



**financial intelligence centre  
REPUBLIC OF SOUTH AFRICA**

## **Supervision and Enforcement**

**Presented by  
The Financial Intelligence Centre**

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# Introduction



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# FIC Act Supervision & Enforcement Model

- Supervisory Bodies (SBs) take responsibility to supervise and enforce compliance with the FIC Act, order, determination or directive made in terms of the FIC Act by all accountable institutions regulated or supervised by it [s45(1)]
- The FIC takes responsibility to supervise and enforce non-compliance with the FIC Act on accountable and reporting institutions not regulated or supervised by a SB [s4(g)(i)]
- The FIC takes responsibility to supervise and enforce non-compliance with the FIC Act on accountable institutions regulated or supervised by a SB where the SB fails to fulfil its responsibilities [s4(g)(ii), 45(3), 45B(6)(a)]

# FIC Act Supervision & Enforcement Model

Schedule 2 to the FIC Act lists the SBs:

- Financial Services Board (Insurance companies, FSPs, CIS managers, authorised users of Exchange)
- South African Reserve Bank
  - BSD (Banks, Mutual Banks, Persons dealing in foreign exchange, money remitters)
  - Finsurv (ADLAs, money remitters)
  - NPSD (payment system)
- Estate Agencies Affairs Board (Estate Agents)
- Independent Regulatory Board for auditors (auditors that are also FSPs)
- National Gambling Board and Provincial Gambling Boards (Casino's, Betting on horse racing and sporting events, Bingo, LPMs)
- Provincial Law Societies (Practicing Attorneys)

# FIC Act Supervision & Enforcement Model

- The following institutions are not regulated or supervised by a SB:
  - Trust companies and administrators
  - Entities who lend money against the security of securities
  - The Postbank
  - Ithala Development Corporation
  - MVDs (reporting institution)
  - Kruger Rand dealers (reporting institution)
- The FIC supervises and enforces compliance with the FIC Act with regard to the institutions listed above

