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The International Comparative Legal Guide to:

Fintech 2019

3rd Edition

A practical cross-border insight into fintech law

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

Two general chapters. These chapters provide an overview of artificial intelligence in fintech, and of the recent trends and challenges in the financing of cross-border fintech start-ups.

Country question and answer chapters. These provide a broad overview of common issues in fintech laws and regulations in 51 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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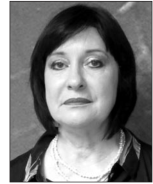

ENSafrica

Ina Meiring

1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

South Africa has witnessed an increase in fintech businesses over the last two years or so, and it is noticeable that a number of these businesses have attracted significant investment and funding from local and foreign investors alike.

The majority of fintech start-ups provide payments and money transfer services, with the rest of the market roughly divided between: trading, investment and crowdfunding; blockchain and Bitcoin; and lending, financing and retail banking services.

In the payment space, there is Karr, which, in partnership with Nedbank, launched a mobile payment app that facilitates parents paying for *ad hoc* events such as school shows, trivia nights, field trips, sports events and fundraisers while on the go – including auto-reminders for events.

Prospa is a mobile savings wallet for low-income South Africans that makes it easy to save small amounts infrequently using prepaid vouchers.

Akiba Digital is a gamified mobile app making it easier and more rewarding to set, manage and meet savings goals.

2019 will see the launch of three new digital banks, namely TymeBank, Bank Zero and Discovery Bank. TymeBank styles itself as the first digital-only bank. It does not have any banking branches and relies solely on digital means (mobile app and website) and kiosks housed predominantly in retail stores.

Discovery has launched what they term "the world's first behavioural bank", a fully functional digital bank that can be joined by anyone with a smartphone.

Bank Zero is a new app-driven bank, which is accessible to all customers and individuals with a smartphone. Bank Zero also offers its services through an app without a customer having to visit a branch.

Sureswipe is a card payment acceptance organisation that offers independent retailers and service providers an easy and accessible way to accept card payments and consolidate payment channels, simplifying the administrative burden of such providers as a result.

TransferWise is a money transfer system allowing private individuals and businesses to send money abroad at lower costs without any hidden charges.

Yoco is a highly successful fintech company in South Africa in the mobile payment service provider industry, targeting small to medium companies which require the portability of a card reader. In the past two years of operation, Yoco has raised US$7 million.

As regards insurance, the Fo-Sho insurance product relies on policy holders forming groups with similar risk profiles to create savings pools to reduce the cost of risk financing and to mitigate excess payments in the event of a claim. The app gives the consumer the power to obtain insurance quickly, comfortably, and on their own terms in a very short space of time.

Self-labelled as the "Uber of insurance", Riovic directly connects to risk managers and risk underwriters and allows private investors to accept a stream of certain cash flows in exchange for an uncertain future liability.

In the security and regulation fintech sphere, Bokio automates accounting and serves as a decision-making platform for small businesses – automatically handling invoicing, payroll and accounting.

With regard to payment and verification, the online verification system ThisIsMe allows individuals, businesses, regulators and financial institutions to link into Home Affairs and major banks.

In the property and investment space, KapitalWise – a cost-effective micro-investment platform for financial institutions – delivers personal investing literacy and predictive analytics to retail users of financial institutions.

In the Energy and Agriculture fintech industry, The Sun Exchange is a market place where consumers can buy into commercial solar projects at the scale of one cell at a time, using blockchain and smart contracts to facilitate transactions.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

The Banks Act, 1990 regulates the "business of a bank", which is defined as the taking of deposits from the general public as a regular feature of its (the entity's) business. Subject to certain exemptions, any person (natural or juristic) taking money from the public (which includes corporates) and who undertakes that the monies will be repaid on demand or otherwise, conditionally or unconditionally, and with or without interest, must register as a bank in terms of the Banks Act.

