



# AGRICULTURE, AQUACULTURE & FISHING SECTOR

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## AGRICULTURE, AQUACULTURE & FISHING (AAF) SECTOR

### Introduction

The AAF sector is vital to a country's economy. The shifting regulatory landscape and concerns around sustainable food security mean that our clients face increasingly complex challenges.

Our AAF sector lawyers in South Africa and Kenya understand these challenges and the industry's commercial drivers. We provide practical and commercial advice to our clients in the AAF sector to help them achieve their business objectives, protect existing interests and maximise opportunities.

### CORPORATE & COMMERCIAL

Our Corporate & Commercial practice specialises in corporate law, corporate governance and mergers and acquisitions, and provides general commercial law related services and advice.

Our clients reap the benefit of working with leading corporate and commercial law specialists who have advised a number of multinational and local companies on establishing and building their presence in the agriculture, aquaculture and fishing markets, and who have long-standing relationships with clients in the AAF sector.



## OUR SERVICES AND EXPERIENCE

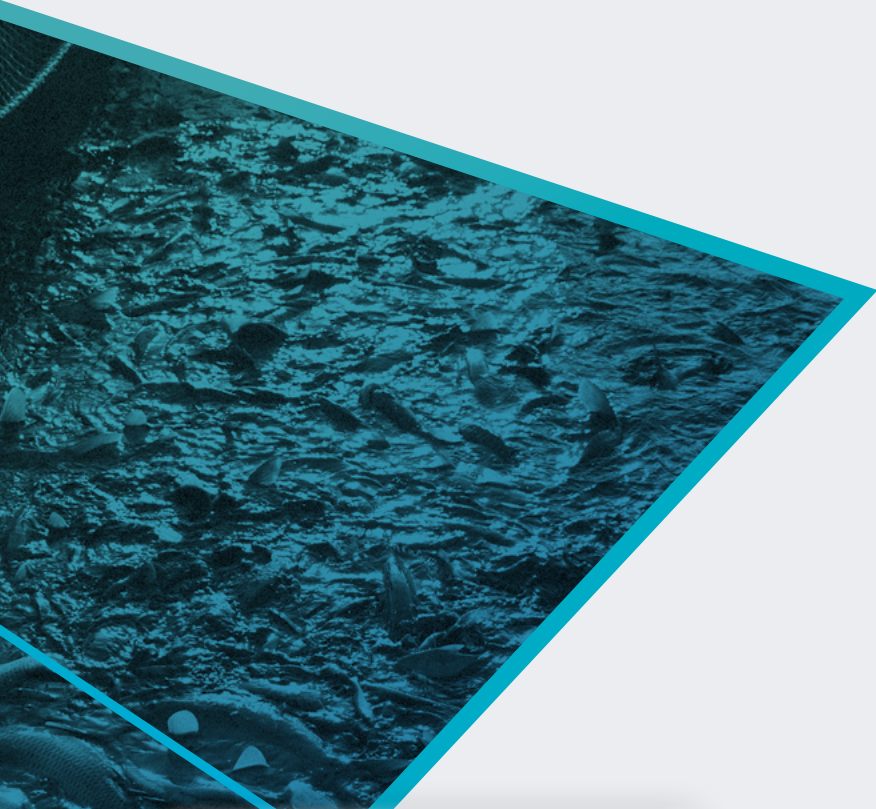
In the AAF sector, our services include:

- corporate governance related assistance, including general company secretarial work, assisting with annual general meetings, drafting constitutional documents and advising on good corporate governance practices
- general commercial work in respect of mergers and acquisitions, including share subscriptions, share buybacks, schemes of arrangement, share purchases, drafting and reviewing commercial agreements, conducting due diligence investigations and drafting advisory opinions
- advising on joint ventures between established businesses and newcomers in the agricultural industry
- advising on black economic empowerment transactions, drafting enterprise and supplier development agreements and drafting opinions on the relevant black economic empowerment codes regarding their application to our clients and/or their organisations
- advising on consolidations and hostile takeovers
- drafting licence, supply, distribution, agency and marketing agreements
- assisting with intellectual property related matters
- assisting with listings on securities exchanges and providing advice on OTC trading; as well as providing general advice to listed companies on capital raisings and other corporate actions
- liaising with regulators about transactions
- advising on import/export matters
- establishing employee share schemes and broad-based ownership schemes in accordance with black economic empowerment legislation
- advising on complex management structures

