



**ESTATE AGENCY AFFAIRS BOARD  
OF SOUTH AFRICA**

**RISK MANAGEMENT AND COMPLIANCE  
PROGRAMME TEMPLATE IN TERMS OF THE  
FINANCIAL INTELLIGENCE CENTRE ACT, 38 OF 2001**

**ESTATE AGENCY ENTERPRISES**

## TABLE OF CONTENTS

	Pages
Definitions	3 - 5
1. Introduction	6
2. Purpose	6
3. Objectives	7
4. Senior management	7
5. Risk	7
6. Risk –based approach	7 - 8
7. Internal controls	9
8. Scope and Application	9
9. Risk Management and Compliance Programme	10 - 30
10. Schedule	31 - 34

## DEFINITIONS

### Definition of Key Terms

Act	The Estate Agency Affairs Act, 112 of 1976, and the regulations promulgated in terms of section 33 thereof.
Accountable Institution	A person referred to in Schedule 1 of the FIC Act.
Auditors	Persons registered as an accountant and auditor in terms of section 23 of the Public Accountant and Auditors Act, 80 of 1991, and engaged in practice as such.
Board	The Estate Agency Affairs Board established in terms of section 2 of the Act.
Compliance	Conformity with legislative requirements of the Act.
Compliance monitoring and assessment framework	Any measures that may be implemented by the Board from time to time to monitor and assess compliance by accountable institutions with the provisions of the Act.
Contravention	Non-compliance with the legislative requirements of Estate Agency Affairs Act and the Financial Intelligence Centre Act
Controlling ownership interest	The ability of a legal person, by virtue of voting rights attaching share holdings, to take relevant decisions and pass resolutions.
CTR	The cash threshold report submitted in terms of section 28 of the FIC Act.
CTRA	The cash threshold report submitted in terms of section 28 of the FIC Act where transaction values have been aggregated and add up to the total of the prescribed threshold value.
Customer	A person who has indicated a wish to enlist the service of the estate agency firm.
Effective Control	The ability to materially influence key decisions relating to a legal person or the ability to take advantage of the capital or assets of a legal person.
Estate Agent	Any person as defined as such in section 1(vi) of the Act and/or regulation 2 of the Specification of Services Notice published under Government Notice R1485 of July 1981.
FIC	The Financial Intelligence Centre established in terms of section 2 of the FIC Act.
FICA	The Financial Intelligence Centre Act, 38 of 2001, as amended.
MLTFC	The Money Laundering and Terrorist Financing Control Regulations in terms of section 77 of the FIC Act.
POCDATARA	The Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 33 of 2004.
Prospective Client	A person who has indicated a wish to enlist the estate agency services of an estate agency enterprise but who is unlikely either to transfer any value to the enterprise or has not firmly indicated a readiness to transfer value to the enterprise.

Risk	The impact and likelihood of money laundering and terrorist financing taking place including the inherent risk or level of risk that exists before mitigation but not the residual risk or the level of risk still remaining after mitigation.
Risk based approach	The approach pursuant to which an accountable institution identifies, assess and understands the money laundering and terrorist financing risks to which the enterprise is exposed and implements appropriate anti- money laundering and counter-terrorist financing measures proportionate to those risks.
Risk Factors	Variables that, either on their own or together, may increase or decrease the money laundering and terrorist financing risks posed by an enterprise relationship or a single transaction.
RMCP	The Risk Management and Compliance Programme of an accountable institution in terms of section 42 of the FIC Act.
Senior Management	The senior official whose approval is required for purposes of the FIC Act having sufficient seniority and oversight to take informed decisions concerning the enterprise's compliance with the FIC Act such as to actually bind the enterprise to those decisions.
Source of funds	The origin of the funds involved in an enterprise relationship or a single transaction including the activities that generated the funds used in the enterprise relationship.
Source of wealth	The activities that have generated the total net worth of the client such as those that produced the client's funds and property or which are derived from an inheritance or savings.
Supervisory Body	A functionary or enterprise referred to in Schedule 2 of the FIC Act which Schedule includes, inter alia, the Estate Agency Affairs Act, 112 of 1976.
POCA	The Prevention of Organised Crime Act, 121 of 1998.
Report	The person or entity that makes a FIC report.
SAR	A suspicious or unusual activity report submitted to the FIC in terms of section 29(1) or 29(2) of the FIC Act.
STR	A suspicious or unusual transaction report submitted to the FIC in terms of section 29(1) of the FIC Act.
TFAR	A terrorist financing activity report submitted to the FIC in terms of section 29(1) or section 29(2) of the FIC Act.
TFTR	A terrorist financing transaction report submitted to the FIC in terms of section 29(1) of the FIC Act.

