



# BOWMANS

THE VALUE OF KNOWING

## SAVCA

## COVID-19

Business considerations in Africa

8 April 2020



## Table of Contents

- Introduction – the African angle
- Likely economic impact of COVID-19 in Africa
- Immediate COVID-19 considerations for Business
- Post COVID-19 considerations for Business
- Bowmans approach



**BOWMANS**

THE VALUE OF KNOWING

## **Introduction – the African Angle**





# Introduction

## Global challenge

The World Health Organisation (**WHO**) categorised the severe acute respiratory syndrome novel Coronavirus 2 (**COVID-19**) as a pandemic. Numerous lives have been affected. Governments around the globe have announced bold measures to contain the spread of the virus.

We live in increasingly turbulent and unpredictable times, and whilst it is early, the impact on our economy and businesses will be significant.

## Africa focus

The table below sets out a high level snapshot of the approach of some of the more material African governmental approaches to COVID-19 to date:

South Africa	Kenya	Uganda	Tanzania	Mauritius
A national state of disaster has been declared in South Africa in terms of the Disaster Management Act and several regulations and directives have been passed thereunder. A twenty-one day national lockdown, restricting freedom of movement and other rights, is effective from midnight on Thursday 26 March 2020 to 16 April 2020, subject to extension.	A 30-day nationwide curfew was declared, restricting movement between 7pm to 5am, effective from the 27th March 2020. The curfew was issued by the Public Order (State Curfew) Order, 2020 under the Public Order Act (Cap 56). A 21-day containment period was also declared restricting movement in and out of four areas i.e. the Nairobi Metropolitan Area, Mombasa, Kilifi and Kwale counties with effect from 6th April 2020.	The country is in a 14 day lock down that commenced 31st March 2020 with no movement except for essential services, cargo and food carriers and a curfew that runs from 7:00pm to 6:30am. The primary piece of legislation is the Public Health (Control of COVID-19) Rules, 2020.	The Prime Minister of Tanzania has announced school closure and suspension of sports activities.	Government has decreed a national curfew starting Monday 23rd up to 2nd April, now extended to 15th April with restrictions on internal traffic, closure of all businesses, retail outlets and public offices. Access to essential food and household supplies has been opened on a restricted basis. The Prevention and Mitigation of Infectious Disease (Coronavirus) Regulations 2020 (the supplementing the Quarantine Regulations 1953 were issued as a matter of emergency to deal with the increasing threat of wider scale propagation of the virus.

# Introduction

## Critical need

The COVID-19 crisis requires all of us to take stock of our businesses. Now more than ever we need to stay close to and in contact with our broader networks to understand business critical needs of the various sectors and supply chains. Working collaboratively with each other is critical at this time.

This document serves to create an opportunity to meet with key stakeholders and clients in an attempt to fully understand the needs of each business and be sure that we are doing everything possible to prepare ourselves to assist where it is needed most. It is intended to facilitate senior leaders in contemplating the COVID-19 situation and how it may unfold, empowering us to work together to protect business, employees, customers and suppliers.

We have highlighted below certain areas and issues to be considered by businesses, investors and transaction teams:

- going into and during this period – aimed at addressing immediate challenges faced by business in Africa; and
- going forward, in a post-COVID world – aimed at survival, growing, improving and flourishing within the new normal.



**BOWMANS**

THE VALUE OF KNOWING

**Likely Economic impact of  
COVID-19 in Africa**





## Testing Times

Kenya faces challenges as COVID-19 impacts the economy

BANKS URGED

Halt dividends, bonuses to support battling clients

Property buckles under pressure

African health officials warn of chronic medical shortages



## Bank sees more room for stimulus

● Economy could contract as much as 4% this year ● The budget deficit could exceed 10%

South Africa's army of informal workers face destitution

Millions of cleaners, street vendors and others have been left out of financial relief schemes

