Africa Remuneration

Trends Report 2024

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Foreword

By Martin Hopkins and Norma Mazibuko

As global investors increasingly turn their attention to Africa, understanding the nuances of remuneration management and governance in this complex, dynamic and high-growth region is critical. Managing the inherent people risks and opportunities is key for sustainable success.

This Africa Remuneration Trends Report offers a comprehensive analysis of the evolving landscape of executive remuneration across key African markets. It was prepared by remuneration and reward specialists from Bowmans' offices across the continent and Udo Udoma & Belo-Osagie, our Alliance Firm in Nigeria.

The report highlights significant trends and developments in remuneration practices, providing insights into how African companies are adapting to global standards while addressing local challenges. From the evolution of executive pay structures to the development of employee share ownership plans and the incorporation of environmental, social and governance (**ESG**) performance measures, this report covers a broad spectrum of topics relevant to stakeholders invested in Africa's economic growth.

The inclusion of advanced remuneration provisions such as *malus* and clawback, minimum shareholding requirements, and the integration of ESG performance conditions reflects increasing alignment with developed markets. These measures are vital in ensuring that executive pay is closely tied to long-term business performance and sustainability.

We believe that this report will serve as a valuable resource for business leaders, policymakers, and investors looking to navigate and capitalise on the remuneration trends shaping Africa's corporate landscape. We hope you find the insights presented both informative and actionable.

The contents of this report are for reference purposes only and should not be considered a substitute for specific reward and legal advice. It is correct as at October 2024.

Reward Advisory Services

Bowmans provides expert reward advice grounded in solid legal principles, ensuring compliance with statutory and regulatory requirements.

Over the past decade, executive remuneration and pay equity have remained contentious issues. As shareholders and other stakeholders become more vocal and governments implement measures to promote fair and responsible pay, it is essential to navigate these challenges with expertise.

We offer comprehensive advisory services to both management and remuneration committees. For management, we assist in developing and implementing broad-based remuneration strategies that align with business objectives and market trends. For remuneration committees, we provide independent and objective advice on executive remuneration, ensuring that pay structures are competitive, equitable, and aligned with shareholder interests.

Our multidisciplinary team includes experts in employment and commercial law, tax, finance, industrial psychology, human capital management, and quantitative analysis. We are differentiated by our ability to provide comprehensive advisory services and bespoke solutions tailored to each client's unique needs.

We provide seamless reward advisory services across multiple jurisdictions and emerging African markets. We excel in navigating local regulatory landscapes, making us the preferred partner for multinational corporations that operate in various regions with diverse regulatory requirements.

Our specialist services cover:

- **Core reward services:** Our core reward services focus on designing and implementing effective reward strategies to attract, retain, and motivate top talent.
- **Incentive scheme design:** We specialise in creating robust and effective incentive programs that align employee performance with organisational goals. These plans are tailored to meet the unique needs of organisations, ensuring they drive the desired outcomes.
- **Reward analytics:** Our reward analytics services offer deep insights into remuneration structures using proprietary models and specialised tools. We evaluate costs, analyse pay gaps, benchmark remuneration, and assess the impact of incentive plans.
- **Legal, tax and governance advice:** Our legal and tax services offer expert guidance on structuring incentive schemes, ensuring compliance with legislation and tax regulations.

Then and Now:

The Evolution of Executive Remuneration

By Norma Mazibuko and Nyakallo Scheepers

Understanding the history and development of executive remuneration is a key component to navigating the complexities of fair and responsible executive pay. Over the decades, there has been a significant shift in remuneration philosophy and practices, reflecting changes in the economic landscape, regulatory regimes and corporate governance principles.

From the era of fixed salaries to the development of performance-based incentives, the changes in remuneration structures reflect efforts to find a balance between shareholder interests and managerial motivation.

By studying this evolution, corporates can obtain insights into the various factors that shaped modern remuneration practices and find better ways to align executive pay with long-term business objectives.

Until 1950s

Fixed salaries to the introduction of restricted share options

Before professional management became prevalent, most enterprises were owner-managed, which meant that the interests of shareholders and management were always aligned. As enterprises grew larger and more complex, the demand for professional managers increased and that is when the era of managerial capitalism began. Managerial capitalism was a form of capitalism in the 20th century, in which the markets were dominated by large bureaucratic organisations led by teams of salaried executives. These managers were entrusted with safeguarding the interests of shareholders and growing the value of the enterprise. For the first half of the 20th century, these professional managers received a remuneration package consisting of a fixed salary and benefits. With the passing of the United States Revenue Act 1950 came significant tax increases, which resulted in the widespread adoption of restricted share options in an attempt to avoid high tax rates when compensating executives.

1970s

Formalisation of variable pay

As this new class of business leaders gained prominence, a conflict emerged between the interests of owners and managers, known as the agency problem. Managers began prioritising decisions that maximised their own wealth rather than maximising shareholder value. In their famous 1976 article, Jensen and Meckling criticised this behaviour on the part of managers and attributed some of it to their fixed remuneration structure. In the same article, they suggested implementing incentive structures that included share options as part of managers' remuneration. This approach aimed to incentivise managers to prioritise actions that enhance shareholder value. This article triggered a drive towards performance-based incentives such as annual bonuses and share-based incentives.

1990s

Executive pay boom

Throughout the 1990s and into the new millennium, there was a marked rise in executive compensation, driven primarily by the increased adoption of equity-based incentives as a significant component of executives' total remuneration packages. The growth in remuneration was also inflated by the economic boom of the mid to late 1990s. This decade saw the adoption of incentives including share options, deferred bonuses and leveraged share schemes in non-listed financial institutions.

The 2000s

and beyond

The number of corporate scandals in the United States caused a Congressional response which resulted in the passing of the Sarbanes-Oxley Act of 2002. While dealing mainly with financial fraud within companies, it also aimed to enhance the transparency of executive remuneration.

In South Africa, the King Report on Corporate Governance 2002 (**King II**) came into effect. King II gave more guidance on the governance and disclosure of executive remuneration. King II recommended the development of a formal and transparent remuneration policy and the appointment of a remuneration committee.

In 2009, the King Report on Governance for South Africa 2009 (**King III**) was published on the back of the introduction of Companies Act 71 of 2008 (**Act**). King III provided guidelines and principles on the determination and governance of executive remuneration with a focus on fair and responsible pay.

The release of the King Report on Governance for South Africa 2016 (**King IV**) provided more specific guidelines and aimed to promote more accountability on remuneration. King IV also considered the growing focus on disclosure and voting on remuneration by international regulators and institutional investors. This emphasis on transparency and shareholder engagement required more robust remuneration policies and detailed implementation reports from remuneration committees.

The changing economic landscape, regulatory environment and corporate governance principles over the last few decades have spawned innovative incentive structures. The new suite of incentive structures includes share appreciation rights (**SARs**), retention shares and performance shares. Another innovative structure that was introduced in recent years is the single incentive, which combines short-term and long-term incentives (**STIs** and **LTIs**).

Conclusion

The evolution of executive remuneration is a testament to the dynamic interplay between economic realities, regulatory changes and shifts in corporate governance principles. From the early days of fixed salaries to the contemporary landscape dominated by complex incentive structures, each phase of development has been driven by the need to align executive actions with shareholder interests and long-term business objectives.

The journey from fixed remuneration to today's sophisticated remuneration structures underscores the importance of adaptability and transparency in executive compensation. By understanding this historical context, businesses can better navigate the challenges of fair and responsible executive pay, ensuring that remuneration strategies not only attract and retain top talent but also promote sustainable growth and value creation.

04

Analysis:
CEO Remuneration in Africa

By Luzaan Pretorius, Norma Mazibuko, Nyakallo Scheepers and Sibusiso Nkomani

Executive remuneration is a key mechanism that companies use to drive executive performance and create value for shareholders and other stakeholders. This makes executive pay an important factor to consider when evaluating investment opportunities. Prudent investors, such as institutional investors, place significant emphasis on the alignment of executive pay with company performance. This is only possible when investors have access to complete and accurate information about the remuneration packages of executives, and when company boards apply solid corporate and remuneration governance principles.

While institutional investors have the leverage to request information about executive remuneration, other stakeholders do not ordinarily have this kind of influence. To ensure transparency and accountability many governments and regulators (including stock exchanges) have put laws and regulations in place for publicly listed companies to provide detailed disclosures of the remuneration of their top executives. While this may be the norm in many developed countries, developing countries are behind in terms of implementing mandates on executive pay disclosure.

This section contains an analysis of the CEO remuneration of publicly listed companies from six African countries, consisting mostly of countries in East and Southern Africa, and one from West Africa. The analysis looks at the individual components of executive remuneration and assesses the disclosure gap among the different jurisdictions.

Laws and regulations that govern remuneration disclosures

While governments and regulators may rely on the prudence of company directors to practise good governance, this ‘laissez-faire’ approach does not always result in positive outcomes. This is why several governments, especially in developed economies, have put laws and regulations in place to encourage good governance.

Key legislative requirements by jurisdiction

Country	Regulation / Statutory Requirement
Kenya	The Companies Act 2015 Capital Markets Authority: Capital Markets Code for Issuers of Securities (**Code**)
Mauritius	Finance Act 2004
Nigeria	Companies and Allied Matters Act 2020
South Africa	Companies Act 2008 Companies Amendment Act 2024 King IV Johannesburg Stock Exchange (**JSE**) Listing Requirements Employment Equity Act Basic Conditions of Employment Act Labour Relations Act Occupational Health and Safety Act
Tanzania	Companies Act 2002
Zambia	Companies Act 2017

Components of remuneration in the African landscape

Executive remuneration across Africa consists of various components, with significant differences in disclosure practices observed across the countries researched. Basic salary, which forms part of the guaranteed package, is not consistently disclosed across all countries; in some countries, an aggregated figure for all executives is provided instead. The level of disclosure for other remuneration components such as short-term incentives (STIs), long-term incentives (LTIs), and additional benefits, also varies widely and tends to be country specific. For example, certain trends, such as the disclosure of club memberships, are more common in East African countries.

The table overleaf provides an overview of the different components of executive remuneration disclosed across the countries researched. It reflects the level of transparency observed in public reports and may not be exhaustive due to varying disclosure practices and regulatory requirements.

	Guaranteed package			STIs		LTIs		Other benefits			
	Basic salary	Medical aid	Pension benefit	Cash bonus	Deferred bonus	Share incentive	Deferred share incentive	Residential and utility	Car and driver allowance	Club membership	Professional indemnity
Kenya	✓	✓	✓	✓		✓		✓	✓	✓	✓
Mauritius	✓	✓	✓	✓		✓					
Nigeria	✓	✓	✓					✓			
South Africa	✓	✓	✓	✓	✓	✓	✓				
Tanzania	✓	✓	✓	✓		✓			✓	✓	✓
Zambia	✓	✓	✓	✓		✓					

Challenges in benchmarking executive pay in Africa

To remain competitive and align with standard industry practices, companies generally conduct remuneration benchmarking by comparing their actual and on-target remuneration with that of comparable companies in the market or against national market data. The effectiveness of this benchmarking depends on acquiring reliable data from relevant reference groups or market data surveys. However, several challenges affect the availability and quality of this data:

- **Aggregated pay data:** Executive remuneration is often reported as a single figure for all roles, making role-specific comparisons difficult.
- **Lack of standardised reporting**: Inconsistent formats for reporting pay data across companies complicates comparisons.
- **Limited detail on pay components:** Minimal breakdowns of salary, incentives and benefits, which limits comprehensive analysis.
- **Insufficient number of comparators:** Finding enough comparable companies is challenging, particularly in smaller markets, reducing benchmarking accuracy.

These challenges are compounded by varying regulatory and statutory requirements. Our research indicates that public companies in Kenya and South Africa provide the most detailed remuneration reports, likely due to stricter legal and regulatory requirements and enforcement. In contrast, companies in Mauritius, Nigeria, Tanzania and Zambia typically disclose only guaranteed packages, making comprehensive quantitative benchmarking across all markets difficult.

To address these gaps, companies often purchase data from salary survey providers to obtain more detailed market insights. However, these surveys may not always provide complete coverage across all regions.

Remuneration disclosure country profile

To measure and monitor the level of remuneration disclosure, we developed a resource called the Remuneration Disclosure Country Profile. This resource aims to track the relative differences in remuneration disclosure between countries across Africa, beginning with the six countries selected in this report.

The Remuneration Disclosure Country Profile summarises the level of disclosure based on five basic elements relating to remuneration data and policies. These include information about types of remuneration, total remuneration figures, a description of STI and LTI, STI and LTI figures and a list of key performance indicators (**KPIs**) linked to incentives. The results of our findings are illustrated in the graphic below.

Remuneration disclosures

Country	Types of remuneration	Total remuneration figures	Description of STI and LTI	STI and LTI figures	List of KPIs linked to incentives
Kenya	Good	Good	Average	Average	Minimal
Mauritius	Average	Average	Average	Average	Minimal
Nigeria	Minimal	Average	Minimal	Minimal	Minimal
South Africa	Good	Good	Good	Good	Good
Tanzania	Average	Average	Average	Minimal	Minimal
Zambia	Minimal	Average	Minimal	Minimal	Minimal

- Minimal disclosure
- Average disclosure
- Good disclosure

Conclusion

The varying results of the exercise serve to highlight the contrasting legislative requirements and voluntary executive remuneration policies across the countries in the sample. This is not entirely uncommon but does, however, represent an opportunity for further disclosure in the countries with limited disclosure. This in turn would enhance the overall standard of disclosure across the African continent.

