



# **Legislative and Regulatory Report**

## **August 2025**

## Introduction

- The month of August saw developments that illustrate both the opportunities and limitations of effective Parliamentary oversight.
- On the one hand, the establishment of the *Ad Hoc* Committee on Police Corruption demonstrates the legislature's willingness to confront allegations implicating senior political and security figures, with the potential to strengthen accountability in one of the country's most critical state institutions. Similarly, the recently concluded oral hearings on the Tobacco Products and Electronic Delivery Systems Bill by the Portfolio Committee on Health have shown the difficulties that law makers face in balancing legislations that have public health implications and far-reaching social and economic implications.
- On the other hand, the Constitutional Court's crucial ruling in *Corruption Watch v Speaker of the National Assembly* highlighted Parliament's failure to ensure transparency and public involvement in the appointments of board members of Chapter 9 institutions. The Court's intervention underscores that oversight is not symbolic but substantive; and when Parliament falls short, the judiciary will step in to enforce constitutional standards.
- Oversight also extends beyond political accountability to the fiscal and regulatory domain. National Treasury's publication of the Draft Taxation and Tax Administration Laws Amendment Bills, alongside draft VAT regulations, reflects a shift towards broadening the tax base and tightening compliance rather than introducing headline tax increases.

## The Importance of Oversight

- Oversight is a cornerstone of any constitutional democracy because it ensures that those entrusted with public power remain accountable to the people. In South Africa, Parliament's oversight mandate is explicitly anchored in the Constitution, which obliges the legislature to hold the executive and state institutions to account, scrutinise the use of public resources, and facilitate meaningful public participation in decision-making. This function is especially vital in a context where the dominance of a single political party can weaken checks and balances, heightening the risk of executive overreach or corruption.
- Effective oversight by the South African Parliament not only strengthens transparency and the rule of law but also preserves the legitimacy of democratic governance. Recent judicial interventions - such as the Constitutional Court's ruling in *Constance Mogale and Others v. the Speaker of the National Assembly* (concerning public involvement in the Traditional and Khoi-San Leadership Act) and *Corruption Watch v Speaker of the National Assembly* - underscore that when Parliament fails in its oversight role, the courts may step in to safeguard constitutional principles. This highlights that parliamentary oversight is not a procedural formality but a substantive safeguard for accountability, rights protection, and public trust in democratic institutions.
- Several provisions in the Constitution of the Republic of South Africa expressly or implicitly establish Parliament's oversight role:
  - Section 42(3) states that the National Assembly "is elected to represent the people and to ensure government by the people under the Constitution" and must do so "by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action."
  - Section 55(2) requires the National Assembly to "provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it," and to "maintain oversight of the exercise of national executive authority, including the implementation of legislation."
  - Section 56 grants the Assembly or its Committees power to summon persons to give evidence or produce documents, require reports, compel attendance, and receive petitions, all essential tools for oversight.
  - Section 68 outlines the role of the National Council of Provinces (NCOP), including providing a forum for debate of national issues and facilitating oversight of national policy and executive action.
  - Section 69 and Section 72 empower the NCOP and provincial legislatures to summon individuals, require documents, and hold inquiries - further oversight powers.
  - Section 92(2) and (3) establishes that Cabinet members are collectively and individually accountable to Parliament and must provide full and regular reports on their activities.
  - Section 114(2) mirrors Section 55(2) but at the provincial level, obliging provincial legislatures to maintain oversight of their provincial executives.



## **Ad Hoc Committee on Allegations by Lt-Gen Nhlanhla Mkhwanazi (SAPS)**

- The National Assembly established an Ad-Hoc Committee to investigate allegations by KwaZulu-Natal Police Commissioner Lieutenant-General Nhlanhla Mkhwanazi. The *Ad hoc* committee relates to criminal activities within the South African Police Service (SAPS), as well as alleged interference in the police work by the now suspended Police Minister, Senzo Mchunu. The committee must report to the Assembly by 31 October 2025.

- The Committee is an inter-party structure, involving the ANC, DA, MKP, EFF, IFP, Patriotic Alliance (PA), and ActionSA.
- The Committee elected Molapi “Soviet” Lekganyane of the African National Congress (ANC) as its chairperson. The committee has agreed that Lt-Gen Nhlanhla Mkhwanazi will be the first witness to appear. The committee also delegated Parliament’s Constitutional and Legal Services to procure external legal support.



