

FIC Amendment Act

What are the changes?

Presented by: Dineo Mphahlele
Executive Manager: Inspectorate



**ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA**

FIC Amendment Act

1. Introduction
2. Risk-based approach
3. Risk Management and Compliance Programme(RMCP)
4. 7 Pillars of Compliance
5. Self Assessments of Compliance
6. Q & A

INTRODUCTION

The Estate Agency Affairs Board as a **regulatory body** is mandated to ensure **compliance** with the Estate Agency Affairs Act and Financial Intelligence Centre Act.

In addition, the **EAAB is a supervisory body** charged with ensuring and monitoring compliance with FIC Act.

The Financial Intelligence Centre (FIC) amongst its mandate, it includes the identification of monies associated with unlawful activities and elimination of ML/FT activities.

The FIC role includes gathering, analysing, and sharing of financial intelligence with law enforcement agencies to assist in criminal prosecution.

RISK BASED APPROACH

Risk - refers to the impact or likelihood of ML/TF taking place in your institution, this refers to **inherent risk** or the level of risk that exist before mitigation, not residual risk or the level of risk that still remain after mitigation.

RBA - in this context, which requires a Principal estate agent to identify, analyse, assess, mitigate and monitor risk associated in doing business with customers to prevent ML/TF activities.

Under those circumstances the principal would be expected to rate their customer against specific products, service offerings or other factors.

RISK BASED APPROACH

- An accountable institution should then **apply its knowledge and understanding** of its ML/TF risks when **developing the control measures** to manage and mitigate the risks identified;
- Where **higher risks** are identified, accountable institutions are to take **enhanced measures** to manage and mitigate the risks;
- **Simplified measures** may be applied where **lower risks** have been identified;
- All of the above must be **documented** in the accountable institution's **Risk Management and Compliance Programme.**

Risk Identification	Risk Management	Risk Rating
<ul style="list-style-type: none"> ❑ Principal Estate Agent should identify, assess, understand its money laundering risk posed by its products, service offerings, clients etc; ❑ Principal Estate Agent must then apply its knowledge and understanding taking into account the impact/ consequence; 	<ul style="list-style-type: none"> ❑ Principal Estate Agent should put in place measures to mitigate or treat its identified risk associated with his product, service offering, clients; ❑ The control measures must be proportionate to and to the extent of the risk assessed; 	<ul style="list-style-type: none"> ❑ The findings of risk assessment will determine different level of risk rating viz: low, moderate, high; ❑ Low “lighter measures”, moderate “simplified measures” “high” “stringent measures”; ❑ Risk matrix;

RISK BASED APPROACH

- In other words, estate agents would have more flexibility to exercise judgement in determining the extent and nature of the information required to prevent money laundering and terrorist financing risks;
- It is important to note that the risk must be assessed at regular intervals based on the changes that occur in the institution internally and externally;

RISK MANAGEMENT COMPLIANCE PROGRAMME (RMCP)

- Section 42 of the FIC Act obliges estate agencies to develop, document, maintain and implement a Risk Management and Compliance Programme.

The RMCP must sufficiently address and counter the money laundering and terrorist financing risks faced by estate agency concerned;

RMCP should comprises policy, processes and procedures, systems and controls to be implemented by and within the estate agency;

- Therefore, RMCP is underpinned by a risk-based approach;

RISK MANAGEMENT COMPLIANCE PROGRAMME (RMCP)

- Section 42(2B) provides that the board of directors, senior management or other person, or group of persons exercising the highest level authority in an accountable institution must approve the RMCP;
- It must be reviewed at regular intervals.

THE BASIS FOR CUSTOMISED RMCP

- Can be tailor-made to the needs of the institution;
- Unique to circumstances of the institution;
- Institutions differ in size, diversity, sophistication;
- Provide for more flexibility to exercise in determining the extend of information applicable;
- Permit greater control on how to satisfy FIC requirements;
- It is an individual firm responsibility not collective;

RISK MANAGEMENT COMPLIANCE PROGRAMME (RMCP)

Section 42 outline all the elements of a compliant RMCP namely:

- How AI **identifies, assess, monitors, mitigate and manage** ML/TF;
- How AI determine if person is prospective/ existing client;
- How AI will ensure **“no anonymous clients”**;
- How AI determine if future transaction consistence with AI's knowledge of prospective clients;
- How AI conduct **additional CDD** for legal persons, partnership and trust

RISK MANAGEMENT COMPLIANCE PROGRAMME (RMCP)

- How AI conducts **ongoing CDD** and continuous monitoring;
- How AI **examines and keeps** written findings of complex or unusual large transactions, and unusual pattern of transaction which have no lawful purpose;
- How AI will confirm information relating to clients where there are **doubts about veracity** of previously obtained information;

RISK MANAGEMENT COMPLIANCE PROGRAMME (RMCP)

- How AI will perform CDD **in the course of a business relationship** and where AI suspects the activity transaction is suspicious;
- How AI will **terminate an existing business relationship** if unable to conduct a CDD;
- How AI determines if a prospective client is foreign or a domestic prominent person;
- How AI **conducts enhanced due diligence** for high relationships and when simplified CDD may be permitted;

RISK MANAGEMENT COMPLIANCE PROGRAMME (RMCP)

- How and where records are kept;
- **Provide processes for reporting** to FIC;
- How RMCP is implemented in branches, subsidiaries etc;
- RMCP should document risk rating methodology;
- **NOTE: Section 42(2A)** permits an estate agent to exclude from the RMCP any component which is not applicable with justification.

