TRAINING MANUAL – FICA & RELATED LEGISLATION – ELNA RUDMAN BROKERS CC

(A copy of this training manual is given to personnel for self study and questions pertaining to their understanding asked and explained in areas not understood.)

Please read carefully as was published as part of the INSETA training material for Representatives and was part of your study material for the preparation of the RE exams:

"CHAPTER 8:

Adhere to the requirements of FICA and other relevant anti-money laundering legislation, as it applies to the FSP.

This chapter covers the following criteria:

KNOWLEDGE CRITERIA
Explain what FICA governs and requires.
Describe how the FSP is impacted by FICA.

Purpose

Money laundering is one of the biggest challenges facing governments throughout the world today as a result of terrorism and organised crime. Both are real threats to civilisation as we know it. Money laundering has been used by terrorist organisations to fund their activities. The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover terrorism and organised crime as well.

In South Africa, this led to the implementation of the Prevention of Organised Crime Act (POCA), the Financial Intelligence Centre Act (FICA) and the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, known by its clumsy acronym as POCDATARA.

The purpose of this chapter is to provide you with insight and a good knowledge of the implications of these Acts on your work in the financial services industry. Most importantly, you need to know the requirements that these Acts impose on FSPs and representatives so that you can comply with it on a daily basis. Non-compliance may lead to harsh penalties.

8.1 INTRODUCTION

In this chapter you are going to learn how to comply with the requirements of FICA and other relevant anti-money laundering legislation, as it applies to the FSP and yourself. There are two very important underlying concepts with regard to FICA that you have to understand before you can continue with this chapter. These concepts are money-laundering and unlawful activities. Let's discover the meaning of these terms.

8.1.1 The concepts of money laundering and unlawful activities

What is a money-laundering activity?

Definition:

A money laundering activity is any activity that has, or is likely to have, the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities. By definition, any interest

which anyone has in such proceeds as listed above is also guilty of money laundering and includes any activity which constitutes an offence in terms of Section 64 of the Financial Intelligence Centre Act, 38 0f 2001 (FICA) or Section 4, 5 or 6 of the Prevention of Organised Crime Act 1989 (known as POCA).

Financial Intelligence Centre Act 38 of 2001

1 Definitions

"money laundering" or "money laundering activity"

means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such, proceeds, and includes any activity which constitutes an offence in terms of section 64 of this Act or section 4, 5 or 6 of the Prevention Act;

Chapter 4

Offences and Penalties

64. CONDUCTING TRANSACTIONS TO AVOID REPORTING DUTIES

Any person who conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act, is guilty of an offence.

Money laundering is a three-stage process. The process can be illustrated as follows:

1. The first stage is placement, where the origin of illegal money is usually mixed with the origin of legitimate money. The proceeds of unlawful business are in the form of cash, making it relatively simple to get the illegal money back into the financial system by mixing it with the proceeds of a cash business.

   This "dirty" money is therefore disguised and the illegal funds avoid detection. A further aim is to convert the nature of the profits, usually cash, into some other asset, such as property, or certain financial instruments, such as life assurance investments or travellers' cheques.

Example: Mr Naidoo

Mr Naidoo has illegitimate funds offshore. He transfers this money to South Africa where he purchases a property. (*Disguising the illegal money*)

2. In the second stage, money launderers try to achieve four main objectives:
   - Disguise the ownership;
   - Disguise the origin;
   - Disguise the audit trail; and
   - Disguise the profit and source of crime.

   This is achieved by conducting layers of complicated financial transactions, usually using electronic transactions. Transactions include dealing with shares, commodity and futures brokers.

Example: Mr Naidoo

A couple of months later he registers a bond over the property and withdraws the maximum capital amount from the bond. He is now able to show a legitimate source of funds, namely the bond registered on his property.

3. The third stage consists of a series of complex transactions involving a number of legal entities in many jurisdictions, designed to conceal the true source of the funds. By this stage, the money already appears "legal".

More examples of money-laundering:

1. Mr Johnson has received the proceeds of an illegal activity. In order to legitimise the money, he invests in a single-premium endowment policy with life insurer A. Four months later he surrenders the policy and receives the full surrender value. He is now able to show a legitimate source of the funds.

2. Mrs Botha has received the cash proceeds of an illegal activity. She pays cash for a brand-new Mercedes Benz. Two months later she sells the car and receives the proceeds of the sale in her bank account. She is now able to show a legitimate source to the bank, namely the sale of her car.

