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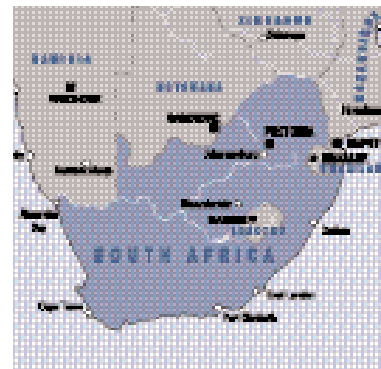
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Securities regulation in South Africa

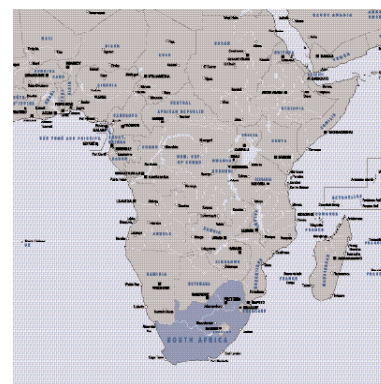
Kevin Cron
Deneys Reitz
Johannesburg

The financial markets in South Africa are regulated pursuant to a number of statutes and regulations. The most important of these statutes are the Stock Exchanges Control Act (the SECA), the Financial Markets Control Act (the FMCA), the Custody and Administration of Securities Act and the Insider Trading Act.

The SECA regulates stock exchanges and provides the regulatory framework within which a stock exchange is to operate and the manner in which listed securities are to be dealt with. For the purposes of the SECA, securities include stocks, shares, debentures, notes, units of stock issued in place of shares, and options on indices. The SECA does not extend to shares in a private company or stocks or shares in a public company where transferability is restricted. Stock exchange business may only be carried on by the holder of a stock exchange licence, which is issued by the Registrar of Stock Exchanges. It is in terms of this Act that the JSE Securities Exchange South Africa (the JSE) is licensed and operates. In turn, the JSE has established its Rules, which effectively set out the constitution of the JSE and membership, trading and disciplinary procedures. The JSE Listing Requirements set out the requirements that apply to listed companies, including listing procedures and ongoing obligations, and have been updated to deal with innovations such as share buy-backs and price stabilization. The South African Futures Exchange (SAFEX) has merged with the JSE and operates as a division of the JSE. Accordingly, on-market futures trading in South Africa also takes place under the auspices of the SECA. The SECA also regulates undesirable advertising or canvassing relating to securities, manipulative practices and price stabilization.

The FMCA is similar in scope and content to the SECA but regulates the licensing of an exchange in respect of financial instruments as opposed to securities. Financial instruments for purposes of the FMCA are futures contracts, option contracts, loan stock and other instruments declared by the Registrar of Financial Markets to be financial instruments. Each of these terms is further defined. The only licensed exchange under the FMCA is the Bond Exchange of South Africa (the BESA), which deals primarily in listed bonds. The FMCA also outlaws false trading and market manipulation, undesirable advertising or canvassing in relation to financial instruments and similar issues relating to trading and market practice.

The Custody and Administration of Securities Act provides for the registration of a Central Securities Depository, which will take custody of and administer securities. For this purpose, securities means listed securities defined in the SECA, listed financial instruments defined in the FMCA and other securities approved as such by the Registrar. The Act provides for the dematerialization of securities and establishes a



basic framework in which the electronic trading of dematerialized securities may take place. Although the definition of securities for purposes of this Act is reasonably wide, to date only listed securities traded on the JSE have been dematerialized and trade in an uncertificated format. Electronic trading of securities takes place through the JSE's STRATE system (STRATE stands for Share Transactions Totally Electronic). The Act also provides for depository institutions to become participants of the Central Securities Depository and provides the framework through which the system is to operate.

Another important piece of legislation in this context is the Insider Trading Act, which prohibits insider trading. The Act extends beyond merely dealing on the basis of inside information and extends also to the improper disclosure of inside information or the passing on of inside information. Inside information, for purposes of this Act, means information that is not public that is obtained or learned as an insider and which would be likely to have a material effect on the price or value of any securities or financial instruments when made public. Insider not only means a director, employee or shareholder of a company, but also any individual who knows that the direct or indirect source of the information was such a person. Contravention of the statute gives rise to both civil and criminal liability and the Financial Services Board enforces and administers this Act. The introduction of this Act has enabled the authorities to deal more firmly with instances of insider trading and a number of investigations and prosecutions have been launched. In most instances, offenders have chosen to settle with the Financial Services Board rather than risk formal criminal prosecution.

