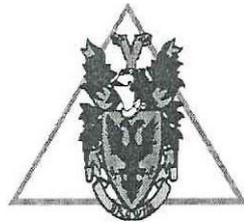


# MANUAL



**ER BROWNE INCORPORATED**

**PIETERMARITZBURG**

**ATTORNEYS: NOTARIES: CONVEYANCERS**

**PROKUREURS: NOTARISSE: AKTEBESORGERS**

## **THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001**

### **INTERNAL RULES**

This is a confidential document which is not for dissemination or use outside the firm  
without prior approval of **RAZIA SEVEUNDAN**

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## 1. INTRODUCTION

### 1.1 Objectives of the Act

Compliance with the Financial Intelligence Centre Act 38 of 2001 (as amended)  
The identification of the proceeds of the unlawful activities and the combating of money laundering activities and the financing of terrorists and related activities.

### 1.2 Requirements in terms of Act and Regulations

- 1.2.1 The identification and utility bill of clients (certified true copies)
- 1.2.2 The nature of the business relationship or transactions.
- 1.2.3 Reporting of suspicious and unusual transactions.
- 1.2.4 Reporting of cash deposits of R25 000.00 and over.
- 1.2.5 Reporting of direct cash deposits to bank of R25 000.00 and over.
- 1.2.6 Retain records for a minimum period of five (5) years.

### 1.3 This firm of attorneys appointed as an Accountable Institution

#### **ER Browne Incorporated**

### 1.4 The process of Money Laundering

Money laundering typically takes place in a three-step process, as follows:

- 1.4.1 Placement - the initial stage in the laundering process where money first enters the retail economy or the financial system.
- 1.4.2 Layering - illicit proceeds are separated from their source. Complex layers of financial transactions are created to disguise the audit trail.
- 1.4.3 Integration - the final stage through which laundered proceeds are placed back into the economy in such a way as to make it appear as legitimate income.
- 1.4.4 Application in the attorney's firm:
  - (a) Direct Placement of Funds

- o The Fee Deposit

One of the simplest ways to secure the prize of a cheque paid out by the attorneys is by way of a deposit in respect of fees for a transaction or series of transactions which, by preconceived plan, will never eventuate. The requested refund of the deposit produces a trust cheque, which is then used as the first layer in a legitimisation process.

- o The Trust Deposit

The use of attorneys' trust accounts as a vehicle for laundering funds is a worldwide phenomenon. Deposits for fictitious transactions are recalled and produce the required clean cheque.

Business payments by attorneys against the promise of reimbursement can be used to acquire assets which are, in turn, disposed of as a second layer laundering operation. The funds paid to settle the attorney's disbursement have effectively been laundered.

- (b) Indirect Laundering

The attorney's office may be used to create vehicles which will, in turn, be used to launder funds. So, an attorney may be requested to establish companies, close corporations, and trusts, all of which will be used as a vehicle for laundering funds.

The services of the attorney will be employed to draw contracts facilitating the laundering process. These might include leases, factoring contracts, discounting agreements, loans, mortgages, etc.

The attorney's services can be used in the preparation and implementation of contracts involving international trade where over and under invoicing represents a common method of laundering funds.

- (c) Unusual Transactions

Examples:

- o A transaction involving an unusually large cash amount given the profile of the client.
- o The depositing of funds into several related accounts that are then aggregated into one account or disbursed to a common recipient or recipients.
- o The purchasing of securities which are held on behalf of a client, where such a transaction does not seem appropriate given the client's profile.
- o Buying or selling securities with no clear purpose.

- o A frequent change of small bills to large bills.
- o Transactions involving frequent deposits and withdrawals of large amounts of currency for no apparent personal or business reason.
- o The payment of commissions or agent's fees that appears excessive in relation to those normally payable.
- o Purchase of commodities at prices significantly above or below market prices.
- o The intensive use of a previously inactive account for no apparent legitimate personal or business reason.
- o The repayment of a long past due debt with no plausible explanation.
- o Regularly buying securities and selling them for little profit or even at a loss.
- o Trust accounts that show substantial cash deposits and immediate withdrawals.

## **2. COMPLIANCE OBLIGATIONS**

Accountable institutions are obliged to: -

- 2.1 Identify and verify new and existing clients.
- 2.2 Keep records of identities of clients and transactions entered into with clients.
- 2.3 Report certain transactions to the Financial Intelligence Centre ("the Centre") established by FICA.
- 2.4 Formulate and implement internal rules.
- 2.5 Train employees; and
- 2.6 Appoint a responsible person to monitor compliance.

