



Financial
Intelligence Centre

PUBLIC COMPLIANCE COMMUNICATION

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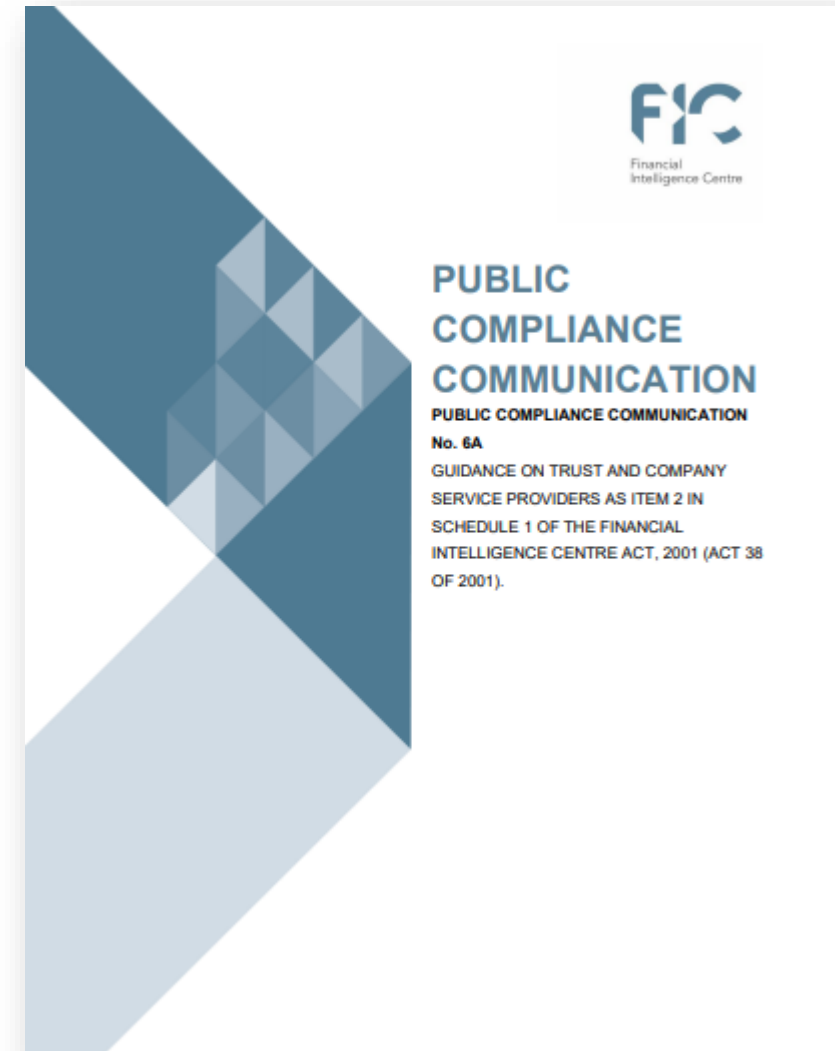
Definition & risks relating to Trust and Company Service Providers

1 November 2023

Public compliance communication 6A

- Issued on 18 August 2023
- Followed robust industry engagement
- Examines the definition of trust and company service providers (TCSP) as set in December 2022
- Focuses on professions included in the definition
- Highlights the risks and red flags
- Discussion on 'service offering risk' as an inherent risk factor given the nature of TCSP

[PUBLIC COMPLIANCE COMMUNICATION No6A.pdf \(fic.gov.za\)](#)





TCSP: An activity-based Schedule item

- A TCSP can be any person/entity that **performs the business of a TCSP**, this is **dependent on the activity that is performed. Activities performed qualifies** you to become a TCSP **irrespective of the profession you hold**. This means that you must register with the FIC in terms of section 43(b) to discharge your obligations.
- If you are a financial institution, legal professional or accountant and you meet the definition of a TCSP you will be deemed an accountable institution
- If you perform TCSP **activities**, you will be considered an accountable institution



TCSP: An activity-based Schedule item (cont.)

Impact on professions or existing accountable institutions under other Schedule items

A person that performs the business of a TCSP, regardless of the professional accreditation they hold, is an accountable institution and must register as a TCSP with the FIC

For example: Where a legal practitioner, accountant, performs functions of TCSP, then they must in addition register as an item 2 accountable institution.

What is a TCSP?

A trust and company service provider (TCSP) is defined as:

1

- (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)

2

- (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.

3

- (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).



TCSP terminology

A person

Includes both natural persons and legal persons

Carries on the
business of...

This term is not defined in the FIC Act. The ordinary meaning of the term, within the context of the FIC Act is applied.

Client

Defined in section 1 of the FIC Act as, ‘a person who has entered into a business relationship or a single transaction with an accountable institution’.

Note: A person who performs a TCSP activity in the *capacity of an employee* for their employer’s legal structure, would not be considered to be providing a service to a client.



TCSP terminology (cont.)

Business

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 in a personal capacity, as opposed to doing so on a commercial basis as a feature of their business for clients, are not required to be registered as a TCSP. A commercial basis includes where a person offers such TCSP activities to be conducted as part of their service offering, regardless of the number of clients that take up this service.

