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FINANCIAL SERVICES

Harnessing innovation and governance to help solve Africa's challenges

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Contents

"*Our team is ideally placed to assist a wide range of financial services clients navigate a rapidly changing environment as innovation transforms many industries, and they deal with regulatory reform, and increased competition. We're committed to helping our clients to not only adapt but really thrive in Africa's exciting future.*

Maria Philippides, Financial Services Sector Leader at Webber Wentzel"

Comprehensive legal services for the financial sector in Sub-Saharan Africa

Webber Wentzel's financial services team brings together multidisciplinary experts who have acted on many landmark matters, and have strong relationships with industry regulators along with a deep understanding of the legal landscape and nuances of this multifaceted sector. We successfully tackle complex challenges facing banks, insurers, and other financial institutions, advising on a diverse array of issues, from mergers and acquisitions to regulatory compliance and cyber threats.

The Webber Wentzel financial services team believes there is a massive opportunity to harness fintech in combination with the African Continental Free Trade Area (AfCFTA) Agreement to help solve present and future challenges facing Africa.

Executive Summary

Somewhat uniquely, fintech in Africa goes beyond technological innovation; it can also be harnessed as a key mechanism to deal with financial inclusion and address many socio-economic challenges. Large sectors of the South African population - like many African nations - still don't have access to traditional financial services, for various reasons, and fintech innovations are providing solutions to bridge that gap.

In 2024, Webber Wentzel reported South Africa and the wider region "currently has a dynamic fintech landscape", with lots of movement spearheaded by regulatory changes on crypto and cross-border payments, and financial inclusion solutions.

The World Bank says AFCFTA could lift 50 million people out of poverty by 2035.

Harmonisation is key to create a free flow and as few trade restrictions as possible; while innovation can be borderless, eg digital financial products, it is separate from financial regulation. With its plentiful resources, youthful population and entrepreneurial spirit, Africa is ripe for investment, but it can be a "spaghetti bowl" with varying regulations and overlapping bilateral treaties and regional agreements.

Multinational financial institutions operating in Africa can face a complex web of regulatory requirements, so from a group governance perspective it is always best to align yourself with the highest standards. Navigating myriad regulatory layers is a significant challenge that shouldn't be understated, and while historically anti-money laundering requirements were seen as an isolated framework, they too should be considered as part of the entirety of a group's governance framework.

As a growing market, Africa is the place to be, now and in the future. Webber Wentzel regularly advises international clients looking to directly invest in Africa, providing risk and regulatory assessments, supply chain advice, and structuring investments taking into account the spiderweb of regulations and treaties.

Webber Wentzel's experts have sector-specific knowledge, understand various industries incredibly well, and can put together teams that deeply understand clients' businesses while helping to navigate any challenges they are faced with.

Fintech fuels financial inclusion in SA

South Africa's fintech landscape is set to undergo significant change via regulatory reform, technological advancements and increased competition. Lerato Lamola spoke to Craig Sisterson about navigating an exciting future.

Africa is quite unique in the sense that fintech is viewed not just in terms of innovative technology, but also as a key mechanism to deal with financial inclusion and to address a lot of socio-economic challenges, says fintech expert Lerato Lamola.

"If I look specifically at South Africa, quite a large sector of our population still doesn't have access to traditional financial services," noted Lamola, a partner at leading firm Webber Wentzel. "So whether they live in a remote area or don't have access to services for other reasons, that's where various fintech innovations are finding a gap and providing solutions."

During last year, Lamola's team produced an update to their 2024 Fintech Year Ahead document, covering trends in AI and machine learning, payments, crypto and blockchain, and Open and Mobile banking and financial services. She says this report highlighted that South Africa and the wider region "currently has a dynamic fintech landscape", with lots of movement spearheaded by regulatory changes on crypto and cross-border payments, and financial inclusion solutions.

"One of the most interesting trends has been that a lot of our African counterparts have issues with unstable currency," Lamola commented. "When you can't get cash in a local currency, that's where things like digital currencies and mobile money step in to fill the gap and allow for economies still to run."

While South Africa is one of the continent's leaders when it comes to fintech and financial sector regulation, Lamola believes that can be a double-edged sword.

"We have the most developed financial regulatory regime on the continent, however that makes it difficult for new players who want to enter the market, particularly when it comes to compliance costs and understanding the regulations. That's where our team comes in: helping new entrants understand where their products and services lie within the regime, assisting with licensing applications and product structuring, and assisting with engagements with the regulators themselves."