### **3. SCOPE AND PURPOSE OF INTERNAL RULES**

- 3.1 The purpose of these rules is to provide clearly for the procedures which must be followed by us in the discharge of our compliance obligations as an accountable Institution In terms of the Financial Intelligence Centre Act, 2001 ("FICA").
- 3.2 In terms of FICA, our internal rules must provide for the following: -
  - 321 The establishment and verification of the identity of all clients (new and existing) entering or having entered into a single transaction or a business relationship with us.
  - 322 The information which must be recorded in terms of FICA and how and where those records must be kept.
  - 323 The steps to be taken to determine when a transaction is reportable to ensure that we comply with our reporting duties under FICA; and
  - 324 Other matters as may be prescribed by the Regulations to FICA,
- 3.3 The Regulations in summary format are attached as annexure "A".

## **4. ESTABLISHMENT AND VERIFICATION OF CLIENTS**

### **4.1 Informing Clients of FICA.**

At each meeting with a client both new and existing clients should be informed of our obligations in terms of FICA. In particular, we must ensure that the client knows and understands when Information disclosed to him or her will be protected by legal professional privilege, clients should not be allowed to act under the misapprehension that all communications with an attorney will be kept confidential when, by virtue of the provisions of FICA, the attorney may be obliged to disclose certain confidential information. You must, accordingly, advise existing and new clients, as a matter of course, of the nature and extent of the reporting duties which you have in terms of FICA and of the distinction between privileged and confidential information.

### **4.2 Establishment and Verification of Identities**

In terms of FICA, you may not establish a business relationship or conclude a single transaction with a client or prospective client unless you have taken certain prescribed steps to establish and verify the identity of the client or prospective client, as the case may be. Identification of the "principal" and "agent" and proof of authority are required where the client is acting on behalf of someone, or someone is acting on behalf of the client. If an accountable institution had established a business relationship with a client before FICA took effect, the accountable institution may not conclude a transaction in the course of that business relationship unless the accountable institution has taken the prescribed steps to establish and verify the identity of the client and the client's agent or principal.

4.3 In terms of a general exemption granted under FICA, you may obtain a mandate from a prospective client to conclude a single transaction or establish a business relationship without first verifying the identity of the client. However, the client's Identity must be established and verified before the "instruction" or business mandate has been concluded.

4.4 A business relationship in FICA is defined as "an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis". Transaction is widely defined in FICA as "a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution" and is not limited to transactions involving the flow of money.

## 5. IDENTIFICATION AND VERIFICATION PROCEDURES-NEW CLIENTS

### 5.1 The Duty to Establish and Verify Identity

As early as possible and preferably at or before the first meeting with a new client, you must ascertain what information and documentation you are required to obtain from the client in order to establish and verify the client's identity. The process of verification of identity entails that you should compare the identifying particulars provided by the client with other available information in order to establish whether the particulars provided by the client accurately and correctly reflect the client's identity.

If you have not, prior to your first consultation with the client, discussed what information and documents you require, this must be done at the consultation.

Initially at least, you should take the summary (annexure "A") with you to the consultation.

You are only required to establish and verify the client's identity if: -

- 5.1.1 A client is assisted in the planning or execution of: -
- 5.1.2 The buying or selling of immovable property;
- 5.1.3 The buying or selling of any business undertaking;
- 5.1.4 The opening or management of a bank, investment or securities account;
- 5.1.5 The organisation of contributions necessary for the creation, operation or management of a company or close corporation or of a similar structure outside the Republic;
- 5.1.6 The creation, operation or management of a company or close corporation or of a similar structure outside the Republic;
- 5.1.7 The creation, operation or management of a trust or of a similar structure outside the Republic, except for a trust established by virtue of a testamentary writing or court order.
- 5.1.8 A client is assisted in disposing of, transferring, receiving, retaining, maintaining control of or in any way managing any property;
- 5.1.9 A client is assisted in the management of any Investment;
- 5.1.10 A client is represented in any financial or real estate transaction; or
- 5.1.11 A client deposits, over a period of 12 months, an amount of R100 000 or

more into our account in respect of fees (including disbursements) [the Exemptions to FICA (Section 10) makes reference only to fees, not fees and disbursements] which may be incurred in the course of litigation.

