

Obligation to Identify Clients.

This is the most significant obligation in which an accountable institution (AI) must identify and verify particulars of its clients. ~~It has~~ The AI must be able to verify the identity of its client before it establishes a business relationship and/or concludes a single transaction. ^{with} ~~client~~

The AI first obtains particulars of the client and verifies them by comparing with other available information.

If an institution fails to verify and establish its clients particulars, it is precluded from contracting with ^{with} clients.

The obligation to identify further means that the AI must have clear internal account-opening identification procedures. This is to ensure that the client and the business is legit.

It is also necessary to obtain sufficient ^{SK} knowledge ~~and the~~ ^{of} the pattern and nature of the customer ~~business~~ to identify suspicious transactions that may indicate money laundering.

The procedures to identify and verify particulars differs depending on the type of client (eg natural persons, foreign nationals, SA ~~business/corporate~~, etc).
partnerships, trusts etc.

For a S.A citizen, he/she needs to verify basic information, tax no and ~~client~~ residential address.

For corporate customers, FICA regulations stipulate that an AI must obtain the best available evidence of identity and address of the corporate as well as the ~~at~~ directors. For authorized signatories the country of origin must be verified. Special attention must be paid to those individuals who have ^{ultimate} control and ownership of the corporate and its funds. When an AI knows or suspects that a person is conducting transactions on behalf of others, that ^{both parties} persons identities ^{as well as the other parties} must be established. ✓

Regulation ^{sec} 21 of FICA compels an AI to:
Obtain further information regarding a business or transaction which pose a risk of money laundering
→ identify proceeds from unlawful activities.
The AI has to put in measures ^{so it} can verify sources of customers income. ✓

In 2005 the Centre? released guidance notes for Identification and Verification obligations - General Guidance Notes Concerning Identification of Clients. The notes state that an AI may ~~exercise~~ ^{exercise} its own judgement to decide on the level of verification required and the most practical means of obtaining it. The notes also recommends the use of the risk based approach in which ~~higher~~ ^{higher &} stricter methods of verification will be used if it is perceived that the risk of money laundering is high.

A number of exemptions ^{to these} FICA obligations have been issued by the minister:

- Banks are relieved from verifying ~~particulars~~ ^{obligations} for loans < R15 000
- Relieves banks from certain KYC obligations if a client and an account meet with certain requirements.

Obligations to Report Transactions.

Section 29 of FICA imposes an obligation on certain persons to report transactions to the centre. The value of this obligation is that without cooperation from the AI & the subsequent reporting, it would be impossible to control money laundering. The transaction reports are also used as physical evidence for prosecutorial purposes.

The reporting obligation applies to 3 parties: the AI, the reporting institutions and businesses in general.

There are 4 types of transaction reports that must be filed

- 1) Reporting of cash transactions above a set limit.
- 2) " of cash conveyances to & from S.A.
- 3) " of money sent to & from SA above the threshold limit by Electronic Funds Transfer. (EFT)
- 4) Reporting of suspicious transactions.

FICA ~~require~~ require two types of reports

1) Any person who carries on a business, who manages/is in charge of a business and has knowledge or suspicions of certain activities must report to the centre. These activities include business receiving proceeds from unlawful activities, business has been used/is about to be used for money laundering, or that the business is involved/about to be involved in unlawful activities.

2) FICA imposes threshold ~~obligations~~ obligations for AI and reporting institutions. At present only dealers of motor vehicles & dealers in Kruger Bands are listed as reporting institutions.

The threshold limit prescribed by legislation is R5000.00.

An important feature of the reporting obligations is that no duty of secrecy influences compliance with the statute. The only exception relates to the right of professional privilege that exists between an attorney & his/her client.

FICA precludes a person who files the report from disclosing the fact to another - "anti-tipping off provision".

Suspicious transaction reporting can be disclosed to the SAPS, SARS, the Centre, other accountable institutions & supervisory bodies.

Info held by the Centre can only be disclosed

- 1) In terms of legislation
- 2) to further purposes of FICA
- 3) With the permission of the Centre
- 4) purpose of legal proceedings
- 5) when ordered by court.

FICA provides for protection of persons that have complied with its reporting obligations. However there are 2 shortcomings:-

- 1) As the requirement for reporting is based on Good Faith, opens the door for ^{potential} civil or criminal action against the reporter.
- 2) Whistleblowers/employees of financial institutions are not protected against victimization from other employees/managers.

Meaning of Knowledge or Suspicion - is crucial to FICA.

A person who knows or suspects a transaction as being unusual/suspicious must report that transaction to the centre even if it has not yet been concluded. Suspicion is a state of conjecture where proof is lacking. Suspicion arises at/near the starting point of an investigation of which ~~the~~ ^{obtaining} of prima facie proof is the end. Suspicion ^{must not be confused with speculation &} is not merely a hunch/gut feeling. FICA specifies the circumstances under which a person will be deemed to have/ought to have knowledge that a transaction was suspicious or unusual.