



Financial
Intelligence Centre

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WELCOME



Financial
Intelligence Centre

Amendment of the Schedules to the
Financial Intelligence Centre Act:
**Consultation with the
Short-Term Insurance Industry**

12 May 2017



DISCUSSION POINTS

- Background
- Amendment of the Schedules to the FIC Act
- 7 Pillars of Compliance
- Case studies
- International Perspective
- Proposed inclusion and Benefits of Regulating the Short-Term Insurance Industry
- Questions and discussion
- Way forward
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Background

- The Financial Intelligence Centre Act (FIC Act) was passed in 2001 and FIC was started in 2003
- The FIC implements and administers the Act
- South Africa's national centre for the production of financial intelligence, responsible for identifying the proceeds of crime, combating money laundering (ML) and the financing of terrorism (TF)
- The Act is a key component of SA's anti-money laundering and combating the financing of terrorism (AML/CFT) regime
- The Act identifies certain business sectors, called accountable institutions, as vulnerable to ML and TF activities



Background - continued

- Transparency is one of the fundamental principles for inclusion of business in the FIC Act Schedule. This requires financial and other institutions to apply customer due diligence measures – the knowledge that an institution has about its customer
- Important to understand - the fact people may be exploiting a vulnerability in a particular type of institution or business sector does not mean that the type of business is under suspicion or that the business is in cahoots with criminals; this is not the reason for including such institutions / businesses in the FIC Act Schedule
- In addition, also important is ensuring a level playing field among institutions or businesses that provide similar types of services to customers



Background - continued

- The FIC uses the information submitted by business, including accountable and reporting institutions, as well as additional information to develop its financial intelligence reports
- The FIC shares these reports with law enforcement authorities, the South African Revenue Service and other competent authorities. These partners of the FIC are able to use these reports for their follow up action and investigations
- These competent authorities rely on the FIC as the only source of financial intelligence in the country, which is critical in assisting them with mitigating, addressing and disrupting criminal activities



Background - continued

- The FIC also works closely with supervisory bodies, such as the South African Reserve Bank, the Financial Services Board and the Estate Agency Affairs Board – together, the FIC and the supervisory bodies help identified sectors adhere to the necessary FIC Act compliance measures
- Where no supervisory body exists for any sector, the FIC is the default sector supervisor



Amendment of the Schedules to the FIC Act

- The FIC commenced a process of reviewing the current ML/TF legislative framework with the view to improving South Africa's capability to combat ML and TF
- The FIC Act Amendment Bill was one initiative in the review process. The Bill was signed by the President on 26 April 2017 - The FIC Amendment Act, 2017 (Act No. 1 of 2017)
- The amendments to Schedules 1, 2 and 3 to the FIC Act is another initiative in the review process
- Amendments to the Schedules will improve the FIC's ability to obtain information concerning the identities and financial activities of customers from a wider range of financial and other institutions



Amendment of the Schedules to the FIC Act - continued

- The Act identifies industry sectors vulnerable to ML and TF
- Schedule 1 to the FIC Act contains a list of “accountable institutions” that are required to fulfil compliance obligations
- Schedule 2 lists supervisory bodies that are responsible for ensuring accountable institutions comply with the FIC Act provisions
- Schedule 3 lists “reporting institutions” that have to register with the FIC, submit reports on cash transactions of R25 000,00 and above and suspicious transactions
- All business is obliged to report suspicious and unusual transactions to the FIC



7 Pillars of Compliance – for Schedule 1 institutions

- Registration – section 43B of the FIC Act requires every accountable and reporting institution to register with the FIC
- Identification and verification of clients – section 21 of the FIC Act requires an accountable institution to identify and verify the identity of the client
- Keeping record of clients – section 22 of the FIC Act requires records of business relationships and transactions to be kept
- Appointment of a compliance officer – section 43
- Setting of internal rules related to compliance – section 42
- Training staff on company compliance rules – section 43
- Submitting reports to the FIC – Among the statutory reports required of institutions are: suspicious transaction reports (section 29), cash threshold reports (section 28) – on transactions of R25 000.00 and above and terrorist property reports (section 28A) (only applicable to accountable institutions)

Case study 1 - Corruption Matter

BACKGROUND

A high ranking government official was implicated in a **corruption matter**.

His personal account that received the **proceeds** of the corrupt relationship also made payments to three short-term insurance companies.

The individual owned three vehicles to the value of approximately R2.3 million. Payments of R24,878.44 were identified as being made to at least three **short-term insurance companies**.

FINDINGS



The reason and purpose of these payments were not identified due to the fact that the insurance companies are not accountable institutions and the FIC was therefore not in a position to request information relating to the insurance contracts from these short-term insurers. (Refer below to the obligations in terms of the FIC Act for accountable institutions.)

This made the tracing of the high value insured assets (bought with the proceeds of crime) linked to these insurance payments impossible.

Case study 2 - Prepaid Insurance

BACKGROUND

A Information received reflected that a short-term insurer received an initial amount of R968, 429.26 from an embassy's foreign bank account. According to a report the premium due was invoiced for an amount totaling R149,870.53.

