

# Anti money laundering legislative changes

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# Financial Action Task Force (FATF)

SA is a member of FATF  
37 member jurisdictions

Global money laundering and  
terrorist financing watchdog  
Sets international standards  
Monitor countries and hold them to  
account

SA was evaluated  
Report issued October 2021  
Rated poorly  
Failed in 20 out of 40 core standards (Technical  
compliance)  
Failed in all 11 effective measures  
Have to report to FATF by October 2022  
FATF plenary meeting in Feb 2023 to consider  
greylisting

# Summary of compliance to FATF recommendations

PC	R1	Assessing risks & applying a risk-based approach	C	R21	Tipping-off & confidentiality
PC	R2	National co-operation & co-ordination	PC	R22	DNFBPs: Customer due diligence
LC	R3	Money laundering office	PC	R23	DNFBPs: Other measures
LC	R4	Confiscation & provisional measures	PC	R24	Transparency & BO of legal persons
PC	R5	Terrorist Financing offences	PC	R25	Transparency & BO of legal arrangements
NC	R6	Targeted financial sanctions related to terrorism & terrorist financing	PC	R26	Regulation & supervision of financial institutions
PC	R7	Targeted financial sanctions related to proliferation	PC	R27	Powers of supervisors
NC	R8	NPO	PC	R28	Regulation & supervision of DNFBP's
LC	R9	Financial institution secrecy laws	LC	R29	Financial intelligence units
PC	R10	Customer due diligence	C	R30	Responsibilities of law enforcement & investigative authorities
LC	R11	Record keeping	C	R31	Powers of law enforcement & investigative authorities
NC	R12	Politically exposed persons	PC	R32	Cash Couriers
LC	R13	Correspondent banking	LC	R33	Statistics
PC	R14	Money or value transfer services	LC	R34	Guidance & feedback
NC	R15	New technologies	LC	R35	Sanctions
LC	R16	Wire transfers	LC	R36	International instruments
NC	R17	Reliance on 3rd parties	LC	R37	Mutual legal assistance
PC	R18	Internal controls & foreign branches and subsidiaries	LC	R38	Mutual legal assistance: freezing & confiscation
LC	R19	Higher-risk countries	LC	R39	Extradition
LC	R20	Reporting of suspicious transaction	LC	R40	Other forms of international cooperation

# Summary of compliance with Immediate Outcomes

IO	Description	Rating
IO.1	Risk, policy & coordination	Moderate
IO.2	International cooperation	Moderate
IO.3	Supervision	Moderate
IO.4	Preventative measures	Moderate
IO.5	Legal persons & arrangements	Low
IO.6	Financial Intelligence ML/TF	Moderate
IO.7	ML investigation & prosecution	Moderate
IO.8	Confiscation	Moderate
IO.9	TF investigation & prosecution	Low
IO.10	Terror financing preventative measures & financial sanctions	Low
IO.11	Proliferation financing financial sanctions	Moderate

# How to correct

August

Report to FATF on Technical Compliance

October

Detailed report on Technical Compliance  
and effectiveness measures

February  
2023

FATF plenary meeting

Have to address this by changes in laws and show action  
Technical compliance - Address weaknesses in 20 recommendations  
Effectiveness measures – can we implement our laws

# Changes required

- Omnibus Bill. Amends the following laws:
  - (a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
  - (b) the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997);
  - (c) the Trust Property Control Act, 1988 (Act No. 57 of 1988);
  - (d) the Companies Act, 2008 (Act No. 71 of 2008), and
  - (e) the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)

Bill addresses 14 of the technical compliance deficiencies  
(recommendations 7,8,12,15,17,18, 22 to 28)

POCDATARA Amendment Bill currently in Parliament addresses 2  
deficiencies (recommendations 5 & 6)

Remaining 4 deficiencies will be dealt with via regulatory and policy  
interventions.

# Trust Property Control Act

## Beneficial owner (S1)

Accountable Institution definition 

BO as per FIC and for trusts

Natural person who directly or indirectly ultimately owns the trust property or exercises effective control

### Founder

Founder (legal person / partnership)  
natural person who directly or indirectly owns or exercises effective control

### Trustee

Trustee (legal person / partnership)  
natural person who directly or indirectly owns or exercises effective control

### Beneficiary

Beneficiary (legal person / partnership)  
natural person who directly or indirectly owns or exercises effective control

Person ability to control the votes of the trustees or to appoint the trustees or to appoint or change the beneficiaries / exercise effective control

# Trust Property Control Act

## Disqualification of office bearers (S6)

Disqualified if:

- Unrehabilitated insolvent
- Prohibited by court to be director of co / declared delinquent
- Removed from office of trust
- Convicted & imprisoned (S69 of Co Act) theft, fraud, forgery, perjury etc
  
