

PUBLIC COMPLIANCE COMMUNICATION

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No 46 (PCC 46)

GUIDANCE ON THE COMMENCEMENT
AND ENFORCEMENT OF THE
FINANCIAL INTELLIGENCE CENTRE ACT
2001 (ACT 38 of 2001) AS AMENDED BY
THE FINANCIAL INTELLIGENCE CENTRE
AMENDMENT ACT, 2017
(ACT 1 of 2017)

PCC SUMMARY

This Public Compliance Communication (PCC) confirms the fact that all the obligations as brought about by the Financial Intelligence Centre Amendment Act, 2017 (Act 1 of 2017) (FIC Amendment Act) which commenced on 2 October 2017 are effective and enforceable.

Accountable institutions must demonstrate compliance with all the obligations as set out in the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act), with the consequence of non-compliance resulting in possible administrative sanctions.

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OBJECTIVE

This PCC confirms the position regarding the commencement and enforceability of all the obligations pursuant to the FIC Amendment Act, which commenced on 2 October 2017.

1. COMMENCEMENT AND ENFORCEMENT DATES

- 1.1. The FIC Act was amended by the FIC Amendment Act, of which certain provisions became effective and enforceable on 2 October 2017.
- 1.2. Although all provisions were enforceable as at 2 October 2017, the Prudential Authority (PA) and Financial Sector Conduct Authority (FSCA), as a means to assist the transition to compliance with the obligations that were introduced by the FIC Amendment Act, permitted a transitional period whereby the sanctioning of non-compliance in respect of these provisions of the FIC Act was deferred until 1 April 2019. Kindy refer to the annexed PA Public Notice dated 29 March 2019 and both FSCA general communications dated 25 April 2019.
- 1.3. This deferment until 1 April 2019 implies that PA and FSCA may sanction non-compliance with the provisions of the FIC Act from 2 April 2019 onwards at their discretion.

2. COMPLIANCE WITH THE AMENDMENT ACT

- 2.1. It is the PA and the FSCA's view, as supported by the Centre, that accountable institutions must demonstrate full compliance with their obligations as set out in the FIC Act as amended by the FIC Amendment Act as at 2 October 2017.
- 2.2. The amendments to the FIC Act did not have retrospective application as at October 2017. Therefore, the supervisory bodies granted the transition period from October 2017 to April 2019 to allow accountable institutions to fully align processes, policies, systems, client files and all money laundering and terrorist financing (ML/TF) controls with the amended FIC Act.
- 2.3. The requirements of the FIC Act apply to an accountable institution's full client data base, at any given time. This does not amount to a retrospective application of the Act. Full compliance includes the development and implementation of a Risk Management Compliance Programme (RMCP) to manage the money laundering, terrorist financing and targeted financial sanction risks. A supervisory body, through

appropriate supervisory measures, may expect an accountable institution to demonstrate compliance with these requirements.

3. NON-COMPLIANCE

- 3.1 It is the PA and FSCAs view, as supported by the Centre, that accountable institutions that cannot demonstrate compliance with the obligations which commenced on 2 October 2017 and all other obligations which remained in force in terms of the FIC Act, are non-compliant with the FIC Act, and may be subject to administrative sanctions in the discretion of the relevant supervisory body in terms of section 45C of the FIC Act.
- 3.2 This position regarding the consequence of non-compliance applies to all other accountable and reporting institutions.

4. GENERAL

- 4.1. The Centre has a dedicated Compliance Call Centre that may assist accountable institutions to understand their obligations in terms of the FIC Act.
- 4.2. Should you have any queries please contact the FIC's Compliance Call Centre on 012 641 6000 and select option 1. Alternatively log an online compliance query by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the Centre's website and submitting an online compliance query.

Issued By:

The Director Financial Intelligence Centre

30 March 2020



Public Notice

Financial Intelligence Centre Amendment Act 1 of 2017 transition period deadline of 2 April 2019

The Financial Intelligence Centre Amendment Act 1 of 2017 (FIC Amendment Act) was signed into law by the President of South Africa on 26 April 2017 and gazetted on 2 May 2017. However, the determination of the effective commencement date was left to the Minister of Finance (Minister). On 13 June 2017, the Minister signed and gazetted various provisions of the FIC Amendment Act coming into operation.

