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## EXTRA CAUTION IS REQUIRED WHEN TRANSACTING WITH GOVERNMENT IN IMMOVABLE PROPERTY TRANSACTIONS

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### INTRODUCTION

Transacting with immovable property in South Africa can be legally complex and precarious. This is especially true for landowners who seek to sell their property, through a written agreement of sale, to any municipality in South Africa. The recent decision of the Supreme Court of Appeal (SCA) in the matter of *Merifon (Pty) Ltd v Greater Letaba Municipality and Another* 2023 (1) SA 408 (SCA) (“Merifon case”) illustrates this point sharply. When dealing with a municipality or any organ of state generally in any agreement involving the disposal or acquisition of capital assets, greater care needs to be shown to ensure that the municipality or the organ of state has adhered to their required statutory internal processes to lawfully conclude the agreement in order to eliminate the risk of concluding an agreement which is later found to be unenforceable.

### INSIGHT

In the Merifon case, a municipality - the Greater Letaba Municipality, sought to purchase land owned by Merifon (Pty) Ltd (Merifon) for R52 Million plus legal transfer costs following lengthy negotiations, in order to build low-cost housing. The municipality had planned to fund the transaction through a grant from the Limpopo Provincial Government: Department of Cooperative Governance, Human Settlements and Traditional Affairs. However, following the conclusion of the written sale agreement the municipality’s planned source of funding for the property fell through pursuant to a decision by the Limpopo Provincial Treasury to decline to approve the transfer of the necessary funds to the

municipality, with the result that the municipality was unable to meet its obligations to make payment of the purchase price in terms of the agreement.

When Merifon tried to sue the municipality in order to compel it to perform its obligations in terms of the sale agreement, it failed because the court found that the agreement was not enforceable. This was due to the municipality having concluded the agreement without complying with the Municipal Finance Management Act (MFMA). The MFMA detailed certain procedures, criteria and processes that needed to be followed before the municipality could validly undertake the transaction. Certain legal avenues that would ordinarily have been available to Merifon to compel a purchaser to perform in terms of the agreement, notwithstanding the failure of the purchaser to follow its internal processes and formalities correctly, such as the doctrine of *estoppel* and that of *ostensible authority*, were not available to Merifon given the nature of the purchaser and the internal processes in question. In this regard, the court found that the nature of the processes and formalities which had been flouted were statutory and could therefore not be saved by common law doctrines of *estoppel* and *ostensible authority*. The court ruled that to allow an agreement entered into in clear contravention of the statutory law would undermine the public interest in promoting transparency, accountability, and good governance. Accordingly, the municipality could not be compelled to perform in terms of the agreement and Merifon's case was dismissed.

## **IN CONCLUSION**

The legal framework governing property transactions in South Africa is constantly evolving. It is therefore important to obtain expert legal advice and guidance when concluding any property transaction, especially with government, in order to ensure that agreements concluded following long negotiations and significant expenditure in time and money are legally enforceable.

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Thabo completed his LLB at the University of KwaZulu-Natal in 2009 and was awarded his Master of Law (LLM) in 2018. He joined Cox Yeats in 2013 as an Associate in the Property Law Team specialising in all aspects of Property Law. Thabo was admitted as an Attorney, Conveyancer and Notary Public simultaneously in 2011.

Over the past 12 years Thabo has attended to a wide variety of property and conveyancing transactions, including acting for commercial and residential property owners, acting on behalf of commercial and retail banks, and attending to township and sectional title developments.