



**THE FINANCIAL INTELLIGENCE CENTRE  
ACT 38 OF 2001  
COMPLIANCE MANUAL –  
INTERNAL RULES FOR FIVAZ INCORPORATED**

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### **Management Acceptance**

The management of **Fivaz Incorporated** (hereinafter referred to as the Employer), hereby accepts the following Internal Rules for implementation and integration into the Company's Personnel Management System in order to comply with of the regulatory architecture, namely the FIC Act, which protects the integrity of the South African financial system, together with legislation such as the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) and the Prevention of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No. 32 of 2004).

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A. Fivaz  
Director  
2017

## Revision History

REVISION	DATE	BY (NAME)	DESIGNATION
Original 1.0	28/02/2011	Anelia de Bruyn & Marni Labuschagne	Attorney & Office Manager
Revision 2.0	18/05/2012	Anelia de Bruyn & Marni Labuschagne	Conveyancer & Office Manager
Revision 2.1	18/10/2017	Eugene Meintjes	Compliance Officer

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## Definitions

In this document the expressions referred to below shall have the following meaning:

- “Client”** means: the person from whom the firm has obtained a mandate to render legal services.
- “Conveyancer”** means: any person, as defined in section 1 of the Attorneys act, 53 of 1979, who is duly admitted to practise as a conveyancer within any part of the Republic of South Africa.
- “Firm representative”** means: any representative in the service of the firm who renders a representative service or services, which includes but is not limited to an attorney, conveyancer and/or notary.
- “Compliance officer”** means: the person appointed as compliance officer by the firm, namely, Mr. Eugene Meintjes or temporarily appointed by the managing director.
- “Law Society”** means: the Law Society of the Northern Provinces, incorporated as the Law Society of the Transvaal, which was established during 1892 and is the statutory body governing the attorney’s profession in the four provinces constituting the former Transvaal province, i.e. the Gauteng, Mpumalanga, North West and Limpopo Provinces.
- “Mandate”** means: an instruction or authority granted to render legal services, whether oral or in writing.
- “Legal services”** means: any service or act as agreed to between the attorney and client, and which is reflected in the mandate.
- “Practise”** means: practise as an attorney, notary, or conveyancer.
- “the FIC Act”** means: the Financial Intelligence Centre Act, 38 of 2001, as read with the regulations promulgated in terms thereof, as amended.
- “The firm”** or **“accountable institution”** means: the attorney firm Fivaz Incorporated.
- “Verification documents”** means: the documents prescribed by the FIC Act for the verification of the identity of a client.

## **A. Establishment and verification of identities**

1. A firm representative accepting a mandate on the firm's behalf shall, before so accepting the mandate, duly explain to the client that the firm is obliged by the provisions of the FIC Act to:
  - 1.1 establish the identity of the client and, in this respect, to obtain certain details concerning the identity of the client; and
  - 1.2 that certain documents must be obtained by the firm from the client to enable the firm to verify the particulars of the client.

If the client is represented by any representative it will be necessary for the firm representative, in addition, to establish and verify the identity of such representative(s).

2. A firm representative must, before accepting a mandate from a client, obtain all the particulars of the client required by the FIC Act. This shall be done by using the forms specifically designated for this purpose by the firm. The documents will be saved on the firm's server of which the location will be pointed out to the firm representatives.
3. The firm follows and incorporates a risk-based approach to compliance elements such as customer due diligence into the regulatory framework. The firm's personnel understand that a risk-based approach requires accountable institutions to understand their exposure to money laundering and terrorist financing risks in order to limit the potential that clients, by using the accountable institution's products and services, can exploit the accountable institution to promote money laundering or terrorist financing activities.