Note: Applies to company AND trust service offering.



TCSP terminology (cont.)

Preparing for

To make something or somebody ready to be used or to do something

Carrying out

To do and complete a task

Assisted

To help something to happen more easily / to help somebody do something

Planning

The act or process of making plans for something

Execution

The act of doing a piece of work, performing a duty, or putting a plan into action.

Terminology used in relation to company services

1

- **Organisation of contributions** could include, and is not limited to, assisting clients to raise capital or funding for the client's business, either through advising on the sourcing of funding or liaising with donors and investors.
- **Creation** can include, and is not limited to, assisting a client on the registration or administrative processes to register a particular legal person/corporate vehicle, with relevant government organisations for the client to commence with trading as this registered legal person/corporate vehicle. This can include advising on legal requirements associated with the legal structure or creation of an entity, drafting of any formation, or formation related documentation, and any form of secretarial or facilitation of the registration process.
- **Operation** of the particular legal person or corporate vehicle entails the assisting with the ongoing operations of the client. This includes any function that relates to planning or execution of any of the client's operations.
- **Management** includes performing any active role, or making decisions for the client's business, where such activity or decision-making steers the direction of the client's operations or business.



Application of terminology

Not included in the FIC's interpretation:

- Activities that relate solely to the **recording, or capturing of company data or information**, including book-keeping functions
- The **administrative submissions** of information or data for legislative purposes, such as the filing of tax returns
- Activities that **do not amount to decision-making** within the client's business activities
- Activities that **do not steer, impact or influence** the client's business operations
- **Statutory function – Liquidation or business rescue** (where the client under L/BR is an accountable institution, these obligations continue).

Terminology referring to nominee services

2

- **“Nominee”** – A person approved to act as a holder of securities or an ownership interest in the entity on behalf of other persons.
- Limited to the definition as set in the Companies Act – “a person that acts as the registered holder of securities or an interest in securities on behalf of other persons”

Who is the client?

- Where the TCSP acts as a nominee for an entity, that entity will be deemed to be their client.
- Where the TCSP arranges for a nominee to act on their client’s behalf, **both** the client and the person acting as the nominee are considered to be the TCSP’s client.
- This could include where the TCSP acts as the intermediary.



Application of terminology

Not included in the FIC's interpretation:

- Where an entity provides custodial services as required by law on behalf of a financial services provider
- A reminder – The focus on the definition set in the Companies Act, and on the activity of nominee in that context.

Terminology referring to trust services

3

- Creating and preparing for or carrying out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property.

“**Trusts**” include trusts created between parties (*inter vivos*) and includes trusts both established locally (i.e. in South Africa) and foreign trusts (i.e. trusts established outside of South Africa).

Trust arrangements **do not include**:

- Trusts created by a court order
- Trusts created by a testamentary disposition
- Trusts created for person under curatorship
- Trusts created by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund.



RISKS AND RED FLAGS



What makes a TCSP vulnerable to abuse?

- **Knowledge and expertise** in **creating, administering and managing trusts and other business entities** is particularly attractive to potential abuse.
- Legal persons can be used to attempt to **disguise beneficial ownership**, to provide an **appearance of legitimacy** and **create an air of respectability** for these customers and their newly created corporate vehicles.
- **Criminals** may seek opportunities to **retain control over criminally derived assets** while frustrating the ability of law enforcement to **trace the origin and ownership of the assets** by using TCSPs' services. Criminals see companies – often trusts and similar legal arrangements – as potentially useful vehicles to achieve this outcome.



What makes a TCSP vulnerable to abuse?

- **Misuse of shelf companies**, which can be formed by accountants, by seeking access to companies that have been “sitting on the shelf” for a long time. This may be in an attempt to create the **impression that the company is reputable and trading in the ordinary course** because it has been in existence for many years. Shelf companies can also add to the overall complexity of corporate structures, further concealing the underlying beneficial ownership of information.
- **“Gatekeeper function”** by providing potential access points into the financial system for criminals to do business with financial institutions without revealing their own identities
- Although the business of the TCSP may be legitimate, crime syndicates or individual criminals may seek out their services in the facilitation of ML, TF and PF. A TCSP may unwittingly become part of such ML, TF and PF attempts.



What makes a TCSP vulnerable to abuse? (cont.)

- **Multiple/different services** to their clients relating to the client's business, such as using auditing, legal services, accounting as well as entity creation (legal person or trust), administration and management. Multiple engagements across different services could **intensify the disguising of a potential criminal entity or trust** to such an extent that the **client's identity is mainly linked to the TCSP themselves**.
- **Disguising ultimate beneficial owners** through a **corporate structure**, to limit the detection of a sanctioned or designated person, an associated sanctioned person, a politically exposed person (PEP), such as a foreign PEP or domestic PEP, a prominent influential person (PIP) or a person linked to criminal activity.



Risk indicators: Inherent in the nature TCSP

- **Facilitating the movement of illegal proceeds** from a foreign client's country to South Africa. This is the primary reason why sufficient care and application of the mind is used to scrutinise client details to identify whether they are not a PEP. In these instances, a TCSP should satisfy themselves that adequate information is available to assess a client's source of funds and source of wealth as legitimate, with a degree of certainty that is commensurate with the risk profile of the client.
- **Companies** based in **foreign countries hiding the origin of their money**, while attempting to distance themselves from the source of funds and to avoid paying tax in South Africa.



