RENTAL AGENTS AND FICA

26 October 2023

- Are rental agreements subject to FICA?
- When must rental clients be FICA-ed?
- What are the FICA processes in rental agreements?
- Could you rely only on your Digital Rental Software support, such as TPN?

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ANNUAL POPIA FICA REVIEW

2001 SEPTEMBER TERRORIST ATTACKS IN THE USA

2001 - UN PASSES ANTI-TERRORISM LAWS

2001 - FINANCIAL INTELLIGENCE CENTRE IS ESTABLISHED

2001 – FINANCIAL INTELLIGENCE CENTRE ACT IS PASSED

2017 – FIC AMENDMENT ACT IS PASSED

1 APRIL 2019 – FIC AMENDMENT ACT BECOMES EFFECTIVE

2019 – FIRST FATF ASSESSMENT

2020 – SECOND FATF ASSESSMENT

2021 – THIRD FATF ASSESSMENT

2022 – FOURTH FATF ASSESSMENT

WE ARE WARNED THAT WE WILL BE GREY-LISTED

On 24 February 2023 SOUTH AFRICA was GREY-LISTED by the FATF

- We are given 2 years in which to render all Accountable Institutions fully compliant
- FIC Act is amended with the inclusion of HIGH VALUE GOODS TRADING BUSINESSES (like VWSA)
- The Trust Property Control Act is amended
- The Company Act is amended

Geographical areas of concern

FATF (Financial Action Task Force) Countries 2023

THE ISLANDS
THE MIDDLE EAST
AFRICA
PANAMA

The types of risks we face in the property industry

SOUTH AFRICA'S LOCATION (link)

PROCEEDS FROM CYBER CRIMES

ILLICIT ABALONE TRADE

ILLICIT WILDLIFE TRADE

CULTURE OF PERSONAL ENRICHMENT (public and private) without impunity

ILLICIT ARMS TRADE

AFRICAN POPULARITY FOR HIDING DIRTY MONEY

HIGH VALUE GOODS TO HIDE ILL GOTTEN FUNDS

HUMAN TRAFFICKING

BRICS

The types of risks we face in the property industry

Herald LIVE

Nelson Mandela Bay port flagged as drug-trafficking hub

Security ramped up to avoid harbour being classified as unsafe, leading to cargo delays

BY NOMAZIMA NKOSI - 24 JULY 2023

Two South African ports, including Nelson Mandela Bay's Port of Ngqura, have been flagged by the United Nations as hubs for drug trafficking and peddling of illicit goods.

This has forced the Transnet National Ports Authority (TNPA) to ramp up its security systems, fearing the Ngqura and Durban ports could be deemed unsafe and high risk, compromising its security grading...

