



## Laws and Regulations **Practical implementation**

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# Agenda

## 1. AML – introduction to financial crime

## 2. Legislative interventions

- Financial Intelligence Centre Act - FIC
  - Accountable institutions
  - BO
- Companies Act - CIPC
- Trust Property Control Act - Master

## 3. Questions

# Introduction to AML

## Financial Crime

### Types of crime

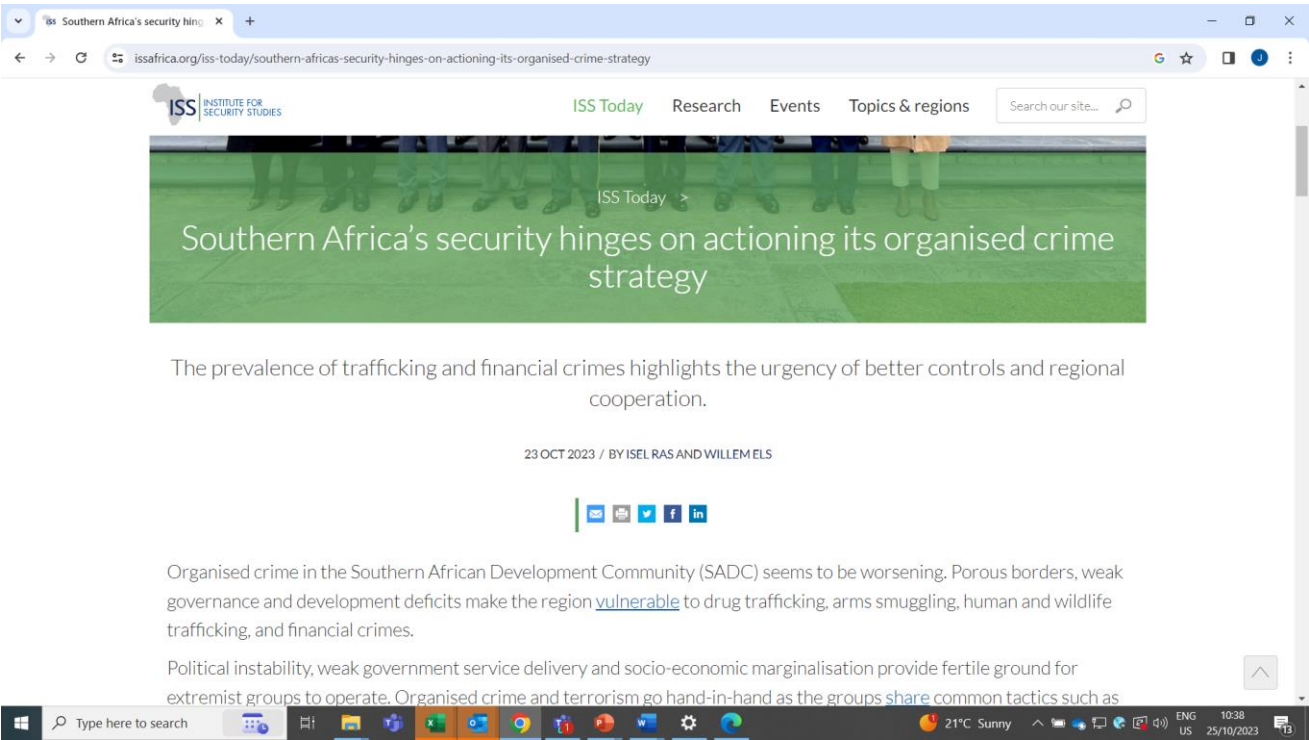
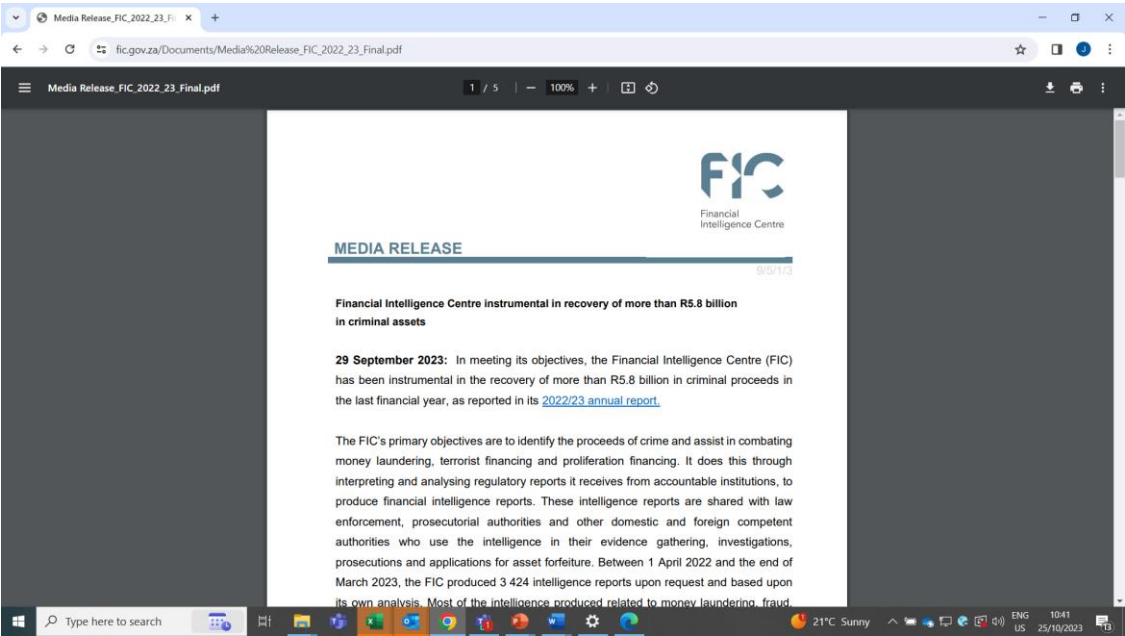
1. Money laundering
2. Terrorism financing
3. Bribery and corruption
4. Weapons proliferation