Ethiopia postpones landmark national elections due to coronavirus

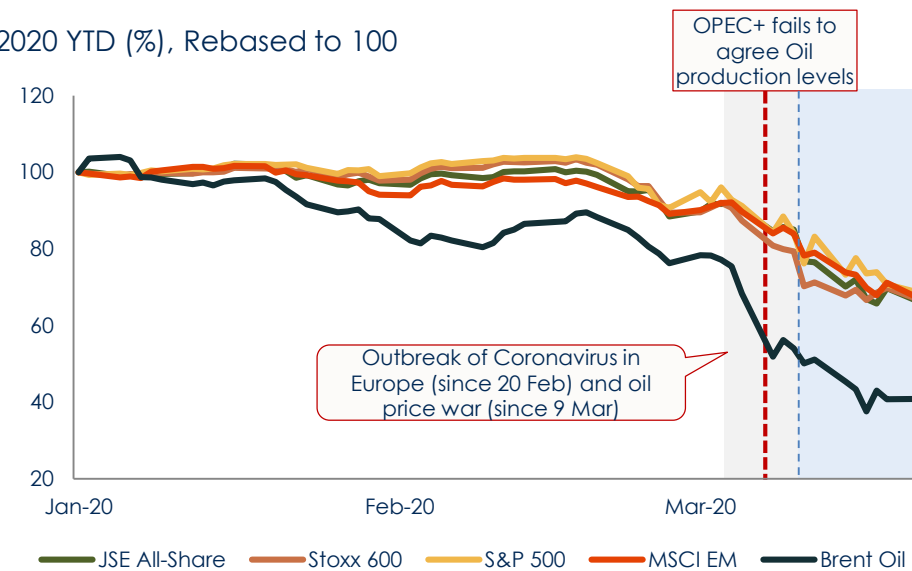
SA to take \$1bn Covid-19 loan from New Development Bank

Investors braced for credit crisis in emerging markets

# Consensus suggests that a global recession is imminent given the devastating impact of COVID-19, adding more strain to the macroeconomic environment across Africa...

## Global Equity Markets Have Lost approximately a third of Their Value as a Result of Ongoing Sell-off

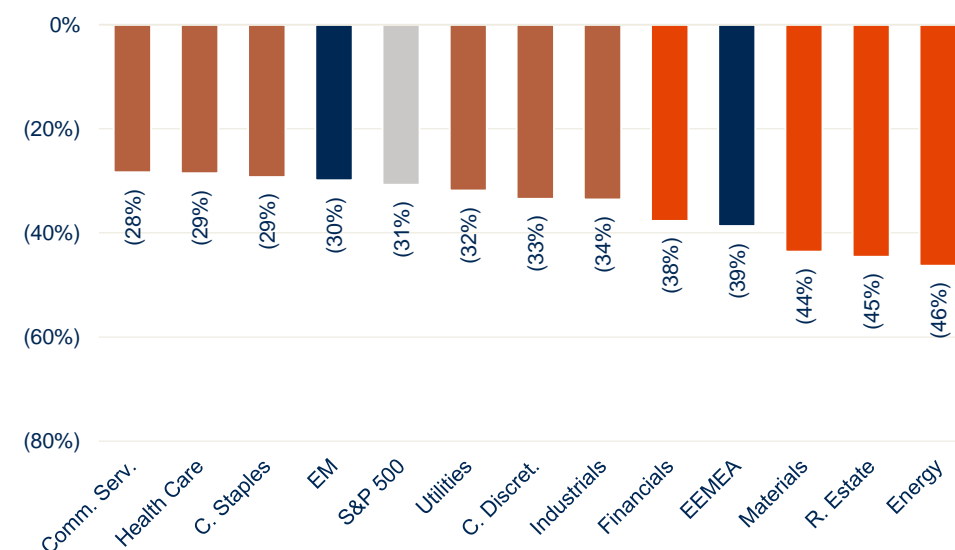
2020 YTD (%), Rebased to 100



Source: Bloomberg as of 23<sup>th</sup> March 2020

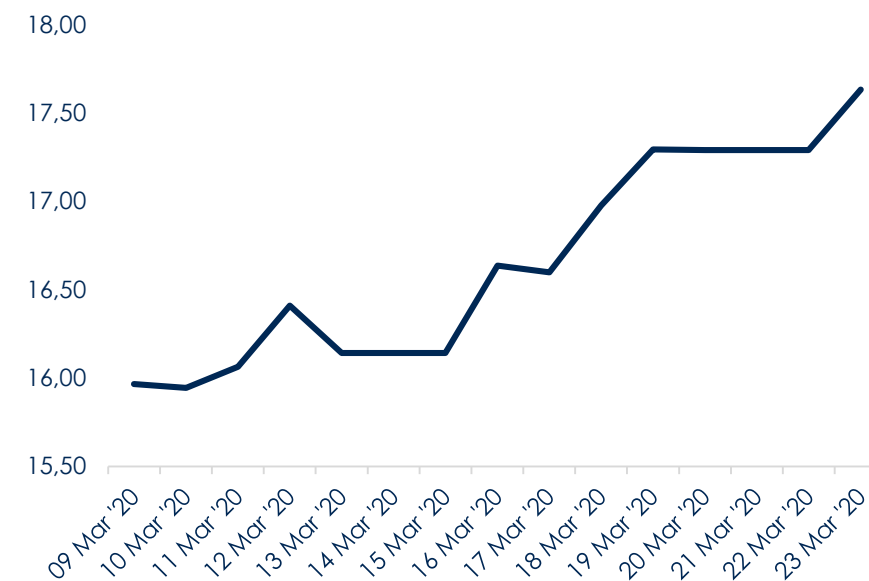
## The Worst Performing Sectors Remain Energy, Real Estate, Materials, and Financials