### **The following rules shall apply in respect of these forms:**

- 3.1 the forms shall be completed using a pen with black ink;
- 3.2 all the client's particulars shall be correctly completed on all forms;
- 3.3 when signing the relevant transfer, or bond documents, the Conveyancer will ensure the correct completion of the form;
- 3.4 should a client refuse to furnish the requested particulars to the firm representative, this fact shall immediately be reported to the compliance officer for reporting to the FIC and a note to this effect made on the form in question;

- 3.5 All particulars provided by the client will be verified by inspecting the client's proof of residence and identifying papers;
  - 3.6 Should certain of the required particulars not be available at the time when the mandate is obtained, the Attorney or firm representative will ensure that all the required particulars are obtained on date of signature, or when the mandate is accepted, otherwise this fact shall be brought to the attention of the compliance officer prior to the firm rendering any further service(s) to the client;
  - 3.7 All the relevant documents will be filed on each client's firm file, which will be stored for a period of 5 years, where after it will be destroyed in the presence of the compliance officer;
  - 3.8 A client shall, on written request, be supplied with a copy of the form in question.
4. A firm representative who accepts a mandate on behalf of the firm shall, immediately on acceptance of such mandate, request the client to furnish the firm with all relevant and required verification documents.
    - 4.1 The verification documents to be requested by the firm representative are those listed in the forms to be used to obtain the required information regarding the identity of the client.
    - 4.2 The firm representative shall, in addition, explain to the client that, pursuant to the provisions of the FIC Act, the firm is prohibited from performing the mandate unless and until the required verification documents have been obtained so as to enable the identity of the client to be properly verified.
5. Every firm representative shall, once having obtained the required verification documents from the client:
    - 5.1 compare the relevant particulars contained in the documents with the details of the identity of the client as recorded on the form in question. The details will also be compared by doing a Deed Search on the client, as well as using the Stordoc system after signature;
    - 5.2 make a copy of the document(s) in question, which will be commissioned by the Attorney attending to the signing of the relevant document;
    - 5.3 immediately report to the compliance officer should any details obtained concerning the identity of the client differ from the particulars contained in the verification documents;

- 5.4 retain all verification documents in respect of a particular transaction in an identified folder and filed in the storeroom to which the compliance officer has access to;
- 5.5 ascertain the intention of the client with regard to the instruction, the source of any funds flowing through the firms' trust account, as well as the destination thereof;
- 5.6 identify, assess and understand the risk involved in the transaction with due regard to the identity of the client, any associates, or political affiliations. This is done by asking probing questions relevant to the instruction and perusing and verifying documentation supplied;
  - 5.6.1 what extent does the product or service provide anonymity to the client?
  - 5.6.2 Does the product or service enable third parties who are not known to the institution to make use of it?
  - 5.6.3 Is another accountable institution involved in the usage of the product?
  - 5.6.4 Can the service or product be funded with cash or must it be funded only by way of a transfer to or from another financial institution?
  - 5.6.5 How easily and quickly can funds be converted to cash?
  - 5.6.6 Does the product and service facilitate the cross-border transfer of funds?
  - 5.6.7 Is the offering of the product or service subject to regulatory approval and/or reporting?
  - 5.6.8 What does the product or service on-boarding processes entail and to what extent does it include additional checks such as credit approvals, disclosure of information, legal agreements, licensing, regulatory approvals, registration, involvement of legal professionals, etc?
  - 5.6.9 To what extent is the usage of the product or service subject to parameters set by the institution that e.g. value limits, duration limits, transaction limits, etc. or to what extent is the usage of the product subject to penalties when certain conditions are not adhered to?
  - 5.6.10 Is the usage of the product or service subject to reporting to regulators and/or to "the market"?
  - 5.6.11 Does historic transaction monitoring information indicate a lower or higher prevalence of abuse of the product or service for money laundering or terrorist financing purposes?
  - 5.6.12 Is the usage of the product or service subject to additional scrutiny from a market abuse or consumer protection perspective?
  - 5.6.13 What is the time duration for the conversion of funds, property etc. through the usage of the product or service?
  - 5.6.14 Are there specific conditions that must be met or events that must happen for clients to have access to funds, property etc.?