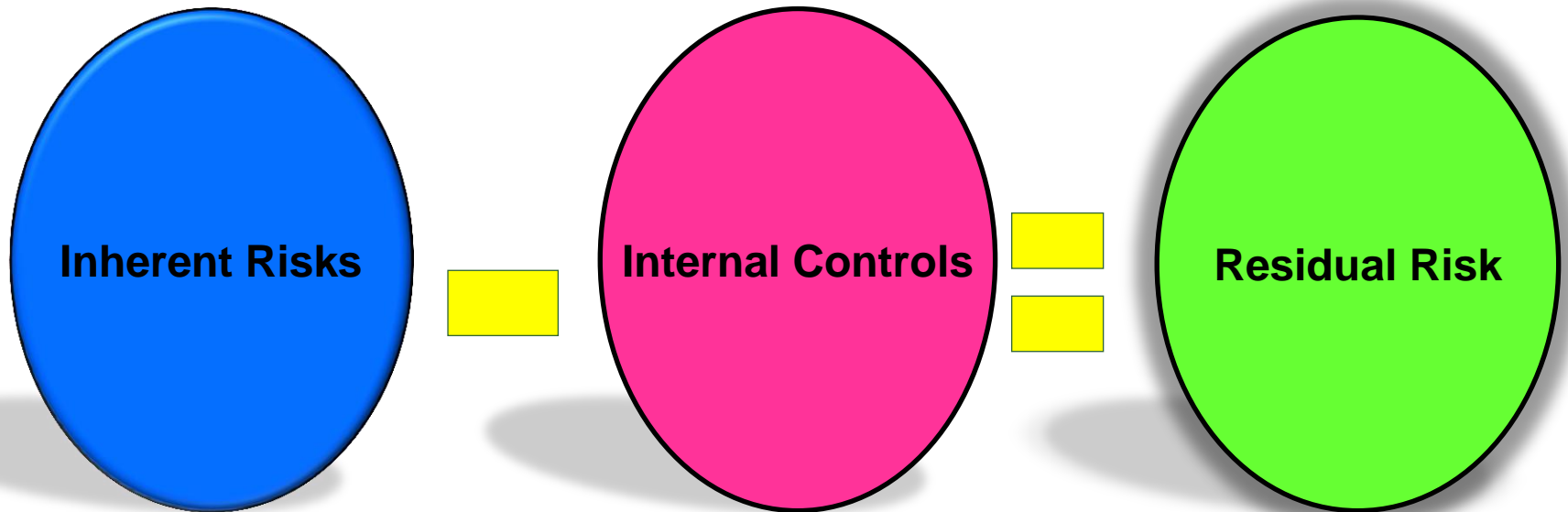
# Risk Based Approach to Supervision

- FATF recommends that every SB follow a risk based approach to supervision [Rec 26 & 28]
- A risk based approach is the general process by which a supervisor, according to it's understanding of risks, allocates resources to supervision and the specific process of supervising institutions that apply a risk based approach [FATF interpretive note]
- Adopting a risk based approach to supervision will allow supervisors to shift resources to those areas that are perceived to present a higher risk for money laundering or financing of terrorism

# Risk Based Approach to Supervision

- Advantages of a risk based approach to supervision:
  - Assist in choosing the entity to be inspected
  - Assist in deciding the frequency and intensity of the inspection
  - Resources should be directed in accordance with priorities - greatest risks receive the highest attention
  - Proportionate administrative actions will be taken
  - Adherence to international standards

# RBA Model to supervision





# What is Risk

- **Risk** is defined as the effect of uncertainty on objectives
- What is **inherent risks**:
  - Inherent risks are characteristics of the institution that makes it vulnerable to money laundering and terrorist financing
- What is **internal controls**:
  - Internal controls are mitigating factors implemented by the institution to mitigate the inherent risks
- What is **residual risks**:
  - Inherent risks – Internal controls = Residual risks

# Inherent Risks

- In determining **inherent risks**, the following needs to be taken into account:
  - Products and services risks (cash based products, international products, exemptions)
  - Customer profile risks (non-face-to-face customers, legal entities)
  - Distribution channel risks (branches, borders, airports)
  - Jurisdiction risks (foreign jurisdictions, borders, provinces)
  - Business structure risks (large companies, high turn over)
  - Previous interaction with the institution (inspections, meetings, letters)
  - Complaints received (media reports, M&A referral, RI from IRBA, complainants, FIC reporting)
  - National and international trends & typologies on ML/TF

# Inspections in terms of the FIC Act

- The purpose of inspections in terms of the FIC Act is to determine the level of compliance of the accountable institution [s45B(1)]
- The FIC and supervisory bodies cannot use the inspections powers to investigate any criminal conduct
- Should the FIC or supervisory body detect any criminal conduct during an inspection, it may refer the matter to law enforcement to investigate
- The allegations of criminal conduct may be an indication that an accountable institution has not complied with the FIC Act and may lead to an inspection

# Inspections in terms of the FIC Act

- Head of SB must appoint inspectors prior to inspection [s45A(11)]
- Head of SB must issue the inspectors with a certificate [s45A(3)]
- Inspectors must be in possession of the certificate when conducting inspections [s45A(5)]
- An inspector must show his certificate when requested by an effected person or person in charge of the premises [s45A(5)]
- Inspection done at reasonable time and notice where appropriate [s45B(1)]
- Inspection to be done at the business premises of AI/RI [s45B(1)]

# Inspection Powers – Section 45b(2)

An Inspector may:

- Direct a person to appear for questioning
- Order any person who has or had any document in his possession or under his control relating to the AI/RI or person to:
  - Produce the document or to
  - Furnish the inspector with information regarding that document
- Open any strong room safe or other container or order any person to open any strong room safe or other container;
- Use any computer equipment system or equipment on the premises or require reasonable assistance from any person on the premises to use that computer system to:
  - Access any data contained in or available to that computer system
  - Reproduce any document from that data
- Examine or make extracts from or copy any document or remove the document for that purpose
- Seize any document against the issue of a receipt.