EEMEA Sector Performance Since EEMEA Peak (20-Jan)



Source: Factset and Morgan Stanley Research

## USD/ZAR Performance (last 14 days)



Source: Bloomberg as of 23 March 2020

## Summary of Latest SA Macro Forecasts<sup>1</sup>

	2018	2019	2020E	2021E	2022E
<b>SARB</b>					
GDP	0.8	0.2	-0.2 (1.2)	1.0 (1.6)	1.6 (1.9)
CPI (headline)	4.6	4.1	3.8 (4.7)	4.6 (4.6)	4.4 (4.5)
CPI (core)	4.3	4.1	3.9 (4.2)	4.3 (4.4)	4.4 (4.5)
Oil (USD/bbl)	71	65	40 (67)	45 (66)	45 (66)
<b>RMBMS</b>					
GDP	0.8	0.2	-1.0	0.8	-
CPI (headline)	4.6	4.1	3.5	4.2	4.6
CPI (core)	4.3	4.1	3.6	3.8	4.2
Oil (USD/bbl)	71	65	40	40	45

<sup>1</sup> Blue text denotes previous forecast  
Source: RMB Morgan Stanley Research forecasts, South African Reserve Bank

## What it means for your business

- Key industries in the market have seen severe immediate reaction from COVID-19.
- The S&P 500 has been under massive pressure with falling oil prices also playing a role in the incoming recession and poor performance of the energy sector.
- Market performance significantly impacted by the global volatility and uncertainties in the market linked with the COVID-19 global pandemic. Market performance over the last 2 months is in line with the performance of other major global indices.
- The impact of COVID-19 compounds the subdued economic position in which South Africa was currently operating pre-COVID-19. The effects of COVID-19 have been amplified in the market creating a risk-off environment for SA for many investors and the continent more broadly.



# Economic developments following the outbreak of COVID-19 in East Africa



**Ethiopia's central bank** said Ethiopian-owned nonfinancial institutions, such as Ethio Telecom, will be allowed to offer **mobile money services** as part of new regulations aimed at boosting noncash payments in the country, Reuters reported.



The **IMF's** executive board approved the disbursement of roughly **\$109.4 million to help Rwanda meet its urgent balance of payment needs** stemming from the coronavirus outbreak.



Ugandan President Yoweri Museveni **sought approval** from lawmakers for a **supplementary budget of 284 billion shillings to help address the COVID-19 pandemic**, Bloomberg News reported, citing the finance ministry.



**Kenya's Treasury increased its stake in Consolidated Bank of Kenya Ltd. to 93.4% from 85.8%** after it injected 1.6 billion shillings of capital into the lender through a debt-to-share swap deal, Business Daily Africa reported, citing the bank's CEO, Thomas Kiyai. The injection also helped Consolidated Bank meet regulatory capital requirements.



Moody's said **Tanzania's credit profile is constrained by the country's vulnerability to exchange rate volatility**, its relatively weak institutional framework and low income levels.



**S&P Global Ratings affirmed Ethiopia's long- and short-term foreign- and local-currency sovereign credit ratings at B/B**, with the outlook on the country under appeal. The National Bank of Ethiopia will provide 15 billion birr of liquidity to private banks to allow them to extend debt relief and additional loans for clients amid the coronavirus pandemic, the prime minister's office said.



Equity Group Holdings PLC CEO James Mwangi said the **Kenyan bank's talks to purchase four lenders in Rwanda, Zambia, Mozambique and Tanzania from London-listed investment firm Atlas Mara Ltd. under a 10.7 billion shilling share-swap deal are continuing** but will be delayed further, adding that the discussions are not likely to be concluded in the early part of this year, Business Daily Africa reported.

# Economic developments following the outbreak of COVID-19 in West Africa



**Fitch Ratings said Nigerian banks are facing severe risks from lower oil prices and operating environment disruption caused by the coronavirus outbreak**, with declining asset quality linked to high exposures to the oil and gas sector representing the biggest threat to lenders' ratings.



**Nigerian lenders** Fidelity Bank PLC, Zenith Bank PLC, Guaranty Trust Bank PLC and Stanbic IBTC Bank PLC have **imposed caps on the amount individuals can withdraw with debit cards while abroad** in a bid to **reduce foreign currency settlement risk**, Reuters reported.



**Ghana's central bank gave payment service providers, electronic money issuers, banks and specialized deposit-taking institutions six more months to meet new minimum capital requirements** after it extended the deadline to the end of 2020 from June 30, Citi Business News reported.



