



**financial intelligence centre
REPUBLIC OF SOUTH AFRICA**

**Financial Intelligence Centre
Compliance Awareness
Road Shows**

**Presented by
The Financial Intelligence Centre**

February - March 2014



Programme

- 07:30 – 08:45** **Registration and Refreshments**
- 08:45 – 09:00** **Welcome and opening**
- 09:00 – 10:00** **Compliance with the FIC Act**
- 10:00 – 10:30** **Tea Break**
- 10:30 – 11:00** **Application of financial intelligence in support of criminal investigations**
- 11:00 – 12:00** **Enforcement of the FIC Act**
- 12:00 – 13:00** **Question and Answer session and Closure**

Agenda

- Objectives of the FIC
- Importance of the FIC Act
- FATF
- FIC - 2012/2013 in review
- Money Laundering
- What is terrorism
- How is terrorism financed
- Compliance framework
- Duties of AI's
- Guidance issued by the FIC
- Amendments to the FIC Act

Financial Intelligence Centre

- Established in terms of section 2 of the FIC Act

The objectives of the FIC are:

- To assist in identifying proceeds of unlawful activities and combating of money laundering and terror financing
- To make information available to investigating authorities, SBs, intelligence services and SARS
- Exchanging AML/CFT information with bodies in other countries that have similar objectives
- Supervise and enforce compliance with the FIC Act

FIC - 2012/2013 in review

	2011/2012	2012/2013	Increase
STRs	53 506	147 744	176%
Requests by LEAs	980	1 445	47%
Requests by other FIUs	131	172	31%
Matters referred to LEAs	761	883	16%
Value of cases referred to LEAs	R6,3 billion	R74 billion	1 075%
Identification and freezing of proceeds of crime	R17,2 million	R334,8 million	1 841%

Importance of the FIC Act

According to the Task Force on Financial Integrity and Economic Development:

Every year, developing countries lose approximately \$1.3 trillion in illicit financial outflows—the proceeds of crime, corruption, tax evasion, and trade mispricing. This loss of capital outpaces current levels of foreign aid by a ratio of 10 to 1. Curtailing these outflows is crucial to nurturing a stable and robust economic recovery in global markets, stamping out political corruption and crime, and fostering good governance...

1 1 “Message to the G-20” Task Force on Financial Integrity and Economic Development. (13 October 2011)
<http://www.financialtaskforce.org/2011/10/13/2011-task-force-conference-communiqu-e-a-message-to-the-g20/>

Financial Action Task Force

- International standard setting body for FIUs
- 38 member global AML standards-setting body which forms an integral part of the global financial intelligence network
- South Africa is the only African member of the FATF
- Standards expressed in the form of “recommendations”
 - 40 Recommendations on AML – Original recommendations reviewed and revised recommendations published February 2012
- In Feb 2009, FATF released a favourable assessment report of a second mutual evaluation it conducted on SA in late 2008 - shortcomings currently being addressed

Money Laundering



Money Laundering

- Money laundering involves criminals and their associates trying to hide the fact that their proceeds and funds come from illegal activities
- In order for crime to pay, a criminal must be able to enjoy whatever it is they have taken and are not entitled to
- Criminals channel dirty money through legitimate businesses and institutions such as banks, casinos, estate agencies, brokers, etc
- Is not dependant on specific predicate crime only – all criminal activities could lead to money laundering

**Money laundering is NOT about cash –
its about the PROCEEDS of crime**

What is terrorism

- **A criminal act that influences an audience beyond the immediate victim**
- **Might have as its aim(s) to:**
 - Produce widespread fear
 - Create doubt that the government can provide for and protect its citizens
 - Attract media attention to obtain recognition for their cause
 - Weaken, or embarrass government security forces
 - Free prisoners
 - Satisfy vengeance
 - Influence government decisions
 - Discourage foreign investment and tourism

How is terrorism financed?