- Disqualification ends after 5 years after date of removal of office or completion of sentence
- Master must
  - Notify each trust which has trustee with order of conviction
  - Establish and maintain public register of person disqualified to serve as trustee




# Trust Property Control Act

## Trust and registration (S10 & 11)

### Section 10 – Trust account

- Trustee must disclose position as trustee to any 
- Must make it known to  that transactions relate to trust property

### Section 11 Registration and identification of trust property

- record the prescribed details relating to  which the trustee uses as agents to perform any of the trustee's functions relating to trust property, and from which the trustee obtains any services in respect of the trustee's functions relating to trust property;

# Trust Property Control Act

## Beneficial ownership (S11A)

### Trustee must:

- establish and record the BO of the trust
- keep a record of the prescribed information relating to the BO of the trust
- lodge a register of the prescribed information on the BO of the trust with the Master's Office
- ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date

Trustee must make information contained in register available to any person as prescribed

### Master must:

- keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts
- must make information contained in register available to any person as prescribed

•(4) The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by [section 2](#) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001).

# Trust Property Control Act

## Failure by trustee to account (S19)

Trustee fails to comply

- Section 10(2)
- Section 11(1)(dA)
- Section 11A



Fine up to R10m  
OR  
Prison up to 5 yrs  
OR  
both

# NPO Act

## Requirement for registration

All NPOs including foreign NPOs that intends to operate in SA must register with DSD Directorate

NPOs operating but not registered **MUST** register in line with period prescribed by Minister including transitional and registration requirements

# NPO Act

## Duty to report (S18)

Registered NPO MUST inform director about prescribed information about

- office bearers
- control structures
- governance
- management
- administration
- operation

**Must be prescribed after consultation with Finance Minister and FIC**

# NPO Act

## Register of NPO (S24)

Director must keep register with prescribed information about

- office bearers
- control structures
- governance
- management
- administration
- operation

**Must be  
prescribed after  
consultation  
with Finance  
Minister and FIC**

NPO and director must provide access to information in the register

# NPO Act

## Disqualification of office bearers (S25A)

Disqualified if:

- Unrehabilitated insolvent
- Prohibited by court to be director of co / declared delinquent
- Convicted & imprisoned (S69 of Co Act) theft, fraud, forgery, perjury etc
  
- Disqualification ends after 5 years after date of removal of office or completion of sentence
- Director must
  - Notify each NPO which has office bearer with order of conviction
  - Establish and maintain public register of person disqualified to serve as office bearer

# Companies Act

## Beneficial owner (S1)

Accountable Institution  
definition ▲

BO as per FIC

Natural person who directly or indirectly ultimately owns or exercises effective control of the company including

### Ownership of securities

Exercises or control of the exercise of the voting rights

Exercises or control of the exercise of the right to appoint or remove members of the board

Ownership or exercise the control of

- Holding co
- Juristic person other than HoldCo
- Body of persons
- Partnership
- Other category that owns or exercise control

Ability to materially influence the decision-making or policy



# Companies Act

## Annual return (S33)

### 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)

### 2022 Bill

#### Co must also file

- copy of the company's securities register as required in terms of section 50
- copy of the register of the disclosure of beneficial interest as required in terms of section 56

Annual return will be made available electronically to any person as prescribed

Prescribed requirements must be prescribed after consultation with Finance Minister and FIC

# Companies Act

## Securities register(S50)

### Act

Every co must establish register of issued securities and maintain the register

### 2022 Bill

A company 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.

Prescribed requirements must be prescribed after consultation with Finance Minister and FIC

# Companies Act

## Beneficial interest in securities and BO of company (56)

### 2022 Bill

A company must file a record with the Commission, in the prescribed form and containing the prescribed information,

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

Prescribed requirements must be prescribed after consultation with Finance Minister and FIC

# Companies Act

## Disqualification

**Act**  
(8) Person  
disqualified to be  
director if....

2022 Bill  
has been convicted, in the Republic or elsewhere, and  
imprisoned without the option of a fine, or fined more than the  
prescribed amount, for theft, fraud, forgery, perjury or an  
offence:  
involving fraud, misrepresentation or dishonesty, money  
laundering, terrorist financing, or proliferation financing  
activities as defined FIC, POCDATARA, TAA

# FIC Act

- Amendment to Schedule 1 of the FIC Act, list of accountable institutions falling within the scope of the FIC Act
- Technical amendments, do not substantially change the principles on which the customer due diligence provisions are based.
- Proposed amendments however do result in the establishment of a stronger AML/CFT/PF regulatory framework
- Amend definition of PEP
- Amend Risk Management and Compliance Programme

