

Short Notes on:

FICA: ACCOUNTABLE INSTITUTIONS AND THEIR GENERAL OBLIGATIONS?

Introduction

The Financial Intelligence Centre Act 38 of 2001, as amended (hereafter referred to as the “FIC Act”) remains a point of discussion as we move through this new era of Covid-19 regulations and mainstreamed online client relationships.

In saying that however, the FIC Act provides specific provisions which remain applicable to accountable institutions and are to be abided by.

Overview

An accountable institution is referred in the FIC Act as an entity listed under Schedule 1 of the Act which includes amongst others, attorneys and banks.

Chapter 3 of the FIC Act relates to Money Laundering Control Measures and indicates that the following, amongst others, applies to accountable institutions:¹

- a) Duty to Identify Client,
- b) Duty to Keep Record,
- c) Duty to Keep Records for the Duration Specified in the FIC Act (5 years),
- d) Should Records be kept by a Third-party- Records must be accessible by the Company. Should the third-party fail to comply with requirements, the Company shall be liable. Where the third-party has been appointed by the company to comply/ perform the duties set out in the FIC Act, their particulars must be provided by the Company to the Financial Intelligence Centre.
- e) The Financial Intelligence Centre must be allowed access to the records,
- f) Duty to Report Suspicious Transactions,
- g) The Duty to Formulate and Implement Internal Rules which allow for Compliance with the FIC Act.
- h) The Duty to Provide Training to Employees in order to Ensure Compliance with FICA Act.

¹ The Financial Intelligence Centre Act 38 of 2010 as amended, Section: 21 – 45.

Impact of FIC Act Obligations

FIC Act obligations have a number of ancillary effects for businesses which fall under the list of accountable institutions. For example, it is important to ensure that employees charged with FIC Act compliance have the proper training so as to ensure adequate and efficient collection, identification, verification and storage of the documents which allow for compliance with the aforementioned obligations.

The aforementioned obligations, per the FIC Act, may also have certain effects on the policies of a business. For example, it is important to ensure that a business has the necessary legal agreements and policies in place for the handling of the personal and/or sensitive information that may be collected in order to ensure compliance with the FIC Act.

The FIC Act also imposes penalties in respect of non-compliance with obligations. The Act imposes both a monetary penalty as well as imprisonment as a possibility for non-compliance.²

Conclusion

Legislative obligations can be difficult to navigate and with the accepted forms of identification and verification continuously changing, it is even more difficult to keep ahead of the tide. It is therefore important to consider the policy implications of such obligations to your business and to seek legal assistance in respect of the construction, interpretation and implementation of same.

Contact an Attorney at SchoemanLaw Inc for your commercial and legal law needs.

² The Financial Intelligence Centre Act 38 of 2010 as amended, Chapter: 4 *emphasis* Section: 68.