

MEDIA RELEASE

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FINANCIAL INTELLIGENCE CENTRE ACT APPEAL BOARD RULING HIGHLIGHTS PITFALLS OF NON-COMPLIANCE WITH REGULATORY OBLIGATIONS

21 August 2024: A recent Financial Intelligence Centre Act (FIC Act) Appeal Board decision affirmed the rigour of the Financial Intelligence Centre's (FIC'S) inspection and sanctioning processes.

In addition, the judgment emphasised that accountable institutions must take their FIC Act obligations seriously to ensure no major transgressions are found during FIC inspections.

On Tuesday, 13 August 2024, the FIC Appeal Board ruled in favour of the supervisor in an appeal brought by accountable institution, Capital Point Properties. The FIC imposed administrative sanctions on Capital Point Properties for non-compliance with certain FIC Act provisions as well as a directive made in terms of the FIC Act.

The ruling follows an inspection of Capital Point Properties, an estate agency, where the FIC determined that the institution had not complied with FIC Act requirements to develop and implement a risk management and compliance programme (RMCP) timeously, and to scrutinise clients against the targeted financial sanctions (TFS) list. These are central principles in South Africa's anti-money laundering and combating the financing of terrorism (AML and CFT) control measures.

Capital Point Properties also did not comply with Directive 6 by the FIC which required certain accountable institutions – including estate agents – to file a risk and compliance return questionnaire within a specific time frame. Directives have the force of law and are seen as an extension of the FIC Act.

The estate agency's lack of compliance ultimately resulted in an administrative sanction, including a total financial penalty of R266 000, imposed due to failure by Capital Point Properties to:

- Develop and implement an RMCP timeously – R108 000
- Scrutinise clients against the targeted financial sanctions list – R108 000
- Comply with Directive 6 of 2023 on or before 31 May 2023 – R50 000.

Although the appellant remediated some of their non-compliance after the enforcement process had commenced, the fines were nonetheless applicable.

In his ruling, chair of the FIC Act Appeal Board, judge Louis Harms wrote: “The fact that a transgression has been rectified does not mean that it was not a transgression and cannot or should not be subject to a sanction.”

Executive Manager for compliance and prevention at the FIC, Christopher Malan, said the judgment emphasised that accountable institutions must participate in the inspection and enforcement stages and, when required, make thorough representations. Furthermore, the remediation of the non-compliance by the accountable institution, prior to the sanction being imposed is no bar to imposing a financial penalty as there was identified non-compliance at the time of the inspection.

“Frivolous appeals are unlikely to carry any weight at the Appeal Board,” said Malan.

“The FIC Act provides for the FIC to impose administrative sanctions under circumstances including where the institution has failed to comply with provisions of the Act, registration and directives.

“Where accountable institutions ignore their FIC Act compliance obligations, the FIC is obliged to impose administrative sanctions and possibly financial penalties to ensure a change in compliance behaviour.”

The judgment and the administrative sanction can be found [here](#) and [here](#), respectively.

Issued by the Financial Intelligence Centre
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Note to editors: As South Africa's national centre for the gathering and analysis of financial data, the role of the Financial Intelligence Centre (FIC) is to safeguard the integrity of the country's financial system and its institutions. In pursuit of this, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), mandates the FIC to assist in the identification of the proceeds of crime and assist in combating money laundering, terrorist financing and proliferation financing, to facilitate effective supervision and enforcement of the Act.

Under this legislation, financial and non-financial institutions are required to fulfil certain compliance obligations, including registering with, and filing various regulatory reports to the FIC. The information provided in these reports forms the basis for the FIC's analysis to develop financial intelligence reports for use by a wide range of law enforcement and other competent authorities, and other institutions to facilitate the administration and enforcement of the laws of the Republic. The FIC Act also sets out the enforcement and penalty regime for non-compliance with the FIC Act.

In February 2023, the country was placed under increased monitoring listed by the Financial Action Task Force, the global anti-money laundering and combating of terrorist financing watchdog organisation. Work to address South Africa's grey listing was under way in earnest in 2022/23 and will continue in the coming period. The FIC will continue its contribution in work towards exiting South Africa from the grey list as soon as possible. In the FIC environment, the 2022/23 financial year saw several legislative and regulatory changes being implemented, which speak to some of the concerns raised by FATF. Among them were changes to the FIC Act, and an increase in the types of financial and non-financial institutions required to comply with obligations of the FIC Act. Altogether, these amendments and other measures enable the FIC to source, for interpretation and analysis, transactional and other information from a broader playlist. In this way, the FIC will continue to improve its support in the justice and crime prevention arena domestically and internationally.

For more about the FIC visit www.fic.gov.za

ITEM	2022/23
Total institutions registered as at year end	45 392
Compliance events and attendees	33 events and 16 801 attendees
Compliance inspections	402 FIC and 544 supervisory bodies
Regulatory reports received	>5.3 million
Cash threshold reports received	>4.2million
Suspicious and unusual transaction reports received	558 348
Financial intelligence reports disseminated	2 393 reactive, 976 proactive, 55 on illicit financial flows
Proactive financial intelligence reports disseminated	976, of which 144 related to high priority matters
Value of suspected criminal proceeds frozen	R92.2 million
Value of proceeds of crime recovered, in which the FIC's financial intelligence was used	>R5.82 billion