Lamola and her team also help traditional financial institutions figure out how they can restructure their business, offer new products, and become more agile, like their fintech counterparts. She says traditional financial institutions may struggle to be as adaptable and agile as their fintech competitors due to navigating legacy systems.

"A large sector of our population still doesn't have access to traditional financial services ... that's where various fintech innovations are finding a gap and providing solutions."

Lerato Lamola, Partner | lerato.lamola@webberwentzel.com

While regulation can make it challenging to enter the market, it also inspires innovation, and Lamola believes the opportunities are endless.

"With all the new regulations over the past ten to 15 years, a lot of players are now introducing technology-based solutions to deal with new compliance obligations. Or they're noticing a gap in the regulation and introducing a new product to bridge that gap. So it really is about sitting down and understating what the legislation says and figuring out where the gaps are and where one can fit themselves in."

South Africa's AI Planning Discussion Document which was published in April 2024 has received mixed reviews, but is a necessary first step, noted Lamola. Meanwhile, she views the Reserve Bank's Digital Payments Roadmap as "quite ambitious" and an exciting document to modernise the payments system.

"It's great to see the government acknowledge public–private partnerships because it envisages a lot of its 17 action items will require collaboration. It's going to require a lot of innovation from the market itself to create solutions, but if everybody comes to the party, it could mean South Africa would be one step closer to being a cashless society."

Fintech key to ending poverty in Africa

The World Bank says the African Continental Free Trade Area Agreement could lift 50 million people out of poverty by 2035. Lerato Lamola and Yael Shafrir spoke with Craig Sisterson about harnessing fintech to solve Africa's challenges

"AfCFTA is unique because it's not just about trade, but rather inclusive trade and investment, and its ultimate objective is to lift people out of poverty."

Yael Shafrir, Associate Director | yael.shafrir@webberwentzel.com

There is a massive opportunity to harness fintech in combination with the African Continental Free Trade Area (AfCFTA) Agreement to help solve many present and future challenges facing the continent, say legal experts Yael Shafrir and Lerato Lamola.

"That's ultimately the goal – that Africa would be a continent that's using innovation to solve a lot of the issues we have, from youth unemployment to currency instability," explained Lamola, a partner at Webber Wentzel. "For me, the possibilities are endless if we can get the infrastructure and regulatory harmonisation right. You're not going to stop innovation, so how do you let its benefits flow freely across borders within the continent?"

The AfCFTA is unique because it's not just about trade, but rather inclusive trade and investment, and its ultimate objective is to lift people out of poverty, noted Shafrir, an associate director in Webber Wentzel's Cape Town office, with a special interest in FDI and the AfCFTA.

> *Harmonisation is key to create a free flow and as few trade restrictions as possible... while innovation can be borderless, it's vital to separate fintech innovation from financial regulation.*

Lerato Lamola, Partner | lerato.lamola@webberwentzel.com

In 2022 a World Bank report noted that, if fully implemented, AfCFTA had the potential to deliver significant economic and social gains for the continent. These include boosting regional incomes by nearly $50 billion, creating 18 million more jobs (many higher paying and better quality than those currently available), delivering big gains to women workers, boosting exports by 32%, growing intra-African exports by 109%, and helping up to 50 million people exit extreme poverty by 2035.

"By the end of this year we should have over 30 countries trading under the AfCFTA Guided Trade Initiative," said Shafrir. "Fintech will facilitate trade in goods because it's a facilitator like any other form of infrastructure – road or rail or payment platforms. Financial services are also one of the prioritised areas under the AfCFTA Protocol on Trade in Services, so there is an objective to get some kind of harmonisation across financial services in the region."

Lamola also stressed that harmonisation is key to create a free flow and as few trade restrictions as possible. She noted that, while innovation can be borderless, for instance with digital financial products, it's vital to separate fintech innovation from financial regulation.

With its plentiful resources, youthful population and entrepreneurial spirit, Africa is ripe for investment, say Lamola and Shafrir, but it can be a "spaghetti bowl" with varying regulations and overlapping bilateral treaties and regional agreements such as those involving the Southern African Development Community (SADC), East African Community (EAC) and Economic Community of West African States (ECOWAS).

The Webber Wentzel teams regularly advise international clients looking to directly invest in Africa, providing risk and regulatory assessments, advice on supply chains, and structuring investments considering trade and investment treaties.

