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CORPORATE INVESTIGATIONS ALERT

IN THIS ISSUE >

Desperate times: Desperate people

Accountable and reporting institutions should be preparing now for an increase in financial crime. According to statements made by the International Monetary Fund's Chief Economist Gita Gopinath in April, *"The Great Lockdown is the worst economic downturn since the Great Depression, and far worse than the Global Financial Crisis [of 2008]"*. She added that, *"For the first time since the Great Depression both advanced economies and emerging market and developing economies are in recession"*. As a leading emerging economy, South Africa will be amongst the worst affected by the rise in organisational insolvency and unemployment during the global economic recession and its aftermath.

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Desperate times: Desperate people

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The President, in his address on 23 April 2020, outlined the incremental upliftment of lockdown measures and dashed any hope of a return to normal operations in the near future. South African businesses are already under substantial pressure just to survive and this is not going to improve for some time. An increase in accounting fraud or "cooking the books" as a survival tactic is to be expected as people become more desperate. This is especially so in the tertiary sector, where tourism, retail and entertainment businesses are hard-hit by the national lockdown. Their businesses are only scheduled to reopen in Stage 1 and their restart is probably many months away.

It is self-evident that organisations should be actively looking for signs of criminal activity, potential red flags and fraud indicators, both within their workplace and when dealing with external parties. Whistleblower tip-offs, received from both internal and external sources, are widely recognised as an effective and leading mechanism to detect and prevent fraud and impropriety in the workplace and should be actively encouraged during this time. Employees are essential to the detection and prevention of illegal activity in the workplace as they are most likely to witness incidents of fraud and other criminal activity first-hand, and are in a position to report suspected or actual criminal activity to their employers.

Accountable and reporting institutions (AIs and RIs) as defined in the Financial Intelligence Centre Act 38 of 2001 (FICA), such as banks, estate agents and long-term insurance businesses are also encouraged to heighten their vigilance of high risk business relationships and monitor the occurrence of red flags and financial crime indicators. These include transactions which are inconsistent with a client's business profile including large deposits beyond the scope of salary payments from an employer, dormant or newly opened accounts showing sudden high volumes of transactions, or unexpected high value transactions and activity occurring in geographic locations not usually associated with a client.

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The lockdown has bought us time to prepare for what is to come. It would be prudent to include in those preparations arrangements to protect businesses from criminals.

Desperate times: Desperate people *...continued*

To mitigate against their exposure to instances of corporate fraud, South African organisations, AIs and RIs are encouraged to reinforce their existing anti-corruption controls, in particular the swift investigation of whistleblower tip-offs. AIs and RIs are also required to continue to fulfil their reporting obligations and file regulatory reports timeously during all levels of lockdown.

On 24 March 2020, the Financial Intelligence Centre (FIC) indicated in a web notice that there will be no relaxation of obligations during the lockdown. According to section 29 of FICA, the obligation to report non-compliant, suspicious and unusual transactions is placed on a person "who knows or ought reasonably to have known or suspected" that such a transaction had taken place. In terms of FICA, a reasonable suspicion triggers a reporting obligation although the reporter's suspicion ought to be based on an assessment of all the known circumstances relating to the relevant transaction. These include knowledge of the client's business, financial history, background and behaviour. Suspicious transaction reports must be made online using the FIC's web reporting platform "goAML".

In addition, any person in a position of authority "who knows or ought reasonably to have known or suspected" an offence of

corruption, theft, fraud, extortion, forgery or uttering of a forged document involving an amount of R100,000 or more, has a duty in terms of section 34 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 to report their knowledge or suspicion to the Directorate for Priority Crime Investigation of the South African Police Service. A failure by that person in authority to report makes that person guilty of an offence, and liable upon conviction to a fine or imprisonment. It is not necessary for one to have proof of the offence being committed and the obligation arises as soon as there is a reasonable basis to inform such a suspicion.

Initial predictions suggested that this virus would affect us adversely for a couple of months, but scientists are now predicting that the peak of infections in South Africa will only be reached in September. Whilst there is growing criticism of some aspects of the emergency measures, there is consensus that the lockdown has bought us time to prepare for what is to come. It would be prudent to include in those preparations arrangements to protect businesses from criminals. Bearing in mind that the Great Depression lasted for almost 10 years, you may have a long time to regret neglecting those preparations.

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CDH'S COVID-19 RESOURCE HUB

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