- Sources are robust and low-key
- Use of illegitimate and legitimate funds
- A wide variety of crimes may be used to finance operations:
 - drug trafficking
 - identity theft
 - credit card theft
 - social grant theft
 - personal and commercial vehicle hijacking
 - organised shoplifting gangs
 - reselling of stolen property
 - contraband cigarettes
 - sale counterfeit watches, textiles dvd's, cd's and software
 - underground banking

Compliance Framework

Duty	Section	Applicable Regulations	Applicable Guidance	Applicable Exemptions
Establishment of identity of clients and other persons	21	3 to 19 & 21	GN 1, 2, 3 PCC03, 03A, 08, 09, 10, 11, 14, 15	2 to 16
Duty to keep records <ul style="list-style-type: none"> Documents that must be kept What procedure does an AI follow in terms of record keeping? Who has access to these records? Is it documented? Period to keep records Third parties Are records readily available? Is there a policy in place that outlines the access control to these records? 	22; 23 & 24	20 & 26	PCC02	3 to 17
Reporting duties 1. CTR <ul style="list-style-type: none"> Introduced on 01 December 2010 Threshold amount is R24 999.99 Different reporting options Report within 2 business days after becoming aware Aggregation – 24 hours Multiple reporting – cash received and paid 2012/2013 FY more than 6 million CTRs received 	28; 28A & 29	22; 22A; 22B; 22C; 23; 24; 27A; 27B & 27C	GN 4 GN 5 PCC04	N/A



Compliance Framework

Duty	Section	Applicable Regulations	Applicable Guidance	Applicable Exemptions
<p>2. STR</p> <ul style="list-style-type: none"> Defining a suspicion Who must report? This obligation applies to: <ul style="list-style-type: none"> ✓ a person who carries on a business ✓ a person who is in charge of a business ✓ a person who manages a business or ✓ a person who is employed by a business STR's have no cash threshold Time period for reporting – ASAP (not later than 15 working days) Continue transaction (section 33) Protection of person making report (section 38) <p>3. TPR</p> <p>Property owned or controlled by or on behalf of, or at the direction of:</p> <ul style="list-style-type: none"> Any entity which has committed or facilitated the commission of a specified offence as defined in POCDATARA A specific entity identified in a notice issued by the President, under section 25 of the POCDATARA Act – No list in South Africa (UN1267) 	28; 28A & 29	22; 22A; 22B; 22C; 23; 24; 27A; 27B & 27C	GN 4 GN 5 PCC04	N/A

Compliance Framework

Duty	Section	Applicable Regulations	Applicable Guidance	Applicable exemptions
<p>Formulating and implementing of internal rules</p> <p>Internal rules to document procedures for:</p> <ul style="list-style-type: none"> ✓ The establishment and verification of client identities – Regulation 25 ✓ Record keeping – Regulation 26 ✓ Reporting of STR's – Regulation 27 ✓ Appointment of a compliance officer – Section 43 <p>• Internal rules should be approved by the board of directors and senior management and be made available to Centre and SB on request</p>	42	25; 26 & 27	PCC19	N/A
<p>Training of employees regarding the FIC Act and internal rules</p> <ul style="list-style-type: none"> • AI must provide training to its employees • A compliance officer is responsible for ensuring that training takes place • Training manual must be updated , as required • Training should be ongoing - Assessments of employees • Employees should not deal with clients if they have not yet received training 	43(a)	N/A	PCC18	N/A

Compliance Framework

Duty	Section	Applicable Regulations	Applicable Guidance	Applicable exemptions
<p>Appointment of the compliance officer</p> <ul style="list-style-type: none"> • An AI has a duty to formally appoint a compliance officer • The C.O. should have general knowledge of the overall operations of the institution • Interact with all of the departments and branches to keep abreast of changes that may require action to manage perceived risk • The C.O. must have access to all areas of the institution's operations to effect corrective action 	43(b)	N/A	PCC 12, 18	N/A
<p>Registration with the Centre</p> <ul style="list-style-type: none"> • Each AI to be registered separately (including franchises, branches) • Registration online – unless impossible then manually • Registration deadline was 1 March 2011 • Still encouraged to register • Contents of online registration form • Validation process • No registration fees • MLROs • Amendments to registration information • Registrations grew 56% from previous FY - 21 866 	43B	27A	GN05, PCC05, 06, 07, 13	N/A

Guidance issued by the FIC

- Guidance Notes and Public Compliance Communications (PCCs)
- Issued in terms of section 4(c) of the FIC Act

Guidance Notes

- Generally industry specific and detailed

PCCs

- Generally covers 1 issue – industry or general
- Thus far issued 23 PCCs – FIC Website
- Same status as a guidance note
- Topics are identified through industry engagements, SBs, public queries, area of law that is uncertain, on-site reviews/inspections, Amendments to the FIC Act that require clarification

Guidance issued by the FIC

- Guidance Notes

Guidance Note 3A	Guidance for accountable institutions on client identification and verification and related matters
Guidance Note 4	Guidance on Suspicious Transaction Reporting
Guidance Note 5	Guidance on Cash Threshold Reporting