- 5.1.12 There are different identification and verification requirements depending on whether the client or prospective client is a company (foreign or local), close corporation, partnership, trust or individual (resident or foreigner).
- 5.1.13 As to what information and documentation is required, you must refer to the summary of the regulations (annexure "A").
- 5.1.14 If you have obtained information or documentation about a client without, contact in person with the client or a representative of the client, you must take reasonable steps to establish the existence of or to establish and verify the identity of the client.
- 5.1.15 When the required or outstanding information or documentation is received, the attorney responsible for the new matter must ensure that the information and documentation provided by the client is complete and has been verified.
- 5.1.16 Each attorney will be responsible to ensure that his or her client furnishes the required information and documentation.
- 5.1.17 Your firm must take a decision as to whether it will seek to recoup the fees and disbursements incurred in complying with FICA from your clients, either directly (by invoicing the client) or indirectly (by increasing charge-out rates). In the event that you decide to charge your client directly, you should alert your client to the additional charges that would be incurred and ensure that appropriate fee arrangements are made with clients or prospective clients in advance.

## 5.2 Maintaining Correctness of Particulars

You must, in addition to the establishment and verification procedures outlined above, take reasonable steps to maintain the correctness of particulars of a client which are susceptible to change.

## 5.3 Queries

All queries pertaining to the establishment and/or verification of a client's identity must be discussed with

**RAZIA SEVEUNDAN**

## **6. KEEPING OF RECORDS**

### **6.1 Duty to Keep Records**

- 611 In terms of FICA, we are required in matters identified in paragraph 5.1 to keep detailed records of our clients and the transactions entered into with them.
- 612 The duty to keep records arises whenever we establish a business relationship or conclude a single transaction with such a client.
- 613 FICA requires an accountable Institution to keep records of the following:-
- 6131 the identity of a client and, if applicable, the identity of the client's agent or principal;
  - 6132 the manner in which the Identity of the client and the client's agent or principal was established;
  - 6133 the nature of the business relationship or transaction;
  - 6134 in the case of a transaction, the amount involved and the parties to that transaction;
  - 6135 all accounts that are involved in transactions concluded by the accountable institution in the course of a business relationship or a single transaction, as the case may be;
  - 6136 the name of the person who obtained the information referred to in 5.1; and
  - 6137 any document or copy of a document obtained by the accountable institution In order to verify a person's identity.
- 612 In order to comply with this requirement of FICA hard copies of identifying documents received from clients (as outlined in annexure "A") must be sent to

**MR C.G PHILLIPS**

**CONVEYANCYING DEPARTMENT**

- 613 The records referred to above must be kept for a period of five years.
- 614 No person may delete or destroy any record pertaining to a client in respect of identity or verification of identity or in respect of any transaction recorded.
- ### **6.2 Access to Records**

- 6.2.1 An authorised representative of the Centre has access (only by virtue of a warrant where the documents are not public documents) to any records kept by an accountable institution in terms of FICA and may examine, make extracts from or copies of any such records.
- 6.2.2 An accountable institution must, except of course where such documents are protected by legal professional privilege, give to an authorised representative of the Centre all reasonable assistance in this regard.
- 6.2.3 Any request for access to records, including by way of warrant, must be forwarded to [insert name of compliance officer or other responsible person(s)] and may not be dealt with by any member of staff.

**7. INFORMATION AVAILED TO THE CENTRE**

- 7.1 The Centre may request us to advise whether a specified person is or has been a client of the firm; a specified person is acting or has acted on behalf of any client of the firm; or a client is acting or has acted for a specified person. To the extent that some of this information may be protected by privilege and to keep the reporting process streamlined, no person other than may respond to such request.

RAZIA SEVEUNDAN

If you receive such a request, you must immediately inform.

RAZIA SEVEUNDAN

## **8. REPORTING OF SUSPICIOUS AND UNUSUAL TRANSACTIONS**

### **8.1 The Duty to Report**

Generally, FICA requires any person who is employed by a business to report to the Centre suspicious and unusual transactions relating to the proceeds of unlawful activities connected to the affairs of such business.

### **8.2 Accordingly, a report may need to be made to the Centre where an employee of the firm knows or suspects that the firm:-**

8.2.1 Has or is about to receive the proceeds of unlawful activities;

8.2.2 Is party to a transaction that;-

8.2.2.1 resulted or is likely to result in the transfer of the proceeds or lawful activities;

8.2.2.2 appears to have no business or lawful purpose;

8.2.2.3 is constructed to avoid any reporting duty; or

8.2.2.4 may be related to any attempt to evade tax or any other duty or levy imposed by legislation administered by SARS;

8.3 Has been or is about to be used for money laundering purposes.

8.4 FICA defines unlawful activity as "conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of the Proceeds of Crime Act [POCA] and whether such conduct occurred in the Republic or elsewhere".