# FIC Act

## Schedule 1

Designated Non-  
Financial Business  
and Professions

Not included  
No AML /TF  
obligations

Risk

Gatekeepers  
Poor understanding  
Vulnerable for misuse  
Incl

- Trust and company service providers (accountants)
- Attorneys
- Estate agents

Action  
required

Develop policies

- Beneficial ownership
- Use of cash and cross border transactions
- Include DNFBPs in scope

# FIC Act

## Schedule 1

- 2(a) A **person** who carries on the business of preparing for, or carrying out, transactions for a client, where—
- (i) the **client** is assisted in the planning or execution of—
    - (aa) the organisation of contributions necessary for the **creation, operation or management** of a company, or of an external company or of a foreign company, as defined in the Companies Act, 2008 (Act 71 of 2008);
    - (bb) the **creation, operation or management** of a company, or of an external company or of a foreign company, as defined in the Companies Act, 2008; or
    - (cc) the **operation or management** of a close corporation, as defined in the Close Corporations Act, 1984 (Act 69 of 1984).

# FIC Act

## Schedule 1

- (b) A person who carries on the business of—
  - (i) acting for a client as a nominee as defined in the Companies Act, 2008; or
  - (ii) arranging for another person to act for a client as such a nominee.
  
- (c) A person who carries on the business of creating a trust arrangement for a client.
  
- (d) A person who carries on the business of 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, 1988 (Act 57 of 1988).



# FIC Schedule 1

Term: person

the amendment refers to a “person who carries on a business of preparing for or carrying out transactions for a client” concerning certain specified activities:

FICA in Section 1 does not define the term “person” but defines the term “legal person” instead as:

*“Any person, other than a natural person, that establishes a business relationship or enters into a single transaction, with an accountable institution, and includes a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association, but excludes a trust, partnership or sole proprietor.”*

# FIC Schedule 1

## *The phrase “carries on a business”*

### Practitioners performing accounting and tax services relating to financial statements

- *accounting and tax services*
- *services are ancillary and not primary to accounting and tax services, practitioners are not regarded as “carrying on a business” that falls under “company services”*
- *only some practitioner in firm perform the service*

# FIC Schedule 1

## *Creation, operation or management*

Does this include:

- Does “creation” constitute the actual registering of the entity?
- Does “management” constitute managing the business or performing a management function within the company? This is read in the context of the Companies Act, 2008, where section 66 refers to the fact that the business and affairs of a company must be managed by or under the direction of its board.
- Would independent directors be scoped in - viewed as management of a company?
- How is the registered auditor impacted by this section?
- How is the internal accountant affected in comparison to the independent accountant?
- CFO outsourced
- Provision of accounting services such as:
  - Preparing management accounts.
  - Compilation of financial statements.
  - Preparation and submission of tax returns, PAYE and VAT on behalf of a client or employer, as we cannot ascertain whether this would be interpreted as “operation” of a company. Would the fact that SARS correspondence is sent to the tax practitioner be viewed as “operation or management”?
- Is a person providing a tax opinion to a client excluded?
- Is a person appointed as a business rescue practitioner
- Mergers and acquisitions?

# FIC Schedule 1

## Creating a trust arrangement and carrying out a trust arrangement

- The receipt of trust money from a client to set up a trust
- Independent trustee included
- What is trust arrangement
- Tax advice / structuring

# FIC Schedule 1

## Compliance obligations

- Customer due diligence
- Record keeping
- Appointment of compliance officer
- Risk management and compliance programme
- Reporting
- Training of employees
- Registration with the FIC

Increased costs  
Increased time  
Regulatory equity  
Compliance burden

# FIC Act

## Schedule 1

What does it mean to be an accountable institution?



Customer due diligence



Record keeping



Compliance officer



Risk management and compliance programme

# FIC Act

## Schedule 1

What does it mean to be an accountable institution?



Reporting



Training of employees



Registration with the FIC

# FIC Schedule 1

3. An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).
4. An authorised user of an exchange as defined in the [Securities Service Act, 2004 (Act 36 of 2004)] Financial Markets Act, 2012 (Act 19 of 2012).
5. A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of [the Collective Investment Schemes Control] that Act [(Act 45 of 2002)].
6. A person who carries on the “business of a bank” as defined in the Banks Act, 1990 (Act 94 of 1990).
7. A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993).
- 7A. A co-operative bank as defined in the Co-operative Banks Act, 2007 (Act 40 of 2007).
8. A person who carries on a “[long-term] life insurance business” as defined in the [Long-Term Insurance Act, 1998 (Act 52 of 1998)] Insurance Act, 2017 (Act 18 of 2017), but excludes reinsurance business as defined in that Act.
9. A person who carries on the business of making available a gambling activity as contemplated in section 3 of the National Gambling Act, 2004 (Act 7 of 2004) in respect of which a license is required to be issued by the National Gambling Board or a provincial licensing authority.