Money laundering has a negative effect on legitimate business and economic development and is often strongest in the weakest economies.

What are unlawful activities?

Any conduct that constitutes a crime or which contravenes any law, whether the conduct occurred before or after the commencement of the South African legislation, or in SA or elsewhere constitutes unlawful activity.

Examples:

Tax evasion, drug trafficking, theft, robbery, fraud, abduction, extortion.

Financial Intelligence Centre Act 38 of 2001

1 Definitions

"unlawful activity"

has the meaning attributed to that term in section 1 of the Prevention Act.

2) For the purposes of this Act a person has knowledge of a fact if –

a) the person has actual knowledge of that fact; or

b) the court is satisfied that :

i) the person believes that there is a reasonable possibility of the existence of that fact, and

ii) the person fails to obtain information to confirm or refute the existence of that fact.

3) For the purposes of this Act a person ought reasonably to have known or suspected a fact; if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both –

a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and

b) the general knowledge, skill, training and experience that he or she in fact has

Proceeds of unlawful activities are defined as any property or service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in South Africa or elsewhere, at any time, before or after the commencement of the Act from unlawful activities.

8.2 BACKGROUND TO ANTI-MONEY LAUNDERING LEGISLATION

Money laundering is often not included in official economic statistics, making it difficult to judge its precise extent. The fact that it is considered to be the third biggest industry in the world gives one an understanding of the extent of the problem.

Governments of the world have therefore united in the fight against these scourges with an international agreement setting up the Financial Action Task Force ("FATF").

FATF was founded in 1989 by the countries with the world's largest economies, known as the G7 countries (there were originally seven) to combat money laundering. Its activities now cover combating money laundering for criminal and terrorist purposes. Today FATF members represent most countries around the world and generally these members have

money-laundering legislation in place in their countries, or are in the process of introducing it or refining it.

FATF has issued 40 recommendations for action against money laundering that form the basis for legislation in many countries. These recommendations are constantly being reviewed and updated, as is legislation worldwide to keep it on track.

International pressure on countries to adopt measures that met with FATF requirements led to the Financial Intelligence Centre Act 2001 (FICA). FICA added to POCA and repealed certain parts of POCA, meaning the two Acts have to be read in conjunction with each other. POCDATARA was added in 2004.

8.3 THE MONEY-LAUNDERING LEGISLATION

The first thing to understand about money laundering legislation is that it does not act upon the crime itself that has brought about illegal money, for example drug dealing. It deals with the **proceeds** of that crime.

The three main laws dealing with money laundering in South Africa, in chronological order, are the Prevention of Organised Crime Act 1989, 121 of 1998, (POCA), the Financial Intelligence Centre Act, 38 of 2001 (FICA), and the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 (POCDATARA).

Let's investigate what each of these Acts govern and require.

8.3.1 The Prevention of Organised Crime Act (POCA)

The purpose of POCA is to introduce measures to combat organised crime, money laundering and criminal gang activities.

Objectives of POCA

- To criminalise racketeering and offences relating to activities of criminal gangs
- To criminalise money laundering and a number of serious offences in respect of laundering and racketeering
- To create a general reporting obligation for businesses coming into possession of suspicious property
- To create a mechanism for criminal confiscation of proceeds of crime and for civil forfeiture of proceeds

Money laundering offences under POCA

POCA creates the following money laundering offences:

- Offences involving proceeds of all forms of crime
- Offences involving proceeds of a pattern of racketeering

The Act includes a number of offences:

- Receiving or keeping property derived from racketeering (swindling/committing fraud), and using or investing any part of that property in the acquisition of any interest in, or the establishment or operation or activities of, any enterprise
- Receiving property from an enterprise, knowing (or should have known) that the property results from racketeering

Penalties can be as stiff as a maximum fine of R100 million or imprisonment for

30 years.

PREVENTION OF ORGANISED CRIME ACT NO. 121 OF 1998

CHAPTER 2

OFFENCES RELATING TO RACKETEERING ACTIVITIES

2. Offences.*--(1) Any person who--*

(a) (i) receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and

[Sub-para (i) substituted by s. 4 (a) of Act No. 24 of 1999.]

(ii) knows or ought reasonably to have known that such property is so derived; and

[Sub-para. (ii) substituted by s. 4 (a) of Act No. 24 of 1999.]

(iii) uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise;

(b) (i) receives or retains any property, directly or indirectly, on behalf of any enterprise; and

(ii) knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;

[Sub-para. (ii) substituted by s. 4 (b) of Act No. 24 of 1999.]

