



Financial Intelligence Centre Amendment Act No. 1 of 2017

A. Summary

The Financial Intelligence Centre Amendment Act No. 1 of 2017 was promulgated in Government Gazette No. 40821 on 2 May 2017. It amends the Financial Intelligence Centre Act (FICA) to improve South Africa's ability to combat financial crimes. It proposed measures to address threats to the stability of South Africa's financial system posed by money laundering and terrorism financing.

The Amendment Act provides for a risk-based approach to customer due diligence. The supervisory powers and information-sharing requirements of the Financial Intelligence Centre have been improved, together with its administrative and enforcement mechanisms. The amendments aim to improve how efficient Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CTF) measures in South Africa are.

Certain sections of the Amendment Act came into effect on 13 June 2017, with more sections to come into effect on 2 October 2017.

B. Customer due diligence

Customer due diligence refers to the knowledge that an accountable institution has about its customer and its understanding of the business that the customer is conducting with it. An accountable institution is a bank or financial services provider in terms of the Financial Advisory and Intermediary Services Act. The Amendment Act broadens and enhances the elements of customer due diligence requirements, namely:

- determining the customer's identity;
- the duty to keep records;
- identifying the beneficial owner; and
- understanding the purpose and the intended nature of the business relationship.

The Amendment Act introduces two new concepts under the customer due diligence requirements which are the on-going due diligence of the customer's transaction records and the enhanced measures for persons entrusted with prominent public or private sector functions (prominent persons). This is every time accountable institutions establish business relationships with customers.

A risk-based approach to customer due diligence is introduced by the Amendment Act. Under this approach an accountable institution must identify, assess and understand its AML and CTF risks. This will depend on how effectively an accountable institution implements its Risk Management and Compliance Programme. Every accountable institution is required to develop, implement and maintain a Risk Management Compliance Programme. The board of directors and senior management of accountable institutions are ultimately responsible for complying with the FICA and the Risk Management and Compliance Programme.

Another significant change is the increase in the penalty fine that may be imposed for failure to comply with the Regulations to the FICA. The penalty fine has been increased from R100 000 to a maximum of R1 000 000. An administrative sanction may also be applied. An administrative sanction is a type of penalty that may be imposed for example for failing to comply with a condition of a license.

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