# Introduction to AML

## Why important



# Introduction to AML

## Money laundering

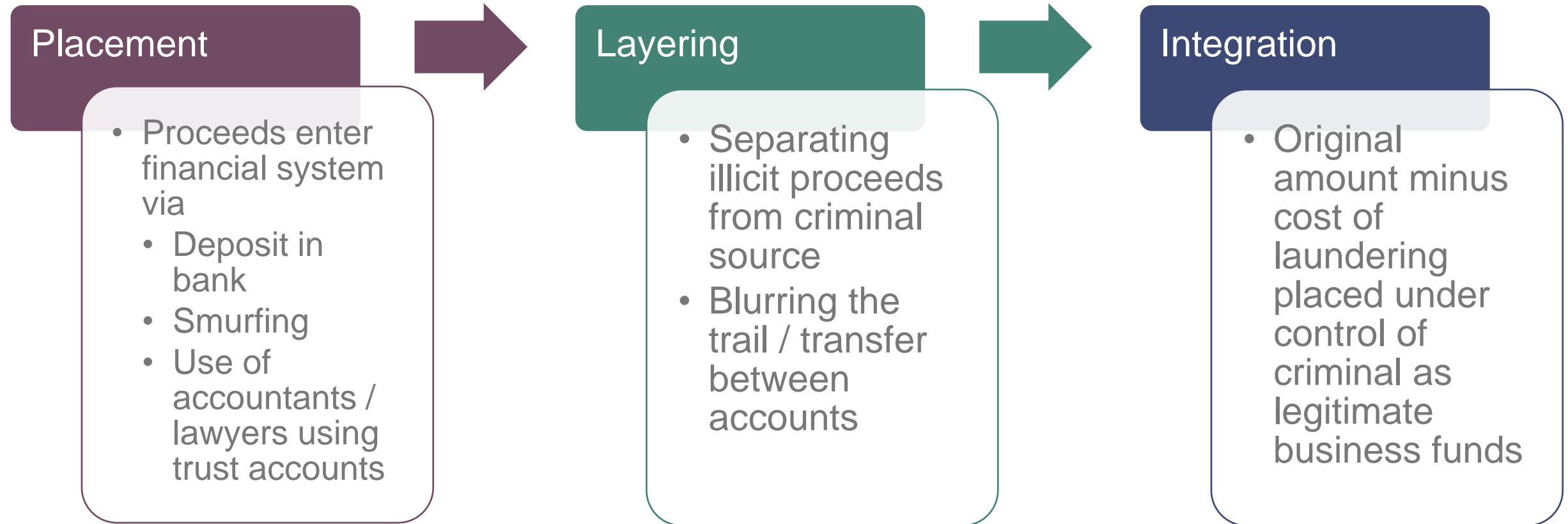
Money laundering is the process of making illegally obtained or "dirty" money appear legal or "clean" by passing it through a complex sequence of financial transactions. This typically involves hiding the illicit origins of funds to make them difficult to trace, often through banks, businesses, or other financial institutions.



