

AML Amendments

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Anti-money laundering legislative changes

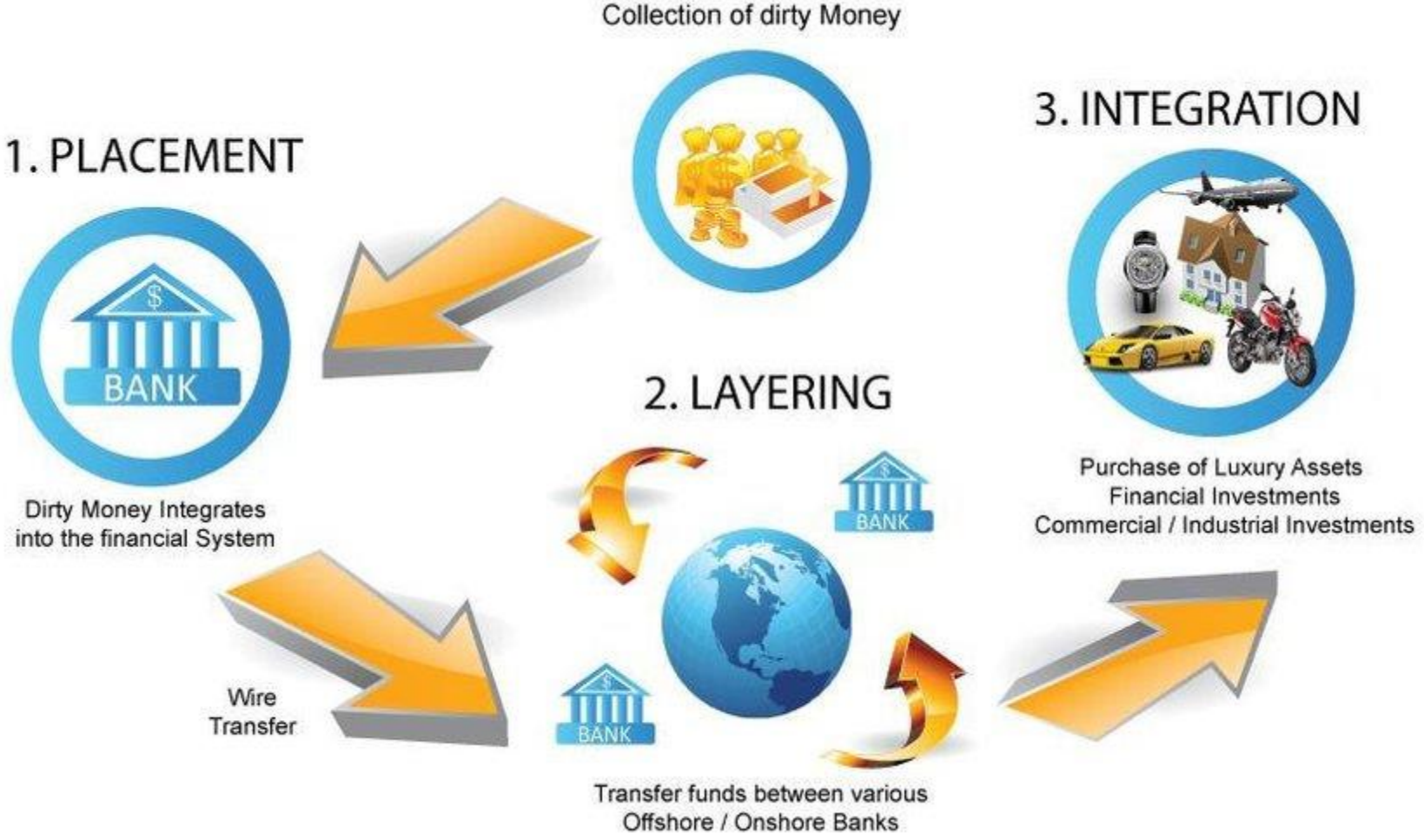


Anti-money laundering legislative changes

- October 2021- FATF mutual evaluation
- 28 November 2022- Post Observation Period Report submitted to FATF
- 16 December 2022 – FATF responded with preliminary response
- 3 January 2023 – SA responded to Joint Group
- 13 January 2023 – SA F2F meeting in Morocco
- Joint Group will respond to FATF International Co-operation Review Group before final recommendation to FATF Plenary
- 22 – 24 February – FATF meeting