(c) (i) uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in, or the establishment or operation or activities of any enterprise; and

(ii) knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;

[Sub-para. (ii) substituted by s. 4 (c) of Act No. 24 of 1999.]

(d) acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity;

(e) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;

(f) manages the operation or activities of an enterprise and who knows or ought reasonably to

have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity; or

(g) conspires or attempts to violate any of the provisions of paragraphs (a), (b), (c), (d), (e) or (f), within the Republic or elsewhere, shall be guilty of an offence.

(2) The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair.

(3) For purposes of proving a previous conviction during a trial in respect of an offence contemplated in

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subsection (1), it shall be sufficient to prove the original record of judicial proceedings if a copy of such record, certified or purporting to be certified by the registrar or clerk of the court or other official having the custody of the record of such judicial proceedings or by the deputy of such registrar, clerk or other official or, in the case where judicial proceedings are taken down in shorthand or by mechanical means, by the person who transcribed such proceedings, as a true copy of such record, is produced in evidence at such trial, and such copy shall be prima facie proof that any matter purporting to be recorded thereon was correctly recorded.

(4) A person shall only be charged with committing an offence contemplated in subsection (1) if a prosecution is authorised in writing by the National Director

8.3.2 The Financial Intelligence Centre Act (FICA)

FICA's purpose is to combat money laundering activities and the financing of terrorist and related activities.

The 2001 FICA Act creates the requirements to ensure that money laundering is controlled. It is aimed at identifying suspicious transactions so that the people who engage in money laundering activities can be charged under POCA.

Suspicious transactions must be reported under FICA, which now provides the infrastructure to curb money-laundering activities.

The Act also requires "accountable institutions" that could serve as a conduit for "dirty money" to comply with certain legal duties relating to combating money laundering.

Accountable institutions

The main purpose of FICA is requiring a long list of accountable institutions (defined in the Act) to follow certain procedures and report suspicious activities or unusual transactions relating to combating money laundering.

The essential characteristic of an accountable institution is its possible use for money laundering. Accountable institutions themselves are not necessarily statutory bodies, but include people and institutions that can be used for money-laundering purposes.

The list of accountable institutions defined in FICA includes, amongst others, banks, estate agents, attorneys, trust companies, collective investment schemes and long-term insurance companies (including an insurance broker and a representative of an insurer).

FICA provides for a Financial Intelligence Centre (FIC) (lending its name to the Act) and a Money laundering Advisory Council to help combat money laundering.

Financial Intelligence Centre Act 38 of 2001

Schedule 1

List of Accountable Institutions

The FIC Act requires "accountable institutions" to verify client details and report suspicious transactions.

For our purposes the following institutions are included in Schedule 1 of the Act:

- *A person who carries on the ''business of a bank'' as defined in the Banks Act, 1990 (Act 94 of 1990).*
- *A person who carries on a ''long-term insurance business'' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998), including an insurance broker and an agent of an insurer.*
- *A person who carries on the business of rendering investment advice or investment broking services, including a public accountant as defined in the Public Accountants and Auditors Act, 1991 (Act 80 of 1991), who carries on such a business.*
- *The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).*
- *A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act 1 of 1985).*
- *The Ithala Development Finance Corporation Limited.*
- *A person who has been approved or who falls within a category of persons approved by the Registrar of Stock Exchanges in terms of section 4 (1) (a) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985).*
- *A person who has been approved or who falls within a category of persons approved by the Registrar of Financial Markets in terms of section 5 (1) (a) of the Financial Markets Control Act, 1989 (Act 55 of 1989).*
- *A person who carries on the business of a money remitter*

Please note:

These are only the accountable institutions applicable to this exam. The act listed more than this. See Schedule 1 of the FIC Act for a full list.

Financial Intelligence Centre

The principal objective of the FIC is to assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities. All accountable institutions are required by the Act to report all information regarding money-laundering activities to the FIC, where it is handed over to the appropriate authorities for further recourse

Other objectives of the Centre include:

- To make information collected by it available to investigating authorities, the intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of the Republic

- To exchange information with similar bodies in other countries regarding money-laundering activities and similar offences.

Money Laundering Advisory Council

Section 17 of FICA establishes the Money-laundering Advisory Council, an advisory body on combating money laundering. It advises the Minister of Finance on policies and best practices to combat money laundering and to identify the proceeds of unlawful activities. It also acts as a forum in which associations representing categories of accountable institutions, organs of State and supervisory bodies that report to the Financial Intelligence Centre can consult one another. The Council should also advise the Financial Intelligence Centre on the performance of its functions.