The statutes mentioned above will be amended and consolidated into a single statute to be called the Securities Services Act. Drafts of the new Act have been circulating for some years but there is as yet no clarity or certainty as to when the new statute will be passed by parliament or become operative. When the Securities Services Act comes into effect, all of the above statutes will be repealed, and the Companies Act and the Insolvency Act will be amended to deal with consequential issues.

Banking

Recommended firms

Deneys Reitz

Webber Wentzel Bowens

Bowman Gilfillan

Jowell Glyn & Marais

Werksmans

Brink Cohen Le Roux

Edward Nathan & Friedland

Sonnenberg Hoffman Galombik

White & Case

Bell Dewar & Hall

Cliffe Dekker

Hofmeyr Herbstein & Gihwala

Jurgens Bezuidenhout Attorneys

Deneys Reitz

Market response places Deneys Reitz “definitely first tier on the banking side”. Lionel Shawe and Clinton van Loggerenberg head Deneys Reitz’s banking practice, which advises an impressive list of clients, including Rand Merchant Bank (a division of FirstRand Bank), Citibank, Nedbank Capital Markets (a division of Nedbank), Investec Bank and JP Morgan Chase.

A new associate, Sarah Browning, has joined the firm from Linklaters in London, and brings the number of banking lawyers at Deneys Reitz to 10 partners and eight associates.

The firm was recently seen acting for Rand Merchant Bank and Barclays Bank on the funding of Mvelaphanda Gold, a subsidiary of Mvelaphanda Resources that acquired 15% of the equity in Gold Fields’ South African mining operations. The deal, valued at R4.13 billion (\$680 million), was handled by a group that included Kevin Cron, a lawyer with a “really good grasp of banking legal issues [who] remains focussed on getting a transaction done”. He is widely praised by competitors and clients alike.

The firm also acted for the Anglo Platinum Corporation on its R7.03 billion refinancing, advised the Rand Merchant Bank in its capacity as lender in a R760 million private equity finance deal, and represented Société Générale on an \$800 million deal involving the Mellon Financial Corporation’s securities portfolio. The firm also acted in a \$150 million deal involving Kumba Resources, advising a consortium of arrangers including ABN AMRO,

the Bank of Tokyo-Mitsubishi, Barclays Capital, Citibank, Crédit Agricole Indosuez, JP Morgan, Standard Chartered Bank and Sumitomo Mitsui Corporation.

Key contact partners

Shawn Barnett
Mark Kyle
Clinton van Loggerenberg
Lionel Shawe

Leading lawyers

Kevin Cron
Lionel Shawe

Webber Wentzel Bowens

Webber Wentzel Bowens is one of South Africa's largest and best-established law firms. It boasts a number of highly respected banking lawyers, including Lisa Botha, who has a "wide experience of banking" and Bruce Cleaver, described as "distinctively a cut above the rest".

The firm is represented in Europe by Maitland & Co, which has offices in London, Luxembourg, Geneva, Paris, the Isle of Man and Dublin.

Clients include De Beers, BAE Systems and Honeywell.

Leading lawyers

Lisa Botha
Bruce Cleaver

Bowman Gilfillan

Bowman Gilfillan continues to impress the market with its solid banking work. The 14-partner banking practice attracts clients such as Standard Corporate & Merchant Bank, Deutsche Bank and the Soros Charitable Foundation (SCF). Among recent highlights, the firm advised the SCF, along with the Overseas Private Investment Corporation and the Soros Economic Development Fund, on a \$27.5 million revolving credit facility that was granted by the Rand Merchant Bank to the Nurcha Finance Company.

Jowell Glyn & Marais

Jowell Glyn & Marais boasts a number of highly respected banking attorneys, among them name partners Richard Glyn and Donn Jowell, described by one competitor as a pair who are "consistently excellent and are very highly rated by all of their peers and clients".

The firm itself was founded in 1990. It is part of the Ernst & Young network, and focuses on corporate finance, structured finance and project finance work.

Leading lawyers

Richard Glyn
Donn Jowell

Werksmans

Wildu du Plessis heads the banking team at this firm, which consists of 19 partners and seven associates. Werksmans has advised a string of clients such as FirstRand Bank, Nedbank, South African Reserve Bank, Investec Bank and Rand Merchant Bank.