Executive Retention

By Adam Smith, Jumoke Lambo, Njoroge Kangethe, Norma Mazibuko, Ozofu Ogiemudia, Rainbow Field and Victoria Agomuo

The retention of a company's executives is paramount to its success and longevity. This section looks at various ways in which companies ensure that their top management remains motivated to both perform and, most importantly, stay.

Kenya

The most common strategies used for retaining executive employees in Kenya include:

ESOPs

ESOPs are very common. An ESOP is a type of employment benefit plan intended to encourage employees to acquire shares or other units of ownership in a company usually at a discount. There are various forms of ESOPs ranging from direct ownership to ESOP unit trusts (in which employees may be granted units in the trust rather than holding shares in the company directly).

Generally, there are no laws restricting the implementation of an ESOP. However, a company listed on the Nairobi Securities Exchange wishing to set up an ESOP must obtain the approval of the Capital Markets Authority under the Capital Markets (Collective Investment Schemes) Regulations, 2002.

LTI plans/ bonus plans

LTI plans (**LTIPs**) are arrangements in which selected eligible employees qualify for a cash award often upon the occurrence of a specific event.

There has been a recent increase in companies setting up LTIPs or bonus plans for key executives to drive business margins. Such LTIPs or bonus plans are often tied to an exit by a key shareholder, often a private equity fund.

There has also been an increase in cash-settled bonus arrangements linked to the increase in value of a share in the company over a specified period.

Retention bonus/ signing-on agreements

In situations where companies are winding down local operations in Kenya and exiting the market, there has been an increase in retention bonus agreements.

A retention bonus agreement is prepared when a company wishes to motivate and recognise an employee's contribution and to provide them with an economic incentive for assisting the company to facilitate the winding up.

Under a retention bonus agreement, an executive employee gets a cash payout following the completion of all the necessary affairs and operations of a company required to finalise the winding-up process.

There has also been an increase in signing-on bonus arrangements, particularly where employees are moving from high-level stable positions.

Key-man provisions

Key-man provisions are increasingly drafted into transaction documents such as share purchase agreements (**SPAs**) and business and asset transfer agreements (**BATAs**).

In such arrangements, key executive employees (often founders), following the close of a transaction (by way of share transfer or business and asset transfer), are given short-term consultancy agreements to assist the buyer in running the newly acquired entity for a short period of time.

Flexible working arrangements

More companies are embracing flexibility in working arrangements. There has been an acceleration in the use of dynamic and flexible ways of getting work done. This includes lighter, but more powerful laptops, cloud-based file sharing and collaborating through Zoom and Teams.

These tech advancements have been critical in allowing flexible working, and employees increasingly negotiate for not only better remuneration but also more flexibility in terms of when, where and how work is done.

Nigeria

Common incentive strategies that are most effective in retaining executive talent in Nigeria include:

ESOPs

Recently, there has been an increase in the establishment of ESOPs among start-ups and tech companies in Nigeria. Section 183(3)(b) of the Companies and Allied Matters Act 2020 provides that nothing prohibits ‘the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company’. In establishing an ESOP, the company must carefully consider key features of the plan, such as the treatment of the shares purchased or allotted under the plan upon the employees death, incapacitation, infirmity or exit (whether voluntarily or involuntarily). With respect to employee exit, for instance, if the plan provides that the shares will be forfeited when an employee exits the company, the shares will have to be valued at the point of exit for repurchase by the company.

Retention bonuses

This bonus has become increasingly popular in Nigeria, given the migration of talent out of the country and the need to retain high-performing employees and maintain a skilled workforce. This bonus may be a fixed amount or a percentage of the employee’s remuneration. Usually, one of the clauses in the agreement between parties is the repayment of any paid portion of the retention bonus in the event of the employee’s exit before the end of the locked-in period.

Performance bonuses

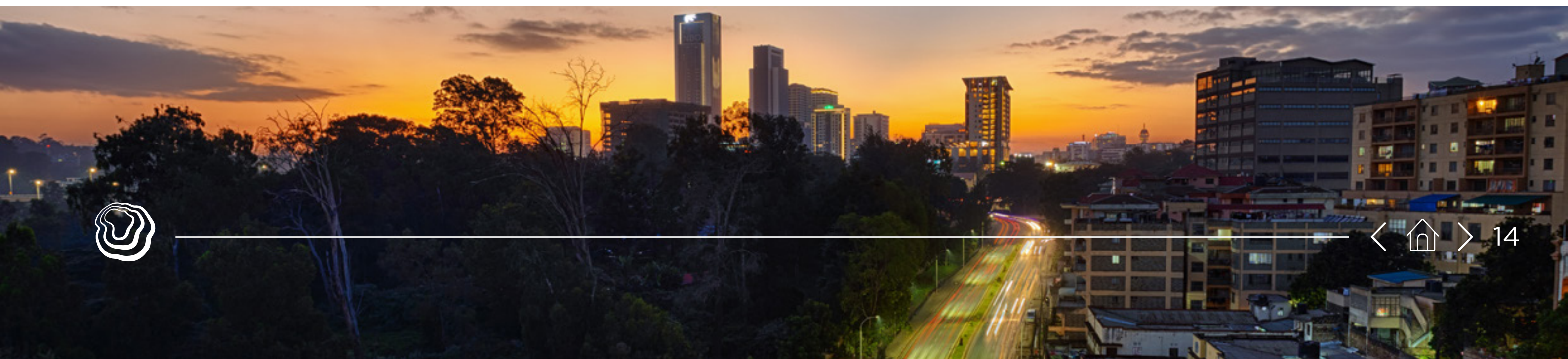
Similar to the retention bonus, a performance bonus is also a strategy used to retain executive talent in Nigeria. The bonus may be funded from a bonus pool representing a percentage of the company’s declared profit and tied to specific performance benchmarks. The payment may be made as a lump sum or on the achievement of set milestones.

Other incentive strategies that are effective in retaining executive talent in Nigeria are profit sharing, gym memberships, housing allowances, electricity generators or fuel allowances, driver and car benefits, etc.

In providing executives with incentives to retain them, public companies and regulated private companies are required to note the provisions of the Nigerian Code of Corporate Governance (**NCCG**).

The NCCG requires companies to implement a clawback policy to recover excess or undeserved rewards, such as bonuses, incentives, shares of profits, share options, or any performance-based reward from directors and senior employees.

The clawback can be triggered if the account or financial performance on which the reward was based is later found to be materially false, misstated, misleading, erroneous, etc, or in instances of misdemeanour, fraud, material violation of company policy or material regulatory infractions. The NCCG also recommends that a company’s corporate governance report includes cases of clawback being pursued by the company.



South Africa

Executive retention is a critical concern for companies in South Africa, where the complex operating environment and diverse workforce presents unique challenges and opportunities. Effective retention strategies have become an increasing priority, with the talent drain and emigration of skilled executives pursing international opportunities. South African organisations continue to attract top talent through competitive performance-based remuneration packages. It is, however, the non-financial aspects of the reward environment that will retain executive talent. Prevalent market retention strategies include:

Competitive remuneration packages

The traditional reward package for executives comprises the fixed remuneration element, inclusive of benefits, as well as the variable remuneration element such as STIs, deferred incentives and LTIs. Tax efficient restricted share awards are being introduced as part of retention and talent management strategies.

Career development opportunities

Providing clear pathways for career advancement and succession planning is essential. Executives are more likely to stay with a company that invests in their professional growth through training, mentorship programmes and leadership development initiatives. This includes exposure to international practices and the opportunity to replicate or apply the learnings within their organisations.

Enhancing corporate culture

Fostering a positive and inclusive corporate culture can significantly enhance retention. This involves creating an environment that values diversity, encourages open communication, and aligns with executives' personal and professional values.

Work-life balance

Executives often face high levels of stress and long working hours. Companies that promote work-life balance through flexible working arrangements and wellness programmes can improve job satisfaction and retention.

Retaining top executive talent in South Africa requires a multifaceted approach that addresses economic, cultural and personal factors. By implementing competitive remuneration packages, promoting career development, enhancing corporate culture, and encouraging work-life balance, South African companies can improve their executive retention rates and ensure long-term success. The key is offering an employee value proposition that leverages a total reward offering to retain employees.

Interesting retention mechanisms implemented across Africa

Kenya

Allowances related to vehicle, driver and domestic assistance, security and education, focus on pay gaps between males and females, as well as a number of diversity, equity and inclusion initiatives like women in leadership, allyships and flexible working (**British American Tobacco**).

Executive housing, vehicle, telephone, utilities and domestic assistance (**Total**)

Mauritius

Travel allowances, medical coverage (**MCB**)

Nigeria

Revamp of maternity and paternity support framework which aims to improve retention of employees returning from parental leave (**Unilever**)

Tanzania

Recognition programmes, individual learning and development opportunities, well-designed and integrated employee wellness initiatives (**Vodacom**)

Zambia

Vehicle and cellphone allowances, airtime and medical insurance (**Airtel**)

Conclusion

It is apparent that non-financial retention mechanisms are gaining increasing prominence in the total reward environment in furthering executive retention, as companies are competing for talent on a level playing field where financial rewards are considered hygiene factors.

On the back of the Covid pandemic, flexibility, remote work and a greater emphasis on work-life integration are prominent features. The work environment will need to support mental health and well-being initiatives to ensure that executives thrive and perform optimally.

Sustainability is another consideration. From an internal perspective, solid succession plans for the leadership team will ensure long-term success and stability. From an external perspective, the focus is on environmental, social and governance (**ESG**) factors, which is particularly key where executives are expected to lead the way in driving sustainable and social projects. This is usually done through including ESG measures on organisational scorecards.

Aligned with the sustainable development goals, diversity, equity and inclusion will increasingly play a role in the global employment village we are currently operating in.

Legislative Environment

By Aneria Bouwer, Chloë Loubser, Danielle Botha, Deirdre Phillips, Javed Niamut, Jumoke Lambo, Lenja Dahms-Jansen, Mabvuto Sakala, Njoroge Kangethe, Ozofu Ogiemudia, Rainbow Field, Reabteswe Moloi, Ukanyo Mabandla and Victoria Agomuo

Kenya

- **Finance Act 2023 (Finance Act)**

  The Finance Act introduced two more tax rates and tax bands for individuals. The tax rate for individuals earning income between KES 500 000 and KES 800 000 per month is 32.5%, while those earning above KES 800 000 per month are taxed at 35%.

  The Finance Act has also introduced a mandatory housing levy to be contributed to by both the employer and employee.

  For each employee, the employer must remit: (i) the employer's contribution of 1.5% of the employee's monthly gross salary; and (ii) the employee's contribution of 1.5% of the employee's monthly gross salary.

- **Employment (Amendment) Bill 2021 (Employment Bill)**

  The Employment Bill was gazetted in October 2021. It is aimed at addressing increased employee burnout and promoting employees' work-life balance.

  Specifically, the Employment Bill seeks to amend the Employment Act 2007 to introduce an employee's 'right to disconnect'. This is a workplace concept that is gaining increasing traction globally, more so following the effect that the Covid pandemic has had on labour relations.

  The Employment Bill defines the right to disconnect as an employee's right to not be contacted by their employer outside of contractual working hours, except when necessary for the purposes of dealing with a workplace emergency. Further, the emergency must relate to an issue within the responsibility of the employee.

  The Employment Bill, if passed into law, mandates an employer to put in place a policy addressing: (i) the circumstances under which they may contact the employee outside of work hours; (ii) the use of electronic devices during out-of-work hours; and (iii) when the right to disconnect can be waived.

  It is worth noting that the Employment Bill does not define what amounts to an emergency, which leaves it open to differing interpretations. Further, guidance is required on what limits can be prescribed in the policy and when employees can exercise the right not to respond.

The Employment Bill places the responsibility of invoking the right to disconnect on employees by granting them the right to disregard any communication from work during out-of-work hours and absolves them from any form of reprimand for doing so.

Although the Employment Bill lapsed (Kenya's legislative process is that when Parliament breaks for a general election, all outstanding Employment Bills lapse), a 2022 Employment Bill was introduced to Parliament which indicates that there is political will to have the Employment Bill passed into law. If passed, policies and employment contracts will need to be reviewed taking into account the employee's right to disconnect.

- **Kenya Citizenship and Immigration (Amendment) Bill 2023 (Immigration Bill)**

Special passes may be granted upon the application of foreign nationals who wish to enter or remain in Kenya for short-term assignments of 90 days or less.

Recently, in March 2023, the Senate gazetted the Immigration Bill which proposes the prohibition of special pass applicants from commencing employment in Kenya unless this is expressly provided for in the special pass application.

Additionally, the Immigration Bill expands the scope of applicants eligible to apply for permanent residency as it authorises the holders of residence permits, for at least seven years, to be granted permanent residence status. Previously, and in respect of permit holders, this privilege was only enjoyed by persons holding work permits for a period of at least seven years and not those holding residence permits. Residence permits (classified as Class K permits) allow the holders only to reside in Kenya. Unlike a work permit, a residence permit holder undertakes not to accept employment, paid or unpaid, or to engage in any income-generating activity of any kind in Kenya.