**Nigeria's central bank and finance ministry said they secured exemptions from President Muhammadu Buhari to allow "very skeletal" operations in the financial system and money markets to ensure citizens could still carry out online transactions and use ATMs during the country's lockdown aimed at curbing the coronavirus outbreak.**

# Economic developments following the outbreak of COVID-19 across Southern Africa



The **Institute of International Finance urged South Africa to seek funding from the IMF**, citing the country's large capital outflows, high debt levels and a potentially deep recession caused by the COVID-19 outbreak, Reuters reported.



**Fitch and Moody's downgraded certain ratings of South African lenders, including Absa Bank Ltd., FirstRand Bank Ltd., Investec Bank Ltd., Nedbank Ltd. and Standard Bank of South Africa Ltd., citing expected negative impacts on the banks from the coronavirus outbreak.** Moody's also lowered certain ratings of Development Bank of Southern Africa, Industrial Development Corp. of South Africa Ltd. and Land & Agricultural Development Bank of South Africa, following a similar action on the sovereign.



**Moody's downgraded certain ratings of South African insurers Discovery Ltd., Momentum Metropolitan Life Ltd., Guardrisk Insurance Co. Ltd., Guardrisk Life Ltd., Guardrisk International Ltd and Standard Insurance Ltd., following a similar action on the sovereign.** Sanlam Ltd. warned that economic growth in all its markets will be lower than expected, with some likely to enter recessions, including South Africa. The insurer, however, said it is "well positioned" to weather the current market conditions caused by the coronavirus pandemic.



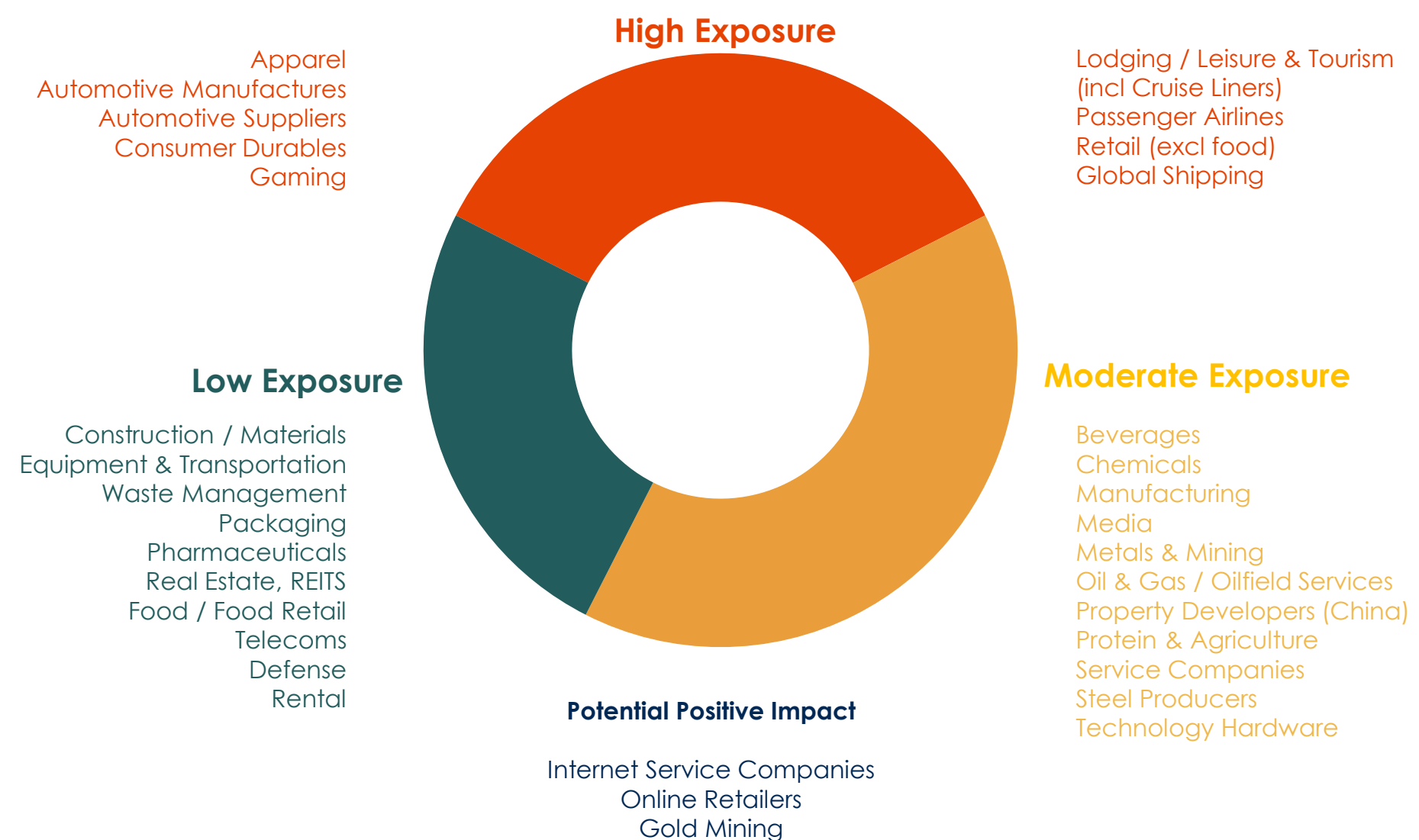
**Moody's downgraded South Africa's long-term foreign- and local-currency issuer ratings to Ba1 from Baa3, with a negative outlook, citing the "continuing deterioration" in the country's fiscal strength and its "structurally very weak" growth.**