## **1. INTRODUCTION**

The Financial Intelligence Centre Act, 38 of 2001, established the Financial Intelligence Centre as the national centre for the gathering and analysis of financial data. The FIC is mandated to identify funds generated from criminal acts and to combat money laundering and terrorist financing. The FIC Act imposes certain obligations on sectors deemed vulnerable to money laundering and terrorist financing by compelling those sectors to report the FIC.

The gathering of information and reporting of developments is reliant on the compliance of institutions and the submission of reports to the FIC from the identified sectors. As the FIC is the only entity authorised to gather and analyse transactions and financial data it is placed at a pivotal point to assist the tax authorities, law enforcement, investigating agencies and other competent authorities with necessary information to identify criminals and bring them to justice.

The FIC discharges this important mandate by developing and providing financial intelligence to a range of agencies, supporting the investigation and prosecution of criminal activity and identifying the proceeds of crime and combating money laundering and the financing of terrorism.

## **2. PURPOSE**

The Risk Management and Compliance Programme (“RMCP”) establishes guidelines and procedure to ensure full compliance with the FIC Act in identifying, measuring, monitoring, managing and reporting the material risks to which the enterprise may be exposed.

Section 42 of the FIC Act obliges estate agency enterprises to develop, document, maintain and implement a RMCP. Doing so ensures that management implements appropriate legal compliance programmes and adheres to areas of accountability thereby preventing money laundering and terrorist financing and efficiently allocating resources to meet the FIC requirements. The RMCP, accordingly, addresses and counters the money laundering and terrorist financing risks that may be faced by the enterprise.

The RMCP comprises policies, procedures, systems and controls to be implemented by, and within, estate agencies for this purpose.

### 3. OBJECTIVE

Estate agents are accountable institutions in terms of the FIC Act and, as such, are required fully to comply with the FIC Act. The property sector has historically been used both to hide illegally obtained funds and as a vehicle through which criminals are able to introduce their illegally gotten proceeds into the financial system. Estate agency enterprises, consequently, should strive to create, promote and build a culture of compliance with the FIC Act and the Money Laundering and Terrorist Financing Control Regulations.

### 4. SENIOR MANAGEMENT RESPONSIBILITY AND ACCOUNTABILITY

The Board of directors, senior management or persons having the highest level of authority within an enterprise have the ultimate responsibility of ensuring that the enterprise maintains an effective internal anti-money laundering and counter-terrorist financing structure through the application of an appropriate RMCP. Such persons must not only ensure compliance by estate agency enterprises and their management and staff with the provisions of the FIC Act and the enterprise RMCP but also establish a corporate culture of compliance with the FIC Act and the Money Laundering and Terrorist Financing Control Regulations. Such persons are also obliged to ensure that these compliance functions are assigned to a person or persons having sufficient competence and seniority within the enterprise to ensure the effectiveness of its compliance functions.

### 5. RISK

The FIC Act requires estate agency enterprises to apply a risk-based approach when performing mandatory client due diligence measures. Risk refers to the likelihood and impact of uncertain events on set objectives and derives mainly from threat, vulnerability and consequence. While **threat** may potentially cause harm in the context of money laundering and terrorist financing **vulnerability** comprises those things that can be exploited by the threat or which may support or facilitate that threat and **consequence** reflect the impact of the threat or the exploitation of vulnerability should the impact actually materialise.

### 6. RISK-BASED APPROACH

The FIC Act incorporates a **risk-based approach** to compliance requirements such as client due diligence, record keeping, reporting, and so forth. Estate agency enterprises must not only fully understand but also appreciate their potential exposure to money laundering and terrorist financing risks in the sector within which they operate.

The risk-based approach requires estate agency enterprises to identify and assess the risk of doing business with their customers with a view to deciding how best to manage that risk. Estate agency enterprises have now been accorded a greater discretion in determining the appropriate compliance steps for themselves. They must nevertheless ensure that adequate processes, proportionate to the size and complexity of the enterprise, are in place to identify and assess money laundering and terrorist financing risks. Estate agency enterprises are required to have a thorough understating of the risks associated with their business and to indicate how they plan to manage these identified risks across their client base.

