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BIODIVERSITY CONSERVATION ACT ENVIRONMENTAL LAWYER PERSPECTIVE

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OUTLINE

1. Interpreting Legislation
2. The major components of the Biodiversity Conservation Act
3. Decisions to be made
4. How decisions should be made
5. Crimes that may be committed
6. The Consultant's role – opportunity and risk

INTERPRETING LEGISLATION

- The Long Title
- The Objects
- The Principles

These are the foundation for every decision under the Act

CONSERVE, MANAGE, PROTECT AND USE

- Act establishes comprehensive regime
- Listings, recovery, plans, conservation agreements, criminal offences, etc.
- Plus regulations, Codes and guidance to come
- But also an enabler for use of environmental assets

THE “ADMINISTRATIVE” AREAS OF THE ACT

- The decisions to be made
- People (ie consultants’ clients) may be affected - opportunity
- Will have either a statutory right to be consulted or a common law right
- Consultants to help on merits and process
- Merits – start at the objects and principles
- What is a proper process?

DECISIONS WILL INVOLVE:

- Listing species
- Restricting use of land
- Giving out licences
 - tourism
 - “farming”
- Codes and Regulations s192 and s193
- Species protection – biodiversity management programmes, recovery plans
- Guidance s261

OTHER DMA'S

- Other DMA's - must have regard to certain things eg Biodiversity Conservation Programme
- The old Roe 8 mandatory -v- non mandatory relevant considerations
- Reminder: These are all administrative law exercises needing advice in complex/opposed matters ⇒ common law rights of affected parties

AGREEMENTS

- Biodiversity Conservation Agreement s114
- Conservation covenant s122

CRIMES

- Look at elements of offence and defence
- eg do not take, harass fauna
- Can do if lawful authority eg tourism licence
- Big penalties
- Consultants to report relevant results of surveys s43

FINAL WORD

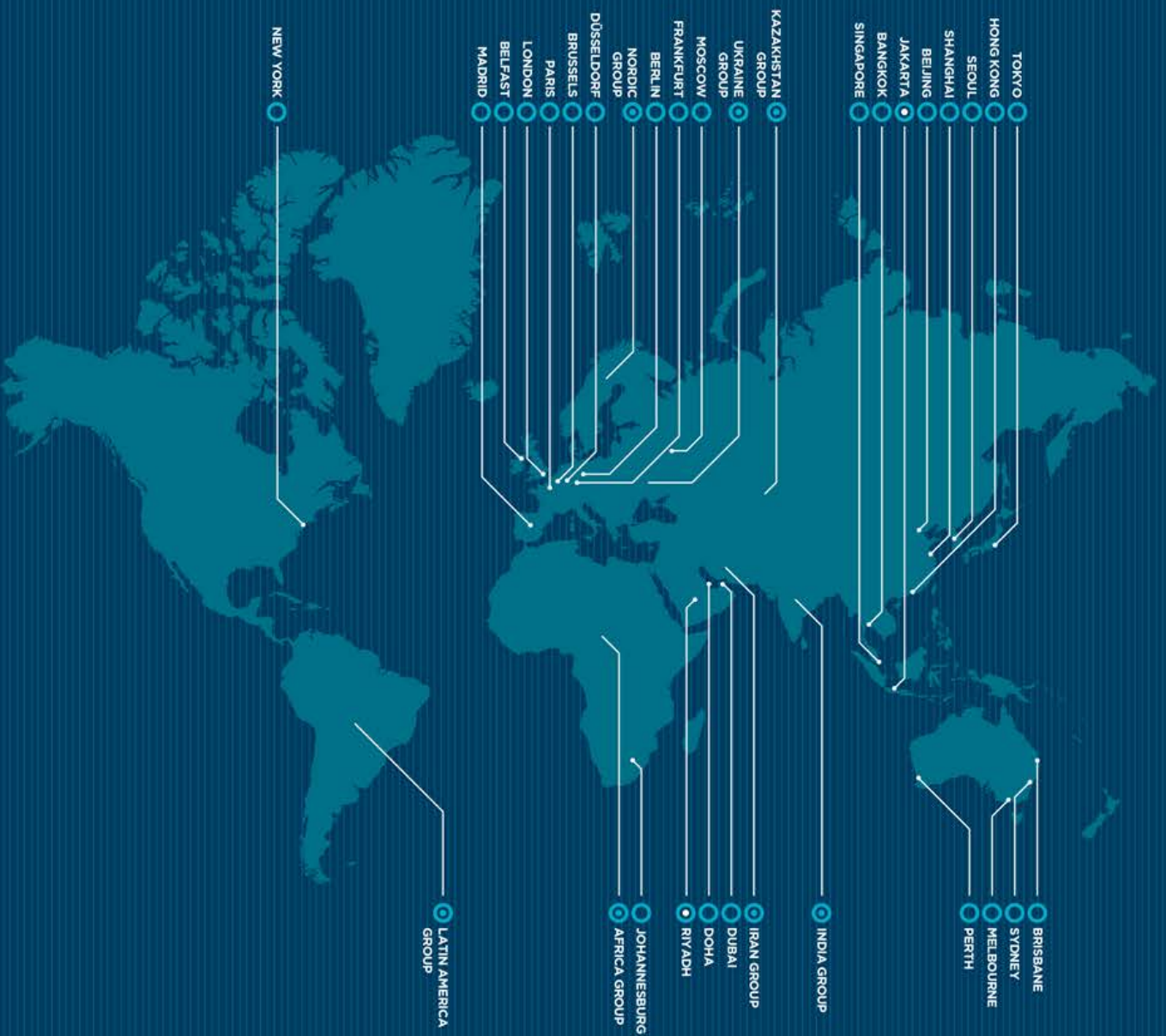
- A comprehensive regime, if well implemented, that will be an important tool in conservation and use of natural resources
- A multitude of decisions where clients of consultants will need representation
- Consultants role in merits arguments and ensuring due process
- Don't be a party to a crime
- Fulfil the reporting obligation

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