**Mozambique's central bank issued a range of special measures aimed at limiting the impact of the coronavirus impact including raising limits for electronic transfers and scrapping charges for some digital operations, O País reported.**



COVID-19's impact on business activity is expected to be sharp and short-lived. The heatmap below shows which industries are most exposed at present...



- Lower demand due to reduced business activity
- Reduction in supply depending on how competitors are affected
- Supply chain disruption
- Ongoing requirement for interim liquidity
- Potential impact on company solvency
- Internal capital expenditure
- Strategic direction/ Opportunities

# High-risk sector impact as a result of COVID-19 and foreseeable risks

Hotels/Leisure & Tourism



Gaming



Passenger Airlines



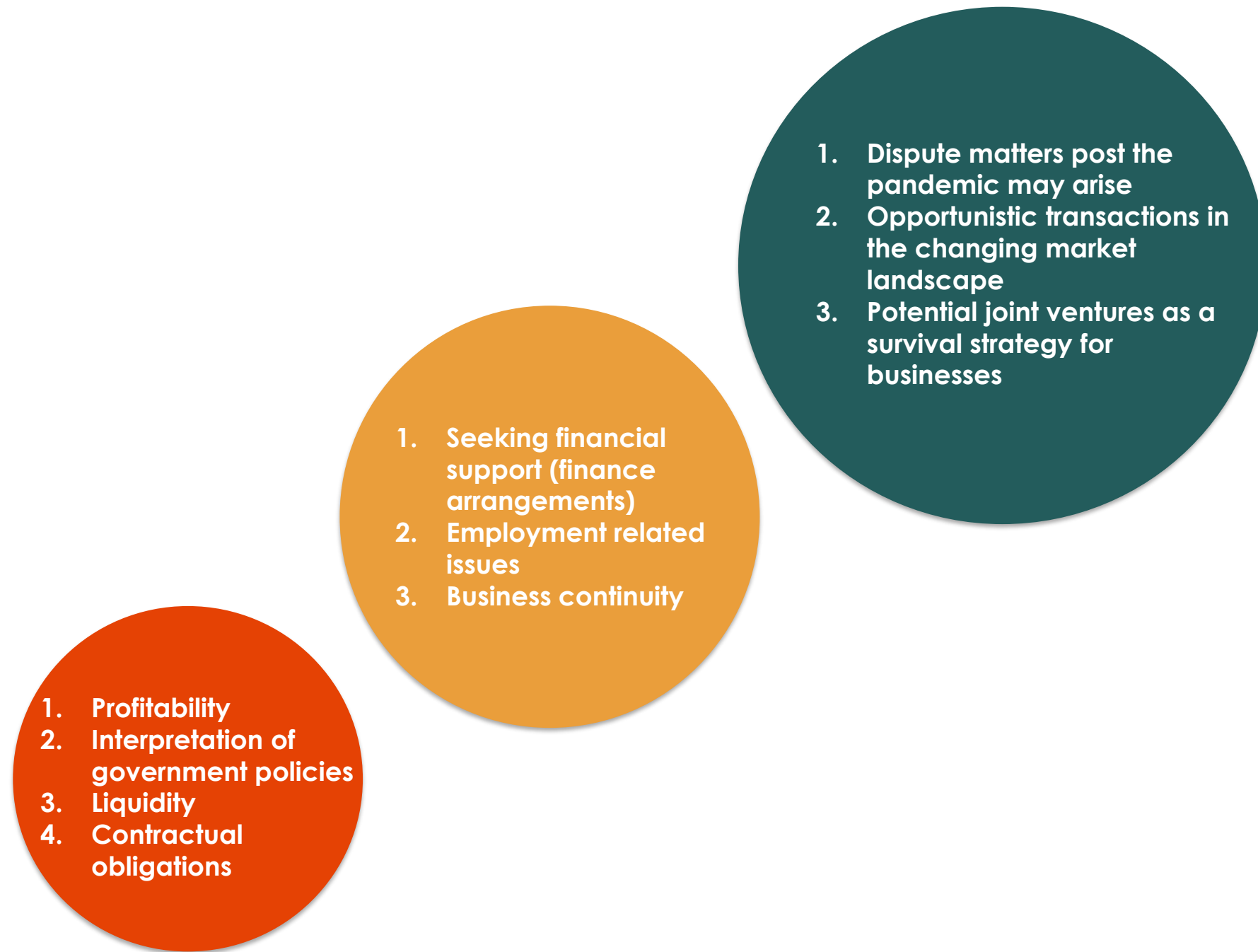
Retail (Non-Food)



