

FICA: Being an accountable institution and following client due diligence

By [Hondo Swartz](#)

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The FIC Act is designed to enable authorities to better understand the movement of money in order to reveal unlawful activities. However, the regulations therein not only pertain to transgressors of the Act, but also companies involved in a business relationship with those companies. Here we look at what constitutes an accountable institution and what they need to know about customer due diligence.



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Introduction

The Financial Intelligence Centre Act 38 of 2001 (FICA) was enacted on the 1 July 2003. The latest Amendment Act 2 of 2017(hereafter referred to as “the Act”), was published in the Government Gazette on 2 May 2017.

The Act will enable authorities to hinder criminal activities, and introduces a risk-based approach to client due diligence. Client due diligence relates to the knowledge that an accountable institution has regarding its clients and the business the clients are conducting. This would strengthen the fight against money laundering, tax evasion as well as combat terrorist and other criminal activities.

What is an Accountable Institution?

An 'accountable institution' is any person defined in schedule 1 of the Act. Amongst those listed include attorneys, trustees and executors, estate agents, financial instrument trade and stock brokers, management companies, bankers and those involved in the remittance of currency, but this is not a closed list.

What are the duties imposed on Accountable Institutions?

The Financial Intelligence Centre requires Accountable Institutions to uphold certain duties. The Act stipulates that an

accountable institution may only establish a business relationship or conclude a single transaction with a client once such institution has, in accordance with its Risk Management and Compliance Programme (hereafter referred to as “RCMP”), established the identity of the client.

Alternatively, if the client is acting on behalf of another person, the institution shall establish the identity of the instructing person as well as the authorisation the client received to establish a business relationship. In the event of a person acting on behalf of the client, the institution shall establish the identity of that person and the authority that person must act on behalf of the client.

Section 20A of the Act prohibits an accountable institution from establishing a business relationship or concluding a single transaction with an anonymous client or a client with an apparent false or fictitious name.

Natural persons as clients

Section 21A states as follows:

“...that the accountable institution shall, in accordance with its RMCP, obtain information regarding a prospective client which will reasonably enable the institution to determine whether future transactions that will be performed during the business relationship concerned are consistent with the institution’s knowledge of that prospective client.”

Juristic persons as clients

Section 21B states as follows:

“...provides that, when dealing with a client which is a partnership or trust, an accountable institution must establish, in terms of its RMCP, the nature of the client’s business and the ownership and control structure of the client which includes the identity of every partner or natural person who purports to be authorised to enter into business on behalf of the partnership.”

Should an accountable institution enter into a transaction or business relationship with a legal person, it must establish the identity of the beneficial owner of the client. This may be done by determining the identity of each natural person who either has a controlling ownership interest in the legal person or has control over the legal person or which exercises control over the management of the legal person. Once established, the institution is to take reasonable steps to verify the identity so that it is satisfied that it knows who the beneficial owner is.

Continuous Due Diligence

Section 21C states as follows:

“...an accountable institution is to monitor the transaction undertaken throughout the course of the relationship which includes the source of funds as well as the background and purpose of all complex, unusual large transactions and patterns thereof.”

Doubts regarding the veracity of information obtained

Section 21D states as follows:

“...when an accountable institution, after entering into a single transaction or establishing a business relationship, doubts the veracity of the information previously obtained, the institution is to follow the above step to confirm the information in question.”

Inability to conduct customer due diligence

Section 21E states as follows:

“...if an accountable institution is unable to establish and verify the identity of a client...or obtain the information contemplated in section 21A or conduct ongoing due diligence as contemplated in section 21C, the institution may not establish a business relationship or conclude any transactions with the client...may not conclude a transaction in the course of a business relationship, or perform any act to give effect to a single transaction...must terminate, in accordance with its RMCP, an existing business relationship with a client, as the case may be and should consider making a report in terms of Section 29.”

The key aim of Sections 21C, 21D and 21E is to ensure that accountable institutions identify any activities of clients which are inconsistent with the knowledge of the client or the purpose of the business relationship. If large transactions are concluded in a suspicious manner, the accountable institution needs to assess these transactions and may report a suspicion of money laundering or terrorist funding to the Financial Intelligence Centre. Should an accountable institution not be able to conduct ongoing due diligence, it should consider making a report to the Financial Intelligence Centre.

Conclusion

The Amendment Act aims to combat money laundering activities and the financing of terrorist and related activities by imposing certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities. It is the responsibility of accountable institutions to comply with the above to ensure a safer future for all South Africans in which the financial system has integrity and transparency to support economic growth and social development.

ABOUT THE AUTHOR

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