Risk indicators: Service offering

- Multiple companies or trusts
- Professionals who scheme to disguise income
- Intermediaries or professionals
- Business opened for sole purpose of transferring funds to foreign bank account without legitimate reasons
- Transfer of funds to individuals from trusts and shell companies with no apparent reasons
- Forgivable loan or payments of multiple loan amounts for longer periods and in smaller amounts
- Same parties in multiple transactions frequently and with no apparent reasons
- Business has no commercial purpose
- Companies that has been making substantial losses



Risk indicators: Client

- Company is registered by a non-resident with no links or activities in South Africa or the jurisdiction where the company is established.
- Parties are native to, resident in, or incorporated in a high-risk geographic area
- Money flow inconsistent with business activities
- Refusal to provide information of themselves or beneficial owners
- Client transactions do not match their employment or business activities
- Complex structured of beneficial owners
- Concealing information around business structures or why the business is created



Risk indicators: Client (continued...)

- Adverse media including ML related or dishonesty convictions of client or close associates
- Anonymous business associate or owners or directors that have a lavish lifestyle exceeding known source of income
- Frequent changes in ownership, officers, beneficiaries, or trustees
- UBO are suspected designated individuals on a TFS list.

ML, TF and PF risk assessment

ML, TF AND PF RISK ASSESSMENT AND RISK RATING FRAMEWORK

Products and services

- Shell or shelf companies
- Trust payable with cash
- payable with cash
- Credit card

Delivery channels

- Direct relationship
- Working through intermediary
- Face to face or non-face to face

Location

- SA/foreign jurisdiction
- High-risk countries
- Client confidentiality in foreign jurisdiction
- Weak regulatory oversight

Client type

- Natural or legal person
- Complex structures
- Politically exposed
- Foreign politically exposed person (FPEP) or domestic politically exposed person (DPEP),
- Adverse information
- Negative media
- ML findings
- Transactional pattern

Other factors

- ML approach
- ML findings
- Sanctions
- Strategy of entity
- Regulatory fines in similar industries
- Learnings/typologies
- Transactions patterns



AMENDMENTS TO THE FIC ACT



Mutual evaluation report findings

- A large portion of the technical compliance deficiencies that South Africa is required to address involve amendments to the FIC Act, including the amendment to the Schedules to the FIC Act
- The amendment to Schedule 1 of the FIC Act, containing the list of accountable institutions falling within the scope of the FIC Act, addresses the scope issue that affect the customer due diligence recommendations
- The amendments to the FIC Act are technical in nature and do not substantially change the principles on which the customer due diligence provisions are based. The amendments, however, do result in the establishment of a stronger AML, CFT and PF regulatory framework



Legislative changes made to address MER findings

- General Law (Anti-Money Laundering and Terrorism Financing) Amendment Act amends the following laws:
 - The Financial Intelligence Centre Act, 2001
 - The Non-profit Organisations Act, 1997
 - The Trust Property Control Act, 1988
 - The Companies Act, 2008
 - The Financial Sector Regulation Act, 2017
- Addresses 13 of the technical compliance deficiencies (Recommendations 7, 8, 12, 15, 18 and 22 to 28)
- POCDATARA Amendment Act addresses two deficiencies (Recommendations 5 and 6)
- Remaining five deficiencies (Recommendations 1, 2, 14, 17 and 32) will be dealt with via non-statutory interventions.

Amendments relating to beneficial owner

- The definition of '**beneficial owner**' is amended to ensure that the definition encapsulates every natural person who is a beneficial owner of a client that is a legal person, partnership or trust – '**look through**' principle - means a natural person who directly or indirectly—
 - ultimately owns or exercises effective control of—
 - a client of an accountable institution; or
 - a legal person, partnership or trust that owns or exercises effective control of, as the case may be, a client of an accountable institution; or
 - exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and includes—
 - in respect of legal persons, each natural person contemplated in section 21B(2)(a)
 - in respect of a partnership, each natural person contemplated in section 21B(3)(b); and
 - in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e)
- Section 21B is amended to provide for instances where -
 - other legal persons, partnerships or trusts exercise ownership or control over the legal person
 - the partners in the partnership or, in the case of trusts, if the founders, trustees or beneficiaries are legal persons

Amendments relating to customer due diligence

- **Section 21C** to provide for instances where the accountable institution suspects that a transaction or activity is suspicious in terms of section 29 (STR) and the institution reasonably believes that performing the **CDD measures** in terms of **section 21C** will disclose to the **client** that a **STR will be made** to the FIC, it **may discontinue the CDD process and consider filing an STR**
- **Section 21D** of the FIC Act deals with the **CDD** process to be followed by accountable institutions in instances where **an STR report is made to the FIC**
- The **offences sections** of the Act that did not provide for administrative sanctions to be imposed for failing to comply with a particular section in the Act. These sections are now amended to include the option of **administrative sanctions as well as criminal sanctions**



Amendments relating to the risk management and compliance programme (RMCP)

Section 42 is amended to include that an accountable institution must:

- take into account the **proliferation financing risks** when developing its RMCP
- provide for the manner and processes by which **group-wide programmes** of an accountable institution for all its branches and majority-owned subsidiaries is implemented to enable the institution to comply with the requirements of the Act. This also extends to the **exchange of information within its branches or subsidiaries relating to the analysis of STRs**. Institutions are now also required to have **adequate safeguards to protect the confidentiality of information exchanged**.
- provide the way it will apply appropriate **additional measures to manage the risks if the host country does not permit the implementation of measures** required in terms of the Act.

