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## Advisory

17 June 2021

### **Financial Intelligence Centre (FIC) legal practitioner's inspections**

1. The Financial Intelligence Centre Act 38 of 2001 (FIC Act) directs the Financial Intelligence Centre (FIC) to combat money laundering and the financing of terrorist and related activities. It does this by seeking to:
  - Supervise and enforce compliance with the FIC Act
  - Facilitate effective supervision and enforcement by supervisory bodies
  - Receive financial data from accountable and reporting institutions
  - Share information with law enforcement authorities, intelligence services, the South African Revenue Service, international counterparts and supervisory bodies
  - Formulate policy regarding money laundering and the financing of terrorism
  - Provide policy advice to the Minister of Finance
  - Uphold the international obligations and commitments required by the country in respect of anti-money laundering and combating financing of terrorism (AML/CFT).
2. The FIC issued a report to the Legal Practice Council on the Inspections and Compliance reviews conducted by the FIC in terms of a Memorandum of Understanding (MOU) signed between the FIC and LPC on 5 November 2019 where FIC is delegated the supervisory responsibilities of the LPC.
3. The FIC conducted 207 compliance Inspections and 9 compliance onsite reviews covering the period 1 April 2020 – 31 March 2021 so as to assess the level of compliance by legal practitioners supervised in terms of the MOU and FIC Act.
4. In respect of the 207 Inspections approximately 80% of the legal practitioners were found non-compliant, with the most common non-compliance relating to:
  - Failure to register with the FIC.
  - Failure to have a Risk Management and Compliance Programme
  - Failure to conduct Customer Due Diligence and
  - Failure to report
- 4.1 The majority of reports submitted to the FIC by legal practitioners were Cash Threshold Reports (2493 reports per year), which indicates that cash is used to pay for legal services. This increases the money laundering risks of the industry.
- 4.2 During the same period of Inspection, an average of 231 Suspicious Transactions Reports (STRs) were filed by legal practitioners. No Terrorist Property Reports (TPRs) were submitted during this time.
- 4.3 The volumes of reports received from legal practitioners were regarded as low in comparison to the number of legal practitioners on the LPC database.

5. The FIC will be referring matters to Council, where legal practitioners have been found to be noncompliant with their FIC Act obligations, for the imposition of administrative sanctions.
6. Legal Practitioners could potentially face disciplinary charges for breaching the Code of Conduct in terms of section 18.17:  
*'Take all such steps as may be necessary from time to time to ensure compliance at all times as an accountable institution with the requirements of the Financial Intelligence Centre Act, 38 of 2001'*
7. According to Section 45C (3) of the FIC Act, the Legal Practice Council as a Supervisory Body may impose one or more of the following administrative sanctions when a legal practitioner has failed to comply with the provision of the FIC Act:
  - a) *'a caution not to repeat the conduct which led to the non-compliance referred to in subsection*
  - b) *a reprimand;*
  - c) *a directive to take remedial action or to make specific arrangements;*
  - d) *the restriction or suspension of certain specified business activities; or*
  - e) *a financial penalty not exceeding R10 million in respect of natural persons and R50 million in respect of any legal person'*
8. In terms of Section 45C (7) (a) *'Any financial penalty imposed must be paid into the National Revenue Fund within the period and in the manner as may be specified in the relevant notice'.*
9. As part of the methods to improve compliance, the LPC will be issuing a series of advisories to raise awareness to legal practitioners in addressing the findings of non-compliance issued by FIC, but legal practitioners are advised to ensure as a matter of urgency that they are aware of all their obligations under the FIC Act, and that they become compliant before any further inspections are conducted.

**Issued by the Legal Practice Council**