Once permanent residence status is granted, a foreign national will no longer be required to apply for a work permit and may work in Kenya on the basis of the certificate of permanent residence alone.

Once passed, the Immigration Bill will therefore limit the holders of a special pass but also grant permanent residence to holders of resident permits for at least seven years.

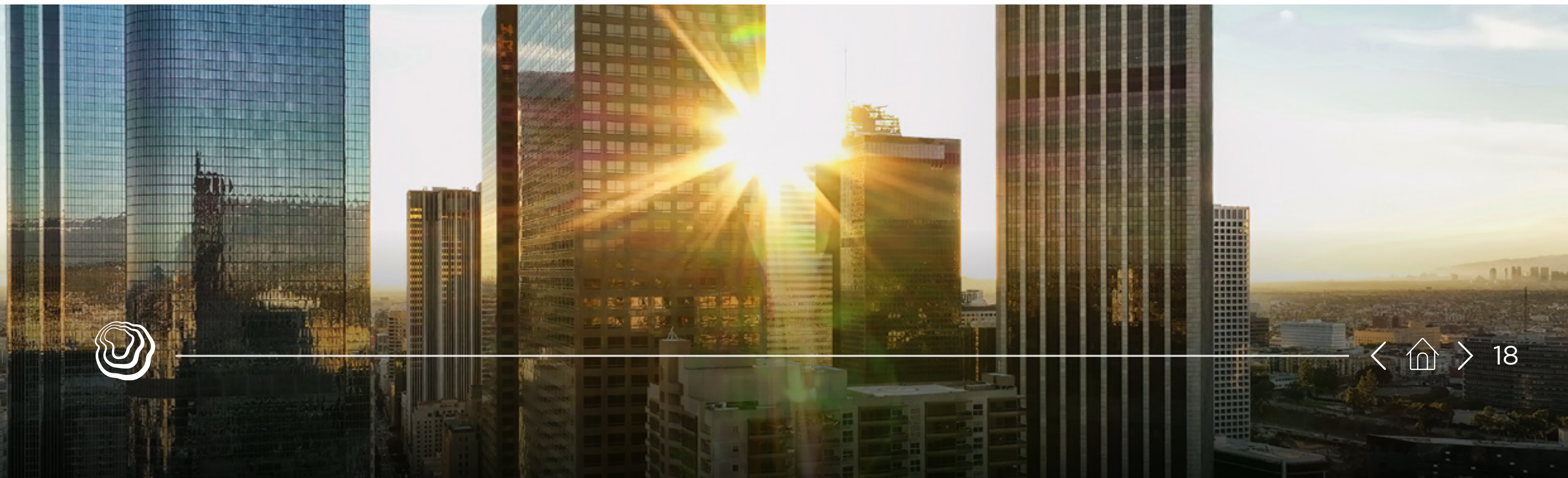
- **The Social Health Insurance Act 2023 (Social Health Act)**

Currently, the National Insurance Fund Act 9 of 1998 (**NHIF Act**) establishes the National Hospital Insurance Fund which is mandated to facilitate access to quality healthcare.

Recently, the Social Health Act was published which seeks to amend the NHIF Act and introduce three distinct funds:

- the Primary Healthcare Fund – whose objective shall be to purchase primary healthcare services from health facilities;
- the Emergency, Chronic and Critical Illness Fund – whose objective shall be to: (i) defray the costs of the management of chronic illnesses after the depletion of the social health insurance cover; and (ii) cover the costs of emergency treatment; and
- the Social Health Insurance Fund in respect of which the Social Health Act is unclear on the objectives.

Although the Social Health Act was published, the Act's commencement date is yet to be gazetted and therefore the Act is not in force.



Mauritius

- **Workers' Rights Act 2019**

The Workers' Rights Act 2019, which is the legislative framework for the protection of workers and related matters, includes provisions regarding remuneration which are applicable only to workers earning a salary of no more than MUR 50 000 (approx. USD 1 130) per month. The remuneration of employees earning a salary of more than MUR 50 000, such as executives, is regulated solely by their employment contracts.

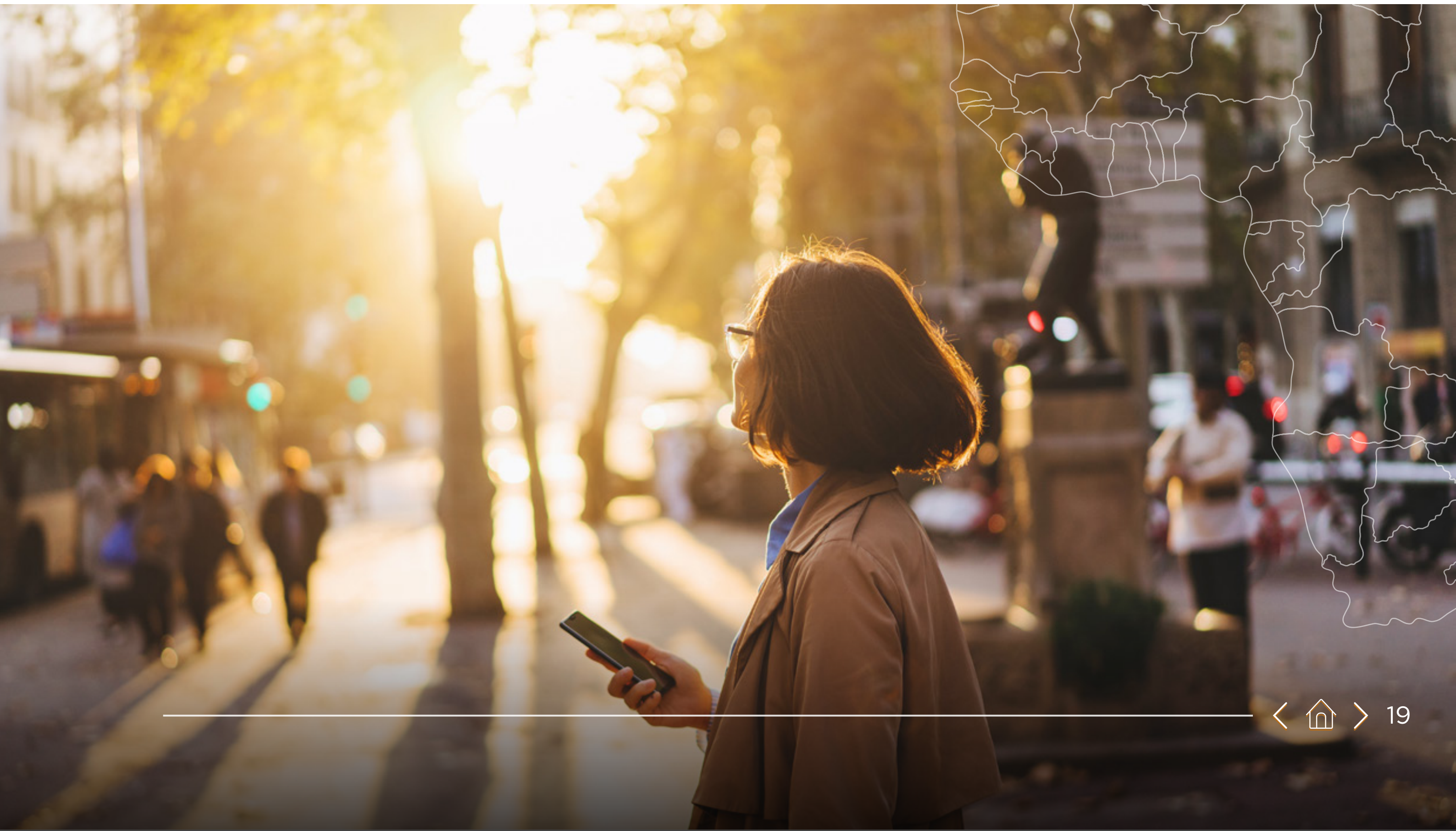
- **Companies Act 2001**

The Companies Act 2001 is applicable in the case where the remuneration package includes the granting of share options to employees. The Companies Act specifically authorises the directors of a company to establish ESOPs without affecting their duties to act in good faith and in the best interests of the company. However, the beneficiaries of the ESOP must be limited to the employees, dependants of employees and former employees of the Mauritian company or the subsidiaries of the Mauritian company. The ESOP cannot be offered to the directors and former directors of the company or that of its subsidiaries. A copy of the ESOP must be filed with the Registrar of Companies within 28 days of its approval by the board of directors of the company.

It is possible to extend the benefit of an ESOP to directors and former directors of a Mauritian company or its subsidiaries, to the extent that the directors of the company would not be in contravention with their duties to act in good faith and in the best interests of the company under the Companies Act.

- **Trusts Act 2001**

If the remuneration includes an ESOP through the use of a trust (which is fairly common) as a separate structure to hold the shares for the executives, the Trusts Act 2001 is applicable. The company implementing the ESOP will usually be the settlor of the trust. The trust can have a maximum of four trustees of whom at least one has to be a qualified trustee. A qualified trustee is defined as a management company (a company holding a management licence issued by the Financial Services Commission) or such other person resident in Mauritius as may be authorised by the Financial Services Commission to provide trusteeship services.



Nigeria

- **Companies and Allied Matters Act 2020**

  The primary source of law that governs executive compensation in Nigeria is the Companies and Allied Matters Act 2020 (**CAMA**), which applies to all companies incorporated in Nigeria. It confers the power of determining the remuneration of directors on the shareholders, and that of a managing director (**MD**) on the company's directors.

  The CAMA also provides guidance on the nature of expenses that a director can seek to be reimbursed for, and the basis for paying directors' fees where the company has not entered into a contract with the director. However, it also prohibits companies from providing loans to any director or a director of a holding company, giving guarantees, or providing security in connection with a loan given to a director/ a director of a holding company. This restriction does not apply to companies that provide such loans or guarantees in the ordinary course of business.

  The CAMA also prohibits companies from making payments to directors for loss of office, or as consideration for, or in connection with the director's retirement from office unless the company has approved the particulars of the proposed payment and the amount.

- **Nigerian Code of Corporate Governance (NCCG)**

  The NCCG issued by the Financial Reporting Council (**FRC**), which applies to public companies and regulated private companies, also provides directives on the remuneration of directors.

  The NCCG requires each company to disclose its remuneration policy in its annual report and prohibits MDs and executive directors (**EDs**) from being involved in determining their remuneration and that of any director of the company.

  In structuring the remuneration of MDs and EDs, the NCCG provides that the remuneration should link rewards to corporate and individual performances and prohibits the payment of directors' fees or sitting allowances to MDs and EDs.

- **Industry-specific regulations**

  In addition to CAMA and the NCCG, there are industry-specific regulations that contain provisions on director and senior management compensation arrangements and remuneration in Nigeria, including:

  - the Central Bank of Nigeria's Corporate Governance Guidelines 2023 (**CBN Guidelines**), which apply to commercial, merchant, non-interest and payment service banks in Nigeria;

  - the Securities and Exchange Commission's Code of Corporate Governance for Public Companies in Nigeria 2011 (**SEC Code**), which applies to all public companies whose securities are listed on a recognised securities exchange in Nigeria, companies seeking to raise funds from the capital market through the issuance of securities or seeking listing by introduction, and all other public companies;

  - the National Insurance Commission's Code of Corporate Governance for the Insurance Industry in Nigeria 2021 (**NAICOM Code**), which applies to all insurance and reinsurance companies;

  - the National Pension Commission's Guidelines on Corporate Governance for Pension Fund Operators 2021 (**PENCOM Code**), which applies to pension fund administrators, closed pension fund administrators and pension fund custodians; and

  - the Nigerian Communications Commission's Code of Corporate Governance for the Telecommunications Industry 2016 (**NCC Code**), which applies to telecommunications licensees that have (i) a spread of operations covering a minimum of three geopolitical zones; (ii) a turnover in excess of NGN 1 billion; (iii) over 200 employees; or (iv) a subscriber base of 500 000 or more.

- the CBN Guidelines and SEC Code, like the NCCG, provide detailed guidance for structuring the remuneration of directors and senior management. Both the CBN Guidelines and SEC Code require companies to which the codes apply to have a remuneration policy, while the SEC Code also prohibits EDs from determining their remuneration.

- companies are also obliged to make certain disclosures regarding their directors' remuneration. In addition, the CBN Guidelines and SEC Code contain restrictions on the remuneration of non-executive directors (**NEDs**) and restrictions on the pricing of share options. EDs are prohibited under the SEC Code from receiving sitting allowances or directors' fees.

- under the CBN Guidelines, banks are required to align their executive and board remuneration with the long-term interests of the bank and its shareholders. Similar to the NCCG and the CBN Code, the SEC Code requires companies to develop a comprehensive policy on remuneration for directors and senior management personnel and also provides that the remuneration of EDs should comprise a component that is related to long-term performance and may include share options and bonuses.

- the NCC Code provides that executive remuneration and rewards should be linked to individual as well as corporate performance beyond the short term and should give executives incentives to perform at the highest levels.

