

**BMH LAW
FICA PRESENTATION**

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What is the real purpose of FICA?

BASIC REMINDER:

The purpose of FICA is to:

- Create transparency in financial transactions by reporting on transactions involving actual or suspected:
 - money laundering; AND / OR
 - financing of terrorism
- NOT TO REPORT CRIME

What is money laundering exactly?



It is the processing of criminal proceeds (including but not limited to drug trafficking and theft) to disguise their illegal origin.

- The term "money laundering" is said to have originated with the Italian mafia and such criminals as Al Capone who purchased 'Laundromats' to mix their illegal profits from prostitution and liquor sales with legitimate business sales from the 'Laundromats' to obscure their illegal profit.
- EXAMPLE: A drug dealer uses the cash he makes over a weekend to buy flats. He then sells the flats and his money is laundered.
- **MONEY THAT COMES FROM A LEGAL SOURCE, but which has not been declared to SARS, is still legal. Buying property with such money is not money laundering - maybe tax evasion.**

Terms and provisions

- “Risk based approach”

Every accountable institution (AI) (which includes administrators of trusts and companies, property practitioners and attorneys) must have a system in place which enables it to assess whether a client is possibly laundering money or financing terrorism, using a risk-based assessment.

What does this mean exactly? Every AI must:

- Register with the FIC as an AI
- Have a Risk Management Compliance Programme in place (RMCP)
- Ensure that all staff who deal with clients are regularly trained to comply with their specific RMCP
- Ensure on going due diligence with long standing clients
- Ensure identification of beneficial owners of legal entities
- Ensure their staff understand what money laundering / anti proliferation (manufacturing of goods that can be used in the manufacturing of weapons of mass destruction)
- Ensure their staff know how to conduct due diligence on how to assess the risk that a client is financing terrorism or laundering money
- Have checks and balances in place to ensure that their RMCP is being adhered to
- Report suspicious transactions and cash threshold transactions of R50 000 or more

Steps to address the threat of *greylisting*:

- Following the *greylisting* of South Africa it was common cause that not enough “reasonable steps” were being taken to determine whether, once a business transaction had commenced, there was a risk of ML/FT
- Far greater emphasis is now placed on “reasonable risk assessment”



FIC revs things up!

In August 2022,
NEDBANK was fined
R35 000 000
(of which R15 million
was suspended),

In 2025 CAPITEC was
fined R56 250 000
(of which R10.5
million was
suspended)

for not being FICA
compliant.

Greylisting since Feb 2023:

- This means the FATF (Financial Action Task Force which is the international organization that oversees FICA) decided that SA's systems were not up to scratch and needed review and adjustments.
- It means we are no longer seen to be FIC compliant which exposes SA to:
 - the risk of less foreign investments;
 - it creates challenges for SA businesses to access international finance services;
 - If we want to invest in FIC compliant countries, we must provide far more details as to the source of our wealth.
 - In essence it makes it far more difficult for South Africans to invest or conduct business in such countries.

Changes since greylisting:

In March 2023 Directives 6; 7 and 8 were issued by FIC

- Directive 6 requires that all non-financial AI's (such as property practitioners and attorneys) must complete an on-line Risk and Compliance Return assessment (RCR) wherein they submit information regarding their understanding of money laundering, terrorist financing and the proliferation of financing risks. (Manufacturing of goods of mass destruction - i.e., bombs)
- DEADLINE was 31 May 2023.
- The fine for not filing an RCR is R10,000 and 152 estate agencies have to date been fined to the value of R1,520,000.
- If you have not submitted your RCR you must do so **asap** to avoid a fine greater than R10,000.

Changes since grey listing...continued

- Directive 8 requires all AI's to:
 - Screen prospective and current employees for competence and integrity periodically, in a risk-based manner.
 - Screen all such employees against the UN Security Council sanctions list / TFS (targeted financial sanctions list)
 - Provide for, and record, the way screening for competence and integrity, as well as the manner of scrutinising of employee information against targeted financial sanctions lists will be conducted.
 - Keep a record of the outcome of such screening.
 - Be able to make these records available to the FIC or a supervisory body upon request
- IMPLEMENTATION DATE WAS 31 MARCH 2023

How does one comply with Directive 8:

At BMH we incorporated the following changes to our RMCP:

- No person may be employed by us without a comprehensive CV being filed in his/her personnel file detailing all past working experience and qualifications.
- All future employees are to be screened under the UN security council checklist before employment may be confirmed. Any such person who is found to be listed may not be employed.
- All current employees are to be screened once every 2 years as from 1 April 2023.
- All directors are to be screened annually as from 1 April 2023.
- All future employees and directors are to confirm whether they are politically connected to any domestic or foreign prominent public official (DPO or FPPO) or whether they have been thus connected, within the past 12 months.
- All current employees and directors, are to confirm every 12 months whether they are related to any such individuals.

Complying with Directive 8 cont...

- All current employees and directors had to confirm by 15 April 2023 that they have not ever been convicted of any crimes involving money laundering, dishonesty or theft.
- All future employees and directors are to confirm that they have not ever been convicted of any crimes involving money laundering, dishonesty or theft, before their appointment as such may be confirmed.
- Any person found to be listed on the UN sanctions list or who has been convicted of such an offence shall be immediately suspended with pay, pending investigation and possible disciplinary sanction.
- Every staff member must attend FICA training at least annually and complete an attendance form to confirm this.

BASICS REVIEW:

At which point do you FICA someone?

At the commencement of a business transaction:

This means once the client has confirmed that he/she/it will be doing business with you i.e., on completion of a client engagement form/mandate when the client becomes your client.

You may not deal with ANY funds or attend to any transaction for a client without full FICA



Who are your clients?

Any person/entity/trust for whom you act in a property/property related manner



- There are primary AI's and secondary AI's
- Under the old FIC Act, there was an exemption which allowed one AI to rely on another's information gathered from a client. That exemption has been WITHDRAWN.
- However, since FICA is now risk-based, you may rely on the 3rd parties' FICA but remember this: If it is subsequently found that a client should have been reported, you cannot hide behind their FICA

**May I rely on third parties'
FICA of our clients?**

Two specific categories of suspicious persons:



DOMESTIC
PROMINENT
INFLUENTIAL
PERSONS (DPIPs)

and



FOREIGN PROMINENT PUBLIC
OFFICIALS (FPPOs)

Domestic Prominent Influential Persons (DPIP)

This definition includes all senior government officials and politicians, royals, and traditional leaders, senior civil servants, judges, ambassadors; high-ranking officers in the military, and senior officials in companies who are doing business with government includes known family members; close associates and mistresses!

THESE ARE NOT DEEMED AS HIGH RISK
BUT MEASURES MUST BE TAKEN TO
DETERMINE THEIR SOURCE OF
WEALTH

Foreign Prominent Public Official (FPPO)

This is a person who is a **foreigner** and; royalty, or senior government official, senior politician, a senior executive of a state-owned entity; or a high-ranking member of the military and includes known family members; close associates and mistresses!

THESE PEOPLE ARE AUTOMATICALLY DEEMED TO BE HIGH RISK AND EXTRA CARE MUST BE TAKEN TO ASSESS THEIR RISK PROFILES, I.E. TO DETERMINE THEIR SOURCE OF WEALTH AND FUNDS TO BE USED IN A TRANSACTION.

NB - YOU MAY NOT TRANSACT WITH THEM WITHOUT SENIOR MANAGEMENT'S CONSENT.

- If a person / entity is identified as a sanctioned person you may not transact with him/her/it;

or

- if you KNOW that the persons is laundering money or financing terrorism.

When must you terminate a transaction?

CASH DEPOSITS OF R50 000 and upward

Any receipt of R50 000 or more in cash (in hand or by way of bank deposit) **MUST** be reported

WHAT IS CASH?

- Any legal coin and/or paper money (local or foreign currency); and
- Travelers Cheques
- Does NOT include EFTs
- The Bank must report any R50 000 cash deposit AND the agency within 2 business days.
- Includes a series of cash transactions amounting to R50k or more within the space of 24 hours
- AS SUCH: **Check** your bank statements **DAILY**.



What test will the FIC apply in deciding whether we should have identified a suspicious transaction?

Section 1(3) of Prevention of Organised Crime Act (POCA) makes it clear that it is a criminal offence not to report to FIC under the following circumstances:

- When any other reasonably diligent and vigilant person;
- with the same skill, training and experience;
- would have known or suspected it.

Examples of suspicious transactions and circumstances:

- When a client stands to make a big loss as a result of a transaction and is unphased by it.
- Clients who refuse to provide original bank statements when requested.
- Requests for payments into an unrelated 3rd party's account where no relationship or transactional cause can be determined.
- Refusal to disclose source of funds for a transaction.
- Any payment that is excessive or out of the norm.
- Multiple cash deposits (even of less than R50k) at multiple banks over a few days.
- Money comes from a crypto trading account.



HOW DOES ONE ASSESS RISK?

- Google all your cash buyers whether South African or foreign
- Best is to do a search on all cash received and new clients: <https://www.un.org/securitycouncil/search/node>
- When source of funds is given as inheritance; sale of shares; sale of property; crypto trading; savings – ask whether the client can provide proof. If the answer is **NO**, that must trigger suspicion.
- **DO NOT BE AFRAID OR SHY TO ASK QUESTIONS! YOU DO NOT HAVE A CHOICE ANYMORE!**
- Foreign Secretary of Finance case scenario – R15 000 000 cash sale. SA Trust. Founder is a secretary of finance for a neighbouring African country. But he is not a trustee himself. Nominated trustee says money comes from a family run business which funds the Trust. I ask for a letter from the COMPANY auditor verifying this. I get a letter from the TRUST auditor saying the money is from rentals and loans by the trustees. Bank statement for the Trust showed over R18 000 000 income in January 2023 alone. I demanded to know where these funds came from. Trustee went dead quiet. I demanded a letter from the auditor that he has personally verified the source of funds as being legitimate and warned him that I would refer that to the FIC if we are audited.

How to assess risk cont ...

- Use a points matrix assessment sheet
- Complete a matrix sheet for **EVERY** new client as proof that an assessment was done
- Whenever the points do go above 50 the FICA compliance officer should be advised; who must then decide whether to report the transaction to the FIC as being suspicious
- Reports to be filed within 15 days of becoming suspicious

**(INSERT
COMPANY NAME)
RISK PROFILE
CHECKLIST
SCHEDULE 3**

CLIENT TYPE	RISK	TOTAL
Foreign Prominent Public Official	40	
Foreign Trust /Partnership /other	40	
Foreign National/Company	30	
South African Trust	20	
South African Partnership	20	
South African Domestic Prominent Influential Persons	20	
South African Closed Corporation	10	
South African Company	10	
South African Professional Partnership (Drs, Engineers, Attorneys etc)	10	
CLIENT CONDUCT & ATTRIBUTES		
Transactions where the value of the transaction is not consistent with the clients income or occupation	30	
Unusual source of funds	30	
Property bought or sold for far less than market value where parties are not related	30	
Transactions without legitimate reasons	30	
Clients who terminate the relationship the moment FIC is requested	30	
Unusual concern for secrecy	30	

**(*INSERT COMPANY
NAME*) RISK
PROFILE CHECKLIST
SCHEDULE 3
continued**

Deposits paid by unrelated 3rd parties	30
Proceeds of transactions payable to unrelated 3rd party	30
Buying property in unrelated 3rd party's name	30
Party who provides ID/Passports with different names without reasonable explanation	20
Repeated cash deposits whether for R50 000 or less	20
Unusual or complicated transaction(s)	20
Resistant to in person dealings. Prefers dealing via electronic media only	20
Vagueness as to source of funds / nature of business	20
High Cash Generating Business/Import & Export/Trades High Value goods	20
Lack of concern/disregard for costs and risks involved	10
Evasiveness/vagueness when requested to provide information	10
TOTAL RISK SCORE:	

1 480 000 00

18/10/19

20605036

	90000	00
	50000	00
	200000	00
	20000	00
	210000	00
	300000	00
	110000	0/0
	50000	0/0
	70000	00
	10800	00
	10200	00
	10000	00
	9200	00
	9700	00
	10400	00
	10000	00
	90000	00



How to report cash / suspicious transactions?

- If you suspect anything report it to the compliance officer/senior management who must decide whether to report it as suspicious or not
- Responsibility rests with senior management not you as employee
- Once you have reported it to senior management, you cannot be held accountable
- Reports are done online at:
www.fic.gov.za

What are the consequences of reporting?

- If you **SUSPECT** money laundering/financing of terrorism:

You may carry on with the transaction once reported

- But if you **KNOW**:

- You may NOT continue with the transaction
- It will be a criminal offence to continue
- i.e., WALK AWAY

When is FICA not strictly required?

- When you have a once-off transaction where the value is under R5000
- BUT if you DO suspect anything untoward, you MUST STILL report it

Ultimate Beneficial Ownership (UBO)

UBO is the identification of the person(s) who ultimately control or own a company or a trust.

Who is the UBO?

Any person with a beneficial interest of at least 5 % in a company. This person can be a shareholder, member, director, trustee that has control of the company/trust.

FIND THE WARM BODY IN THE STRUCTURE

What is needed to FICA someone?

It all depends on which type of person you are dealing with:

- Natural persons
- Companies/NPO
- CC
- Trust
- Partnership
- Executor/Curator
- Church

FOLLOW *BMH* QUESTIONNAIRE -
WHICH LISTS EVERYTHING NEEDED