The AfCFTA incentivises greater foreign direct investment alongside intra-African trade by creating a governance framework and setting up dispute resolution mechanisms, providing investors with greater certainty in the "spaghetti bowl", Shafrir pointed out.

"I think if you're looking to invest in a growing market, obviously Africa is the place to be," Lamola commented. "And while regulatory change may bring compliance costs, the other side of the coin is that a lot of it also creates the opportunity for new products, services and offerings."

Aligning to the highest standards

As it works to get off the FATF "grey list", South Africa has been addressing legislative deficiencies identified in 2023. Financial services experts Kent Davis and Lerato Lamola took a look at the evolution of group governance and anti-money laundering measures.

Multinational financial institutions operating in Africa can face a complex web of regulatory requirements, so from a group governance perspective it is always best to align yourself with the highest standards, advise Kent Davis and Lerato Lamola of Webber Wentzel.

"There's an incentive and interest in South African groups doing business across the continent," noted Davis, a partner in the Johannesburg office, who specialises in all aspects of financial regulatory law. "Where the nuance comes in is to have a broad framework that sets a high standard while catering for a group's approach to governance and risk, then enabling African subsidiaries to align themselves, taking into account variations in local laws."

Navigating myriad regulatory layers is a significant challenge that shouldn't be understated, emphasise Davis and Lamola. For instance, South Africa-headquartered banks or insurers can face general South African governance rules along with specific financial-sector requirements which impose obligations on controlling company boards to ensure governance frameworks overseeing the entirety of a group. Then they have to take into account variations in local laws in other African jurisdictions, overlaid with ESG requirements, climate disclosures, anti-money laundering (AML) requirements, and other standards imposed by clients sitting in the EU or other overseas jurisdictions.

Historically, AML requirements were seen as a parallel or isolated framework, but really they should be considered as part and parcel of the entirety of a group's governance framework, and are a good example of how group governance should be managed, highlighted Davis and Lamola.

> "*We have sector-specific knowledge, we understand the industries we work in incredibly well, and we are able to form core teams around knowing your business.*"
>
> **Kent Davis**, Partner | kent.davis@webberwentzel.com

"With South Africa being greylisted in 2023, there's more emphasis now from our regulators on understanding how groups manage their anti-money laundering risk within the individual accountable institutions that sit under a holding company," explained Lamola, a dual-qualified partner who specialises in financial regulatory law. "Our Financial Intelligence Centre Act (FICA) has this concept of a group-wide risk management compliance programme, so you'll have a holding company and several subsidiaries, and each can be an accountable institution."

Davis and Lamola note that holding companies in South Africa need to take into consideration that they're managing AML requirements as they sit in South Africa and in other African jurisdictions where they have subsidiaries. According to FICA, they need to understand how AML is governed in those other jurisdictions, and assess whether any deviations need to be accounted for.

Again, the higher standard is what should be applied from a group governance perspective.

While there can be misalignment between various regimes, in practice regulators are quite good at speaking to each other and recognising that group-wide regulation sits in South Africa, said Davis, whose team recently worked on a deal involving 29 African jurisdictions.

"Where our expertise lies is that we have sector-specific knowledge, we understand the industries we work in incredibly well, and we are able to form core teams around knowing your business," explained Davis, noting the wide range of internal experts Webber Wentzel can call on who cover the myriad regulatory layers and varied requirements. "I think that's really where we can assist clients – to put together teams that understand your business and that have the correct expertise to really navigate the challenges clients are faced with."

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Lerato Lamola, Partner | lerato.lamola@webberwentzel.com

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Under pressure: Navigating financial regulatory heat in South Africa in 2025

By Anél De Meyer and Lerato Lamola, partners, Webber Wentzel

"Pressure pushing down on me, pressing down on you…" the iconic line from Bowie and Queen's anthem feels prophetic for South Africa's financial sector in 2025. With regulatory heat intensifying from the Financial Sector Conduct Authority (FSCA) and Prudential Authority (PA), heightened global expectations post-greylisting, and new compliance frontiers such as crypto and environmental, social, and governance (ESG) factors, the stakes for financial institutions have never been higher.

We explore key regulatory trends shaping South Africa's legal and compliance landscape in 2025 and offer practical guidelines on how businesses can navigate them.

