

all, SARS will have irrefutable proof that you are no longer a resident for tax purposes and so you will have broken the link to world-wide taxation in South Africa on all your income and capital gains.

**The unintended consequence?** Of course, as with the previous topics I have covered, there can be some curved balls to look out for with a formal emigration. There are restrictions on local credit cards (you have to relinquish them) and on your local bank account (your account will be monitored to ensure you do not become a 'courier',

exporting other peoples' funds via your account). The big one to be aware of, however, is that on emigration you are deemed for capital gains tax purposes to have disposed of all your local assets at market value - so you will have to account for CGT even on assets you leave behind and don't sell up.

Take professional advice to get it right for your particular circumstances - whether you are planning to emigrate or if you left South Africa ages ago without emigrating.

## sisters are doing it for themselves

*Whatever women do they must do twice as well as men to be thought half as good.*

*Luckily, this is not difficult.*

*- Charlotte Whitton*

Venn Nemeth & Hart recently participated in Cell C's Take a Girl Child to Work® program.

Cell C introduced the initiative eight years ago to address the under-representation of

women in the formal economy. The program has enjoyed unrivalled success ever since.

For one day every year, Cell C encourages the private and public sectors to host Grade 10-12 girl learners and to expose them to a range of career opportunities.



Sarah Bulcock, Kirsch Bezuidenhout, Lulama Phungula, Shantell Smith, Liza Bagley.  
Front: Virginia Malila, Precious Nene, Wandiswa Mahaye and Kee-Lean Smith

Five young ladies knocked at our door this time around, and spent the morning accompanying attorneys to various courts. Liza Bagley, an associate and one of our female success stories, enjoyed sharing her experiences with the girls.

After a lunch for mums and daughters, the ladies headed back to school ... hopefully with some interesting new options to consider for their future careers.

## nagesh on the up

*A leader is a dealer in hope.*

*- Napoleon Bonaparte*

Nagesh Maharaj was recently appointed to the board of directors.

Nagesh joined our firm in 2006 and has grown his practice as a road accident, personal injury and medical negligence lawyer. Nagesh has earned our respect as an extremely capable litigator.

Incidentally, Nagesh is also a drag racing enthusiast. But the wheels stopped spinning promptly on the birth of his beautiful baby daughter, eighteen months ago!



Nagesh Maharaj  
Litigation Division

## prizes galore

*The clever men  
Know all there is to know  
But they none of them know  
As intelligent men*

*- spoken by that irascible  
the Wind in the Willows*



Caig Blackmore (candidate attorney), Hannah Szudrawski (director),  
Zama Sokhela (candidate attorney), Nosipo Mgojo (director) and  
Deon Schaup (director)

Deon Schaup, a senior director at Venn Nemeth & Hart, recently presented the Venn Nemeth and Hart prize to the top student in the Law of Contract at the annual University of KwaZulu-Natal Law Faculty prize-giving. Imraan Cohan scooped the award with 86% in this important area of commercial law.

Zama Sokhela, a candidate attorney with our firm, was honoured for being part of the team

that won the 2010 Moot competition. The Moots are held annually and involve teams competing in mock court proceedings. The teams are given scenarios and are required to argue for and against defined positions.

Another Venn Nemeth and Hart candidate attorney, Craig Blackmore, scored the top marks in gender studies.

# LAW LETTER

Supplement

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ATTORNEYS

## services directory

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Matthew Francis

**Agency Conveyancing**  
Leanne Holder  
Redvers Lee

**Banking Law & Foreclosures**  
Avinesh Dursen  
Pat Dewes  
Robert Stuart-Hill

**Constitutional**  
Matthew Francis  
Pat Dewes  
Tim Brown

**Conveyancing & Sectional Title**  
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Nosipo Mgojo  
Redvers Lee

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John Wallace  
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Simon Francis  
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Yuri Maharaj

**Debt Recoveries**  
Anthony Grant  
Dudu Dlamini  
Garnet Venn  
Hellen Dolphin  
Hendrika Forrester  
Jayshre Bagwandeen  
Janine Boucher  
Jeanne Smith  
Maureen Krog  
Mohammed Motala  
Michael Swanepoel  
Ronitha Sarupen  
Velile Radebe

**Estates Administration**  
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John Wallace  
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**Environmental**  
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**Liquor Law**  
Chuma Vabaza  
Tim Brown

**Litigation & Alternative Dispute Resolution**

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Chuma Vabaza  
Deon Schaup  
Kashi Rampararat  
Liza Bagley  
Nagesh Maharaj  
Pat Dewes  
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Yuri Maharaj

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**Public & Local Government**  
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John Wallace  
Simon Francis

**Trusts & Wills**  
Bob Williams  
Hannah Szudrawski  
John Wallace  
Simon Francis

# focus on the commercial division

*A holding company is the people you give your money to while you're being searched.*  
- Will Rogers



John Wallace, Simon Francis and Tim Brown - Commercial Team

John Wallace, Simon Francis and Tim Brown make up our Commercial Team. We found out more about what these business lawyers get up to ...

