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LEGISLATION

On the Horizon – FIC Act Schedule 1

28 July – informed that FIC schedules released for comment on 22 July, deadline 12 August

16 August 2022 – SCOF and NCOP Finance

30 August 2022 – SCOF finalized proposals

20 & 23 September 2022 – National Clothing Retail Federation of SA at NCOP Finance



Effective end of 2022

FIC Act

Schedule 1 – Inclusion as an accountable institution

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

FIC Act

Schedule 1 – Inclusion as AI

A person who carries on the business of

acting for a client as a nominee as defined in the Companies Act

arranging for another person to act for a client as such a nominee



AUTHORISATION

FIC Act

Schedule 1 – inclusion as AI

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 Act

Schedule 1

11 October

What does it mean to be an accountable institution?

[Webinar hosted by SAICA](#)



Customer due diligence



Record keeping



Compliance officer

FIC Act

Schedule 1

What does it mean to be an accountable institution?



Reporting



Risk management and compliance programme



Training of employees



Registration with the FIC

LEGISLATION

On the Horizon – General Laws Amendment

OMNIBUS BILL 18 of 2022 *Anti-money laundering and combating of financing of terrorism amendment bill*

- Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- Nonprofit Organisations Act, 1997 (Act No. 71 of 1997);
- Trust Property Control Act, 1988 (Act No. 57 of 1988);
- Companies Act, 2008 (Act No. 71 of 2008), and
- Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)

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

Specific changes

Section 6 - Disqualification

Section 10 – Trustee must disclose position as trustee to any AI

Section 11A

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

Trust Property Control Act

Failure by trustee to account (S19)

Trustee fails to comply

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

Offence

Fine up to R10m

OR

Prison up to 5 yrs

OR

both

NPO Act

Specific new requirements

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

Registered NPO **MUST** inform DSD about prescribed information and keep register with the prescribed information

Include information on:

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

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

Ownership or exercise the control of

- Holding co
- Juristic person other than HoldCo
- Body of persons
- Partnership
- Other category

that owns or exercise control

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

Exercises or control of the exercise of the voting rights

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

Auditing Profession Act

Exposure of fines

Minister of Finance released maximum fines for comments

Section 51 - Admits
guilt

Section 51B – Charged and
found guilty or admits guilt

Individual registered auditor
– max of R5m per charge

Firm of auditors admits guilt
– max of R15m per charge

Individual registered auditor –
max of R10m per charge

Firm of auditors admits guilt –
max of R25m per charge

Comments due
16 October
2022

Consumer Goods and Service Ombud

Questions asked on application of CGSO on SAICA members / associates

CGSO is an impartial, independent dispute resolution scheme established in 2013 in terms of section 82(6) of the Consumer Protection Act

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