Similarly, peer-to-peer or market-place lenders are regulated by the National Credit Act, 2005 ("NCA"), which, subject to certain limited exemptions, obliges all lenders to register as credit providers, regardless of the quantum of the loan or the number of loans the lender has granted. The NCA is also prescriptive as to the

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fees, interest and other charges that may be levied by a lender. Loan participations or sub-participants by non-banks may also fall foul of banking regulation, and be treated as deposits, even though these loan participations are often styled and drafted as a sale of rights or economic interests rather than a loan to the funder.

Virtual currencies, such as Bitcoin and other cryptocurrencies, are not currently regarded as legal tender. Bitcoin exchanges may, however, have to be licensed in due course. In terms of a consultation paper issued by the South African Reserve Bank dated 16 January 2019, exchanges and persons who keep crypto assets in safe custody will have to register with the Prudential Authority or the Financial Sector Conduct Authority ("FSCA").

A person giving advice or rendering intermediary services, in respect of financial products, must register as a financial services provider under the Financial Advisory and Intermediary Services Act, 2002 ("FAIS"), and this is also true of the entity or person behind the "robo" adviser. Bitcoin and crypto assets are not currently regarded as financial products and are therefore not regulated by the FAIS Act.

Crowdfunding is not currently regulated under South African law. Going forward, crowdfunders may find themselves falling foul of the Banks Act, 1990 where the funding is by way of debt, and there is an obligation to repay or to register as an exchange under the Financial Markets Act, 2012 where the funding is by way of equity.

The Financial Intelligence Centre Act 38 of 2001 ("FICA") places Anti-Money Laundering ("AML") obligations, including registration, customer due diligence, reporting and recordkeeping requirements on accountable institutions, in Schedule 1 of FICA.

As fintech poses increased risks of money laundering, going forward cryptocurrency exchanges and crypto assets service providers will be included as accountable institutions and, as such, will be obliged to comply with customer due diligence and all other obligations imposed on accountable institutions.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Traditional loans are still commonplace, and peer-to-peer lending and crowdfunding appear to be on the rise, despite the regulatory hurdles referred to above.

Royal Fields Finance, a majority black-owned company, provides specialised short-term funding to SMEs and start-up ventures, without requiring risk capital contributions.

Government grant funding and soft loans by private companies to employment equity compliant fintechs are other avenues for raising capital.

Venture capital and private equity firms investing in fintech are also on the rise. A comprehensive list of venture capital and private equity firms is available on the website of the South African Venture Capital and Private Equity Association.

See also question 2.2 below.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

The Black Business Supplier Development Programme provides grant funding that encourages black businesses to grow by acquiring assets and operational capacity, and provides a maximum investment of R1 million to a 51% black-owned entity, with 50% black management.

The Technology and Human Resources for Industry Programme, a project between the Department of Trade and Industry and the National Research Foundation, was implemented to improve South Africa's technical skills and competitive edge through the development of technology. This grant, with a fund capacity of R150 million, is primarily aimed at engineering graduates and developing SMEs into large companies.

The CEO Initiative – under the auspices of the Minister of Finance to avert a ratings downgrade and foster inclusive economic growth – has announced a key milestone in establishing the R1.5 billion private sector fund to stimulate entrepreneurship and support the growth of SMEs.

The Incubation Support Programme is a grant aimed at assisting entities in developing incubator programmes and thereby creating employment within the communities, in turn strengthening the economy. The programme is aimed at encouraging partnerships between the private sector, SMEs and the Government in order to create sustainable growth within the economy.

The Section 12J Venture Capital Company ("VCC") tax regime is a tax incentive that allows investors who invest in accredited Venture Capital companies, that then invest in small businesses, to make a tax deduction of 100% in the year that the investment was made. Although the underlying investments can include fintech offerings, there have been very few investments in tech start-ups to date, but with fintech on the rise, the Section 12J tax regime represents a major incentive for investment into fintech businesses.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The Johannesburg Stock Exchange ("JSE") is licensed as an exchange under the Financial Markets Act, 2012 and serves as South Africa's premier exchange.

