

# Estate agents and FIC Act compliance

## WHO IS THE FIC

The Financial Intelligence Centre (FIC) is the administrator of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), which is central to South Africa's legislative framework on anti-money laundering and counter the financing of terrorism.

The FIC Act established the FIC as the country's national centre for gathering and analysing financial data. The FIC is mandated to identify funds generated from criminal acts, to combat money laundering and terrorist financing. The FIC Act imposes certain obligations on sectors deemed vulnerable to money laundering and terrorist financing and compels these sectors to report to the FIC.

Using the information provided by these sectors, the FIC develops financial intelligence reports for domestic competent authorities such as the South African Police Service and the South African Revenue Service, as well as international partners and peers. This information gathering and report development is therefore largely reliant on the compliance of institutions and the submission of reports from the identified sectors.

Being the only entity authorised to gather and analyse transaction and financial data places the FIC at a pivotal point for assisting tax authorities, law enforcement, investigating agencies and other competent authorities with necessary information to help identify, disrupt and bring criminals to justice.



## WHAT IS MONEY LAUNDERING

Money laundering refers to an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, the disposing or movement of the proceeds of unlawful activities. Criminals who have generated an income from their criminal activities commonly follow three stages in laundering their money. The first stage is commonly referred to as 'placement'. This is when criminals introduce their illegally derived proceeds into legitimate financial systems. An example of this would be splitting a large portion of cash into smaller sums and thereafter depositing the smaller amounts into a bank account, or purchasing a series of monetary instruments (cheques, money orders, etc.) with

the smaller amounts.

The second stage is called 'layering'. During this stage the launderer engages in a series of transactions, conversions or movements of the funds in order to cloud the trail of the funds and separate them from their illegitimate source. The funds may be channelled via instruments such as, for example; the purchase and sale of property, or other investments. Alternatively, the launderer may simply wire the funds through a series of accounts to various banks across the globe. The third stage is 'integration'. This generally occurs after the successful stages of placement and layering. The launderer at this stage causes the funds to re-enter the economy and appear to be legitimate. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

## FIC ACT AND ESTATE AGENTS

The FIC Act lists estate agents – referred to in the FIC Act as an estate agency as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976) – as accountable institutions and requires them to be fully compliant with the FIC Act.

Why are estate agents listed in the Act as accountable institutions?

The property sector has been identified as being at risk for being abused by money launderers. This sector has been used to hide funds and as a vehicle to help criminals introduce their proceeds into the financial system.

The property space allows for potential criminals to put into practice all three aspects of typical money laundering activity: placement, layering and integration. Furthermore, they are able to clean or hide large amounts of money in a single transaction. The purchase of a dwelling, plot or building for a large sum of money may not raise too many alarm bells, for example. For these reasons, estate agents can become easy targets for criminals wishing to launder their illicit funds through estate agents.

Given that estate agents are familiar with their industry, their clients' behaviour and habits these industry experts are also best suited to identify when certain behaviour is suspicious or unusual.

Central to being listed under Schedule 1 of the FIC Act as accountable institutions, estate agents are required to fulfil seven obligations to achieve compliance with the FIC Act.

Among other aspects, these compliance obligations ensure that the institution is known to the FIC (via the registration obligation); that the institution's own rules regarding application of FIC Act are understood by its staff (through the training obligation); that the institution submits reports to the FIC (registration with FIC is required for reporting to commence).



## FIC ACT COMPLIANCE OBLIGATIONS

## RISK-BASED APPROACH

In October 2017 the FIC Act was amended, to create greater transparency in the financial system and advance the fight against money laundering and the financing of terrorism. As part of the amendments, one of the changes brought about was the adoption of a risk-based approach to establishing the identity of a client. The risk-based approach allows institutions greater flexibility in the customer verification measures they need to adopt for their various customers, based on the customer risk profile against the institution's product and service offering. This is also a more cost-effective alternative for institutions and a less burdensome approach for the customer. Furthermore, it is less prescriptive than the previous know your customer regime.