The risk-based approach, in general terms, covers the following phases:

### **Phase I - risk identification**

Identifying money laundering risks requires estate agency enterprises to implement appropriate measures to mitigate the identified risks. Where the risk of possible money laundering abuse is assessed to be higher they must ensure that implemented systems and controls provide for the obtaining of necessary additional information about clients, applying secure confirmation of clients information and conducting closer scrutiny regarding client transaction activities. Where there is a lower risk a simplified due diligence process, allowing for the obtaining of less information or a lesser frequency of scrutiny, may be conducted.

### **Phase II - risk assessment**

When undertaking a risk assessment different categories will be assigned to the different levels of money laundering risk according to the risk scale that is used. The risk scale must be tailored to the size, complexity and circumstances of the individual estate agency enterprise. The complexity of the risk scale will, thus, reflect the size and complexity of the enterprise as well as its nature and the range of products and services that it offers. The assessment of money laundering risk should take account of all factors deemed to be relevant to an engagement with particular clients

### **Phase III - risk management**

In developing a risk management framework estate agency enterprises must be mindful of: events, products and services that may result in an increased money laundering and terrorist financing risk; the internal control activities necessary to mitigate money laundering and terrorist financing risk; and residual risks to indicate levels of comfort as to whether or not the enterprise is sufficiently managing the probability and impact of the risk occurring. Estate agency enterprises are responsible for ensuring that money laundering

risks are effectively managed. The controls that are implemented should be sufficient to detect any money laundering or terrorist financing risks and respond appropriately thereto.

#### **Phase IV - risk mitigation**

Risk mitigation, in the context of money laundering, refers to the activities and methods used by estate agency enterprises to control and minimise the identified money laundering and terrorist financing risks.

#### **Phase V – risk monitoring**

Risk monitoring requires estate agency enterprises continually to monitor the effectiveness of the control mechanisms and to engage in an ongoing review of the risk assessment to ensure the FIC requirements are complied with.

### **7. INTERNAL CONTROL**

The role of internal control is to manage identified risks and ensure that enterprise opportunities are maximised and that potential losses associated with unwanted events are reduced. Estate agency enterprises are required to devise control frameworks as a standard against which the effectiveness of internal systems of control can be assessed.

### **8. SCOPE AND APPLICATION**

Estate agency enterprises must appoint a person, or persons, having sufficient competence to assist that enterprise in complying with the provisions of the FIC Act and the enterprise RMCP. The Board of directors, senior management or persons having the highest level of authority within the enterprise are responsible for ensuring that the enterprise maintains an effective internal anti-money laundering structure through the application of an appropriate RMCP. The RMCP should provide a detailed description of how the compliance obligation is to be undertaken within the enterprise.

The RMCP endeavours, amongst others, to ensure that the enterprise has processes and internal controls in place to meet the compliance requirement of the FIC Act and make specific reference to:

- Client identification and verification
- Record keeping
- Reporting
- RMCP
- Person responsible for compliance



- Training of employees
- Registration with the FIC.

The RMCP, policies, procedures and processes of the estate agency enterprise must be:

- Designed to limit and control the risk of money laundering and terrorist financing;
- Fully consistent with the law; and
- Fully adhered to by all enterprise management and staff.

The RMCP describes the accountability of the board of directors or senior management and provides for the appointment of a person, or persons, with adequate seniority and experience within the enterprise to ensure its compliance with the FIC Act.

The RMCP indicates how the function of managing the establishment and maintenance of effective anti-money laundering and counter-terrorist financing systems and controls will be discharged within the estate agency enterprise.

The RMCP must clearly indicate how the estate agency enterprise intends providing ongoing training to its employees to enable them to comply with the provision of the FIC Act.

The RMCP must be commensurate with size, complexity and nature of the estate agency enterprise.

The nature and extent of the internal systems and controls of an estate agency enterprise, which form an integral part of the RMCP, is dependent on such factors as the:

- Nature, scale and complexity of the business of the enterprise;
- Diversity of its estate agency operations, including geographical diversity;
- Client, product and/or service profile of the enterprise;
- Distribution channels used by the enterprise;
- Volume and size of estate agency transactions conducted by the enterprise; and
- Degree of risk associated with each area of the estate agency operations of the enterprise.