In simple terms, FICA requires the creation of a paper trail, with detailed records of the origins of money placed with an accountable institution and the people involved. Internationally, this paper trail makes it more difficult to launder money.

8.3.3 The Protection of Constitutional Democracy Against Terrorism and Related Activities Act (POCDATARA)

Money laundering has also been used by terrorist organisations to fund their activities. The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover this as well. In South Africa, this led to the 2004 Protection of Constitutional Democracy Against Terrorism and Related Activities, known by its clumsy acronym as POCDATARA.

It introduced a new Section 28A of FICA which requires the reporting of any property associated with terrorist and related activity to the Financial Intelligence Centre.

The aim of POCDATARA is therefore to introduce an obligation to report certain offences linked to terrorist activities, including terrorist financing.

8.3.4 What is the relationship between POCA and FICA?

FICA added to POCA and repealed certain parts of POCA. This means that the two Acts have to be read in conjunction with each other. The relationship between FICA and POCA can best be described by looking at an example:

Example:

Mr du Toit is involved in perlemoen smuggling. He has an amount of cash that he needs to legitimise. He contacts his financial adviser, Mr Samuels, to investigate the possibilities of investing in a single premium endowment policy. While talking to Mr Samuels, he inquires about the possible surrender of such a policy after a number of months.

Mr Samuels is suspicious, partly because he knows that Mr du Toit often visits Gansbaai and the greater Hermanus area over weekends for "business" – which could be illegal perlemoen smuggling. However, he decides that he values Mr du Toit's business and that he will therefore not report the transaction.

If caught, Mr du Toit will be guilty under POCA, Section 4, as he knowingly laundered the proceeds of unlawful activities. Mr Samuels, on the other hand, will be guilty under FICA, Section 29, as he did not report a suspicious transaction.

Example:

Mr Coetzee is a licensed financial services provider and he is also a silent partner in a local night club. His partner in this business, Mr Daniels, has been earning extra money in drug trafficking in the club. He always uses the proceeds of these activities to purchase insurance policies with Mr Coetzee, who then earns commission on the large cash transactions. Mr Coetzee is well aware of the origins of the money invested, but since he is earning a good living off this scheme, he has no intention of ever reporting any of these deals.

If caught, both Mr Coetzee and Mr Daniels will be charged under POCA. Mr Daniels has knowingly laundered the proceeds of unlawful activities. Mr Coetzee has contravened the same section of POCA in that he proceeded with selling a client an insurance policy with the knowledge that the money for such policy has been derived from the proceeds of a crime. Mr Daniels has also contravened the provisions of FICA, since he did not report his suspicions.

8.4 THE IMPACT OF FICA ON FSPs

The FICA creates the following four money laundering control obligations for all accountable institutions:

- Duty to identify and verify clients
- Duty to keep records of business relationships and transactions
- Reporting duties and obligations to give and allow access to information
- Adoption of measures designed to promote compliance by accountable institutions

In terms of these requirements, an FSP who is an accountable institution, as defined in the FICA, must have in place all the necessary policies, procedures and systems to ensure full compliance with that Act and other applicable anti-money laundering or terrorist-financing legislation.

It is, therefore, imperative that FSPs have adequate staff training in place and proper systems and procedures to assist them to comply with the FICA. Banks and insurance companies are regarded as accountable institutions in terms of the FICA.

The compliance report requires information relating to an FSP's adherence to the FAIS General Code with regard to "the necessary policies, procedures and systems to ensure full compliance with FICA and other applicable anti-money laundering or terrorist-financing legislation". This includes client identification, identification and reporting of suspicious transactions and risk rating of clients.

The four money laundering control obligations in more detail

Identification of new clients	Section 21(1) of FICA requires accountable institutions to identify new clients and verify their particulars before any transaction may be concluded/any business relationship is established with them, unless they qualify for *Exemption 2,* which stipulates that any accountable institution may accept a mandate from a prospective client and proceed to establish a business relationship/conclude a single transaction with that client.
Verification of new clients	• The Money Laundering Control Regulations prescribe the identification and verification requirements for clients of accountable institutions, ranging from SA citizens and residents, foreign nationals, corporations, South African companies, close foreign companies, partnerships and trusts. • The information obtained from legal persons, such as companies, close corporations and trusts must be verified by comparing it to the registration documents of these legal entities. • The identification procedures in respect of the legal persons referred to above must also be extended to directors, shareholders, members and trustees. Documents serving to confirm their authority to act on behalf of these legal entities must also be obtained.
Identification and verification of existing clients	• Section 21(2) of FICA requires a similar process for existing clients as for new clients. • It also states that, if an accountable institution had established a business relationship with a client before FICA took effect, it may not conclude further transactions in the course of that

