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ADVISORY

Legislative and Regulatory highlights

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Introduction

- This report looks at the latest developments in Parliament, as it gets into gear in advancing its executive oversight work.
- It also covers bills that have been assented into law by President Ramaphosa and those out for comment.
- We also look at the two-pot retirement system that is coming into effect on 1 September.

7th Parliament in full swing

- Both houses (NA and the NCOP) of Parliament have been busy with setting up structures and inducting members on the workings of the institution, as well as the focus areas of different committees.
- This is as the business of Parliament continues. Already, various cluster Ministers (such as the Justice, Crime Prevention and Security) and heads of state institutions (such as the Auditor-General) have appeared before their respective committees for oral question and answer sessions.
- The President and the Deputy President have also appeared before Parliament to face a wide range of oral questions from House members.
- All this is in line with Parliament's primary responsibility of holding the Executive accountable within the overall context of the separation of powers.
- Previous parliaments have been found wanting in terms of holding the Executive accountable and, in the process, wittingly or unwittingly enabling service delivery failures and Executive abuse of power.
- Some of the failures of previous Parliaments were laid bare during the Commission of Inquiry into State Capture.
- In some instances, even courts have had to order Parliament to perform its functions of holding the Executive accountable as mandated by the Constitution and Parliament's own rules and other laws of the Republic.
- Key court judgments against Parliament include Parliament's failure to hold then President Jacob Zuma accountable in respect of irregular updates to his Nkandla homestead in KwaZulu-Natal; Parliament's failure to allow secret voting in a motion of no confidence in Zuma; and most recently the Constitutional Court's ruling that Parliament failed to follow the law and its own rules in the processing of the Traditional and Khoi-San Leadership bill, by not providing for meaningful public participation in policy-making in respect of this bill.
- There seems to be consensus that a diverse 7th Parliament, following the ANC's loss of electoral majority in the May 29 elections, could be a game changer in holding the Executive accountable.
- The 7th Parliament is expected to be robust and thus signal a paradigm shift from the days when ANC members of the Executive, including the President, were shielded from accountability by Parliament.
- This view is bolstered by the fact that now some Portfolio Committees are chaired by members of the opposition. Of course, this is partly the result of co-governing arrangements entered into between the ANC and other parties.
- Even parties that are partners to the Government of National Unity (GNU) and those the ANC has ceded the chairing of committees to, have vowed to keep the Executive accountable, suggesting that working together at the Executive level does not negate their responsibilities in Parliament.

Key bills considered by Parliament

Appropriation Bill

- On 31 July, the NCOP approved and sent the Appropriation Bill to the President for assent. This was after the bill was approved by the National Assembly on 25 July. The bill initially tabled by the Finance Minister during the February Budget. The bill is now awaiting President's signature.
- The bill aims to appropriate money from the National Revenue Fund for the requirements of the State for the 2024/25 financial year
- It also seeks to prescribe conditions for the spending of funds withdrawn for the 2025/26 financial year before the commencement of the Appropriation Act for the 2025/26 financial year.

Commentary

- The bill is not simply about appropriating monies to align with current financial year requirements, but also sets specific conditions for spending.
- Most importantly the bill balances fiscal consolidation and developmental imperatives. This is necessary in the context of bourgeoning public expenditure pressures against a constrained fiscal framework.
- The Government is intent on staying the course on the fiscal strategy and remains confident a primary budget surplus in the current fiscal year will be achieved, which will effectively mean there will still be space to finance developmental priorities.

Electricity Regulation Amendment Bill

- On 16 August 2024, President Ramaphosa signed into law the Electricity Regulation Amendment Act.
- The Act amends the Electricity Regulation Act of 2006 to respond to current realities in the electricity sector and open up pathways to greater competition and reduced energy costs; increase investment in new generation capacity to achieve energy security.

Commentary

- The new bill is expected to enhance the attractiveness of the South African market for more renewable energy projects and investments.
- The bill is likely to fastrack the modernisation of the country's electricity system, which has been highly criticised for Eskom's monopoly and the challenges towards adding alternative power sources to the grid.
- The National Energy Regulator of South Africa (NERSA) has been criticised for its failure to conduct sound oversight over the electricity market.
- Recently the Pretoria High Court upheld a June ruling requiring that municipalities stop charging consumers unlawful electricity tariffs, a practice given rise to by the Regulator's problematic method for determining electricity tariff increases.
- To date, municipalities have been adding their own tariffs to the ones determined by NERSA. This effectively meant consumers were paying almost twice the reasonable electricity tariff.
- There is hope that the coming into effect of the Electricity Regulation Amendment Act and the High Court ruling will ultimately ease the pressure on consumers.