# Introduction to AML

## How is money laundered?

### Process



# Introduction to AML

## Typologies

### Gatekeepers

Use gatekeepers (lawyers, accountants) to obscure identify of beneficiaries & source of illicit funds

### Banks

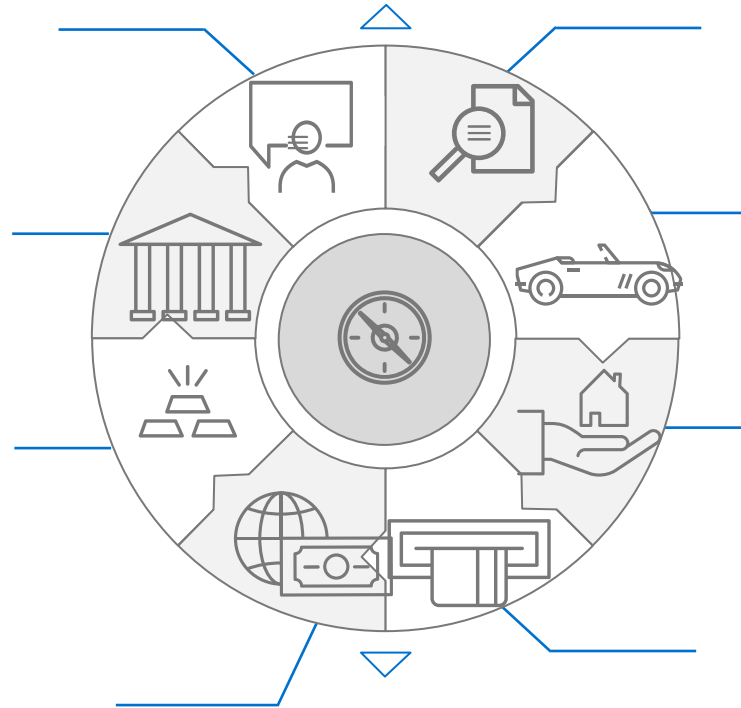
Use of off-shore banks including trust company service providers

### Commodity exchange

Heroin for gold

### Virtual assets / new payment technologies

Exploit regulatory gaps and lack of supervision of virtual asset service providers



### Gaming

Buying winning ticket from legitimate winner

### Valuable assets

Purchase of valuable assets

### NPO

abuse – raise terrorist funds, obscure source and nature

### Smurfing

high number of transactions, deposit, withdrawal, transfer



# Financial crime

## Terrorism financing

### Financing of terrorism

- Solicitation, collection and provision of funds (money starts of clean) and other assets with the intention that it may be used to support terrorist acts, terrorist organisations or individual terrorist.
- Funds may stem from legal and illicit sources
- Not conceal source of funds but rather the financing and nature of the activity being financed