- 5.6.15 Does the usage of the product or services entail structured transactions such as periodic payments at fixed intervals or does it facilitate an unstructured flow of funds?
- 5.6.16 What is the transaction volume facilitated by the product or services?
- 5.6.17 Does the product or service have a "cooling off" period which allows for a contract to be cancelled without much formality and a refund of moneys paid?
  
- 5.7 identify possible risks to the firm and implement countermeasures on a continuous basis to limit the consequences of adverse transactions, should such a transaction materialize, to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. .
  
- 6. Should a client fail and/or neglect and/or refuse to make any verification document available to a firm representative, that firm representative shall forthwith:
  - 6.1 make a note on the form in question and on the clients file to this effect;
  - 6.2 indicate on the form in question which particular document has not been received from the client;
  - 6.3 report the matter to the compliance officer.
  
- 7. The compliance officer shall be responsible for:
  - 7.1 keeping and maintaining adequate stocks of the forms required to be used by firm representatives when establishing and verifying the identity of client;
  - 7.2 assisting firm representatives in completing the required forms whenever such assistance is either sought or required;
  - 7.3 taking the appropriate action under circumstances where a client has failed and/or neglected and/or refused to furnish any required verification information or document to the firm which action will be to inform Anita Fivaz and/or Anelia de Bruyn, who will then inform the relative clients, i.e. the bank or the estate agent;
  - 7.4 monitoring all mandates accepted by firm representatives will be done by the compliance officer after date of registration where after the file will be closed and placed in the storage to ensure that all peremptory FIC Act requirements have been duly met and complied with.
  
- 8. The managing director of the firm shall accept full responsibility for:

- 8.1 appointing a compliance officer; and
- 8.2 conscientiously and continuously monitoring the performance by such compliance officer of the compliance duties established by the FIC Act.

Should a temporary vacancy in the position of compliance officer arise for whatever reason, the managing director of the firm shall forthwith appoint another firm representative to carry out the functions and duties of the compliance officer.

## **B. The Keeping of Records**

1. The firm shall retain and keep the following documents that will be available on request to the compliance officer, for a period of at least 5 years, namely:
  - 1.1 Natural person:
    - 1.1.1 Identity document;
    - 1.1.2 Proof of address;
    - 1.1.3 Marriage certificate if applicable;
    - 1.1.4 Ante nuptial contract if applicable;
  - 1.2 In the instance of a company, Close Corporation, trust please refer to annexure A;
  - 1.3 A copy of the offer to purchase;
  - 1.4 A copy of the loan agreement and all the other relevant bank documents as and when applicable in accordance with the relevant instruction;
  - 1.5 Electrical Compliance Certificate, Electrical Fence Certificate and Gas Certificate which applicable.
2. The aforesaid documents and records shall, if kept at the premises of the firm, be retained in a secure environment. Access to such secure environment, shall be restricted to the firm representatives only. Should the keeping of the aforesaid documents and records have been outsourced, the documents and records shall, similarly, be retained by the outsourced provider in a secure environment while access to the documents in question shall be restricted to a firm representative as instructed by the managing director and compliance officer. The firm shall, moreover, obtain a written

undertaking from the outsourced provider confirming that the documents and records in question shall immediately be made available to the firm as and when they are required.

3. The compliance officer may elect to keep the records and documents, or any part thereof, as well as the inventory contemplated in paragraph 4 below, in an electronic format. The managing director and compliance officer shall, in such case, ensure that backup copies of all records and documents that are stored in an electronic format are made immediately a record that has been electronically captured. Backup copies of the record shall be stored off-site for risk mitigation reasons in a secure environment accessible only to the managing director of the firm and to the compliance officer.
4. The compliance officer shall maintain a continually updated written inventory of all records kept, whether by the firm or by the outsourced provider envisaged in paragraph 2 above, for the purposes of FIC Act compliance.
5. The compliance officer shall implement (in accordance with permission from the managing director) all steps necessary to ensure that the records and documents remain inaccessible to any person(s) who is/are not authorised by law to have access thereto.
6. The compliance officer will document the risk-rating methodology and procedures which are applied as well as the conclusions reached through the processes in the accountable institution's Risk Management and Compliance Programme (RMCP).