# Inspections in terms of the FIC Act

In terms of section 45B(5), an inspector may not disclose to any person not in service of the Centre or SB any information obtained in the performance of the inspection unless:

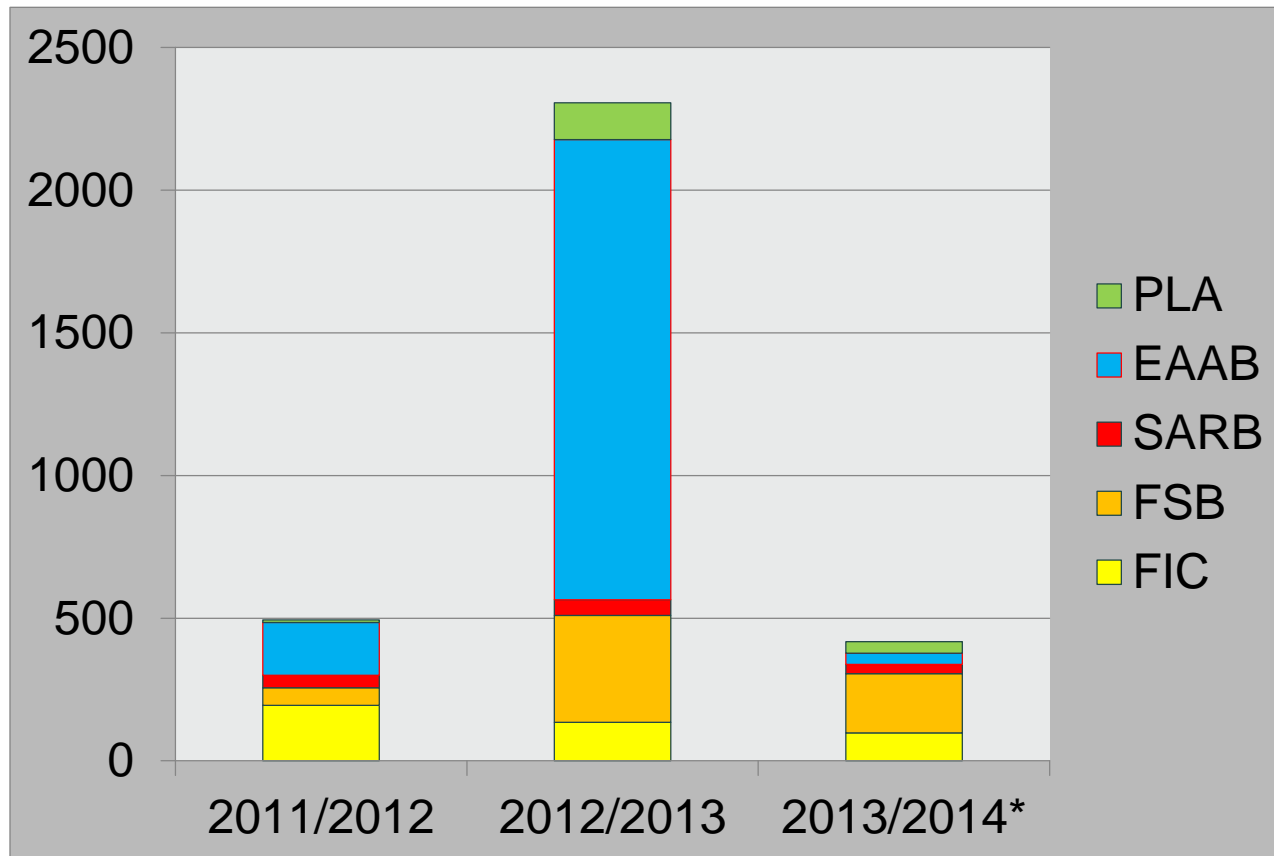
- For purposes of enforcement
- For purposes of legal proceedings
- When required to do so by a Court
- If the Director or SB is satisfied that it is in public interest
- The inspector knows or suspects that the institution
  - Has or is about to receive proceeds of unlawful activity
  - Being used for money laundering or financing of terrorist purposes [s36]