Municipal Structures Amendment Bill

- On 02 August, COGTA extended the deadline for public comments from 31 July to August for the bill.
- The bill seeks to provide a legislative framework to guide the formation and the management of coalition governments at municipalities.
- Some local municipalities, especially the country's metros, have been characterised by numerous changes in governance due to a break down in coalition agreements, which has impacted service delivery.
- The bill has received significant criticism from interest groups about its intentions to maintain the influence bigger parties hold over smaller parties as well as independent politicians.

Commentary

- Calls for regulation of coalitions have been made for a while now. In August 2023, then official opposition Democratic Alliance (DA) and other like-minded opposition parties came together to form the Multi-Party Charter for South Africa; which they viewed as a viable pathway to a new national government after the 2024 general elections. The parties also agreed on broad principles to guide their coalition were they to form a government.
- Deputy President Paul Mashatile, with the Minister of Cooperative Governance and Traditional Affairs, also convened the National Dialogue on Coalition Governments in the same month, at the University of the Western Cape in Cape Town. The objective of the Dialogue was to agree on a set of principles on how coalition governments should function and help in building a strong and stable democracy.
- The Municipal Structures Amendment Bill seeks to translate various views on coalitions into law.
- However, the bill has been criticised by interested groups that it does not sufficiently accommodate smaller parties in coalitions, but rather maintains the influence bigger parties hold over smaller parties as well as independent politicians.
- Given the instability that has been witnessed in metros such as Johannesburg, Ekurhuleni and Tshwane, law makers will be hoping to finalise the bill in time ahead of the 2026 local government elections, so that local governments formed thereafter will have a semblance of stability with positive dividends for residents.

Other Regulatory Updates

South Africa's New Two-Pot Retirement System

- From 1 September of 2024, all members of South African retirement funds will now have access to a portion of their retirement funds.
- This follows the signing into law by President Cyril Ramaphosa of the Revenue Laws Amendment Bill of 2023, which establishes a "two-pot" system that gives members of retirement funds access to retirement savings without having to resign or cash out entire pension funds.
- The amendment law introduces a "two-pot" retirement system to address the concerns related to lack of preservation before retirement and lack of access to retirement funds by households in financial distress.

- The system consists of the following three components:
  - **Vested component** – any retirement funds accumulated before 1 September 2024
  - **Savings component** – allocation of one third of new contributions after 1 September. This is the component that members of retirement funds will have access to.
  - **Retirement component** – allocation of two-thirds of contributions after 1 September 2024. This component will only be accessible from at least the age of 55.
- The savings component will be accessible ONLY once a year before retirement, offering a potential lifeline for those in urgent need.
- Any payout from the savings component will be subjected to tax at an individual's marginal tax rate, as applied by the South African Revenue Service (SARS).

Commentary

- South Africa's new two-pot retirement system might look like a great solution for many who are in financial distress, but it is important for members of retirement funds to fully understand how it works.
- The savings pot lets a member access up to one-third of their retirement savings each year, which can help in emergencies.
- However, existing savings will be moved to a vested pot, and frequent withdrawals from the savings pot could reduce members' retirement funds and hurt long-term investment goals.
- Financial advisors recommend building a separate emergency fund, ideally covering at least three times one's monthly salary, to avoid depleting retirement savings.
- Withdrawals from the savings pot will be taxed as ordinary income, which could reduce the net amount one receives and affect financial planning. While all withdrawals will incur marginal tax rates, members who have outstanding tax bills to SARS will be most affected. There is likelihood that many who withdraw will end up not having enough money to carry them through the emergencies for which they made withdrawals in the first instance.
- The South African Reserve Bank warns that this system might worsen the already low national savings rate. An extra R100 billion in withdrawals could strain long-term savings and compound interest benefits.
- Long-term investments are subject to higher equity risks, and using these funds for emergencies might impact their growth potential and overall financial stability.

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