Amendments relating to targeted financial sanctions

- The definition of “**proliferation financing**” or “**proliferation financing activity**” means an activity which has or is likely to have the effect of providing property, a financial or other service or economic support to a non-State actor, that may be used to finance the manufacture, acquisition, possessing, development, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery, and includes any activity which constitutes an offence in terms of section 49A;
- **Section 26A** is amended to provide for the resolutions of the United Nations Security Council to become **enforceable immediately** on the adoption of a resolution
- **Section 26B** prohibits any person from transacting with a person or entity identified in terms of a resolution of the United Nations Security Council. The amendment extends this prohibition to also **include persons who are acting on behalf of or at the direction of the designated person or entity.**



Amendments in the POCDATARA amendment Act affecting the FIC Act

- **Section 25 of POCDATARA Act is deleted**
- **Section 26A(2)** of the FIC Act referring to the exclusion of section 25 of POCDATARA Act is deleted
- **Section 28A** of the FIC Act is amended to delete the reference to section 25 of the POCDATARA Act

Amendment of the Schedules to the FIC Act

- The amendments to Schedules 1, 2 and 3 to the FIC Act were finalised and came into effect on 19 December 2022
- Amendments in respect of items 4 (EAAB) and 9 (provincial licensing authorities) of Schedule 2 came into effect on 31 December 2022
- The mutual evaluation found supervision, in particular, of designated non-financial businesses and professions (DNFBPs) to be weak while inspections were too infrequent or rare to be effective. South Africa had to address these identified deficiencies through these amendments.

Schedules amendments – [Pages - Home \(fic.gov.za\)](https://www.fic.gov.za/Pages/Home.aspx)

Schedule 1, 2 and 3 amendments which came into effect on 19 December 2022 [https://www.fic.gov.za/Documents/GG%2047596%20-%2029%20Nov%202022%20\(002\).pdf](https://www.fic.gov.za/Documents/GG%2047596%20-%2029%20Nov%202022%20(002).pdf)

Schedule 2 and 3 amendments

Schedule 2 – Supervisory bodies

As at 19 December 2022 – deletion of the following supervisory bodies

- Deletion of Item 5 – Independent Regulatory Board for Auditors
- Deletion of Item 6 – National Gambling Board
- Deletion of Item 8 – Law Societies

As at 31 December 2022 – deletion of the following supervisory bodies

- Item 4 – Estate Agency Affairs Board
- Item 9 – Provincial licensing authorities
- **The FIC will supervise the DNFBP sector, including CASPs (under Item 22); plus credit providers**

Schedule 3 amendments – reporting institutions

- Deletion of Item 1: Motor vehicle dealers and Item 2: Kruger rand dealers

Cash threshold reporting (CTR) amendments

- The amended Money Laundering and Terrorist Financing Control Regulations in respect of CTRs were published in the Government Gazette 47302 on 14 October 2022.

The amendments came into effect on 14 November 2022.

The key changes to the CTR framework approved by the Minister of Finance:

- The revision of the CTR threshold from **R24 999.99 to R49 999.99**
- Reporting period for CTRs revised from **two business days to three business days** from the date on which the accountable, or any of their employees, have become aware of the transaction
- Abolition of the requirement to report CTR aggregation
- Refer to the link for more information - [Media Release - CTR Regulations.pdf \(fic.gov.za\)](#)



International funds transfer reports (IFTRs)

THIS IS NOT A REPORTING OBLIGATION FOR TCSPS- only take note of this

- The promulgation of **section 31** introduces a new reporting stream; international funds transfer reports – IFTRs.
- Section 31 relates to the reporting of electronic cross-border transactions exceeding the prescribed threshold – which means that all electronic cross-border transactions of R20 000 and above must be reported.
- Section 56 deals with the failure of accountable institutions to report electronic funds transfers. Failure to report such transactions could result in the accountable institution being found guilty of an offence or may be non-compliant and subject to an administrative sanction.
- In addition, Regulation 29 deals with failure to report the prescribed information for IFTRs – this could result in the person/institution being found guilty of an offence or alternatively, can be found non-compliant and subject to an administrative sanction.

Summary of legislative changes

14 Nov 2022
CTR

CTR regulation 22B updated

- 2 days to 3 days
- R24 999.99 to R49 999.99
- CTRA deleted - if person is suspected of depositing linked amounts to avoid suspicion, must submit STR.