The types of risks we face in the property industry

https://eia-international.org/wildlife/combating-money-laundering/

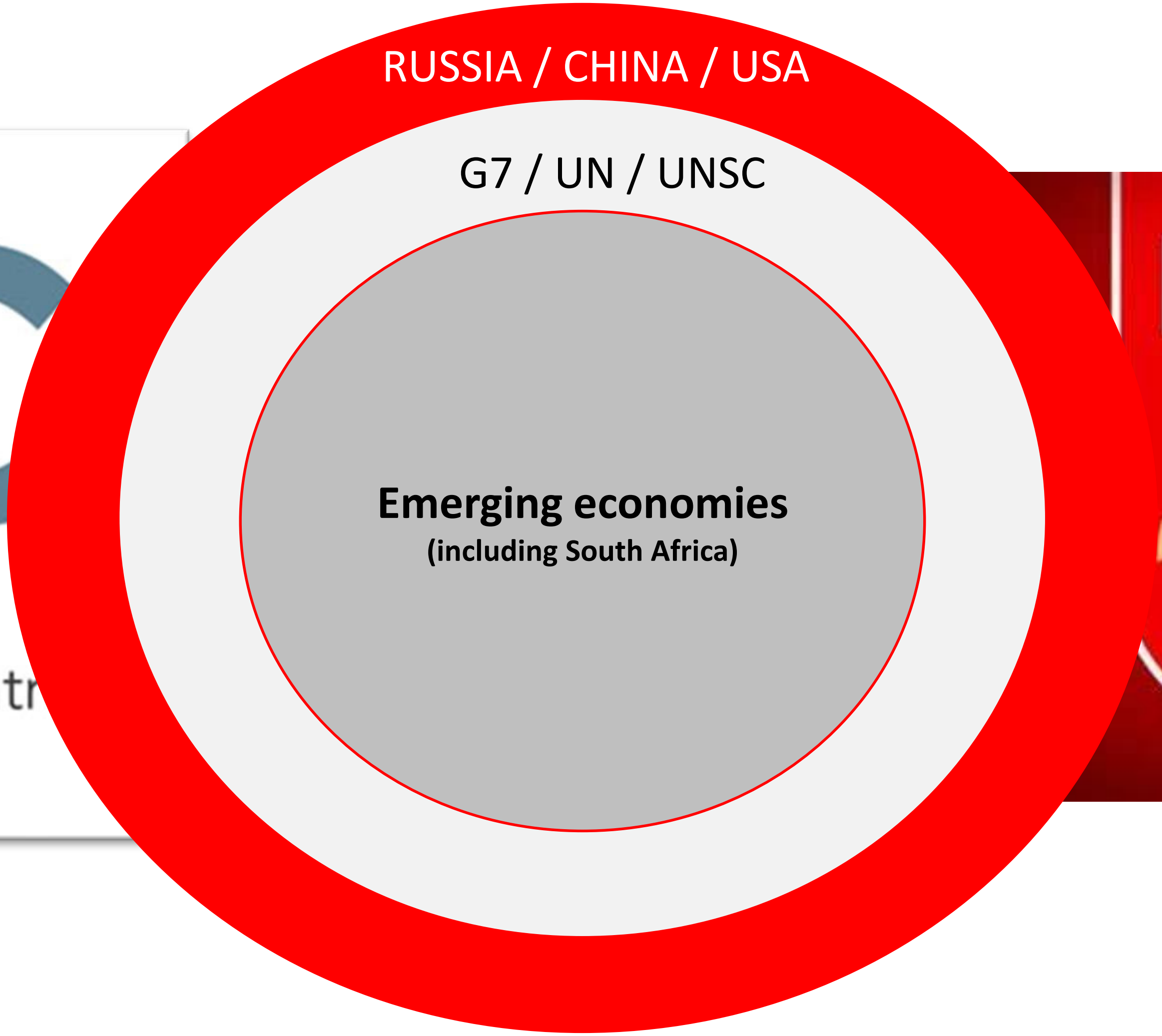
https://reports.eia-international.org/niap/niap-country-southafrica/

https://www.state.gov/reports/2020-trafficking-in-persons-report/south-africa/
https://ocindex.net/

