



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



MINISTER SIGNS FIC AMENDMENT ACT INTO OPERATION

Tuesday, 13 June 2017: The Minister of Finance, Mr Malusi Gigaba, has signed and gazetted the coming into operation of various provisions of the Financial Intelligence Centre Amendment Act, 2017 (Act 1 of 2017) (FIC Amendment Act). The FIC Amendment Act was signed into law by the President on 26 April 2017 and gazetted on 2 May 2017 (Annexure A), but the determination of the commencement date was left to the Minister of Finance.

The key objective of this law is to improve the protection of the integrity of South Africa's financial system and strengthen its ability to prevent and punish financial crimes like money laundering, illicit capital flows, tax evasion, corruption and bribery, and financing of terrorism.

Key elements of the law introduced by the FIC Amendment Act

This law achieves the above objective by placing the risk-based approach at the centre of South Africa's Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) regime. It recognises that the risk of money laundering and terrorist financing can vary by individual, business sector and within sectors. The risk-based approach incorporates three key elements:

- a) Strengthening AML/CFT through a more consultative approach based on partnerships between key stakeholders in both the public and private sectors.
- b) Improving co-ordination and collaboration to ensure more effective preventive and better enforcement measures.
- c) More customer-friendly and cost-efficient approach to implementation of AML/CFT in line with the Treat Customers Fairly initiative.

The law also introduces the following new concepts and approaches to the implementation of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act);

- (a) *Full range of customer due diligence (CDD) requirements* which are focussed on understanding customers better rather than simply identifying and verifying their identities.
- (b) *Customer-Friendly approach* based on a risk-based CDD enables efficient utilisation of resources and should make compliance easier for low risk clients.
- (b) *Beneficial ownership*, which requires institutions to know and understand the natural persons who ultimately own or exercise control over legal entities or structures.
- (c) *Prominent (Influential) Persons and "Politically Exposed Persons"*, which requires institutions to better manage risks relating to relationships with prominent persons.
- (d) *Freezing of assets*, in terms of targeted financial sanctions against persons identified by United Nations Security Council in terms of various sanctions regimes.

Different effective dates for different sections of the FIC Amendment Act

The implementation of different provisions of the FIC Amendment Act will start on different dates; 13 June 2017, 2 October 2017 and dates to be determined after 2 October 2017 (but expected to be no later than the end of 2018).

The first set of provisions commences today. These provisions do not require changes to existing regulations, exemptions or internal systems of institutions to enable compliance with the FIC Act.

The provisions deal mainly with information sharing, consultation arrangements, constitutional concerns relating to inspection powers, and improved functioning of the FIC Act Appeal Board.

The second set of provisions will commence on 2 October 2017. These provisions, which give effect to the above-mentioned new concepts and approaches, will require changes to existing regulations and exemptions under the FIC Act, as well as staff training and major changes to systems by supervisors, the Office of the Chief Procurement Officer, and accountable institutions.

Further, a move to a risk-based approach, which modernises the manner institutions undertake customer due diligence, implies less regulations but necessitates more guidance to clarify the expectations of supervisors on how institutions should appropriately implement the legislation.

The accelerated implementation of the FIC Amendment Act demonstrates Government's commitment to fight corruption, money laundering and illicit financial flows.

The commencement of the FIC Amendment Act, both today and on 2 October 2017 confirms South Africa's commitment to improve compliance with the Financial Action Task Force (FATF) international standards in respect of measures on foreign Politically Exposed Persons, Beneficial Owners and record keeping. South Africa is expected to report on progress on these measures to the FATF Plenary next week and possibly October 2017.

Effective dates of implementation after 2 October 2017

The commencement and operationalisation dates of the two remaining set of provisions in the FIC Amendment Act, namely sections 26A to 26C dealing with the freezing of assets in terms of the UN Security Council Resolutions on targeted financial sanctions, and Schedule 3A dealing with the setting of a monetary value threshold for companies doing business with the State, will be determined after October 2017. The delay on sections 26A to 26C is to enable consultations within Government, and allow for internal systems development.

One of the new features that will be introduced by the Amendment Act is a requirement for institutions to determine whether there are specific money laundering or terrorist financing risks associated with relationships with prominent persons in companies doing business of a certain value with the State. This provision, which relates to Schedule 3A, will commence on 2 October 2017, but will require operationalising later by notice, once a monetary value threshold has been finalised and the State is able to generate such a database or capability. Treasury is currently working with the Chief Procurement Office in this regard.