19 Dec 2022
Schedules

Schedule 1 updated

- Item 1 updated to include Trust advocates
- Item 2 updated TCSP includes company providers, accountants...
- Item 7A Co-operative banks ^(new)
- Item 11 Updated to now include a wider category of credit providers
- Item 16 Ithala removed (will be regulated under I11)
- Item 19 Amended to money or value transfer provider
- Item 20 High value goods dealers ^(new)
- Item 21 South African Mint company ^(new)
- Item 22 Crypto asset service provider ^(new)
- Item 23 Clearing system participant ^(new)

Schedule 2 updated

- Independent Regulatory Board for Auditors ^(removed)
- Legal Practice Council ^(removed)
- National Gambling Board ^(removed)

Schedule 3 updated

- KR Dealer ^{removed} (inc. to item 20)
- MV Dealer ^{removed} (inc. to item 20)
- Schedule 3A amended RE ^{new} PEP terminology
- Schedule 3B amended RE ^{new} PEP terminology
- Schedule 3C added (another PEP category) – PIP
- For 3A, 3B and ^(new) 3C preceding 12 months removed, once a PEP always a PEP.

31 Dec 2022
FIC Act

General Law Amendment Act approved

- New powers and functions for the FIC: Able to form public-private partnerships & Can produce forensic evidence regarding financial flows
- Can share information with auditor general. FIC can request information from organ of state databases.
- **s21B** - amended to include every natural person who is a beneficial owner of a legal person, trust or partnership. This is known as the "look through" (standardised UBO with Companies Act.)
- **s21C** - If the AI wants to submit a STR report and they reasonably believe that performing CDD will tipoff the client acting suspiciously, then it may discontinue the CDD process and file an STR.
- **s21D-** Als need to repeat the CDD process when an STR report is submitted to the FIC.
- **PEPs S21F, G & H and Schedules 3A, #B and 3C:** removal of FPPO and DPIP, replaced with Domestic Politically Exposed Person (DPEP,) Foreign Politically Exposed Person (FPEP) and Prominent Influential Person (PIP) - new category, inclusions into **S42(2)(l)**. PIP list can be updated by the MoF (**s79C**)
- **S42(2)** - Proliferation financing risk must be included in RMCP.
- **S42(2)(q)** How internal branches handle the exchange on information and confidentiality of information, group wide RMCPs, especially regarding STR analysis must be included RMCP.
- **S42(2)qA** - How Als will apply additional compliance process if host country doesn't implement FIC Act must be included RMCP.
- Powers given to the Minister to remove Supervisory Bodies (**s75**)

Definitions, inclusions

- Proliferation financing • PIPs • Beneficial owner

Administrative sanctions

- S49A failure ito S26B (TFS) • S50 failure ito S27 (access to info)
- S52 failure ito S29 (not just criminal) • S57 failure ito 32/45 (comply with request)
- S64 failure ito avoidance of reporting duties

Schedule 2 updated

- Estate Agency Affairs Board (removed)
- Provincial gambling boards removed

7 Jan 2023
POCDATARA / FIC Act

CTR regulation 22B updated

- 2 days to 3 days
- R24 999.99 to R49 999.99

Changes to TFS provisions in POCDATARA

- Deletion of S25 of POCDATARA (President and SAPS no longer involved.)
- Inclusion into s26A
- Reference removed in S28A
- Only 1 listing ito TFS, found on the FIC website. Per S26A
- Focus on the updating of TFS list to be "without delay."

1 Feb 2023
IFTR

IFTR implementation

- Section 31 in force
- R20 000 and above
- Cross Border electronic payments, including CMA
- Specific institutions who conduct cross border payments such as ADLAs and ADs to submit IFTR
- Reportable within 3 days
- Go Liv date 1 February 2023



FIC ACT OBLIGATIONS



FIC Act compliance obligations

Chapter 3 of the FIC Act details FIC Act compliance obligations:

ACCOUNTABLE INSTITUTIONS

- ① Registration

- ② Reporting

- ③ Governance

- ④ Risk management and compliance programme

- ⑤ Risk-based approach to customer due diligence

- ⑥ Training of employees

- ⑦ Record keeping



Registration

- New Schedule 1 items are required to register – deadline was 21 March 2023
- AIs that fail to register are non-compliant and subject to administrative sanction (s43B and s61A of the FIC Act)
- Register if you meet the definition of TCSP, regardless of profession. The activities you perform makes you a TCSP.
- Professionals who are employed by an accountable institution who performs activities of TCSPs are not deemed individual accountable institutions and do not have to register separately.
- Dual registration: In instances where you meet more than one item number



Customer due diligence

No anonymous clients

- Accountable institutions may not do business with an anonymous client or a client with apparent false or fictitious name. Obtain and record client information. Section 20A

Single transaction

Single transaction – transaction where amount is more than R5 000. MLTFC Regulation 1A

- Concluded on a once-off basis – no expectation that it will occur again
- Identify and verify clients

Accountable institutions must

- Identify all its prospective **clients**
- Identify all persons **authorised to act** on behalf of clients
- Verify identities
- In line with the accountable institution's risk management and compliance programme



Targeted financial sanctions

Section 28A of the FIC Act

An accountable institution must scrutinise client information against the targeted financial sanctions lists published in terms of:

- Section 26A of the FIC Act
- File section 28A report if in possession of terrorist property and freeze business (transactions)
- Accountable institutions may not establish business relationships with and/or conduct single transactions on behalf of sanctioned persons



Politically exposed persons and prominent influential persons

What is a PEP?