### **C. The Reporting of Suspicious Transactions**

1. All firm representatives (including the managing director and other employees) of the firm shall forthwith report any completed, aborted or failed transaction which gives rise to a suspicion as contemplated in section 29 of the FIC Act to the compliance officer.
2. The compliance officer shall carefully and diligently consider and evaluate any such reports as may be received and take a decision as to whether, in the circumstances, the matter in question warrants being reported to the Financial Intelligence Centre. If it is decided that a report should be made to the Financial Intelligence Centre this shall be done by the compliance officer within the time frame and in the format and manner required by the FIC Act.
3. All reports made to the compliance officer, and all reports made by the compliance officer to the Financial Intelligence Centre, shall be dealt with on a strictly confidential basis. No person associated with the firm shall in any manner or form divulge details of any such reports to any person unless obliged by law to do so.

4. All firm representatives (including the managing director and other employees) of the firm shall ensure that they are fully acquainted with section 29 of the FIC Act concerning suspicious transactions relevant to the legal sector and the guidelines as set out in **Schedule 1** attached below.

## **D. Training**

1. The firm shall provide all firm representatives (including the managing director and other employees) with comprehensive training so as to ensure that such firm representatives (including the managing director and other employees) are fully aware of the requirements both of the FIC Act and of the internal rules contained in this document and strictly comply therewith. Attendance at all training modules scheduled for this purpose shall be compulsory for all firm representatives and employees.
2. The firm's representatives and employees are aware that the firm follows a low risk approach and that a proper due diligence is done on every transaction.

## **E. Disciplinary Measures**

It is recorded that the firm is totally committed to full and proper compliance with the requirements of the FIC Act and that it considers any non-compliance with such requirements in a most serious light. Any firm representatives (including the managing director and other employees) of the firm who fail to comply with the duties and obligations imposed upon them by the FIC Act and/or the internal rules contained in this document shall, therefore, expose themselves to the institution of disciplinary steps against them by the firm. The disciplinary procedure to be instituted shall, subject to the provisions of the Labour Relations Act of 1995, where applicable, be as follows:

- (i) the compliance officer and/or a non-involved managing director of the firm shall be required to launch an investigation into the alleged failure by any firm representative (including the managing director and other employees) of the firm to comply with the FIC Act and/or with the provisions of these internal rules;
- (ii) if found guilty of non-compliance with the FIC Act and/or with the provisions of these internal rules a first offender shall, provided that the transgression is not of a serious nature, be warned; and
- (iii) in cases of repeated transgressions or where a transgression is considered to be of a serious nature, the guilty party shall be subjected to a disciplinary hearing.

The firm, in addition, reserves the right to refer any alleged failure by a firm representative in its service to comply with the provisions of the FIC Act to the Law Society of the Northern Provinces to be dealt with by the Law Society of the Northern Provinces in accordance with its disciplinary powers in terms of the Attorneys Act, 53 of 1979.

## Schedule 1

### GUIDELINES OF SUSPICIOUS TRANSACTIONS IN THE LEGAL SECTOR

The firm is in the best position to evaluate its transactions and money dealings with members of the public taking into account normal practices, systems and methods of doing business in the legal and property professions. No hard and fast rules can be laid down as to when a transaction or money dealing will give rise to suspicion.