Our Corporate & Commercial law team has assisted clients in the following areas of the AAF sector:

- aquaculture and pelagic fishing industries
- fruit processing, packaging, and marketing for domestic and international markets
- wool and mohair brokerage services
- livestock auctioneering and sales
- property, sales and leasing
- retail trading
- grain production and trading
- poultry
- wine farming, brewing and beverages
- agricultural financing (including commodity finance/hedging)
- cannabis regulation





**COMPETITION LAW**  
Our Competition practice is experienced in advising clients on all competition law issues, including prohibited practice litigation, general compliance, corporate leniency, exemption applications and merger notifications.

**In the AAF sector, our services include:**



Advising on compliance (for example, opinions, training workshops, dawn raid advice, and general advice on business strategy in light of competition legislation), mergers and acquisitions, cartels and abuse of dominance cases



Representing clients in merger proceedings before the competition authorities



Providing advice regarding the implementation of Competition Law compliance programmes and the interpretation of the Competition Laws



Ensuring compliance with the Credit and Consumer Protection Laws

**Our competition law team has assisted clients in the following areas of the AAF sector:**



Wool and mohair brokerage services



Grain production and trading



Livestock auctioneering, processing and sales



Dairy value chain



Retail trading



Seeds and agrochemicals



Fruit processing, packaging, & marketing for domestic & international markets





# ENVIRONMENTAL LAW

Our Environmental practice specialises in a wide range of environmental, energy, land use, water rights, mining rights, administrative and regulatory issues.

In the AAF sector, our services include:

- assisting in compliance with food security and animal husbandry laws
- advising on the regulation of the keeping, movement and hunting of game farm animals
- assisting with all aspects relating to water legislation, waste management and all other relevant environmental legislation, including environmental authorisations
- advising on biodiversity management, including in respect of restricted activities pertaining to alien, invasive and threatened species
- advising on all relevant environmental legislation, including environmental authorisations for the clearance of vegetation in preparation for crop planting and dam building
- facilitating the procurement of, and compliance with, bioprospecting permits under the Biodiversity Laws, including advising on and preparing bioprospecting benefit sharing agreements and material transfer agreements
- assisting with the submission of administrative appeals and objections in relation to appeals against the development of agricultural projects
- providing climate finance advisory services
- advising on the ownership and transfer of carbon rights

Our environmental law team has assisted clients in the following areas of the AAF sector:



Agricultural logistics services



Piggery and breeding services



Commercial fruit & vegetable farming



Meat preparation and sale



Hunting and game farming



Grain production and trading



Bioprospecting



Poultry and beef cattle farming



Fruit processing, packaging, and marketing for domestic and international markets

## EMPLOYMENT LAW

Our Employment practice has extensive experience in all aspects of employment law, including drafting contracts of employment and employee policies and procedures, advising on restructuring and retrenchments, advising on the employment law implications of the transfer of a business as a going concern, and conducting due diligence exercises from an employment law perspective.

### **In the AAF sector, our services include:**

- appearing in all employment-related forums
- advising and assisting in relation to wage negotiations, large-scale retrenchments and restructuring, collective bargaining, the conclusion of collective agreements and demarcation disputes, strikes, and collective and individual disciplinary procedures
- chairing and initiating individual and collective disciplinary hearings
- drafting opinions on and advising in relation to the implications of mergers and acquisitions, including business transfers
- advising in relation to international secondments
- advising on programmes to train emerging farmers
- advising many large agricultural co-ops in respect of employment law related matters
- advising on employee benefits and incentives
- advising on occupational health and safety regulations
- advising on client strategies in relation to employees and employee related matters

### **Our Employment law team has assisted clients in the following areas of the AAF sector:**

- chemical solutions for the agricultural industry
- food security
- retail trading
- grain commodities supply chain management
- agricultural financing

## REAL ESTATE

Our Real Estate practice has assisted in a full range of land matters ranging from conveyancing to funding and opinion assistance. Our Real Estate specialists advise on every component of a property transaction, including commercial and private or residential real estate acquisitions and disposals, property finance, leasing, management and disputes, structuring, restructuring, and environmental and permit matters.