The effective date for the full implementation of the FIC Amendment Act was set as 2 October 2017. However – following consultation with the Financial Intelligence Centre, the Financial Sector Conduct Authority, National Treasury, the banking sector and the life insurance sector – the Prudential Authority (PA) has allowed for a transition period to cater for such amendments up until 2 April 2019. This transition period was to give the accountable institutions more time to achieve full compliance with the FIC Amendment Act, even after the law had taken effect on 2 October 2017.

The deadline agreed upon with the accountable institutions that are supervised by the PA is 2 April 2019. The PA will not issue any extensions to this deadline. Banks, mutual banks and life insurers are therefore urged to ensure full compliance with the FIC Amendment Act by 2 April 2019.

Issued by the Chief Executive Officer: Prudential Authority

Date: 29 March 2019

**GENERAL COMMUNICATION TO:
ACCOUNTABLE INSTITUTIONS REFERRED TO IN ITEMS 4, 5 AND 12 OF
SCHEDULE 1 TO THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001**

**IMPLEMENTATION OF THE AMENDMENTS TO THE FINANCIAL INTELLIGENCE
CENTRE ACT, 2001 – SUPERVISORY APPROACH**

The Financial Intelligence Centre Act, No 38 of 2001 (the FIC Act) was amended by the Financial Intelligence Centre Amendment Act, No 1 of 2017 (the Amendment Act). The Minister of Finance (the Minister) signed and gazetted the coming into operation of various provisions of the Amendment Act. The dates were 13 June 2017, 2 October 2017 and dates to be determined.¹ The Minister further announced the date of 1 April 2019 as the date that the sections of the FIC Act relating to targeted financial sanctions came into effect.² The media release and notice from the Financial Intelligence Centre is annexed hereto.

The Financial Sector Conduct Authority (FSCA) sent out a general communication to accountable institutions supervised by it on 6 April 2018, reminding the institutions of the supervisory approach in the 'Roadmap on implementation of the amendments'. In the communication, the FSCA also afforded accountable institutions until 2 April 2019 (2 October 2017 to 2 April 2019 i.e. 18 months) to fully implement the provisions of the Amendment Act. The communication is annexed hereto.

The FSCA's supervisory approach, post 2 April 2019, regarding the implementation of the Amendment Act is as follows:

1. The FSCA expects that accountable institutions would have in place a Risk Management and Compliance Program (RMCP) which clearly demonstrates the processes and procedures of dealing with money laundering and terrorist financing (ML/TF) risks. The FSCA expects that accountable institutions will have substantially complied with the provisions of section 42 of the FIC Act. The FSCA will advise and guide accountable institutions of any improvements to the RMCP during inspections. In particular, the RMCP must at least provide the following:

¹ https://www.fic.gov.za/Documents/FIC_Act_Commencement_14June2017.pdf

² <https://www.fic.gov.za/Documents/Website%20Notice%20by%20the%20Director%20-%201%20April%202019.pdf>

- a. The process followed to identify and assess the ML/TF risks for the institutions;³
 - b. The risk scales used by the accountable institution in order to classify categories of clients;⁴
 - c. Risk mitigation i.e. the processes and procedures adopted by the accountable institution to conduct customer due diligence on different categories of clients based on their risk classification;⁵ and
 - d. Risk classification of categories of existing clients.⁶
2. The RMCP must have been approved by the board of Directors, senior management or other person or group of persons exercising the highest level of authority in the accountable institution in compliance with section 42(2B) of the FIC Act;
 3. Full implementation of the customer due diligence and record keeping requirements as set out in the Amendment Act and approved RMCP in terms of new clients i.e. clients on boarded from 2 October 2017;
 4. In terms of clients on boarded prior to 2 October 2017, the FSCA expects accountable institutions should have started a process to align its risk classification to those clients. In particular, where an accountable institution has rated a client or category of clients as high risk, it should have started to obtain any additional information from those clients or category of clients in terms of its approved RMCP and conduct enhanced monitoring of transactions of those clients. All these clients should have at least been identified and verified in terms of the FIC Act prior to being amended if not already identified and verified in terms of the Amendment Act and approved RMCP.
 5. Accountable institutions must have started a process to become compliant with section 26A-26C of the FIC Act relating to targeted financial sanctions. This process must be completed by **31 May 2019**. In particular, accountable institutions must have started with a process to:
 - a. identify if persons or entities listed in a resolution by the Security Council of the United Nations adopted under Chapter VII of the Charter of the United Nations (UN lists) are clients of the accountable institution;
 - b. draft policies and guidelines on how to deal with property, financial services of clients listed on the UN lists; and
 - c. draft policies and procedures to report transactions in terms of section 28A(1)(c) and 29(1)(b)(vi) of the FIC Act.