> *"There is increasing global pressure for South African regulators to mirror enforcement regimes where executives are routinely held liable for misconduct."*
>
> **Anél de Meyer,** Partner | Anel.demeyer@webberwentzel.com

Enhanced executive accountability

There is increasing global pressure, for South African regulators to mirror enforcement regimes where executives are routinely held liable for misconduct. Client playbook:

- **Define and document executive oversight:** Outline compliance roles and keep thorough decision records.
- **Conduct regular "top-down" compliance reviews:** Regularly audit senior leaders and test leaderships' understanding of key risk areas such as AML/CFT, whistleblowing, market abuse, and Decentralised Finance (DeFi).
- **Strengthen your "tone at the top":** Align leadership messaging with compliance standards and practically support compliance teams.
- **Implement crisis protocols:** Ensure executives know how to handle direct regulator engagement.
- **Review fit and proper compliance:** Frequently review key executives' qualifications and ethics and proactively address any risk.

“Decentralised finance (DeFi) has seen explosive global growth and is gaining traction in South Africa”

Lerato Lamola, Partner | lerato.lamola@webberwentzel.com

Regulatory response to FATF greylisting

The FSCA, Financial Intelligence Centre (FIC), South African Reserve Bank (SARB), and PA are now co-ordinating to monitor, enforce, and strengthen AML/CFT compliance across all licensed financial institutions and designated non-financial businesses and professions (DNFBPs). Client playbook:

- **Update your RMCPs:** Regularly revise RMCPs to reflect specific business risks and FIC compliance and avoid generic templates.
- **Automate where possible:** Implement real-time transactions PEP screening systems as well as review alerts promptly.
- **Enterprise-wide training:** Provide comprehensive AML training across all levels and train front-line, compliance, and leadership staff on identifying red flags and responding appropriately.
- **Conduct internal AML audits:** Regularly audit internally to proactively identify gaps that align with FATF and FIC standards.
- **Document, document, document:** Maintain thorough documentation of compliance decisions, and escalations.
- **Engage with the FIC early:** Report suspicious activities promptly and effectively to the FIC and ensure section 29 reports are submitted accurately and effectively.

Regulation of crypto assets

As at the end of 2024 the FSCA has approved 248 new crypto asset service providers (CASPs) who are now subject to the licensing regime, AML/CFT compliance, and consumer protection obligations. Client playbook:

- **Licensing compliance:** CASPs must ensure they meet all licensing conditions and adhere to AML/CFT obligations.
- **Risk management:** Develop and implement comprehensive risk management frameworks that address the unique risks posed by crypto assets and decentralised finance platforms.
- **Continuous monitoring:** Maintain regular oversight of regulatory developments and ensure ongoing alignment with FSCA requirements in this rapidly evolving market.
- **Train staff:** Ensure staff understand FICA and sanctions rules.
- **Consumer communication:** Review all marketing and risk disclosures to ensure they align with the FSCA's financial product advertising standards and avoid misleading or incomplete information.

Decentralised Finance (DeFi): The next frontier

Decentralised finance (DeFi) has seen explosive global growth and is gaining traction in South Africa. Client playbook:

- **Identify exposure:** Map all exposure, direct and indirect, regarding DeFi involvement.
- **Evaluate legal risk:** Assess if platforms could be seen as 'unlicensed' financial services.
- **Strengthen on-ramps:** Keep AML controls strong when bridging DeFi.
- **Engage with regulators:** Proactively consult the FSCA, PA, and other relevant regulators to pre-empt future enforcement issues.
- **Watch the horizon:** DeFi regulation is coming – it's a matter of 'when' not 'if'.

Integration of Environmental, Social, and Governance (ESG) factors

There is a growing regulatory focus on integrating ESG considerations into financial services, driven by both investor expectations and evolving regulatory initiatives. Client playbook:

- **ESG policy development:** Formulate clear ESG policies that align with regulatory expectations and global best practices.
- **Transparent reporting:** Share accurate and transparent ESG data.
- **Stakeholder engagement:** Engage with stakeholders' ESG concerns and incorporate into corporate strategies.
- **Integrate ESG into risk appetite statements:** Boards should state what ESG risks are acceptable to guide decisions and align teams.

"The institutions that will thrive in 2025 and beyond are those that see regulation not as a constraint, but as an opportunity to build resilience, bolster credibility, and drive long-term value."

