

MODULE 11: STUDY NOTES

Scope of the Financial Intelligence Centre Act (FICA)

- The Key Individual must ensure that there are adequate systems in place to provide for the FICA exemptions.
- The compliance report requires information relating to a FSPs 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".

Money laundering control obligations in more detail

<p>Identification of new clients</p>	<p>Section 21(1) of the FICA requires accountable institutions to identify new clients and verify their particulars before any transaction may be concluded or any business relationship is established with them unless they qualify for <i>Exemption 2</i>.</p> <p>(Exemption 2 stipulates that an accountable institution may accept a mandate from a prospective client and proceed to establish a business relationship or conclude a single transaction with that client.)</p>
<p>Verification of new clients</p>	<ul style="list-style-type: none"> • The Money Laundering Control Regulations prescribe the identification and verification requirements for clients of accountable institutions ranging from SA citizens & 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 against 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.
<p>Identification and verification of existing clients</p>	<ul style="list-style-type: none"> • Section 21(2) of the 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 the FICA took effect, it may not conclude further transactions in the course of that business relationship, unless prescribed steps are taken to ensure the identities of the clients are established and verified – there was a period of time granted for compliance with this requirement..
<p>Additional measures when a person represents or acts on authority of another</p>	<ul style="list-style-type: none"> • Regulation 17 states that if a person wants to establish a business relationship or to 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 from that person information 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.
<p>Verification in the absence of contact person (non face to face clients)</p>	<ul style="list-style-type: none"> • Regulation 18 stipulates that if the accountable institution obtained identification and verification information from a natural or legal person without contact in person 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.

Reporting duties

The duty to report suspicious and unusual transactions is imposed on all persons who carry on business, are in charge of or manage a business, or are employed by the business.

- The FICA requires **all business organisations**, their **managers and employees of such businesses** to **identify and report suspicious and unusual transactions** to the FIC.
- **Regulation 22** of the FICA deals with the reporting format. It states that suspicious transaction reporting can be internet based or by a method developed by the FIC.
- **Regulation 24** of the FICA deals with the reporting period. The report must be sent to the FIC as soon as possible, but **no later than five days** after the suspicious transaction was determined.
- **Regulation 23** contains full particulars of Suspicious Transaction Reports (STR).
- In terms of **Section 38**, persons filing STRs are guaranteed protection against criminal and civil liability for complying in good faith with the provisions of the FICA.
- STRs are **confidential documents** for use by the FIC staff only.
- In terms of **Section 33**, an accountable institution may continue with the reported transaction unless the FIC specifically orders such a person not to proceed with the transaction.

Formulation and implementation of internal rules	
<p>Section 42 of the FICA requires accountable institutions to formulate and implement internal rules concerning:</p>	
<ul style="list-style-type: none"> • Client identification and verification. 	<ul style="list-style-type: none"> • Record keeping.
<ul style="list-style-type: none"> • Steps taken to determine and report suspicious transactions. 	<ul style="list-style-type: none"> • Such other matters as may be prescribed from time to time.
<p>Internal rules must be made available to every employee involved in transactions to which FICA apply, and on request, a copy thereof must be made available to the FIC and relevant supervisory bodies.</p>	
Training of employees	
<p>The FICA requires accountable institutions to provide training to its employees to enable them to comply with the provisions of FICA and internal rules applicable to them.</p> <p>Note that FICA does not prescribe the format of training required. Both formal training and FICA awareness campaigns are recognised. These methods are both designed to raise the level of awareness of employees regarding their obligations.</p> <p>As in the FAIS Act, record of training attended must be kept as proof.</p>	
Appointment of a Compliance Officer	
<p>Section 43(2) of the FICA requires accountable institutions to appoint a person with a responsibility to ensure compliance by</p>	
<ul style="list-style-type: none"> • The accountable institution with its obligations under FICA, 	<ul style="list-style-type: none"> • Employees of the accountable institution with the provisions of FICA as well as internal rules applicable to them.

Other applicable anti-money laundering legislation

- **Prevention of Organised Crime Act (POCA)**
 - To criminalise racketeering and creates offences relating to activities of criminal gangs.
 - To criminalise money laundering and creates 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.

- **Protection of Constitutional Democracy against Terrorist and Related Activities Act**
 - Offence of terrorism and offences associated or connected with terrorist activities.
 - Offences associated or connected with terrorist activities.
 - Offences associated or connected with financing of specified offences.
 - Offences relating to harbouring or concealment of persons committing specified offences.
 - Duty to report presence of person suspected of intending to commit or having committed an offence and failure to so report.
 - Offences relating to hoaxes.
 - Threat, attempt, conspiracy and inducing another person to commit offence.

The role and power of the FAIS Ombud

- The function of the FAIS Ombud is to resolve disputes relating to the rendering of financial services by providers where they have either failed to comply with the FAIS Act or where as a result of either wilful or negligent conduct by the provider the client has suffered or will potentially suffer prejudice or damage.

- The objective of the Ombud office is to provide a fair, unbiased, reasonable, economical and expeditious relief to the ordinary person in the street at no charge and is mandated to investigate and adjudicate complaints by clients against FSPs and Representatives.

- The FAIS Ombud can officially accept a complaint for investigation if the complaint relates to a financial service that was rendered on or after 30 September 2004.

- The maximum amount of the alleged loss or damage must be **R800 000.00**. Since 1 April 2005, the FAIS Ombud can also act as the Statutory Ombud in terms of the Financial Ombud Schemes Act 2004 (Act No. 37 of 2004) (FSOS Act).

- If a case cannot be settled through mediation or conciliation, the FAIS Ombud or the Deputy FAIS Ombud may issue a determination.

- A determination has the same legal effect as a judgment of a court.