Why change Schedule 1 of FIC Act



Schedule 1 of FIC Act

Change to who is an accountable institution

- Legal practitioners
- Co-operative banks
- Credit providers
- High value goods (valued in R100 000 or more)
- South African Mint Company (RF)(Pty)(Ltd)
- Persons carrying on the business dealing with various crypto-assets
- Trust and company service providers. (TCSP)



Effective 19 December 2022

Schedule 1 – list of accountable institutions



TCSP

A **person** who carries on the business of preparing for, or carrying out, transactions for a client, where client assisted in planning / execution of

organisation of contributions necessary for the **creation, operation or management** of a company, external company, foreign company,

the **creation, operation or management** of a company, external company or foreign company

operation or management of a close corporation

Schedule 1 – list of accountable institutions

TCSP

A **person** who carries on the business of

creating a trust arrangement for a client



preparing for or carrying out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property within the meaning of the Trust Property Control Act



FIC – TCSP Draft Public Compliance Communication 6A

Guidance on Trust and Company Service Providers Guidance in terms of Schedule 1 of the FIC Act for public comment.



Comments due 20 January 2023

Definitions:

Business is that of a commercial activity or institution, as opposed to a charitable undertaking or government institution. Therefore, persons who are appointed as providing TCSP functions on an occasional basis, or who perform this function in a personal capacity, as opposed to doing so on a commercial basis as a regular feature of their business for clients are not required to be registered as a TCSP

Creation includes the registration or administrative processes with relevant government organisations for the client to commence with trading using the type of institution.

Operation of the company entails the assisting with the daily operations of the client, and

Management would entail managing the company, for example, being on the board of management and making management decisions regarding the company.

Questions on TCSPs?

- Administrators / liquidators
- Business rescue practitioners - Companies Act, a person appointed as a business rescue practitioner (BRP) is appointed to manage a company whilst under business rescue. Section 128(1)(b) states that when in business rescue the company is under the temporary supervision of the practitioner and the BRP is managing its affairs, business and property.
- Businesses that outsource staff, such as CFOs
- With regards to tax services provided by accountants there are numerous questions on when a person providing tax services would be classified as an accountable institution and which tax services would be scoped in.
- Practitioners providing accounting, auditing and tax services (completion and submitting of tax returns) are excluded from the ambit of “operation or management”. The majority of practitioners primarily perform accounting and tax services in relation to financial statements, including the preparation of management accounts, compilation of annual financial statements. With regard to tax services, practitioners prepare and submit tax returns, PAYE and VAT schedules on behalf of employers which services might be viewed as operational. With regard to specialised tax services, such as tax opinions this could be seen as “creation, operation or management”.

What must you do if you are an accountable institution?



Customer due diligence



Record keeping



Compliance officer



Risk management and compliance programme



Reporting



Training of employees



Registration with the FIC

Transitional provisions



No
transitional
provisions

Changes effective from 19 December 2022.

FIC media release

- First 18 months from the date of commencement of the amendments, the FIC and supervisory bodies will focus on entrenching the FIC Act risk and compliance provisions and implementation among the new sectors.
- Supervisory bodies conducting inspections and, where warranted, issue remedial administrative sanctions, based on a risk-based approach, to correct identified areas of non-compliance.
- TCSPs the FIC and supervisory bodies do not envisage issuing financial penalties for non-compliance with the FIC Act during the transitional 18-month period

Guidance

- **FIC Draft Directive 7 of 2022** – Submission of risk and compliance returns, comments were due by the 20th of December 2022. Final directive not yet published.
- **FIC draft public compliance communication** – included draft PCC 47A, draft PCC 6A, draft PCC 23A, draft PCC 118, draft PCC 119 and draft PCC 120.
- **Reference Guide for all Accountable Institutions** : This guide sets out all the requirements and where the accountable institution can obtain FIC guidance to assist in meeting the requirements.
- **Public Compliance Communication No. 53** on the Risk Management and Compliance Programme in terms of section 42 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) for Designated Non-Financial Business and Professional.
- **Guidance Note 7** on the implementation of various aspects of the Financial Intelligence Centre Act, 2001
- **Webinar** - SAICA has hosted a webinar that outlines the responsibilities of accountable institutions.

