Real estate industry called to action as compliance failures put economy at risk

In an article released by *BusinessTech* on Wednesday, 14 February, it was revealed that real estate is one of two industries standing in the way of South Africa's efforts to get off the Financial Action Task Force's (FATF's) grey list.

Source: Pixabay

South Africa was placed on the FATF's grey list in February 2022 as a result of the country's inadequate controls for the prevention of financial crimes like corruption, money laundering and terrorism financing. The country was given until January 2025 to implement the FATF's 22 directives and address the eight strategic deficits identified.

On Wednesday, the Financial Intelligence Centre (FIC) executive manager of compliance and prevention, Christopher Malan, revealed that two of the 22 directives are now at risk of failure due to ongoing non-compliance from real-estate agents and legal practitioners.

The directives in question are Directive 2A, requiring the identification of high-risk entities, and Directive 2B requiring the investigation of these entities.

Should these directives not be met by May 2024 and September 2024, respectively, the chances of meeting the FATF's requirements to be removed from the grey list by 2025 would rapidly – and potentially irrevocably – decline.

Where is real estate falling short?

As relatively easy avenues for money laundering, the real estate and legal industries have both been tasked with analysing and reporting on the risk profiles of their clients.

In 2023, the FIC requested each estate agent registered as an accountable institution with the FIC to complete and submit a FIC questionnaire to the FIC in the form of a risk and compliance return (RCR) which would advise and give the FIC information on the real estate sector's understanding and implementation of the FIC and its FIC obligations – a critical component of Directive 2A.

This RCR was due to be submitted by estate agents by 31 May 2023. Failure to do so not only places real estate businesses at risk of hefty non-compliance fines, but also hinders the FIC's ability to fulfil Directive 2A and 2B – investigate the high-risk entities in question.

"Filing RCRs is nobody's idea of a good time," says Tony Clarke, managing director of the Rawson Property Group and former chairperson of Real Estate Business Owners South Africa. "As professionals in a high-risk industry, however, it's our responsibility to ensure we are not inadvertently facilitating criminal activity."

Greylisting as it relates to trusts
SAICA 2 Nov 2023

Clarke says it is extremely disheartening to hear that only 43% of property practitioners and 50% of legal practitioners (including conveyancers) have submitted their RCRs. He questions whether the low figure of 43% of property practitioners is derived from a tally of individual property practitioners or real estate businesses, as the responsibility to fulfil RCRs lies with real estate businesses and not individual property practitioners.

"Non-compliant real estate businesses aren't just at risk of serious fines," he says. "They're also giving our industry a reputation for not taking our responsibilities seriously, and they're putting our entire country's economy at risk by impeding our efforts to get off the grey list."

What can be done to rectify the situation?

According to Clarke, complying with the FIC's regulations does add significantly to industry workloads.

"It's not just filing an RCR – which includes 176 questions, on its own," he says. "Each real estate business also needs to adopt, implement and maintain an up-to-date 'Risk Management Compliance Programme' (RMCP) detailing their estate agency's office's specific FIC processes and procedures."

Clarke believes real estate brands can play an important role in easing the weight of these responsibilities for their franchises and/or branches, by providing guidance through this process.

Can crypto regulation help SA shake off FATF greylisting?
Andre van den Berg, Zanrie Linstrom and Pooja Pu 16 Feb 2024

"At Rawson, we've invested a lot of time and resources into educating and training our entire franchise body on their compliance responsibilities," he says. "We've also created – and continually update – supporting frameworks and document templates to streamline the creation, adoption and fulfilment of each franchise's individual RMCP.

"We can't do their compliance for them, but we can make it as easy as possible. I strongly believe this is something that all the big brands could and should do."

Unfortunately, smaller and independent agencies do not have access to the same support structures as those working under the bigger brands.

"I do suspect that there is a large contingent of smaller operators – particularly in outlying areas – who remain unaware and/or unapprised of their FIC obligations, uncertain of how to fulfil them, or lacking the capacity to create the necessary processes and supporting documentation, however, there is light at the end of the tunnel for these businesses, and that is where Rebosa comes in," says Clarke.

According to Clarke, Rebosa has undertaken efforts to support numerous real-estate businesses in achieving compliance.

"The Rebosa website offers an abundance of free resources for real estate businesses to make use of to ensure compliance," he says. This includes access to a generic RMCP template including explanatory notes for completing the RMCP template.

"Principal property practitioners can easily download this template and tailor it to their specific business needs. Clarke urges all principal property practitioners to visit the Rebosa website and make use of these resources."

While current compliance levels for our industry are bleak, Clarke believes the right support would be instrumental in helping real estate and the FIC turn the corner.

"It's up to us to prove that we're not the villains of this story – we can and will rise to the challenge of compliance by May. This is our chance to make a real difference to our country's economic future. Let's not be the ones to drop that ball."