**AML goal:** Prevent, detect and punish illegal funds entering the system and funding terrorism



# Introduction to AML

## Terrorism financing



# Introduction to AML

## Proliferation financing

### Proliferation financing

- Act of providing funds / financial services which are used
- for the manufacture, acquisition, possession, development, transport or use of
- nuclear, chemical or biological weapons
- in contravention of laws or international obligations

Rapid increase in the number or amount of something

### Examples

- Nuclear weapons
- Chemical and biological weapons
- Ballistic missiles



# Introduction to AML

## Bribery and corruption

### Bribery

- Offence which concerns the offering or accepting of gratification to gain an illicit advantage
- At least 2 persons, offeror and person accepting

### Corruption

- Abuse of position of trust or the improper performance of a relevant function in order to gain undue advantage
- Offers, payments, promises or gifts to another person to induce the recipient to misuse official position

### Gratification

- Financial or non-financial benefits
- Directly or indirectly



## Practical implementation **Legislative interventions**

December 2023

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# 01

Financial Intelligence Centre Act - FIC

# FIC

## Legislative changes to address South Africa's greylisting



Financial Action Task Force – National Treasury to implement changes to address the deficiencies identified in the Mutual Evaluation Report.



One of the strategic deficiencies identified by FATF included the improvement of risk-based supervision of Designated Non-Financial Businesses and Professions (DNFBPs) and demonstrated that all AML/CFT supervisors apply effective, proportionate, and effective sanctions for noncompliance.



Resulted in FIC Schedule 1 amendments

Accountants and Auditors

## Schedule 1 – Accountable Institutions

### Amendments in terms of the General Laws Amendment Act 2022

#### What is an accountable institution?

2(a) A person who carries on the business of preparing for, or carrying out, transactions for a client, where—

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).

(b) A person who carries on the business of—

- acting for a client as a nominee as defined in the Companies Act, 2008; or
- 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 trusts

(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 – Accountable Institutions

PCC6A

### Organisation of contributions

- Assisting clients to raise capital/funding for client business
- Through advising on sources of funding or liaising with donors/investors

### Creation

- Assisting client on registration/admin process to register legal person / corporate vehicle with government organisations to start trading
- Incl. advise on legal requirements/creation of the entity, drafting of formation documents, or secretarial facilitation of registration

### Operation

- Assisting with ongoing operations including planning/execution

### Management

- Active role or making decisions for client's business (steers direction)