- Individual who holds or has held a prominent public function and has some level of influence and **control** over **public funds**, benefits and decision-making powers.
- Abuse of the role could result in corruption and bribery.
- Once a PEP, always a PEP

Domestic PEP is an individual who holds a position as listed in Schedule 3A

Foreign PEP is an individual who holds a position as listed in Schedule 3B

A politically influential person is an individual who holds a position as listed in Schedule 3C



Politically exposed persons and prominent influential persons (cont.)

TCSPs must determine whether

- A prospective client
- Existing client
- Beneficial owner of the client
- Person acting on behalf of the client

are **PEPs/PIPs**, or **immediate family members or known close associates**.

This must be documented in their RMCP.

- Required to conduct additional due diligence when dealing with PEPs and PIPs (section 21F and 21G of the FIC Act.)
- Understand ML risk attached to dealing PEPs and PIPs; **foreign PEPs are considered high risk**



Appointing a compliance officer

- Board of directors, or most senior management is responsible for FIC Act compliance
- Where this is a corporate entity, a person must be appointed to assist this management function (referred to in practice as a compliance officer)
 - Must have sufficient seniority
 - Must be competent, have integrity and screened against TFS lists (see Directive 8)



Appointing a compliance officer: Practical application

- Only one section 42A compliance Officer can be added per entity on goAML
- Added upon first registration with the FIC
- If compliance officer (CO) changes, entity needs to register a new user
- Registration and appointment done through goAML
 - Go to www.fic.gov.za and click on the button “Click here to Register or Report”.
 - Click on “Register as a person”

NB:

- Ensure that the required attachments are included before you click “submit”
- It will go through FIC’s validations
- You will receive an e-mail from the FIC stating whether application is approved or rejected with reasons.



Appointing a compliance officer: Practical application (cont.)

- Upon successful application then compliance officer logs on to goAML, using the Org ID and approved user credentials. You may update details and verify entity details.
- The compliance officer is now able to file reports with the FIC upon receiving a confirmation e-mail from the FIC confirming the successful updating of the institution's details.
- You may register additional delegates also known as money laundering reporting officers (MLROs)
 - MLRO can file STR,CTR, TPR and IFTR reports.

Remember:

- Make sure that your user details are kept safe.
- **Never** share user details, it is an offense as per Directive 1.



Training employees on the FIC Act and RMCP

- Training in terms of section 43 of FIC Act
- TCSPs must provide ongoing training to their employees on the FIC Act and their RMCP and:
 - must be able to demonstrate that training was done
 - training to be done in line with employees' role
 - training is ongoing, as and when changes are made to the RMCP



Transaction monitoring

An accountable institution must:

- Monitor transactions
- Establish source of funds to ensure that this is consistent with the client's business and risk profile
- Establish background and purpose of all complex transactions.