## Terms of Reference (ToR)

- The Committee has convened initial meetings and finalised its ToR for adoption; the first witness scheduled is Lt-Gen Nhlanhla Mkhwanazi. The Committee is on a tight timeline to complete work by 31 October 2025 and has signalled it will call witnesses and conduct hearings during parliamentary recess where necessary.
- The scope includes:
  - Alleged unlawful decision by Police Minister Senzo Mchunu to disband the Political Killings Task Team; alleged unlawful removal of 121 case dockets from that task team reportedly on the direction of Deputy National Commissioner for Crime Detection, Shadrack Sibiya, who is currently challenging his suspension by National Police Commissioner, Fannie Masemola, in court.
  - Allegations of a moratorium on filling vacancies within the SAPS Crime Intelligence Unit.
  - Scrutiny of the nature and implications of relationships between SAPS senior leadership and certain private individuals or companies (including a R360m contract awarded to a company linked to the now incarcerated Vusumuzi “Cat” Matlala).
  - Possible interference by the Investigating Directorate (or the Investigating Directorate Against Corruption) in police/judicial matters.
  - Assessment of the adequacy of SAPS internal mechanisms for dealing with corruption, misconduct and poor management, and recommendations for legislative or institutional reform.
- In terms of procedural rules agreed so far, witnesses will be required to submit sworn written statements; the committee will procure external legal support; provisions were made for access to information and protection of whistleblowers within applicable law.

## Preliminary Analysis

### Strengths / positive design features

- Multi-party composition creates a formal cross-bench mechanism to test allegations that implicate senior police and political figures; promoting parliamentary oversight beyond the executive. The inclusion of both majority and opposition MPs strengthens perceived legitimacy.
- Clear ToR and deadline (31 Oct 2025) provide a bounded, results-oriented mandate that, if enforced, can produce actionable recommendations.
- Legal and procedural safeguards (sworn statements, external legal support, whistleblower protections) raise the prospect of a forensically sound process; provided they are implemented properly.

### Risks and Constraints

- **Partisan politicisation:** Despite multi-party membership, the committee is ANC-weighted and chaired by an ANC MP. Political incentives exist for containment rather than full exposure, especially where allegations touch senior state or party actors. There is also the possibility of selective callings of witnesses, closed sessions, or redaction of sensitive evidence.
- **Compression of time:** The 10–12 week window (now end -Aug to 31 Oct) is tight for complex allegations involving documentation, cross-border enquiries, and forensic audits; this raises the risk of superficial findings or deferred recommendations.
- **Overlap with judicial processes:** Parallel judicial or prosecutorial investigations (e.g. the Madlanga Commission, Investigating Directorate, SIU, or pending criminal matters) can create legal conflicts - e.g., risk of prejudicing trials, confidentiality constraints, or duplication of investigative effort. Coordination protocols are essential but may be weak.
- **Evidence and witness safety:** Given the gravity of allegations (corruption, interference, removal of dockets), protecting whistleblowers and witnesses will be operationally challenging; incomplete protection can deter testimony.
- **Public confidence vs political theatre:** If hearings become a venue for political point-scoring, rather than rigorous fact-finding, public confidence in outcomes may fall and could further polarise debate.

### Likely Near-Term Outcomes to Monitor

- Whether the committee subpoenas senior SAPS leaders (Minister Senzo Mchunu, Deputy National Commissioner Shadrack Sibiya) and private actors alleged to be implicated.
- How closely the committee coordinates with the Judicial Commission of Inquiry (Madlanga Commission), and prosecutorial authorities to avoid jurisdictional conflict.
- Whether the committee releases a transparent programme of hearings, publishes non-sensitive evidence, and secures external legal/audit capacity adequate to examine procurement and docket management claims.



## Strategic Reading

- Parliament's *Ad-Hoc* Committee is a major oversight test for South Africa's separation of powers and the criminal-justice architecture. If conducted with legal rigour, transparent process, and adequate forensic support, the committee can recommend concrete reforms to restore confidence in SAPS, curb corruption, and tighten procurement and docket integrity. Conversely, if constrained by partisan tactics, compressed timelines, or weak evidence handling, the exercise risks becoming symbolic, further eroding trust in institutions and leaving the most serious allegations unresolved.