The principal requirements for a JSE Main Board listing include: subscribed capital of at least R50 million; not less than 25 million equity shares in issue, and 20% of each class of equity securities must be held by the public to ensure reasonable liquidity; and a satisfactory audited profit history for the preceding three financial years, where the last report must show an audited profit of at least R15 million before taxation and after taking account of the headline earnings adjustment on a pre-tax basis.

In addition, the company must be carrying on as its main activity, either by itself or through one or more of its subsidiaries, an independent business – supported by its historic revenue earning history – which gives it control over a majority of its assets, and must have done so for a prescribed period.

The JSE requires the appointment of a sponsor to list on the main board, whose responsibilities include advising the directors of their responsibilities and obligations, satisfying itself that the company is suitable to list, and liaising between the JSE and the company.

The JSE furthermore requires an accredited independent accountant to report in the prospectus or pre-listing statement on, amongst other things, the profits and financial position of the company over the preceding three years.

The JSE may, in exceptional circumstances, list companies that do not comply with these requirements.

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2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

We are not aware of any notable exits in the fintech industry for 2019, but the ICO industry has slowed considerably.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

See question 1.2 above and section 4 below.

Money laundering in South Africa is regulated by FICA and the Prevention of Organised Crime Act, 1998 ("POCA") and the regulations promulgated thereunder. The latter sets out the money-laundering offences, while the former (for the most part) provides the administrative framework for regulating anti-money laundering. FICA was recently amended by the FICA Amendment Act, which introduced a risk-based approach to client due diligence. "Accountable institutions", as defined in FICA, include banks, insurers, money remitters, investment advisers and the like. Accountable institutions are subject to onerous compliance obligations, including identifying and verifying customers and record-keeping as well as registering with the Financial Intelligence Centre ("FIC"). Fintech companies that do not fall within the definition (of an accountable institution) are exempt from these obligations, and the monitoring and screening of transactions becomes increasingly difficult where transactions are conducted cross-border using financial technology. It is interesting to note in passing that mobile phone operators are not accountable institutions for purposes of FICA.

The SARB and the FIC have recommended that cryptocurrency asset service providers should comply with FICA. Among other things, this would require South African cryptocurrency asset providers to do the following:

- Register with the FIC as accountable institutions, conduct due diligence of clients and keep records. This also includes monitoring transactions and compiling and filing reports on any unusual or suspicious crypto transactions, and reporting cash transactions of R24,999 and above (see the proposed amendment to this threshold discussed in question 3.2 below).
- Adopt a risk-based approach to customer due diligence.
- Ensure complete compliance with FICA or risk facing remedial action, which would include administrative sanctions.

The National Payment System Act, 1998 regulates the provision of payment services, including clearing settlement, payment processing, and the like. Subject to limited exceptions, only registered banks are allowed to clear and settle payment instructions between banks within the national payment system. The Payment Association of South Africa has been appointed by the South African Reserve Bank ("SARB") as the payment system management body which organises, manages, oversees and regulates, in relation to its members, all matters affecting payment instructions.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Not as of yet.

The SARB, together with other financial services regulators (the FIC, the FSCA and National Treasury), are embarking on a process of "limited" or "lite" regulation of cryptocurrencies or crypto assets.

In January 2019, the SARB released a consultation paper outlining its proposals for the way forward and inviting members of the public and industry stakeholders to send their comments.

Once public and stakeholder comments have been collated, the SARB plans to issue a policy paper for release in the second quarter of this year.

The SARB is aware of the risk of fraudulent activities, such as money laundering, terrorist-financing activities, the circumvention of exchange controls, and the masking of illicit financial flows, particularly from the anonymity of dealing in crypto assets.

