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**BANKS, AND THE
LAWS
THAT THEY HAVE TO
COMPLY WITH**

SA LEGAL SYSTEM

- **Statutes**
- **Common Law**
 - **judicial precedent**
 - **old authorities**
 - **international influences**



PUBLIC LAW

- **Public Law**

- Relationship between the state and its subjects
 - “compliance” Legislation eg. Banks Act, FICA, RICA

- **Private Law**

- Relationship between the citizens of a country
 - “enabling” legislation eg.
 - Bills of Exchange Act
 - Deeds Registries Act
 - Marriages Act






























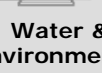
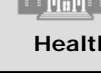
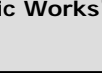
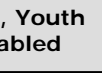


LAWS APPLICABLE TO BANKS AND BANKING GROUPS

- **Statutes regulating the behavior of Banks in the market place**
 - **Compliance Risk**
 - **Legal Risk**












National Departments' Laws and Bills

- | | | |
|--|--|--|
| 
Agriculture, Forestry & Fisheries | 
Higher Education | 
Rural Development & Land Reform |
| 
Arts & Culture | 
Home Affairs | 
Science & Technology |
| 
Basic Education | 
Human Settlements | 
Social Development |
| 
Communications | 
International Relations | 
Sport and Recreation |
| 
Correctional Services | 
Justice | 
State Security |
| 
Cooperative Governance | 
Labour | 
The Presidency |
| 
Defence | 
Mining | 
Tourism |
| 
Economic Development | 
Police | 
Trade & Industry |
| 
Energy | 
Public Enterprises | 
Transport |
| 
Finance | 
Public Service | 
Water & Environmental Affairs |
| 
Health | 
Public Works | 
Women, Youth & Disabled |

Industry Regulators




Provincial Laws

 Gauter	 W Cape	 KZ	 Free State
 Nort Wes	 E Cape	 N Province	 N Cape
			 Mpuma-langa

- Ugu Umzumbe
West Rand Umgungudlovo
Manguang Capricorn Msinga
Tshwane Waterberg Imbabazane
Sedibeng Mutale Mbonambi
Ekurhuleni Vhembe Klerksdorp
Johannesburg Nelson Mandela OR Tambo
Mopani
Saldhana Bay Zululand Alfred Nzo
Siyanda Montheo Highlands Ukwahlamba
Stellenbosch Karoo Govan Mbeki
Cape Town Frances Baard Boland Amathole
Kagisano Nkangala Gert Sibande Xhariep
Mbombela
Madibeng Kgalagadi Lejweleputswa
Metsweding
Ventersdorp Northern Free
State
Thabo
Mufutsanyana

Municipal Bylaws



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CURRENT STATUTORY LANDSCAPE FOR BANKS

**±900 Principal Acts
currently on the Statute books**

**184 Principal Acts
impacting directly or indirectly on Banks**

Subordinate Measures

Regulations

Rules

Codes

Charters

Notices

Circulars

Directives

Practice Notes

Guidances

Position Papers

Manuals

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REGULATORY STATISTICS FOR BANKS IN 2010

