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ADVISORS

# IMMEDIATE ISSUES TO BE ADDRESSED BY “NEW” ACCOUNTABLE INSTITUTIONS



Marriot Hotel, Midrand: 5 March 2019

# AGENDA

**concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities**



**ANTI-MONEY LAUNDERING**

## **FICA Compliance:**

- Background
- 7 Pillars of Compliance
- Risk Based Approach
  - Customer Due Diligence
- Risk Management and Compliance Program
- Reporting

# CLEAR & PRESENT DANGER

- Major **FIC Act amendments 2017**
  - Regulations amended and rules relating to Customer Identification and Verification scrapped
  - Exemptions scrapped
  - New FIC Guidance on legislative amendments
- Moving from a rules-based approach to a risk-based approach to customer due diligence – **Paradigm shift**
- Imminent broadening of accountable institutions in schedule 1 to FIC Act:
  - **Credit providers**
  - Accountants
  - Auctioneers
  - Dealers in high value goods, ...
- **FATF mutual evaluation** of South Africa 2019
- POPIA & FSRA



# 7 PILLARS OF COMPLIANCE



Old FIC ACT	Amended FIC ACT 2017
Client Identification & Verification	Customer Due Diligence (includes CI)
Record Keeping	Record Keeping
Reporting	Reporting (also on sanction screening)
Formulate and implement Internal Rules	Risk Management & Compliance program
Compliance ownership with Compliance Officer	Compliance governance at the Top
Training of employees	Training of employees
Registration with FIC	Registration with FIC

# RISK BASED APPROACH

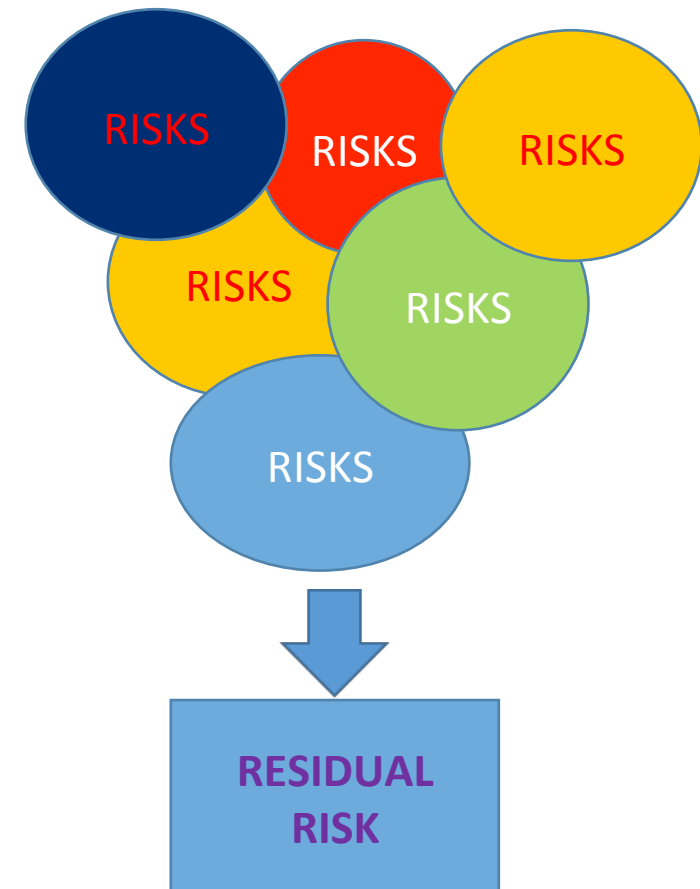


- How can your clients **abuse** your products and services offered for ML/TF purposes?
- No more rigid rules, RBA allows for **flexible** set of measures
  - Enables accountable institutions to spend most of financial and human resources on right areas
- Ensure that measures to prevent ML/TF are **in proportion** with the ML/TF risks identified
- Your risk ratings may change over time
  - continuous **re-evaluation** is required & adapt accordingly

# RISK ASSESSMENT

- Identify the ML/TF risks (inherent risks)
- Take into account following factors/indicators:
  - ✓ Products and services
  - ✓ Delivery channels
  - ✓ Geographic locations
  - ✓ Clients
  - ✓ Other factors
- Residual Risk – acceptable risk

**FIC GUIDANCE NOTE 07 OF 02 October 2017**



# TO DO LIST FOR RBA



- Understand your **environment** and propensity for being abused for money laundering and terrorist financing.
- Develop an **AML policy, risk assessment and a risk matrix.**
- Take measures to **mitigate risk** and document these! Treat the risks by developing systems and controls to manage the ML/TF risks. Manage Risk, don't de-risk.
- **Align the risks against the tailored Customer Due Diligence measures** – low risk= soft touch approach and high risk = more stringent approach (Match RBA with CDD)
- **Document your processes** and how you derived at answers and include in the Risk Management and Compliance Program. Explain how risk is mitigated.

# NO ANONYMOUS CLIENTS

- Als **must not** establish a business relationship or conclude a single transaction with:
  - an anonymous client, or
  - a client with an apparent false or fictitious name
- Where the transaction is a single transaction below the threshold of R5000 the full scope of CDD is not required.
  - Ask **at least basic information** from client
    - Full names, identity number and contact number.
    - Don't have to verify this information.





# ESTABLISH IDENTITY & VERIFY

- AI must **in the course** of establishing a business relationship, or entering into a single transaction, establish and verify the identity of the client.
- CIV must be **completed** by the time the transaction is **concluded**.
- Also applies to a person representing the client; or a person on whose behalf the client is acting.
- **How you identify and verify is largely up to you, but ....**
- Can use **third parties** in complying and recordkeeping but cannot delegate accountability.



# ONGOING & ENHANCED CDD REQUIREMENTS

- Obtain information to determine whether future transactions, that will be performed in the course of **the business relationship**, are consistent with the knowledge of that prospective client. Information such as:
  - The **nature & intended purpose of the business relationship** concerned
  - The **source of funds to be used** in the course of the business relationship. Verification of the information not required.
- Conduct **ongoing due diligence** iro a **business relationship**.
- If you at any point doubt veracity or adequacy of previously obtained info
  - **repeat process.**
- If AI **cannot conduct CDD** it **must not establish** a business relationship, conclude single transaction and must terminate an existing business relationship.

# DOMESTIC & FOREIGN PIPS



## Foreign Prominent Public Officials & Domestic Prominent Influential Persons

- Obtain senior management approval for establishing **business relationship**.
- Take reasonable steps to establish source of **wealth/funds** of client.
- Conduct **enhanced ongoing monitoring** of the business relationship.
- Foreign PIPs always high risk but Domestic PIPs not necessarily.
- FIC provided some sites that may assist in identifying who is a Foreign or Domestic PIP.
- FIC Act also applies to immediate family members and known close associates of a person in a foreign or domestic prominent position.

# RISK MANAGEMENT AND COMPLIANCE PROGRAMME (RMCP)

- “An AIs ability to apply a risk-based approach effectively is largely dependent on the quality of its RMCP”.
- AI must **develop, document, maintain and implement** a program for risk management and compliance in respect of AML and CFT.
- Must be **documented**.
- The RMCP must enable the AI to:
  - **Identify; assess; monitor; mitigate and manage**, the risk of money laundering or financing of terrorism
- FIC does not favour **de-risking**
- **Governance at the top!**



# END GAME - VARIOUS REPORTS

Suspicious Transaction Report (STR)

- **Section 29**
  - Suspicious and Unusual Transaction Report (STR)
  - Suspicious and Unusual Activity Report (SAR)
  - Suspicious and Unusual Transaction Report Batch (STRB)
  - Terrorist Financing Activity Report (TFAR)
  - Terrorist Financing Transaction Report (TFTR)

Cash Threshold Report (CTR)

- **Section 28**
  - Cash Threshold Report (CTR)
  - Cash Threshold Report Aggregation (CTRA)

Terrorist Property Report (TPR)

- **Section 28A**
  - Terrorist Property Report (TPR)
  - UNSC List

International Fund Transfer (IFTR)

- **Section 31**
  - International Fund Transfer (IFTR)

# THANK YOU



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