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BANKING & FINANCE

Additional obligations on accountable institutions

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Following on the recent amendments to the Financial Intelligence Centre Act, 38 of 2001 ("**FICA**") and most notably, the extension to the scope of accountable institutions regulated under FICA, the Financial Intelligence Centre ("**FIC**") has recently issued a number of Directives in relation to additional reporting requirements which certain accountable institutions will be obligated to comply with going forward, as well as the imposition of additional screening obligations on accountable institutions.

Directive 6 of 2023

This Directive relates to the submission of risk and compliance returns by specified accountable institutions who are designated as non financial businesses and professions. This Directive only applies to those accountable institutions which are listed in items 1[1], 2[2], 3[3] and 9[4] of Schedule 1 to FICA.

In terms of the Directive, the applicable accountable institutions are obligated to submit information to the FIC on, *inter alia*, their understanding of money laundering, terrorist financing and proliferation financing risks as well as their assessment of compliance with their obligations under FICA through the completion of a risk and compliance return. It would appear that the FIC is seeking to identify the money laundering, terrorist financing and proliferation financing risks facing different accountable institutions as designated in Schedule 1 to FICA through this process.

The first risk and compliance return in terms of this Directive is to be submitted to the FIC by no later than 17h00 on 31 May 2023, which report will relate to the reporting period from 1 April 2022 to 31 March 2023 (both dates inclusive).

The completion of the report is an automated process and accountable institutions will be required to populate the information directly through a link made available on the FIC's website.

Directive 7 of 2023

This Directive similarly relates to the submission of a risk and compliance return to the FIC by specified accountable institutions, as contemplated under the Directive. The Directive applies to accountable institutions as listed in items 11[5], 14[6], 20[7], 21[8] and 22[9] of Schedule 1 to FICA respectively.

Once again, the Directive requires that the relevant accountable institutions must submit information in relation to their understanding of money laundering, terrorist financing and proliferation financing risks and well as their assessment of compliance with their obligations under FICA.

As is the position under Directive 6, the completion of a risk and compliance return is compulsory for all accountable institutions regulated under the provisions of Directive 7. The first risk and compliance return must be submitted to the FIC by no later than 17h00 on 31 July 2023 and will cover the reporting period from 1 January 2023 to 30 June 2023 (both dates inclusive). The completion of the report pursuant to Directive 7 is similarly an automated online process on the FIC's website.

Failure by an accountable institution to submit a risk and compliance report, whether in terms of Directive 6 or Directive 7 respectively, will be considered to be non compliant and may result in the imposition of an administrative sanction in accordance with the provisions of section 62E of FICA, as read together with section 43A(3) of FICA.

Directive 8 of 2023

In terms of this Directive, accountable institutions are now obligated to screen their employees for competence and integrity as well as having to scrutinise their employee information against applicable targeted financial sanctions list as a money laundering, terrorist financing and proliferation financing control measure.

This obligation extends to the screening of prospective employees as well as current employees for competence and integrity. This would include the need to scrutinise employees information against the targeted financial sanctions list in order to identify, assess, mitigate, monitor and manage the risk of money laundering, terrorist financing and proliferation financing.

Directive 8 applies to all accountable institutions and requires both prospective and current employees to be screened in terms of a risk based process. Furthermore, accountable institutions will have to scrutinise any information in relation prospective employees as well as any current employees upon any notice being given to them in terms of section 26A(3) of FICA.

Going forward accountable institutions will be required to record and provide for the manner in which screening of both current and prospective employees with reference to their competence and integrity as well as the manner in which the scrutinising of employee information against targeted financial sanctions lists will be conducted. Records must be retained of the outcome of all screenings undertaken by accountable institutions and it will also be necessary for records to be retained in relation to the scrutiny of employee information against targeted financial sanctions lists. The FIC and any supervisory body appointed by the FIC shall be entitled to request access to these records.

Failure by an accountable institution to comply with the provisions of Directive 8 may result in the imposition of an administrative sanction in accordance with the provisions of section 45(c) of FICA.

Accountable institutions are therefore advised to carefully consider the provisions of Directives 6 and 7 respectively in order to ensure that they update their processes and timeously submit the necessary compliance and risk reports going forward as well as ensuring that they implement steps to address their obligations under Directive 8 and commence screening all prospective employees as well as current employees as part of their risk management programmes.

Should you have any queries or require any assistance in implementing the Directives, please contact the Banking and Finance Team.

Footnotes

[1] A person who is admitted and enrolled to practice as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 and who is an attorney (including a conveyancer or notary) practicing for his or her own account, as contemplated in section 34(5)(a) of that Act or an advocate contemplated in section 34(2)(1)(ii) of that Act as well as a commercial juristic entity, as contemplated in section 34(7) of the Legal Practice Act, 2014.

[2] (a) A person who carries on the business of preparing for, or carrying out, transactions for a client, where– (i) the client is assisted in the planning or execution of– (aa) the organisation of contributions necessary for the creation, operation or management of a company, or of an external company or of a foreign company, as defined in the Companies Act, 2008 (Act 71 of 2008); (bb) the creation, operation or management of a company, or of an external company or of a foreign company, as defined in the Companies Act, 2008; or (cc) the operation or management of a close corporation, as defined in the Close Corporations Act, 1984 (Act 69 of 1984). (b) A person who carries on the business of– (i) acting for a client as a nominee as defined in the Companies Act, 2008; or (ii) arranging for another person to act for a client as such a nominee. (c) A person who carries on the business of creating a trust arrangement for a client. (d) A person who carries on the business of preparing for or carrying out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).

[3] An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).

[4] A person who carries on the business of making available a gambling activity as contemplated in section 3 of the National Gambling Act, 2004 (Act 7 of 2004) in respect of which a license is required to be issued by the National Gambling Board or a provincial licensing authority.

[5] (a) A person who carries on the business of a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005). (b) A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1)(a) or (b) of that Act.

[6] The South African Postbank Limited referred to in section 3 of the South African Postbank Act, 2010 (Act 9 of 2010).

[7] A person who carries on the business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of R 100 000,00 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked, where "high-value goods" means any item that is valued in that business at R 100 000,00 or more.

[8] The South African Mint Company (RF) (Pty) Ltd, only to the extent that it distributes non-circulation coins in retail trade and where in respect of such transactions it receives payment in any form to the value of R 100 000,00 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked.

[9] A person who carries on the business of one or more of the following activities or operations for or on behalf of a client: (a) Exchanging a crypto asset for a fiat currency or vice versa; (b) exchanging one form of crypto asset for another; (c) conducting a transaction that transfers a crypto asset from one crypto asset address or account to another; (d) safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset; and (e) participation in and provision of financial services related to an issuer's offer or sale of a crypto asset, where "crypto asset" means a digital representation of perceived value that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act 19 of 2012).

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