

Anti-Money Laundering

FICA Website

www.fic.gov.za

The FICA website can be referenced to access the following:

The Financial Intelligence Centre Act, 2001 (Act 39 of 2001)

The purpose of this legislation is: to establish a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.

The Financial Intelligence Centre Act, 2001, as amended (Act 39 of 2001)

The Financial Intelligence Centre Act, 2001 was amended so as to define or further define certain words and expressions; to clarify the application of the Act in relation to other laws; to extend the objectives and functions of the Centre; to change the name of the Money Laundering Advisory Council; to clarify certain provisions; to update references to legislation; to provide for the sharing of information by the Centre and supervisory bodies; to provide for the issuance of directives by the Centre and supervisory bodies; to provide for the registration of accountable and reporting institutions; to clarify the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to authorise the Centre and supervisory bodies to conduct inspections; to regulate certain applications to court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; to make further provision for offences; and to provide for matters connected therewith.

The FICA Guidance Notes

Money laundering is criminalised in section 4 of the Prevention of Organised Crime Act, 1998. The money laundering offence can basically be described as the performing of any act which may result in concealing the nature of the proceeds of crime or of enabling a person to avoid prosecution or in the diminishing of such proceeds.

Apart from criminalising the activities constituting money laundering, South African law also contains a number of control measures aimed at facilitating the detection and investigation of money laundering. These are contained in the Financial Intelligence Centre Act, 2001.

These measures are based on three basic principles of money laundering detection and investigation:

- Intermediaries to the financial system must know with whom they are doing business
- The paper trail of transactions through the financial system must be preserved
- Possible money laundering transactions must be brought to the attention of investigating authorities

The Financial Intelligence Centre Act empowers the Financial Intelligence Centre to provide guidance in relation to a number of matters. The Centre has prepared guidance notes to assist accountable institutions and supervisory bodies with the practical application of the requirements of the Act.

These notes are provided as general information only, not as legal advice and not to replace the Act and the Money Laundering Control Regulations issued under the Act in December 2002.

The control measures introduced by the Financial Intelligence Centre Act, 2001 require institutions to establish and verify the identities of their clients, to keep certain records, to report certain information and to implement measures that will assist them in complying with the Act.

The Public Compliance Communications

The Financial Intelligence Centre has a new communication platform – the Public Compliance Communication (PCC) series – to help businesses understand the Financial Intelligence Centre Act, Act No 38 of 2001 and what it means in practice. The PCC series will provide guidance on the Centre’s interpretation of the relevant legislation. This form of guidance will have the same legal status as the guidance notes issued by the Centre. The PCC series does not replace any of the existing communication platforms such as guidance notes, circulars, FAQs and regular meetings with stakeholders, but is an added platform to address contentious issues that arise around the interpretation of the FIC Act. The PCC series will offer legal interpretation of most issues that have been a challenge in implementing the FIC Act.

Notices and Circulars

FATF Publications

The Financial Intelligence Centre has included the Financial Action Task Force guidelines that address general issues and information relevant to accountable institutions.

The FATF website

www.fatf-gafi.org/

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by a Group of Seven Summit in Paris, initially to examine and develop measures to combat money laundering. In October 2001, the FATF expanded its mandate to incorporate efforts to combat the financing of terrorism. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF monitors countries’ progress in implementing its recommendations; reviews money laundering and terrorist financing techniques and counter-measures; and promotes the adoption and implementation of its recommendations globally.

The FATF recommendations are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the international financial system.

In the past few years, the FATF has extensively discussed a risk-based approach with the private sector. Its guidance seeks to provide a broad framework of principles and good practice. It recognises that each country and its national authorities, in partnership with its financial institutions, will need to tailor a regime to address individual country risks.

UN Lists

The (previous) UN 1267 list is the only list required in law against which clients must be screened. (Refer to section 28A of the FIC Act and to section 25 of POCDATARA.) The UN 1267 list has been split up and is now contained in the 1988 list (for Taliban members) and the 1989 list (for Al Qaeda

members). Links to both these lists are as below as well as on the FIC website. There are also other lists such as the UN sanctions list that should be taken into consideration for purposes of risk management. These lists can be found on the UN website.

<http://www.un.org/sc/committees/1267/pressreleases.shtml>

http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml

<http://www.un.org/sc/committees/1988/pressreleases.shtml>

<http://www.un.org/sc/committees/1988/list.shtml>