General Laws Amendment Act, 22 of 2022

- Financial Intelligence Centre Act, 2001
- Nonprofit Organisations Act, 1997
- Trust Property Control Act, 1988
- Companies Act, 2008
- Financial Sector Regulation Act, 2017



Effective 31 December 2022
And 1 April 2023 (with some
exceptions)

Financial Intelligence Centre Act

- Insert definitions of beneficial owner
- “Domestic prominent influential person” TO “domestic politically exposed person”
- “Foreign prominent public official” TO “foreign politically exposed person”
- Adoption of United Nations Security Council resolutions
- Provisions regarding access and safeguarding of information
- Offences and administrative sanction

Nonprofit Organisations Act

NPOs will now be required to register with the Registrar if they:

- make donations to individuals or organisations outside South Africa or
- provide humanitarian, charitable, educational or cultural services outside South Africa.

NPOs that are not organs of state may apply to be registered.

DSD must establish an administrative and regulatory framework

All registered NPOs must in writing provide the **prescribed information**

The director must keep a register in the prescribed form of the **prescribed information**

Prescribed information

- Office-bearers
- Control structure
- Governance
- Management
- Administration &
- Operations

Trust Property Control Act

Beneficial owner of a trust includes

- the natural person who **directly or indirectly owns** the trust property
- the natural person who **exercises control of the administration** of the trust arrangements
- it includes **the founder** of the trust or if the founder is a **legal person, a person acting on behalf** of the partnership or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership
- each **trustee** of the trust and if the trustee is a **legal person a person acting on behalf** of the partnership or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership
- each **beneficiary** referred to by name in the trust instrument or founding statement or if a beneficiary is referred to by name is a **legal person, a partnership or a person acting on behalf** of the partnership or a person acting in pursuance of the provisions of the trust instrument, the natural person who directly or indirectly exercises effective control of the legal person or partnership of relevant trust property.

Trust Property Control Act

TRUSTEES

- Disqualification requirements
- Disclose position as trustee to AI &
- Identify transaction relate to trust property
- Establish and record BO
- Keep record of info
- Lodge register with Master
- Update information
- Make information available when required as prescribed

MASTER

- Keep register of disqualified persons
- Notify trusts of trustees – with order /conviction
- Approve persons appointed as trustees from outside SA
- Keep register of prescribed information re BO
- Make info available when requested

Regulations relating to BO registers and records of details of AIs

TRUSTEE must keep information on BO

- Name
- Date of birth
- Nationality
- Official ID, indicating type and country of issues
- Residential address
- Address for service notice
- Other mean of contact
- Grounds on which person is BO
- Date on which person became BO
- Date on which person ceased to be BO
- Certified copy of ID of EACH BO

Public comment – 13
February 2023

Regulations relating to BO registers and records of details of AIs

MASTER's register (electronic)

- Access through username & password
- Security measures
- Trustee to load and update info on each BO
- Trustee to upload documents

Public comment – 13
February 2023

A beneficial owner is defined in respect of a company as an

- individual who directly or indirectly ultimately owns the company or
- exercises control through various options including
 - holding of beneficial interest,
 - exercise of control of the voting rights,
 - exercise or control the right to appoint or remove members of the board of directors

Affected company - regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of circumstance contemplated in section 2(2)(a) or 3(1)(a).

S56(7)(aA) Requirement of affected company

- establish and maintain a register of persons who hold beneficial interest equal to or in excess of 5% of the total number of securities issued by the company,
- register must be updated as per the information received via a notice.

Section 33 – Annual return

Act

Every co must file AR including a copy of its AFS if it is required to have such statements audited in terms of section 30(2) or the regulations contemplated in section 30(7)

Amendment

- Submit copy of securities register
- Submit copy of register of disclosure of beneficial interest as prescribed in S56(7)(aA) (AFFECTED COMPANY)
- Commission must make AR available to persons as prescribed

56(7)(aA) An AFFECTED COMPANY must establish and maintain a register of persons who hold beneficial interest equal to or in excess of 5% of the total number of securities issued by the company, which register must be updated as per the information received via a notice.

S50(3A) Companies that are not an “affected company”

MUST must record in its securities register

- prescribed information regarding the natural persons who are the beneficial owners of the company,
- in the prescribed form, and
- must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred

S56(12)

- ❖ Must file a record with the Commission
- ❖ In the prescribed form
- ❖ Containing the prescribed information
- ❖ Update by filing notice with the CIPC
- ❖ Within the prescribed period after changes happened

Protection of Constitutional Democracy Against Terrorism and Related Activities Amendment Act

- Include cyber-terrorism
- Refining offence of terrorist financing
- Improving process for implementation of financial sanctions against supporters of terrorist organisations

Effective 4 January 2023

Conclusion

- SAICA will keep you informed
- Newsletter / webinar / articles