## What does the risk-based approach mean for estate agents?

This requires estate agents (as well as all other accountable institutions listed under Schedule 1 of the FIC Act), to identify and assess the risk of doing business with their customers with a view to deciding how best to manage that risk.

The estate agency would be expected to rate their clients in terms of risk for money laundering and terrorist financing against specific product or service offerings and other factors. In this way, estate agents will be able to allocate their resources more efficiently using the risk-based approach. Where money laundering or terrorist financing risks are amplified stronger controls, and therefore more resources, will be needed. On the other hand, where there is a low level of risk, fewer or reduced amounts of controls will be needed.

As part of the implementation

of their risk-based approach, estate agencies need to know and practice the following: Their institutional risk framework needs to be in writing i.e. a risk management compliance programme is required

- Their institutional risk framework needs to be in writing i.e. they are required to write a risk management compliance programme (RMCP)
- The estate agency's RMCP needs to be updated regularly
- When doing client profiles in regard to money laundering and terrorist financing risks, consider these scenarios as high risk:
  - o Type of client – politically exposed persons, legal entities, non-face to face clients
  - o Product type – high value properties
  - o Geographical location – countries listed on terrorist and sanctions lists of governments and international organisations and non-members of the Financial Action Task Force (FATF).



## RISK MANAGEMENT AND COMPLIANCE PROGRAMME

A new focus of compliance obligations introduced with the amendments to the FIC Act in October 2017, was the requirement for all accountable institutions, including estate agents, to put in place a risk management and compliance programme (RMCP).

This requirement works hand in glove with the risk-based approach which was also introduced with the 2017 amendment to the FIC Act. For estate agents, the RMCP means that they need to develop a thorough understanding of the risks associated with their business and how they plan to manage this across their client base. Estate

agents must develop this understanding, document it and implement the programme. Also, the document must be kept updated. How the RMCP ties in with the risk-based approach is that in order for institutions to know to what extent they are vulnerable to money laundering and terrorist financing, and what they need to do mitigate these risks in terms of their customer engagement, they need to conduct risk assessments. This in turn, will help them determine the extent of resources they require to mitigate that risk.

It is important that board members and senior management fully understand and endorse the content of the institution's RMCP. They will need to actively lead the process to understand money laundering and terrorist financing risks that the organisation needs to take into account.

*South Africa is a member of the Financial Action Task Force, an international policy development and standard setting body for combating money laundering and the financing of terrorism. FATF has 37 member countries, associate and observer members. The organisation's objectives are to set standards and promote measures – FATF Recommendations – which protect the international financial system. Member countries are required to implement these Recommendations. From time to time, member countries undergo reviews by their peers on their implementation of the Recommendations.*

## REPORTING SUSPICIOUS BEHAVIOUR



As one of the seven compliance obligations, the requirement for institutions to submit regulatory reports to the FIC is vital to combat money laundering and terrorist financing. Accountable institutions listed as Schedule 1 in the FIC Act, which includes estate agents, are obliged to submit report the following regulatory reports to the FIC: cash transactions of R24 999, 99 and above (cash threshold reports); where transactions arouse suspicion or appear unusual (suspicious or unusual transaction reports) and when the prospective client is linked to terrorism and related activities (terrorist property report). It is important to note that institutions must be registered with the FIC (another compliance obligation) before they can begin to submit reports.

Estate agents and other accountable institutions are at the transaction coalface. They have direct access to information on their customers, their transactions, customer behaviour and other information. This unique insight enables accountable institutions to provide detail-rich regulatory reports if and when necessary.

The FIC uses the information in the reports submitted to it to develop financial intelligence which is shared with competent authorities for their follow up action and investigations. In submitting regulatory reports, estate agents can help in the fight against crime and contribute to a safer, a more stable business environment and economic growth. Over and above this, being vigilant and reporting helps prevent the estate agent's own business from being targeted for abuse by criminals. As a first step, all estate agents must register with the FIC. Registration can be done online, via [www.fic.gov.za](http://www.fic.gov.za). Once the registration process is complete, estate agents will be able to submit reports to the FIC. Not knowing about the legal obligation to register and report to the FIC as an estate agent is not an acceptable excuse. If you are an estate agent and you have not yet registered, then do so today by accessing the FIC's website on [www.fic.gov.za](http://www.fic.gov.za).