## Portfolio Committee on Health: Tobacco Products and Electronic Delivery Systems Control Bill



- In August, the Portfolio Committee on Health continued with oral hearings on the Tobacco Products and Electronic Delivery Systems Control Bill. The hearings were conducted virtually, which allowed the committee to hear presentations from more organisations.
- Most of the presentations were from organisations in support of the bill in its current form or proposing even stricter measures to control smoking and vaping in South Africa.
- The bill currently proposes the following measures:
  - Smoke-Free Areas:** Expanding smoke-free zones to include all indoor public spaces and certain outdoor areas, aiming to protect non-smokers from second-hand smoke exposure.
  - Plain Packaging:** Mandating standardized packaging for tobacco products to reduce their appeal, especially among youth.
  - Display Bans:** Restrictions on the display of tobacco products at points of sale, aiming to limit product visibility and reduce impulse purchases.
  - Regulation of E-Cigarettes/ENDS:** Introduction of comprehensive regulations of electronic nicotine delivery systems (ENDS), including e-cigarettes, to address their growing popularity and potential health risks.
- Following the public hearings, the Portfolio Committee on Health is set to process the feedback received and consider potential redrafts of the bill. This phase is anticipated to occur later in the year, with the committee aiming to finalise the legislation for presentation to the National Assembly and, subsequently, the National Council of Provinces.

## Analysis

- Although conducting the hearings virtually facilitated widespread public participation, ensuring diverse stakeholder input into the legislative process, there are concerns about the allocated time to thoroughly discuss submissions and inputs. There was a sense of the committee rushing the process, as seen with the committee hearing as much as 5 presentations in one sitting.
- While most of the organisations are advocating for both traditional tobacco products and emerging alternatives like e-cigarettes to face stringent regulations, there is equally a strong voice for distinction within the bill for tobacco products and nicotine alternatives based on their risk profile.
- The proponents of the bill argue that the proposed measures align with the World Health Organisation's (WHO) Framework Convention on Tobacco Control. However, there remains a concern about the overbearing influence of the WHO and its key proponents in domestic policy development, which has the hallmarks of policy capture.
- The organisations in support of the bill, primarily argue that it is to protect future generations from becoming nicotine addicts. However, the argument on assisting current smokers access alternatives and protection of jobs should also be considered, especially with the country facing an unemployment crisis.
- The high levels of tobacco illicit trade cannot be left unaddressed and the department of health and portfolio committee on health cannot wash its hands off it and claim that it is a law enforcement issue. Not if the proposed bill will entrench the problem.
- There is a general agreement that the current enforcement mechanisms are not adequate and they need to be strengthened to ensure compliance with the new regulations. Something that seems improbable, given the economic constraints faced by the country.

## JUDICIAL OVERSIGHT

### Constitutional Court's ruling in Corruption Watch (RF) NPC v Speaker of the National Assembly

- Under Section 59 of the Constitution, Parliament must facilitate public involvement in its processes, it plays a key role in holding the executive and Chapter 9 institutions accountable; this includes both legislation and appointments.

- Oversight is meant to monitor executive conduct, prevent corruption, and ensure accountability. However, political dominance by the ruling party often limits effective scrutiny. Opposition parties, which are usually seen as the main drivers of oversight, frequently lack the power to enforce accountability.
- In numerous cases, where Parliament failed to exercise meaningful oversight, South Africa's judiciary, particularly the Constitutional Court, has intervened to uphold constitutional principles, sometimes issuing remedial or declaratory orders.
- Corruption Watch challenged the 2023 Commission on Gender Equality (CGE) appointments, arguing Parliament's process failed constitutional requirements for public participation, citing limited information disclosure, short comment windows (14 days), and restrictive online submission formats (2,000 characters). On 1 August, the Constitutional Court unanimously ruled that Parliament's process was constitutionally deficient and invalidated the appointments. However, it suspended the declaration of invalidity for 12 months to allow corrected appointments.



This ruling affirmed key legal principles:

- Public participation is a constitutional imperative (Section 59(1)(a)), not optional.
- Adequate disclosure (e.g., full CVs, qualifications) and timeframes are necessary for meaningful input.
- Privacy laws (e.g., Protection of Personal Information Act (POPIA)) cannot override the obligation to facilitate transparency and participation.
- The CGE acknowledged the judgment and agreed to cooperate with a re-run of the appointment process in line with constitutional requirements

## Strategic Insights

- Judicial oversight as a safety net. The ruling illustrates how courts uphold democratic principles when Parliament's mechanisms fail. This mirrors past instance, such as the EFF v Speaker (Nkandla enforcement), Glenister (anti-corruption agency independence) and recently the Western Cape High Court ruling on the VAT question in April, where courts compelled Parliament or government to fulfil constitutional duties.
- The decision underscores that legislative oversight must be substantive, not perfunctory. Parliament cannot rely on formal compliance while denying meaningful public engagement.
- Constitutional reboot for participatory governance. Section 59 is more than symbolic; the case clarifies that both procedural inclusivity and transparency are integral to the rule of law and democratic legitimacy.
- Separation of powers reinforced. Judicial invalidation of Parliament's actions reaffirms the Constitution's hierarchy -procedural failures cannot be justified under privacy or expediency concerns.