# FIC

## Schedule 1 - Amendments

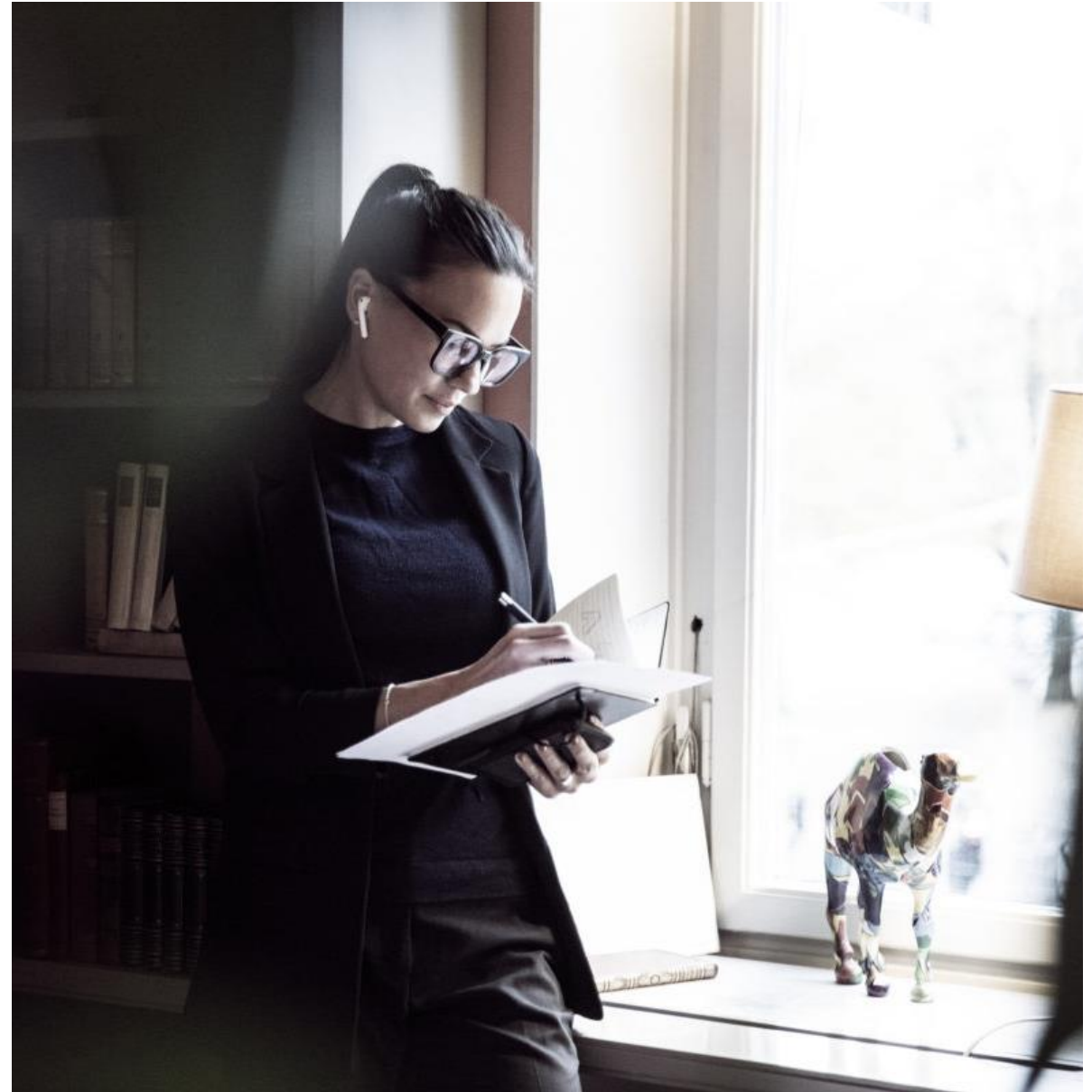
### Does not include:

- Recording, and capturing of company data or information, including book-keeping
- Administrative submissions of information or data for legislative purposes, e.g. filing of tax returns
- Activities that do not amount to decision-making in the client's business
- Activities that do not steer, impact, or influence the client's business operations
- Fulfilling of statutory function, specific liquidation of entity or business rescue

### Trusts:

Does not include:

- Testamentary trusts
- Trusts created by court order
- Trusts created for person under curatorship
- Trusts created by trustee of a retirement fund in respect of benefits payable to beneficiaries of retirement fund





# FIC

## Schedule 1 – Amendments

### Accountable Institutions



### Identify services

#### Obligations: ↗

- a) Registration with the FIC (90 days to register)
- b) Appoint a person responsible for compliance
- c) Develop a risk management and compliance programme
- d) Implement a risk-based approach to CCD
- e) Train employees on how to comply
- f) Where required – submit regulatory reports (Cash transactions above R49 999.99 / suspicious transactions)
- g) Record keeping
- h) Directive 8 – Screen employees based on competence & and integrity (include Targeted Financial Sanctions List)