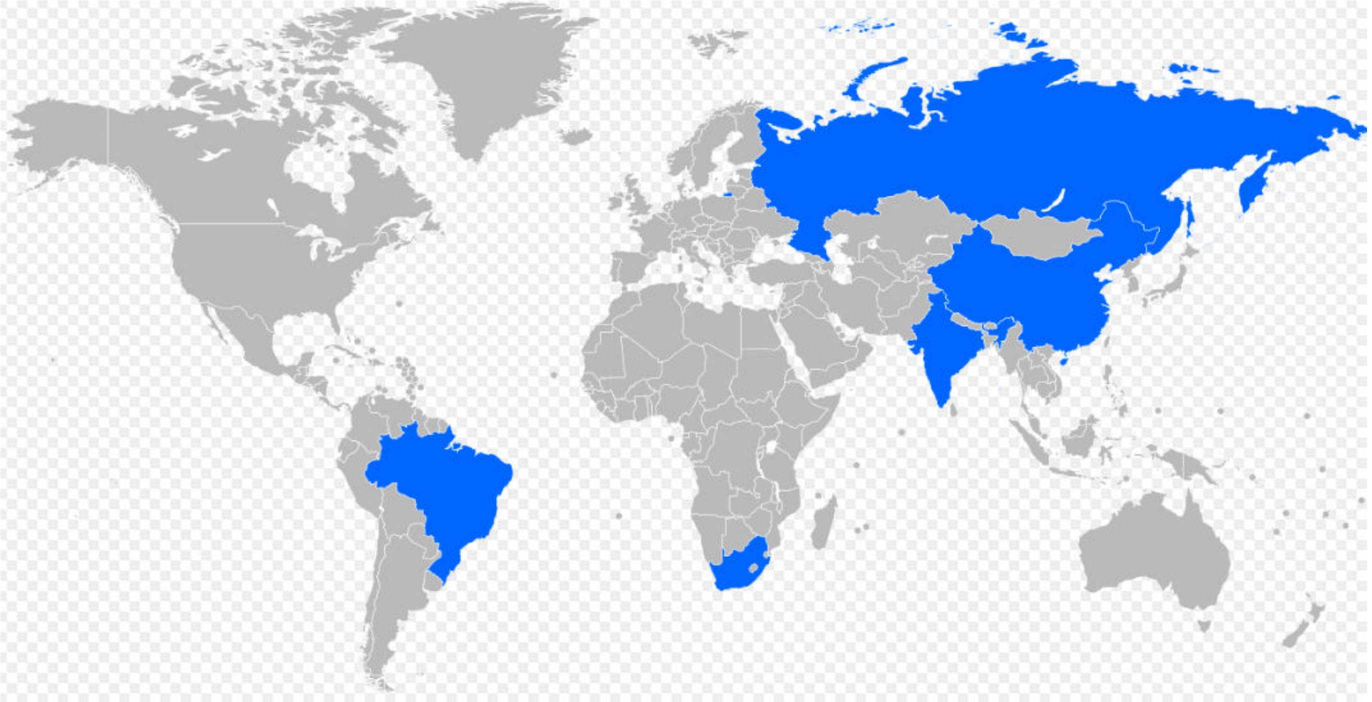
https://animalsurvival.org/trade-and-legislation/the-epoch-times-chinese-south-african-mafia-decimating-wildlife-in-kruger-national-park/

https://www.defenceweb.co.za/security/maritime-security/secret-chinese-criminal-societies-make-millions-poaching-abalone/

There is a fine balance between international rule of law, internal rule of law, political leverage, trade leverage and strategy.



BRICS



BRICS is a grouping of the world economies of Brazil, Russia, India, China and South Africa formed by the 2010 addition of South Africa to the predecessor BRIC.

The original acronym "BRIC" (or "the BRICs") was coined in 2001 by Goldman Sachs economist Jim O'Neill to describe fast-growing economies that would collectively dominate the global economy by 2050.

The BRICS have a combined area of 39,746,220 km^2 (15,346,100 sq mi) and an estimated total population of about 3.21 billion or about 26.7% of the world's land surface and 41.5% of the global population. Brazil, Russia, India, and China are among the world's ten largest countries by population, area, and GDP (PPP), and the latter three are widely considered to be current or emerging superpowers.

All five states are members of the G20, with a combined nominal GDP of US$28.06 trillion (about 26.6% of the gross world product), a total GDP (PPP) of around US$56.65 trillion (32.5% of global GDP PPP), and an estimated US$4.46 trillion in combined foreign reserves (as of 2018).

ADMINISTRATIVE FICA COMPLIANCE

- You must have a unique RMCP Policy in place. And if there are rentals and sales in the office, then the Policy <u>must</u> separate these departments with its <u>own</u> risk rating forms and its <u>own</u> questionnaires
- You must use the new client questionnaires
- You must develop a proper risk rating against which you need to test:
  - the clients' status (landlord before listing and tenant before occupation)
  - the transaction (thereafter)
- You need to implement management control checklists
- You need to also have a set of guidelines in place of what ADDITIONAL and ENHANCED due diligence must be done when
- You must have a Risk & Compliance Officer appointed
- You must register your business on the goAML as an organisation and if you have branches, each of the branches must also be registered under the organisation
- You were obliged to file the Directive 6 Self-Assessment (first by end of May 2023 and then the extended deadline which was 13 October 2023)
- You must comply with the Directive 8 proficiency test, integrity check and screen all the agents and employees on the TFS lists
- You must arrange formal training for all the agents and employees
- You must report cash deposits in excess of R49,999,99

