



## financial intelligence centre REPUBLIC OF SOUTH AFRICA

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### **Attorneys vulnerable to abuse by criminals**

**Tuesday, 20 August 2013:** With recent international reports suggesting that the size of the illicit economy world-wide could be as large as the economy of a leading state<sup>1</sup>, the pressure is on law enforcement authorities to clamp down on such activity with greater effectiveness. Core to the growing underground economy is the ability of criminals to launder their profits.

To do this, criminals use various methods, often finding new ways to outsmart the authorities. One technique found around the world is the abuse of the services offered by the legal profession. As testimony of the significance of criminal intent, global anti-money laundering standards-setting body, the Financial Action Task Force, commissioned a typology report on this in 2012.

The results were recently released in a document entitled “Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals”.<sup>2</sup>

Although South Africa was not a focus country for the project, many of the findings have resonance in our environment, particularly issues such as immovable property transactions, the creation and management of trusts and companies, and the setting up and management of charities.

The FATF report makes the point that, while there have been instances in which attorneys opted to participate in money laundering, in most instances the legal professional’s involvement is not done with criminal intent. The criminal will select an attorney because the service he/she offers is core to the transaction needed for the money laundering to take place. In addition, “legal professionals add respectability to the transaction”, says FATF.

“A point of significance for us and for attorneys is that those involved in legal work must be alert to the red flags that could suggest that a client’s business may not be above board,” says Christopher Malan, executive manager of the Compliance and Prevention department at the Financial Intelligence Centre (FIC).

“Heightened awareness of pointers to look for is likely to help law enforcement authorities identify criminals and take appropriate action against them, while at the same time protecting law-abiding legal professionals from being linked to criminal activity.”

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<sup>1</sup> 'Global organized crime as big as a G20 nation', *Agence France-Presse*, 30 July 2013

<sup>2</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>

Some of the red flags that attorneys should be aware of include:

- A client pays funds into the attorney's bank account and requests that most of the funds be paid back to the client at a later date but no legal service has been requested. An example would be where someone from another country who is not known to an attorney here contacts him/her electronically, asking that the attorney acts on his behalf in the purchase of goods from South Africa. The work involved does not require the specific skills of a legal practitioner. Once the transaction has been finalised, the attorney pays the supplier, deducts his fees and pays any remaining amount over to the client.

Similarly, the criminal may be aware of the need for there to be an underlying legal service and may request a service but later cancel the request. When this happens, the legal professional must be conscious of warning signals like a request to pay the unused funds to a third party. South African anti-money laundering laws consider a refund to be a transaction for purposes of compliance with customer identification and verification requirements; in addition, the attorney may need to report the activity if it appears to be suspicious.

- The structuring of payments to attempt to avoid particular legislative requirements. If, for instance, a client pays an attorney via a number of separate cash payments, all just under R25 000, this should be a red flag to the attorney. The Financial Intelligence Centre Act, No 38 of 2001, obligates the attorney to report a transaction involving a cash payment of R25 000 or more to the FIC. The reason for this is that the proceeds of crime are often in the form of cash and so criminals will try to 'get rid' of the cash and, ideally, convert it into another form – which is of a more acceptable, legal nature.
- Property purchases are a useful means for laundering ill-gotten money because property is generally an appreciating asset and because a later sale will generate funds that appear to be completely legitimate. Attorneys should be aware of behaviour relating to property purchases that could indicate criminal activity, e.g.:
  - The full purchase price is paid in cash before the documentation for the purchase has been finalised
  - There is a large amount of private funding paid over to secure the transaction yet the amount is at odds with the purchaser's socio-economic profile
  - Someone buys properties and concurrently arranges to sell them to purchasers prepared to pay a much higher price than the first person had paid.

“Crucial to the positive role that legal professionals can play in stopping this sort of activity in its tracks is awareness both of what to look out for and of what action to take when a red flag is spotted,” Malan explains. To this end, the FIC recently concluded Memoranda of Understanding with the statutory Provincial Law Societies from the Cape, Free State, Northern Provinces and KwaZulu-Natal, representing attorneys throughout South Africa. According to David Bekker, Co-Chairperson of the Law Society of South Africa and Chairperson of its FIC Committee, “In their roles as supervisory bodies, the provincial law societies will undertake to train practitioners, and keep them up to date regarding

communication from the FIC. The law societies will also undertake to carry out regular random inspections of attorneys.”

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**Note to editors:** The Financial Intelligence Centre (FIC) was established in 2003, through the promulgation of the Financial Intelligence Centre Act 38 of 2001 (FIC Act), with the purpose of identifying the proceeds of unlawful activities and combating money laundering and financing of terrorism. The organisation collects and analyses data sourced from reports submitted by accountable and reporting institutions. Where necessary, the FIC provides this analysis to the law enforcement authorities and the South African Revenue Service for further follow up. The FIC works closely with counterparts on the African continent as well as with international organisations. The FIC enhances levels of business compliance to the FIC Act, thereby reducing the possibility of financial and accountable institutions being exploited by criminal networks, which is core to enhancing the integrity of the country’s financial system. Amendments to the FIC Act were announced on 1 December 2010, which gave the supervisory bodies and the FIC powers of inspection and enforcement of the FIC Act and Regulations.

Some statistics from the 2011/12 Annual Report of the Financial Intelligence Centre:

- 14 054 accountable and reporting institutions were registered with the FIC
- 5.5 million cash threshold reports were received by the FIC during the reporting period
- 53 506 suspicious transaction reports were filed with the FIC during the reporting period, an increase of 45% on the number filed in the previous year
- 520 inspections were carried out
- The FIC experienced a 71% increase in requests for support in investigations from other organisations
- 761 matters identified by the FIC were referred to investigating agencies.

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa’s 21 400 attorneys and 5 800 candidate attorneys.

In terms of the Attorneys Act, 1979 the four statutory provincial law societies – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State and the Law Society of the Northern Provinces – are the regulatory bodies for attorneys. They will also serve as the supervisory bodies in terms of the FIC Act.

**Issued by the Financial Intelligence Centre: [www.fic.gov.za](http://www.fic.gov.za)**

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