## RISK MANAGEMENT COMPLIANCE PROGRAMME- SCHEDULE

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><b>RISK MANAGEMENT AND COMPLIANCE PROGRAMME</b> Section 42(1):</p> <ul style="list-style-type: none"> <li>• an accountable institution must [formulate] develop, document, maintain and implement a programme for the anti-money laundering and counter- terrorist financing risk management and compliance;</li> <li>• the establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of this Chapter;</li> <li>• the information of which record must be kept in terms of Part 2 of this Chapter;</li> <li>• the manner in which and place at which such records must be kept;</li> <li>• the steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties under this Act; and</li> <li>• such other matters as may be prescribed] a programme for anti- money laundering and counter- terrorist financing risk management and compliance;</li> </ul>	<p><u>Establishment and verification of natural person.</u> An estate agency shall determine the natural person identity with reference to such basic attributes as the person’s full names, date of birth, identification number(ID), passport number, work permit, visa, etc. issued by government source.</p> <p>When using an electronic data source the estate agency must apply the same test as that used for documentary sources, namely, that the source is a reliable and independent third-party source.</p> <p><u>Establishment and verification of legal persons, trust, and partnership</u> An estate agency shall establish the nature of the client’s business, the ownership and control structure of the client, the beneficial owners of the client and the identity of the beneficial owners of the client.</p>	<p><b>VERY IMPORTANT:</b> Estate Agency Enterprises are expected to identify the level of their risk and attach thereto weight appropriate to their risk</p>

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
	<p><i>Attributes underlying legal persons will include: a company registration number, the address of registered office of the legal person, details of the directors and senior management of the legal person, the trading name or names of the legal person and the income tax number of the legal person.</i></p> <p><i>The estate agency shall take all necessary reasonable steps to verify the identity of that person.</i></p> <p><i>An estate agency shall establish the identities of a partnership which is a client by viewing the partnership agreement governing its constitution and membership and any business correspondence and/or promotional material advertising the business of the partnership.</i></p> <p><i>The estate agency shall take all necessary and reasonable steps necessary to verify the identity of a trust which is a client by viewing the Trust Deed registered with the relevant Master of the High Court, ascertaining the</i></p>	

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	<p><i>authority of Master of the High Court and establishing the registered trust number of the trust.</i></p> <p><i>Establish, identify and verify all natural persons who may benefit from the trust arrangement or who may control decisions relating to the management of the trust property.</i></p> <p><u><i>Record keeping</i></u>  <i>An estate agency shall keep client due diligence records and records of the information pertaining to a client that were obtained by that estate agency for compliance purposes.</i></p> <p><i>An estate agency shall keep transaction records of both single transactions and transactions concluded in the course of a business relationship with a client.</i></p> <p><i>The necessary transaction records shall include such information as: the amounts and currency of the transaction, the date of the transaction,</i></p>	

