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 affected 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

<table>
<thead>
<tr>
<th>Duty</th>
<th>Section</th>
<th>Applicable Regulations</th>
<th>Applicable directives, guidance notes or PCCs</th>
<th>Applicable exemptions</th>
<th>Administrative sanction</th>
<th>Criminal sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identify and verify client</td>
<td>21</td>
<td>3 to 19 &amp; 21</td>
<td>GN 1, 2, 3 PCC03, 03A, 08, 09, 10, 11, 14, 15, 20, 21, 22, 24, 26, 27, 29, 30, 31, 32, 33</td>
<td>2 to 16</td>
<td>R50 million for legal person R10 million for natural person</td>
<td>R100 million or 15 years imprisonment</td>
</tr>
<tr>
<td>Duty to keep records</td>
<td>22; 23 &amp; 24</td>
<td>20 &amp; 26</td>
<td>PCC02</td>
<td>3 TO 17</td>
<td>R50 million for legal person R10 million for natural person</td>
<td>R100 million or 15 years imprisonment</td>
</tr>
<tr>
<td>Reporting duties</td>
<td>28; 28A &amp; 29</td>
<td>22; 22A; 22B; 22C; 23; 24; 27A; 27B &amp; 27C</td>
<td>Dir 3, GN 4 &amp; 5 PCC04, 16, 28</td>
<td>N/A</td>
<td>R50 million for legal person R10 million for natural person</td>
<td>R100 million or 15 years imprisonment</td>
</tr>
<tr>
<td>Formulating and implementing of internal rules</td>
<td>42</td>
<td>25; 26 &amp; 27</td>
<td>PCC 19, 35</td>
<td>N/A</td>
<td>R50 million for legal person R10 million for natural person</td>
<td>R10 million or 5 years imprisonment</td>
</tr>
<tr>
<td>Training of employees regarding the FIC Act and internal rules</td>
<td>43(a)</td>
<td>N/A</td>
<td>PCC 18</td>
<td>N/A</td>
<td>R50 million for legal person R10 million for natural person</td>
<td>R10 million or 5 years imprisonment</td>
</tr>
<tr>
<td>Appointment of the compliance officer</td>
<td>43(b)</td>
<td>N/A</td>
<td>PCC 12</td>
<td>N/A</td>
<td>R50 million for legal person R10 million for natural person</td>
<td>R10 million or 5 years imprisonment</td>
</tr>
<tr>
<td>Registration with the Centre</td>
<td>43B</td>
<td>27A</td>
<td>Dir 1, 2, GN05 PCC05, 06, 07, 13, 17, 23, 25, 34</td>
<td>N/A</td>
<td>R50 million for legal person R10 million for natural person</td>
<td>R10 million or 5 years imprisonment</td>
</tr>
</tbody>
</table>
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
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.
## Sanctions issued 2015/2016

<table>
<thead>
<tr>
<th>Institution</th>
<th>Contravention</th>
<th>Sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thebe Stockbroking (Pty)Ltd</td>
<td>Failure to identify and verify clients</td>
<td>R500 000</td>
</tr>
<tr>
<td>Ayoba Foreign Exchange</td>
<td></td>
<td>R180 000</td>
</tr>
<tr>
<td>JSH Motors t/a Honda Johannesburg South</td>
<td>Failure to register</td>
<td>R5 000</td>
</tr>
<tr>
<td></td>
<td>Failure to file CTRs</td>
<td>R754 741*</td>
</tr>
<tr>
<td>J’s Way Auto CC</td>
<td>Failure to register</td>
<td>R10 000</td>
</tr>
<tr>
<td>Oryx Zonda (Pty) Ltd t/a Oryx Auto</td>
<td>Failure to register</td>
<td>R10 000</td>
</tr>
<tr>
<td>JWJ Auto CC t/a Moto Traders</td>
<td>Failure to register</td>
<td>R5 000</td>
</tr>
<tr>
<td>Agra Bikes CC t/a House of Bikes</td>
<td>Failure to register</td>
<td>R5 000</td>
</tr>
<tr>
<td>East End Motors CC</td>
<td>Failure to register</td>
<td>R5 000</td>
</tr>
<tr>
<td>Bikes Galore CC</td>
<td>Failure to register</td>
<td>R5 000</td>
</tr>
<tr>
<td>Woodmead Auto CC t/a Sunshine Auto</td>
<td>Failure to register</td>
<td>R5 000</td>
</tr>
<tr>
<td></td>
<td>Failure to file CTRs</td>
<td>R105 045 of which R50 450 is suspended</td>
</tr>
</tbody>
</table>
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<tr>
<td>Estimel CC t/a Voortrekker Motors</td>
<td>Failure to register</td>
<td>R10 000</td>
</tr>
<tr>
<td>Kelston Motors (Pty) Ltd t/a Market Square Volkswagen Uitenhage</td>
<td>Failure to file CTRs</td>
<td>R368 654 of which R248 654 is suspended</td>
</tr>
<tr>
<td>M.S. Haffejee t/a Auto Empire</td>
<td>Failure to register</td>
<td>R5 000</td>
</tr>
<tr>
<td></td>
<td>Failure to file CTRs</td>
<td>R66 000 of which R40 000 is suspended</td>
</tr>
<tr>
<td>Cotizone (Pty) Ltd t/a Cash Inn</td>
<td>Failure to register</td>
<td>R10 000</td>
</tr>
<tr>
<td></td>
<td>Failure to file CTRs</td>
<td>R121 000*</td>
</tr>
<tr>
<td>GBS Mutual Bank</td>
<td>Failure to identify and verify clients</td>
<td>Reprimand</td>
</tr>
<tr>
<td></td>
<td>Failure to implement internal rules</td>
<td>R500 000</td>
</tr>
<tr>
<td></td>
<td>Failure to provide adequate training</td>
<td>Reprimand</td>
</tr>
<tr>
<td>Habib Overseas Bank Limited</td>
<td>Failure to file STRs</td>
<td>R1 million</td>
</tr>
</tbody>
</table>
Sanctions issued 2015/2016

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<th>Institution</th>
<th>Contravention</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Investec Bank Limited</td>
<td>Failure to implement internal rules</td>
<td>R20 million</td>
</tr>
<tr>
<td>The South African Bank of Athens</td>
<td>Failure to identify and verify clients</td>
<td>Reprimand</td>
</tr>
<tr>
<td></td>
<td>Failure to implement internal rules</td>
<td>R3 million</td>
</tr>
<tr>
<td>Standard Charted Bank – Johannesburg Branch</td>
<td>Failure to identify and verify clients</td>
<td>Reprimand</td>
</tr>
<tr>
<td></td>
<td>Failure to file CTRs</td>
<td>R10 million</td>
</tr>
</tbody>
</table>

* 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)
• 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
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
“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
Contact Us

www.fic.gov.za

Compliance Contact Centre 0860 222 200
Questions