



SAICA

**Financial Intelligence
Centre Act amendments**

1. Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an independent inter-governmental body that promotes policies and standards for combating money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction.

FATF is responsible for setting international standards and the promotion of legal, regulatory and operational measures on combating illegal activities, including money laundering and terrorist financing and other related threats to the integrity of the international financial system. South Africa has been a member of the FATF since June 2003. Mutual evaluations are peer reviews that are used to assess countries' level of compliance to the anti-money laundering (AML) standards and identify steps necessary for them to increase their effectiveness. The findings of mutual evaluations are geared to assist member countries in strengthening their financial system, thereby enhancing the integrity of their financial system.

South Africa was subject to a mutual evaluation of its AML system by the FATF between April 2019 and June 2021 and the final Mutual Evaluations Report (MER) was finalised and published in October 2021). FATF concluded that South Africa “has a solid legal framework for combatting money laundering and terrorist financing but significant shortcomings remain.”¹FATF identified significant findings and made recommendations on areas of improvement. This means that South Africa needs to implement recommendations from the report, or the country could be placed on the FATF “grey list”. Being grey listed by the FATF means that a country may threaten the international financial system and grey listing may have dire consequences on its reputation, economic trade, and transactions with other countries.

2. Financial Intelligence Centre Act, 38 of 2001 and recent amendments

The Financial Intelligence Centre (FIC) in response to recommendations made by FATF has amended the FIC Act and related schedules.

The Minister of Finance amended Schedules 1, 2 and 3 to the FIC Act with effect from 19 December 2022. The amendments were done in terms of sections 73, 75 and 76 of the FIC Act which gives the minister power to amend the list of accountable institutions, the list of supervisory bodies and the list of reporting institutions, respectively.

Schedule 1 – List of accountable institutions has been amended to include new categories of businesses. The list of supervisory bodies in Schedule 2 was amended and all reporting institutions listed in Schedule 3 of the FIC Act have been deleted.

¹ <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html>

2.1 Schedule 1 Amendments ²

The following amendments needs to be considered by SAICA members and associates and where applicable Chartered Accountants (SA), Associate General Accountants (AGA(SA)) and Accounting Technicians (AT(SA)) that fall within the scope of Schedule 1 would need to meet the requirements of the FIC Act.

- 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).
 - (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
 - (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).

The Draft Public Compliance Communication (PCC) No. 6A, Guidance on Trust and Company Service Provider³s for the purpose of Schedule 1 of the FIC Act was released for public comment and does provide the following definitions:

- **“A person”** which 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.
- **“Business”** is that of a commercial activity or institution, as opposed to a charitable undertaking or government institution. Therefore, persons who are appointed as providing TCSP functions on an occasional basis, or who perform this function in a personal capacity, as opposed to doing so on a commercial basis as a regular feature of their business for clients are not required to be registered as a TCSP
- **“Creation** includes the registration or administrative processes with relevant government organisations for the client to commence with trading using the type of institution.
- **Operation** of the company entails the assisting with the daily operations of the client, and

² [Schedule 1: List of accountable institutions](#)

³ <https://www.fic.gov.za/Documents/221213%20Draft%20PCC%206A%20TCSP%20final.pdf>
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- **Management** would entail managing the company, for example, being on the board of management and making management decisions regarding the company.
- **Trust** definition excludes
 - Trust created by a testamentary disposition
 - Trust created by court order
 - Trust 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.”

SAICA has submitted comments⁴ on the Draft Public Compliance Communication and requested further guidance.

3. Responsibilities of accountable institutions

The amendments to the FIC Act broaden the scope of accountable institutions thereby including categories of institutions, such as “co-operative banks, crypto asset service providers, high-value goods dealers, the South African Mint Company, trust and company service providers, and payment clearing operators.” New and old accountable institutions are required to fulfil certain FIC regulatory requirements, including the following:

- Register with FIC
- Submit regulatory reports to the FIC
- Implement a risk-based approach to customer due diligence
- Develop a risk management and compliance program (RMCP)
- Record-keeping controls
- Targeted financial sanctions controls aimed at terrorist financing
- Targeted financial sanctions controls aimed at proliferation financing (section 26A, 26B and 26C of the FIC Act)
- Prominent influential person controls
- Implement a compliance function and appoint a person responsible for compliance
- Train employees on how to comply with the FIC Act

4. Guidance

To assist accountable institutions in understanding their obligations, the FIC has provided various guides and communication.

- Reference Guide for all Accountable Institutions⁵ : This guide sets out all the requirements and where the accountable institution can obtain FIC guidance to assist in meeting the requirements.

⁴ [SAICA Comments on the Draft Public Compliance Communication 6A](#)

⁵ [Reference guide for all accountable institutions](#)

- Public Compliance Communication No. 53 on the Risk Management and Compliance Programme⁶ in terms of section 42 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) for Designated Non-Financial Business and Professional.
- Guidance Note 7 on the implementation of various aspects of the Financial Intelligence Centre Act, 2001⁷
- Webinar - SAICA⁸ has hosted a webinar that outlines the responsibilities of accountable institutions.

5. Offences and Penalties

Non-compliance with the FIC Act may lead to imprisonment up to 15 years or fines up to R100 million.

6. Effective date

The amendments became effective on 19 December 2022.

7. Transitional Provisions

Although there is no formal transitional provisions mentioned in Schedule 1, the FIC in a media release⁹, dated 30 November 2022 stated:

“In the first 18 months from the date of commencement of the amendments, the FIC and supervisory bodies will focus on entrenching the FIC Act risk and compliance provisions and implementation among the new sectors in Schedule 1 to the FIC Act. Supervisory bodies will conduct inspections and, where warranted, issue remedial administrative sanctions, based on a risk-based approach, to correct identified areas of non-compliance. In respect of the new sectors, the FIC and supervisory bodies do not envisage issuing financial penalties for non-compliance with the FIC Act during the transitional 18-month period.”

⁶ [Public Compliance Communication No 53](#)

⁷ [Guidance note 7](#)

⁸ SAICA webinar - <https://vimeo.com/webinars/events/2ead7c4b-59d7-41b9-b622-21483e2c85a3>

⁹ [Media release, dated 30 November 2022](#)