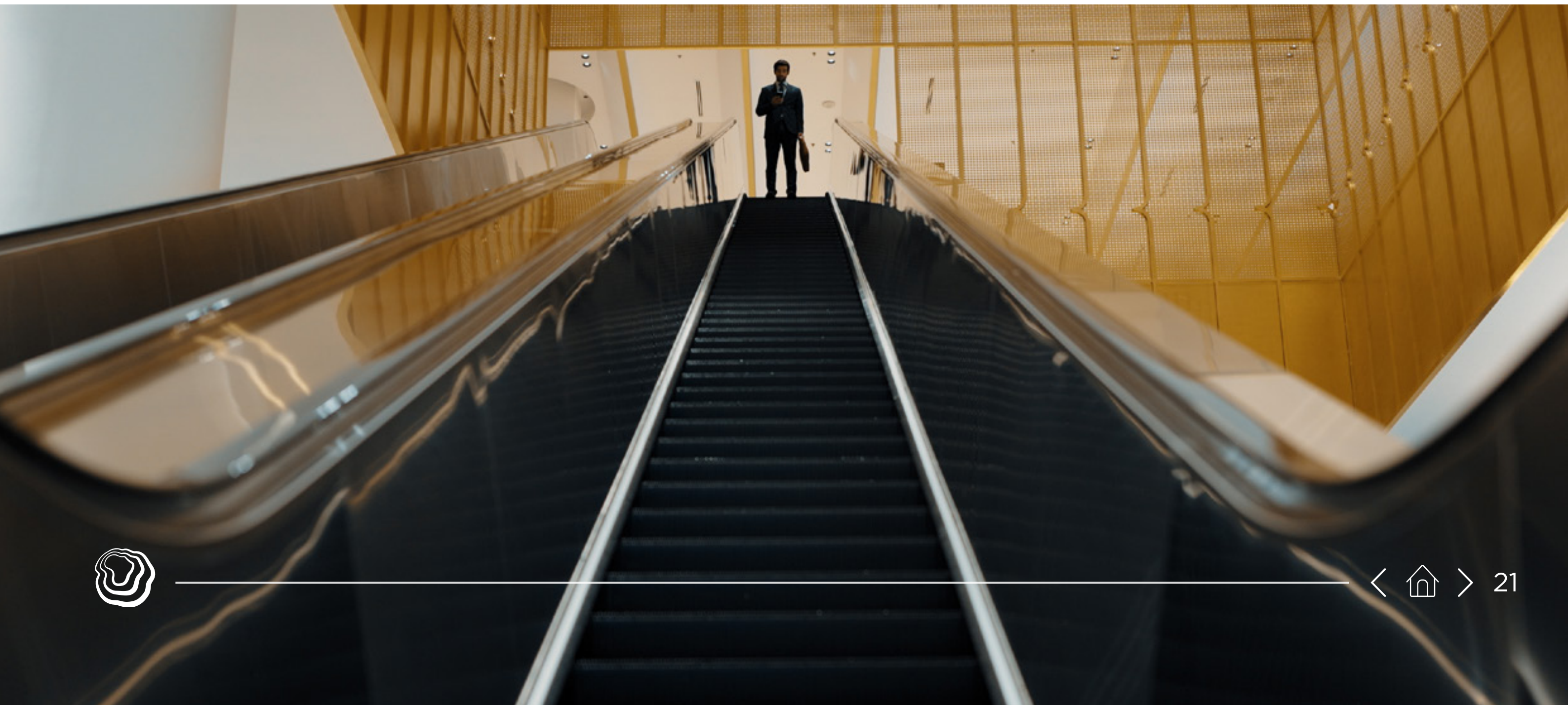
- unlike the NCCG, SEC Codes and the CBN Guidelines, the NAICOM Code does not contain comprehensive provisions on the remuneration of directors. The NAICOM Code merely states that shareholders have the right to make their views known on the remuneration policy of board members and key executives of the company.

- the PENCOM Code recommends adhering to the practices specified in the NCCG and states that PENCOM shall approve all LTI schemes for directors. Where performance-related elements are considered in the remuneration of EDs, they should be transparent, stretched, and rigorously applied without bias, and care must be taken to prevent excessive risk-taking.

- public companies, pension fund administrators, pension fund custodians, regulated private companies, banks and financial holding companies are obliged to disclose their respective remuneration policies in their annual reports and accounts.

- in addition, public companies, banks, and financial holding companies are required to disclose details of the directors' shareholding in their annual reports. The reporting requirements for public companies also include publishing all material benefits and compensation paid to directors in the annual report and accounts.

- every company is also obliged to maintain a register (which can be inspected at the company's registered office) that sets out directors' interests in the shares or debentures of the company.



South Africa

- **Companies law**

The regulatory regime for remuneration of directors varies depending on the type of company in question. For purposes of this guide, we focus on the legal and regulatory requirements applicable to for-profit companies (and excluding state-owned companies).

The primary source of legislation applicable to all companies is the Companies Act 2008 Companies and Allied Matters Act 2020 (**CAMA**). The Companies Act provides that a company may pay remuneration to its directors provided that: (i) the company's constitutional document does not prohibit paying remuneration to its directors; and (ii) remuneration may only be paid in accordance with a special resolution approved by the company's shareholders within the previous two years. Other than the aforementioned, the Companies Act primarily regulates reporting on and disclosure of directors' remuneration in a company's annual financial statements and does not specifically prescribe further requirements for directors' remuneration.

For those public companies that are listed on the JSE, there is an additional layer of compliance imposed by the JSE's Listings Requirements (**JSELRs**).

The JSELRs incorporates the provisions of King IV by reference, and prescribes a 'comply and disclose' process whereby a company must include the steps it has taken to comply with the JSELRs and King IV in its annual reporting suite. As it relates to remuneration, the JSELRs and King IV prescribe a more rigorous disclosure process for directors' remuneration including, amongst others, the publication of a background statement, remuneration policy, and a remuneration implementation report. While the JSELRs and King IV list the elements of remuneration that must be disclosed, not all the obligations pertain exclusively to directors' remuneration. For example, the company is also required to articulate its broader remuneration philosophy in the remuneration policy. According to the JSELRs and King IV, the remuneration policy and implementation report must be tabled for a non-binding advisory vote approved by at least 75% of shareholders. If 25% or more of shareholders vote against it, the JSELRs and King IV prescribe an engagement process for the company to adopt to ascertain and address legitimate and reasonable objections and concerns raised by dissenting shareholders.

On 30 July 2024, the Companies Amendment Act 2024 **(Amendment Act**) was signed into law by the President of the Republic of South Africa with the date of implementation yet to be announced. Once implemented, the Amendment Act will introduce the following provisions into the Companies Act, which pertain to remuneration reporting and disclosure requirements for public companies and state-owned companies:

- a company's remuneration policy must be approved by an ordinary shareholder resolution every three years or whenever a material amendment to the remuneration policy is made, and a company's remuneration (implementation) report must be approved by an ordinary shareholder resolution at every annual general meeting;

- the remuneration (implementation) report must disclose the ratio between the total remuneration of the top 5% employees and bottom 5% employees; and the highest, lowest, average and median total remuneration of employees;

- if at an annual general meeting the remuneration (implementation) report is not approved by an ordinary resolution, the committee responsible for remuneration must (i) at the next annual general meeting, present an explanation on the manner in which the shareholders' concerns have been taken into account and (ii) the directors who are not involved in the day-to-day management of the business of the company and who serve on the committee must stand for re-election as members of the committee at the annual general meeting at which the explanation is presented;

- if at the annual general meeting in the year immediately following the year contemplated above, the remuneration (implementation) report in respect of the previous financial year is also not approved by ordinary shareholder resolution, the directors who are not involved in the day-to-day management of the business of the company and who serve on the committee (i) may continue to serve as directors of the board provided they successfully stand for re-election at that annual general meeting and (ii) will not be eligible to serve on the committee for a period of two years thereafter.

Committee members who have served for less than 12 months in the year under review will be exempt from the consequences of the failed shareholder votes detailed above.

A plain reading of the amendments introduced by the Amendment Act and the JSELRs and King IV indicates some inconsistencies which will need to be addressed and aligned by legislators and regulators in due course. In particular, the voting threshold prescribed by the Amendment Act for the approval of the remuneration report by way of ordinary shareholder resolution does not align with the process prescribed by the JSELRs and King IV which require a non-binding advisory vote.

- **Labour and benefits law**

Chapter 4 of the Basic Conditions of Employment Act 1997 (**BCEA**) regulates remuneration and prescribes specific requirements for all categories of employees pertaining to, amongst others, the calculation and methods of paying remuneration; the provision of information to employees on remuneration; the payment of contributions to benefit funds; and deductions and other acts by employers concerning remuneration.

While the BCEA provides guidance to employers on how to calculate an employee's wage or remuneration where it fluctuates significantly from period to period, variable remuneration in the form of short-term and long-term incentives is not specifically regulated by South African labour law. Employees will, however, enjoy the general protections afforded to them by labour law where it impacts their fixed and/ or variable remuneration and/or benefits. For example:

- the Labour Relations Act 1995 (**LRA**) prohibits employers from conducting themselves unfairly in relation to, *inter alia*, the provision of benefits to an employee;
- the LRA also provides that fixed-term or part-time employees who earn below the annual earnings threshold prescribed by the Minister of Employment and Labour from time to time (currently ZAR 254 371.67) may not be treated on the whole less favourably than comparable permanent/ full-time employees performing the same or similar work, unless there is a justifiable reason for the difference in treatment;
- the Employment Equity Act 55 (**EEA**) prohibits employers from discriminating unfairly against any employee 'in any employment policy or practice' on a variety of grounds (including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, or birth) or on any other (analogous) arbitrary ground. This prohibition would extend to policies and practices in relation to remuneration and benefits; and
- the EEA also provides that a difference in terms and conditions of employment (including remuneration) between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any of the abovementioned grounds amounts to unfair discrimination.

Unless an employer makes membership of a medical aid scheme and/ or a retirement fund (pension or provident) a term and condition of employment or the employer is party to an industry-specific collective agreement which prescribes medical aid and/ or retirement fund membership, employers are under no legal obligation to ensure that employees become members of such schemes or to procure any of these benefits for their employees.

This notwithstanding, in the interests of safeguarding employees' health and encouraging them to save towards retirement, many employers compel employees to join the employer-nominated medical aid scheme and/ or retirement fund by making it a term and condition of employment. Most retirement funds in the private sector are regulated by the Pension Funds Act 1956, while public sector retirement funds are governed by the Government Employees Pension Fund, which is regulated by the Government Employees Pension Law Proclamation 1996. Medical aid schemes are regulated by the Medical Schemes Act 1998.

There is an increasing trend by employers to apply *malus* and clawback provisions to employee incentive awards. *Malus* relates to the pre-vesting forfeiture of all or a portion of an incentive award, while clawback refers to the post-vesting recoupment of all or a portion of the cash equivalent of an incentive award. Companies also regularly apply minimum shareholding requirements to executive directors of companies.

- **Tax**

South Africa has an employees' tax withholding system often referred to as pay-as-you-earn or 'PAYE'. This is not a separate form of tax but is a withholding mechanism to provide for the deduction and payment of tax to the South African Revenue Service (**SARS**) on a monthly basis. The tax to be withheld is based on the employee's liability for normal tax.

All employers who are tax resident in South Africa are obliged to register with SARS as employers. Currently, a non-resident employer is obliged to register as an employer only if it has a representative employer in South Africa, and if such representative employer is liable to pay remuneration to employees. From 1 March 2024, a non-resident employer will be required to register as an employer with SARS if it has a permanent establishment in South Africa.

Employees' tax withholding is dealt with in the Fourth Schedule to the Income Tax Act 1962 (**ITA**).

The Seventh Schedule to the ITA deals with the tax treatment of fringe benefits. Benefits provided to employees are, as a general rule, included in the definition of 'remuneration' in the Fourth Schedule to the ITA are thus subject to employees' tax.

The tax treatment of benefits will depend on the specific benefit provided. For example:

- An employer contribution to a **medical aid** is a taxable fringe benefit, but the member will qualify for a tax credit in respect of contributions paid by or on behalf of them to a medical aid. The tax credit is not substantial and thus provides limited relief. It is anticipated that medical scheme tax credits will be phased out once the proposed National Health Insurance Scheme is implemented in full.

- An employer contribution to a **retirement fund** is a taxable fringe benefit. The employer contribution is deemed to be an employee (member) contribution to the extent that the contribution is treated as a taxable fringe benefit. The member may claim a deduction in respect of their contribution and/ or deemed contribution to a pension fund, provident fund, and/ or retirement annuity fund. The total deduction allowed during a year of assessment may not exceed the lesser of ZAR 350 000 or 27.5% of the higher of the member's remuneration or taxable income.

- **Employee share schemes** are dealt with in terms of section 8C of the ITA. Section 8C provides for the gain on the vesting of an equity instrument to be subject to income tax (maximum rate of 45%) as opposed to capital gains tax (maximum rate of 18% for individuals). The definition of an equity instrument is very wide and not only includes shares and options, but also any contractual right or obligation if the value thereof is determined directly or indirectly with reference to a share. Section 8C will, as a general rule, apply where the equity instrument is obtained by virtue of the person's employment or office of director, or if it was acquired as a restricted equity instrument during the period of the person's employment with the employer or from an associated institution. The instrument will be regarded as 'vested' for tax purposes at the time of acquisition (in the case of an unrestricted equity instrument) or when it becomes unrestricted (in the case of a restricted equity instrument). The most common restrictions are those that prevent the employee from disposing of that equity instrument at market value, or which could result in the taxpayer forfeiting ownership or being penalised financially in any other manner. It is also important to note that an employer must apply for a directive and withhold employees' tax at the time of section 8C vesting. These compliance obligations could also apply in the context of a foreign share scheme, but subject to the detailed provisions of paragraph 11A of the Fourth Schedule to the ITA.