8.5 Proceeds of unlawful activities is defined for purposes of FICA as "any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of [POCA], in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived".

8.6 Money laundering and money laundering activity means "an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds and includes any activity which constitutes an offence in terms of section 64 of [FICA] or section 4.5 or 6 of [POCA]".

### **8.7 Confidentiality and Privilege**

8.7.1 FICA preserves legal professional privilege and privileged communications

need not be reported. In broad terms, legal professional privilege protects from disclosure communications between attorneys and their clients which are made in confidence for the purpose of enabling the client to obtain general legal advice and advice in respect of litigation which is either pending or contemplated or which has commenced. This latter concept of "litigation privilege" also extends to communications between a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced.

- 8.7.2 The privilege is the privilege of the client, not the attorney. If an attorney claims privilege, he or she does so on behalf of the client and indeed it is suggested that the attorney has a duty to claim such privilege. The client may elect not to claim the privilege, in which event the attorney has no independent right to do so.
- 8.7.3 The privilege does not operate if the client obtains the legal advice in order to further a criminal end. A legal adviser who knowingly participates in the commission of a crime is not acting professionally, but the authorities suggest that even if he or she had no knowledge of the purpose for which advice was sought, no privilege will attach to the communications with the client if the latter obtained the advice in order to further a criminal objective.
- 8.7.4 Confidentiality is a wider concept than privilege as information may be confidential even though it is not protected by legal professional privilege. An obligation of confidentiality may arise from contract, either as an express term or as an implied term in a fiduciary relationship, or it may arise from a delictual duty to refrain from disclosing confidential information.
- 8.7.5 There is an overlap between the concepts of confidentiality and legal professional privilege. Confidentiality is a necessary condition for claiming privilege but is not a sufficient condition for such a claim. The mere fact that a communication was made in confidence will not necessarily mean that that communication is privileged. Privilege only attaches if the communication is made for the purpose of obtaining legal advice, so that a statement unconnected with the giving of legal advice will not be privileged even if it was made in confidence.
- 8.7.6 Confidentiality, as opposed to privilege, is overridden by the duty to report.

## 8.8 Advising Clients

When a client discusses with an attorney a proposed course of conduct that may, if proceeded with, give rise to a reporting duty in terms of FICA, and the communication is not privileged, an attorney will not be precluded from advising the client that the proposed course of conduct is unlawful and should not be persisted with.

## 8.9 The Right to Withdraw

8.9.1 The provisions of FICA do not impact on an attorney's ethical right and duty not to accept an unlawful mandate from a client or to withdraw from a matter.

8.9.2 The client is entitled to expect that information which would otherwise be reportable that is disclosed to the attorney as part of the process of providing instructions to the attorney for the purpose of obtaining advice or within the litigation privilege, will not be reported to the Centre. Unrelated and incidental disclosure not germane to the privileged situation will not be protected. Dinner table or change room gossip imposes no reporting obligation.

## 8.10 Internal Reporting

8.10.1 In order to avoid the difficulties with the concepts "knows " and, in particular, "suspects" and severe penalties for failure to report a suspicion to the Centre, you must immediately report every suspicion to

### **RAZIA SEVEUNDAN**

The Compliance Officer will decide whether or not a report must be made to the Centre as required by FICA and, in the event of a report being made by us, whether or not the relationship with the client will be continued. In coming to that decision that the Compliance Officer will consider the profile of the particular client and hold discussions, if necessary, with the person reporting the suspicion.

#### 8.10.2 **ER BROWNE INCORPORATED**

must make a report to the Centre within 15 days of coming to a decision that such report should be made.

8.10.3 No person other than the Compliance Officer may report directly to the Centre. For this reason, members of staff will not have access to the Centre's website.

8.10.4 Each person who reports to

### **RAZIA SEVEUNDAN**

will be given feedback in the report, including whether or not a report was made to the Centre.

8.10.5 Furthermore, no person may disclose to any person other than the Compliance Officer the fact that he or she has reported a suspicion in terms of these rules.

8.10.6 Where the person reporting to the Compliance Officer is informed that a report

offence under FICA.

- 8.10.7 A person who has reported to the Compliance Officer as set out above, will have discharged his or her obligation to report in terms of FICA. This obligation is discharged whether the firm ultimately reports the suspicion.
- 8.10.8 Any further communications from the Centre, including information pertaining to the report made, must be forwarded to and be dealt with by the Compliance Officer and not by the person who reported to him/her.