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	<p><i>the parties to the transaction, the nature of the transaction, accounts and accounts files and any other pertinent and relevant correspondence.</i></p> <p><u><i>How records must be kept</i></u>  <i>An estate agency shall ensure that records are kept in a format that can be easily accessible, that the records can be reproduced in a legible format and that the records are readily available upon request by FIC and the EAAB.</i></p> <p><i>An estate agency shall keep records for a period of five years.</i></p> <p><i>Records pertaining to the establishment of a business relationship shall be kept for a period of at least five years from the date when the business relationship was terminated.</i></p> <p><i>Records of a single transaction shall be kept for a period of five years from the date when the transaction was concluded.</i></p>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
	<p><i>An estate agency shall keep records relating to an ongoing investigation until the relevant law enforcement agency has confirmed, in writing, that the matter is finalised.</i></p> <p><i>An estate agency shall provide the FIC and the EAAB with details of any third parties who may be storing records if the records are stored off-site</i></p> <p><u><i>The steps to be taken to determine when a transaction is reportable to ensure that the estate agency complies with its duties under the FIC Act.</i></u></p> <p><i>An estate agency shall consider, and properly document, the information provided to that estate agency.</i></p> <p><i>The estate agency shall conduct a review and compile a sample reports to ensure that all relevant information required has been provided.</i></p>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
	<p><i>An estate agency shall ensure that the information provided complies with FIC Act requirements.</i></p> <p><i>An estate agency shall consider the provisions of section 29 of the FIC Act (relating to STRs) and section 28 of the FIC Act (in respect of CTRs) and ensure that these sections are complied with.</i></p> <p><i>An estate agency shall define its processes in such a form and manner that such processes are easily able to detect any reportable transactions.</i></p>	
<p><i>A Risk Management and Compliance Programme must-</i></p> <p><i>(a) Enable the accountable institution to –</i></p> <ul style="list-style-type: none"> <li><i>(i) Identify</i></li> <li><i>(ii) Assess</i></li> <li><i>(iii) monitor</i></li> <li><i>(iv) mitigate</i></li> <li><i>(v) manage</i></li> <li><i>(vi)</i></li> </ul> <p><i>the risk that the provision by the accountable</i></p>	<p><i>An estate agency shall document money laundering and terrorist financing risk by applying an appropriate rating methodology and procedures, indicating the criteria and the intervals for the re-evaluation of such risk rating and advising the conclusions reached through the implementation of these methodologies and procedures.</i></p>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><i>institution of products or services may involve or facilitate money laundering activities or the financing of terrorist and related activities;</i></p>		
<p><i>(b) A risk Management and Compliance Programme must provide for the manner in which the institution determine if a person is –</i></p> <p><i>(i) a prospective client in the process of establishing a business relationship or entering into a single transaction with the institution; or</i></p> <p><i>(ii) a client who has established a business relationship or entered into a single transaction:</i></p>	<p><i>An estate agency shall determine what constitutes a “single transaction” and what it to be regarded as “once-off transaction” or a transaction where there is no expectation on either side that the engagement will recur over a period of time.</i></p>	
<p><i>(c) A risk management and compliance programme must provide for the manner in which the institution complies with section 20A;</i></p>	<p><i>Upon having requested sight of the required information and where it becomes apparent that the estate agency is or may be dealing with an anonymous client or clients, no transaction shall be concluded by that estate agency.</i></p>	
<p><i>(d) A risk management and compliance programme must provide for the manner in which and the processes by which the establishment and</i></p>	<p><i>In establishing a client identity the estate agency shall obtain a range of information concerning the client.</i></p>	



PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><i>verification of the identity of persons whom the accountable institution must identify in terms of Part of this Chapter is performed in the institution;</i></p>	<p><i>The estate agent shall corroborate the identity of the person by comparing this information with information contained in the source document or electronic data issued.</i></p>	
<p><i>(e ) A risk management and compliance programme must provide for the manner in which the institution determine whether future transactions that will be performed in the course of the business relationship are consistent with the institution’s knowledge of prospective client;</i></p>	<p><i>The estate agent shall determine any future transaction that will be performed in the course of business relationship are consistent with the institution’s knowledge of prospective client, within the prescripts of the FIC Act.</i></p>	
<p><i>(f) A risk management and compliance programme must provide for the manner in which and the process by which the institution conducts additional due diligence measures in respect of legal persons, trust and partnerships;</i></p>	<p><i>When conducting an additional due diligence in respect of legal persons, trusts and partnerships an estate agency, in respect of a single transaction, shall require and verify the identity of the client and/or of any agent acting on behalf of the client including the authorisation of such agent to act on behalf of the client.</i></p> <p><i>For business relationships an estate agency shall be required to identity and verify the</i></p>	

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	<p><i>identity of the client, identity and verify the identity of any agent acting on behalf of the client, obtain a letter of authority in respect of such agent and ascertain the nature of the business relationship, its purpose and the source of wealth and/or funds.</i></p>	
<p><i>(g) A risk management and compliance programme must provide for the manner in which and the process by which ongoing due diligence and account monitoring in respect of business relationships is conducted by the institution;</i></p>	<p><i>Ongoing due diligence measures flowing from the obligation of an enterprise to understand the purpose, and intend nature, of a proposed business relationship must be initiated and such measures shall include;</i></p> <ul style="list-style-type: none"> <li><i>- scrutinising all transactions undertaken throughout the course of the relationship;</i></li> <li><i>- confirming that the transaction is being conducted in the course of a business relationship and is consistent with the estate agency’s knowledge of the client and of the client business and risk profile; and</i></li> <li><i>- Ensuring that the information which the estate agency has about the client is accurate and relevant.</i></li> </ul>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><i>(h) A risk management and compliance programme must provide for the manner in which the examining of –</i></p> <p><i>(i) complex or unusually large transactions; and</i></p> <p><i>(j) unusual pattern of transactions which have no apparent business or lawful purpose and keeping of written findings relating thereto, is done by the institution</i></p>	<ul style="list-style-type: none"> <li>- <i>All suspicious or unusual activities and transaction are reported to the FIC in the prescribed form.</i></li> <li>- <i>The estate agency shall cooperate with the FIC to prevent money laundering activities.</i></li> <li>- <i>The estate agency shall report suspicious and unusual transactions and activities on any person who carries on a business, who is in charge of a business, who manages a business or who is employed by a business.</i></li> <li>- <i>The estate agency shall report to the FIC if it becomes aware of events or if circumstances arise where the estate agency can reasonably be expected to be aware, or suspicious, of the event.</i></li> <li>- <i>An estate agency shall report a transaction, or series of transactions, which has/have no apparent business or lawful purpose and which has/have been completed by the estate agency to the FIC.</i></li> </ul> <p><i>An estate agency shall report a client, or clients, who during the course of a single day have deposited cash, or an aggregation of cash</i></p>	-