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In a regulatory environment defined by heightened scrutiny, and increasing expectations, financial institutions in South Africa can no longer adopt a reactive compliance posture. The institutions that will thrive in 2025 and beyond are those that see regulation not as a constraint, but as an opportunity to build resilience, bolster credibility, and drive long-term value.

Webber Wentzel's key Legal and Regulatory Developments in 2025

As we move further into 2025, the financial services sector continues to face rapid change, shaped by evolving regulations and heightened legal scrutiny. Webber Wentzel takes a closer look at the legal and regulatory shifts that are set to influence the strategic and operational priorities of financial institutions in the year ahead.

Legal Privilege in Focus: Steinhoff, Secrecy and the Supreme Court of Appeal

A recent judgment in the Steinhoff matter by the Supreme Court of Appeal has brought renewed attention to the scope of legal privilege in South Africa. The case has significant implications for how forensic investigations are treated, particularly when the public interest is at play.

> *"AI is becoming a key tool across financial services, from enhancing fraud detection to tailoring customer experiences. However, with these benefits come new risks."*

The court held that litigation privilege will only apply if the main reason for commissioning a report is to seek legal advice in connection with existing or expected litigation. If the purpose is broader—such as an internal probe or a public disclosure—then privilege may not apply. This serves as a clear reminder for financial institutions to be deliberate and specific about the purpose of any commissioned investigations, especially in matters involving potential reputational risk.

Data Protection and Cybersecurity: The Rise of AI and Emerging Risks

Artificial intelligence (AI) is becoming a key tool across financial services, from enhancing fraud detection to tailoring customer experiences. However, with these benefits come new risks.

Concerns around algorithmic bias, data breaches, and cyber vulnerabilities are growing. In response, regulators are tightening expectations around how AI is deployed—particularly around transparency and data governance. To stay ahead, financial institutions need to strengthen their cybersecurity frameworks and ensure responsible, ethical use of AI technologies.

Fintech and Payments: Evolving Regulatory Landscape

In the fintech arena, regulatory focus has turned to the legislative amendments required to modernise South Africa's national payments system. The Draft Directive on Specific Payment Activities and the Draft Exemption released earlier in 2025 mark the first step. These proposed changes aim to clarify the types of payment activities that require licensing and those that may be exempt.

The goal is to strike a balance between encouraging innovation, encouraging new entrants in the market and safeguarding consumers. Both established financial institutions and fintech startups will need to assess how these developments affect their operations and prepare for implementation once the directive is finalised.

Employment Equity Amendments: Greater Accountability for Employers

The amended Employment Equity Act increases employers' responsibilities, particularly within the financial sector, with the introduction of binding, sector-specific targets. Employers are now required to set annual numerical goals aligned to five-year sectoral targets and ensure that their Employment Equity Plans (EEPs) specifically address the under-representation of designated groups.

In preparation for compliance, employers should now focus on reviewing and updating their EEPs to ensure alignment with the new sectoral targets and ensure that all prescribed obligations are met. Non-compliance with the additional obligations may impact eligibility for government contracts and influence B-BBEE scoring.

Competition Law: Important new developments impact on M&A transactions

During the last quarter of 2024 and the beginning of 2025, we have observed a shift from the Competition Commission's (CC) recent overemphasis on the public interest effects of mergers to age-old competition considerations. This is evident from the prohibitions of the Vodacom/Maziv and Peermont/Sun International transactions. With both these mergers, the CC has illustrated that the competition authorities do not rank public interest benefits above competition concerns when assessing mergers. Financial institutions involved in mergers or acquisitions must remember that offering a plethora of public interest commitments may not necessarily overcome the anticompetitive effects of a merger.

The CC also published guidelines on indivisible transactions and internal restructurings, which businesses should consider carefully when structuring transactions intended to be notified as single mergers or internal restructurings.

> *"The Dimension Data judgement reinforced the importance of full disclosure and the risks of personal liability for directors who fall short of these standards"*

Company Law Updates: Board Conduct and Group Structures

The Dimension Data case has clarified directors' duties under Section 75 of the Companies Act, particularly in relation to conflicts of interest. The judgment reinforced the importance of full disclosure and the risks of personal liability for directors who fall short of these standards.

In parallel, the Companies Second Amendment Act 17 of 2024 came into effect at the end of December. One key change relates to Section 45, which governs financial assistance within corporate groups. The amendments introduce exemptions aimed at easing compliance for intra-group transactions—but questions remain around whether these extend to foreign subsidiaries.