Guidance issued by the FIC

<p>PCC05</p>	<p>Registration of accountable and reporting institutions with the Financial Intelligence Centre</p>	<p>This PCC details the institutions that need to register with the FIC and the process for registering, also includes guidelines for registration</p>
<p>PCC12</p>	<p>Outsourcing of compliance activities to third parties</p>	<p>Als may utilise the services of a 3rd party to perform activities relating to establishing and verifying client identities and record keeping requirements, but still remains liable for compliance failures relating to the outsourcing arrangement.</p>
<p>PCC 18</p>	<p>Compliance obligations in terms of section 43 (training and apt of a CO) of the FIC Act</p>	<p>An AI is required to provide training to its employees and to formulate internal rules.</p> <p>An AI is also required to appoint a compliance officer.</p> <p>It is the responsibility of the compliance officer to ensure that the AI and employees of the AI comply with the provisions of the FIC Act and the internal rules formulated.</p>

Guidance issued by the FIC

<p>PCC 19</p>	<p>Compliance obligations of AIs in a complex group structure, specifically to those AIs applying the group internal rules under a centralised compliance function, within a complex group structure.</p>	<p>An AI that forms part of a complex group structure is required to implement processes and procedures that will govern the manner in which the AI will comply with its obligations as set out in the FIC Act.</p> <p>AIs that form part of a complex group structure are required to comply with the FIC Act in their own right and have to adopt internal rules in terms of section 42 of the FIC Act specific to its business.</p>
<p>PCC 21</p>	<p>The scope and application of Exemption 17 of the exemptions to the FIC Act.</p>	<p>Exemption 17 exempts designated AIs from compliance with certain CIV obligations required by the FIC Act. PCC provides guidance on the scope and application of Exemption 17.</p>
<p>PCC 24</p>	<p>Verification of the registration details of a company or close corporation prior to doing business with them.</p>	<p>The documentation that an AI must obtain to verify the particulars of a company or CC taking into account the new Companies Act and the amended Close Corporations Act.</p> <p>In respect of a SA company:</p> <ul style="list-style-type: none"> • registration certificate and notice of incorporation or utilise the electronic verification processes provided by CIPC. <p>In respect of a CC:</p> <ul style="list-style-type: none"> • founding statement and certificate of incorporation, bearing the stamp of the Registrar of CCs and signed by an authorised member or employee of the CC, or alternatively utilise the electronic verification processes provided by CIPC.

Amendment of FIC Act

In amending the FIC Act consideration is given to:

- International standards – Most recent FATF standards
- 2009 FATF assessment report of SA
- To enable institutions to make it simpler for customers to satisfy customer due diligence processes
- To create opportunities for institutions to explore more innovative ways of offering financial services to a broader range of customers, thereby bringing previously excluded sectors of society into the formal economy

Amendment of FIC Act

- Risk Based Approach
- Customer due diligence measures
- Beneficial ownership
- PEPs
- Record keeping
- On-going due diligence



Amendment of FIC Act – Risk Based Approach

- RBA central theme of FATF's approach
- Application of a RBA entails that an AI should identify, assess, and understand its ML and TF risks
- Risk - refers to the risk that an institution's products or services may be abused by its customers in order to carry out ML or TF activities and emanate from a combination of factors such as the customers countries, products, delivery channels etc. involved in a given scenario
- Understanding of risks should form basis for actions against ML/TF
- Take effective action to mitigate risks
- Document assessment of risk or demonstrate that risks are identified and understood

Amendment of FIC Act – Risk Based Approach

Benefits of a RBA

Flexible

- ✓ ML/TF risks vary across jurisdictions, customers, products, delivery channels and over time

Effective

- ✓ Institutions are better equipped than legislators to effectively assess and mitigate risks they face particularly ML/TF risks

Proportionate

- ✓ More attention to high risk customers and less attention to low risk customers. Allocate resources more effectively

Amendment of FIC Act – Beneficial owner

- The FATF describes a “beneficial owner” as:
“the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”
- Requiring the identification of the beneficial ownership of customers which are not natural persons is a key step to bring greater transparency to activities in a financial system
- This not only enhances the ability of institutions to better assess customer related risks in the course of managing business relationships, but also greatly improves the ability of authorities to detect, investigate and prosecute abuses of financial and other institutions for ML and TF purposes

Feedback and Enquiries

- Enquiries by e-mail: fic_feedback@fic.gov.za
- CAP Contact Centre: +27 860 222 200

