

MEDIA RELEASE

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BENEFICIAL OWNERSHIP FRAMEWORK OVERHAUL TO ENHANCE INVESTIGATORY PROCESS

Monday, 27 March 2023: Financial Intelligence Centre (FIC) director, Advocate Xolisile Khanyile, believes changes to South Africa's beneficial ownership framework will enhance the transparency of legal persons and make them less attractive for criminals.

Adv Khanyile delivered the opening address at a training seminar in Pretoria for law enforcement agencies on the tools and methods to access beneficial ownership data in their investigations involving suspect or potentially suspect accounts or assets held by corporate vehicles. The FIC hosted the two-day workshop in collaboration with the United Nations Office on Drugs and Crime Regional Southern Africa Office and Open Ownership on 23 and 24 March 2023.

Understanding the legal and beneficial ownership of corporate vehicles can play an integral part in aiding competent authorities, in particular law enforcement authorities and the FIC, by identifying natural persons who may be involved in criminal activity at arm's length through the use of vehicles such as companies and trusts, or who may have relevant information to further an investigation. Enhancing the transparency of these corporate vehicles makes them less attractive for criminals.

The lack of adequate, accurate and up-to-date beneficial ownership information facilitates money laundering and terrorist financing by allowing criminals to hide their true identities, the true purpose of an account or property held by a corporate vehicle and/or the source or use of funds or property associated with a corporate vehicle.

Adv Khanyile said South Africa's beneficial ownership framework will undergo changes that will bolster the investigatory process and bring it in line with international standards aimed at combating financial crime.

“Access by authorised recipients to beneficial ownership information would significantly aid efforts to protect and safeguard the financial system from illicit use,” Adv Khanyile said.

“It would impede illicit actors’ ability to use legal entities to conceal proceeds from criminal acts that undermine national security and foreign policy interests, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing.”

The Financial Action Task Force (FATF) recently strengthened the international standards on beneficial ownership of legal persons to improve prevention and deterrence of the misuse of legal persons. The global standard setting body for combating money laundering and terrorist financing requires that law enforcement agencies and financial intelligence units have all the powers to obtain prompt, basic and beneficial ownership information held by relevant parties.

Addressing South Africa’s beneficial ownership framework, FATF’s most recent mutual evaluation report concluded that the lack of timely access to accurate and adequate beneficial ownership information by law enforcement and other authorised recipients, remained a significant gap in the country’s anti-money laundering and counter terrorist financing regime.

The recently enacted General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act (General Laws Amendment Act) has introduced several changes to the beneficial ownership framework including by harmonising the concept of a beneficial owner across key pieces of legislation, namely the Financial Intelligence Centre Act (FIC Act), the Companies Act and the Trust Property Control Act. These Acts now all contain definitions of a beneficial owner that refer to a natural person who directly or indirectly ultimately owns or exercises effective control of a legal person or a trust. This brings the concept of beneficial ownership that is used in the South African legal framework in line with the FATF Recommendations.

In addition, the Companies and Intellectual Property Commission, which administers about 2.1 million active entities, announced in March 2023 that it was planning to establish and implement a beneficial ownership register on the basis of the amendments that the General Laws Amendment Act brought about in the Companies Act.

The aim of the beneficial ownership register is to establish a repository of natural persons who own or exercise control over legal entities. This will assist law enforcement with information relevant to their investigations into the ultimate owners of an entity.

“The beneficial ownership register, as envisaged by the CIPC in cooperation with other regulators and financial institutions, will enable greater transparency on who the owners are of an entity,” Adv Khanyile said.

“This will go a long way in preventing abuse of our corporate vehicles for nefarious purposes and assist South Africa to comply with the FATF requirements.”

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The Financial Intelligence Centre

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

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), mandates the FIC to assist in the identification of the proceeds of crime, in combating money laundering and in 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 registering with, and filing various regulatory reports to the FIC. The information provided in these reports forms the basis upon which analysis is conducted to develop financial intelligence reports for use by a wide range of law enforcement agencies, investigative authorities, and other 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.

The 2021/22 financial year saw initiatives which had been implemented in prior years take further root and yield results through collaboration and partnerships. Among these was the work of the Fusion Centre, a collaboration of law enforcement agencies and the FIC, and that of the public-private partnership, the South African Anti-Money Laundering Integrated Task Force. Both initiatives bring together necessary resources and focus attention on dealing with money laundering and terrorist financing.

The financial year also saw the adoption of the Financial Action Task Force mutual evaluation report in October 2021, following their assessment of the country's capability and capacity for combating money laundering, terrorist financing and proliferation financing. Work to address the identified deficiencies got under way in the 2021/22 financial year.

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

ITEM	2021/22
Total institutions registered	45 555
Regulatory reports received	>5.12 million
Cash threshold reports received	>4.5 million
Suspicious and unusual transaction reports received	533 277
Inspection reports issued by FIC and supervisory bodies	404 FIC and 739 supervisory bodies
Value of sanctions imposed	>R41 million
Financial intelligence reports disseminated	3 114
Responses to requests for financial intelligence	2 300
Proactive financial intelligence reports disseminated	782 of which 131 related to high-priority matters
Financial intelligence reports on illicit financial flows	32
Value of suspected criminal proceeds frozen	R204 million
Proceeds preserved and recovered through Fusion Centre over two years since the inception of the Fusion Centre	>R1.75 billion
Value of proceeds of crime recovered, in which the FIC's financial intelligence was used	>R5.1 billion
Collaboration between SAMLIT and the Fusion Centre over the last two years led to the preservation and directives to freeze accounts to this amount	R86 million