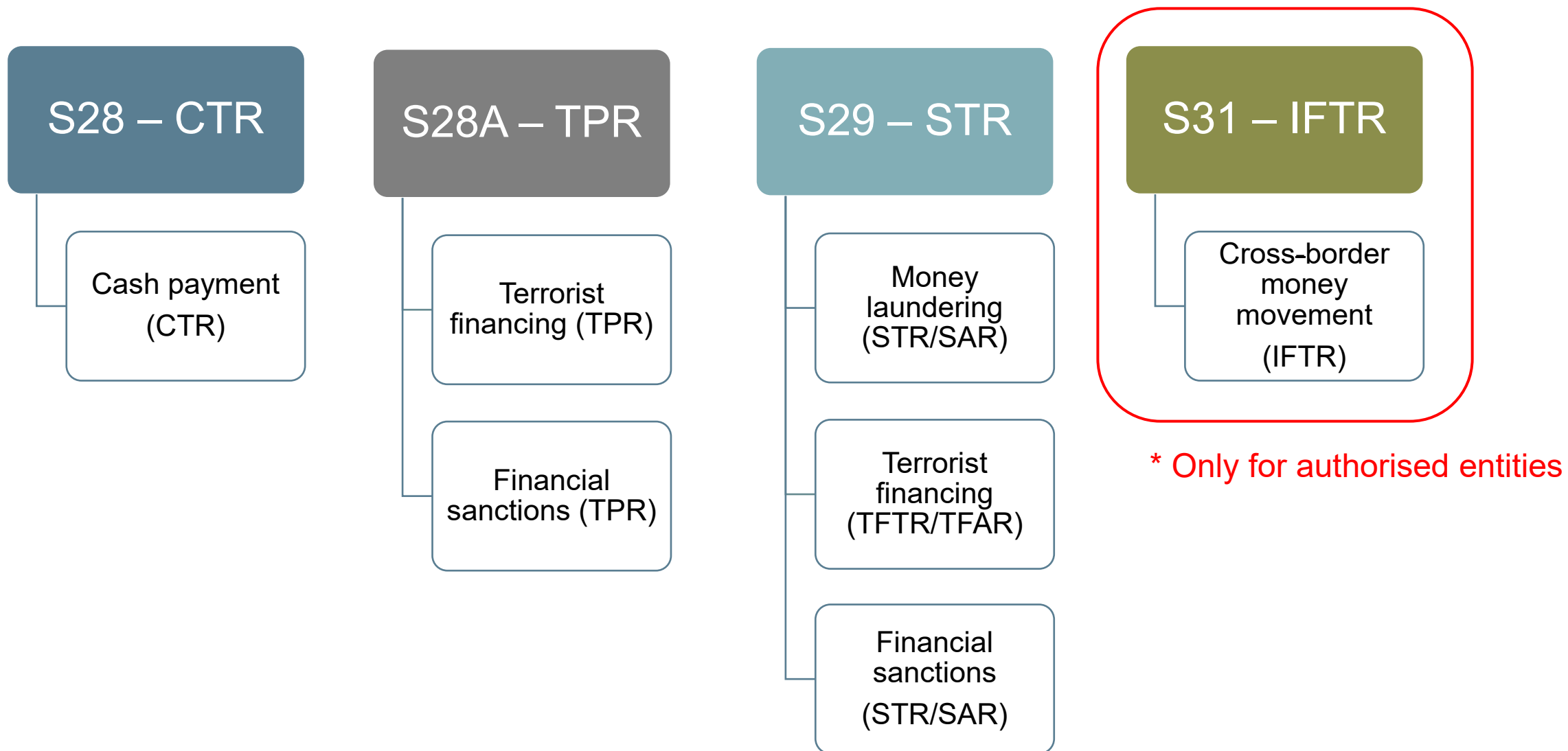
Doubts about veracity

- Where an accountable institution doubts veracity or adequacy of previously obtained information, the accountable institution must repeat the identification and verification steps.



REPORTING

Reporting





Cash threshold report

Section 28 in terms of the FIC Act

- **Triggered** by cash transactions above the threshold of R49 999.99
- Cash transactions – **Cash, coins, paper money** and **travelers' cheques** (not an EFT)
- Report **within three business days** of the transactions
- **Aggregation** no longer applicable

NOTE: It is prudent and expected that TCSPs monitor their bank accounts daily to identify if cash has been deposited into their bank account.



Cash threshold report (cont.)

CTR and STR


- Where multiple cash payments or a series of cash payments are conducted to avoid detection then an STR must be filed.
- It is therefore possible that a cash transaction could give rise to an obligation to report a cash threshold report in terms of section 28 of the FIC Act and a suspicious or unusual transaction in terms of section 29 of the FIC Act.



Suspicious and unusual transaction reporting (STR)

The person must file a section 29 report when that person knows or ought reasonably to have known or suspected that a transaction or activity relates to:

- Proceeds of unlawful activity
- Unusual sales purchases activity by client
- Facilitates the transfer of proceeds of unlawful activity
- Has no apparent business or lawful purpose
- May be relevant to the investigation of an evasion or attempted evasion of a duty to pay tax or attempted tax evasion
- An offence relating to the financing of terrorist and related activities
- The contravention of a prohibition under section 26B of the FIC Act
- Any structuring of a transaction or activity which is conducted for the purpose of avoiding giving rise to a reporting duty under the FIC Act.




Suspicious and unusual transaction reporting (STR) (cont.)

Threshold

- No monetary threshold applicable to the reporting of suspicious or unusual transactions.

STR


- An STR must be submitted when the suspicion is in respect of a **complete transaction** or **series of transactions** relating to the suspicion or knowledge of the proceeds of unlawful activity or money laundering **and** regarding a transaction or series of transactions relating to a contravention of prohibitions under section 26B of the FIC Act.



Suspicious and unusual transaction reporting (STR) (cont.)

Suspicious activity report (SAR)

- An SAR must be submitted when a suspicion relates to the proceeds of unlawful activity, or money laundering activity or a contravention of prohibitions under S26B of the FIC Act:
 - Where the report relates to an activity which **does not involve a transaction** between two or more parties
 - In respect of a transaction or a series of transactions about which enquiries are made but which has **not been concluded**.
 - In respect of a transaction which has been **incomplete, interrupted, aborted, abandoned** and ultimately **not concluded**



Suspicious and unusual transaction reporting (STR) (cont.)

Inability to conduct customer due diligence

Section 21E – An accountable institution must consider submitting a section 29 report to the FIC should they be unable to:

- Establish and verify the identity of the client and other relevant persons, in terms of their risk management and compliance programme (RMCP)
- Obtain information about the business relationship with the client in terms of their RMCP
- Conduct ongoing due diligence on the client in terms of their RMCP.



Time periods and transaction monitoring

Regulation 24

- A section 29 report must be sent to the FIC **as soon as possible** after a person became aware of the facts which give rise to a suspicion
- Must **not be longer than 15 days**, excluding Saturdays, Sundays and Public Holidays.



Implications of filing a section 29 report

Continue transacting with a customer?

- Section 33 of the FIC Act – A **reporter may continue** with and carry out a transaction unless the FIC directs the reporter not to proceed with the transaction.
- Section 34 of the FIC Act – The **FIC may direct the institution in writing not to proceed** with a transaction for a prescribed period – 10 days.