Shipping



Automotive



Short, Medium and Long term Risks to be faced by impacted sectors



**BOWMANS**

THE VALUE OF KNOWING

**Immediate COVID-19  
considerations for business**





# COVID-19 Considerations for Business in Africa

We have set out below a high level outline of some of the key considerations for business going into and during the COVID-19 period across Africa. Each jurisdiction is obviously clothed in its own nuances and now more than ever knowing what is happening on the ground and who to contact when faced with challenges is of critical importance. We have also created more detailed guides for each jurisdiction which can be located on our COVID-19 portal (accessible at <https://www.bowmanslaw.com/coronavirus-pandemic/>).

Each of our offices is in some way or another assisting government or business unity organisations in the relevant jurisdictions to mould the regulatory framework in that space. This is an unprecedented time giving rise to opportunities to collaborate and direct the regulatory framework in a manner that is in the best interests of all. For this reason, business is encouraged to reach out to their local attorneys to discuss business critical matters.

## Business Continuity

- Although business as usual is not possible, it is still critical to **continue operations as seamlessly** as regulations permit. This requires an understanding of what business functions can and must be coordinated remotely and which, if any, may remain fully operational. In many jurisdictions, this assessment requires a detailed analysis by your lawyers.
- It is also our recommendation to make every effort to comply with all ordinary **regulatory requirements** and **corporate actions** (i.e. the filing of returns and holding of meetings). If faced with obstacles in doing so, reach out to your attorney to understand whether or not a dispensation has been provided for that corporate action and the recommended course of action.
- Now, more than ever, business must remain up to date with all relevant codes of **good practice, regulations and directives relevant to their sector** pertinent to COVID-19 matters. This is a fast moving space and teams may need to be put in place to monitor developments.

# COVID-19 Considerations for Business in Africa

## Business Preparedness

The role of the board of a company will be critical during this time. Boards will need to:

- actively **evaluate opportunities** for transactions not previously available;
- be prepared to respond to potential **activist attacks** or other offers or actions by those capitalising on the current situation;
- actively **engage with regulators, each other, shareholders and other stakeholders**;
- act quickly to implement changes within the organisation necessary to **mitigate risks, manage liquidity and align corporate strategies**.

## Contractual Considerations

- COVID-19 threatens the ability of contracting parties to meet their obligations. The impact on businesses in these uncertain times may be significant. Parties should **review their existing agreements** to assess their risks and seek to **limit the risk** of their non-performance or non-performance by a counterparty. **New agreements** should be drafted with these considerations front of mind.
- Regulations regarding **consumer contracts** should be taken into consideration.
- **Insurance policies** should be reviewed where relevant.
- Working remotely has also given rise to a need to understand the laws of each jurisdiction as they pertain to **electronic signatures**.

# COVID-19 Considerations for Business in Africa

## Mergers and Acquisitions, Private Equity and Equity Capital Markets Considerations

- Companies need to actively **evaluate opportunities, reassess pricing, review contractual terms and acquisition structures, etc.**
- **Due diligences** need to adjust scope and be reworked logistically.
- Engagement with **regulators** becomes increasingly critical and delays on prohibitions on certain applications need to be taken into consideration. See our COVID-19 client portal for examples of some of the changes to the regulatory approval space across Africa.
- **Warranties and indemnities** will need to be carefully considered.
- Access to **funding** will need to be reassessed.
- **Roadshows** will need to be held electronically in certain jurisdictions.
- **Solvency and liquidity** must be considered.
- **Dividend** declarations need to be considered and structured accordingly.
- The manner and timing of **holding of meetings and obtaining approvals** needs to be considered.
- **Disclosure requirements** need to be carefully assessed (particularly in the listed company context).