- As set out in more detail below, South Africa introduced the 'two-pot retirement system' with effect from 1 September 2024. Members of retirement funds who choose to access a 'savings withdrawal benefit' from their 'savings pot' are subject to income tax at normal rates, and not at the more beneficial rates applicable to retirement fund lump sum benefits.

- **Exchange control**

South African residents are subject to exchange controls in terms of the Exchange Control Regulations, issued under the Currency and Exchanges Act 1933. The purpose of exchange controls is, *inter alia*, to regulate inflows and outflows of capital from South Africa. South African residents are not permitted to export capital from South Africa except as provided for in the Authorised Dealer Manual. Most local commercial banks have been appointed to act as authorised dealers.

No South African resident is entitled to enter into any transaction in terms of which capital (whether in the form of funds or otherwise) or any right to capital is directly or indirectly exported from South Africa without the approval of either the Financial Surveillance Department of the South African Reserve Bank (**FinSurv**) or, in certain cases, by an Authorised Dealer. Remuneration paid by a resident employer to a resident employee has to be paid in South African Rand (**ZAR**) into their South African ZAR accounts.

South African residents may remit funds offshore by using their annual discretionary allowance of ZAR 1 million and/or annual foreign investment allowance of ZAR 10 million. Application must be made to the resident's authorised dealer to do so.

Exchange controls do not apply to non-residents, but non-residents may be impacted indirectly as acquisitions of South African assets and transactions with a resident may require exchange control approval.

A non-resident employer may pay remuneration into a foreign bank account, but if the employee is an exchange control resident, the employee would have to remit these funds to South Africa within 30 days of becoming entitled to such amounts, unless the income was in respect of services rendered to non-residents while physically abroad.

Expatriates working in South Africa would generally remain exchange-control non-residents until they immigrate to South Africa. During this period, they would be entitled to receive remuneration in a ZAR account with an authorised dealer, or into their foreign bank account (subject to their having ensured that they have sufficient funds available in South Africa to meet their living expenses).

A resident employee may participate in a foreign share incentive scheme, provided that if they have to make payment to become a participant, they must use a dispensation, such as their foreign investment dispensation, to make payment. The employee's authorised dealer should be able to remit the payment, although application to FinSurv may be required in certain instances. In addition, if there is any form of recharge arrangement, the South African employer would have to apply for prior approval to FinSurv. Where employees have received approval to invest in a foreign share scheme using their annual discretionary or foreign allowance to participate in the scheme, they would generally be permitted to receive the proceeds from the foreign share scheme into a foreign bank account without having to remit it to South Africa..

- **Securities laws**

No prospectus is required for share incentive schemes if certain requirements set out in Chapter 4 of the Companies Act, which regulates the offer of securities to the public, are complied with.

- **Data protection**

The Protection of Personal Information Act 2013 (**POPIA**) regulates the processing of personal information of a data subject (such as an employee) by a responsible party (such as an employer). Personal information includes information relating to an employee's remuneration. POPIA prescribes eight conditions for the lawful processing of personal information which must be adhered to by employers. POPIA also contains specific provisions regarding the transfer of personal information outside of South Africa's borders.

Recent updates

- **The Revenue Laws Amendment Act 2024**

The so-called 'two-pot retirement system' took effect on 1 September 2024 following the promulgation of the Revenue Laws Amendment Act (**RLAA**) as well as the Pension Funds Amendment 2024.

With effect from 1 September 2024, the monthly contribution to a retirement fund is split into 'two-pots'. Members are required to contribute one-third of their total retirement fund contribution to the 'savings pot' and two-thirds of their total retirement fund contribution to the 'retirement pot'. A member's accumulated retirement saving in the retirement fund as at 31 August 2024 (less the seed capital amount referred to below) has been 'grandfathered' in the 'vested pot' and is not impacted by the new provisions.

A member's saving pot has an opening balance which is equal to 10% of the member's retirement savings on 31 August 2024 or ZAR 30 000, whichever is the lowest. This is known as the 'seed capital' and is a once-off transfer from a member's vested pot to the savings pot. A member may, while in the employ of an employer, choose to access a 'savings withdrawal benefit' from the savings pot once every tax year. Previously, a member of an occupational retirement fund (pension funds and provident funds) was only permitted to access their benefit from the fund when leaving service or upon retirement.

There is no maximum amount that can be withdrawn from the savings pot. The minimum amount that may be withdrawn from the savings pot is ZAR 2 000. Members are encouraged to only access their savings in the savings pot in the event of a financial emergency and to save their retirement savings for retirement.

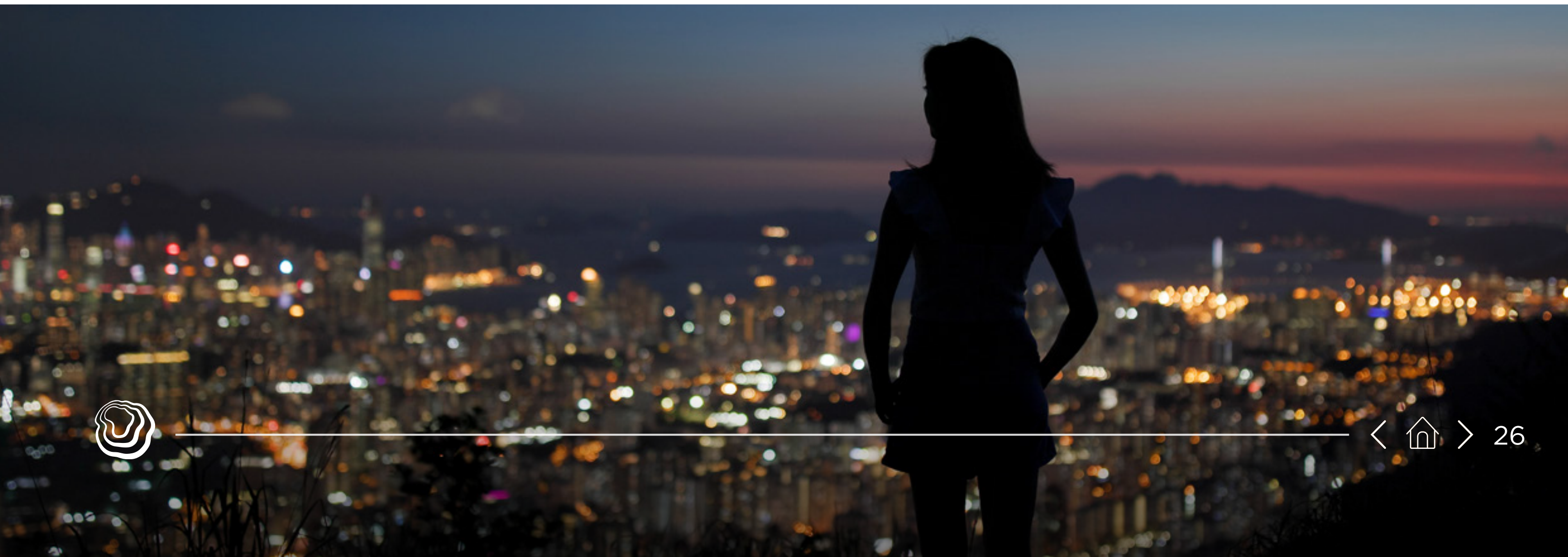
A member is not permitted to withdraw from the retirement component prior to reaching the applicable normal retirement age (ie, they are no longer able to access their full retirement funds upon resignation). Upon reaching the applicable retirement age, an annuity (or annuities) will be paid by the retirement fund.

- **Digital nomads**

South Africa has recently introduced digital nomad visas to facilitate remote working by foreigners in South Africa. However, while the digital nomad rules absolve digital nomads from registering as South African taxpayers in certain circumstances, it is unfortunate that to date, no concessions have been provided to foreign employers to allay concerns that the presence of a digital nomad in South Africa could trigger a South African income tax liability or tax compliance obligations for the foreign employer.

- **Disclosures of 'beneficial ownership'**

New legal provisions regarding the disclosure of beneficial owners have been introduced from a company law and trust perspective. The two sets of legislation (the Companies Act and the Trust Properties Control Act 1988 (**TPCA**) contain different definitions for a 'beneficial owner'. The TPCA does not automatically exempt share incentive trusts from having to provide details of beneficial owners to the Master of the High Court. It is, therefore, important that the disclosure obligations in this regard are analysed based on the specific circumstances.



Zambia

Executive remuneration is no longer solely fixed on the basis of contractual arrangements. Various factors, including laws and regulations, affect the way remuneration is designed and structured.

The Employment Code Act 2019 (**Employment Code**) is the main law governing the remuneration of employees. The Employment Code provides for the payment of wages by an employer to its employees at the set intervals in accordance with the agreement between the employer and employee, which must be concluded in accordance with the law (section 66 of the Employment Code). The Employment Code further provides for wages to be paid in the currency of the Republic of Zambia, the Zambian Kwacha, unless otherwise agreed (section 67(1) of the Employment Code).

- **State organs and State-owned organisations**

  There are particular public offices that, by virtue of their responsibilities and ranking, can be categorised as executive management. For instance, a Ministerial Permanent Secretary is the chief executive officer of the Ministry under which they are appointed. It follows that the remuneration of such executives is generally guided by the Emoluments Commission (**Commission**) as established in the Constitution of Zambia (Amendment) Act 2016 (**Constitution**) and the Emoluments Commission Act 1 of 2022 (ECA) (article 232 of the Constitution).

  The mandate of the Commission is to determine, on the recommendation of the relevant authority or commission, the emoluments of the various categories of public officers (article 264 (2) of the Constitution). In determining emoluments, the Commission is guided by principles such as the requisite qualifications and skills for service delivery, efficient performance, the level of responsibility, the enhancement and maintenance of macroeconomic stability in the country and affordability and sustainability (section 15 of the Emoluments Commission Act).

  The Commission is mandated by law to undertake a concurrent review of emoluments every two years. However, the law also provides for special reviews to be conducted to attract and retain critical or scarce professional skills required to effectively execute the functions of a State organ or State institution, or to compensate for the increased cost of living of an officer in a State organ or State institution.

- **Public and private companies**

  Zambia's corporate governance legal framework is underpinned by the Companies Act 2017 (**Companies Act**). This affects the structure of the remuneration of executive management. Under the Companies Act, executive officers receive remuneration as determined by the board of directors. Further, the remuneration of executive directors is determined by shareholders by way of an ordinary resolution and subject to the terms of any agreement entered into with the director (section 101(2) of the Companies Act).

  It is clear that shareholders play a critical role in the remuneration of executive officers and directors. However, there has been a long-standing debate on the effectiveness of shareholder intervention in companies, including on matters such as remuneration.

  Remuneration of executive management may also be dependent on the articles of association governing the organisation as well as other sector-specific legislation that governs the industry in which an executive is employed.

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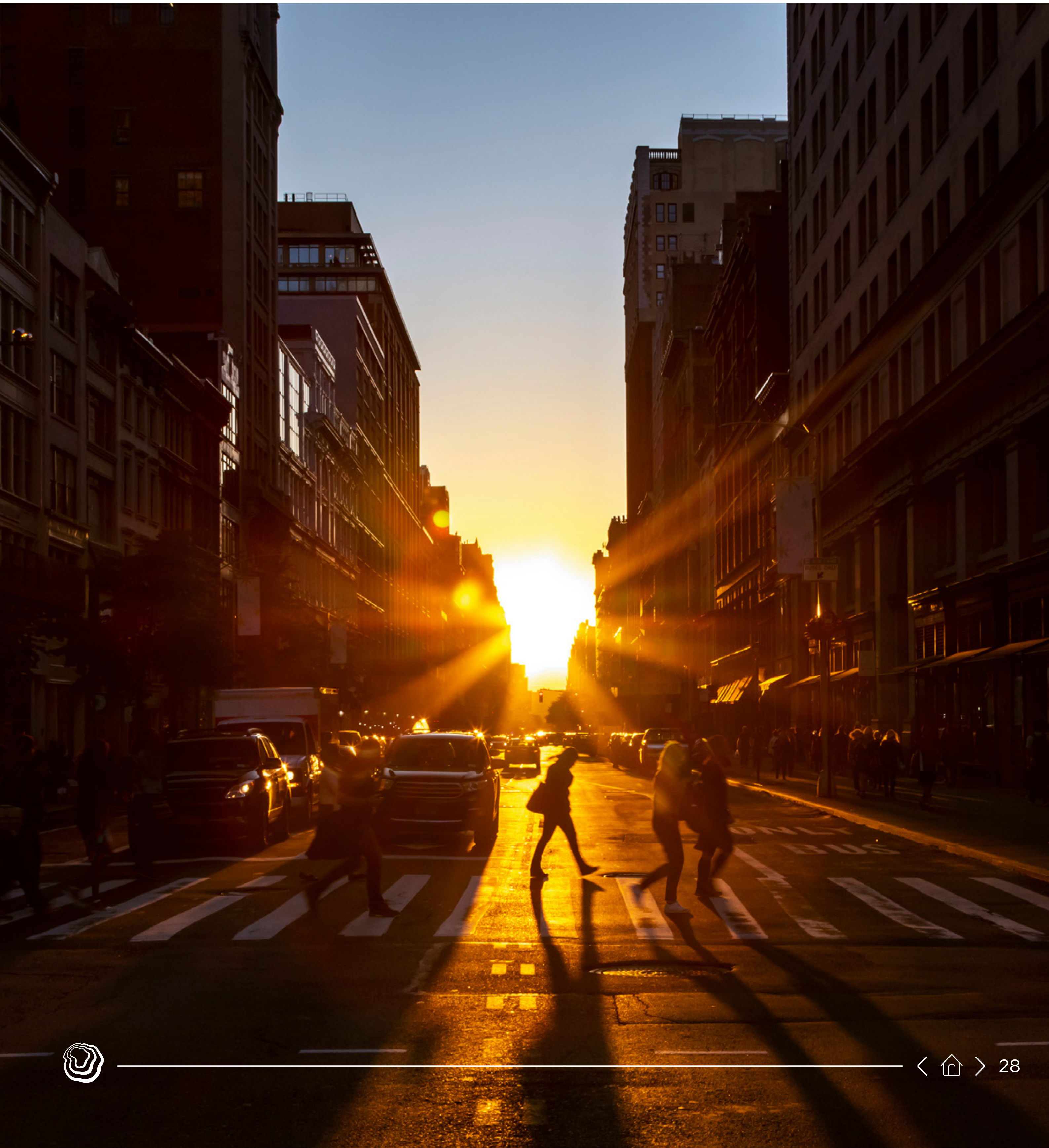


Remuneration in Corporate Transactions

(M&A and Private Equity)

By Julie Oppenheim, Jutami Augustyn, Njoroge Kangethe, Rainbow Field, Reabteswe Moloi and Ukanyo Mabandla

Kenya

In most M&A transactions, retention of key employees (senior executives in particular) with customer relationships, product knowledge and a grasp of business fundamentals is a priority for the acquirer.