	business relationship, unless prescribed steps are taken to ensure that the identities of the clients are established and verified – a time period was granted for compliance with this requirement.
Additional measures when a person represents or acts on authority of another	• Regulation 17 states that, if a person wants to establish a business relationship or conclude a single transaction with an accountable institution on behalf of another person, the accountable institution must, in addition to the normal identification and verification requirements, obtain information from that person, which provides proof of that person's authority to act on behalf of the client. Information that can be obtained includes mandate, power of attorney, etc.
Verification in the absence of contact person (non-face-to- face clients)	• Regulation 18 stipulates that, if the accountable institution obtained identification and verification information from a natural or legal person without personal contact with such a natural person or representative of that legal person, the accountable institution must take reasonable steps to establish the existence and verify the identity of that natural person or legal person. • Authorised FSPs are encouraged to establish procedures for dealing with non-face-to-face clients, and must incorporate them into their main client acceptance procedure manual.

The impact of FICA on financial services providers and representatives (in their role as accountable institutions) is determined by the additional duties that it imposes on them. The main duties of accountable institutions, including those that are FSPs and representatives, as described in FICA, include:

- Identifying and verifying clients
- Reporting suspicious transactions
- Keeping records
- Training staff
- Reporting cash transactions
- Formulating and implementing internal rules

Let's look at each of these duties in depth so that you can understand what FSPs and representatives have to do to be compliant with this legislation.

8.4.1 The duties of an FSP relating to its employees in terms of FICA

The two duties that FICA imposes on an FSP (as an accountable institution) relating to its employees are the training of staff and the formulation and implementation of internal rules. Let's investigate how these duties impact on the FSP.

1. Training staff

FSPs have to ensure that staff are suitably trained. In addition, they have to put in place a reporting of suspicious transactions procedure. Harsh penalties are set out, either for the individual who does not comply or for the organisation that does not comply, namely maximum imprisonment for a period not exceeding 15 years or a fine not exceeding R10 000 000.

2. Formulating and implementing internal rules

The Act requires that the FSP formulate and implement internal rules relating to:

- The identification and verification of a person's identity
- The record-keeping requirements prescribed in the Act
- Steps to be taken to decide whether a transaction is reportable or not.

These internal rules must be made available to all employees and the FIC.

In addition to the above, an FSP (as an accountable institution) also needs to be aware of the obligations created in the following:

- The common law
- Industry-specific and sector-specific legislation
- The 40 FATF recommendations as changed from time to time
- International best practices within the industry.

8.4.2 The duty of the identification and verification of clients

Some of the duties listed that FICA imposes on FSPs also become your duties when you work for the FSP as a representative.

Getting to know the client is an essential element in combating money laundering. This is expressed simply and effectively as "know your client" (KYC).

The term "client" can be regarded as anyone who uses the services of an accountable institution. Client categories include natural persons, companies, close corporations, trusts, partnerships and the like.

An FSP or its representatives may not establish a business relationship or conclude a single transaction with a client unless the necessary steps have been taken to identify and verify the identity of the client.

The accountable institution has to obtain the client's full names, date of birth, ID number, income tax number (where applicable) and address. If the client is represented by another person, the identity of the other person as well as the authority of that person to act on behalf of the client need to be established.

It is important to note that the Act requires an accountable institution to identify and verify clients not only when a single transaction is about to be concluded, but also when the accountable institution and the client intend to establish an ongoing business relationship.

Business relationship means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis. If the accountable institution established a business relationship before the commencement of FICA, it has to take steps to verify and identify clients before a new transaction is entered into in terms of the relationship.

There are, therefore, guidance notes as to what constitutes knowledge of your client – for example: copy of the ID book, copy of a utility bill to prove residential address, a copy of tax form showing tax registration number, copy of payslip, which gives you an idea of how onerous the legislation is and how serious South Africa is about money laundering.

Documentation used for identification and verification of clients differs slightly for natural persons and legal entities. A further distinction is also made between South African citizens, residents and legal entities (such as companies, trusts and close corporations) on the one hand, and foreign nationals and legal entities on the other.