**We like to think that we're the creative guys.** Our work comes in early - setting up contracts, restructuring businesses and giving advice. Later, if a dispute comes along, we hand over to the heavies ... our colleagues in the Litigation Team. Hopefully, the solid contracts and sensible structures you put in place early on pay dividends when the going gets rough, providing much-needed protection to the parties.

**What we like about business law, at the end of the day, is that it is about business.** Whether its IT, construction or farming, we *like* hearing about our clients' businesses. We also enjoy visiting our clients at their premises. A real treat is a tour of a client's new milking parlour or manufacturing plant. This adds a whole new dimension to our work, giving greater practical insight into potential risks and vulnerabilities.

**A lawyer who can write plainly?** You may be sceptical, but we have been working on plain language drafting for years. This means that our contracts should not have legalese, overly-complex wording or sentences so long that you forget the point

mid-way. Our greatest satisfaction is when a client reports that one of our contracts was a pleasure to read!

**We do a lot of restructuring, from re-organising farming enterprises to listed companies.** Like a good contract, a sensible business structure is worth its weight in gold. A good structure, including business entities and trusts, can work together, can ring fence projects, provide for tax efficiency and protect assets from creditors.

**The Consumer Protection Act affects literally all our clients.** There is a lot of negative press about the Act but, as with everything, there are more challenges than problems. Careful redrafting of consumer documents and an audit of business practices will reveal creative ways to respond ... and to get ahead of the competition.

**The newly-enacted Companies Act is a similar challenge.** If business can be compared to a game, then the rules have changed. Some things stay the same, but in other areas it will be like playing Monopoly

with Scrabble rules. Every business needs to be re-assessed. Articles of Association and shareholders' agreements need to be

carefully re-drafted and re-lodged with the CIPC, the new version of CIPRO.

## sa expats, citizenship and residency part three

*The Swiss are not a people so much as a neat, clean and quite solvent business.*  
- William Faulkner

In the previous two editions of our newsletter, I tackled the problems relating to citizenship and the residency rules for income tax. In this, the final part of the series, I deal with exchange control.

**Exchange control residency** is perhaps the simplest of the concepts we have dealt with so far. The South African Reserve Bank takes the view that once you are a resident for exchange control (whether by birth or naturalisation) you remain a resident until you complete and file an MP336b form via your local bankers. This form is called an 'emigration form' and includes a declaration of your local assets and liabilities at the time of your intended departure from the country.

As mentioned in the first article in this series, most folk leave South Africa without completing this emigration form under the mistaken belief that submitting the form will somehow impact on their citizenship rights. This fear may arise because the signature portion of the form includes a declaration that one is *"permanently relinquishing my/our South African residence to take up permanent residence in the country specified"*. But the fear is unfounded because the right to reside in South Africa stems from one's *citizenship*, and the form does not include a renunciation of citizenship or the right to reside in South Africa at any time in the future.



John Wallace  
Commercial Division

The emigration form also includes an undertaking to repatriate any funds exported from South Africa if the person returns to live here permanently within five years from the date of emigration. This is designed to thwart anyone who plans to quickly emigrate to get money out the country without any real intention of moving permanently abroad. The Reserve Bank will be on the lookout for folk who try and get around exchange controls in this way.

**Why emigrate for exchange control?** Simply because, by doing so, you will be able to take all of your assets and investments out of South Africa without restriction. The levy payable to the Reserve Bank on amounts in excess of R4 million in exported funds has been cancelled. Inheritances will also be free to flow abroad from local benefactors. Those who have retirement annuities 'trapped' in South Africa will be able to terminate these products, pay income tax and export the full net proceeds without having to wait for income payments to trickle in over time. If you return to South Africa after you have spent five or more years abroad, you will be able to retain your offshore assets. Perhaps most important of

