

Consequences of failing to comply with information legislation

By [Simon Watson](#)

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Many investors, executives, directors and employees are aware of laws and procedures, restrictions and limitations, mandatory actions and the risk of severe penalties relating to running a business.



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Unfortunately they are not always familiar with the details of the related legislation and how to practically implement and monitor compliance.

In the first half of 2014 fines totalling in excess of R120m were imposed on various banks for failing to comply with money laundering controls. This has sent a signal to all businesses of the risks for failing to comply with legislation regulating information.

The fines imposed related to a failure, amongst other things, to collect and store information prescribed by the Financial Intelligence Centre Act, also known as FICA. Part of the fines also related to repeated failures to report cash transactions in excess of R25,000 to the Financial Intelligence Centre, the regulatory body established in terms of FICA.

Many mediums

Companies these days deal with extremely large amounts of information obtained and transmitted in many ways including meetings, telephone calls, the internet, employment applications, credit applications, due diligence investigations, banking transfers, letters, faxes, text messages, advertising mediums and emails. Because there are many mediums through which information can be transmitted, it can easily find its way to the wrong recipient and get lost, ignored or misused, all of which can have potentially negative legal consequences.

The regulatory issues relating to information include what information is collected, how it is stored, processed and used and

with whom and how it is shared. There are restrictions on the collection of certain types of information, compulsory record keeping criteria for other types of information and in some instances mandatory disclosure requirements.

In today's fast paced, competitive and regulated environment a coordinated information management system is critical for business efficiency and for being compliant with a myriad of legislation. Unfortunately, it is impossible to set up or maintain an effective information management system if those involved in both its creation and daily use are not familiar with the relevant legal framework.

Companies often spend large sums of money setting up high tech information management systems which assist with compliance, however very few if any directors or employees are able or willing to spend time reading hundreds of pages of regulations. Furthermore, if effort is made to read the regulations there is a risk that the knowledge will not be retained because practical situations are not confronted on a regular basis.

Practical issues

LexisNexis South Africa in partnership with Cox Yeats and ENS Africa have produced Practical Guidance Corporate Governance in order to overcome this challenge. While the solution focuses on practical issues relating to the Companies Act and the related company regulations, guidance is also provided on the application of King III, various environmental legislation as well as laws relating to information such as the:

- Promotion of Access to Information Act
- Protection of Personal Information Act
- Financial Intelligence Centre Act
- Prevention of Organised Crime Act
- Prevention and Combating of Corrupt Activities Act
- Protected Disclosures Act

Answers to practical questions are provided along with checklists, precedents, updated case law summaries and references to further relevant material. These resources are intended to assist directors and others involved in a company's operations with making timeous and confident decisions relating to corporate governance issues and information.

ABOUT THE AUTHOR

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