With regards to the regulation of anti-money laundering, the SARB proposes that crypto asset service providers be required to:

- register with the FIC (as accountable institutions);
- conduct customer due diligence, including ongoing monitoring;
- keep records, and
- file reports on suspicious and unusual transactions, cash transactions of R24,999.99 and above, and (if aware) any property that it either possesses or controls that may be linked to terrorist activity or terrorist organisations. The FIC, however, has released a consultation paper relating to the amendment of regulations in respect of cash threshold reporting and aggregation.

It is proposed that the cash threshold amount of R24,999.99 be increased to R49,999.99. The obligation to report information concerning cash transactions will therefore arise when a transaction is concluded with a client by means of which the cash paid or received totals is R50,000.00 and above.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

Financial markets are tightly regulated in South Africa, and while such regulation is necessary to protect consumers and the sector from systemic risk, it does create high and sometimes insurmountable barriers to entry for fintech innovators. While the regulators are open to discussion with these innovators, and are giving serious thought to the regulatory challenges posed by fintech, they have been slow to adapt regulations to embrace fintech. Unlike other jurisdictions, such as Singapore and the United Kingdom, neither the SARB nor the FSCA (previously the FSB) have to date created regulatory sandboxes for these companies.

The SARB is exploring cryptocurrencies and blockchain and is interested in innovations that may stem from its development; and, recently, a number of South African banks have pushed ahead with plans to test blockchain applications in a partnership that has drawn support from the SARB and the FSCA.

On 31 January 2019, the SARB released a media statement where it confirmed that it is joining the Global Financial Innovation Network ("GFIN") as a member. This is part of SARB's journey to support responsible financial innovation for the benefit of all South Africans. Joining GFIN will provide the SARB with the opportunity to share and gain insights from its fellow regulations on experiences in enabling innovation.

The GFIN will pilot the hosting of cross-border trials by financial entities through the regulatory sandboxes of those members who

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have chosen to participate in the pilot. Although the SARB supports this initiative, it has elected not to partake in the pilot in order to first focus on the appropriateness and feasibility of a SARB regulatory sandbox. The SARB will first put in place a process that is fair and open for South African firms, and ensure that consumer protection is in place for citizens who are clients of those companies participating in the trials.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

See question 1.2 above and section 4 below.

A foreign company offering fintech products and services is required to register as an external company in terms of the Companies Act, 2008 within 20 business days after it first begins conducting business within the Republic.

Direct marketing to customers in South Africa is stringently regulated in terms of the Consumer Protection Act, 2008 ("CPA") and the Protection of Personal Information Act, 2013 ("POPI").

South Africa still has a system of exchange control and, subject to exemptions, persons wishing to remit money cross-border would have to apply for permission from the SARB or entities authorised to deal in foreign exchange.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

POPI has been signed into law, but has not yet come into full force. Certain provisions relating to the establishment of the Regulator and the issuing of regulations under POPI, however, came into force on 11 April 2014.

The effective date of the remainder of the provisions under POPI will not be prior to the Information Regulator becoming operational, which may only be in the first few months of 2019.

The Regulations relating to the Protection of Personal Information, 2018 ("the Regulations") were published under GN R1383 on 14 December 2018. The Regulations are highly administrative in nature and do not necessarily assist organisations in interpreting POPI to ensure compliance. As a result, the Regulations do not substantially alter that which needs to be complied with. Although the Regulations are final, the Regulations will only commence on a date to be determined by the Regulator by proclamation in the Government Gazette. The commencement date of the Regulations will be aligned with the POPI commencement date.

A responsible party (defined in POPI as "a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information") is given a one-year transitional period after the commencement of the Act to comply with the provisions of POPI. This period may be extended by the Minister of Justice by an additional period which may not exceed three years.

POPI applies to the automated or non-automated processing of personal information entered into a record in any form (provided that when the recorded personal information is processed by non-automated means, it forms part of a filing system or is intended to form part thereof) by or for a responsible party who or which is domiciled in South Africa, or not domiciled in South Africa, unless the processing relates only to the forwarding of personal information through South Africa.

