



Financial  
Intelligence Centre

# Presentation on the Financial Intelligence Centre Amendment Bill, 2016

September to October 2016



# DISCUSSION POINTS

- **Status of the Financial Intelligence Centre Amendment Bill**
- **Key changes to the FIC Act when the amendments take effect**
- **Topics identified where guidance may be required**
- **Way forward to bring the amendments into operation**
- **Amendments to Schedule 1 and Schedule 3 of the FIC Act**



## Where we are in the process

- Parliament has passed the Financial Intelligence Centre Amendment Bill
- Parliament has referred the Bill to the President for assent and signature
- When the President signs the Bill it becomes an Act
- The Minister of Finance will bring the Act into operation after the President signs it into law



# Key changes to the Act

- Full range of customer due diligence measures:
  - ✓ Understand and obtaining information about the client
  - ✓ On-going due diligence
  - ✓ Persons in prominent positions
  - ✓ Control structure and Beneficial Ownership
  - ✓ Obligation to keep records
- Risk Management and Compliance Programme
- Enhancing certain administrative and enforcement mechanisms
- Implementation of the UN Security Council Resolutions



# Key changes: Risk based approach to customer due diligence

- The application of a RBA means that accountable institutions should identify, assess and understand its ML/TF risks in respect of the products and services it offers to clients
- An accountable institution should then apply its knowledge and understanding of its ML/TF risks when developing the control measures to manage and mitigate the risks identified
- Where higher risks are identified, accountable institutions are to take enhanced measures to manage and mitigate the risks
- Simplified measures may be applied where lower risks have been identified
- All of the above must be documented in the accountable institution's Risk Management and Compliance Programme



## Key changes: Risk based approach to customer due diligence (cont.)

- Accountable institutions would have more flexibility to exercise judgement in determining the extent and nature of the information required for CDD in accordance with its Risk Management and Compliance Programme
- Implications for this are that the current regulations would be substantially redrafted to be less rigid
- The exemptions relating to CDD will also be withdrawn



# Key changes: Strengthening CDD Measures

## Understanding and obtaining information about the client

- The Bill requires accountable institutions, at the CDD stage of the business relationship, to obtain additional information so that it can determine if the client's transactions are consistent with the institutions knowledge of that client
- It also requires institutions to obtain information on the source of funds that the client expects to use in the course of the business relationship
- Based on the identification and all other information about the client's relationship with an institution, the Bill requires that on-going due diligence on the business relationship be undertaken throughout the course of the business relationship



# Key changes: Strengthening CDD Measures (cont)

## Persons in prominent positions

- Domestic prominent influential persons includes:
  - ✓ The President, Ministers, Premiers, members of the royal family, DGs and CFOs of government departments and municipal managers
  - ✓ CEOs and CFOs of state entities like Eskom, Telkom, FIC, FSB, NGB, EAAB, etc.
  - ✓ Judges
  - ✓ Top officials of companies that receive certain tenders from government
  - ✓ Includes family members and known close associates
- Being a domestic prominent person does not create a presumption of being guilty of any crime and does not mean that an accountable institution cannot transact with such a person
- Accountable institutions will have to include the management of business relations with person in prominent positions in their internal programmes





# Key changes: Strengthening CDD Measures (cont)

## Persons in prominent positions

- Accountable institutions need to do the following if they find that a relationship with a domestic prominent person poses a higher risk:
  - ✓ Obtain senior management approval
  - ✓ Establish source of wealth and source of funds
  - ✓ Monitor the business relationship
- Monitoring the relationship means that close attention is paid to the manner in which the client uses the institutions services and products
- The definition of foreign prominent public official is similar and a similar process is followed except that the measures are taken for every foreign prominent person and not based on higher risk



# Key changes: Strengthening CDD Measures (cont)

## Legal persons

- Institutions, in addition to verifying the identities of the clients which are not natural persons, need to:
  - ✓ Understand the nature of the entity's business
  - ✓ Understand its ownership and control structure
  - ✓ Know who the natural persons are who ultimately own or control their clients
- Accountable institutions will be required to carry out additional due diligence measures in relation to the beneficial ownership of legal persons, trusts and partnerships



# Key changes: Obligation to keep records

- Recordkeeping requirements will require accountable institutions to record adequate information to enable the reconstruction of the flow of funds to assist investigators in the event of a criminal investigation
- Records may be kept in electronic form
- The Centre, supervisory bodies and law enforcement must be able to readily access electronically stored records



# Key changes: Risk Management and Compliance Programme

- Accountable institutions will be required to develop, document maintain and implement a Risk Management and Compliance Programme
- The Bill contains details of what the programme should contain to guide institutions to develop a programme incorporating all the elements in the Bill that are linked to the customer due diligence measures
- CDD requirements are linked with an accountable institution's application of a risk-based approach through its programme
- The effective implementation and application of a risk-based approach is largely dependent on the accountable institution's programme
- The board of directors, senior management or person having the highest level of authority in the institution must approve the programme