With respect to SPAs, the acquirer is required to retain all the employees of the target entity as the employing entity does not change.

To limit this liability (of absorbing the cost of payroll and employee benefits), we have seen an increased preference for BATAs as opposed to SPAs in the context of M&A transactions such that the acquirer is left with the autonomy to selectively absorb key employees and staff the remaining roles at will.

Kenyan labour laws do not allow for the automatic transfer of employees from one employer to another. Therefore, in a BATA situation, employees will legally be declared redundant. If the acquirer wishes to retain the employees, this may be achieved through a tripartite agreement.

In some cases, to incentivise senior executives to stay post-merger, the senior executives are offered equity incentives in the new entity (for example, through an ESOP) or cash incentives (for example, through an LTIP). However, these remuneration plans may impact an M&A transaction as they may lead to shareholder dilution in the case of an ESOP, or cash flow constraints in the case of an LTIP.

South Africa

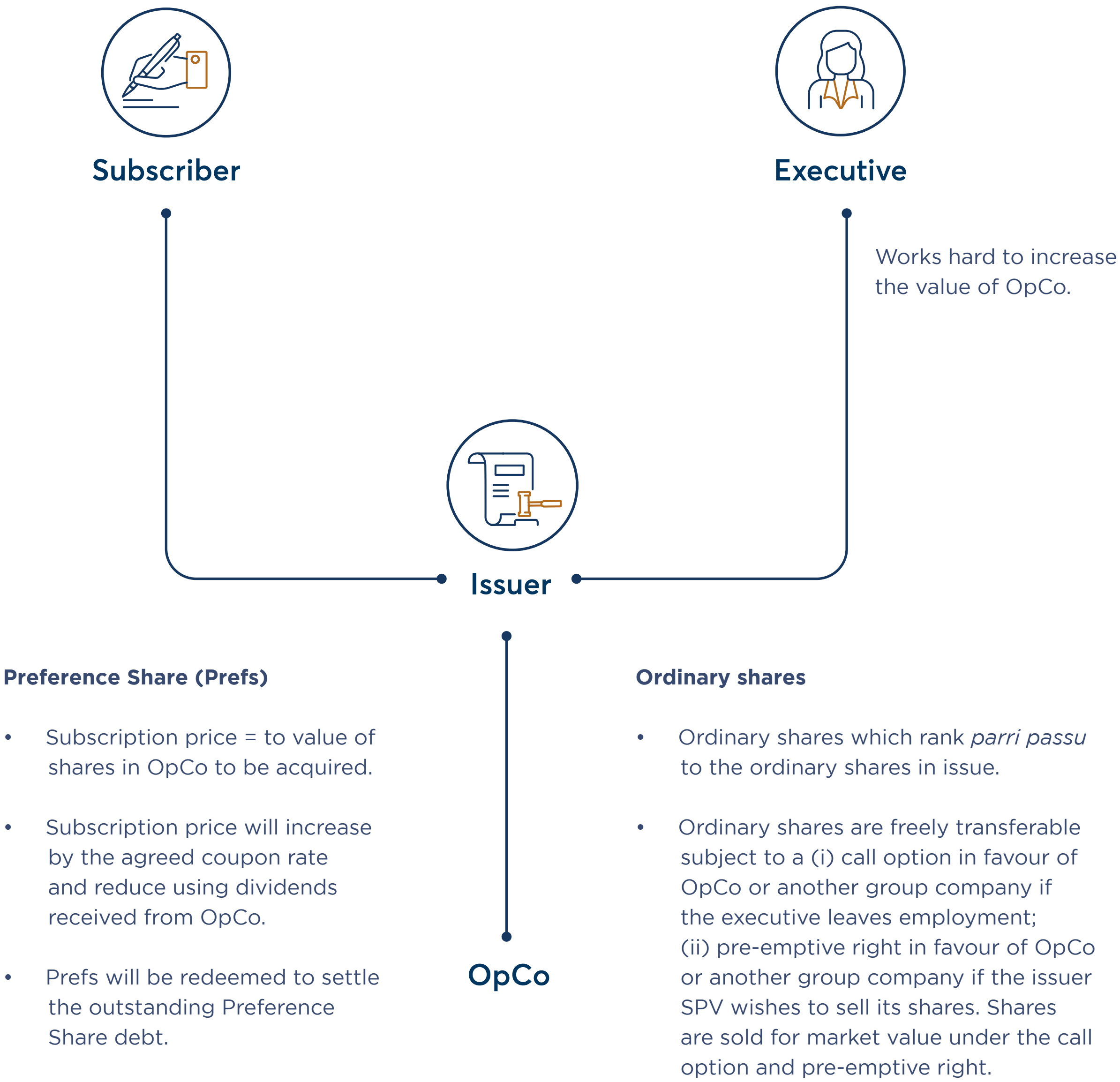
Incentive schemes that are common in the private M&A environment include (i) preference share funded buy-in schemes (**Pref Funded Scheme**); (ii) options schemes (**Option Scheme**); and (iii) management incentive trusts/ companies, which are common in the private equity space (**Carry Scheme**).

Pref Funded Scheme, Option Schemes and Carry Scheme

To give effect to these schemes, various transaction agreements, authorising and other resolutions/ approvals as well as amendments to the relevant company's constitutional documents are required.

- **Pref Funded Scheme**

  Broadly speaking, in terms of a Pref Funded Scheme, an executive who qualifies for participation in the scheme would establish a newly formed company (called, for example, the **Issuer SPV**). The Issuer SPV would issue preference shares to a company in the group in which the executive is employed (**Subscriber**) and the Issuer SPV would use the subscription proceeds received from the issue of the preference shares to the Subscriber to acquire shares in a/ the underlying group operating company (**OpCo**). The Pref Funded Scheme can be depicted as follows:



- **Option Scheme**

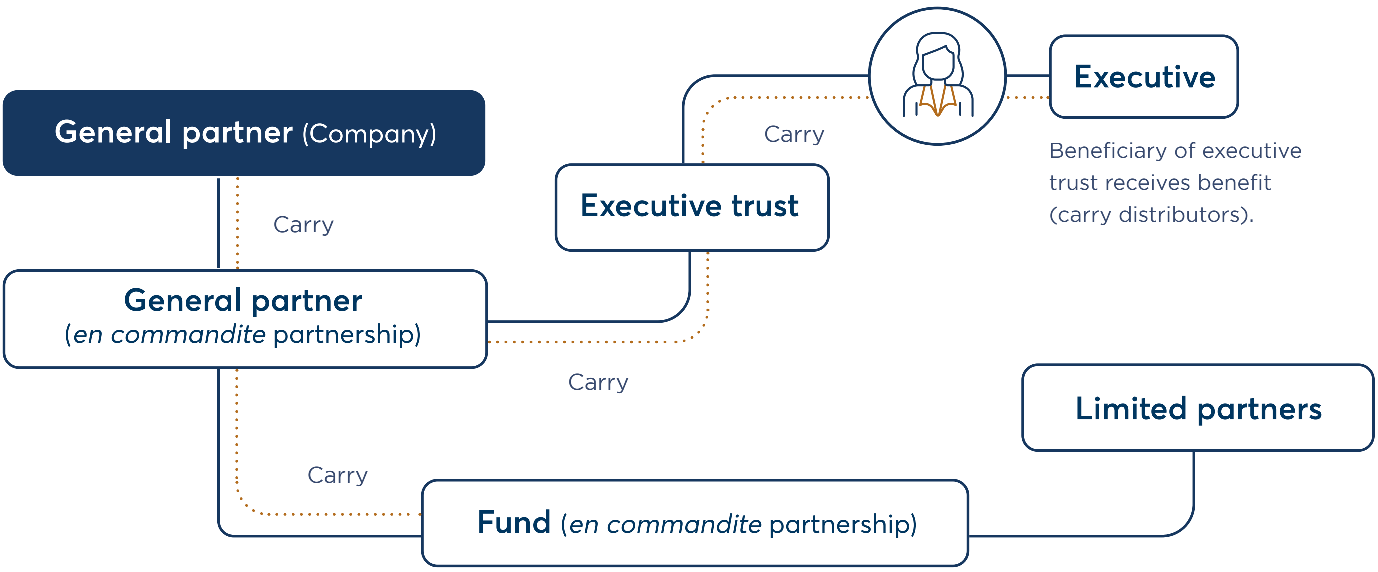
The Option Scheme is one where the OpCo issues options to an executive to subscribe for shares in OpCo on the happening of certain liquidity events. The executive will only receive options if a pre-agreed internal rate of return hurdle is met. The executive then shares in value created above the hurdle. The Option Scheme can be depicted as follows:

Executive – OpCo

- Issue options to executive to subscribe for such number of shares as is determined in accordance with a formula and provided a pre-agreed hurdle has been met.
- Options are triggered on sale of assets or shares (**Liquidity Event**).
- On exercise of the option(s), the executive is issued shares in OpCo for no consideration and entitled to either (i) sell into the Liquidity Event or (ii) continue to hold the shares.
- Provision can also be made for the executive to exercise all or some of their options if there is no liquidity event within an agreed period of time.

- **Carry Scheme**

The main incentive for key persons in a private equity fund is to gain access to the carry. This is done by affording executives an instrument, either in the form of being beneficiaries in a management trust or of holding shares in a management SPV, which will give them access to carry as and when the general partner earns and receives it. The Carry Scheme can be depicted as follows:



Employment Mobility

By Aneria Bouwer, Danielle Botha, Njoroge Kangethe, Rainbow Field and Waziri Mchome

This chapter explores employment mobility and the tax implications of sourcing foreign executive talent within the African continent. African labour migration goes beyond the traditional narrative of the male seasonal migrant workers travelling to their destination countries along the charted migration corridor. In recent years, the complexity and diversity of the migration narrative has progressed at a rapid speed due to the multitude of economic, environmental, and political struggles that many countries on the continent are facing.[2]

The importance of labour migration to individual employers and to employers' organisations is evident. At both ends of the international migration process, employers have an important stake in what kind of, and how, labour migration takes place.

Employers in destination countries have a primary interest in accessing a pool of workers with the skills they need. Labour migration can bring relief to skills shortages, help stabilise costs and maintain competitiveness. Employers in countries of origin also have an interest in labour migration governance. In many countries the returnee migrants are seen as brain gain. Their expertise, experience and acquired skills can be harvested to enrich the national pool of skilled human resources through training, transfer of technology and know-how. However, the countries of origin also have a stake in ensuring that there is no excessive loss of their own skilled workers, technicians and professionals in whose training they have invested heavily.[3]

Notwithstanding this, African states have signalled that their priority is trade and not the free movement of persons, considering the low ratifications of the Africa Union's Free Movement of Persons Protocol (**AU-FMP**) as compared to the African Continental Free Trade Agreement (**AfCFTA**). Of the 54 countries that have signed the AfCFTA agreement, 44 have ratified it and several have established committees for the implementation of the agreement. But with regards to the AU-FMP, the signatory countries have not established any mechanisms to facilitate its implementation or begun the process of changing any national regulations or policies, to implement measures that will facilitate the movement of people. Thus, the focus on the implementation of trade reform and trade facilitation measures is rarely accompanied by measures that ensure the facilitation of the movement of persons for several reasons.[4]

With regards to regional economic organisations in Africa, in early 2021, SADC adopted a new Labour Migration Action Plan (2020–2025) as part of its efforts to promote skills transfer and match labour supply and demand for regional development and integration. The Economic Community of West African States (**ECOWAS**) adopted the 2019 ECOWAS Regional Migration Policy and the ECOWAS Mixed Migration Framework and established the ECOWAS General Convention on Social Security to guarantee the portability of social security rights for migrant workers. It has further developed guidelines and a monitoring mechanism for the evaluation by ECOWAS member states of the implementation of the ECOWAS Protocol on the free movement of persons including workers. The East African Community (**EAC**) is developing an East African Labour Migration Policy Framework with EAC partner states and sub-regional representative organisations of the social partners. The draft labour migration policy is intended to guide national endeavours on labour migration governance on a common basis and approach.[5]

[2]ILO, Employers' Organizations Guides on Fostering Labour Migration Governance in Africa, First published 2021 at page 1
[3]Ibid. at page 12
[4]A. Bisong, Labour Mobility as a Key Element of the AfCFTA: What Role for the AU's Free Movement Protocol? Briefing Note No. 153, December 2022 at page 5
[5]ILO, Employers' Organizations Guide on Fostering Labour Migration Governance in Africa, First published 2021, at pages 17-18

In origin countries there are tax implications for sourcing foreign executive talent within the African continent. Brain drain has important consequences for the sustainable development of origin countries. The impact of the brain drain depends on the size and level of development, the sectors and occupations involved, and the nature of migration (temporary, permanent, or circular). The departure of skilled labour represents a loss of public investment in education, as well as in potential tax revenues.