## Broader Implications and Trends

- **Credibility of Chapter 9 Institutions:** Since the CGE plays a central role in promoting gender equality, procedural integrity in its appointments preserves its legitimacy and public trust.
- **Precedent for future appointments:** This judgment sets a high bar for the National Assembly, affecting not just CGE but also institutional appointments across governance structures.
- **Push for cultural change in oversight:** Parliament must internalise meaningful participation norms, not just meet deadlines or rely on boilerplate notices.



# FISCAL AND REGULATORY UPDATES

## National Treasury's Draft Tax Laws



- The National Treasury and the South African Revenue Service (SARS) published the 2025 draft tax bills and draft VAT/export regulations on 16 August 2025.
- This package includes the:
  - Draft Taxation Laws Amendment Bill (TLAB) 2025,
  - the Draft Tax Administration Laws Amendment Bill (TALAB) 2025,
  - draft VAT regulations on the domestic reverse charge (valuable metal) and draft "export" regulations.
- Deadline for written comments is 12 September 2025.

- Key technical proposals highlighted in the Draft TLAB/TALAB (explanatory memorandum): reducing the threshold for ring-fencing assessed losses, removing certain exemptions for foreign retirement benefits, refining the definition of “hybrid equity instrument” in section 8E so that instruments treated as debt under International Financial Reporting Standards (IFRS) are treated as debt for tax purposes, removal of the three-year redemption safe harbour for preference-share structures, low-value import VAT changes, and Phase 2 carbon tax adjustments.
- Draft VAT regulations address practical problems (notably definitions of “residue” and “valuable metal” for the domestic reverse charge introduced in 2024) and clarify the application of export zero-rating (e.g., coal delivered to terminals). The Treasury/SARS note changes to the gold/residue definitions and a 1% threshold on “valuable metal” applied in earlier rules.
- The National Treasury signalled the Public Procurement Act (2024) regulations will be ready for inter-governmental consultation at end-August 2025 and promulgated during FY 2025/26. This is part of operationalising the new single-rulebook procurement framework.
- Cost-containment framework remains National Treasury Instruction No.1 of 2024/25 (and 1A) which prescribes travel, conference and other cost containment measures for departments; departments have in practice set local travel/conference rates since March 2025, but the Instruction remains the binding framework until updated.

## Key Policy Changes and Why They Matter

- Section 8E/ preference-share / hybrid-instrument change: proposal to treat instruments classified as financial liabilities under IFRS as taxable “hybrid equity instruments” for tax purposes and to remove the 3-year redemption safe harbour. This would reclassify many preference-share dividends as taxable income, with knock-on cash-flow and covenant effects for issuers and investors. (Effective date signalled as years of assessment beginning on/after 1 Jan 2026 in commentary by practitioners.)
- Domestic reverse charge VAT clarifications (valuable metal / gold): proposed technical fixes to limit over-broad application of the reverse charge and to clarify “residue” and “valuable metal” definitions introduced earlier. That matters to miners, traders and refiners (gold, other precious metals).
- Low-value imports now in scope of VAT: removal of the tax-free low-value import threshold is proposed (affects e-commerce, schools purchasing small imports, and cross-border retail flows).
- VAT localisation and export clarifications: draft “export” regulations clarify zero-rating tests (e.g., port/terminal operators), which has consequences for exporters and logistics chains.
- Procurement regulations under the Public Procurement Act (2024): once promulgated they will create a single, amplified procurement regime (single rulebook), stronger anti-fraud measures and local content/preference rules; significant operational change for all organs of state.

## Practical Implications

- The biggest beneficiary of these changes would be the state (through potentially higher revenue).
- However, issuers and holders of preference shares and hybrid instruments (private equity funds, infrastructure SPVs, project finance structures), companies using preference-share funding to optimise tax flows, and exporters/retailers relying on low-value import exemptions. Many existing funding agreements may become uneconomic if dividends are re-classified as taxable income and gross-up clauses trigger higher cash outflows.
- A shift away from preference-share funding (or a renegotiation of terms); which could raise upfront financing costs, require covenant resets, or prompt migration to alternative structures (e.g., true debt, equity, or tax-efficient leases). Project finance models must be stress-tested to reflect higher effective tax burdens and altered liquidity profiles.
- Vendors that supply government must expect a stricter, centralised procurement regime (single-rulebook), stronger integrity checks, and possibly more onerous local-content/preference compliance. This will increase compliance costs for vendors but may improve transparency and reduce fraud long term. Government procurement officers must upgrade systems, supplier due-diligence, and audit trails.
- There are fiscal and budgetary consequences too, in so far as revenue upside vs economic drag. Several measures (hybrid reform, low-value import VAT) raise revenue; however, they also increase costs for business and could depress investment/consumption if applied abruptly. The cancelled VAT hike earlier in 2025 shows how politically sensitive revenue measures are; Treasury must balance revenue needs with economic and political tolerance.