## Key changes: Governance

- The board of directors or senior management must ensure compliance with the FIC Act and its Risk Management and Compliance Programme
- An institution that is a legal person must assign a person with sufficient competence and seniority to assist it to discharge its obligations in terms of the FIC Act
- Institutions that are not legal persons will require the person with the highest level of authority to ensure compliance



# Key changes: Other related matters

- Bill distinguishes between criminal and administrative enforcement by de-criminalising certain breaches
- Compliance with Constitutional Court Decision:
  - ✓ Clarify when a warrant will be required to enter premises during an inspection
- Implementation of the UNSC Resolutions relating to the freezing of assets:
  - ✓ Accountable institutions will be required to freeze property and transactions pursuant to financial sanctions imposed in the UNSC Resolutions
  - ✓ Accountable institutions will be required to report property in its possession or under its control of a person or an entity identified in the sanctions list



# Topics identified where guidance may be required

- Published an Issue Paper –
  - Initiated the consultative process of developing guidance on specific aspects where accountable institutions will require guidance when the amendments take effect
  - Indicates where the regulations and exemptions will have to change
  - Gives institutions an opportunity to express views on the areas to be covered in guidance and type of guidance required to implement new amendments



# Topics identified where guidance may be required (cont.)

## Adoption of a risk-based approach to customer due diligence

- The concept of risk and contextualising it specifically to money laundering and terrorist financing
- Understanding ML/TF risk and assessing the extent the institution is vulnerable to ML/TF
- Management of risk by developing control measures to mitigate risk identified
- In the absence of the regulations and exemptions relating to the identification and verification of clients, guidance will be developed to assist institutions to transition from a rules-based approach to a risk-based approach





# Topics identified where guidance may be required (cont.)

## Additional due diligence measures

- Guidance may be required to implement new requirements relating to-
  - ✓ Beneficial ownership
  - ✓ Prominent persons
  - ✓ Risk Management and Compliance Programme



# Way forward to bring amendments into operation

- Before the Minister sets a date for the Act to take effect a few processes needs to be completed
- The implementation of the amendments is dependent on the promulgation of revised regulations and exemptions under the FIC Act
- Substantial guidance will be developed to assist accountable institutions in the implementation of the new provisions
- The amended regulations and exemptions and new guidance will take effect at the same time the amendments take effect



# Amendment of Schedules

- Schedule 1 to the FIC Act contains a list of “accountable institutions” that are required to
  - ✓ Establish and verify clients’ identities
  - ✓ Keep records
  - ✓ Register with the Centre
  - ✓ Report information to the Centre
  - ✓ Maintain internal rules
- Schedule 2 contains a list of supervisory bodies that are responsible for ensuring compliance of the FIC Act provisions by accountable institutions supervised or regulated by each body
- Schedule 3 contains a list of “reporting institutions” which have to register with the Centre and report to the Centre suspicious transaction and cash transactions of R25 000,00 and above



# Amendment of Schedules (cont.)

## Why should the scope of the FIC Act be widened?

- Widening the scope of the FIC Act by including additional categories of institutions and businesses will improve the Centre's ability to obtain information concerning the identities and financial activities of clients of a wider range of financial and other institutions
- This in turn will improve the Centre's ability to provide high quality information to law enforcement and security agencies
- Widening the scope of the FIC Act will also bring South Africa's legal framework against ML/TF in line with the international standards set by the Financial Action Task Force (FATF) (South Africa was found to be deficient by not having certain categories of businesses included under the scope of the FIC Act)



# Amendment of Schedules (cont)

## Who should be considered to be included?

- As required by the FATF standards the following should be included under the scope of the FIC Act but are not yet included:
  - ✓ Professional accountants
  - ✓ Professionals providing services relating to the formation and administration of trusts and companies (TCSPs)
  - ✓ Dealers in precious metals and precious stones
- Certain items of Schedule 1 will be broadened to align with the international standards: e.g. Item 19 (money remitter) will be broadened to include value transfer providers



# Amendment of Schedules (cont)

## Who should be considered to be included?

- Other industries under consideration:
  - ✓ Numismatic dealers (looking to widen it to include coin dealers instead of limiting it to Kruger Rand dealers)
  - ✓ Dealers in high value goods
  - ✓ Persons who carry on the business of providing private security boxes or security vaults for the safekeeping of valuables
  - ✓ Short-term insurance industry
  - ✓ Auctioneers (including a Sheriffs' offices when performing the job of an auctioneer at a public auction)
  - ✓ Persons who carry on the business of a credit provider in terms of which such person is required to register in terms of the National Credit Act
  - ✓ Persons who carry on the business of a virtual currency exchange eg. where Bitcoins may be bought or sold for SA currency



# Amendment of Schedules (cont)

## Who should be considered to be included?

- Consultation will take place with representative organisations of these industries
- A Notice is published on the Centre's website to indicate possible industries that may be included in the scope of the FIC Act and requiring supervisory bodies regulating these industries to contact the Centre to engage further