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# COMPLIANCE

The Non-Negotiable FICA Compliance

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## 1. WHAT IS FICA?

Among all the laws and regulations that a business owner must ensure their business is in compliance with, lies the Financial Intelligence Centre Act 38 of 2001 (FICA). It is crucial that as a business owner you are aware of the existence of FICA, its requirements and the penalties your business is at risk of bearing in the case of non-compliance.

FICA was enacted by the legislature for purposes of identifying and combating the combined threats of money laundering, terrorist financing, the proceeds of unlawful activities, tax evasion and related activities.

FICA is the manner in which South Africa aligns itself with legislation in other countries' similar to its nature. As South Africa's primary anti-money laundering and counter-terrorism financing legislation, FICA does not only help curb these illegal activities, but it also helps to keep the money of South African citizens safe with its various control measures.

FICA predominately relies on information gathered through mandatory due diligence, record keeping, and reporting obligations in its risk-based response to these threats. However, the efficacy of the entire system is undermined when participants ignore their reporting obligations and/or fail to comply with them.

The supervisory body responsible for overseeing compliance with FICA is the Financial Intelligence Centre (FIC). FIC is established as an institution outside the public service but within the realm of public administration as envisaged in section 195 of the Constitution. Although the FIC's principal objective is to assist in the identification of the proceeds of unlawful activities, the combating of money laundering activities and the financing of terrorist and related activities its scope of objectives extends further.

The FICA's other objectives include:

- facilitating effective supervision and enforcement by supervisory bodies coupled with supervising and enforcing compliance with FICA or any directive published in accordance with FICA;
- to avail the collected information to investigating authorities, supervisory bodies, the intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of the Republic; and
- to exchange information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities.





## 2. WHAT DOES FICA REQUIRE OF A BUSINESS OWNER?

In order to enjoy the protection of FICA, a business owner's business as well as each decision-making member of the business entity must be FICA compliant. In addition, FICA places an obligation on accountable institutions to report to the FIC any suspicious or unusual transactions.

Schedule 1 of FICA provides for what constitutes an accountable institution, among those listed include, a practitioner who practices as defined in section 1 of the Attorneys Act (53 of 1979), board of executors or a trust company, estate agents, authorised users of exchange, managers registered in terms of the Collective Investment Schemes Control Act 45 of 2002, banks, persons carrying on the business of long-term insurance, foreign exchange and lending money against the security of securities.

In addition to the accountable institutions, FICA affects all clients/consumers entering into either a single transaction or a business relationship with an accountable institution.

### **Clients/Consumers include the following private and juristic persons:**

- Natural Persons
- Natural person acting on behalf of another, or
- Foreign national
- Close corporation
- South African company
- Foreign company
- Legal Persons
- Partnerships
- Trusts

## 3. BECOMING FICA COMPLIANT

In order to become FICA compliant, all you need to do it attend to your nearest bank branch and furnish them with the following supporting documentation:

- Your green barcoded South African identity document or the new smart identity card; and
- Proof of Residence (e.g. a Municipal Bill that is less than three months old).

## 4. PENALTIES OF NON-COMPLIANCE

The risk you stand to be exposed to in the case of non-compliance as an individual is that that criminals may commit criminal activities on your account such as using your account to commit fraud and in turn you could be locked out of your account and therefore, loose access to your account.

Businesses or accountable institutions that do not comply with FICA are exposed to the risk of the entities' management facing possible imprisonment of up to 15 years or a fine of up to R100 million.

Accountable institutions are deemed to be in contravention of FICA and therefore guilty of an offence in the following instances:

- failure to identify persons and keep records;
- destroying or tampering with records;
- failure to give assistance to representatives of the Centre;
- failure to advise Centre representatives of client history when requested;
- failure to report cash transactions above prescribed limits;
- failure to report suspicious or unusual transactions;
- failure to report the conveyance of cash in or out of the Republic;
- failure to transmit a report to the Centre;
- failure to report electronic transfers;
- failure to comply with a request by the Centre or investigating authority;
- failure to comply with a monitoring order; misuses, discloses, tampers with or destroys confidential information;
- failure to formulate and implement internal rules;
- failure to provide training or appoint a Compliance Officer;
- obstructs an official in the performance of their duties;
- conducts transactions to avoid reporting duties; or;
- wilfully accesses or modifies an application, data or computer system under the control of the Centre.

## 5. CONCLUSION

Businesses and individuals must ensure compliance with FICA in order to ensure that the fight against money laundering and financing of terrorism programmes continues and to further curb the risk of incurring the penalties of non-compliance as prescribed by FICA.

Businesses must implement internal structures that ensure the preservation of paper trails of all transactions and the consistent reporting of any possible money laundering to the investigation authorities. As an individual you may attended to your nearest bank branch to ascertain whether you are indeed FICA compliant or should you require any further information insofar as your FICA status.