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	<p><i>amounts, exceeding the cash threshold reporting amount of R24 999.99 into the account of the estate agent to the FIC.</i></p> <p><b><u>Indicators of reportable transactions, includes:</u></b></p> <ul style="list-style-type: none"> <li>- <i>Deposit of funds with a request for their immediate transfer elsewhere;</i></li> <li>- <i>Unwarranted and unexplained international transfer;</i></li> <li>- <i>Payment of commissions or fees that appear to be excessive in relation to those normally payable;</i></li> <li>- <i>Transaction that do not appear to be in keeping with the normal industry practices;</i></li> <li>- <i>The purchase of commodities at prices significantly above or below market prices;</i></li> <li>- <i>Performing transactions in a manner that attempts to conceal the underlying client/ultimate beneficiary of the transaction;</i></li> <li>- <i>Buying or selling securities with no apparent concern for making profit or avoiding a loss;</i></li> </ul>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><i>(k) A risk management and compliance programme must provide for the manner in which and the process by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information</i></p>	<p><i>If during the course of relationship, or where a subsequent suspicion of money laundering or terrorism financing has arisen, an estate agency doubts the veracity of the client’s due diligence information obtained that information shall be verified by the estate agency to the extent deemed necessary.</i></p>	
<p><i>(l) A risk management and compliance programme must provide for the manner in which and the processes by which the institution will perform the customer due diligence requirements in accordance with section 21, 21A, 21 Band 21C when, during the course of a business relationship, the institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29;</i></p>	<p><i>An estate agency shall obtain all necessary information to ensure that it knows with whom it is doing business.</i></p> <p><i>An estate agency shall obtain sufficient information relating to who benefits from the business.</i></p> <p><i>An estate agency shall obtain information to assist it in understanding the nature of the business done and to enable it to determine when the business concluded with a client seems to be suspicious and/or unusual.</i></p> <p><i>An estate agency shall terminate the relationship where it is apparent that it is dealing with anonymous client, where it is</i></p>	

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	<p><i>unable to conduct an additional CD, where there is doubt as to the veracity of the information provided or where it has been provided with fictitious names.</i></p>	
<p><i>(m) A risk management and compliance programme must provide for the manner in which the accountable institution will terminate an existing business relationship as contemplated in section 21E;</i></p>	<p><i>When a client relationship must be terminated the estate agency shall implement appropriate risk mitigation measures to ensure that no greater threat to the financial integrity of the estate agency business occurs.</i></p> <p><i>An estate agency shall perform a risk assessment of such client and may terminate an existing business relationship if the client refuses to provide any requested information and/or documentation.</i></p> <p><i>Where there is doubt as to the veracity of information provided or where the estate agency is unable to conduct an ongoing due diligence and/or any additional due diligence the relationship shall be terminated.</i></p>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
	<p><i>An estate agency shall not deal with anonymous clients acting under false names or fictitious names such as if a client refuses to provide supporting documentation. In such case the estate agency shall request sight of the client identification and make and retain a copy thereof.</i></p> <p><i>False identification in connection with any transaction shall include the use of fictitious documents, documents lacking important details such as contact particulars, where identification presented is foreign and/or cannot be verified, where a client changes a transaction after being requested to provide a form of identification or where a client provides insufficient, vague or suspicious information.</i></p>	
<p><i>(n) A risk management and compliance programme must provide for the manner in which and the processes by which the accountable institution determines whether a prospective client is a foreign prominent public official or a domestic prominent influential person;</i></p>	<p><i>Foreign prominent public officials, domestic prominent influential persons</i></p> <p><i>The business relationship with domestic influential persons shall be considered on its own merits. The estate agency shall refer to</i></p>	