Consultations

The full implementation of the new provisions will take time, even after the commencement of relevant provisions in October 2017. Supervisors of accountable institutions are aware of the implementation challenges and that a transitional period is required to achieve full compliance with the FIC Amendment Act even after law takes effect. The relevant supervisory bodies will, even after 2 October 2017, continue regular engagements with the relevant industries to determine a timetable for full compliance, and monitor progress on such compliance.

Various consultations with the industry and supervisory bodies have been taking place this year. Draft Guidance Note that was developed jointly by the FIC, SA Reserve Bank, Financial Services Board and National Treasury will be released by Thursday, and a document on "A new approach to combat money laundering and terrorist financing" from Treasury is released today for public comment on how best to implement the new measures.

Immediate consultations will take place on the released documents and provisions coming into effect on 2 October 2017 ([see Roadmap](#)). A second draft of the relevant consultation documents will be released for further comments before finalisation by October 2017.

To enhance and entrench future consultative processes, the Counter-Money Laundering Advisory Council will also be replaced by an Inter-departmental forum. Further consultative forums which will include the industry will also be established.

Other continuing work and treating customers fairly

Further processes to assess and understand money laundering and terror financing risk at a national level, and to establish cost efficient and easy ways to access compliance information on beneficial owners, will continue. In implementing the law, institutions should always treat customers fairly, and implement the new law in a customer-friendly way, taking into account the need for fair and lower charges. Various measures, including those in the Financial Sector Regulation Bill, once enacted, and enhancing the Banking and other Ombuds, will advance these objectives in the financial sector.

Released documents and contact

A table of documents released today for noting and public consultation, including deadlines, can be found below. These documents will be available on the National Treasury and FIC websites. These include the above-mentioned documents and draft Notices on the withdrawal of Exemptions and Amendments to Regulations. Mr Raymond Masoga, from the National Treasury, at 012 315 5018 (raymond.masoga@treasury.gov.za) and Ms Poovindree Naidoo, from the FIC, at 012 641 6000 (poovindree.aidoo@fic.gov.za) will be the main contact persons for general queries.

PLEASE SEE NEXT PAGE TO READ ALL RELEVANT DOCUMENTS

DOCUMENTS FOR NOTING AND CONSULTATION

Name of the Document	Description of Document	Request to the Public
Government Notice No. 563 on Commencement of the Financial Intelligence Centre Amendment Act No. 1 of 2017 ("the FIC Amendment Act")	Minister's Notice on commencement of the FIC Amendment Act [click here to read the document]	Noting
Gazette No. 40821 of 2 May – FIC Amendment Act, 2017	Gazette containing the FIC Amendment Act as signed by the President [click here to read the document]	Noting
Draft Guidance	Draft Guidance to Assist Accountable Institutions to Implement the Financial Intelligence Centre Amendment Act, 2017, issued by the Financial Intelligence Centre to assist institutions and supervisors with the implementation of the FIC Amendment Act, for public comment and engagement	Consultation and Comments Deadline: 12 July 2017
A new approach to combat money laundering and terrorist financing	National Treasury high-level document providing long-term vision, strategy and overview on implementation of the FIC Amendment Act, with questions for public response and engagement . [click here to read the document] [click here to comment]	Consultation and Comments Deadline: 12 July 2017
Roadmap on Implementation of the FIC Amendment Act	Roadmap for the Short-term implementation of the Financial Intelligence Centre Amendment Act for supervisors and accountable institutions, detailing implementation plans; FIC Amendment Act provisions commencing on 13 June and 2 October 2017; and timeframes, for noting [click here to read the document]	Noting
Government Notice No. 562 in Gazette No. 40196 of 13 June 2017 inviting comment on withdrawal of exemptions and amendments to regulations	(i) Minister's Draft Government Notice, with an explanatory note, announcing the withdrawal of existing Exemptions, for public comment [click here to read the document] [click here to comment] (ii) Minister's Draft Government Notice, with an explanatory note, announcing amendments to existing Regulations, for public comment [click here to read the document] [click here to comment]	Consultation and Comments Deadline: 12 July 2017