Documents required for identification and verification:

- For a **natural person** (RSA citizen), a copy of the ID document will serve as verification of his identity. Residential address verification can be obtained from a utility bill, a bank statement from another bank reflecting the name and address, a municipal rates and taxes invoice, a telephone or cellphone account reflecting the name and residential address of the person, etc.
- A **foreign national** may be identified from an identity document or passport, in addition to a letter of confirmation from a person in authority (for example from the relevant embassy) which confirms authenticity of that person's identity document
- For a **private company** the following may be used: Registered name and registration number, address, registered trade name and address, documentation to verify tax and VAT number (any SARS document), personal details of manager/CEO or both, details of shareholders holding 25% or more voting rights, mandate authorising person acting on behalf of company in entering into business relationships, most recent version of certificate of incorporation (CM1), notice of registration of office and postal address (CM22)
- For a **company listed on the JSE**, only a registration number and the name of the company are required
- For a **close corporation** the following may be required: Registered name and registration number, address, registered trade name and address, documentation to verify tax and VAT number, most recent version of the founding statement (CK1), notice of registration of office and postal address (CM22), the member's agreement, a resolution authorising the person to act, personal details of each member of the CC
- For a **trust** the following are required: The identifying name and number of the trust, the address of the Master where it is registered, the trust deed or other founding document, letter of authority from the Master of the High Court in SA, the income tax registration number, trustees' resolution authorising person to act, personal details of each trustee, each beneficiary referred to by name in the trust deed, the founder and the person authorised to act.

(More information available on www.fic.gov.za).

Exemptions

FICA provides for certain exemptions in terms of circumstances where accountable institutions **do not have to** identify and verify clients.

There are general exemptions that apply to certain accountable institutions, where a business relationship/single transaction is established or concluded with a second accountable institution after the primary institution has identified and verified the client.

There are also specific exemptions:

- Any long-term insurance policy which provides benefits only upon the death, disability, sickness or injury of the life insured

Example:

Financial adviser K does not have to verify and identify his client when he sells a pure life-cover policy to the client.

- Any long-term insurance policy, unit trust or linked product in respect of which recurring premiums/contributions are paid, which will amount to an annual total not exceeding R25 000, subject to the condition that the client will have to be identified and verified if:
  - The recurring premium is increased so that the R25 000 p.a. is exceeded
  - The policy/investment is surrendered/liquidated within three years
  - A loan is granted against the policy within three years.

Example:

Client X is about to invest R300 per month in a recurring premium endowment policy. His financial adviser does not have to follow the rules of identification and verification.

- Any long-term insurance policy, unit trust or linked product in respect of which a single premium/contribution not exceeding R50 000 is payable, subject to the condition that the client will have to be identified and verified if:
  - The policy/investment is surrendered/liquidated within 3 years after its commencement
  - A loan is granted against the security of such a policy within 3 years after its commencement.

Example:

Client Y invests R60 000 in a single-premium sinking fund with Company X. The financial adviser will have to identify and verify the client in this scenario, as the single premium is more than R50 000.

- Any other long-term policy where the surrender value of the policy does not exceed 20% of the value of the premiums paid in respect of the policy within the first 3 years of the policy.

8.4.3 The recording function

FICA requires the following records to be kept:

- The identity of the client
- The identity and authority of a person acting on behalf of a client
- The identity and authority of a client acting on behalf of another person
- The manner in which the identity was established
- The nature of the business relationship or transaction
- The name of the person who obtained the information on behalf of the accountable institution

- Documents used to identify and verify the client or the other person.

The records mentioned above may be kept in electronic form. Records which relate to the establishment of a business relationship should be kept for five years from the date on which the business relationship is terminated. Records which relate to transactions should be kept for at least five years from conclusion of the transaction.

FICA also allows for third parties to keep records on behalf of the accountable institution, provided that the accountable institution has free and easy access to the records. Should the third party fail to keep proper records, the accountable institution is liable for that failure. If an accountable institution decides to make use of a third party to keep records, the particulars of such third party needs to be provided to the Financial Intelligence Centre.

Accessibility of information

An authorised representative of the Financial Intelligence Centre has access to records kept by an accountable institution during ordinary working hours and may examine, make extracts or make copies of such records. Where such records are not available to the general public, a warrant issued by a judge or magistrate of the region in which the accountable institution conducts business is required by the representative of the FIC. Such a warrant will only be issued if there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. An accountable institution which fails to provide this assistance, is guilty of an offence, punishable with imprisonment for a period not exceeding 15 years, or a fine not exceeding R10 million.

