WHO IS THE FIC

The Financial Intelligence Centre (FIC) is the administrator of the Financial Intelligence Centre Act, 2001, which is central to South Africa’s legislative framework on anti-money laundering, countering the financing of terrorism and combating the proliferation of weapons of mass destruction.

The FIC is the country’s national centre for gathering and analysing information disclosed to it. In doing so, the FIC assists in identifying funds generated from unlawful acts, combating money laundering and terrorist financing. To help towards fulfilling this mandate, obligations are imposed on certain business sectors deemed vulnerable to money laundering and terrorist financing, such as banks, attorneys, and estate agents. Part of the obligations imposed on these sectors, known as accountable institutions, is for them to register with the FIC, and to submit regulatory reports to the FIC.

Using the information and data submitted by these sectors, the FIC develops financial intelligence, which is requested or referred to competent authorities such as the South African Police Service, the National Prosecuting Authority, the Asset Forfeiture Unit and others including the South African Revenue Service, the Public Protector and supervisory bodies. This financial intelligence is used by domestic and foreign partners in their investigations, prosecutions and other follow up actions. As the FIC is reliant on timeous and quality information from accountable institutions, it is important that the sectors provide accurate, quality data and information to the FIC.

MONEY LAUNDERING

Money laundering refers to the concealing or disguising of the nature, source, location, disposing or movement of the proceeds of unlawful activities such as drug trafficking, human trafficking, proceeds derived from a fraudulent act or any other criminal activity that would have generated illegitimate monies.

The primary intention of money laundering is to transform illicit monies into legitimate funds by introducing it into the financial system i.e. changing money from ‘dirty’ to ‘clean’.

To acquire their criminal proceeds, individuals may conduct a wide range of offences from petty to more serious crimes. The proceeds are integrated into the financial system through various means including the purchase of high-end goods such as property, motor vehicles, art, shell companies and so on.

When successfully laundered, criminals are able to have full control over their money in the financial system and they are able to continue criminal activities with near impunity.

THE FIC ACT AND ESTATE AGENTS

Estate agents, as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976), are listed as accountable institutions on Schedule 1 of the FIC Act. Sectors included on Schedule 1, have been identified as being at risk of being abused by money launderers. The estate agency sector has also been used as a vehicle to hide funds and to help criminals introduce their proceeds into the financial system.

Potentially, criminals can use the property sector to hide or clean large amounts of money in single transactions. The purchase of any type of property for a large sum of money, for example, may not raise too many alarm bells. Estate agents can therefore become easy targets for criminals wanting to use them to launder their illicit funds.

Given that estate agents are familiar with their clients’ behaviour and habits, as experts in this industry estate agents are best suited to identify when their clients’ behaviour is suspicious or unusual. Estate agents, like all accountable institutions, are required to fulfil certain obligations to achieve compliance with the FIC Act.

Compliance obligations that estate agents must fulfil within their business:

The diagram depicts the FIC Act obligations which apply to estate agents as an accountable institution:

These seven compliance obligations are:

- Client identification and verification
- Record keeping
- Apply risk-based approach
- Risk management and compliance programme
- Compliance officer
- Reporting
- Registration with the FIC

Why should I submit reports to the FIC?

A fundamental measure to minimize the risk of money laundering is for estate agents to submit regulatory reports to the FIC. As a necessity, estate agents need to increase their understanding and awareness of their reporting obligations as well as remain alert to what needs to be reported.
The primary regulatory reporting areas are:
Cash threshold report (on cash transactions of R24 999.99 and above), Suspicious and unusual report (on transactions that are suspicious or do not make business sense) and Terrorist property report (where the institution holds or on behalf of someone holds property which may be associated with terrorism).

It is important to remember, reports can only be submitted by estate agents who are registered with the FIC.

The reporting obligation typically arises during day to day business. Suspicious and unusual transactions can be identified by assessing the client and/or transaction against money laundering indicators. Estate agents must acquaint themselves with some of the possible indicators of illicit financial activity. These may include:

• Source of income not matching client’s occupation
• Attempts to conceal identity of individuals involved in the transaction by using nominees or fronts
• Purchasing an income property to allow legitimate rental income to be co-mingled with criminal revenue and
• Abusing property related companies such as property development or construction companies. These companies would then purchase properties, financed in part by bonds provided by other shell companies established by the launderer.

Penalties for non-compliance with these obligations can include administrative sanctions and criminal prosecution. This may amount to a maximum of 15 years in prison or a fine not exceeding R100 million. Penalties depend on the contravention and the severity of the offence. Compliance with the FIC Act makes it more difficult for criminals to hide their illicit proceeds in the formal financial sector.

Further information to assist estate agents on what to look out for as indicators of potential criminality is available on the FIC website www.fic.gov.za.

TARGETED FINANCIAL SANCTIONS
Since April this year, the FIC has put in place measures to effect sanctions and resolutions imposed by the United Nations Security Council (UNSC). The measures are intended to assist in combating the financing of terrorism and the proliferation of weapons of mass destruction. South Africa has implemented these measures, as it is a member of the UNSC and of the Financial Action Task Force

To assist estate agents with implementation of the UNSC measures, the FIC has on its website a targeted financial sanction list containing all persons and entities identified by the UN. Updated regularly, the persons and entities list remain effective indefinitely, unless withdrawn.

The Minister of Finance publishes a notice in the government gazette on the adoption of UNSC Resolutions, while the FIC Director publishes notices on persons or entities subject to sanctions measures as per the sanctions list.

Estate agents are required to identify whether they have a sanctioned person or entity as a client. They may draw the attention of the sanctioned person or entity to the notices published by the Minister of Finance and the FIC’s Director, in the government gazette.

Targeted financial sanctions and estate agents
Estate agents must remember that it is prohibited to acquire, collect or use of the property of a person or an entity whose names appear in the sanctions notices. This implies therefore, that they may not transact or process transactions for a sanctioned person or entity. The only exception to this general prohibition is in specific instances where the Minister of Finance has permitted certain financial services or dealings with property as discussed below.

With the FIC’s targeted financial sanctions list in place, estate agents are required to screen their new and existing clients against this list. Furthermore, the process for this screening must be contained in the estate agents RMCP. Estate agents and all accountable institutions may also subscribe to the FIC to receive alerts when any changes on the list are made.

Should an estate agent discover that they have a client on the targeted financial sanctions list, they are required not to transact with the individual or entity. The estate agent is required to submit a terrorist property report (TPR), should they identify property in their possession or under their control, which is owned or controlled or on behalf of a person or an entity identified in the sanctions list.