*The following guidelines can be used:*

- Suspicion must be based on facts and not on gossip, rumour or loose talk. Merely wondering about the authenticity of a transaction does not in itself give rise to suspicion.
- As a general rule, events and behaviour are suspicious; not people. No suspicion should arise merely by reason of a person's race, creed, nationality, sexual orientation, gender or beliefs.
- A transaction can be suspicious regardless of the amount involved.
- A suspicious transaction may involve a number of factors that may seem to be innocent if viewed in isolation, but raise suspicion when taken together. All relevant factors must, therefore, be considered.
- A firm representative is not expected to launch a full-scale investigation to determine whether his/her suspicion about a transaction or money dealing is well founded. All that is required is a reasonable evaluation of all relevant facts and circumstances.
- The majority of property transactions are ordinary commercial transactions entered into between law abiding persons. A firm representative is not expected to view every client and customer suspiciously anticipating that he/she is engaged in money laundering or other unlawful activity. There is, furthermore, no duty on members of the public to establish good faith on their part when dealing with a firm representative. An ordinary firm transaction can, therefore, be assumed to be in order unless of course there are circumstances reasonably warranting a firm representative to believe otherwise.
- Receipt of cash on the form of bank notes may or may not be suspicious depending on the amount, the type of transaction involved and the surrounding circumstances. Entrusting a large amount of cash to a firm representative will generally require some valid explanation. What constitutes as a large amount will generally depend upon the market value of the house or the bond amount in the instance of a bond instruction and the amount normally received by the firm in the ordinary course of business. Suspicion

will readily arise if a large sum, in bank notes, is entrusted to a firm representative by means of a once-off payment and/or a series of irregular payments over time, particularly if the firm representative was initially led to believe that only a small portion of the purchase price was to be paid in cash.

- No suspicion should necessarily arise merely on the ground that a purchaser or a client has electronically transferred the purchase price of a property, or a portion thereof, or the pro forma costs due into the trust account of the firm. The electronic transfer of an exceptionally large amount into the trust account of the firm may, however, well be suspicious when taken with other important factors such as, for instance, the fact that the funds are transferred into the trust account over a period of time and apparently, originate from a different source on each occasion.
- A large number of purchase and sale transactions concluded by the same person over a relatively short period of time may give rise to suspicion particularly where no discernable investment pattern is apparent and relatively large monetary amounts are involved.
- The fact that the stated occupation of the purchaser of a property does not appear to match the type of property that has been purchased such as, for instance, where a lowly-paid secretary buys a mansion on an exclusive golf estate, may give rise to suspicion. It should not be overlooked, however, that people can, and sometimes do, benefit from unexpected financial windfalls such as, say winning the lottery or inherit money. Suspicion will, obviously, arise if the same secretary buys more than one luxury property in a short space of time particularly when no mortgage finance is required for the purchases.
- Suspicion will, however, readily arise in the following circumstances:
  - A firm representative receives a large amount in trust from a third party on the pretence that the money is to be used for property investment purposes and the prospective buyer shortly thereafter asks for the money to be released on the grounds that he/she has had a change of heart about investing in property;
  - A client or buyer deposits a series of large cheques in the name of a third party, but endorsed over to the client or buyer;
  - A large deposit on a sales transaction is paid by an unidentified third party on account of the buyer and the parties are neither related nor connected in some way;
  - The true purchase price of a sales transaction is not disclosed in the sales agreement, because money changes hand 'under the table';

- A party to a transaction does not wish to record his/her own name in the agreement, but uses the name of a business associate or of a distant relative;
- The buyer pays a deposit on a sales transaction with a series of cheques, each of which is drawn by a different person;
- The name of the buyer is changes just before the transaction is closed;
- The purchaser insists that the property be registered nt he name of a third party other than a spouse even if this means the payment of a double transfer duty;
- A firm representative is offered a fee or a commission to accept an electronic transfer of money from abroad in trust for safekeeping on the pretence that the money will be used to invest in property at some time in the future;
- A firm representative is asked to deposit money, whether in the form of cheques or cash, in the firms trust account and to issue a trust cheque in return for the payment of a commission or a fee;
- The purchase price of a property is unrealistically split between the property and the movable assets included in the sale in order to avoid the payment of transfer duty on the true value of the sale.