Example:

Let's assume that the authorities have been investigating client X in terms of unlawful activities. The Financial Intelligence Centre can obtain a warrant to access records kept by an accountable institution such as a long-term insurer, provided that there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. The insurer will be obliged to provide all necessary assistance to FIC in this process.

8.4.4 The duty to report cash and suspicious transactions

A person liaising with a client on behalf of the business is required to report any suspicion on his part of receiving proceeds of unlawful activities from a client. A person who has reported a suspicious transaction may not inform the client that such a report has been made (so-called "tipping off"). In practice, this process is mostly handled by the money-laundering reporting officer of an institution.

The role of the money laundering officer

The employees of the institution will report suspicious or unusual transactions to the Money Laundering Reporting Officer in that institution. The procedure for making the report must be laid down in the internal rules that the institution has put in place to ensure compliance with FICA.

The Reporting Officer will investigate the transaction to determine whether in fact it was suspicious and/or unusual. If so, the Money Laundering Reporting Officer must report the transaction to the Financial Intelligence Centre within 15 working days of learning of it or from when the suspicion arose. The FIC may ask for additional information on the matter.

Reporting cash and suspicious transactions

The Act requires accountable institutions to report cash transactions above a prescribed limit. This section is, however, not operational yet and the limits have not been prescribed (for more info see www.fic.gov.za). This reporting duty is applicable where the accountable institution receives the cash amount from a client, as well as where the accountable institution pays a cash amount above the prescribed limit to the client.

Example:

Client Y wants to deposit R100 000 cash at Bank A. In terms of FICA, Bank A, as an accountable institution, is obliged to report the transaction to the Financial Intelligence Centre. The cashier will report it to Bank A's reporting officer/department, who in turn will report it to the Financial Intelligence Centre.

Possible indicators of a suspicious transaction

The following are examples of possible suspicious or unusual transactions – they may be perfectly legitimate, but they are often used to cover money laundering:

- Payments to be made to third parties
- Transfer of funds to other product providers
- Constant movement of money among different business entities
- Transactions that have no apparent business purpose
- Transactions involving large cash amounts
- Surrendering of policies and second-hand (traded) policies shortly after they have been purchased
- Loans against new-generation products (loans can then be repaid with "dirty" money in order to "clean" the money)

Suspicious transaction may not always be easy to spot. The Financial Intelligence Centre (www.fic.gov.za) has published guidelines to assist banks with the verification and identification process. In this document, the following are some of the high risk factors listed in terms of suspicious clients:

- A client appears to have bank accounts with several banks in the area
- A client makes cash deposits to a general account of a foreign correspondent bank
- A client wishes to have credit and debit cards sent to destinations other than his address
- A client has numerous accounts and makes or receives cash deposits in each of them amounting to a large aggregated amount
- A client frequently exchanges currencies
- A client wishes to have unusual access to safe-deposit facilities
- A client's account shows virtually no normal business-related activities, but is used to receive or disburse large sums
- A client has accounts that have a large volume of deposits in bank cheques, postal orders or electronic funds transfers
- A client is reluctant to provide complete information regarding these activities

- A client's financial statements differ noticeably from those of similar businesses
- A client makes a large volume of cash deposits from a business that is not normally cash-intensive

The following case studies were taken from the Financial Action Task Force reports on money laundering typologies (www.fatf-gafi.org).

Case Study 1

A company director from Company W, Mr H, set up a money laundering scheme involving two companies, each one established under two different legal systems. Both of the entities were to provide financial services and providing financial guarantees for which he would act as director.

These companies wired the sum of $1.1 million to the accounts of Mr H in country S. It is likely that the funds originated in some sort of criminal activity and had already been introduced in some way into the financial system. Mr H. also received transfers from country C.

Funds were transferred from one account to another (several types of accounts were involved, including both current and savings accounts). Through one of these transfers, the funds were transferred to country U from a current account in order to make payments on life insurance policies. The investment in these policies was the main mechanism in the scheme of laundering the funds. The premiums paid for the life insurance policies in country U amounted to some $1.2 million and represented the last step in the laundering operation.

Case Study 2

A person (later arrested for drug trafficking) made a financial investment (life insurance) of R250 000 through an insurance broker. He acted as follows: he contacted the broker and delivered an amount of R250 000 in three cash instalments. The insurance broker did not report the delivery of that amount and deposited the three instalments in the bank.

These actions raised no suspicion at the bank, since the broker was known to them as being connected to the insurance branch. The broker delivered, afterwards, to the insurance company responsible for making the investment, three cheques from a bank account under his name, totalling R250 000, thus avoiding raising suspicion with the insurance company.

