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## Financial Intelligence Centre Amendment Act

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### Introduction

This article considers the amendments introduced by the recently promulgated Financial Intelligence Centre Amendment Act No. 1 of 2017 (the “FIC Amendment Act”) and the effects in relation thereto. The Amendments require that Institutions understand their relationships with their customers rather than only identifying them and, accordingly, apply the appropriate risk mitigation controls.

### Background

The Financial Intelligence Centre Amendment Bill B33 - 2015 (the “Bill”) was passed by Parliament in May 2016 and submitted to the Presidency for approval on 13 June 2016. The Bill was reverted to Parliament for reconsideration, having particular regard to concerns that certain provisions of the Bill did not pass constitutional muster. The Bill was assented to and signed by the President on 29 April 2017.

The FIC Amendment Act introduces measures to strengthen the transparency and integrity of the

South African financial system in its objectives to combat financial crimes and concomitantly brings South Africa’s anti-money laundering and counter-terror financing legislation in line with the international standards of the Financial Action Task Force (the “FATF”), of which South Africa is a member.

Further, the FIC Amendment Act makes it more difficult for persons who are involved in illegal activities to hide behind legal entities, including shell companies and trusts.

### The FIC Amendment Act

The amendments introduced by the FIC Amendment Act include, *inter alia*, the following (the “Amendments”):

1. identification of beneficial owners to prevent natural persons from misusing legal entities for *mala fide* purposes;



2. identification of domestic prominent influential persons (“PIPs”) and foreign prominent public officials (“PPOs”);
3. adoption of a risk-based approach in the identification and assessments of money laundering and terrorist financing risks;
4. inspection powers for regulatory compliance purposes in accordance with the Constitution; and
5. implementation of United Nations Security Council Resolutions (the “Resolutions”).

#### Identification of Beneficial Owners

In respect to corporate customers, the FIC Amendment Act requires accountable institutions (“Institutions”) to take reasonable measures to determine the identity of the beneficial owner/s. As such, the Institutions will be tasked with undertaking ongoing customer due diligence in order to ‘get to know’ the people behind the company structure and apply the necessary level of controls to mitigate the risk involved.

#### Adoption of a Risk-Based Approach

The FIC Amendment Act establishes an obligation on Institutions to implement a Risk Management and Compliance Programme.

Risk-based due diligence requires Institutions to vary their approach depending on, *inter alia*, the type of customer, business relationship, product and geographical location. Accordingly, the level of due diligence required will be dependent on the

money laundering and/or terror financing risk assigned to the particular customer.

The risk-based approach enables Institutions to use more efficient means to comply with their legal obligations and makes it easier for customers to do business with them.

#### Identification of Domestic PIPs and Foreign PPOs

Global standards direct that Institutions should pay attention to their politically exposed customers and customers in prominent positions within the public sector.

The FIC Amendment Act adopts this measure and extends the scope thereof by applying same to prominent customers in the private sector who engage in business with government e.g. persons in senior positions responsible for high-value procurement contracts.

Institutions will apply different approaches to domestic and foreign prominent persons. Additional customer due diligences will be applied to all foreign PPOs, however, same will only be applied to domestic PIP’s in circumstances that indicate that there are specific risks that need to be managed. Foreign PPOs will automatically be deemed to be high risk, whereas domestic PIPs will not automatically be deemed to be high risk unless, after assessment, the contrary is indicated.

The application of enhanced customer due diligence requires high risk customers to, *inter alia*:



1. provide information in relation to the source of wealth/income;
2. acquire senior management approval; and
3. undergo ongoing monitoring of said customer's business relationship(s) by the relevant Institution.

Enhanced customer due diligence affects companies and trusts with beneficial owners.

#### Inspection Powers for Regulatory Compliance

The FIC Amendment Act amends section 45B of the Financial Intelligence Centre Act No. 38 of 2001 (the "Act"), in light of the finding by the Constitutional Court in *Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others* [2014] ZACC 3, in terms of which parts of section 45B of the Act were declared unconstitutional, to the extent that the aforementioned section allowed for an inspection without a warrant in certain instances. Thus the amendment prescribes the circumstances in which a warrant is and is not a requirement.

#### Implementation of the Resolutions

The FIC Amendment Act establishes a legal framework for the Financial Intelligence Centre (the "FIC") to administer the implementation of financial sanctions emanating from the Resolutions, including the freezing of assets deemed by the UN Security Council to be involved in terrorism.

In addition thereto, the functions of the FIC are broadened to allow the FIC to initiate the analysis of suspicious transactions.

#### **Effects of the FIC Amendment Act**

The commencement date of the FIC Amendment Act is to be determined by the Minister of Finance. Certain provisions will require the simultaneous amendment of the Money Laundering and Terrorist Financing Control Regulations and the exemptions under the Act. Further, authorities are assisted in detecting, investigating, and prosecuting nefarious financial transactions.

The FIC Amendment Act provides greater flexibility for Institutions in assessing and managing their risks. The application of a differentiated approach to different categories of customers assists in reducing the administrative burden for Institutions, as highly onerous requirements, such as cases relating to PPOs and PIPs, need not be applied across the board.

The Amendments support South Africa's economic growth by ensuring that South Africa remains part of the global financial system which facilitates trade and investment flows.

The amendment of the Act, by virtue the promulgation of the FIC Amendment Act together with various judicial rulings in respect thereof, demonstrates South Africa's commitment to upholding our membership responsibilities to the FATF and the United Nations Security Council.





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