

## FEEDBACK ON FICA INSPECTIONS

One of the key components of our supervisory plan is onsite reviews. The FAIS Supervision department conducted inspections on a number of car dealerships over the past two years. The purpose of the inspections was to determine the level of compliance with the Financial Intelligence Centre Act (FICA).

Most of the dealerships visited are small family owned businesses selling pre-owned vehicles. The dealerships were visited in their capacity as accountable institutions for carrying on business as financial services providers (FSPs) in respect of Short-term insurance (both personal lines and commercial lines) as well as Long-term insurance.

This article provides an overview of the findings and concerns identified from the visits. It highlights the challenges faced by small FSPs such as car dealerships from fully implementing FICA requirements. It also offers suggestions for improving the level of compliance in the business. Small FSPs in general may find the information very useful.

The key issues to emerge from the inspections are summarised below:

### **Incorrect registration with the FIC**

In terms of section 43B of FICA, every accountable institution referred to in Schedule 1 and every reporting institution referred to in Schedule 3 must register with the Financial Intelligence Centre (FIC) within the prescribed period and in the prescribed manner. Car dealerships are generally classified as reporting institutions for selling cars. They can also be classified as accountable institutions for rendering financial services on other products defined in the FAIS Act, with the exception of Short-term insurance and Health service benefits.

During the inspections, we have noticed that most of the dealerships were incorrectly registered with the FIC. The dealerships were only registered as reporting institutions and were not aware of the implications of having Long-term insurance products

on their licence. Notwithstanding the fact that the dealerships later corrected their registration status, they registered as accountable institutions outside of the prescribed 90 days period.

A dealership that conducts the business of a FSP should register under Item 12 as an accountable institution in respect of its FSP business as well as under Item 1 of Schedule 3 as a reporting institution in respect of its business as a car dealer.

If in the process of selling vehicles, a dealership also sells credit life cover underwritten as a Long-term insurance policy; such dealership is an accountable institution and should register with the FIC.

If a FSP focuses on short-term insurance and health service benefits only but is also licensed for other products, such FSP is still an accountable institution and should fully comply with FICA.

FSPs that are licensed for other products but have never conducted business on such products, or have only conducted business on these products in the past or intend to conduct any future business on said products are accountable institutions and must comply with all the FICA requirements.

Where a FSP conducts the business of more than one accountable institution, as described in Schedule 1 of FICA, such FSP should register separately under each item.

FSPs licensed for Short term insurance and Health service benefits only are not accountable institutions in terms of Schedule 1. However, section 29 of FICA applies to them. It provides that any person who carries on a business or is in charge of or manages a business or is employed by a business should report suspicious and unusual transactions to the FIC.

## Issues concerning internal rules

One of the obligations of accountable institutions is to formulate and implement internal rules in terms of section 42 of FICA. Most, if not all, dealerships visited had internal rules or some written document on AML/CFT policies and procedures.

Internal rules is a document which sets out practical working methods and procedures implemented in the business to ensure AML/CFT compliance. It guides relevant staff to enable them to correctly discharge their duties and obligations under FICA.

Some of the car dealerships faced challenges in fully implementing the internal rules requirements. Most of the internal rules reviewed were drafted by external compliance officers of the FSPs and were not customised, updated or approved by senior management of the dealerships. Some of the internal rules contained lengthy, inaccurate and irrelevant information.

Internal rules should be tailored and aligned to the business of the FSP. Internal rules should also be simplified and easy to understand. The internal rules should be approved by senior management of the FSPs. It is expected that senior management of the FSPs should have comprehensive knowledge of the AML/CFT risks as this will improve the culture of compliance in the business.

Internal rules should have standard operating procedures and working methods to ensure identification and verification of clients, record keeping and reporting suspicious transactions to the FIC. There is an expectation that internal rules should have separate procedures to report cash transactions amounting to R25 000 or more, as well as property associated with terrorist activities; even though this requirement is not expressly provided for in FICA and the underlying Regulations.