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	<p><i>the provisions of the FIC Act to determine whether or not it is transacting with a domestic influential person.</i></p> <p><i>An estate agency shall contact the FIC to establish a United Nations Security Council list to determine the status of foreign prominent public officials.</i></p> <p><i>Should an estate agency conclude that there is a higher risk it shall apply the same measure as prescribed for high risk in this respect.</i></p> <p><i>Senior management approval shall be obtained when establishing a business relationship with foreign prominent public officials and/or their immediate family members and/or known close associates of the prominent public officials, to determine if the estate agency is dealing with foreign prominent public official. The estate agency may use commercially available sources of information to establish the status of foreign prominent officials and should monitor the</i></p>	



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	<p><i>media and should be alert to the dissemination of public information regarding any possible status changes of a client. An estate agency may use credible third- party sources of information and apply existing processes for the ongoing monitoring of business relationships.</i></p> <p><i>An estate agency shall take all steps necessary to verify the source of wealth and/or the source of the funds of the client.</i></p> <p><i>An estate agency shall conduct an enhanced and ongoing monitoring of the business relationship.</i></p> <p><i>When determining the source of wealth an estate agency should consider the funds and property generating the total net worth of the client as well as the origin and the means of transfer of funds involved in the transaction such as occupation, enterprise activities, proceeds of sale, corporate dividends etc.</i></p>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><i>(o) A risk management and compliance programme must provide for the manner in which and the processes by which enhanced due diligence is conducted for higher- risk business relationships and when simplified customer due diligence might be permitted in the institution;</i></p>	<p><i>Where a higher money laundering and terrorist financing risk has been identified an estate agency shall put the following measures in place:</i></p> <ul style="list-style-type: none"> <li><i>- increased automated transaction monitoring;</i></li> <li><i>- increased intensity of client diligence;</i></li> <li><i>- increased review period of client information;</i></li> <li><i>- utilising higher quality source for vetting of information;</i></li> <li><i>- increased senior management involvement in decision made to take on clients;</i></li> <li><i>- Dedicate specialist staff to manage enhanced due diligence.</i></li> </ul>	
<p><i>(p) a risk management and compliance programme must provide for the manner in which and place at which the records are kept in terms of part 2 of this chapter.</i></p>	<p><i>Refer to section 42(1) above</i></p>	
<p><i>(q) A risk management and compliance programme must enable the institution to determine when a transaction or activity is reportable to the Centre under part 3 of this chapter.</i></p>	<p><i>Refer to section 42(h) above</i></p>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><i>(r) A risk management and compliance programme must provide for the processes for reporting information to the Centre under part 3 of this chapter ;</i></p>	<p><i>Refer to section 42(h) above</i></p>	
<p><i>(s) A risk management and compliance programme must provide for the manner in which the risk management and compliance programme is implemented in branches, subsidiaries or other operations of the institution of the institution in foreign countries as to enable the institution to comply with its obligations under the this Act .</i></p> <p><i>Provide for the manner in which the institution will determine if the host country of a foreign branch or subsidiary permit the implementation of the measures required under this Act.</i></p> <p><i>Provide for the manner in which the institution will inform the centre and supervisory body concerned if the host country contemplated in subparagraph(ii) does not permit the implementation of measures required under this Act</i></p>	<p><i>The RMCP shall be implemented in a similar manner as the primary office based on similar type of business such as service, product and clients.</i></p>	
<p><i>(t) Provide for the process for the institution to implement its risk management and compliance programme.</i></p>	<p><i>Senior management shall implement the RMCP by training staff and employees on the content and application of the RMCP, providing a copy thereof to staff members and ensuing that the staff sign the RMCP to confirm that</i></p>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
	<p><i>they are aware thereof and have been trained in the implementation of the RMCP.</i></p> <p><i>Senior management shall monitor the training and implementation of the RMCP.</i></p>	
<i>(u) Provide for any prescribed matter</i>	<i>Estate agent shall determine any additional prescribed matter in compliance with FIC Act.</i>	
<i>(2A) an accountable institution must indicate in its risk management and compliance programme if any paragraph of subsection (2) is not applicable to that accountable institution and the reason why it is not applicable.</i>	<i>It is the function of the senior management to demonstrate that certain provisions are not applicable, and senior management will provide reasons to justify the “not applicable”.</i>	
<i>(2B) The Board of directors, senior management or other persons or group of persons exercising the highest level of authority in an accountable institution must approve the Risk Management and Compliance Programme of the institution.</i>	<i>It is the function of the senior management who has the responsibility of ensuring that it maintains effective internal anti-money laundering structures through the application of appropriate RMCP. The senior management shall declare by way of signature that approval of the RMCP and supported by a resolution taken at the Board meeting confirming such approval.</i>	
<i>(2C) An accountable institution must review its Risk Management and Compliance Programme at regular intervals to ensure that the programme</i>	<i>It is the function of the senior management to formulate the RMCP.</i>	