For financial services groups operating across borders, the scope of these exemptions needs to be carefully considered. Additionally, the relationship between these changes and the requirements of the Insurance Act must be evaluated to avoid regulatory missteps.

Anti-Corruption Compliance: Section 34A of PRECCA

The introduction of Section 34A to the Prevention and Combating of Corrupt Activities Act (PRECCA) marks a step change in anti-corruption compliance. While Section 34 focused on mandatory reporting, the new Section 34A requires companies to take active steps to prevent corrupt activities.

This includes adopting anti-corruption policies, conducting risk assessments, offering training, and monitoring for compliance. Although it is still early days in terms of enforcement, this new requirement brings South Africa more in line with global anti-bribery laws, such as the UK Bribery Act and the U.S. Foreign Corrupt Practices Act. Companies should move quickly to update their compliance programmes.

Greylisting: Adapting to Ongoing Regulatory Expectations

South Africa's greylisting by the Financial Action Task Force (FATF) has placed additional pressure on financial institutions to demonstrate strong compliance with anti-money laundering (AML) and counter-terrorist financing (CTF) obligations.

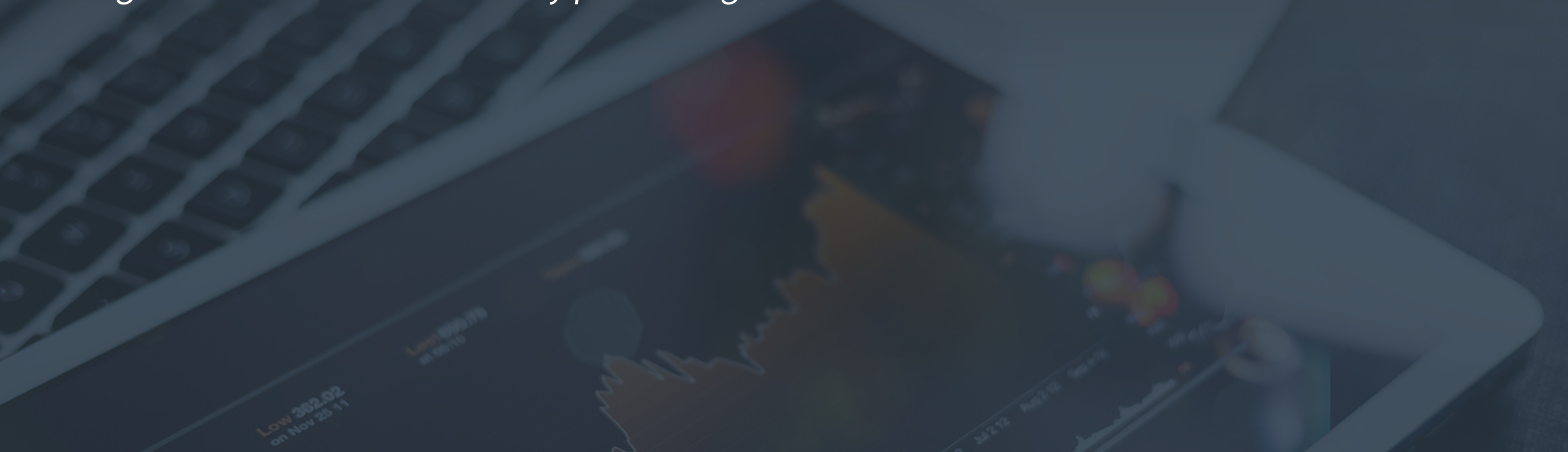
Although efforts are underway to address FATF's concerns, regulatory scrutiny remains high. Firms must adopt a proactive compliance posture—implementing enhanced due diligence, bolstering transaction monitoring, and staying alert to reputational risks. Aligning with international best practices is now more important than ever.

> *"Firms must adopt a proactive compliance posture—implementing enhanced due diligence, bolstering transaction monitoring, and staying alert to reputational risks."*

Looking Ahead

This year's legal and regulatory developments present both challenges and opportunities for the financial services sector. From clarifying legal privilege and tightening AI governance, to navigating M&A risk and strengthening anti-corruption frameworks, 2025 is shaping up to be a year that demands agility, compliance, and strategic foresight.

Webber Wentzel remains committed to helping clients stay ahead of the curve with expert legal advice and commercially practical guidance.



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