Relevant staff in the business of the FSP who are involved in transactions to which FICA apply should be made aware of the internal rules. They should be provided with training on both FICA and the internal rules. Internal rules should stipulate the roles and responsibilities of the different role players involved in ensuring AML/CFT compliance. Internal rules

should further provide for disciplinary measures against staff for not complying with internal rules and for failing to discharge their duties and obligations under FICA.



## Cash threshold reporting

The majority of the dealerships did not accept cash in their premises, while those who did so, allowed a minimum of R10 000 only to be put forward as a deposit towards the purchase of the vehicle. Clients were generally encouraged to use EFT or deposit funds into the dealership's bank account.

All dealerships were aware of the requirement to report cash transactions above R25 000, however, some were not aware of the 2 business days period within which to file reports with the FIC. As already alluded to, some of the dealerships did not have separate procedures in their internal rules to detect, monitor and report cash transactions above specified limit. They were advised to amend their internal rules to cater for this requirement.

If a client deposits R25 000 or more into the FSP's bank account, both the bank and the FSP should report such a transaction to the FIC because they both became aware of it. Similarly, if a dealership pays a client an amount of R25 000 or more for vehicle trade-in, this will have to be reported to the FIC.

## Terrorist property reporting

The majority of the dealerships did not have separate processes and procedures in place to identify, monitor and report property associated with terrorist activities. The internal rules did not set out steps taken to determine when a transaction is reportable under section 28A of FICA. As already mentioned, this requirement is not expressly provided for under FICA and the Regulations.

Furthermore there were no processes or procedures in place to screen clients against the UN 1267 sanction list. Those who were able to do so, did not apply the screening process consistently. Some of the dealerships used incorrect sanction lists such as the Financial Industry Regulatory Authority (FINRA) list, which it was assumed was the same as the UN 1267 list. The dealerships were not aware that the FINRA list has not been proclaimed as the official sanction list. The dealerships also did not know where to find the UN 1267 list. The dealerships were however advised to ensure that their internal rules catered for this requirement.

### **Training of staff**

In terms of section 43 of FICA an accountable institution must provide training to its staff to enable them to comply with the provisions of FICA and the internal rules applicable to them.

Training was provided to relevant staff of most of the dealerships. Training was predominantly on a face to face basis while computer based training also enjoyed good support. However, even though it is not expressly provided for in the Act, there were no assessments done in some of the training provided to determine the level of understanding. Some of the employees interviewed did not demonstrate sufficient knowledge of FICA. It was also found that the training provided focused on FICA only and excluded internal rules. These issues were discussed with the compliance officers in attendance and they undertook to amend their training material to address the shortcomings.

It was also found that refresher training was not provided in the majority of the cases in order to update staff's knowledge on FICA. Although both FICA and the Regulations do not expressly provide for refresher training, it is highly recommended by the FIC.

The provision of periodic training to relevant staff enables them to remain informed of the developments in AML/CFT legislation and other evolving risks and trends. FSPs should establish from their risk framework which of their employees need to be trained on the provisions of FICA and the level of training to be provided to relevant staff. FSPs should ensure that training is relevant, tailored to their businesses, and has a strong practical dimension. Relevant staff in the business should receive appropriate training in line with their responsibilities, activities and skills. Some staff may require only basic training while those interacting with clients may be required to have more intensive training.

### **High risk clients**

Car dealerships are prone to doing business with high risk clients such as Politically Exposed Persons (PEPs). Most of the dealerships indicated that they might have had dealings with PEPs but were not aware that they had to have separate procedures for identifying and verifying this type of clients. Although FICA does not expressly provide for a risk-based approach, Regulation 21 requires institutions to obtain additional information in relation to a business relationship or transaction deemed to pose a high risk of AML/CFT. FSPs should conduct own risk assessments to characterise clients and apply proportionate measures in signing such clients.

In conclusion, FSPs have made significant progress implementing the FICA requirements. They have relevant AML/CFT policies and procedures in place. However, the document needs to be tailored to incorporate procedures relating all requirements.



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### **Disclaimer**

*The article does not constitute a guidance note envisaged in section 4(c) of FICA. The FIC is the only institution that is empowered by FICA to issue guidance notes. The article is only intended to raise awareness so that affected FSPs can improve their processes.*