

Module # 1 Component 1



A Risk-Based Approach

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Preamble

The Financial Intelligence Centre Act, 2001 (“the FIC Act”), together with the Prevention of Organised Crime Act, 1998 (“POCA”) and the Protection of Constitutional Democracy against Terrorist and related activities Act (“POCDATARA”) form the statutory framework to combat money laundering and suppress the financing of terrorism in South Africa.

A money laundering offence may be described as the performing of any act in connection with property by a person who knows or ought reasonably to have known that the property is or forms part of the proceeds of unlawful activities and that may result in concealing or disguising the nature, source, location, disposition or movement of the proceeds of the crime, the ownership thereof or any interest anyone may have in respect thereof or enabling or assisting a person to avoid prosecution or to remove or diminish the proceeds of crime.

While money laundering has been criminalised in section 4 of POCA, the FIC Act is a key regulatory tool to protect the South African financial system against money laundering, the proceeds of crime and the financing of terrorism.

XYZ Company (“the institution”) is an accountable institution as envisaged in the FIC Act. This Act requires the board of directors of the institution to ensure compliance by the institution and its employees with the provisions of the FIC Act and a Risk Management and Compliance Programme.

This document embodies the Risk Management Compliance Programme of the institution and has been updated to include the 2 October 2017 amendments made to the FIC Act by the Financial Intelligence Centre Amendment Act, No. 1 of 2017.

This programme enables the institution to identify, assess, monitor, mitigate and manage the risk of money laundering activities or the financing of terrorist and related activities that the provision of products or services may involve.

A Risk Based Approach

The institution follows a risk-based approach to client identification and verification regarding the type of information by means of which it will establish clients' identities and the means of verification of such information.

Application of a risk-based approach implies that the institution can accurately assess the risk involved. It also implies that the institution can take an informed decision based on its risk assessment as to the appropriate methods and levels of verification that should be applied.

The institution applies simplified measures where lower risks have been identified and enhanced measures where higher risks are identified. To assess the risk factors, the institution makes use of a risk framework which forms part of the institution's policies and procedures to address money laundering and terrorist financing.

The institution applies the concept of a single client view in respect of each client when applying the provisions of the FIC Act. A single client view allows all the business units within the institution to access an existing client's identification and verification information from a central point. A single client view is in line with the national and international move towards a risk-based approach.

The risk-based approach requires the institution to understand its exposure to money laundering and terrorist financing risks. By understanding and managing its money laundering and terrorist financing risks, the institution not only protects and maintains the integrity of its business, but also contributes to the integrity of the South African financial system.

Definitions

"beneficial owner", in respect of a legal person, means a natural person who, independently or together with another person, directly or indirectly owns the legal person or exercises effective control of the legal person;

"business relationship" means an arrangement between a client and the institution for the purpose of concluding transactions on a regular basis;

"cash" means coin and paper money of the Republic or of another country that is designated as legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue; travellers' cheques;

"Centre" means the Financial Intelligence Centre. The contact details for the Centre are as follows:

Address: The Financial Intelligence Centre

Private Bag X177

Centurion

0046

Tel Number: 0860 342 342 (FIC FIC)

Compliance and Prevention:

Tel Number 0860 222 200

Fax Number 0860 333 336

Head Office: Tel Number +27 12 641 6000

Fax Number +27 12 641 6215

"client", in relation to the institution, means a person who has entered into a business relationship or a single transaction with the institution;

“domestic prominent influential person” means an individual who holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic-

- a prominent public function including that of the President or Deputy President;
 - a government minister or deputy minister;
 - the Premier of a province;
 - a member of the Executive Council of a province;
 - an executive mayor of a municipality elected in terms of the Local Government: Municipal Structures Act, 1998;
 - a leader of a political party registered in terms of the Electoral Commission Act, 1996;
 - a member of a royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003;
 - the head, accounting officer or chief financial officer of a national or provincial department or government component, as defined in section 1 of the Public Service Act, 1994;
 - the municipal manager of a municipality appointed in terms of section 54A of the Local Government: Municipal Systems Act, 2000, or a chief financial officer designated in terms of section 80 (2) of the Municipal Finance Management Act, 2003;
 - the chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999;
 - the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000;
 - a constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001;

- an ambassador or high commissioner or other senior representative of a foreign
 - government based in the Republic; or
 - an officer of the South African National Defence Force above the rank of major general;
- any of the following positions in of a company, as defined in the Companies Act, 2008, if the company provides goods or services to an organ of state and the annual transactional value of them goods or services or both exceeds an amount determined by the Minister by notice in the Gazette
 - chairperson of the board of directors;
 - chairperson of the audit committee;
 - executive officer; or
 - chief financial officer ; or
 - the position of head, or other executive directly accountable to that head, of an international organisation based in the Republic;

“entity” with reference to Sections 3, 4, 14, 22, 23 and 25 of POCDATARA, means a natural person, or a group of two or more natural person (whether acting in the furtherance of a common purpose or conspiracy or not) or syndicate, gang, agency, trust, partnership, fund or other unincorporated association or organisation or any incorporated association or organisation or other legal person, and includes, where appropriate, a cell, unit, section, sub-group or branch thereof or any combination thereof;

“foreign prominent public official” means an individual who holds, or has held at any time in the preceding 12 months, in any foreign country a prominent public function including that of a-

- Head of State or head of a country or government;
- member of a foreign royal family;
- government minister or equivalent senior politician or leader of a political party;
 - senior judicial official;
 - senior executive of a state owned corporation; or
 - high-ranking member of the military;

“immediate family member” means

- the spouse, civil partner or life partner;
- previous spouse, civil partner or life partner, if applicable;
- children and step children and their spouse, civil partner or life partner;
- parents; and
- sibling and step sibling and their spouse, civil partner or life partner;

“institution” means the accountable business registered with the Financial Intelligent Center;

“legal person” means any person, other than a natural person, that establishes a business relationship or enters into a single transaction, with an accountable institution and includes a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association, but excludes a trust, partnership or sole proprietor;

“money laundering” or “money laundering activity” means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of section 64 of the FIC Act or section 4, 5 or 6 of POCA;

“offence relating to the financing of terrorist and related activities” means an offence under section 4 of the POCDATARA;

“POCDATARA Act” means the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;

“property” has the meaning assigned to it in section 1 of POCDATARA;

“single transaction” means a transaction other than a transaction concluded in the course of a business relationship and where the value of the transaction is not less than R5000, except in the case of section 20A (where no threshold applies);

“terrorist and related activities” has the meaning assigned to it in section 1 of POCDATARA;

“trust” means a trust defined in section 1 of the Trust Property Control Act, 1988, other than a trust established by virtue of a testamentary disposition; by virtue of a court order; in respect of persons under curatorship or by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund, and includes a similar arrangement established outside the Republic.