FIC COMPLIANCE REQUIREMENTS – INSPECTIONS GUIDELINES

The PPRA is established in terms of Property Practitioners Act, 22 of 2019. The PPRA is a supervisory body in terms of Financial Intelligence Centre Act, 38 of 2001 (FIC Act) and is responsible for supervising and enforcing compliance with FIC Act. The Financial Intelligence Centre (FIC) amongst its mandate includes identification of monies associated with unlawful activities and elimination of Money Laundering and Terrorist Financing (ML/TF) activities.

The FIC Act comprise of various compliance obligations, and these are tested during an inspection by an inspector and includes:

a) The accountable institutions risk-based approach (including business risk assessments, new products and process risk assessment, and client risk assessment methodology);
b) Client identification and verification;
c) Scrutinising of client information against the targeted financial sanctions lists;
d) Scrutinising of client information to identify domestic prominent influential persons and prominent influence persons;
e) Record keeping;
f) Reporting;
g) Compiling of a Risk Management and Compliance Programme (RMCP);
h) Appointment of a person responsible for compliance;
i) Training of employees; and
j) Registration with FIC.

Risk management and risk-based approach

Risk Based Approach is the identifying the highest compliance risks to your organisation, making them a priority for the organisation's compliance controls, policies and procedures. Property practitioners, as accountable institutions are required to apply a risk-based approach when establishing a business relationship and/or conducting a single transaction

with a client. This requirement aligns with the Financial Action Task Force (FATF), which sets international standards on combating money laundering and terrorist financing.

What is risk in terms of FIC Act

Risk - refers to the impact or likelihood of ML/TF taking place in an institution. Inherent risk or the level of risk that exist before mitigation, not residual risk or the level of risk that remain after mitigation. Therefore, from a money laundering and terrorist financing view, ML/TF risks will include the following elements:

a) Threat – persons or objects with the potential to cause harm;
b) Vulnerability – things that can be exploited by the threat or facilitate its activities; and
c) Consequences – refers to impact of a threat or exploitation of a vulnerability.

What is risk-based approach

Risk Based Approach (RBA) - in this context, requires a property practitioner to identify, analyse, assess, mitigate, and monitor inherent ML/TF risk associated in doing business with customers to prevent ML/TF activities. To successfully implement a risk-based approach, a property practitioner is required to;

a) Conduct business risk assessments, new product and processes risk assessments and client risk assessments, this is influenced by the nature of your business, size, structure, range of products and services offered by your business, and the various clients.
b) Make provision for risk indicators – for example indicator relating to products - to what extent does your product provide anonymity to clients, can the product be funded by cash or does the product allow the flow of cash, what is the cost of the product
c) Implement risk identification measures – property practitioner should then assess, understand, its money laundering risk posed by its product as an example, it is important to note that the risk must be assessed at regular intervals based on the changes that occur in the institution internally and externally.
d) Implement risk rating mechanism – implies assigning different categories to different levels of risk according to a risk scale and classifying the money laundering and terrorist financing risk. Under those circumstances the property practitioner would be expected to rate their customers, products, services, delivery channels, geographic areas involved and other risk factors, where applicable.
e) Implement Risk Matrix mechanism –may be made up of different components to evaluate a particular client, product, transaction, or service in its entirety.
f) Implement risk management and risk mitigation measures.

Section 42 of the FIC Act requires property practitioners to develop, document, maintain and implement a Risk Management and Compliance Programme (RMCP). An RMCP should comprises of policies, processes and procedures, systems and controls to be implemented by and within the property practitioner's business. Therefore, an RMCP is underpinned by a risk-based approach as espoused in section 42 of the FIC Act and it must take the following into consideration:

a) The board of directors, senior management or other person, or group of persons exercising the highest-level authority in the property practitioner's business must approve the RMCP.
b) It must be reviewed at regular intervals.
c) Can be tailor-made to the needs of the institution.
d) Unique to circumstances of the institution.
e) Institutions differ in size, diversity, sophistication.
f) Provide for more flexibility to exercise in determining the extend of information applicable.
g) Permit greater control on how to satisfy FIC requirements.
h) It is an individual firm responsibility not collective.

Section 42 outline all the elements of a compliant RMCP namely:

a) How PP identifies, assess, monitors, mitigate and manage ML/TF risks.
b) How PP determine if person is prospective/ existing client.
c) How PP will ensure it does not do business with anonymous clients.
d) How PP determine if future transaction is consistent with AI's knowledge of prospective clients.
e) How PP conduct additional CDD for legal persons, partnership, and trust.
f) How PP conducts ongoing CDD due diligence and continuous monitoring.
g) How PP examines and keeps written findings of complex or unusual large transactions, and unusual pattern of transaction which have no lawful purpose.
h) How PP will confirm information relating to clients where there are doubts about veracity of previously obtained information.
i) How PP will perform CDD during a business relationship and where PP suspects the activity transaction is suspicious.
j) How PP will terminate an existing business relationship if unable to conduct a CDD.
k) How PP determines if a prospective client is foreign or a domestic prominent person.
l) How PP conducts enhanced due diligence for high relationships and when simplified CDD may be permitted.

m) How and where records are kept.

n) Provide processes for reporting to FIC.

FOR ENQUIRES reviewcompliance@theppra.org.za

WEBSITE: www.theppra.org.za

CALL CENTRE: 087 285 3222

ISSUED BY THE PROPERTY PRACTITIONERS REGULATORY AUTHROITY (PPRA)

DATE: 12 SPETEMBER 2022