Among recent highlights, Werksmans advised the Rand Merchant Bank on Indwa's asset-backed commercial paper programme valued at R15 billion (\$2.3 billion). Wildu du Plessis and Amelia van As ran the deal, and the pair went on to advise the Rand Merchant Bank again, this time on BMW's Autoloan Investments R2 billion asset-backed note issue. The firm also represented Mvelaphanda Resources in connection with R4.1 billion-worth of funding in connection with its gold mining operation, and acted for Standard Bank on a R250 million syndicated facility granted to Sun International.

Key contact partners

Tippy Luttig
Wildu du Plessis
Kevin Trudgeon

Brink Cohen Le Roux

The sterling reputation of partner Johan Brink helps to bring the firm work on some of the country's big banking deals. The 10-strong practice is respected for its knowledge of financial products and banking legislation, and it advises on all aspects of banking legislation and international development projects. The team also advises on derivatives work, loan transactions and currency swaps, as well as syndicated loan transactions, offshore funds and off-balance-sheet financing.

Clients of the firm include financial services company Fistrand, chemical and fuel company Sasol, and Alstom, the global energy and transport infrastructure specialist.

Key contact partner

Johan Brink

Edward Nathan & Friedland

Professor Angela Itzikowitz is highly recommended for her banking work at Edward Nathan & Friedland, described by one market observer as an "outstanding lawyer when it comes to banking – probably one of the most pre-eminent lawyers in South Africa".

Unusually for a law firm, Edward Nathan is owned by a bank – Nedcor Investment Bank – and as a result much of the firm's work comes from that parent company. Some commentators have suggested that this situation has created "an inherent conflict of interest" for the firm, but it doesn't seem to have been conficted out of extensive work for the South African government, and a high-profile role handling the listing of Telekom (South Africa's privatized telecoms

operator) on the New York Stock Exchange (NYSE). The firm also advised Sasol on its listing on the NYSE; Sasol was the first South African oil company to be listed in New York.

Edward Nathan & Friedland's highly recommended chairman Michael Katz heads the corporate finance group.

Key contact partner

Angela Itzikowitz

Leading lawyers

Angela Itzikowitz
Michael Katz

Cliffe Dekker

Joz Coetzer heads Cliffe Dekker's banking practice in Johannesburg, and David Thompson the Cape Town practice. The practice is comprised of six partners and six associates, who have in the past advised HSBC, Nedbank Barclays Standard Bank and ABN AMRO.

Nedbank came to the firm in connection with the R1.4 billion (\$223.7 million) financing and restructuring of a listed company. Cliffe Dekker lawyers Joz Coetzer and Ryan Butler worked on this deal. Among other highlights, the firm advised ABN AMRO on a standby letter of credit and intercreditor arrangement worth \$285 million, and represented HSC on financing the transfer of a sub-Saharan business.

Key contact partners

Joz Coetzer
David Thompson
Deon Wilken

Capital markets

Recommended firms

Deneys Reitz

Webber Wentzel Bowens

Werksmans

Bowman Gilfillan

Edward Nathan & Friedland

Jowell Glyn & Marais

Jurgens Bezuidenhout Attorneys

Brink Cohen Le Roux

Cliffe Dekker

Tabacks

White & Case

Deneys Reitz

Deneys Reitz retains an excellent reputation for capital markets work, and counts some highly-respected lawyers amongst its numbers, particularly Kevin Cron and Lionel Shawe. There are four partners and five associates dedicated to capital markets work.

The firm has recently acted on a R930 million (\$148 million) note issue under the Eagles Bonds domestic medium-term note programme to fund the acquisition of three aircraft by Safair Lease Finance. At the end of 2003 a team led by Lionel Shawe and Casper van Heerden advised on Steinhoff Manufacturing's R1 billion corporate bond issue, and recently the firm acted on bond issues by the Imperial Group and DaimlerChrysler South Africa.

Deneys Reitz also advised on the establishment of a warrant programme for the Absa Bank and its listing on the Johannesburg stock exchange.

Key contact partners

Casper van Heerden
Clinton van Loggerenberg
Lionel Shawe

Leading lawyers

Kevin Cron
Lionel Shawe

Webber Wentzel Bowens

Webber Wentzel Bowens' capital markets practice advises on work ranging from plain vanilla bond issues to debt programmes, equity-linked and credit-linked issues and repackagings. From a team of 11 capital markets lawyers, Karen Couzyn is singled out for her expertise, with one market commentator dubbing her "a really good, solid lawyer".

Clients of the firm include the African Merchant Bank, Gencor and Tsogo Investments.