Fintech businesses will undoubtedly constitute responsible parties and will have to comply with the eight conditions for lawful processing of personal information set out in Chapter 3 of POPI when collecting, using, transmitting, or otherwise processing personal information.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

See question 4.1 above.

Section 72 of POPI regulates the transfer of personal information outside South Africa. Consent of the data subject is a sufficient justification for the transfer of such information. The transfer may also be done without the consent of the data subject if, among other things, it is done for the benefit of the data subject, and obtaining the consent of the data subject is not reasonably practicable; and, if it were reasonably practicable, the data subject would be likely to give it.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

The unlawful processing of personal information and the unlawful disclosure of such information to a third party could lead to delictual (tort) liability and damages, as well as a breach of POPI.

A contravention of POPI could also lead to a fine or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment. A responsible party who is alleged to have committed an offence in terms of POPI may also be liable to an administrative fine up to the amount of R10 million.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

The current legal framework to combat cybercrime is a hybrid of legislation and the common law. The common law, which develops on a case-by-case basis, has failed to keep up with the nature of cybercrime.

The Cybercrimes Bill is nearing the stages of becoming law, as it was passed by the National Assembly on 27 November 2018. The Cybercrimes Bill seeks to create offences which have a bearing on cybercrime, to criminalise the distribution of data messages which are harmful, and to provide for interim protection orders, among other issues.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

The statutes regulating money laundering are POCA (referred to in question 3.1) and FICA (referred to in question 1.2). The statute regulating the financing of terrorism is the Protection of

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Constitutional Democracy against Terrorist and Related Activities Act, 2004. Regulations promulgated under these Acts clarify and amplify the various obligations and provide for certain exemptions. As to money-laundering regulation, POCA (as the main regulation) contains the substantive money laundering provisions, while FICA provides the administrative framework. (See also question 3.1 above.)

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

See question 1.2 above.

In addition, the scope and application of the CPA is extremely wide. It applies to: (a) the promotion of goods (defined to include any game, information, data, software, code or other intangible product written or encoded on any medium or a licence to use any such intangible product) and services; (b) all transactions for the supply of goods and services between suppliers and consumers (unless specifically exempt); and (c) the goods and services themselves once the transaction has been concluded.

The CPA will apply fully to fintech businesses that provide products or services to natural persons or juristic persons with an annual turnover or asset value not exceeding R2 million (at the time the transaction is concluded).

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

Businesses do not encounter any restrictions in relation to the hiring of their staff. The Labour Relations Act 66, 1995 (“LRA”), however, requires dismissals to be both substantively and procedurally fair. Therefore, a dismissal must be effected for a fair reason and in accordance with a fair procedure. The LRA provides for three categories of dismissals: dismissals for misconduct; incapacity (poor work performance, ill health or injury); and dismissals for operational requirements.

5.2 What, if any, mandatory employment benefits must be provided to staff?

There are no mandatory employment benefits that must be provided to staff. Employers grant their employees benefits on a discretionary basis.

The Basic Conditions of Employment Act, 1997 confers certain rights on employees, for example:

- paid annual leave (21 days in an annual leave cycle);
- paid sick leave (six weeks during a 36-month cycle);
- maternity leave (four consecutive months); and
- paid family responsibility leave for child births, child sickness and familial deaths (three days in an annual leave cycle).

The Act also regulates the number of hours worked by employees to 45 hours in any week. This limitation on hours worked, however, only applies to employees earning below the threshold set by the Minister of Labour.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

Any foreign national who is not a permanent resident of South Africa and who wishes to render services in South Africa needs to obtain a work visa in order to do so. In terms of the Immigration Act, 2002, foreign nationals will be allowed to work in South Africa if they have Intra-Company Transfer Work Visas or Critical Skills Work Visas.

Intra-Company Transfer Work Visas allow foreign nationals to be transferred from a business abroad to a local branch, subsidiary or affiliate. Critical Skills Work Visas are granted to candidates who possess special expertise and know-how in relation to a particular industry, which is listed by the Department of Labour. Each of these visas have particular requirements that must be met.