PROVISIONS OF THE FIC AMENDMENT ACT	PROCESSES AND PROCEDURES IN PLACE	LOW – MEDIUM - TO HIGH RISK RATING
<p><i>remains relevant to the accountable institution's operations and the achievement of the requirements contemplated in subsection(2).</i></p>	<p><i>Senior management undertakes to reassess the RMCP at intervals of no less than 24 months to ensure that the RMCP continues to reflect the operations of the enterprise and is continuously realigned with the money laundering and terrorist financing risks facing the enterprise.</i></p> <p><i>The assessment of the money laundering risk shall take account of all the factors deemed to be relevant to an engagement with clients or the services provided by the enterprise.</i></p>	
<p><i>(2) Accountable institution must make documentation describing its risk management and compliance programme available to each of its employees involved in transaction to which this Act applies.</i></p>	<p><i>All staff members shall be made aware of the existence of the RMCP and shall be required to comply therewith. Each staff member shall receive a copy of the RMCP.</i></p> <p><i>Each staff member shall confirm in writing that they have read and understand the RMCP and that they will consistently implement the same.</i></p>	
<p><i>(3) Accountable institution must, on request make a copy of the documentation describing its management and compliance programme available to the centre or a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution.</i></p>	<p><i>An estate agency shall make a copy of the RMCP available, upon request, to the EAAB and FIC respectively, and shall notify both the EAAB and the FIC where the documentation is kept in cases of third party or records holders.</i></p>	

**DOMESTIC PROMINENT INFLUENTIAL PERSONS**

A domestic prominent influential person is an individual who holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic –

- (a) a prominent public function including that of—
  - (i) The President or Deputy President;
  - (ii) A government minister or deputy minister;
  - (i) The Premier of a province;
  - (iv) A member of the Executive Council of a province;
  - (ii) An executive mayor of a municipality elected in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
  - (iii) A leader of a political party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996);
  - (iv) A member of a royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);
  - (v) The head, accounting officer or chief financial officer of a national or provincial department or government component, as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
  - (ix) The municipal manager of a municipality appointed in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or a chief financial officer designated in terms of section 80(2) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

- (x) The chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
  - (xi) The chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
  - (xii) A constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001);
  - (xiii) An ambassador or high commissioner or other senior representative of a foreign government based in the Republic;
  - (xiv) An officer of the South African National Defence Force above the rank of major-general;
- (b) The position of—
- (i) Chairperson of the board of directors;
  - (ii) Chairperson of the audit committee;
  - (iii) Executive Officer; or
  - (iv) Chief Financial Officer,
- Of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the Gazette; or
- (c) The position of head, or other executive directly accountable to that head, of an international organization based in the Republic.

## **FOREIGN PROMINENT PUBLIC OFFICIALS**

A foreign prominent public official is an individual who holds, or has held at any time in the preceding 12 months, in any foreign country a prominent public function including that of a—

- (a) Head of State or head of a country or government;
- (b) Member of a foreign royal family;
- (c) Government minister or equivalent senior politician or leader of a political party;
- (d) Senior judicial official;
- (e) Senior executive of a state owned corporation; or
- (f) High-ranking member of the military.

## **IMMEDIATE FAMILY MEMBERS**

Immediate family members of Domestic Prominent Influential Persons and Foreign Prominent Public Officials include, but are not limited to:

- (a) Their spouse, civil partner or life partner;
- (b) Their previous spouse, civil partner or life partner;
- (c) Children and step-children and their spouse, civil partner or life partner;
- (d) Their parents; and
- (e) Siblings or step-siblings and their spouse, civil partner or life partner.