The short-term insurer was instructed to reimburse the difference of R818,558.73. However, the refund was to be made to a South African bank account. It was established that the account given for the refund was an account held in the name of a high ranking official who was residing in South Africa and employed at the embassy.

FINDINGS



The transaction was deemed suspicious due to the fact that the funds were paid in Euros from the embassy foreign account and the instructions given to refund the difference was to a personal account held in South Africa.

The fact that an embassy could transfer funds into South Africa through a short-term insurance company left a blind spot in the monitoring of foreign funds coming into South Africa.

Case study 3 - Illicit tobacco

FACTS OF THE MATTER



A high priority target under investigation by the Illicit Tobacco Task Team, was known to be driving high value exotic sports vehicles.

No links to these vehicles were found under official vehicle ownership records or financing records queried with financial institutions.

INVESTIGATION



Assistance was sought from the South African Insurance Crime Bureau (SAICB) to determine if any short-term insurance policies linked to the individual under investigation could be found and for which assets.

The policy result positively linked the credentials of the subject under investigation indicating insurance cover for two Ferraris – matching the intelligence received that this individual enjoyed the profits from his criminal activities.

This information led to the discovery of assets which were actively concealed from ownership records.

VULNERABILITIES



This information could have been ascertained considerably sooner had the option for a section 27 FIC Act enquiry for client relationship of a short-term insurer been available to the FIC.

Case study 4 - SARS fraud matter

In a SARS fraud matter the subjects **diverted VAT refunds** to a business account and from the business account they styled the payments as salary to their personal accounts

The funds were then used to pay their monthly expenses, including **debit order payments** for their short-term insurance on their vehicles which were registered in their personal names

Case study 5 - Cell phone service provider the victim of fraud

Mr P was employed by a cell phone service provider and engaged in a fraudulent scheme which benefited his private company, BT (Pty) Ltd, to the value of R16 million at the expense and prejudice of his employer.

He was diverting cell phones to his personal company and selling them to wholesalers/online sellers (Inventory theft – purchasing and receiving scheme).



The proceeds were deposited / transferred to the bank account of his private company, BT (Pty) Ltd, and thereafter he transferred the funds to his personal account.

From his personal account he then used the funds for various purchases as well as the purchase of high value vehicles which was insured through short-term insurance companies. The insurance premiums were paid with the proceeds of the crime.

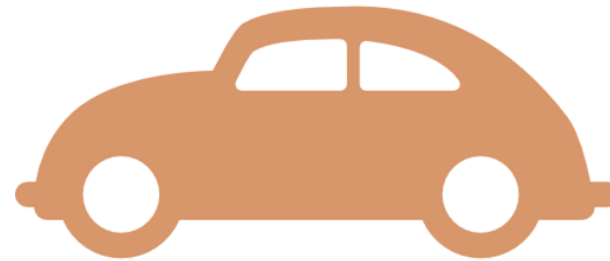


Case study 6 - Fraud by school principal

The principal of a government school diverted government funding to his personal bank accounts and to that of his family members



The subject suddenly purchased high value vehicles and paid the insurance on these vehicles via debit order using the proceeds of the fraud



Case study 7 - A bank the victim of a fraud

The subject defrauded his employer (a bank) by diverting R6,5 million from a dormant account to his personal account



The funds were co-mingled with his salary and then subsequently some of the funds were used to pay debit orders for short-term insurance to insure high-value items bought with the proceeds of the crime



Case study 8 - Cell phone franchise - fraud

- **Detail of the Matter**

- The subject was an accountant at a cellular franchise shop and stole funds from her employer by transferring it to her personal account. The subject purchased vehicles with the proceeds and then insured these vehicles.

- **Application of the proceeds**

- The subject paid the premiums for the insurance on these vehicles with the proceeds of crime.



Case study 9 - Ponzi / investment scheme

- **Detail of the Matter**

- The FIC assisted the Asset Forfeiture Unit in uncovering the details of a Ponzi/Investment scheme with an exposure of R42 million.
- Various victims paid money into a bank account linked to the scheme. The company was not registered with the Financial Services Board and therefore could not act as a financial service provider. The subject behind the scheme created another company with the proceeds of crime in an attempt to create a cover of legitimacy for the proceeds.

- **Finding**

- The subject then bought assets and used the proceeds of crime to pay insurance premiums for assets linked to a newly created company.

- **Vulnerabilities**

- The assets that were insured were not registered in the name of the entity but the newly created company and the original scheme funds were used to pay the premiums. Some assets were also registered in a trust and the subject was the only trustee of the trust.



International Perspective

- FATF Typologies Report (2004 - 2005) – covers money laundering vulnerabilities in the insurance sector. The report indicates that the insurance sector could be attractive to money launderers seeking to place funds into a financial product that will provide them with a reliable, clean return of funds invested. It further states that if a money launderer is able to move funds into an insurance product and receive a payment made by an insurance company then the funds appear legitimate. This is evident from some of the domestic cases mentioned above.
- Overall picture of the insurance sector is that of a rapidly expanding and substantial market, with insurers offering sophisticated products and competing with other parts of the financial services industry.
- On general insurance and reinsurance, the report states that far from being completely immune from criminal infiltration, there are various instances of crimes related to general insurance and reinsurance, which may not be confined to mere instances of fraud, but possess all the features of money laundering.



