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*Attorneys, Notaries and Conveyancers*



**WITH COMPLIMENTS**

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**November 2015**

**“Demolish Or Go To Jail”:  
Developer In The Doghouse**

*“..... a lenient approach ..... would also lead to an open invitation to members of the public to follow the course adopted by the [developer] and to continue with the construction of buildings and structures in circumstances where the*



Insider Trading – Big Brother is watching!

The November website: what's up with WOT? Check your website now

*authority therefore has not been obtained from the relevant municipality” (From judgment below)*



30 days – that's how long a property developer will spend in the local lock-up unless he demolishes illegal building works.

#### ***A deviation from plans .....***

- A property developer obtained municipal approval to build a house on his property
- The municipality, finding on inspection that the construction taking place deviated from the approved plans, obtained a court order forbidding him to continue
- Undaunted, the developer carried on building, ignoring notices clarifying his legal position, a direction to “*cease all work forthwith*” and ultimately the threat of a contempt of court order
- Hauled back to court, he tried to convince the court that, having applied for special consent to the deviation from plan, he believed that he was entitled to continue building
- Unsurprisingly the Court was not impressed with this defence and, refusing to condone his conduct, found him guilty of contempt of court
- Commenting that the object of contempt of court proceedings is not only to vindicate the court's honour but also to compel performance of court orders, the court sentenced the developer to 30 days, suspended for 2 years on condition that he demolishes the illegal building work within 30 days, and thereafter complies with the original order.

#### ***So what do you do if your neighbour builds illegally?***

Regular readers will recall the oft-repeated advice to seek legal assistance immediately you become aware of any illegal building activity in your area. Don't delay; you need to move quickly and decisively.

And once again our courts have confirmed that every municipality has “not only a statutory duty but also a moral duty to uphold the law and to see to due compliance .....” Nor will our courts tread softly when it comes to assisting municipalities in carrying out this duty.

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### **13th Cheques: Must You Pay An Annual Bonus?**

November has rolled around again, and with it comes the normal slew of annual bonus questions and complaints like: “My business is struggling. Must I pay Christmas bonuses this year?” and “I haven't been given a bonus this year – what are my rights?”



To start with, nothing in our labour laws gives employees any automatic right to 13th cheques or bonuses, so to answer these questions have a look at your employment contracts, company policies and (if applicable) collective agreements. Are your employees guaranteed a bonus? Are conditions specified (profitability of business, employee performance or contribution etc)? Is the boss given unlimited discretion in deciding?

Note that even where nothing has actually been agreed, you need to tread carefully if you have regularly paid annual bonuses in the past. This is because departing from

any established practice without employee consultation can be seen as an unfair labour practice. The dictates of labour law aside, employee morale is going to dive if expectations of a bonus have been built up over the years but are then shattered at short notice.

### ***What about fixed term employees?***

A recent Bargaining Council arbitration decision held that where a municipality had a practice of paying 13th cheques to all its other employees, it was unfair for it to refuse the same to a fixed term employee. Be careful generally of differentiating between employees performing the same or similar work.

### ***Employees: A final thought***

Remember the taxman will take a sizeable slice out of your bonus – often more than you expect. And before you begin to mentally spend what's left on some festive season high-living, read "Warning: don't blow that bonus" on [IOL website](#).

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## **Did you know? The legal limits to paying in coins (plus a bit on bitcoin)**

***"Samsung paid Apple \$1bn in 30 truckloads of coins" (Thus runs a 2013 rumour – false but widely reported - after Apple's victory in the "lawsuit of the century")***



Here's a scenario for you - **you win a huge court case**, and your very vengeful opponent (believing perhaps the Apple v Samsung rumour recounted above) turns up at your doorstep with a convoy of coin-filled trucks. Must you accept the payment?

Scenario 2: You're a **landlord**. Your tenant, angry with you for some reason, decides to punish you by marching into your office with next month's rental in 5 cent pieces. What are your rights?

Now you're a **shopkeeper** whose customer wants to pay for his groceries with R500 worth of R1 coins – can you refuse to accept them?

Or perhaps you are a disaffected **motorist** issued with an unfair (you think) traffic fine. Revenge being sweet, you decide to inconvenience the municipal teller by paying the fine with the most complicated mix of different coins you can think of. Must the teller spend the next hour counting coins?

### ***Legal tender – the limits***

The answer to all these questions lies with the South African Reserve Bank's policy on what or what is not "legal tender". If it is, you must accept it. With banknotes, any amount may be tendered, but with coins the following limits apply for each individual transaction-

- In R1, R2 or R5 coins: R50.
- In 10c, 20c or 50c coins: R5.
- In 5c coins or less (no longer being minted, but still legal tender): 50c.

You can report transgressors (reports of shops refusing to accept 5c coins have been circulating since minting of them stopped in 2012) to the Reserve Bank at 086 112 7272.