# FIC

## AI obligations

### Risk Management Compliance Programme (RMCP)

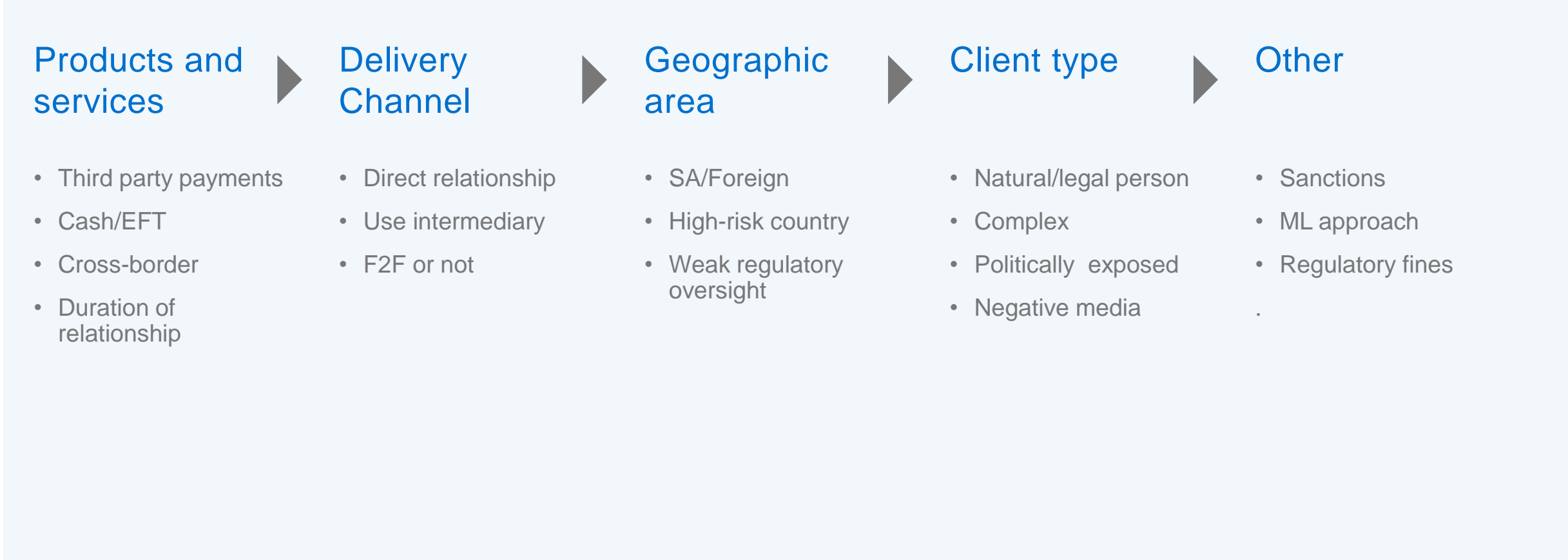
- How you are going to implement the FIC Act
- Must be approved
- When reviewed and evidence
- Available to all staff
- Detail on how to send RMCP to FIC when required
- Compliance officer
- Training

AI must identify, assess, monitor, mitigate, and manage the risk



# FIC

## Risk assessment and rating



# FIC

## Considerations

### Deadline

- Registration deadline - 20 March 2023
- Directive 6 Online submission of risk and compliance return – 31 May 2023
- Risk and Compliance Management Programme – on demand to be submitted to FIC

### Other considerations

- Risks relating to IRBA - Individual Annual Return
- Risk of non-compliance with the IRBA Final Rules for improper conduct
- SAICA and IRBA
  - Code of Conduct – risk of not complying with section 115 - professional behaviour and complying with relevant rules and regulations

Reputational risk - FIC publishes all fines on their website

### Penalties

- Possible penalties – June 2024?
- Administrative sanctions
  - (a) A caution not to repeat the conduct which led to the non-compliance
  - (b) A reprimand
  - (c) A directive to take remedial action or to make specific arrangements
  - (d) The restriction or suspension of certain specified business activities; or
  - (e) A financial penalty not exceeding R10 million in respect of natural persons and R50 million in respect of any legal person.

# FIC

## Beneficial owner

### Beneficial owner

- means a natural person who directly or indirectly:
    - ultimately owns or exercises effective control of:
      - (aa) a client of an accountable institution; or
      - (bb) 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:
- (i) in respect of legal persons, each natural person contemplated in section 21B(2)(a);
  - (ii) in respect of a partnership, each natural person contemplated in section 21B(3)(b); and
  - (iii) in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e).



