

12 OCTOBER 2021

DISPUTE RESOLUTION ALERT

IN THIS ISSUE

A lawyer's duty of care: With great responsibility comes great risk

The Financial Intelligence Centre Act 38 of 2001 (FICA) prescribes control measures by which various institutions are to, among other things, verify the identities of their clients and the authenticity of their ongoing and intended transactions. Measures like these not only ensure that sectors such as the legal profession function on ethical standards, but safeguard the professionals themselves from inadvertently enabling criminal activity.



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

[CLICK HERE](#) 

FOR MORE INSIGHT
INTO OUR EXPERTISE
AND SERVICES

A lawyer's duty of care: With great responsibility comes great risk

According to an advisory update issued by the Legal Practice Council on 17 June 2021, the Financial Intelligence Centre conducted 207 compliance inspections between 1 April 2020 and 30 March 2021 and found that 80% of legal practitioners were non-compliant with FICA.

The Financial Intelligence Centre Act 38 of 2001 (FICA) prescribes control measures by which various institutions are to, among other things, verify the identities of their clients and the authenticity of their ongoing and intended transactions. Measures like these not only ensure that sectors such as the legal profession function on ethical standards, but safeguard the professionals themselves from inadvertently enabling criminal activity.

According to an advisory update issued by the Legal Practice Council on 17 June 2021, the Financial Intelligence Centre conducted 207 compliance inspections between 1 April 2020 and 30 March 2021 and found that 80% of legal practitioners were non-compliant with FICA.

This was unfortunately the case with a prominent solicitor from the UK who caught himself in a lie and was reprimanded by the Solicitors Regulation Authority (SRA). For purposes of this Alert, we refer to him as Mr Solicitor.

Mr Solicitor found himself with a client who needed assistance with confirming an agreement. The client, Mr A, borrowed £53,000 from Mr B. With this money, Mr A purchased property that he intended to renovate and resell, proceeds of which would go back to Mr B. Mr A approached Mr Solicitor for assistance in confirming the agreement, thereby reassuring Mr B of the transaction.

Mr Solicitor initially attended to the necessary verification of his client. He received Mr A's identification but failed to request evidence of Mr A's residency or ownership of the purchased property. He then drafted a declaration of trust, which outlined who would own what in the property and the financial arrangements going forward. Mr Solicitor's idea was to have the declaration registered against the property. After Mr B signed the declaration, it was submitted to Her Majesty's Land Registry. The same registry then contacted Mr Solicitor informing him that Mr A was not the registered owner of the property and rejected his application. Shortly thereafter, Mr B was informed by his relatives that he might have been a victim of fraud. When the matter was reported to the local police station, this unfortunately seemed to be the case. Mr A was eventually tried and convicted of fraud and theft.

Mr Solicitor also found himself in hot water when he admitted that though he had drafted the declaration of trust, he had failed to conduct his proper due diligence by confirming that his client indeed owned the property. The SRA did not take kindly to his blunder, regardless of Mr Solicitor's true intentions. Though Mr Solicitor otherwise had a clean record and this clearly was a one-time shortcoming on his part, in order to remind the legal fraternity of its intolerance towards poor fact checking, the SRA rebuked Mr Solicitor.

A lawyer's duty of care: With great responsibility comes great risk

...continued

In the South African context, sanctions for failure to comply with FICA can have serious consequences. These can be as light as a slap on the wrist through a reprimand, or as high as a fine of R50 million.

Compliance in South Africa

In the South African context, sanctions for failure to comply with FICA can have serious consequences. These can be as light as a slap on the wrist through a reprimand, or as high as a fine of R50 million. The incident with Mr Solicitor is a reminder to the legal profession across the board of the importance of compliance with regulatory legislation. Section 21B of FICA calls upon all legal practitioners to ensure that proper due diligence is conducted to establish the nature of their clients' businesses, ownership and control. Section 21D further empowers practitioners to repeat the steps in section 21B where doubt may have been cast on the veracity of submitted information.

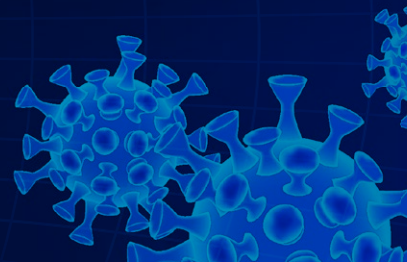
Mr Solicitor's story might even reveal that some, if not most, non-compliance incidences are unintentional and rather a result of poor fact checking.

Though a particular check may seem tedious, especially in instances where there is a longstanding relationship with a client or because of the way the facts appear before the practitioner, with great risk comes great consequence where FICA is considered. Where the stakes are so high that a fine of R50 million may be imposed, it does not hurt any practitioner or tread with caution.

Mongezi Mpahlwa and Esther Ooko

CDH'S COVID-19 RESOURCE HUB

Click here for more information 



OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa and Kenya, please contact:



Tim Fletcher
Practice Head
Director
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com



Thabile Fuhrmann
Chairperson
Joint Sector Head
Government & State-Owned Entities
Director
T +27 (0)11 562 1331
E thabile.fuhrmann@cdhlegal.com

Timothy Baker
Director
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester
Director
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Jackwell Feris
Sector Head
Industrials, Manufacturing & Trade
Director
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Anja Hofmeyr
Director
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Tobie Jordaan
Sector Head
Business Rescue, Restructuring
& Insolvency
Director
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com

Corné Lewis
Director
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Richard Marcus
Director
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer
Director
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Rishaban Moodley
Sector Head
Gambling & Regulatory Compliance
Director
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com

Mongezi Mpahlwa
Director
T +27 (0)11 562 1476
E mongezi.mpahlwa@cdhlegal.com

Kgosi Nkaiseng
Director
T +27 (0)11 562 1864
E kgosi.nkaiseng@cdhlegal.com

Byron O'Connor
Director
T +27 (0)11 562 1140
E byron.oconnor@cdhlegal.com

Desmond Odhiambo
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhoodie
Director
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com

Clive Rumsey
Sector Head
Construction & Engineering
Director
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba
Director
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit
Director
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Joe Whittle
Director
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse
Executive Consultant
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

Jonathan Witts-Hewinson
Executive Consultant
T +27 (0)11 562 1146
E witts@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

CVS Plaza, Lenana Road, Nairobi, Kenya. PO Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2021 10491/OCT



INCORPORATING
KIETI LAW LLP, KENYA



As part of our firmwide greener living policy, CDH supports the campaign for Greener Arbitrations.



DISPUTE RESOLUTION | cliffedekkerhofmeyr.com