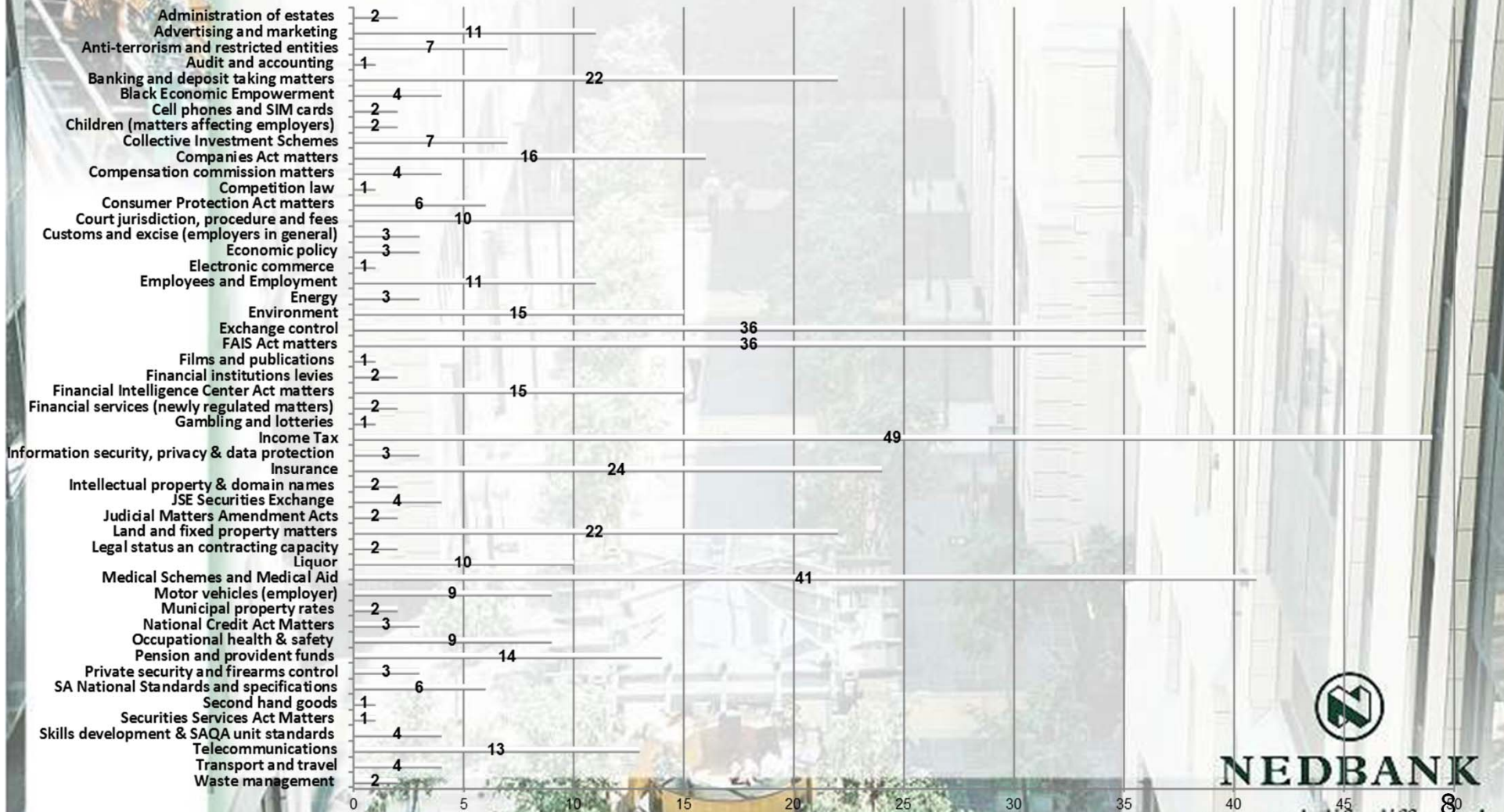
- Regulatory instruments impacting on banks:
 - 454 (Published in the Gazette or by way of regulators' circulars and directives)
 - Average of 2 Regulatory Alerts per business day
- Total no of pages of applicable (relevant) regulatory instruments
 - 14 741 pages
- Person days required to review the 14 741 pages:
 - Average of 5 minutes reading per page
 - 73 705 minutes (1 228 hours) / 8 hours
 - = 154 person days in 2010 reading applicable regulatory content *

* Does not include time spent to prepare executive summaries, implement, etc.



AREAS OF BUSINESS AFFECTED

NUMBER OF NEW REGULATORY DEVELOPMENTS (January to December 2010)



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NO WONDER ...

THURSDAY 21 OCTOBER 2010 **BusinessDay**

my

SA 'legals' put in more hours than peers abroad

SANCHIA TEMKIN
Professional Services Editor

LEGAL professionals in SA spend more hours at their jobs during a typical workday than their international counterparts do, according to the findings of a study issued yesterday by LexisNexis, a provider of content-enabled workflow solutions designed for professionals.

South African legal professionals spend on average 9,5 hours of their day in the office, compared to their counterparts in the US who spend

8,8 hours, the UK (7,8 hours), China (8 hours) and Australia (7,9 hours).