# COVID-19 Considerations for Business in Africa

## Banking and Finance Considerations

COVID-19 may have a significant impact upon the ability of borrowers to meet their obligations. Faced with the default or potential default of borrowers as a result of non-performance or delayed performance, parties should consider the following:

- **Financial covenants;**
- Whether or not **alternative qualifying security is required** (i.e. where transactions are backed by securities, the value of which may be adversely impacted by the volatility of markets - cover ratios may slip towards default).
- Whether or not **material adverse effect** provisions are triggered, the breadth of the provision, and for new agreements if they should be provided.
- To what extent the following are relevant:
  - **cross default** to other financial indebtedness or underlying contracts of the borrower;
  - **insolvency and financial distress/acts of insolvency** (as financial distress is forward looking, over the next 6 months, this may be a particularly sensitive trigger);
  - actions or steps taken with regard to any **compromise with creditors;**
  - **cessation** of (all or a substantial part of) a borrower's business.
- **Information undertakings** and positive obligations to inform lenders on potential issues.
- Whether or not **drawdown conditions** can be met and whether to seek draw down in advance.
- Whether or not **market flex** provisions have been met.

# COVID-19 Considerations for Business in Africa

## Commercial Property Considerations

Consideration needs to be given to the functioning of the **deeds registries, functioning of municipalities, contractual relationships** between landlords and tenants and the **implementation of developments**.

## Employment Considerations

Active steps need to be taken in the employment space to manage the effectiveness and security of the work force. In this regard, companies need to:

- empower employees to work **remotely** where required;
- ensure a **safe and healthy work environment**;
- manage **employee absence**;
- manage the consequences of **business closures** (and leave or compensation arrangements);
- consider **remuneration models** at the different levels of employee;
- ascertain continuing requirements as they pertain to **retirement fund** contributions, **medical scheme** contributions and other employee benefits;
- understand what can and cannot be done in terms of testing and sharing information regarding the health status of employees from a **data protection** perspective; and
- manage travel of employees (including understanding the visa requirements and travel restrictions across jurisdictions).

# COVID-19 Considerations for Business in Africa

## Tax Considerations

- Business needs to understand whether any leniency has been granted in respect of tax obligations and which **compliance deadlines** remain unchanged.
- To the extent that any jurisdictions offer **leniency**, there is often a **procedure** that needs to be followed to benefit from these measures.
- Alternative arrangements need to be made in many jurisdictions to **physical attendance** at the office of the regulator.
- Consideration needs to be given to **customs and excise** in the space, particularly as it applies to supply chains.
- Companies must be mindful of deadlines and filing requirements for **tax dispute resolution**.

## Insolvency and Restructuring

- Many businesses will be facing some form of financial distress as a result of the economic and social consequences of COVID-19. In many instances some form of **restructuring** will be required, be it operational restructuring or financial restructuring. It will be important for business to:
  - be aware of **conduct that may trigger consequences** in this space that were unintended;
  - have a strong board that is **mindful of their duties** in this space.
- In instances where restructuring will not suffice or fails to provide the liquidity required, a **formal process** may be appropriate. Our Restructuring and Insolvency attorneys are able to assist you in evaluation your options.
- Businesses and boards of directors must **act proactively** in engaging with creditors and financiers at the early stages of financial distress. The economic consequences of the COVID-19 pandemic are likely to be far reaching and unprecedented. Good faith engagement at an early stage may be vital in ensuring the support of all relevant stakeholders as we weather this storm.



# COVID-19 Considerations for Business in Africa

## Insurance Considerations

Consideration needs to be given to determine whether the insurance cover they have in place relating to their business covers losses related to COVID-19. Early consultation with brokers is recommended. Measures should also be taken to limit risk. Consult with attorneys to advise you from a legal perspective where your risks lie and how you can mitigate them.

## Litigation Considerations

Consideration needs to be given to the fact that certain **restrictions** have been placed on court attendances. What courts are approached, at what time and in what manner is critical. Parties may also want to consider **alternative dispute resolution**.

## Competition/ Antitrust Considerations

Business needs to take care to operate within the bounds of what is legal. Many jurisdictions have rules regarding the **pricing** of consumer goods and services and the prevention of excessive pricing. Certain jurisdictions also have prohibitions on certain **horizontal on vertical practices** (although many jurisdictions have lessened these obligations in light of the pandemic).

## Procurement

Clients in the business of providing goods or services to government should be aware of laws in the jurisdiction regarding procurement during a pandemic or other state of emergency that may have been declared in that jurisdiction.

# COVID-19 Considerations for Business in Africa

## Intellectual Property

Consideration needs to be given to whether or not it is still possible to file / register intellectual property (**IP**) in the relevant jurisdiction. Where IP registration is an obligation subject to a deadline or is a condition precedent to a transaction that is currently underway, consideration must be given to the terms of the transaction documents and whether the agreement contemplates suspension as may be required in the relevant jurisdiction.

## Cyber-Crime

Steps should be taken to safeguard businesses and to create **response plans**. Bowmans' Forensic Incident Response Team would be happy to help clients with legal advice, investigative services and (in conjunction with our computer forensic service provider), can respond to technical challenges brought about by a cyber-attack.