Tipping off

- A person involved in the making of a report **may not inform anyone**, including the customer or any other person associated with a reported transaction, of the contents of a suspicious transaction or activity report or even the fact that such a report has been made.



Terrorist property reporting (TPR)

Section 28A of the FIC Act

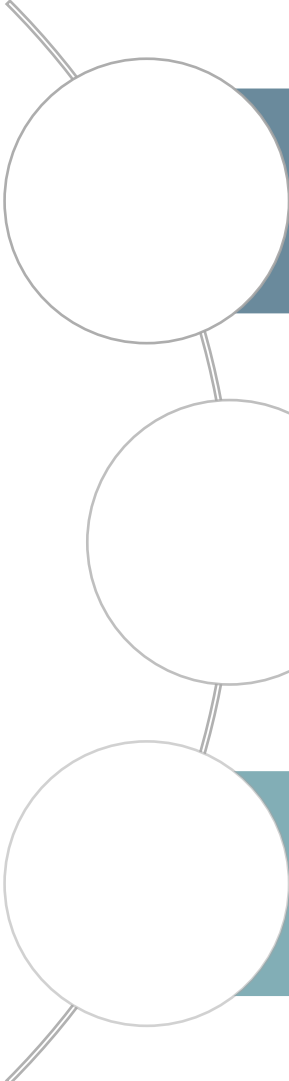
An accountable institution which has in its **possession** or under its **control property owned or controlled by or on behalf of, or at the direction of**

- A terrorist
- A sanctioned person

must within **five days** of becoming aware **report** that fact and the prescribed particulars to the FIC.

In addition, the **property must be frozen** (i.e. do not proceed with any transactions with this client).

Targeted financial sanctions: FIC Act obligations sequencing



Section 28A – Scrutinise information concerning a client
Section 26A – TFS list published on the FIC website

Section 26B – Freeze property that is linked to a designated person, terrorist activity or proliferation financing activity

Section 28A – File a Terrorist Property Report with the FIC

Terrorist property reporting obligations

S26 A

- Sets out the TFS regime in respect of the UN Security Council Resolutions (under Chapter 7)
- Includes terrorist financing, proliferation financing and other crimes against humanity
- Automatically adopted in the SA framework once issued (ie. without delay)

S26B

- Sets out the prohibitions in relation to acquisition, collection, use, control, providing or making available any form of property, financial or other services or economic support to a listed person
- Applies both directly, indirectly, in whole or in part, by any means

S26C

- Sets out permissible financial services
- The Minister must provide explicit consent in writing

S28A

- Requires a TPR to be submitted when client is on a TFS list (property possession or under control)
- Scrutinise client and potential client information against TFS list



Targeted financial sanctions: Scrutinise information concerning a client

Information concerning a client includes but is not limited to information on:

- The client
- The person acting on behalf of the client
- The client acting on behalf of another person
- A beneficial owner of the client or a party to a client's transaction
- Including a party who benefits in any way from a client's transaction.

Information that must be used for scrutinising includes the person's:

- Name
- Identification number
- Place of birth
- Address
- Date of birth
- Nationality
- Entity's name and other information
- Other information may include but is not limited to the country of residence in the case of a natural person

Targeted financial sanctions: Process to freeze property

- If an accountable institution identifies a designated person or entity, they must immediately, without delay cease any activity in relation to that designated person or entity. “Automatic obligation to freeze.”
- No need to obtain any consent from the FIC and no need for a court order
- Risk management and compliance programme (RMCP) must provide for the process of freezing of a designated person’s or entity’s property
- Freeze applies to all property and/or services provided to designated person





Record keeping

Accountable institutions must keep records of:

- Client information and transaction information
- Business relationship
- Reports submitted to the FIC
- Five years from date of termination of relationship, conclusion of transaction and or submission of a report
- Electronic and hard copies
- The accountable institution can make use of third-party storage providers
- Records must be accessible and kept safe

Recommended links: Guidance

PCC 6A: TCSPS

[!\[\]\(34b4f260a8587d2e97eeaee361cc357b_img.jpg\) Public Compliance Communication 6A](#)

Draft PCC 5D: Registration with the FIC

[!\[\]\(6605b201d6f14d9b3bcb8ab5f274d107_img.jpg\) public Compliance Communication 5D](#)

PCC 53: RMCP

[!\[\]\(fa6f3af6bfa46c5d4a2d362681095beb_img.jpg\) PUBLIC COMPLIANCE COMMUNICATION](#)

Guidance Note 7: Application of the FIC Act

[!\[\]\(e8fb589d58dad1692debababa5e928b6_img.jpg\) 171002_FIC Guidance Note 07.pdf](#)

Guidance Note 7A: Pending updates relating to RMCP

[!\[\]\(e1c624d4757f08486e89482c18364c17_img.jpg\) 220401_FIC Guidance Note 07A final.pdf](#)

FATF guidance for accounting profession

[!\[\]\(4688aadfd656ded00cd6bdfae55089a9_img.jpg\) GUIDANCE FOR A RISK-BASED APPROACH FOR THE ACCOUNTING PROFESSION](#)

Companies Act

[!\[\]\(e3f255517d37bb309a3a931ec4849e6a_img.jpg\) Companies Act 71 of 2008](#)





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THANK YOU