### QUESTIONS AND ANSWERS FOR ESTATE AGENTS

**Q: Do I have to be registered with the FIC?**

**A:** Yes, an estate agent is deemed to be an accountable institution as listed in Schedule 1 of the FIC Act.

**Q: By when should I comply with the amendments to the FIC Act?**

**A:** As an estate agent, you should already be working to comply with the new requirements. After April 2019, if you are found to be non-compliant by the Estate Agency Affairs Board and FIC, the normal enforcement process will commence. This may involve remedial action and/or penalties.

**Q: If I am found to be non-compliant and penalised, can I appeal this decision?**

**A:** Yes, you can appeal the decision. Depending on who issued the penalty (FIC or the Estate Agency Affairs Board), the decision through the Estate Agency Affairs Board appeal process or the FIC adjudication process.

**Q: Can I outsource my FIC compliance function to a third party, such as a consultant?**

**A:** Yes, you may outsource your FIC compliance function. However, the ultimate responsibility for ensuring that you and your business meet the FIC requirements still lies with you as the estate agent

**Q: If one of my property transactions looks suspicious, can I still proceed with the transaction before submitting a suspicious or**

**unusual transaction report (STR) or a suspicious activity report (SAR) to the FIC?**

**A:** Yes, you can still proceed with the transaction unless through your customer due diligence process you have identified that the customer is on an applicable sanctions list or the transaction is linked to terrorist activities (as per section 28A of the FIC Act).

**Q: Can I let my client know that I have reported them to the FIC?**

**A:** Under no circumstances may you inform your client you have reported them to the FIC, this is called "Tipping Off" and is an offence.

**Q: What happens if one of my property transactions looks suspicious, and I do not submit a suspicious or unusual transaction report (STR) or a suspicious activity report (SAR) to the FIC within the stipulated time lines?**

**A:** Failure to report these types of transactions, is an offence. You may still submit the report to the FIC with an explanation as to why it was not submitted in time.

**Q: Is my identity protected if I submit a report to the FIC?**

**A:** Yes, section 38 of the FIC Act makes provision that any person submitting information via cash threshold, terrorist property or suspicious or unusual reports to the FIC will have their identity protected. This person is also not compelled to testify at criminal proceedings.

### QUESTIONS AND ANSWERS FOR PROPERTY PURCHASERS

**Q: Why do I need to provide my ID and proof of address to the estate agent and attorneys involved with my property purchase?**

**A:** The estate agent and the conveyancing attorneys are both considered to be accountable institutions which means both parties are obliged to adhere to requirements of the FIC Act. One of the primary requirements is that they cannot do business with anonymous clients, thus they require your ID and proof of address.

**Q: The estate agent and attorney asked me for my source of funds for the property purchase. What is source of funds and why do I need to provide it?**

**A:** The FIC Act requires accountable institutions, in this instance the estate agent and attorney, to clearly identify whether the funds you will use for this property transaction are from a legitimate source. They may ask you for further documents, like bank statements, to demonstrate how you acquired or intend to acquire the funds. This is part of the requirement of accountable institutions to assess your source of wealth and determine if it is in line with the transaction.

**Q: Does my estate agent have to be registered with the FIC?**

**A:** Yes, they have to be registered with the FIC and licensed by the Estate Agency Affairs Board. It is part of the Estate Agency Affairs Board's requirements that an estate

agent cannot be issued a licence to operate unless they are registered with the FIC. agent cannot be issued a licence to operate unless they are registered with the FIC.

**Q: Can I ask to see my estate agent's licence and check its validity?**

**A:** It is highly recommended that you ask to see your estate agent's licence. If you have doubts about its validity, please contact the Estate Agency Affairs Board.

**Q: Who is required to provide documents for FIC Act purposes? The buyer or the seller of the property?**

**A:** It is the view of the FIC that both the seller and the buyer of the property would need to be identified by the estate agent and the attorney involved in the property transaction.

[www.fic.gov.za](http://www.fic.gov.za)