### Our Real Estate team has assisted clients in the following areas of the AAF sector:

- Agricultural land
- Mining on agricultural land
- Renewable energy
- Fishing industry
- Game farming
- Wine farming

### In the AAF sector, our services include:



Advising clients on legal issues pertaining to expropriation



Assisting in a wide range of conveyancing issues in terms of property transfers, consolidations, subdivisions, servitudes, land swops and leases



Acting for and advising clients on land availability agreements and farm housing schemes



Advising on sale and lease of agricultural land



Assisting clients in registering various mortgage bonds, including notarial bonds over movables



Advising on ministerial consent in respect of agricultural land



Assisting in various registrations in respect of the financing and transfer of vessels

## TAX & EXCHANGE CONTROL

Our Tax & Exchange Control practice specialises in giving tax and exchange control advice on a wide range of matters that are regulated by our extensive tax legislation framework, such as the income tax and VAT legislation, as well as exchange control legislation. The matters we advise on include corporate restructurings, mergers and acquisitions, cross-border transactions, financing transactions, utilisation of tax allowances available to taxpayers, the settlement of disputes with the Revenue Service and engaging with the relevant authorities to obtain exchange control approval for transactions. Our clients have the benefit of working with leading Tax & Exchange Control specialists who have advised a number of companies operating in the agricultural sector about structuring their affairs in the most tax efficient manner, while ensuring that they comply with the applicable legal framework.

### In the AAF sector, our services include:

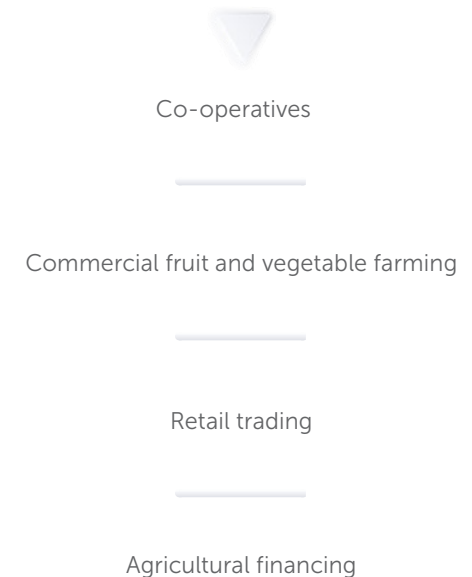
- advising on the tax considerations applicable to mergers and acquisitions involving entities
- advising on the tax considerations applicable to finance and funding transactions involving entities, including transactions where the relevant entity obtains funding from a foreign entity

- advising on the tax considerations applicable to foreign entities investing in the local agricultural sector, including the international tax consequences, such as withholding taxes
- advising local entities on the tax considerations arising from offshore investments

### From an exchange control perspective, our Tax & Exchange Control team renders the following services:

- advising local and foreign entities on the exchange control considerations that apply where a local entity receives a loan from a foreign entity, including applying to the Reserve Bank or an authorised dealer for the approval of such a loan
- advising local and foreign entities on the exchange control considerations that apply where a foreign entity acquires shares in a local entity operating in the agricultural sector and to assist the entities in complying with the relevant exchange control provisions
- advising local entities on compliance with the applicable exchange control rules, where such local entities invest offshore
- assisting entities with regularising their exchange control affairs where there has been a contravention of exchange control provisions

Our Tax & Exchange Control law team has assisted clients in the following areas of the AAF sector:





## DISPUTE RESOLUTION

Our Dispute Resolution practice has assisted in some of the most sensitive and complex cases and provides an approach that is pragmatic, commercially focused and solution based. Our Dispute Resolution practice partners with clients to identify and execute the most advantageous solutions, either by pursuing or defending arbitration or litigation proceedings, or through alternative dispute resolution mechanisms.