## Shipping, Aviation and Logistics

COVID-19 has had, and will continue to have, a huge impact in the **shipping, aviation and logistics industries** on a global scale. Sweeping regulatory controls have been introduced, almost overnight, by the principal governmental role players in the aviation, ports and shipping sectors. Restrictions are also relevant to business as it pertains to **travel of employees**.

## Other Regulatory

It is important to adopt a practical approach to guard business interests during this time and to minimise the practical effects of the suspension of services during the lockdown and thereafter.



**BOWMANS**

THE VALUE OF KNOWING

**Post COVID-19 Considerations**





# What comes after COVID-19? Business continuity and transformation plans...

Companies are transitioning from crisis response mode to planning for future sustainability

## Contractual



- ✓ Review disruptions to operations and supply chains
- ✓ Advise on force majeure, termination and material adverse effect provisions
- ✓ Contract risk mitigation strategies
- ✓ Partnership structures for future collaboration
- ✓ Creative constructs for security of supply

## Governmental Policies



- ✓ Monitor governmental support programs incl tax relief, court proceedings, employee benefits, fiscal policies, etc.

## Labor and Employment



- ✓ Legal responsibility of organization as employer
- ✓ WFH as new normal when markets return: employee policies
- ✓ Consideration of appropriateness of employment spread

## Insurance



- ✓ Creation of new policies
- ✓ Increased interest in obtaining insurance

## Business continuity and Governance



- ✓ Advising boards of directors on duties to employees, shareholders, stakeholders
- ✓ Covid-19 impact on shareholder meetings
- ✓ Board composition for changing business models
- ✓ Business continuity plans, policies and procedures
- ✓ Obtaining additional advice on fiduciary duties in unprecedented times

## Banking and Finance



- ✓ Revising debtor and financing arrangements
- ✓ Increased focus on borrowing structures and creative means to obtain security
- ✓ Some banks have shown concessions for liquidity

## Data Privacy



- ✓ Processing personal data in efforts to prevent COVID-19 spread
- ✓ Use of data as business models adapt

## Antitrust / Competition



- ✓ Anticipating / responding to merger control clearance
- ✓ Understanding impact of price ceiling
- ✓ Competitor collaborations
- ✓ Increased incidences of horizontal and vertical practices that need investigation

## M&A / JVs / Strategic Relationships



- ✓ Consider effect of market volatility on transactions, incl valuations, MAC and merger control
- ✓ Efficient / smart due diligence related to potential distressed targets
- ✓ Building market positions in changing landscape
- ✓ M&A deals restructured. Investors may have less money than anticipated available for risk
- ✓ Delays in M&A deals. Regulators backlogged from lockdown
- ✓ Uptick in equity finance
- ✓ Opportunistic M&A (hostile and friendly) – cheap targets, companies needing to sell assets to raise cash

## Cyber-crime



- ✓ With the “new normal” involving remote work, we anticipate cyber-crime to continue to be an important factor for business preparedness

## Intellectual Property



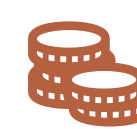
- ✓ Innovative ways of doing business, particularly related to remote working, will necessitate the registration of further IP

## Litigation



- ✓ Increase in claims for non-performance and disputes re contractual terms and breaches
- ✓ Backlog in courts and increased alternative dispute resolution
- ✓ New electronic procedures

## Tax



- ✓ Liaising with advisers / internal team to implement structures
- ✓ Support intercompany reporting
- ✓ Consider changes to transfer pricing

## Restructuring and Insolvency



- ✓ Uptick in this space as parties look to farm out non-essential assets and restructure in a manner that reduces financial distress
- ✓ Uptick in solvent and insolvent restructuring

## Bowmans Office Contacts

### Cape Town

T: +27 21 480 7800

E: info-cpt@bowmanslaw.com

### Dar es Salaam

T: +255 76 898 8640

E: info-tz@bowmanslaw.com

### Durban

T: +27 31 265 0651

E: info-dbn@bowmanslaw.com

### Addis Ababa

T: +251 1470 2868

E: info@aaclo.com

### Follow us on

 @Bowmans\_Law

 Bowmans

 Bowmans

[www.bowmanslaw.com](http://www.bowmanslaw.com)

### Johannesburg

T: +27 11 669 9000

E: info-jhb@bowmanslaw.com

### Kampala

T: +256 41 425 4540

E: info-ug@bowmanslaw.com

### Moka, Mauritius

T: +230 468 8411

E: info-ma@bowmanslaw.com

### Nairobi

T: +254 20 289 9000

E: info-ke@bowmanslaw.com



**BOWMANS**

THE VALUE OF KNOWING