IMPLEMENTATION (PRACTICAL) FICA COMPLIANCE

- Your RMCP Policy must be approved by management
- Your tests must be marked and a summary of the results must be discussed by management
- Additional training must be arranged for the agents and employees that did poorly in the test
- You must sign up with one of the KYC software applications (Lexis Nexis, DocFox, Beeswax etc) as you <u>must</u> screen all clients:
    - against the TFS lists;
    - against the PIP and PEP lists;
    - for other associations or adverse media;
    - ID verification (if South African)
- The RCM must be trained in order to guide the agents on what additional or enhanced measures must be taken when there is medium or high risk identified
- The RCM must act as conduit between the agents and management where management's approval is required in order to proceed
- Clients must be risk rated before listings are published or Offers are sent for conveyancing
- Transactions must then be risk rated before registration
- Management must sign the management control checklists
- The RCM must report matters
- The MLRO must be registered on the goAML platform

Who are the clients for FICA purposes

- Both landlord AND tenant are seen as “clients” for FICA purposes
- You are expected to apply the first 5 client due diligence steps in respect of the landlord prior to listing the property
- Then you are expected to apply the first 5 client due diligence steps in respect of the successful tenant once the lease is signed, prior to occupation or lease effective date – whichever is earlier
- And then you must risk rate the transaction within a reasonable period of time
- The remaining due diligence steps must then be followed within another reasonable period of time
- And the whole process must be repeated on the anniversary of the lease

STEP 1 – IDENTIFICATION & CLIENT QUESTIONNAIRES

STEP 2 – BASIC IDENTIFICATION DOCUMENTS (see listed at the bottom of the questionnaires)

STEP 3 – TFS/UN1267 SCREENING – MANUAL/LEXIS KYC/DOCFOX

STEP 4 – VERIFICATION & OVERVIEW (check your screening reports and compare with the answers on the clients' questionnaires - political exposure/influence, occupation, addresses, social media, Linkedin, Google) - MANUAL/LEXIS KYC/DOCFOX

STEP 5 – RISK RATING LANDLORD and then the TENANT (completing the Risk Rating Form and using the other screening tools in support)

- *Landlord: when the mandate is being signed before the property is listed*
- *Tenant: when the Lease is signed before the lease commences or occupation is taken*

PARTY RELATED IDENTIFICATION & VERIFICATION

STEP 5 – RISK RATE THE TRANSACTION

STEP 6 - OVERVIEW

- *Enhanced CDD (proof of occupation, income wealth, tax number)*
- *Additional CDD (more proof of ID, marital status, clearer copies)*

STEP 7 – CASH THRESHOLD CHECK AND REPORTING (for instance, any once off payment of R50,000 and over MUST be reported to FIC via the goAML portal

STEP 8 – MANAGEMENT CONTROLS

STEP 9 – ARCHIVING (FIC'S RULES)

TRANSACTIONAL

OBJECTIVE	STEP 1 – THE AGENT
OBJECTIVE	STEP 2 – THE AGENT
OBJECTIVE	STEP 3 – THE COMPLIANCE TEAM
OBJECTIVE & SUBJECTIVE	STEP 4 – THE AGENT / THE COMPLIANCE TEAM
OBJECTIVE	STEP 5 – THE AGENT / COMPLIANCE TEAM
OBJECTIVE & SUBJECTIVE	STEP 6 – THE COMPLIANCE TEAM / THE AGENT
SUBJECTIVE	
OBJECTIVE	STEP 7 – THE ACCOUNTS DEPARTMENT
OBJECTIVE & SUBJECTIVE	STEP 8 – THE COMPLIANCE TEAM / MANAGEMENT
OBJECTIVE	STEP 9 – THE COMPLIANCE TEAM

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