³ See in this regard pages 14-21 of Guidance Note 7 issued by the FIC

⁴ A risk scale (sometimes referred to as risk ratings) refers to classification of clients into categories e.g. low, medium and high, as a result of the risk assessment conducted by the accountable institution.

⁵ See pages 23-27 of Guidance Note 7 issued by the FIC.

⁶ Rate existing clients or categories of clients in accordance with the risk scale e.g. low, medium and high.

The FSCA will start conducting inspections in terms of the FIC Act during May 2019. Any non-compliance with the FIC Act identified during inspections will be viewed in a serious light and may, depending on the circumstances of the matter, lead to administrative action being taken by the FSCA against the accountable institution.

Issued by the:

The Financial Sector Conduct Authority

25 April 2019

**GENERAL COMMUNICATION TO:
ACCOUNTABLE INSTITUTIONS REFERRED TO IN ITEMS 4, 5, 8 AND 12 OF
SCHEDULE 1 OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001**

**IMPLEMENTATION OF THE AMENDMENTS TO THE FINANCIAL INTELLIGENCE
CENTRE ACT, 2001 – SUPERVISORY APPROACH**

It has been eight (8) and five (5) months since the majority of the new amendments¹ of the Financial Intelligence Centre Act 38 of 2001 (FIC Act) commenced on 13 June 2017 and 2 October 2017, respectively.

The Financial Services Board, which became the Financial Sector Conduct Authority (FSCA) with effect from 1 April 2018, wishes to remind Accountable Institutions of the supervisory approach that was envisaged in the Roadmap on Implementation of the amendments² and to confirm its commitment to assist Accountable Institutions to implement same.

In this regard, the following is noted:

[1] The FSCA will continue to use onsite inspections and other oversight activities to guide and advise its Accountable Institutions on implementation of the new requirements of the FIC Act.

[2] Accountable Institutions are expected to demonstrate progress towards the implementation of the new requirements in terms of the FIC Act.

[3] In order to ensure appropriate traction during the implementation period, the FSCA will request Accountable Institutions to respond to surveys and/or to submit implementation plans highlighting progress towards the implementation of the new requirements in terms of the FIC Act. The respective Supervision Departments within the FSCA will engage with Accountable Institutions in due course regarding this. In instances where implementation plans are to be submitted, Accountable Institutions will be required to indicate the key milestones that need to be achieved for successful implementation. It will be required that milestone dates be set starting from June 2018, indicating which provisions of the amendments to the FIC Act will be implemented by which milestone date. This implementation process will be closely monitored and the respective Supervision Departments within the FSCA will engage with Accountable Institutions in due course regarding this as well as the manner and date by which to provide the required implementation plans and the expected reporting intervals in respect thereof.

¹ As amended in terms of the Financial Intelligence Centre Amendment Act, 2017 (FIC Amendment Act)

² <https://www.fic.gov.za/Documents/ROADMAP%20FOR%20THE%20IMPLEMENTATION%20OF%20THE%20FINANCIAL%20INTELLIGENCE%20CENTRE%20AMENDMENT%20ACT%2013%20June.pdf>

The FSCA understands the challenges in achieving the above and more importantly that time is required to fully implement the new requirements. For this reason, Accountable Institutions are afforded until 2 April 2019 to fully implement the new requirements of the FIC Act as amended. Despite various communications from registrars of different sectoral laws on different implementation dates we have agreed with the Prudential Authority to coordinate to a single date. Any previous dates communicated may be disregarded. Accountable Institutions are reminded of the importance of the implementation of the amendments to the FIC Act and the FSCA can do no better than to refer to the following statements by National Treasury in its press release on 14 June 2017-

"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"

and

*"The accelerated implementation of the FIC Amendment Act demonstrates Government's commitment to fight corruption, money laundering and illicit financial flows"*³

-Ends-

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³ https://www.fic.gov.za/Documents/FIC_Act_Commencement_14June2017.pdf

MEDIA RELEASE

9/5/13

SOUTH AFRICA IMPLEMENTS TARGETED FINANCIAL SANCTIONS

Monday, 1 April 2019: South Africa's measures for combating the financing of the proliferation of weapons of mass destruction and related acts have been enhanced with the launch of the list containing particulars of persons and entities identified for targeted financial sanctions (TFS).