Proposed inclusion and benefits of regulating the Short-term Insurance Industry

The information held by the short-term insurance industry is invaluable as explained below:

- High-value assets insured should attract high levels of scrutiny and the information gleaned from this could be useful in the fight against money laundering and the financing of terrorism.
- Abnormalities in individual profiles such as sudden purchases and insurance of high-value goods such as jewellery, boats, real estate, artwork, antiques, precious metals and stones, should result in STRs being filed with the FIC. This would also assist the FIC in following up with the suppliers of such goods on the spending patterns of their clients.
- Insurance documents, such as contracts, policy schedules, claims histories and the names and bank details of insureds or beneficiaries could provide intelligence on unknown individuals linked to subjects of interest.



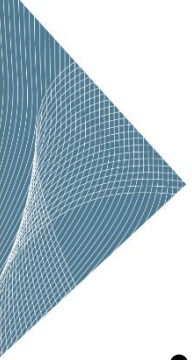
Proposed inclusion and benefits of regulating the Short-term Insurance Industry - continued

- Intelligence from the short-term insurance sector could generate leads which may result in the FIC using **section 27** of the FIC Act (request for additional information), **section 34** directives (freezing orders) or section 35 (monitoring orders)
- **Section 27** authorises representatives of the FIC to request from an accountable institution whether a specified person is or has been a client of the accountable institution; whether a specified person is acting or has acted on behalf of any client of the accountable institution or whether a client of the accountable institution is acting or has acted for a specified person
- The FIC can use a **section 34 directive** to instruct an accountable institution not to proceed with a transaction, a proposed transaction or any other transaction related to that proposed transaction for a period of not more than five days
- **Section 35** of the FIC Act allows the FIC to approach a judge in chambers to obtain permission (by means of a monitoring order) to order an accountable institution to report to the FIC on transactions of clients suspected of money laundering or terrorist financing



Proposed inclusion and benefits of regulating the Short-term Insurance Industry - continued

- Suspicious Transaction Reports (STRs) filed by the short-term insurance sector will enable tracking of criminal trends within the insurance industry thereby assisting the FIC and the industry in its fight against fraud, corruption, ML and TF
- Short-term insurers are a rich source of information on beneficial ownership for South African law enforcement. This is particularly so in instances where assets are registered in the names of friends or relatives to conceal their origin and real ownership
- Regulating the short-term insurance sector will ensure greater transparency on a wider range of high risk financial products/transactions



Proposed inclusion and benefits of regulating the Short-term Insurance Industry – continued

- Spreading the regulatory burden associated with combating ML/TF, closing regulatory and intelligence gaps, enhancing national security and enhancing the reputation of the South African financial system
- AML/CFT regulation of the short-term insurance industry would also further enhance the industry's awareness of ML/TF risks and tighten the sector against criminal exploitation
- Consider and better understand the identity of their client, the source of funds used by a client for a transaction and the nature of the intended business relationship with the client



Questions and discussion

- Are there any major players in the short-term insurance industry who may have been excluded from this consultation?
- Views of the industry – arguments for and against the inclusion of the short-term insurance industry under the scope of Schedule 1 to the FIC Act
- What may be the impact of having the short-term insurance industry included as an accountable institution under Schedule 1 to the FIC Act?
- What may be the possible implications when the Insurance Bill is passed?
- In what instances can the premiums payable under some commercial insurance policies be paid back to the insureds, either as a result of a favourable claims history, sharing in profits of the ST insurer, as a result of upfront payment of premiums or through "self insurance"?



Way forward

- This meeting kicks off the initial consultation between the FIC and the short-term insurance industry
- Follow up meetings, where necessary
- Written input from short-term insurance industry bodies in respect of the proposed inclusion under Schedule 1 to the FIC Act will be requested once all necessary consultations have been attended to and a consultation paper is published
- Minutes of this meeting to be communicated



FIC contact

For any enquiries relating to the consultation process of the amendment to the Schedules to the FIC Act, please contact:

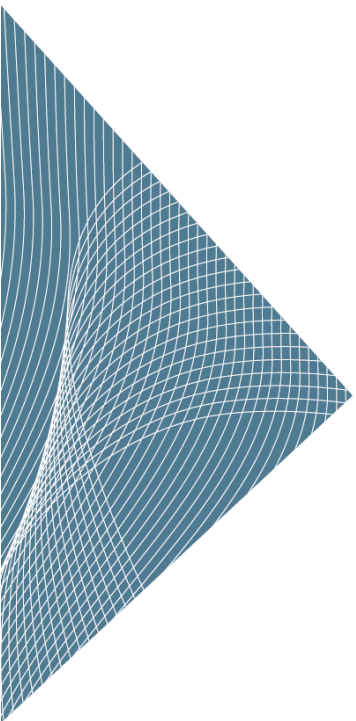
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THANK
YOU



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