## AI obligations in relation to BO

### Additional CDD in terms of Section 21

#### Accountable institutions must

- Identify all its prospective / current **clients**
  - Identify all persons **authorised to act** on behalf of clients
  - Verify identities
  - (Current) trace accounts / transactions in course of relationship
  - In line with the accountable institution's risk management and compliance programme
- 
- If client is legal person (S21B2), partnership (S21B3) or trust (S21B4) must also establish nature of client's business and ownership and control structure of client

## AI Obligations in relation to BO

Different forms of legal persons and classes of BO (Draft PCC 121 Relating to BO and the application of section 21B)

Legal person	Controlling ownership interest	Effective control through other means	Management
Unlisted co	Natural person owns controlling shares	Nominee shareholding of controlling shares	Directors
NPC	Beneficiaries	Directors	Directors
CC	Natural person owns controlling interest	Each member	Each member
Co-op	Natural person owns controlling member shares	Each member or as delegated	Management
Registered NPO	Founder & beneficiaries	Founder	Management
PBO	Founder & beneficiaries	As per founding document	Management
Associations	Holder of controlling ownership interest	As per founding statement	Management

# FIC

## Guidance

### Helpful Links

Requirements		Reference	Guidance
Register with the FIC		Section 43B, Regulation 27A	<a href="#">Directive 2 of 2014</a> <a href="#">Draft PCC 5D</a> <a href="#">GoAML registration</a> <a href="#">Registration for accountants</a>
Governance of AML & CFT		Section 42A	<a href="#">Guidance note 7</a>
Customer due diligence		Sections 20A, 21, 21A to 21H	<a href="#">Guidance note 7</a>
Training		Section 43	<a href="#">Guidance note 7</a>
Risk management and compliance programme		Section 42	<a href="#">Guidance note 7</a> <a href="#">PCC 53</a>
Reporting	Suspicious and unusual transactions (STR)	Section 29 Regulations 22, 23, 23A, 23	<a href="#">Directive 5/2019</a> <a href="#">Guidance note 4B</a>
	Cash threshold reporting (CTR)	Section 28 Regulations 22, 23, 23A, 23	<a href="#">Directive 3/2014</a> <a href="#">Guidance note 5C</a>
	Terrorist property report (TPR)	Section 28A Regulations 22, 23, 23A, 23	<a href="#">Guidance note 6A</a>
Recordkeeping		Sections 22,22A,23,24 Regulation 20	<a href="#">Guidance note 7</a> <a href="#">Recordkeeping</a>

## Companies Act - CIPC

## Beneficial owner

In respect a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through:

- a) The holding of **beneficial interests** in the securities of that company;
- b) The exercise of, or control of the exercise of the voting rights associated with securities of that company;
- c) The exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company;
- d) The holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;
- e) The ability to exercise control, including through a chain of ownership or control, of:
  - i. A juristic person other than a holding company of that company;
  - ii. A body of persons corporate or unincorporated;
  - iii. A person acting on behalf of a partnership;
  - iv. A person acting in pursuance of the provisions of a trust agreement; or
  - v. The ability to otherwise materially influence the management of that company

## Beneficial interest

When used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship, or otherwise, alone or together with another person to:

- a) receive or participate in any distribution in respect of the company's securities;
- b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities, but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act 45 of 2002).



# CIPC

## Categorise

### Affected company

- Public company
- State-owned company
- Private company - where transfer of securities exceeded 10% in the last 24 months
- Private company that is controlled by an affected company or is subsidiary of affected company

### Non-Affected company with beneficial ownership

BO refers to the natural person that is possibly not reflected as a shareholder but ultimately benefits from the company (receives dividends, control in terms of decision making etc)

- Trusts, other companies

### Non-Affected company with no Beneficial Ownership

Legal ownership:

- CIPC states “that which is known”
- shareholders in company, members of CC s

# CIPC

## Beneficial owner register

### Affected Company

S56(7)(aA)

Must establish and maintain a register of persons who hold **BI** ≥5% of class of securities

PLUS extent of **BI** and update register

AND publish in AFS list of persons who hold BI ≥5% plus extent of BI

- Include in **BI** register BO information
- Listed companies – not file (other providers)



## Reg 32A

AFFECTED CO register of disclosure of **BI**

Establish and maintain a register of persons with BI ≥5% of the total number of securities of that class of securities.

