



Financial
Intelligence Centre

FIC Roadshow Enforcement of the FIC Act

September to October 2016



AGENDA

- Supervision of the FIC Act
- Enforcement of the FIC Act
- Appeals
- FIC amendment bill

INTRODUCTION





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 (AIs) regulated or supervised by it [s45(1)]
- The FIC takes responsibility to supervise and enforce non-compliance with the FIC Act on AIs and RIs 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 AIs regulated or supervised by a SB where the SB fails to fulfil its responsibilities [s4(g)(ii), 45(3), 45B(6)(a)]



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 AI [s45B(1)]
- The FIC and SBs cannot use the inspections powers to investigate any criminal conduct
- Should the FIC or SB 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 AI has not complied with the FIC Act and may lead to an inspection



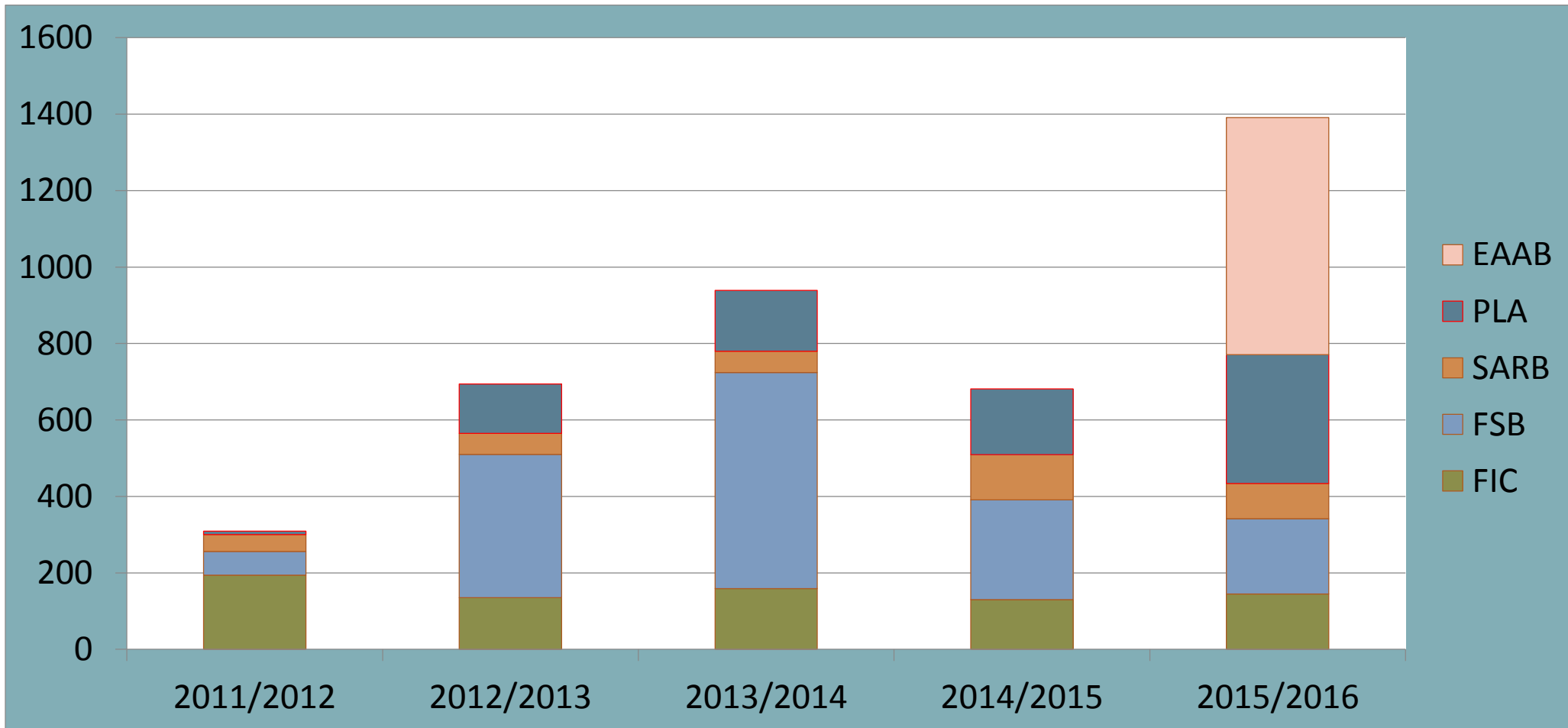
Inspections in terms of the FIC Act

- 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)]
- Inspectors must obtain a warrant before conducting an inspection where it suspects that the entity may be involved in criminal activity unless the entity consents to the inspection. No warrant is, however, required for routine inspections [Auction Alliance v EAAB & others]

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, 26, 27, 29, 30, 31, 32 33	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	Dir 3, GN 4 & 5 PCC04, 16, 28	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, 35	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, 2, GN05 PCC05, 06, 07, 13, 17, 23, 25, 34	N/A	R50 million for legal person R10 million for natural person	R10 million or 5 years imprisonment

Inspections conducted





Common inspection findings

1. Registration:

- A large number of AI/RI are still unregistered
- Institutions did not register a user on goAML

2. Identification & verification of clients:

- Legal entities are not identified and verified as prescribed in Regulations 7, 8, 15 & 16
- Misinterpretation and/or application of the exemptions to the FIC Act
- Dispute on when and what constitutes a business relationship
- AIs receive money from clients without identifying and verifying the client first