### ***Bitcoin: What's the Buzz?***

Bitcoin on the other hand is a very different animal – it's the most used virtual currency and it's giving governments sleepless nights. Decentralised, borderless, neither linked to nor controlled by any bank or banking authority, it lends itself to anonymity (more correctly "pseudonymy") and a kind of Cyber Wild West – with no law-enforcing Sheriff in sight. That may change as authorities increase their efforts to regulate it – or at least to monitor it for financial crime like money laundering, tax evasion, breach of exchange control regulations etc - but it remains to be seen how successful they will be.

Here in South Africa, Bitcoin is currently –

- Perfectly legal to use, but not "legal tender", so no one can force you to accept it as payment. If you do, be sure to comply with FICA and other local regulations (take advice in any doubt).
- Packed with potential. We are all feeling our way on this one, and as always, great opportunity and great risk walk with us hand-in-hand. If you invest in Bitcoins – and some investors have made fortunes doing so - beware of possible grey areas around tax treatment and exchange control laws.
- Very much accepted and used at your own "sole and independent risk" (quote from SA Reserve Bank). You have zero legal protection, no guarantee of value, convertibility or stability, and exposure to hacks, fraud and theft. Bitcoin enthusiasts refute many of these supposed risks but for now it seems safer to proceed on the basis that **you could lose everything in the blink of an eye or you could make a fortune; no one really knows.**

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### **Insider Trading – Big Brother is watching!**

***"Big Brother is Watching You" (George Orwell, 1984)***

If you trade in a public company's shares, bonds or other securities (on the JSE for example) be careful of our "market abuse" rules. They are wide enough that you could fall foul of them inadvertently, and as the penalties for non-compliance are harsh **take specific advice in any doubt.**



#### ***What is "inside information" and are you an "insider"?***

"Insider Trading" is a commonly-encountered type of "market abuse", but many company directors and other share investors aren't entirely sure what is outlawed and what is allowed.

In a nutshell, **inside information** is any specific information which is "obtained or learned as an insider" and which, if it were made public, "would be likely to have a material effect on the price or value of any security listed on a regulated market."

You are an **insider** if you have such information through being a director, employee or shareholder, if you have access to it "by virtue of employment, office or profession", or if

you know that the source of the information was one of those people.

### ***Big Brother is watching!***

The JSE's surveillance staff constantly monitors trading activity for any "unusual price and volume movements". Any suspicious activity is probed and if referred to the FSB (Financial Services Board), will be investigated by the ominous-sounding "Directorate of Market Abuse", with its powers of interrogation and search-and-seizure. The FSB's Enforcement Committee can then impose administrative penalties on offenders or refer them for criminal prosecution.

### ***The Court upholds R1m penalty***

A new and important High Court decision concerned an individual and a company who, as part of a strategy to acquire a controlling interest in a public company, bought tranches of its shares whilst armed with the non-public knowledge that it had obtained a R99m loan from the IDC.

The buyers denied any wrong-doing but on the facts the FSB found them guilty of insider trading and handed them a R1m penalty. Plus they must pay the costs. This wasn't a criminal prosecution so the FSB was able to act independently and quickly, bypassing our criminal justice system and evaluating evidence on a "balance of probabilities" rather than the "beyond a reasonable doubt" standard required for criminal conviction.

On appeal the High Court confirmed the FSB's decision, giving it a useful precedent to continue imposing substantial penalties on offenders. To rub salt into the offenders' wounds, their share investments were subsequently rendered valueless when the company was liquidated. Not relevant, said the Court, what counts is the rise in the share price *when the inside information becomes public*; later price movements are irrelevant.

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## **The November website: what's up with WOT? Check your website now**

When you search online for something your chosen search engine returns a long list of websites that meet your search criteria. Now you can choose which site to click on first.



But wait! How do you know whether or not the site is safe to visit? Might it put malware on your computer? Could it be a scam or a rogue web store? Or are the links untrustworthy? Is it safe for online shopping?

Of course having strong anti-virus and anti-malware software loaded is your first line of defence against cyber threats, but there are some threats that they just can't spot.

### ***Safer cyber surfing***

That's where WOT (Web of Trust) comes in. It's a free browser add-on available for Chrome, Firefox, Internet Explorer, Opera and Safari. What it does is tell you how its global community of millions of users have rated various websites from real life experience for trustworthiness and child safety. Sites with a **green circle** next to them are considered "good", **red** of course is "bad", and **yellow** warns you to be cautious. A blue question mark over a grey circle means the site hasn't yet been rated by enough users.

Download **WOT** free at [www.mywot.com](http://www.mywot.com).

**Important: Search for your own website regularly** – if WOT shows it as anything but green, potential customers and clients may be finding you online but then surfing away, afraid to click on your website link. See [WOT's](#) "Reputation" FAQs at for tips on how to get your rating back to "green for good".

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