In this case, it is clear that the insurance broker should have reported the transaction as suspicious, due to the fact that the amount was delivered in cash. Furthermore, once the section on reporting cash transactions became effective (see below), the bank employee would also have to report the transaction if it was in excess of the prescribed cash limit.

Activity

1. Assume that you have just seen a new client, Amy. Since you are busy with this course, you know that FICA requires you to fulfil certain duties.
   You have to explain how you will go about fulfilling the duties of identification, verification and record-keeping with regard to Amy. First write down your explanation without referring to the study guide and then tell a colleague (preferably one who is doing the same course), your manager, a friend or a relative what you will do.
2. Assume that Amy wants to buy a life assurance product with a large amount of cash. You feel the cash may be the proceeds of an unlawful transaction and that it has to be reported. First write down what process you will follow in reporting the transaction and then tell a colleague (preferably one who is doing the same course), your manager, a friend or a relative what you will do.

8.5 THE CONSEQUENCES OF NON-COMPLIANCE

In terms of FICA, the following (amongst others) are declared to be an offence, punishable by a maximum of 15 years' imprisonment, or a maximum fine of R10 million:

- Failure to identify persons
- Failure to keep records
- Destroying or tampering with records

- Failure to give assistance to the FIC
- Failure to report cash transactions as prescribed (when operational)
- Failure to report suspicious or unusual transactions
- Failure to train staff or to appoint a compliance officer, or to implement internal rules

These offences affect different parties. Some are committed by an accountable institution (e.g. failure to keep records); others are committed by any other person (e.g. tampering with records).

Summary

The activity of money laundering is defined as an activity which has, or is likely to have, the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities. This includes any interest accrued to these amounts which anyone has in such proceeds and includes any activity which constitutes an offence in terms of Section 64 of this Act or Section 4, 5 or 6 of the Prevention of Organised Crime Act.

The Financial Intelligence Centre Act, 38 of 2001 is aimed at establishing a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money-laundering activities. Further, the Act is used to impose certain duties on accountable institutions and other persons who might be used for money laundering purposes.

FICA determines that accountable institutions need to:

- Identify and verify their clients
- Report suspicious transactions
- Keep records
- Train staff and put reporting procedures in place
- Report cash transactions over a prescribed limit

FICA amended the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; to provide for matters connected therewith.

The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover money laundering used by terrorist organisations to fund their activities. In South Africa, this led to the 2004 Protection of Constitutional Democracy Against Terrorism and Related Activities Act (POCDATARA). This Act requires the reporting to the Financial Intelligence Centre of any property associated with terrorist and related activity.

The introduction of these Acts has gone a long way in aligning South African with the rest of the international community in the fight against money-laundering.

NB – New Developments as per FICA website:

Financial Intelligence Centre Compliance Contact Centre

Kindly note that the Financial Intelligence Centre (FIC) has established a Compliance Contact Centre to deal with queries related to compliance with the Financial Intelligence Centre Act, No. 38 of 2001, as amended (FIC Act).

This dedicated telephone service is geared to handle all FIC Act-related compliance queries, such as:

- Whether or not a business is required to register with the FIC;
- How to register with the FIC;
- What types of businesses are required to register with the FIC;
- Technical issues relating to the registration process;
- Queries relating to complying with the provisions of the FIC Act including, but not limited to:
  - Establishing and verification of the identity of clients;
  - Record-keeping relating to your clients;
  - Reporting of cash threshold transactions;
  - Reporting of property associated with terrorist and related activities;
  - Reporting of suspicious and unusual transactions;
  - Formulation and implementation of internal rules;
  - Training and monitoring of FIC Act compliance.

The FIC Act Compliance Contact Centre can be reached on: **0860 222 200**

The FIC is also still able to receive e-mailed compliance based queries on: fic_feedback@fic.gov.za

For calls unrelated to compliance matters, please call the FIC on: **0860 342 342**.

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To report any fraudulent, corrupt or suspicious activities involving the Financial Intelligence Centre please call the anti-fraud and corruption hotline:

0800 20 1104

ALL PERSONNEL OF ELNA RUDMAN BROKERS CC ARE ENCOURAGED TO REPORT ALL FRAUDULANT TRANSACTIONS OR UNLAWFUL ACTIVITIES TO THE REPORTING OFFICER: ELNA RUDMAN OR TO USE THE ABOVE CONTACT DETAILS.