Common inspection findings





Common inspection findings

3. Cash threshold reporting

- Cash received in the bank account of the AI is not reported by the AI
- Some cash threshold transactions are not reported where the institution employs centralised reporting
- CTRs are not reported timeously

4. Terror property reporting

- No or inadequate screening of clients



Common inspection findings

5. Suspicious & unusual transaction reporting

- 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

6. Internal rules

- The internal rules are not customised for the particular business
- Internal rules are not implemented or adhered to by the AI or its staff
- Accountability and responsibilities are not specified in the internal rules



Common inspection findings

7. Appointment of the compliance officer

- No replacement of a compliance officer that resigned
- Sharing of login credentials to file reports

8. Training

- No one remembers the training
- The FIC Act is not readily available



Supervision of a risk based approach

- Supervisors will not conduct an independent risk assessment, but will not necessarily accept a risk assessment as correct
- Test the rigour of the processes and procedures used and internal consistency of the assessment
- Focus on high-level issues, not fine details and should take a common-sense approach to whether the results are reasonable
- Consider other credible or reliable sources of information to identify whether there might be any material differences that should be explored further

Administrative Sanctions



Sanctions issued 2015/2016

Institution	Contravention	Sanction
Thebe Stockbroking (Pty)Ltd	Failure to identify and verify clients	R500 000
Ayoba Foreign Exchange		R180 000
JSH Motors t/a Honda Johannesburg South	Failure to register	R5 000
	Failure to file CTRs	R754 741*
J's Way Auto CC	Failure to register	R10 000
Oryx Zonda (Pty) Ltd t/a Oryx Auto	Failure to register	R10 000
JWJ Auto CC t/a Moto Traders	Failure to register	R5 000
Agra Bikes CC t/a House of Bikes	Failure to register	R5 000
East End Motors CC	Failure to register	R5 000
Bikes Galore CC	Failure to register	R5 000
Woodmead Auto CC t/a Sunshine Auto	Failure to register	R5 000
	Failure to file CTRs	R105 045 of which R50 450 is suspended

Sanctions issued 2015/2016

Institution	Contravention	Sanction
Estimel CC t/a Voortrekker Motors	Failure to register	R10 000
Kelston Motors (Pty) Ltd t/a Market Square Volkswagen Uitenhage	Failure to file CTRs	R368 654 of which R248 654 is suspended
M.S. Haffejee t/a Auto Empire	Failure to register	R5 000
	Failure to file CTRs	R66 000 of which R40 000 is suspended
Cotizone (Pty) Ltd t/a Cash Inn	Failure to register	R10 000
	Failure to file CTRs	R121 000*
GBS Mutual Bank	Failure to identify and verify clients	Reprimand
	Failure to implement internal rules	R500 000
	Failure to provide adequate training	Reprimand
Habib Overseas Bank Limited	Failure to file STRs	R1 million

Sanctions issued 2015/2016

Institution	Contravention	Sanction
Investec Bank Limited	Failure to implement internal rules	R20 million
The South African Bank of Athens	Failure to identify and verify clients	Reprimand
	Failure to implement internal rules	R3 million
Standard Chartered Bank – Johannesburg Branch	Failure to identify and verify clients	Reprimand
	Failure to file CTRs	R10 million
* Sanction has been reduced on appeal		



Administrative sanctions

- 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



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)



Appeals

- The Appeal Board has decided on two appeal matters i.e. JSH Motors t/a Honda Johannesburg South and Cotizone (Pty) Ltd t/a Cash Inn
- The following salient points can be extracted from the judgments:
 - ✓ Ignorance of the FIC Act is not an excuse and sanctions may be issued by the FIC or supervisory bodies despite the institution not knowing about their obligations, but it may lead to a reduced penalty
 - ✓ Financial penalties may be imposed on first time offenders
 - ✓ Wilful non-compliance should be met with harsh penalties



Appeals

- Remediation of the non-compliance is a mitigating factor that should be taken into account when the appropriate sanction is considered
- The purpose of sanctioning is deterrence
- The Appeal Board referred with approval to the guidance issued by the FIC in order to resolve issues in dispute
- The FIC did not fail in its duty to supervise the institutions that do not have a supervisory body.



Amendments to the FIC Act

- The Bill will become effective as soon as it is published
- No delayed implementation
- Enforcement of the amended act to be suspended as agreed between the Centre and supervisory bodies
- Inspections to continue as normal
- Inspections should be used to guide accountable/ reporting institutions to become fully compliant with the amendments to the Act



Amendments to the FIC Act

- Enforcement still to proceed on unaffected sections of the Act i.e.
 - ✓ Registrations
 - ✓ Reporting obligations



Closing comment

“Institutions which deliberately use their business to either aid terrorism or raise money for clandestine projects or aid money launderers with illegal cash proceeds should be distinguished. It follows that the maximum penalties provided for in section 45C(3)(e) of the FIC Act were enacted specifically to be impose on those who deliberately failed to complied with the prescribed legislation.”

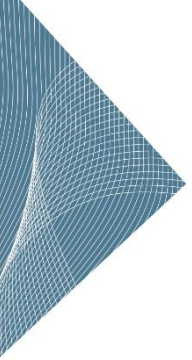
The FIC Act Appeal Board



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Questions