The study, carried out between June and July, included 1700 professionals from five countries.

Productivity, which is being demanded from a shrinking workforce during the recession, is affected by employees' access to information, several recent studies have found.

The LexisNexis research included 300 nonlegal professionals and 200 legal professionals in the US and 200 nonlegal professionals and 100 legal professionals in each of the other

markets included in the study.

It found six in 10 South African workers reported that since the economic downturn, the amount of information they have had to process at work had fallen significantly.

Furthermore, nine in 10 South African professionals agreed that not being able to access the right information at the right time was a huge waste of time.

The productivity of 25% of South African professionals was negatively affected because they did not have consistent internet access at work.

A significant percentage of professionals experienced feelings of dejection and frustration with the constant flood of information and believed they would soon reach a breaking point where they couldn't handle any more information.

Kevin Laithwaite, MD of interactive talent management portal JobCrystal, said: "This trend is clearly not going to decelerate."

Mr Laithwaite said e-mail was proving to be a continuous stream of interruption for employees.

"The happiest and most satisfied

employees are senior management because they know how to deal with stressful matters in the workplace."

In terms of job function, people in design, legal work, manufacturing, retail, sales, business and transportation were the most miserable employees, according to a recent study carried out by JobCrystal.

Mr Laithwaite said professionals tended to be reactive in their work environments, which only added to their stress level.

Most workers (67%) who took part in the LexisNexis study admit-

ted that the quality of their work suffered at times because they couldn't sort through the information they needed fast enough.

Lawyers, in particular, reported that research tended to take up so much of their time that sometimes they ended up not billing for the time they had spent on work.

Billy Last, CEO of LexisNexis SA, said businesses globally were demanding sophisticated online research tools capable of searching, sifting and filtering information.
temkins@bdfm.co.za



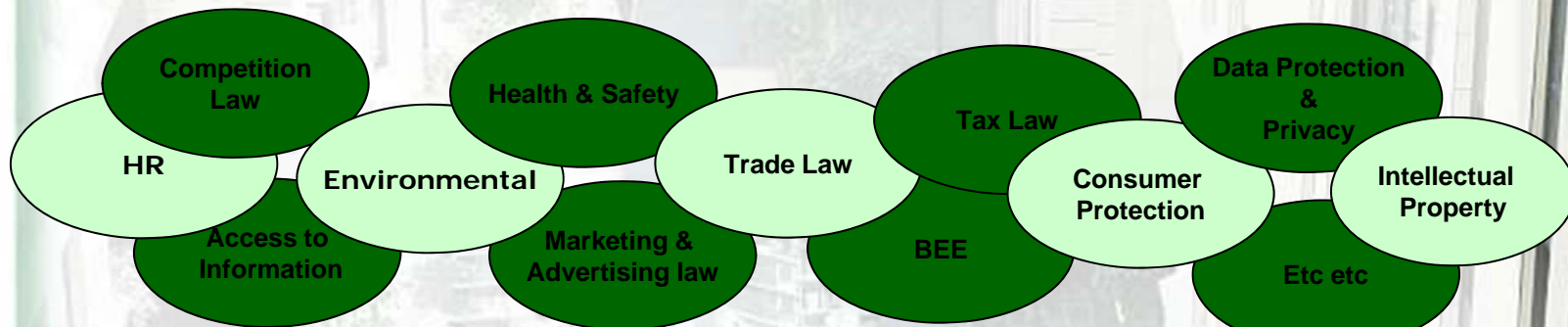
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COMPANIES ACT 71 OF 2008 SECTION 88(2)(b)

The company secretary must make the directors aware of any law relevant to or affecting the company

Not just directors duties or company law





KING III, PRINCIPLE 6

The board and each individual director should have a working understanding of the effect of the applicable laws, rules, codes and standards on the company and its business.

The induction and ongoing training programmes of directors should incorporate an overview of and any changes to applicable laws, rules, codes and standards

Directors should sufficiently familiarize themselves with the general content of applicable laws, rules, codes and standards to discharge their legal duties.



