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 transactions 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 are splitting a large portion of cash systems. An example of this would introduce their illegally derived income from their criminal activities into a bank account, or purchasing 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 Acts, 1976 (Act 112 of 1976) – as accountable institutions and requires them to be fully compliant with the FIC Act. What 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 launder their illicit funds through the real estate sector. The third stage of the laundering activity 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 to appear to be legitimate. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

FIC ACT: COMPLIANCE OBLIGATIONS
Application of risk-based approach
Risk management and compliance programme
Compliance officer
Client identification and verification
Record keeping
Training of employees
Registration with the FIC

RISK-BASED APPROACH
In October 2017 the FIC Act was amended, to create greater transparency in the financial system and assist in 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 establish 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 profile. The risk-based approach assists institutions to assess the risk of doing business with their customers, based on the customer profile.

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
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 are both the Estate Agency Affairs Board (EAAAB) and Financial Intelligence Centre (FIC) 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.

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, 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.

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.

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 whom 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 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.

Q: What do 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. 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.