A foreign national is obliged to obtain his/her visa through application to the South African consular office in his/her country of ordinary residence or home country. If there is no consular office, then the foreign national must apply by courier to his/her closest South African foreign mission or to the Department of Home Affairs in South Africa.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

In South Africa, innovations, inventions and other creations of the mind are protected by well-established intellectual property laws. The main pieces of legislation that regulate the creation, ownership, protection and enforcement of intellectual property rights include the Patents Act, 1978, the Designs Act, 1993, the Trade Marks Act, 1993 and the Copyright Act, 1978.

Depending on the nature of the innovation or invention, either one or more of these pieces of legislation may apply when seeking protection over the relevant intellectual property.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Patent – an application for a patent in respect of an invention may be made by the inventor or by any other person acquiring from him the right to apply, or by both such inventor or such other person.

Design – the proprietor of a design is either: (a) the author of the design; (b) where the author of the design executes the work for another person, the other person for whom the work is so executed; (c) where a person, or his employee acting in the course of his employment, makes a design for another person in terms of an agreement, such other person; or (d) where the ownership in the design has passed to any other person, such other person.

Trade Mark – the proprietor of a trade mark is the person who first used the trade mark in respect of goods or services, or the person who first registered the trade mark in respect of goods or services, whichever is the earlier.

Copyright – ownership of copyright in a work vests in the author or, in the case of joint authorship, in the co-authors of the work. However, the following exceptions apply:

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- Where a literary or artistic work is made by an author in the course of his employment by the owner of a newspaper, magazine or similar periodical under a contract of employment, and is so made for the purpose of publication in said periodical, the owner of the periodical shall be the owner of the copyright in the work insofar as the copyright relates to publication of the work in said periodical or to reproduction of the work for the purpose of it being so published. In all other respects, however, the author shall be the owner of any copyright subsisting in the work.
- Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of a cinematograph film or the making of a sound recording and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, such person shall be the owner of any copyright subsisting therein.
- Where a work is made in the course of the author's employment by another person under a contract of employment, that other person shall be the owner of any copyright subsisting in the work.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

South Africa has acceded to the Patent Cooperation Treaty, which makes it possible to seek patent protection for an invention simultaneously in each of a number of countries (including in South Africa) by filing an "international" patent application.

The Trade Marks Act affords protection to trade marks that are entitled to protection as well-known trademarks under the Paris Convention on the Protection of Industrial Property of 20 March 1883, as revised or amended from time to time.

The Copyright Act makes provision for the extension of the application of the operation of the Act to other countries by way of publication of a notice in the Government Gazette listing such countries. The last published notice was GN 136/1989 in Government Gazette 1178 dated 3 March 1989.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

Intellectual property rights may be exploited in a number of ways, including through licensing agreements, mergers or sales, joint ventures or collaboration agreements, and the like. Certain anti-competitive rules are prohibited from being included in such commercial agreements relating to the sale or licensing of intellectual property rights, in particular patents.

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Professor Angela Itzikowitz is a director in ENSafrica's Banking and Finance department. She specialises in banking and financial market regulation, including finance and regulatory reform, card and related electronic payment instruments, derivatives, loan agreements, collective investment schemes, insurance, and fintech.

She has done a significant amount of work in South African Development Community ("SADC") countries such as Uganda, Kenya and Zambia, including regulatory law reform through capacity building projects. Angela has participated in a number of financial market initiatives in Asia in collaboration with colleagues from Beijing, Shanghai, Hong Kong and India. She also acts for a number of European banks, asset managers and investment advisors.

In addition, she has been recognised as a leading Fintech lawyer, advising banks and start ups.

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- *Best Lawyers*® 2018, 2017, 2016 – Banking and Finance (South Africa).

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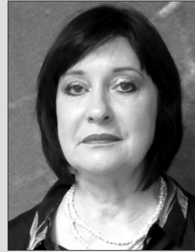

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