**9. PROTECTION IN LIGHT OF DISCLOSURES TO THE CENTRE**

- 9.1 No action, whether criminal or civil, lies against any person complying in good faith with the reporting obligations under FICA.
- 9.2 A person who has made, initiated or contributed to a report in terms of FICA or who has furnished additional information concerning such a report is competent, but not compellable, to give evidence in criminal proceedings arising from the report.
- 9.3 No evidence concerning the identity of a person who has made, initiated or contributed to such a report or who has furnished additional information concerning such a report is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

## **10. FAILURE TO COMPLY WITH INTERNAL RULES**

An accountable institution that fails to:

- 10.1 Formulate and implement internal rules;
- 10.2 Make them available to its employees or to the Centre or to the Law Society;  
and
- 10.3 Provide training to its employees to ensure compliance with the rules, commits an offence that carries a penalty of imprisonment for a period not exceeding 5 years or a fine not exceeding R1 million.
- 10.4 In addition to the sanctions imposed by FICA also be subject to disciplinary action.

## **11. TRAINING OF STAFF MEMBERS**

- 11.1 These rules are formally rectified by the partners/ directors of the Firm and minuted as such.
- 11.2 A copy of these rules will be made available to every employee involved in transactions to which FICA applies and on request to the Financial Intelligence Centre and Law Society. Each employee will be required to acknowledge receipt of a hard copy of these rules in writing.
- 11.3 Training will be provided to all employees concerned to enable them to comply with FICA and these rules.
- 11.4 An attendance register of such training sessions will be kept.

**12. APPOINTMENT OF COMPLIANCE OFFICER**

The person responsible for monitoring compliance at

**E R BROWNE INC.**

---

IS

**RAZIA SEVEUNDAN**

I, the undersigned accepts herewith my appointment as Compliance Officer and certifies that I am familiar with the contents of this manual. Furthermore, shall ensure compliance as set out herein.

All enquiries pertaining to the establishment and/or verification of a client's identity, as well as reports on suspicious and / or unusual transactions will be received by me.

SIGNED AT **PIETERMARITZBURG** ON **22 JULY 2021.**

  
\_\_\_\_\_  
RAZIA SEVEUNDAN  
Compliance Officer

  
\_\_\_\_\_  
Witness

**ANNEXUE A**

**THE FINANCIAL INTELLIGENCE CENTRE ACT**

**ACT NO 38 OF 2001**

**RECORD OF PRESCRIBED CLIENT PARTICULARS  
(NATURAL PERSON: - SOUTH AFRICAN CITIZEN)**

1. FULL NAMES -----
2. DATE OF BIRTH -----
3. IDENTITY NUMBER ----- COPY KEPT
4. IF NO IDENTITY NUMBER AVAILABLE
  - 4.1 REASON FOR UNAVAILABILITY \_\_\_\_\_
  - 4.2 PASSPORT NO. \_\_\_\_\_
  - 4.3 INCOME TAX NO \_\_\_\_\_
  - 4.4 COPY KEPT
5. PERSONAL BANK ACCOUNT DETAILS
  - 5.1 Name of Bank \_\_\_\_\_  
Account Holder \_\_\_\_\_
  - 5.2 Branch \_\_\_\_\_
  - 5.3 Branch Code \_\_\_\_\_
  - 5.4 Account Number \_\_\_\_\_
6. MANNER OF VERIFICATION OF BANK DETAILS \_\_\_\_\_
7. RESIDENTIAL ADDRESS  
\_\_\_\_\_  
\_\_\_\_\_
8. POSTAL ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. TELEPHONE NOS. \_\_\_\_\_(H) \_\_\_\_\_(B)

CELL \_\_\_\_\_

10. E-MAIL ADDRESS \_\_\_\_\_

11. AMOUNT OF NON-BANK LOAN FUNDS TO BE UTILISED IN CONCLUDING THE TRANSACTION (NOT APPLICABLE TO THE SELLER OF PROPERTY)

\_\_\_\_\_

12. SOURCE OF SUCH FUNDING \_\_\_\_\_

I DECLARE THESE PARTICULARS TO BE CORRECT

DATE: \_\_\_\_\_

\_\_\_\_\_  
CLIENT'S SIGNATURE

NAME OF EMPLOYEE WHO ASSISTED IN OBTAINING AND VERIFYING INFORMATION

FULL NAMES \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPLIANCE OFFICER'S RATIFICATION FO SCHEDULE AND ANNEXURES

NAME OF COMPLIANCE OFFICER \_\_\_\_\_

DATE \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE