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FIC inspection - Case Study

Being an **Accountable**
Institutions

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- The CR Trustees Team help organisations comply with regulatory compliance
- We respond to situations of non-compliance and improve the processes around information systems supporting governance, risk and compliance
- Supports sustainability by providing business strategies that are underpinned by Profitable and Compliant Solutions

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Money laundering and terrorist financing and how is this relevant for purposes of the Financial Intelligence Centre Act, no.38 of 2001 as amended

- **What is Money Laundering?**

Money laundering is about more than just money but rather about proceeds of unlawful activity.



- **What is Financing of Terrorism?**

Unlike with money laundering the funds or assets for terrorism may come from both legal and illicit sources. The primary goal is not to conceal the sources of funds and assets but to conceal the financing and the nature of the activity being financed.

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What is the RISK

The risk of the accountable institution being abused for money-laundering and terrorist financing.

Threats and vulnerabilities put accountable institutions at risk of being abused to facilitate ML/TF activities

Potential clients or actual clients may use products and services offered by accountable institutions for ML/TF activities.

Misconception that the risks referred to are risks of fraud, theft and corruption.

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What does the FIC Act seek to achieve regarding money laundering and financing of terrorism?

POCA & POCDATARA - deal with the criminal activities of money laundering and terrorism and financing of terrorism.

POCA - deals with the criminality of money laundering and in certain circumstances persons who assist money launderers or acquires possession or use of proceeds of unlawful proceeds may also be guilty of money laundering.

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What does the FIC Act seek to achieve regarding money laundering and financing of terrorism?

FIC Act –

- brings accountable and reporting institutions into the regulatory environment and **regulate these institutions** against certain compliance obligations.
- demands a **risk-based approach** to Customer Due Diligence to obtain information from the accountable institutions, through various types of intelligence reports.
- allows for **criminal sanctions**, but it is fair to say that the emphasis falls on Regulatory inspections and administrative sanctions, including financial penalties, rather than criminal penalties.

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Schedule 1 contains various items of institutions/persons who are accountable institutions

- Who are accountable institutions
- Who are reporting institutions
- One exception - Section 29 Suspicious and Unusual Transaction Reports.

The obligation to make such reports is on **“a person who carries on a business, or is in charge of, or is employed by a business”**. Read section 29 in the FIC Act as it creates an obligation to other persons and is thus wider than just accountable and reporting institutions.

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Control measures for money laundering
and financing of terrorist and related activities

7 major compliance obligations that accountable institutions must
comply with:

- Registration with the Centre
- Risk-based approach to Customer Due Diligence which includes customer identification and verification (not rules based)
- Record keeping
- Training of staff members
- Reporting
- Risk Management and Compliance Program (RMCP)
- Governance

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Control measures for money laundering and financing of terrorist and related activities

- The FIC or a supervisory body, which performs regulatory or supervisory functions in respect of that accountable institution, may request a copy its RMCP.
- The Centre has in the past, publicly remarked that an accountable institution's ability to apply a Risk-Based approach effectively, is largely dependent on the quality of its Risk Management Compliance Programme (RMCP).

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Risk-Based Approach

- Identify, assess and understand the ML/TF risks posed.
- Assess the risks.
- Rate the risks.
- Develop a risk matrix.
- Take measures to manage and mitigate these ML/TF risks through systems and controls. In other words, treat and mitigate the risks.
- Apply the correct and proportionate risk controls to the risks. If the risks are higher the controls and customer due diligence will be more stringent.

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Risk-Based Approach

- Dovetail the customer due diligence requirements with the low, medium and high risks. Residual risk is acceptable and within the risk appetite of the accountable institution.
- Ensure that the process is contained and explained in the RMCP.

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Inspections

- Section 45B of the FIC Act
- Inspectors inspect compliance with the FIC Act and "compliance" means compliance with a provision of this Act or any order, determination or directive made in terms of this Act and which, if not complied with, constitutes non-compliance.
- Questions - based on the 7 compliance obligations

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Inspections

- Section 43B - Registration with the Centre
- Section 42A - Compliance Governance
- Section 42 - Risk Management and Compliance Programme
- Section 43 - Compliance Training
- Sections 20A, 21 & 21A-H - Customer Due Diligence
 - Anonymous, False or Fictitious Clients – Section 20A
 - Basic Customer Due Diligence – Section 21
 - Inherently High-Risk Individuals – Section 21F and 21H
 - Enhanced Customer Due Diligence – Section 21A
 - Additional Customer Due Diligence – Section 21B
 - Ongoing Customer Due Diligence – section 21C
 - Veracity of Previously Obtained Information – Section 21D
 - Inability to Conduct Customer Due Diligence – Section 21E

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Inspections

- Sections 22, 22A, 23 & 24 and Reg 20 – Duty to Keep Records
- Section 28 & Reg 22, 22B, 22C & 24- Cash Threshold Reports
- Section 28A - Terrorist Property and Financial Sanctions Reports
- Section 29 & Reg 22, 23, 23A & 24 - Suspicious Transaction Reports
- Section 32 - Furnishing of Additional Information to the FIC
- Section 38 – Protection of Persons making a Report

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Sanctions

- Remedial approach
- Upon the completion of an inspection, an independent internal review of the inspection report is undertaken to assess whether the identified instances non-compliance is sufficiently serious and extensive to warrant the imposition of an administrative sanction in terms of section 45C of the FIC Act.
- Should the Centre determine it appropriate to impose an administrative sanction in this matter, its intention to do so will be communicated to the institution.

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THANK YOU

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