## Implications for the 2025 MTBPS

- The release of the Draft TLAB and TALAB 2025 signals Treasury’s revenue strategy ahead of the Medium-Term Budget Policy Statement (MTBPS) – usually towards the end of October/ beginning of November.
- Proposed anti-avoidance measures (preference shares, hybrid instruments, and VAT refinements) suggest an effort to broaden the base and protect revenue, rather than introducing outright tax hikes. For the MTBPS, this implies:
  - No major tax increases in the short run, but tightening of loopholes.
  - A focus on stability and predictability to reassure investors.
  - Potential incremental gains in corporate income tax and VAT, helping Treasury defend its fiscal consolidation targets.



## Political, Legal and Transition Risks to Monitor



- Retrospectivity and litigation risk: practitioners note Treasury's drafts may apply to years of assessment from 1 Jan 2026 and could catch existing instruments; affected parties may pursue litigation or request transitional relief.
- Parliamentary amendment risk: draft bills will be debated by the Standing/Select Committees on Finance and may be amended further after public hearings, so changes can be expected between the draft and final Acts.
- Implementation capacity: SARS and implementing regulations (Gazette notices) will determine the practical burden. A strong regulatory guidance programme and taxpayer outreach by SARS/Treasury is essential to lower compliance shocks.

## WIDE-RANGING REFORMS AND REGULATORY COHERENCE

### The DTIC's Omnibus Bill

- The DTIC's Annual Performance Plan (APP) Revision (June 2025), and subsequently Minister Parks Tau's Budget Vote, confirmed that the Omnibus Bill remains a Cabinet priority, aiming to overhaul several key statutes to ease economic constraints and cut red tape.
- The APP notes that in addition to primary legislation, seven pieces of secondary legislation (regulations) are also being prioritised, to be gazetted for public comment shortly. These aim to address urgent regulatory bottlenecks.
- The Omnibus Bill seeks to amend multiple Acts, including the Companies Act, Infrastructure Development Act, Drug Trafficking Act, Legal Metrology Act, Land Alienation Act, Liquor Act, intellectual property laws, and commercialisation of cannabis law, to reduce competitiveness barriers. The DA has said it supports the initiative and expects delivery this financial year.
- DTIC continues to plan and prioritise the Omnibus Bill and related regulatory updates, though no formal draft has been published yet. Public engagement and reporting are expected in the coming months, likely in coordination with the 2025/26 legislative schedule.



### Why It Matters

- The Omnibus Bill is intended to streamline processes across multiple sectors - corporate governance, infrastructure rollout, intellectual property, land reform, and sector-specific regulation (e.g., liquor, cannabis). If well-designed, it could enhance ease of doing business and lower transaction costs for enterprises, especially SMEs.
- But execution risk is high given the breadth of affected laws and potential pushback from entrenched interests.
- DTIC's plan includes both amended Acts and secondary regulations. Regulations are likely to move faster (gazetted and commented on sooner) and can produce quicker, more agile fixes. The combination suggests a two-tier approach: first immediate regulatory relief, then longer-term legislative reform.
- Delays in delivering the Omnibus Bill could undermine DTIC's credibility - even the DA has flagged expectations for outcomes this financial year. Failure to deliver may be seen as performance risk. Conversely, timely delivery could strengthen investor confidence in reform momentum.
- Given the breadth of affected sectors, stakeholder consultation will be critical: stakeholders (business, civil society) are likely to watch for accessible drafts, timelines, and feedback mechanisms. Transparency will determine whether the Bill garners substantive support or leads to perceptions of elite capture.
- If aligned with DTIC's broader industrial strategy, such as localisation, beneficiation, and support for township economies (e.g., spaza shop fund, export initiatives), the Omnibus Bill could serve as an enabling legislative centrepiece, unlocking reforms across value chains and regulatory infrastructure. The Omnibus Bill's success is thus a key enabler of the DTIC's larger mission to boost competitiveness and inclusive growth.

**END**