From today, the searchable TFS list is available on the Financial Intelligence Centre (FIC) website (www.fic.gov.za). The FIC is responsible administering TFS measures as adopted by the United Nations Security Council in its Resolutions.

The TFS measures contained in the FIC Act relate to combating the financing of the proliferation of weapons of mass destruction as well as other instances of TFS-related to threats to the peace, breaches of the peace and acts of aggression.

It is prohibited to acquire, collect or use of property of persons or an entity whose names appear in the TFS list. This includes providing financial services and/or products to those persons or entities. No person may transact with a sanctioned person or entity, or process transactions for such a person or entity.

Accountable institutions, listed under Schedule 1 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), are encouraged to use the searchable TFS list to determine whether they have a sanctioned person or entity as an existing or prospective client. The TFS list is available to all FIC website visitors. Subscriptions are open to receive alerts each time there are changes to the list (e.g. names added or amendments made to the listing information).

The FIC Director, Advocate Xolisile Khanyile, welcomed the TFS listing as a major milestone for improving South Africa's anti-money laundering and combating of terror financing framework.

"The publication of this list is a significant mechanism and tool for financial institutions to use against possible rogue elements in our financial system. Publishing this list enhances South Africa's

alignment with global measures on anti-money laundering and combating of terror financing to protect the financial system," said Advocate Khanyile.

Issued by:

The Financial Intelligence Centre

For more information please contact communications@fic.gov.za or visit www.fic.gov.za.

ABOUT THE FIC

Note to editors: As South Africa's national centre for the gathering and analysis of financial data, the role of the Financial Intelligence Centre (FIC) is to safeguard the integrity of the country's financial system and its institutions. In pursuit of this, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act), mandates the FIC to identify the proceeds of crime, combat money laundering and the financing of terrorism, and facilitate effective supervision and enforcement of the Act.

Under this legislation, financial and non-financial institutions are required to fulfil certain compliance obligations, including reporting to the FIC. The information provided in these reports form the basis upon which analysis is conducted to develop financial intelligence reports which the FIC makes available to a wide range of law enforcement agencies and other government institutions to facilitate the administration and enforcement of the laws of the Republic. The FIC Act also sets out the enforcement and penalty regime for non-compliance with the FIC Act.

In 2017, new amendments to the FIC Act were passed to create greater transparency in the financial system and to advance the fight against corruption, money laundering and the financing of terrorism. These amendments ensure that South Africa continues to meet international standards and best practices. The amendments target four key areas:

- Adopting a risk-based approach when establishing the identity of a client
- Identifying who really owns and benefits from corporate vehicles
- Improving the management of relationships with prominent influential persons
- Implementing United Nations Security Council financial sanctions.

For more about the FIC visit www.fic.gov.za

HEADLINE STATISTICS AS AT 31 MARCH 2018	
40 799	Institutions registered with the FIC
330 639	Reports on suspicious or unusual transactions
4.88 m	Cash threshold reports received
5.2 m	Total number of reports received
1 470	Referrals to law enforcement
2 243	Requests for information
37	Contributions to judicial actions
859	Total FIC (133) and supervisory body (726) inspections conducted

NOTICE

NOTICE BY THE DIRECTOR IN TERMS OF SECTION 26A(3) OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001

The Minister of Finance has announced the date of 1 April 2019 as the date that the sections in the Financial Intelligence Centre Act, 2001 (FIC Act) relating to targeted financial sanction (TFS) come into effect.

In addition, the Minister of Finance has published the list of Resolutions adopted by the United Nations Security Council to which the FIC Act applies.

In terms of section 26A(3) of the FIC Act, the Director is required to give notice of persons and entities who are subject to the TFS measures imposed by the various applicable Resolutions. The Director's Notice can be accessed [here](#). The TFS measures restrict sanctioned persons and entities from having access to funds and property under their control and from receiving financial services in relation to such funds and property in accordance with section 26B of the FIC Act.

The Targeted Financial Sanctions List, developed by the Financial Intelligence Centre (FIC), contains the available identity particulars of persons and entities referred to in the Notice published by the Director. The FIC will maintain an updated Targeted Financial Sanctions List on its website of any additions or deletions to the information as and when information to that effect is received from the United Nations Security Council.

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The Financial Intelligence Centre

1 April 2019

