



MC²AGENT

FICA & THE REPORTING OBLIGATION – PART 1 & 2

In terms of the Financial Intelligence Centre Act (FICA) each accountable institution (which includes attorneys and estate agents) has a reporting duty towards the Financial Intelligence Centre (FIC). They have to report any of the following:

- 1) Cash transactions above the prescribed limit
- 2) Property associated with terrorist and terrorist related activities
- 3) Suspicious and unusual transactions
- 4) Politically exposed persons

1) Cash transactions above the prescribed limit:

The reporting of cash transactions above the prescribed limit aids the FIC centre in the prevention of money laundering.

When a transaction is concluded by a client by means of cash above the prescribed limit of R 25 000.00 an accountable institutions' reporting duty arises. It is important to take note that in this instance "cash" refers to coin and paper money.

Transfer of funds by way of an electronic fund transfer or any way of transferring money that does not include the physical transfer of notes or coins is not considered as a "cash" transaction.

If a transaction is partly a cash transaction, and the cash part exceeds the limit of R 25 000.00 the transaction needs to be reported.

The Financial Intelligence Centre has prescribed forms and guidance notes on their website for the reporting of any cash transactions. <https://www.fic.gov.za/Compliance/Pages/Reporting.aspx>.

Keep in mind that the mere fact that a client pays with cash and the transaction is reported to the FIC does not mean that the transaction will be stopped or that the purchaser will be in trouble.

2) Property associated with terrorist and terrorist related activities

Section 28A of the FIC Act deals with property associated with terrorist and terrorist related activities and applies to a purely factual situation and the reporting duty is limited to accountable institutions as listed in Schedule 1 of the FIC Act. This includes attorneys and estate agents.

Section 28A requires an accountable institution to file a report with FIC if the accountable institution **knows** (and not merely speculates) that it possesses or controls property of a person or entity which has committed or attempted to commit or facilitate an act of terrorism or terrorism related activities. No activity relating to the property is required to trigger the reporting obligation.

To determine if your client is associated with such activities you must compare your client to the sanctions list as provided by the UN. If the client or entity appears on the sanctions list then the accountable institutions' reporting duty arises. An up to date sanctions list can be accessed via the United Nations website: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>.

The failure to file a report in terms of section 28A of the FIC Act constitutes an offence.

3) Suspicious and unusual transactions

The duty to report suspicious and unusual transactions and activities is governed by section 29 of the FIC Act.

The obligation to report suspicious and unusual transactions applies to any person who:

- carries on a business; (principal/director/member)
- is in charge of a business; (principal/office administrator)
- manages a business; or (Principal/team leader/office manager)
- is employed by a business. (Agent/bookkeeper)

All businesses, including accountable and reporting institutions (attorneys and estate agents), has to report suspicious and unusual transactions that are potentially linked to money laundering or terrorist financing to the FIC.

This reporting obligation arises when a person is indeed aware of certain facts, or even suspects that certain facts exist with regards to a suspicious or unusual transaction.

There is no monetary threshold which applies to the reporting of suspicious or unusual transactions. Once a conclusion is reached that a situation exists which gives rise to a suspicion that a transaction or activity relates to proceeds of unlawful activities, money laundering or terror financing, the transaction or activity must be reported irrespective of the amount involved.

Examples of suspicious and unusual transactions can include; but is not limited to the following:

- Deposits of funds with a request for the immediate transfer elsewhere;
- Unwarranted and unexplained international transfers;
- Transactions do not appear to be in keeping with normal industry practices;
- Unnecessarily complex transactions;
- A transaction seems to be unusually large or otherwise inconsistent with the customer's financial standing or usual pattern of activities;
- Performing similar transactions (i.e. cash deposits) at multiple branches of the same institution on the same business day;

Next week we will deal with the final reporting function

Best regards,

The MC-Team

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Part 2 – 25 September 2020

Part 3 – 2 October 2020