### Information:

- Natural person, name, ID, date of birth, or passport, country of issue and country of birth, if non-SA
- Juristic person – full name and registration nu
- Business, residential, or postal address
- Email address
- Confirmation as to the participation and extent of the person's beneficial interest in the total number of issued securities of that class, whether directly or indirectly, **ownership of a company** or exercising effective control of such company

## Reg 121A

- AFFECTED Co must file with the Commission certified copy of register of disclosure of BI within 10 business days after updating

# CIPC

## Beneficial owner register

Not affected co

### S56 (12)

Must file a record with CIPC regarding individuals who are the BO of the co and update info



### Reg 32B

Must file with CIPC CoR form with a copy of the securities register within 10 business days after updating the securities register

### S50 (3A)

Must record in the securities register prescribed information re natural persons who are BO of the company



### Reg 32(3)

Any securities held by 1 person for the BI of another – included in the securities register

- a) record of all disclosures etc
- b) record of each BO incl.
  - a. Full name, date of birth, id
  - b. Address, res & postal
  - c. Email address
  - d. Confirmation -scope of participation (extent of ownership / effective control)

# CIPC

## Beneficial owner register

### Summary

#### Not affected companies

- Submit BO information for BO more than 5% (if shares) but also look at rest of definition
- Also include BO information in securities register (all)
- If no BO / BI then only include securities register

#### Affected company

- Keep BI register
- Include BO information in BI register
- Affected listed and non listed – must submit BI register
- BO information to be obtained from other sources

External companies / CC – CIPC include although not included in the GLAA / Regulations

# CIPC

## Beneficial owner register

### Annual returns

#### Beneficial ownership information

- Entities incorporated after 24 May 2023 - 10 days after incorporation
- Entities incorporated before 24 May 2034 – part of AR
- From 11 December 2023 - E-services
  - Soft implementation when submitting AR,
  - Asked whether filed BO register

#### Penalties

Compliance notice  
Possible administrative penalty

#### Turnover validation

- From 11 December 2023 - E-services
  - Soft implementation when submitting AR,
  - Validate turnover with iXBRL submission revenue figure
  - When capturing turnover – stop at decimal point, no rounding up or down

#### 2024

From 1 April 2024 will be implemented on E-services,  
Self-service terminals and Bizportal  
Hard implementation when submitting AR  
Cannot continue if not submit the BO register or failed turnover validation

## Trust Property Control Act - Master's Office



# Master's Office

## Beneficial ownership

### Trustee duties

- Trustee must
  - Establish and record BO of trust
  - Keep record of prescribed information relating to BO of trust
  - Lodge a register of prescribed information on the BO
  - Keep the information up to date



# Master's office

## Beneficial ownership

### Who is a Beneficial Owner ?

- Natural person who **directly /indirectly ultimately owns** trust property
- Natural person who **exercises effective control** of the administration of the trust arrangements
- **Founder** or
  - If founder legal person or person acting on behalf of the partnership, **natural person who directly or indirectly owns or exercises effective control**
- **Trustee** or
  - If Trustee a legal person or person acting on behalf of the partnership, **natural person who directly or indirectly owns or exercises effective control**
- Each **beneficiary referred to by name** in the trust instrument or
  - If beneficiary is a legal person or person acting on behalf of partnership, **natural person who directly or indirectly owns or exercises effective control**

# Master's office

## **Beneficial ownership**

### How to submit

- Master – excel spreadsheet

# Master's office

## Beneficial ownership

### Deadlines and penalties

- Deadline - 1 April 2023
- Non-compliance by trustees
  - Penalty of up to R10m and / or
  - Imprisonment of up to 5 years



# Questions

Practical implementation - BO

# Contact

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