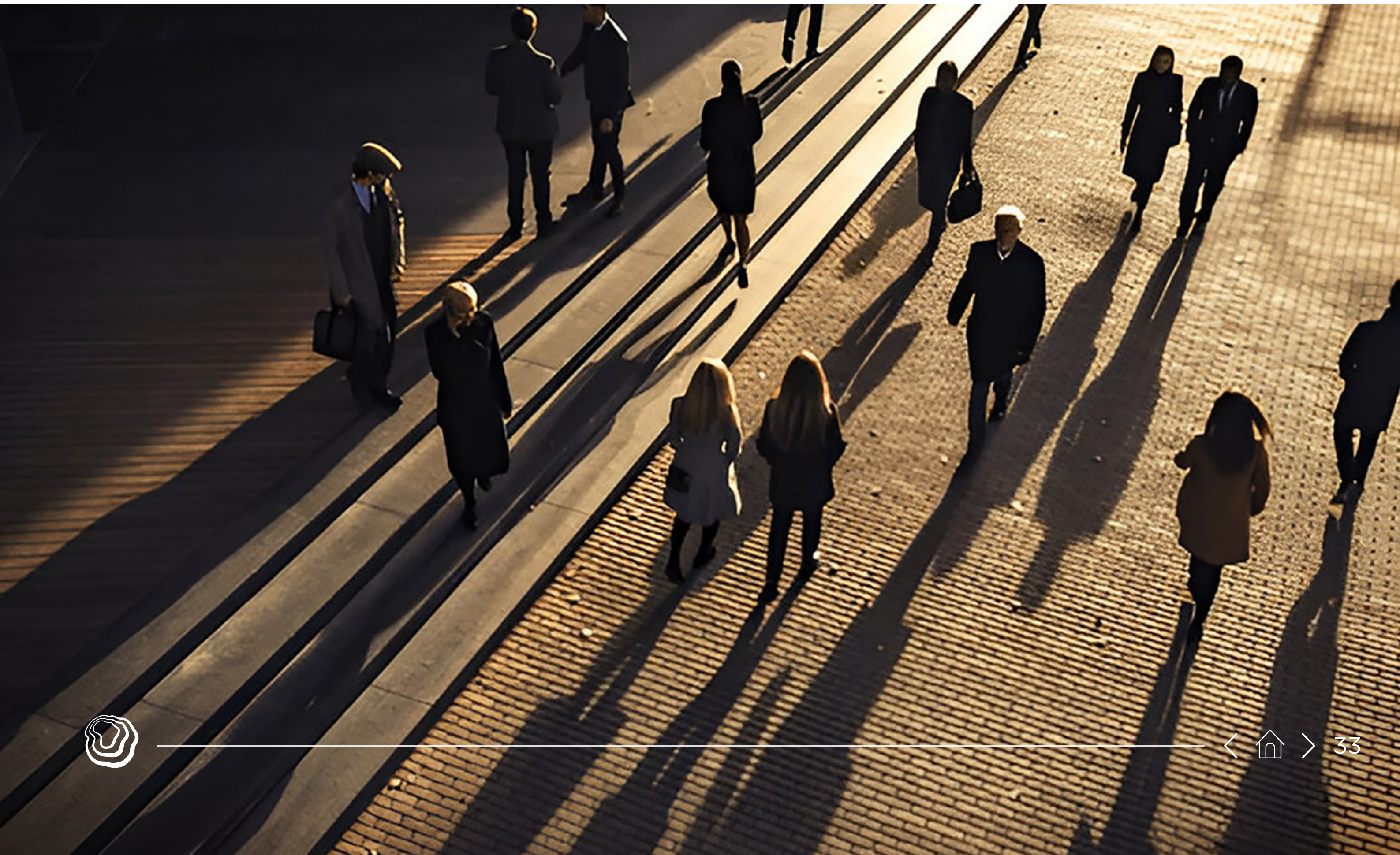
Conversely, in destination countries, except in those with a large share of older migrants, migrants contribute more in taxes and social contributions than they receive in individual benefits. Return migrants have the potential to make a positive contribution to the economic development of their home countries.[6]

However, there is the possibility of employment mobility benefitting both the country of origin and the country of destination. Migration can increase the likelihood of a return migrant becoming an entrepreneur due to the accumulation of savings and skills while abroad. In addition, migrants could play a role in facilitating trade and investment flows between origin and destination countries and, as consumers representing large communities, they could create new demands for goods and services.[7] In that way both countries benefit from taxes.

On whether tax can affect employment mobility, tax rates differ substantially across countries and across policy locations. Tax policy may affect location decisions of individuals. Induced mobility is a central mechanism in several strands of economic theory. Despite its importance in economic theory, and its salient policy debate, empirical evidence on the responsiveness of individual location decisions to taxes has been remarkably scanty.[8]

Where suitable migration data is available, the next challenge relates to the tax variation used to estimate migration responses. This challenge is twofold. First, one needs to correctly measure the tax incentive that governs location decisions. As with other extensive-margin decisions, location decisions depend on the average rather than the marginal tax rate, and average tax rates are not always straightforward to calculate.

Moreover, for workers at the lower end of the income distribution, the relevant average tax rate depends not only on the tax system, but also on the potentially complicated system of welfare and social insurance programs. Second, one needs to find tax variation separate to other factors affecting individual location choices including local labour market conditions, local amenities, and public goods, and the effects need to be sufficiently large to generate effects that can be detected in the data.[9]



Kenya

Where foreign executive talent is sourced from other countries by a Kenyan company, if the executive hired is a non-resident for Kenyan tax purposes, the remuneration paid to the executive by the company is deemed income accrued or derived from Kenya and is therefore subject to taxation in Kenya.

However, where the foreign executive is resident in Kenya, in addition to the remuneration paid to the executive by the Kenyan company, all the worldwide employment income earned by the executive is income taxable in Kenya.

A foreign executive is deemed to be resident in Kenya if the executive has:

- a permanent home in Kenya and was present in Kenya for any period in any particular year of income under consideration;
- no permanent home in Kenya, but was present in Kenya for a period or periods amounting in the aggregate to 183 days or more in that year of income; or
- no permanent home in Kenya but was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.

[6]ILO Organization for Economic Co-operation and Development, World Bank Group, The Contribution of Labour Mobility to Economic Growth, Joint Paper for G20 Labour and Employment Minister's Meeting, Ankara, Turkey, 3-4 September 2015 at pages 9-11
[7]ibid.
[8]H.Klen, C. Landais, M. Munoz, and S. Stantcheva, Tax and Migration: Evidence and Policy Implications, Journal of Economic Perspectives, Volume 34, Number 2 Spring 2020 at page 120
[9]ibid. at pages 122-124

South Africa

In the past few years, new ways of working have forced employers and employees to reevaluate the typical employee value proposition and their remuneration and mobility policies. Remote and hybrid working arrangements have become more common and an accepted means of acquiring key talent.

South African companies may consider drawing on a global pool of talent especially in the face of skills shortages. South Africa has joined various other countries that have adopted 'digital nomad visas' (in Africa, this includes Mauritius and Namibia) to encourage remote workers to live and work in their jurisdictions for a limited period, simulating tourism and encouraging spending. These visas generally provide the ability to work in the relevant jurisdiction and prescribe a minimum level of income that the mobile employee should earn.

South Africa has not been unaffected by these global trends, but faces specific challenges that have hindered the development of remote working and global mobility for both employees and employers. Some of the considerations limiting the attraction of global talent and the move to mobile employment arrangements include:

- the skills shortage crisis;
- delays in obtaining critical skills and other visas, making it difficult for companies to recruit scarce skills from other jurisdictions to South Africa;
- labour and regulatory complexity in South Africa;
- recent amendments to the tax legislation, which require a non-resident employer to register for and withhold employees' tax if the foreign employer has a permanent establishment in South Africa; and
- ongoing uncertainty regarding the obligations of foreign employers in respect of Unemployment Insurance Fund (**UIF**) contributions and Skills Development Levies (**SDLs**) for employees in South Africa.

With flexibility becoming a key part of an employee value proposition, and in light of the concerns listed above, many skilled employees have been looking offshore for lucrative job opportunities, either remaining in South Africa or relocating to foreign jurisdictions.

South Africa is an attractive remote working proposition for those with flexibility, offering a relatively low cost of living and fair weather while earning income in a comparatively stronger foreign currency such as dollars or pounds. The introduction of the South African digital nomad visa rules is anticipated to promote remote working in South Africa. The rules have been through various iterations since they were first published earlier in 2024. The third version of these rules (published in October 2024) addressed some of the concerns raised regarding the earlier versions. Unfortunately, South Africa has not yet updated tax and employment laws to provide foreign employers with the assurance that the presence of remote workers in South Africa will not have tax and/ or employment law implications for foreign employers. While the digital nomad rules should attract more remote workers to South Africa, the programme will only achieve optimal success once the risks for foreign employers are addressed.

Aside from the impediments above, South African employers would benefit from keeping pace with developments in the increasingly mobile and competitive global labour environment to ensure they attract and retain the correct talent.

In this regard, a quietly emerging trend in South Africa, particularly amongst multinationals, has been to consider the adoption of a global mobility policy. The contents of these policies vary, but they consider the tax, legal and regulatory implications of remote working and global appointments. They could also include policy decisions on 'softer' elements such as quality of life and mental well-being. A company's remuneration policy could cover the attraction of global talent; seconding of talent to offshore entities; and/ or allowing employees to work remotely from other jurisdictions.

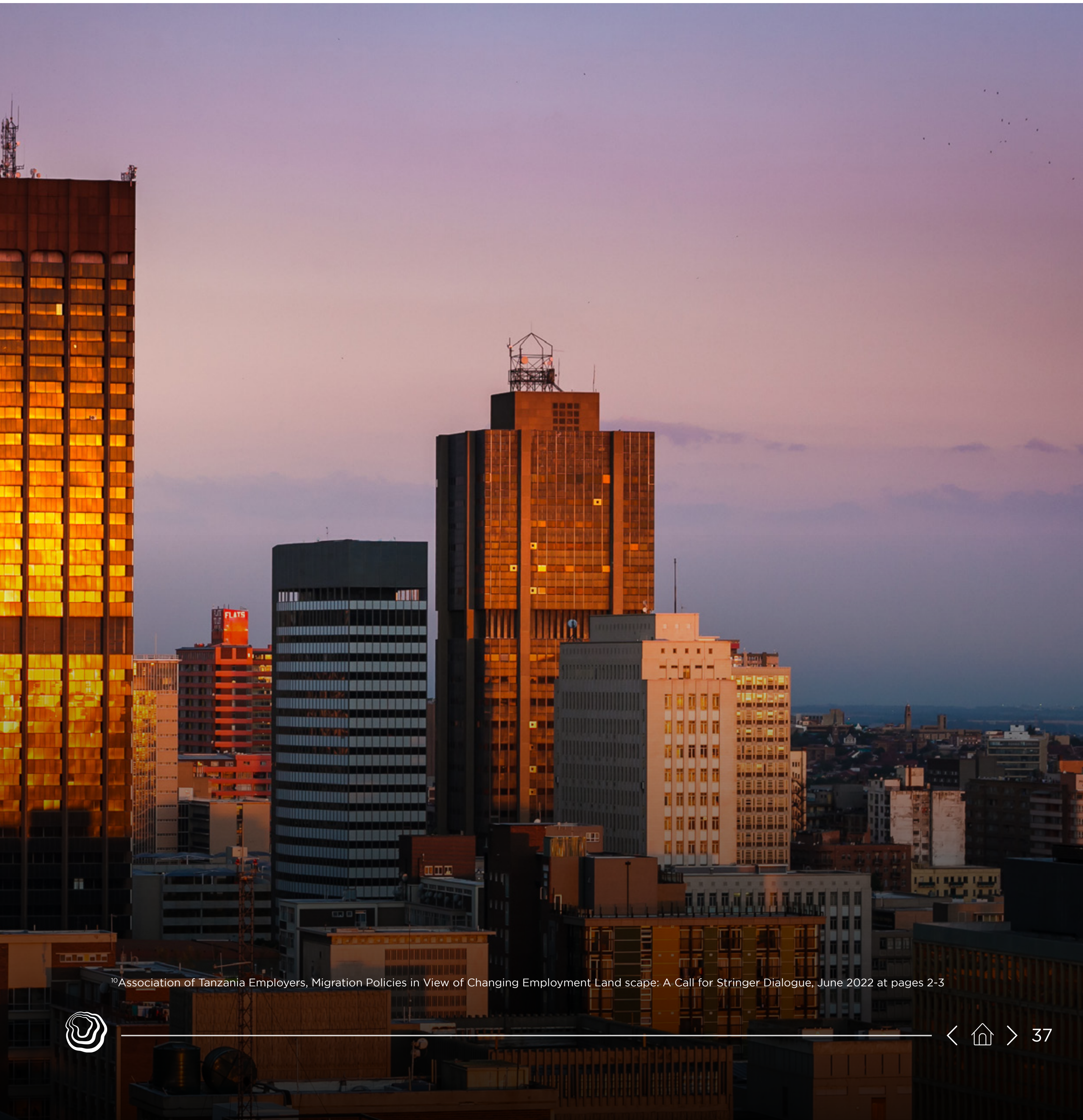
Key questions that an organisation could ask in preparing a global mobility policy and aligning its remuneration policy to global mobility trends whilst ensuring equity within the workforce include:

- Will the presence of employees in the foreign jurisdiction trigger any compliance, employment law and/ or tax obligations for the employer in the foreign jurisdiction?
- How to determine the level of remuneration for two employees performing the same job in two different jurisdictions?
- Would a cost-of-living adjustment be included, and would this position remain the same if the move was initiated by the employee as opposed to the employer?
- Would the company consider allowing employees to work remotely on a permanent basis and continue to remunerate them from South Africa? If so, how would the tax and regulatory implications of this decision impact the level of remuneration provided?
- Would the position differ when considering the retention of scarce and critical skills and would the employees' families be accommodated? How does this affect the variable remuneration of a particular employee when benchmarking their position?
- How would variable remuneration be structured for flexible or mobile employees and how would incentives be benchmarked?
- What are the tax and compliance implications in respect of LTIs where employees are not employed in the same location throughout the vesting period?

Tanzania

While Tanzania has ratified a total of 37 ILO conventions including the eight core conventions, it has not ratified any of the ILO conventions on labour migration. Therefore, Tanzania does not have a national migration or labour mobility policy in place.[10] Instead, employment of non-citizens is addressed through the Non-Citizens (Employment Regulation) Act 2015 which states areas where non-citizens can be employed and the conditions applicable.

Procedurally, any foreign citizen is allowed entry into Tanzania provided they comply with the requirement for admission in accordance with the national law.



[10] Association of Tanzania Employers, Migration Policies in View of Changing Employment Land scape: A Call for Stringer Dialogue, June 2022 at pages 2-3

The Future of Remuneration in Africa

By Martin Hopkins

Africa has one of the fastest-growing consumer markets in the world. Average annual gross domestic product (**GDP**) growth has consistently outpaced the global average. Household consumption has increased even faster than the continent's GDP in recent years. Increasing affluence, population growth, urbanisation rates, and the rapid spread of access to the internet and mobile phones mean that Africa's emerging economies present exciting opportunities for expansion, particularly in retail and distribution.

To encourage foreign investors, African executives, employees and communities to seize these opportunities, enhanced remuneration governance and reporting standards as well as the concomitant development of executive share plans, ESOPs and enhanced employee benefits should be considered.

Despite the stagnation of the South African listed company market (over 20 companies delisted from the JSE in 2022 alone, and the number of companies listed on the bourse has dropped by more than half over the past 30 years to less than 300), there are significant opportunities for growth of stock exchanges in other growing African markets.[11]

In July 2023, it was reported that stock markets in Africa were close to record highs after an incredible rebound from the pandemic.[12] The number of stock markets in Africa has risen from five in 1990 to 18 currently. In the banking sector, credit to the private sector and bank assets (both indicators of banking sector development) have increased significantly since 1990.[13]

These opportunities have mutually supportive links to remuneration:

- Enhanced remuneration governance and reporting will increase the comfort of global investors in the quality and integrity of a company's overall governance and sustainability.
- More liquid and thriving local markets increase the ability of African companies to offer attractive LTIs to attract, retain and award high quality leaders with skills to take advantage of the commercial opportunities in these markets.
- These enhancements in regional stock exchanges will also enable the implementation of ESOPs as well as improved rewards for workers and lower-paid employees.

The role that remuneration developments can play in this mutually beneficial African future includes:

- The balanced enhancement of reward governance and reporting in key African markets can encourage global investors, while not being so onerous as to dissuade top leaders and talent from taking on key African company roles.
- The implementation of more executive share plans and ESOPs can enhance executive remuneration offerings as well as enable the sharing of the benefits of enhanced stock market performance with workers.
- The incorporation of some elements of developed markets' executive remuneration provisions, such as *malus* and clawback provisions, minimum shareholding requirements (**MSR**), and the incorporation of ESG performance conditions.
- The implementation of enhanced benefits programmes, recognition awards and other non-financial benefits.

[11] https://dailyinvestor.com/investing/32422/jse-delisting-trend-continues/
[12] https://www.dw.com/en/africas-stock-market-boom/a-66375522
[13] https://www.imf.org/external/pubs/ft/wp/2009/wp09182.pdf

ESOPs

Executive share plans in developed markets, and in some African markets, provide a compelling means of attracting, retaining, and rewarding top executives and key talent. Similarly, ESOPs provide a more broad-based means of sharing the equity in a listed company with workers and other less highly paid employees.

Remuneration governance and reporting

The inherent conflict of interest of the executive directors and senior management when setting their own remuneration, and the view of some shareholders and many other stakeholders that executive remuneration is excessive, mean that governance and reporting of executive remuneration attracts particular scrutiny.

The US section of Randall S. Thomas and Christoph Van der Elst's, *Say on Pay Around the World*, 2015, and the UK's *Corporate Governance Code*, 2018, as well as applicable stock exchanges' listing requirements impose rigorous remuneration governance and reporting requirements on listed companies regulated by exchanges in these markets. The King IV Code in South Africa imposes similar requirements on JSE listed companies.

Whilst overly onerous regulations in this regard can stifle growth, discourage listings, and dissuade great leaders from taking up positions in African companies, a balanced enhancement of governance and reporting standards could encourage global investment in African countries with the concomitant benefits of rewarding successful leaders (by means of executive share plans) and sharing wealth with local workers (via ESOPs).

Supplementary executive remuneration provisions

Provisions for *malus* and clawback and **MSR** are now very common executive remuneration provisions in developed markets and are starting to gain traction in African markets. These are not 'executive friendly' provisions, but are favoured by shareholders to protect and align management with their interests.

Malus and clawback provisions apply to variable remuneration awards that are either 'in flight', such as deferred bonus and LTI awards that have not yet vested, or to such awards that have already vested and been settled. These provisions are applicable when 'trigger events' such as material misstatement of financial statements (or other parameters that are used to determine reward outcomes) and misconduct occur. *Malus* refers to reduction or forfeiture of unvested variable pay awards, and clawback means that some or all of variable pay awards that have already been settled must be repaid.

Minimum shareholding guidelines are policies that require senior executives to build up personal holdings of their own company's shares. The targets are set to a multiple of the executive's base pay. In developed markets the target multiple for the CEO is three to five times salary, or even more in North American markets, but regionally, where applied the targets are usually two to three times salary. The executives usually have five years to build up the holdings from the inception of the policy or from being appointed to the role.

The inclusion of ESG performance measures into executive remuneration policies is also a global trend that African companies will need to incorporate into their future remuneration frameworks, especially LTIs. To attract global shareholders as well as sophisticated African shareholders, African listed companies are likely to impose such conditions in their executive remuneration policies, but this will need to be accomplished in a balanced way that provides sufficient comfort to global investors while not discouraging great leaders and key talent from senior roles at African companies.

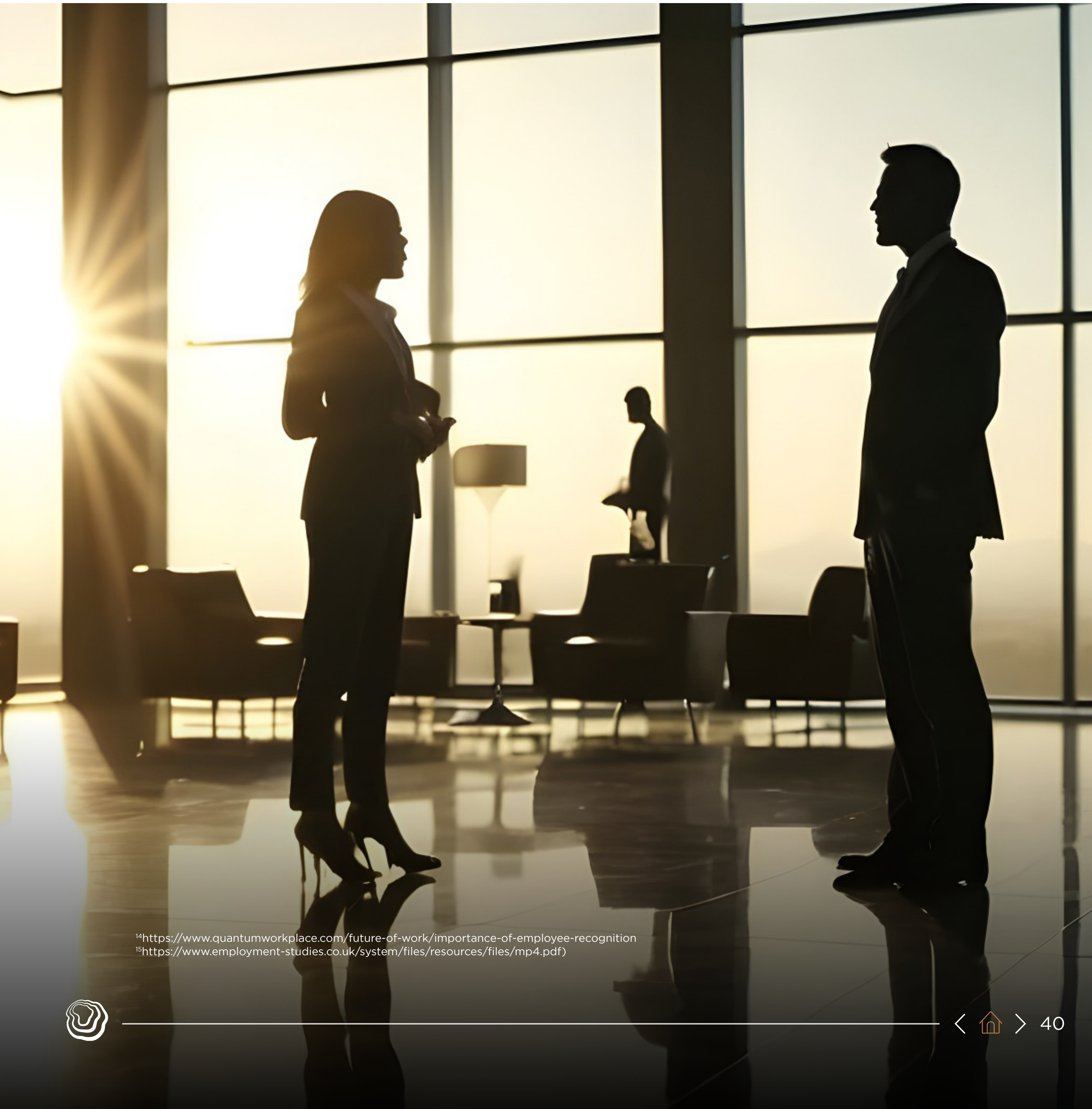
'Foundation' benefits

With increased focus on the social aspects of companies' performance, it is likely that large companies with significant buying power will leverage this advantage to procure essential goods and services required by their employees, especially lower-paid employees, at better prices. Our initial research in this area indicates that the use of this opportunity is relatively limited and that there is a paucity of service providers and platforms to enable large companies to increase their implementation of such benefits.

Recognition and non-financial benefits

Recognition programmes that celebrate the exceptional achievements and exemplary behaviours of a few outstanding employees are acknowledged to drive employee behaviour more than pure remuneration.[14] In our experience, recognition programmes are underutilised in African companies, and future remuneration offerings in Africa should seek to leverage such programmes.

A focus on non-financial aspects of total reward, such as career development, promotions and other such opportunities, is also critical to enhance the effectiveness of African reward and remuneration offerings.[15]



[14]https://www.quantumworkplace.com/future-of-work/importance-of-employee-recognition
[15]https://www.employment-studies.co.uk/system/files/resources/files/mp4.pdf)

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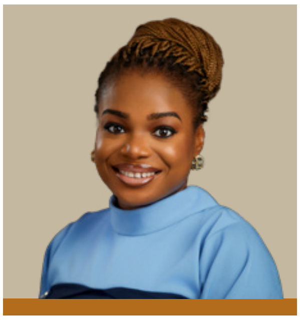

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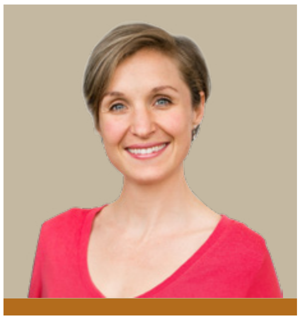

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