# Scope of inspections

Duty	Section	Applicable Regulations	Applicable directives, guidance notes or PCCs	Applicable exemptions	Administrative sanction	Criminal sanction
Identify and verify client	21	3 to 19 & 21	GN 1, 2, 3 PCC03, 03A, 08, 09, 10, 11, 14, 15, 20, 21, 22, 24	2 to 16	R50 million for legal person R10 million for natural person	R100 million or 15 years imprisonment
Duty to keep records	22; 23 & 24	20 & 26	PCC02	3 TO 17	R50 million for legal person R10 million for natural person	R100 million or 15 years imprisonment
Reporting duties	28; 28A & 29	22; 22A; 22B; 22C; 23; 24; 27A; 27B & 27C	GN 4 & 5 PCC04, 16	N/A	R50 million for legal person R10 million for natural person	R100 million or 15 years imprisonment
Formulating and implementing of internal rules	42	25; 26 & 27	PCC 19	N/A	R50 million for legal person R10 million for natural person	R10 million or 5 years imprisonment
Training of employees regarding the FIC Act and internal rules	43(a)	N/A	PCC 18	N/A	R50 million for legal person R10 million for natural person	R10 million or 5 years imprisonment
Appointment of the compliance officer	43(b)	N/A	PCC 12	N/A	R50 million for legal person R10 million for natural person	R10 million or 5 years imprisonment
Registration with the Centre	43B	27A	Dir 1, GN05 PCC05, 06, 07, 13, 17, 23	N/A	R50 million for legal person R10 million for natural person	R10 million or 5 years imprisonment



# Inspections conducted





# Pre inspection

- The Centre will issue a notice of inspection where appropriate [s45B(1)]
- The notice will be issued from a mailbox called [inspections@fic.gov.za](mailto:inspections@fic.gov.za)
- The notice will set out the following:
  - The name of the institution to be inspected
  - The date and time of the inspection
  - Purpose of the inspection
  - The possible consequences of the inspection
  - The inspection contraventions in terms of the FIC Act
  - Who needs to be present during an inspection
  - What documents to provide prior to the inspection

# Pre inspection

- The institution to be inspected must provide the following documents prior to the inspection:
  - The internal rules
  - Minutes of the Board of Directors approving the internal rules
  - Letter of appointment of the compliance officer
  - Training manual
- Documents to be ready during the inspection include:
  - Proof of the submission of CTRs, TPRs and STRs
  - Client files
  - Bank statement, cash receipt books etc.

# During the inspection

- The inspection starts with completing a questionnaire
- The questionnaire covers all the compliance duties of an accountable institution
- A person appointed to s43 (compliance officer) and where applicable the CEO/Director/Head of the institution is required to attend the completion of the questionnaire
- Staff members will thereafter be questioned to determine:
  - When and how were they trained on the FIC Act and internal rules
  - Their knowledge regarding CIV and reporting obligations

# During the inspections

- Sampling of client files will be done to determine:
  - CIV obligations
  - record keeping obligations
  - reporting obligations
- The amount of files sampled will be determined by the type and scope of the inspection
- Bank statements and cash receipt books will be reviewed to identify any transactions that exceed the threshold limit and to identify any possible suspicious transactions
- The process, procedure or system for detecting and reporting CTRs and STRs will also be tested

# During the inspection

- Inspectors may examine or make extracts from or copy any document in the possession of the inspected institution [s45B(2)(e)]
- Inspectors may also, against the issue of a receipt, seize any documents which may constitute evidence of non-compliance with the FIC Act [s45B(2)(f)]

# Inspection offences

## Offences created by the FIC Act are:

- The failure to appear for questioning
- The failure to produce a document
- Intentionally gives false information
- The failure to comply with a reasonable request
- Intentionally hinders an inspector in the performance of his functions

## Penalties:

- **Administrative penalty:**
  - ✓ Natural person: R10 million
  - ✓ Legal person: R50 million
- **Criminal penalty:**
  - ✓ 5 years imprisonment
  - ✓ R10 million