### **In the AAF sector, our services include:**

- advising clients on legal issues pertaining to distressed debts
- assisting in a wide range of insolvency related proceedings including, but not limited to, defending clients against liquidation applications, bringing liquidation applications against third parties, voluntary liquidations, placing third-party companies into business rescue by court order, and commencing business rescue of clients' companies by means of resolution
- acting for and advising clients on disputes (contractual and otherwise)
- advising in shareholder and company related disputes
- representing clients in land evictions
- advising on claims relating to veld fires

### **Our Dispute Resolution team has assisted clients in the following areas of the AAF sector:**

- commercial fruit and vegetable farming
- wool and mohair brokerage services
- livestock
- agricultural financing
- chemical solutions for the agricultural industry
- veterinary healthcare
- dairy production
- poultry
- agricultural imports and exports
- wine farming and breweries
- cannabis regulation



## FINANCE & BANKING PRACTICE

Our Finance & Banking practice advises many of the leading companies in the AAF sector on debt and equity financing.

Our experience of complex transactions coupled with strong local and African law capability in key jurisdictions means that we are ideally placed to assist local and international companies in the AAF sector.

We provide full service in relation to Finance and Banking advice across a range of disciplines in the AAF sector including but not limited to the following:

- Debt Capital Markets
- Project Finance
- Corporate Lending
- Structured Finance
- Debt Restructuring
- Commodity Trade Finance
- Acquisition Finance
- Financial Compliance

## TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

Our Technology, Media & Telecommunications practice is unique because we draw on international experience when partnering with clients. Borders are no barrier to our team providing sophisticated, highly practical information and legal advice for clients which not only considers the legal position but also draws on international best practice and commercial considerations. We constantly stay abreast of international trends, precedents, and developments in order to provide practical advice to our clients.

### Our services and experience:

In the AAF sector, our services include:

- We advise on the use of machine learning, big data analytics and artificial intelligence in a number of sectors, including AgriTech
- Assisting and advising clients on current legislation regulating electronic transactions, including the relevant Electronic Communications and Transactions and Consumer Protection Laws
- Advising in respect of website and mobile application terms and conditions, privacy policies and click-wrap agreements and assisting with consumer contract terms and conditions in respect of liability and warranties
- Commercialisation of intellectual property rights, including the transfer and licensing of intellectual property rights
- Cybersecurity: Our team has been tracking the developments in cybersecurity and cybercrime policy responses in South Africa since the inception of the policy and legislative frameworks. We work in a cross disciplinary manner with technical information technology experts and forensic experts to assist our clients to understand the risks, develop response plans and ensure compliance with the dictates of legislation. We also offer training and advisory services tailored to clients' needs and we assist clients with managing risk and security by being well placed to assist clients in preventing data breaches and in taking the required legal and mitigating action should a breach have occurred
- We are experienced in fintech and related fields, and regularly advise on the payment regulations and licensing requirements for online payment systems
- Advising on the transfer and protection of intellectual property, ecommerce, branding, social media, and information technology assets as part of mergers and acquisitions and other transactions
- Data Protection: We are able to assist with advice and with compiling policies for compliance with Data Protection Laws and with developing data management strategies. We regularly advise clients on data protection issues in corporate transactions, navigating international transfers of personal information and drafting intra-group and third-party data transfer agreements and various forms of data privacy policies
- Advising on managing consent for direct marketing to consumers as well as the management of consumer databases in the context of applicable privacy legislation





## MARKET RECOGNITION

*Chambers Global 2024* ranked [Cliffe Dekker Hofmeyr](#) among the leading South African law firms with 39 partners recognised as leaders in their fields of expertise, and 27 areas highly ranked. [Cliffe Dekker Hofmeyr](#) was also awarded a 'Spotlight Table' for its International & Cross-Border capabilities.

