IMPLICATIONS OF SOUTH AFRICA'S GREYLISTING STATUS ON LEGAL PRACTICE – FICA

Category: Commercial Law
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South Africa's presence on the grey list issued by the Financial Action Task Force ("**FATF**") came with little to no shock to South Africans. The FATF is an inter-governmental body that monitors financial activities within the global financial system. The FATF also develops policies and monitors compliance with them to prevent money laundering, proliferation financing and terrorism financing.[1] Countries are placed on the grey list by the FATF when they fail to comply their policies and standards and are subject to enhanced monitoring. South Africa's grey list status has significant consequences. From an economic perspective, investors find it difficult to invest in a country that has a high risk of facilitating money laundering and terrorism financing.[2] From a legal perspective, there are implications for law firms. The Financial Intelligence Centre, ("**FIC**"), an entity that enforces measures to combat money laundering and terrorism financing, will scrutinise transactions of law firms and its clients and compliance with the Financial Intelligence Centre Act ("**FICA**").

FICA sets out standards for accountable institutions to adhere to for the purposes of combating money laundering and financing of terrorist and related activities. Legal practitioners are listed in schedule 1 of FICA as an accountable institution and must comply with the standards of the FATF. Accountable institutions are expected to conduct enhanced due diligence and adopt a risk-based approach,[4] prior to establishing a business relationship with a client. FICA requires that accountable

institutions verify its clients' identities and ensure that the business relationship is clearly established and understood.[5] Additionally, legal professionals must establish the nature of their client's business and beneficial ownership. FICA compliance necessitates a clear understanding of FICA's provisions and FATF standards. If it is impossible to conduct a due diligence, the accountable institution (legal practitioner) may not establish a relationship with the client and must terminate any existing relationship.[6]

A duty is imposed on all legal professionals to have a risk management and compliance programme in place.[7] Law firms must implement FICA compliance programmes and train their staff. This is to ensure that all employees understand how to ensure compliance with FICA and the consequences of failing to comply. Staff should be trained on the information and documents to obtain from clients and how to deal with each client, in respect of their legal status. Additionally, it is important for the client to be made aware of the process, the requirements, and the implications of the "know your client" process. The compliance programme can be drafted by asking what FICA requires of accountable institutions and how the law firm intends to achieve compliance with FICA provisions. For example, FICA requires that cash transactions above a prescribed limit are reported. The law firm may assess how the client will pay for the services and can inform the client of this provision to ensure that it is aware that such transaction will be reported to the FIC.

South Africa's presence on the grey list has put the country under a lot of pressure and the main objective is to ensure that South Africa is off the list. The FIC will closely be monitoring accountable institutions including legal practitioners and will be watching for non-compliance The most important take away is that FICA requirements must be complied with and should not be underestimated.

For more information, please do not hesitate to contact us.

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[1] National Treasury "What does FATF greylisting mean for a country?" 2023

2023022501 FATF Grey Listing Fact Sheet.pdf (treasury.gov.za)

[2] News2wire "South Africa has been greylisted" 2023 – (Polity – South Africa has been greylisted (24 – 02 – 2023)

[3] 38 of 2001.

[4] See footnote number 1 above.

[5] See footnote number 4 above, section 21.

[6] See footnote number 4 above, section 21E.

[7] Myemane "How FICA affects you and your legal practice" 2019 – How FICA affects you and your legal practice – De Rebus