Leading lawyer

Karen Couzyn

Werksmans

Werksmans counts some highly impressive companies among its clients, including Ambac Assurance, Fitch Ratings and the Rand Merchant Bank. In November 2003 the firm advised Citigroup on international offering of shares in Steinhoff International Holdings, in a deal worth R982 million (\$157 million).

Perhaps the most-high profile deal the firm has worked on was Edgars Consolidated Stores (Edcon)'s R1.9 billion (\$305.8 million) debtor book securitization in 2002. In June 2004 the company announced that it had successfully concluded the securitization of a further R1.1 billion. Edcon will use the proceeds to repay debt, leaving it ungeared, and will also direct funds towards expansion.

Key contact partner

Wildu du Plessis

Bowman Gilfillan

Bowman Gilfillan was recently involved in the Durban Roodepoort Deep \$66 billion convertible bond issue, and also advised the Development Bank of South Africa on the establishment of its R5 billion (\$797 million) medium-term note programme.

The firm's close links to domestic banks make it a go-to firm for capital markets work. From a widely respected team, partner Jonathan Schlosberg is regarded as especially able, described by one commentator as "a sound lawyer with extensive experience".

Key contact partner

Jonathan Schlosberg

Edward Nathan & Friedland

Edward Nathan & Friedland recently advised Sasol Financing on its issue of R2 billion (\$318 million)-worth of notes due September 2007, and acted for Nedbank on the R5 billion Nedcor rights issue, a deal that included input from both Deutsche Bank and Merrill Lynch. The firm was also involved in setting up the R2.5 billion Lever Ponds commercial paper programme and issue thereunder, and the Safair Lease Finance securitization of aircraft lease receivables with respect to three aircraft leased by Safair Lease Finance to South African Airways, guaranteed by Ex-Im Bank.

Sean Lederman heads the capital markets practice at Edward Nathan & Friedland, overseeing a department that consists of five partners and one associate. Graeme Tucker is singled out by the market for his structured finance expertise: "he has done phenomenal securitizations in New York," says to one peer.

Key contact partners

Eric La Grange
Sean Lederman
Graeme Tucker

Leading lawyer

Graeme Tucker

Jurgens Bezuidenhout Attorneys

Jurgens Bezuidenhout specializes in capital markets work, and name partner Jurgens Bezuidenhout is "the best known guy in the area" according to one peer. Some personnel changes saw associate Davina Stock join the practice from rivals Werksmans in February 2004, and partner Coenie de Beer leave the firm in October 2003.

In September 2003 the firm advised Deutsche Bank, as the arranger, on the update of African Bank's domestic medium-term note programme and issue of secured

bonds. Partner Sorelle Gross led the firm's team on these deals; she also advised Rand Merchant Bank on South African National Roads Agency's R6 billion (\$958.8 million) bond issue, which also took place in September. In February 2004 Gross was busy again, this time acting for Rand Merchant Bank as the arranger of FirstRand Bank's domestic medium-term note programme and issue of Tier II capital.

At the time writing Bezuidenhout and Gross were advising Deutsche Bank on the contemplation of further products to be issued under the JSE Securities Exchange South Africa listed securities issuance programme.

Key contact partners

Jurgens Bezuidenhout
Travis Green
Sorelle Gross

Leading lawyer

Jurgens Bezuidenhout

Mergers and acquisitions**Recommended firms**

Cliffe Dekker

Edward Nathan & Friedland

Webber Wentzel Bowens

Werksmans

Bowman Gilfillan

Brink Cohen Le Roux

Deneys Reitz

Jowell Glyn & Marais

Sonnenburg Hoffman Galombik

Hofmeyr Herbststein & Gihwala

Tabacks

Bell Dewar & Hall

Fluxmans

Cliffe Dekker

With offices in Cape Town and Johannesburg, Cliffe Dekker conducts its business in Afrikaans, Shangaan, Zulu, Greek, Xosa and Dutch. In Johannesburg the office is headed by the "outstanding" Chris Ewing and, in Cape Town, by David Thompson.

Fifteen partners and 11 associates make up Cliffe Dekker's M&A department, and they have been highly active over the last 12 months. The firm was ranked the number one legal adviser by deal value for 2003 in the Annual Deal Makers Mergers & Acquisitions activity rankings. Among the firm's stand-out deals, Cliffe Dekker acted for Harmony in the gold mining company's merger with Armi and Avmin, which was named deal of the year. The firm also advised Harmony in the year's third biggest deal – the Harmony and ARMgold merger. M&A work for Harmony has been worth R10.5 billion (\$1.678 billion).