*Chambers FinTech 2019–2023* ranked our FinTech sector in Band 1.

*The Legal 500 EMEA 2023* recommended [Cliffe Dekker Hofmeyr](#) in 14 practice areas across South Africa and Kenya. It ranked 12 partners on the elite 'Leading Individuals' list and mentioned an additional 51 partners. In addition, *Legal 500 EMEA 2023* ranked our Kenyan practice in Tier 2 for banking, finance & capital markets, and in Tier 3 for corporate, commercial/M&A, as well as employment.

*IFLR1000 2017–2023* ranked [Cliffe Dekker Hofmeyr South Africa](#) in Tier 1 for M&A. *IFLR1000 2023* ranked [Cliffe Dekker Hofmeyr South Africa](#) in Tier 1 for project development: infrastructure, and in Tier Two in 2022. *IFLR1000 2022–2023* ranked [Cliffe Dekker Hofmeyr South Africa](#) in Tier 2 for banking, for project finance, and for capital markets: debt and equity. *IFLR1000 2023* ranked [Cliffe Dekker Hofmeyr Kenya](#) in Tier 3 for M&A. *IFLR1000 2023* ranked [Cliffe Dekker Hofmeyr Kenya](#) in Tier 4 for banking. *IFLR1000 2022* ranked [Cliffe Dekker Hofmeyr Kenya](#) in Tier 3 for banking. *IFLR1000 2021* ranked [Cliffe Dekker Hofmeyr Kenya](#) as notable in financial and corporate. Our banking, capital markets: equity; project development: energy; project development: finance, and project development: mining were ranked in Tier 2 in 2022–2023. *IFLR1000 2021* ranked CDH in Tier 3 for project development: oil and gas.

**The way we support and interact with our clients attracts significant external recognition.**

[André de Lange](#) is the Head of our Agriculture, Aquaculture & Fishing sector. *The Legal 500 EMEA 2022* recommended him for banking & finance.

[Sammy Ndolo](#) is the Kenya Managing Partner. *Chambers Global 2021–2024* ranked Sammy in Band 4 for corporate/M&A.

*Chambers Global 2023–2024* ranked him in Band 4 for banking & finance. *The Legal 500 EMEA 2024* recommended Sammy as a 'Leading Individual' for banking, finance & capital markets. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets. *The Legal 500 EMEA 2023–2024* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2023* ranked him as a 'Notable Practitioner'.

*The Legal 500 EMEA 2021–2024* recommended [Tessa Brewis](#) for projects & infrastructure. *IFLR1000 2022–2023* ranked Tessa as highly regarded in project development.

*The Legal 500 EMEA 2021–2024* recommended [Simóne Franks](#) for real estate.

*Chambers Global 2014–2024* ranked [Andries le Grange](#) in Band 4 for competition/antitrust. *The Legal 500 EMEA 2014–2024* recommended him for competition.

*The Legal 500 EMEA 2024* recommended [Martha Mbugua](#) for corporate/M&A. *The Legal 500 EMEA 2018* recommended her for corporate/M&A. *IFLR1000 2021–2023* ranked her as a highly regarded lawyer in Private Equity, and M&A. *IFLR1000 2017–2019* ranked her as a 'Rising Star' in Private Equity, and M&A. Martha was ranked by the *Business Daily* newspaper as one of the *Top 40 under 40 Women for 2017* and noted as one of the youngest female partners specialising in Private Equity, and M&A.

*The Legal 500 EMEA 2023–2024* recommended [Burton Meyer](#) for mining.

*Chambers Global 2023–2024* ranked [Lucinde Rhoodie](#) in band 4 for dispute resolution. *The Legal 500 EMEA 2021–2024* recommended her for dispute resolution.

## OUR TEAM

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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

**PLEASE NOTE**

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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