wanted to train as a doctor. For me, returning to the healthcare sector, which I never thought I would, is wonderful. It is my first love, and I am enthusiastic about cutting edge, lifesaving work, especially where it is not necessarily profit-driven.

... in general businesses are paying lipservice to ESG in SA, but it will happen where there is money to be made from it. They are only doing it because their shareholders require it.

Interesting fact(s) about yourself / your achievements

I was very involved in starting the cultural boycott of SA. I was counsel and spokesman for Artists United Against Apartheid and their founders, Steven van Zandt and Arthur Baker. ●



Safiyya Patel
Partner



Area of speciality

Social impact and governance in the corporate sector, with a focus on BEE and employee trusts. I work with a range of companies, including financial services, telecoms, renewables, multinationals, listed and unlisted entities.

Experience in ESG (focus being within SA and especially in the deal making / financial market space)

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ESG is still quite nascent in SA. Advising corporates on governance policies has always been an integral part of corporate work, and ESG, in different forms, has been part of corporate policy for many years. But ESG as a holistic approach is still relatively new. We are particularly conscious of how important it is becoming in the M&A space, and particular for inward investors, who scrutinise a company's ESG closely before they make an acquisition.

For example, we are involved in a potential acquisition of a South African company, acting for the foreign buyer. A key qualification to their decision is whether the practices of the target company, in terms of the fees they are charging to underprivileged clients, could be considered unfair or excessive. They do not want to be seen to be investing in a company that is treating customers unfairly.

There are some good examples of South African companies that are very aware of ESG and put it at the forefront of their decisions. One in the retail space is Woolworths, which is very careful in its supply chain to ensure that the materials its suppliers use are sustainable and that their suppliers have empowerment policies in place.

Thoughts on ESG as a whole in the context of SA

SA cannot turn a blind eye to the concept of ESG. There is a need for partnership and collaboration between public and private sectors and this is an opportunity for everyone to achieve a win-win solution.

Hurdles/challenges within this sector

There is a great need for educating South African companies to understand the benefits of ESG and take a forward-looking approach. We need to do a lot more work in getting companies to understand how their actions impact communities, rather than having a selfish, profits-first approach.

South African businesses need to move away from the traditional, top-down way of decision making and become more inclusive. This entails, for example, consulting more with employees and communities and thinking beyond factors like age, gender and race.

One of the biggest problems that SA faces is youth unemployment – it has so many knock on effects, including increased levels of crime. A company like Woolworths has the understanding that if it doesn't contribute to job creation, its business suffers too because its market is not growing. Forward-looking companies appreciate that issues like this affect the success of their businesses. They know they must think harder about how to create opportunities for the youth by listening to them and understanding the hurdles they face.

Some personal information, eg how did you get into this speciality?

I feel very passionate about social impact. I have advised on a lot of BEE regulatory work and impact work and that is how I moved in this direction. There is a lot of overlap between those two areas. I couldn't do this work if I were not passionate about it. It gives me purpose and fulfilment, and keeps me interested in what I do.

Interesting fact(s) about yourself / your achievements

If I wasn't a lawyer I might have done something in the creative arts, probably become a comedienne. ●

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