Cliffe Dekker has also advised Aplitec on a R1.1 billion disposal, and acted for Comparex during its merger with Business Connexion Solution Holdings. In late 2003, a team consisting of Chris Ewing, Vanda Forssman and Jean Meijer advised Lonmin during the sale by Implats of its Lonplats holding to Lonmin and various black empowerment purchasers. The deal was valued at \$800 million.

Key contact partners

Chris Ewing
Ian Hayes
David Thompson

Edward Nathan & Friedland

Michael Katz leads a mergers and acquisitions team of 20 partners and eight associates at Edward Nathan & Friedland, which has seen one partner and one associate join in the last 12 months. Of the partners, four are US-qualified and one is UK-qualified. Katz himself is extremely well regarded in the market, one peer describing him as “*the M&A lawyer in South Africa.*”

Some market commentators griped that the firm “has dwindled a bit” of late, and is not the firm it was before its purchase by Nedcor Investment Bank. However, the firm's visibility on some high-profile deals does not seem to support this opinion. A team from Edward Nathan & Friedland recently advised Goldfields on the sale of a 15% stake in its South African gold mining assets to Mvelephanda. The deal was handled by Katz, Jason Valkin and Patrick Cronin and valued at R4.1 billion (\$653.15 million).

Katz also advised Bidvest's shareholders in respect of the acquisition of a 15% stake in Bidvest by Dinatla Investments. The deal was valued at R2.1 billion. Edward Nathan & Friedland was also involved in the New Africa Investments takeover, and Bidvest's acquisition of the entire issued share capital of McCarthy.

Key contact partners

Miranda Feinstein
Cecil Wulfsohn
Jason Valkin

Leading lawyer

Michael Katz

Webber Wentzel BOWENS

Bruce Cleaver is described as “a very competent lawyer who does lots of work,” and is regarded by some as being the “next generation” of top M&A lawyers in South Africa. Also recommended are Ed Southey and Johann Scholtz, described as “top men” and “star performers”.

These solid reputations have managed to secure the firm some impressive work, which has included advising the Bourbon AXA Investment Fund as it acquired 31% of a waste and municipal services company. The acquisition constituted the fund's first investment in South Africa. Webber Wentzel also advised Tsogo Investments' acquisition of 51% of SAB Miller's hotel interests, as well as on Tsogo's acquisition of control of its joint gaming interests. The deal was valued at R1.9 billion (\$305.8 million).

Leading lawyers

Bruce Cleaver
Johann Scholtz
Ed Southey

Werksmans

The consistently recommended Carl Stein heads Werksmans' M&A practice. With 34 lawyers dedicated to M&A work, the firm is one of the largest in the country. Recently, Werksmans acted in the Merger of Shaw Wallace Brewing Company of India and SABMiller's Indian brewing operations. The deal was worth R2.1 billion (\$335.55 million) and was handled by Carl Stein and Lara Matisonn.

The firm also advised on the acquisition by Mvelaphanda Resources of a 15% interest in Goldfields' gold mining assets and on the Stanlib R1.4 billion empowerment transaction. Werksmans also acted on the R10.5 billion merger between Ashanti Goldfields Company and AngloGold, a deal that involved a Ghanaian scheme of arrangement.

The firm previously advised Xstrata on the \$2.57 billion acquisition of Glencore's Assets in Australia and South Africa, represented Bytes Technology as it acquired 50% + 1 share in Xerox and advised the MTN Group's non-executive directors on their R4.2 billion (\$577 million) management buy-in.

Key contact partners

Gareth Driver
Gerhard Johannes
Carl Stein

Leading lawyer

Carl Stein

Deneys Reitz

Deneys Reitz's recent deal highlights have included advising Anglovaal Mining on an R8 billion (\$1.277 billion) transaction, and acting for Coronation during its R2.1 billion

restructuring. The firm also acted for the Rand Merchant Bank in connection with the R4.1 billion Mvelaphanda Resources and Gold Fields black empowerment transaction, and for Kumba on the R7.1 billion mandatory offer by Anglo Mining for Kumba.

The universally acclaimed partner Kevin Cron heads Deney's Reitz's M&A section; he oversees a team of 16 partners and four associates.

Key contact partners

Kevin Cron
Peter Simkins
Andre Visser

Leading lawyer

Kevin Cron

Other notable firms

Sonnenberg Hoffman Galombik is "doing exceptionally well" and is "making huge inroads" into the mergers and acquisitions market. John Schlossberg at **Bowman Gilfillan** is "very thorough, and good with detail." And Phillip Vallet at **Fluxmans** is also "very good."