# FIC Schedule 1

10. A person who carries on the business of dealing in foreign exchange.

11. (a) A person who carries on the business of [lending money against the security of securities] a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005).

(b) A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1)(a) or (b) of that Act.

12. A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice [and] or intermediary services in respect of the investment of any financial product (but excluding a [short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998)] non-life insurance policy, reinsurance business as defined in the Insurance Act, 2017 (Act 18 of 2017) and [a health service benefit provided by] the business of a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998.))

13. A person who issues, sells or redeems travellers' cheques, money orders or similar instruments.

14. The South African Postbank Limited referred to in section [51] 3 of the [Postal Services Act, 1998 (Act No. 124 of 1998)] South African Postbank Act, 2010 (Act 9 of 2010).

# FIC Schedule 1

19. A person who carries on the business of a money [remitter] or value transfer provider.
20. A person who carries on the business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of R100 000,00 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked, where “high-value goods” means any item that is valued in that business at R100 000,00 or more.
21. The South African Mint Company (RF) (Pty) Ltd, only to the extent that it distributes non circulation coins in retail trade and where in respect of such transactions it receives payment in any form to the value of R100 000,00 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked.

# FIC Schedule 1

22. A person who carries on the business of one or more of the following activities or operations for or on behalf of a client:
- (a) Exchanging a crypto asset for a fiat currency or vice versa;
  - (b) exchanging one form of crypto asset for another;
  - (c) conducting a transaction that transfers a crypto asset from one crypto asset address or account to another;
  - d) safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset; and
  - (e) participation in and provision of financial services related to an issuer's offer or sale of a crypto asset,

where "crypto asset" means a digital representation of perceived value that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act 19 of 2012).

# FIC Schedule 1

23. A clearing system participant as defined in section 1 of the National Payment System Act, 1998 (Act 78 of 1998) that facilitates or enables the origination or receipt of any electronic funds transfer and or acts as an intermediary in receiving or transmitting the electronic funds transfer

# UK legislation

- The Proceeds of Crime Act 2002 (POCA) as amended. Particular attention is drawn to the Serious Organised Crime and Police Act 2005 (SOCPA)
- The Terrorism Act 2000 (TA 2000) as amended. Particular attention is drawn to the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) and the Terrorism Act 2006 (TA 2006)
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the 2017 Regulations) as amended. Particular attention is drawn to The Money Laundering and Terrorist Financing (Amendment) Regulations 2019)
- Terrorist Asset-Freezing etc. Act 2010
- Anti-terrorism, Crime and Security Act 2001
- Counter-terrorism Act 2008, Schedule 7
- Criminal Finances Act 2017.

# Consultative Committee of Accountancy Bodies (CCAB)

Anti-Money Laundering and Counter-Terrorist Financing – Guidance for the Accountancy Sector (May 2022)

## Defined services

This means anyone who, in the course of business in the UK, acts as:

- An auditor (Regulation 11(a))
- An external accountant (Regulation 11(c))
- An insolvency practitioner (Regulation 11(b))
- A tax adviser (Regulation 11(d))
- A trust or company service provider (Regulation 12(2))

The scope of what would be considered carrying on business in the UK is broad and would include certain cross border business models where day to day management takes place from a UK registered office or a UK head office

# Way forward

FIC Schedule – to be approved still in 2022

General Laws Amendment Bill – to go through Parliamentary process

Members to be advised, education to be provided

**End .....**



# FIC Act

## Beneficial owner (S1)

Natural person who directly or indirectly

ultimately owns or  
exercises effective  
control

exercises effective  
control of client of AI  
on whose behalf  
transaction is  
conducted

Client of AI

Legal person,  
partnership or trust  
that owns or  
exercises effective  
control of the client of  
AI

Legal person –  
each natural  
person  
Partnership –  
each natural  
person  
Trust – each  
natural person

# Companies Act

## Beneficial owner (S1)

Accountable Institution definition 

BO as per FIC

Natural person who directly or indirectly ultimately owns or exercises effective control of the company including

Ownership  
of securities

Exercises or  
control of the  
exercise of  
the voting  
rights

Exercises or  
control of the  
exercise of the  
right to appoint  
or remove  
members of the  
board

Ability to  
materially  
influence the  
decision-  
making or  
policy

Ownership or exercise  
the control of

- Holding co
- Juristic person other than HoldCo
- Body of persons
- Partnership
- Other category that owns or exercise control