7 PILLARS OF COMPLIANCE

The FIC Amendment Act is based on the 7 pillars of compliance which include:

- Client identification and verification;
- Record keeping;
- Reporting;
- RMCP;
- Person responsible for compliance;
- Training of employees;
- Registration with FIC;

CLIENT IDENTIFICATION AND VERIFICATION

- A **risk based approach** must be applied to CDD;
- The estate agent is to ensure that he/she does not transact with “anonymous client” when commencing business relationship/ concluding a single transaction;
- The estate agent must **know your client (KYC)**;
- For a single transaction (Natural Person);
 - Identify and verify client
 - Identify and verify agent and authority

CLIENT IDENTIFICATION AND VERIFICATION

Business relationship

- Identify and verify client
- Identify and verify agent and authority
- Nature of business relationship
- Purpose of the business relationship
- Source of funds

CLIENT IDENTIFICATION AND VERIFICATION

Client as legal person;

- identify and verify legal person;
- identify and verify beneficial owner (controlling interest/ management control);
- identify and verify agent and authority;
- nature of business relationship;
- purpose of the business relationship;
- source funds;

CLIENT IDENTIFICATION AND VERIFICATION

Client as a partnership;

- identify and verify partnership;
- identify and verify partners;
- identify and verify agent and authority to act;
- identify and verify person who exercises executive control;
- nature of business relationship;
- purpose of the business relationship;
- source of funds;

CLIENT IDENTIFICATION AND VERIFICATION

Client as a trust

- identify and verify trust;
- identify and verify founder;
- identify and verify trustees, beneficiaries;
- identify and verify agent and authority to act;
- identify and verify address of Master of the High Court;
- nature of business relationship;
- purpose of the business relationship;
- source of funds;

CLIENT IDENTIFICATION AND VERIFICATION

- Where there is **inability to conduct CDD**, the estate agent **may not conclude or give effect** to a single transaction, **may not establish or conclude transactions** in business relationship, therefor must terminate the existing relationship and consider submitting a S29 report;

CLIENT IDENTIFICATION AND VERIFICATION

Foreign Prominent Public Officials and Domestic Influential Persons;

- conduct CDD;
- source of funds and wealth;
- conduct ongoing enhance monitoring;

THE RATIONAL BEHIND THE CDD

- Ensure that estate agents do not do transactions with anonymous client;
- Know who they are doing business with;
- Know who benefits from the business it does with the client;
- Understand the nature of the business it does with a client;
- Determine when a transaction during that business relationship is considered suspicious or unusual;

RECORD KEEPING

- The estate agent is required to keep adequate information to enable the reconstruction of the flow of funds to assist investigation in the event of a criminal investigation;
- Records may be kept in electronic form;
- Records must be readily accessible;
- Records must be kept for 5 years;

RECORD KEEPING

- Records kept in terms of section 22A- 5 years from the date on which the transaction is concluded;
- Transaction or activity which gave rise to section 29 report – **5 years from date on which report was submitted to the FIC;**
- Ongoing investigations - keep records until law enforcement agency has confirmed case has been closed;

REPORTING REQUIREMENTS

Section 28 of FICA (Cash threshold)

- **The threshold amount is R24 999.99.** The amount in excess of the prescribed limit must be reported by the estate agency within 2 business days after becoming aware;
- The estate agency must within the prescribed period report to the FIC the particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed limit is paid by the estate agent to the client,
 - or to a person acting on behalf of the client,
 - or to the person on whose behalf the client is acting,
 - or is received by the estate agent from client,
 - or from the client,
 - or from a person on behalf of the client,
 - or from a person on whose behalf the client is acting

REPORTING REQUIREMENTS

Section 29 of FICA (suspicious transactions)

- The section obliges the estate agency to report a suspicious transaction.
- The section requires an estate agency who suspects or who ought to have known that the business has received, or about to receive the proceeds of unlawful activities;
- or property which is connected to an offence relating to the financing of terrorist and related activities to report to FIC;
- The time period for reporting (not later than 15 working days).

Note: that the estate agency must continue with the transaction.

REPORTING PLATFORM

- The FIC electronic reporting portal where an estate agent can report a suspicious transaction and transactions above threshold and prescribed timelines within which to report;

PERSONS RESPONSIBLE FOR COMPLIANCE

Board or Senior Management must approve and ensure compliance with the FIC Act and RMCP;

A Compliance Officer must be appointed with sufficient competence and seniority to ensure compliance with the FIC Act;

TRAINING OF EMPLOYEES

- Training in terms of the FIC Act;
- Training must be ongoing;
- Enable employees to comply with FIC Act and RMCP which must be implemented as set out;
- Employees may be provided with copy of RMCP;

REGISTRATION WITH FIC

- All estate agents must be registered with FIC within 90 days of start of business;
- All branches must also be registered;
- Registration detail on goAML;
- Appointment of the compliance officer;
- Non-compliance will result in the imposition of administrative sanction;

SELF-ASSESSMENT OF COMPLIANCE

This is a web-based tool , its principle aim is to encourage Estate Agents and Agencies to assess the level of compliance with the provisions of the of both FIC AND EAA Act.

This measure is intended to assist the EAAB to identify areas of non-compliance in order to implement appropriate remedial measures;

It is available on the EAAB website www.eaab.org.za

SELF-ASSESSMENT OF COMPLIANCE

An electronic generated request will be sent to estate agents and estate agencies identified, calling-on them to provide information which will be requested electronically.

Upon receipt of such information, the Inspections Department will analyse information and records about the estate agent or estate agency, and provide feedback to the concerned estate agent, or estate agency about his/her/its level of compliance with the Act.

Contact us

- www.eaab.org.za
- Dineo.mphahlele@eaab.org.za
- www.fic.gov.za

THANK YOU