BANKING LEGISLATION: TOP 10 HIT PARADE

- **Banks Act**
- **NCA**
- **CPA**
- **FAIS**
- **FICA**
- **Companies Act**
- **POPIA/PAIA**
- **Labour Laws**
- **Tax laws**
- **Competition Act**



NEXT GROUP ...

- **Short Term Insurance Act**
- **Long Term Insurance Act**
- **Security Services Act**
- **Collective Investment Schemes Act**
- **Administration of Estates Act**
- **Trust Property Control Act**
- **National Payment Systems Act**
- **Deeds Registries Act**
- **Bills of Exchange Act**
- **PSIRA**
- **Safety at Sports and Recreational Events Act**



AND SOME MORE ...

- **Prescription Act**
- **Currency and Control Act**
- **Customs and Excise Act**
- **Pension Funds Act**
- **BEE Acts and Codes**



BANKS ACT 1990

- **Regulator**
- **Basel 1, 11 and 111: prudential requirements**
- **Ownership of Banks**
- **Bank Directors duties**
- **Dispute Resolution : Registrar**



NATIONAL CREDIT ACT 2005 (NCA)

- **Regulator**
- **Compliance requirements**
- **Enforceability requirements**
- **Returns**
- **Codification of Common Law**
- **Dispute Resolution : National Consumer Tribunal**



CONSUMER PROTECTION ACT 2008 (CPA)

- **Regulator**
- **Compliance requirements**
- **Enforceability requirements**
- **Returns**
- **Codification of Common Law**
- **Dispute Resolution : National Consumer Tribunal and National Consumer Commission**



FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 2002 (FAIS)

- **Registration**
- **Compliance requirements**
- **Legal Risk requirements**
- **Dispute Resolution : FAIS Ombud**



FINANCIAL INTELLIGENCE CENTRE ACT 2001 (FICA)

- **Regulator / Enforcement Agency**
- **FATF**
- **“PRECCA” Act**
- **Sanctions Lists**
- **Dispute Resolution : FIC**



COMPANIES ACT 2008

- **Regulator (CIPC)**
- **Compliance**
- **Legal Risk**
- **Enforcement and Dispute Resolution –
Companies Tribunal**



PROTECTION OF PERSONAL INFORMATION BILL (POPIA) AND THE PROMOTION TO ACCESS OF INFORMATION ACT (PAIA)

- **Regulator**
- **Protection of personal information and the storage thereof**
- **Enforcement : Regulator**



LABOUR LAWS

- **Labour Relations Act**
- **Employment Equity Act**
- **Basic Conditions of Employment Act**



TAX LAWS

Income Tax Act

VAT Act

Customs and Exise Act

- **Regulator: Commissioner**
- **Enforcement: Commissioner**



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COMPETITION ACT 1998

Regulator / Enforcement Agency

- **Competition Commission**
 - **Mergers**
 - **Prohibited Practices**
 - **vertical**
 - **horizontal**



COMMON LAW

- **Judicial Precedent**

- interpretation of the statutes
- enforceability of statutes –
Constitutional Court
- applicability of “old” rules in current
circumstances
 - abolish adultery as a crime
 - extension of vicarious liability:
**Minister of Police held liable in
recent rape case**



OLD AUTHORITIES – ROMAN DUTCH LAW

- Roman Law, as interpreted by the Dutch commentators in the 1600's, brought to SA by the Dutch in 1652.
- Escaped codification as in the rest of Europe by Napoleon.
- Cape Colony annexed by the British Empire in 1796, retained the legal systems of the colonies.



INTERNATIONAL INFLUENCE

- **English Law influences**
 - **“Old” Companies Act**
 - **Bills of Exchange Act**
- **Canadian/US Law influences**
 - **NCA and CPA drafted by Canadians**
 - **New Companies Act drafted by US lawyers and Canadians**
- **Precedents in those countries, and in other countries influenced by them, will be considered by our courts.**



DILEMMAS:

- **Inconsistent wording of statutes**
- **Inconsistent interpretation of statutes by regulators themselves.**
- **Regulators responsible for enforcement results in a lack of judicial precedent in respect of breaches.**
- **Compliance requirements inconsistent – eg customer and transaction record keeping for NCA, FAIS, CPA and FICA.**





QUESTIONS ?



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