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BANKING & FINANCE

The implication of the amendments to the Financial Intelligence Centre Act, 38 of 2001

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With effect from 19 December 2022, the list of "**accountable institutions**", as contained in Schedule 1 to the Financial Intelligence Centre Act, 38 of 2001 (FICA), was amended such that the scope of accountable institutions was substantially extended.

As a consequence hereof, a number of businesses which were not previously considered to be accountable institutions for purposes of the FICA have now been brought within the realm of the legislation and are obligated to comply with the provisions of the FICA as well as the duties imposed thereunder on accountable institutions.

In addition to the amendments to Schedule 1 of the FICA, in terms of the General Laws (Anti-Money Laundering and Combatting Terrorism Financing) Amendment Bill (GLA), a number of additional amendments were effected to the provisions of the FICA, which amendments came into effect from 31 December 2022.

Set out below is a discussion of the most important consequences of these recent amendments.

The list of accountable institutions under the FICA has recently been extended to include, amongst others:

1. A person who carries on the business of creating a trust arrangement for a client;
2. A person who carries on the business of preparing for or carrying out transactions (including as trustee) related to the investment, control, safe-keeping or administering of trust property within the meaning of the Trust Property Control Act;
3. A co-operative bank as defined in the Co-Operative Banks Act, 40 of 2007;
4. A person who carries on the business of a credit provider as contemplated under the National Credit Act, 34 of 2005 (NCA);
5. A person who carries on the business of providing credit in terms of any credit agreement which is excluded from the application of the NCA, pursuant to the provisions of sections 4(1)(a) or (b) of the NCA;
6. A person who carries on the business of a money or value transfer provider;
7. A person who carries on the business of dealing in high value goods in respect of any transaction, where such business receives payment in any form to the value of R100,000 or more; and
8. A person who carries on the business or operation, for or on behalf of a client, which would include exchanging one form of crypto-asset for another, concluding a transaction which transfers a crypto-asset from one crypto-asset address or account to another or the safe-keeping or administration of a crypto-asset or an instrument enabling control over a crypto-asset.

Given the extended scope of the list of accountable institutions required to comply with the provisions of the FICA, it will be necessary for those entities which are now regarded as accountable institutions to ensure that, going forward, they comply with the provisions of the FICA.

To this end, it will be necessary for such entities to:

1. Register with the Financial Intelligence Centre (FIC), which registration is to be undertaken by no later than 19 March 2023. **The registration on the FIC's go-AML system can be completed on the FIC's website;**
2. Appoint a compliance officer, which must either be an employee or director of the accountable institution;
3. Prepare a risk management and compliance programme (RMCP), which RMCP will have to comply with the provisions of section 42 of the FICA. In addition, the RMCP will have to be signed off by senior management and/or the board of directors;

4. Undertake a risk-based assessment in relation to the identification and verification of clients with whom they conclude a transaction or enter into a business relationship with. Accordingly, it will be necessary for accountable institutions to risk-rate clients and to undertake customer due diligence on clients based on their relevant risk assessment;
5. Undertake ongoing customer due diligence in relation to those clients with whom they concluded a business relationship;
6. Retain records in relation to the transactions concluded with clients, which records must be retained in line with the provisions set out in the FICA;
7. Submit reports to the FIC in relation to, *inter alia*, any transactions above the prescribed cash threshold, any suspicious and unusual transactions or any electronic fund transfers above the prescribed threshold; and
8. Provide ongoing training in relation to the provisions of FICA and the obligations to be undertaken by accountable institutions.

One of the significant changes to the FICA as a consequence of the amendments under the GLA is the expansion of the concept "**beneficial owner**", as well as the additional obligations which have been placed on accountable institutions in relation to the identification and verification of the beneficial owners behind juristics, partnerships and trusts respectively. Additional obligations have been placed on accountable institutions to, *inter alia*, identify and verify the trustee, the founder as well as the beneficiaries under a trust.

The GLA has also extended the scope of FICA in relation to the identification of persons involved in money-laundering activities and offences related to the financing of terrorist and related activities to include offences relating to proliferation financing activities which contemplates the provision of financing to manufacture, develop, possess, transport, transfer or use nuclear, biological or chemical weapons.

Failure by an accountable institution to register with the FIC, to comply with their reporting obligations under the FICA, to establish, document and maintain a RMCP, to provide adequate training or to retain records, will result in non-compliance with the provisions of FICA and an accountable institution could be subject to the imposition of an administrative sanction by the FIC which includes, but is not limited to, a financial penalty not exceeding R10 million in respect of natural persons and R50 million in respect of legal persons. In light of such consequences, it is imperative that accountable institutions ensure their compliance with the provisions of the FICA.

Werksmans is able to assist and advise clients on their obligations under the FICA, to assist in preparing and/or reviewing RMCP's as well as providing training on the FICA.

Should you require further details, please contact us at enquiries@werksmans.com and we will happily assist.

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