# Post inspection

- An inspection report is written by the inspectors
- Inspected institution to provide comments on the inspection report
- Final inspection results issued

# Inspection findings

- The most common inspection findings are:
  - Neither the compliance officer nor the employees knows what a suspicious transaction is in their environment
  - The training provided to the employees of the institution is not adequate or frequent enough
  - The internal rules are not customised for the particular business



# Costs

- The FIC or a SB may recover all expenses necessarily incurred in conducting an inspection from an AI, RI or person inspected – s45B (3)
- Inspection manual: cost will only be recovered when material non-compliance is found
- Cost will also be claimed where the compliance officer is absent at the conducting of the inspection without good reason
- Where FIC accompanies a SB, FIC will pay their own costs. Those costs cannot be recovered from the AI. The SB can, however, recover its own costs

# Administrative Sanctions

- The FIC or SB may impose an administrative sanction on any AI, RI or other person to whom the act applies when satisfied on available facts and information that the institution or person:
  - Has failed to comply with the FIC Act
  - Has failed to comply with a condition of a licence, registration, approval or authorisation issued i.t.o s45 (1B)(e)
  - Has failed to comply with a directive
  - Has failed to comply with non-financial administrative sanction

# Administrative Sanctions

- The decision to sanction or not will depend on the following factors:
  - the willingness of the AI to comply
  - the nature, duration, seriousness and extent of the non-compliance
  - whether the AI has previously failed to comply with the FIC Act
  - any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance
  - any other mitigating or aggravating factors

# Administrative Sanctions

- The FIC or SB may impose any appropriate administrative sanction – s45C (6)
- The FIC Act provides various administrative sanctions which includes:
  - a caution not to repeat the conduct which led to the non-compliance
  - a reprimand
  - a directive to take remedial action or to make specific arrangements
  - the restriction or suspension of certain specified business activities
  - a financial penalty

# Administrative Sanctions

- SBs to consult the FIC before imposing an administrative sanction
- SB to impose sanction after representations from the inspected institution – s45C (5) & (6)
- Administrative sanctions are not criminal sanctions
- The Director or SB must, subject to certain conditions, make public the decision and nature of the sanction imposed – s45C (11)

# Administrative sanctions

- Two administrative sanctions have been imposed to date
- Any financial penalty imposed must be paid into the Criminal Assets Recovery Account (CARA) established by s63 of POCA - s45C (7)
- CARA is controlled by a Ministerial committee - s65 of POCA
- The committee is to advise Cabinet in connection with the rendering of financial assistance to law enforcement agencies and any other institutions, organisations or funds established with the object to render assistance to victims of crime - s68, 69 & 69A of POCA

# Administrative Sanctions and Criminal Prosecutions

- Non-compliance could also amount to a crime punishable with hefty fines
- FIC and supervisory bodies may refer matters to the SAPS and authorities for criminal investigation and prosecution [s44]
- SAPS may investigate non-compliance with the FIC Act on their own accord
- Real risk of criminal prosecution in non-compliance matters
- Number of such cases already in criminal courts;
- The risk of criminal prosecution is real – Reporting is a defence against a charge of money laundering [s 7A POCA, 121 of 1998]

# Appeals

- An institution may appeal the decision of the Director or SB
- The appeal must be lodged within 30 days of receiving the sanction notice
- The appellant must, with the appeal, pay a fee of R10 000 to the FIC – regulation 27C (d)
- If the Appeal Board sets aside the decision of the FIC or SB, the R10 000 must be refunded to the appellant – s45D (10)(a)
- If the Appeal Board varies a decision of the FIC or SB, it may direct that the whole or part of the R10 000 be refunded to the appellant – s45D (10)(b)
- Any party to an appeal is entitled to be represented at an appeal by a legal representative – s45D (6)



# Feedback and Enquiries

- Enquiries by e-mail: [fic\\_feedback@fic.gov.za](mailto:fic_feedback@fic.gov.za)
- CAP Call Desk: +27 860 222 200



# Questions & Answers

