DYKES VAN HEERDEN
ATTORNEYS AND CONVEYANCERS

A BRIEF SUMMARY OF THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT 1 OF 2017

On 2 May 2017 the Financial Intelligence Centre Amendment Act 1 of 2017 (the "Amendment Act") was published which Amendment Act has made a number of amendments to the Financial Intelligence Centre Act, 2001 (the "Act"). Certain sections of the Amendment Act became effective on 13 June 2017, certain other sections will become effective on 2 October 2017 and certain other sections will become effective on a date to be proclaimed.

The Financial Intelligence Centre has issued a draft guidance note in respect of the Amendment Act, which is available on the website www.fic.gov.za. Please note that the guidance note is 69 pages. In light of the same while we do seek to deal with some of the important amendments imposed by the Amendment Act this article should not be deemed to constitute legal advice or to be exhaustive in nature.

As of 2 October 2017, every accountable institution (referred to as an "Institution" for the purposes of this article) must develop, document, maintain and implement a Risk Management and Compliance Programme ("**RMCP**"), in replacement of the internal rules currently required to be formulated and implemented by Institutions. In terms of the RMCP (amongst other requirements):

- The Institution must (i) identify; (ii) assess; (iii) monitor; (iv) mitigate and manage the risk that the services or products of the Institution may be used for money laundering or the financing of terrorist activities.
- The RMCP must set out the manner in which the Institution will determine if the person is a client or prospective client; the manner in which the Institution will ensure compliance with section 20A (not establishing relationships with fictitious clients or clients using a false name – briefly discussed below).
- The RMCP must set out the manner in which and the processes by which the establishment and verification of clients will be undertaken;
- The RMCP must set out the manner in which the Institution determines whether future transactions that will be performed in the course of the business relationship are consistent with the Institution's knowledge of the client;
- The RMCP must set out the manner in which the Institution will undertake additional due diligence measures in respect of legal persons, trusts and partnerships;
- The RMCP must set out how the Institution will comply with ongoing due diligence investigations and account monitoring of its clients;

- The Institution will examine complex and large transactions and unusual patterns of transactions which have no apparent lawful purpose;
- The RMCP must set the manner in which and the processes by which enhanced due diligence is conducted for higher risk business relationships;
- The RMCP must provide for the manner in which and the processes by which the institution will perform the customer due diligence requirements in accordance with sections 21, 21A, 21B and 21C (new sections briefly set out below) when, during the course of a business relationship, the institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29;
- The RMCP must provide for the manner in which the accountable institution will terminate an existing business relationship as contemplated in section 21E.

In terms of section 42A the board of directors (if a company), or the senior management of an Institution must ensure compliance by the Institution and the employees of the Institution with the Act and the relevant RMCP.

New sections of the Amendment Act include (which sections become effective on 2 October 2017):

- Section 20A has been inserted which provides that accountable institutions may not enter into a transaction with an anonymous client or a client with a false or fictitious name;
- Section 21 is amended such that when an accountable institution "engages with a prospective client" to undertake a transaction or establish a business relationship it must establish and verify the identity of the client, or such other person acting on behalf of such client;
- 21A provides that, in addition to the information required to be obtained in terms of section 21 and the RMCP, the Institution must obtain information to enable the accountable institution to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the institution's knowledge of that prospective client, including information describing:
    a) the nature of the business relationship concerned;
    b) the intended purpose of the business relationship concerned; and
    c) the source of the funds which that prospective client expects to use in concluding transactions in the course of the business relationship concerned.
- Section 21B sets out additional due diligence measures to be performed by Institutions when dealing with legal persons, trusts and partnerships including determining the nature of the client's business and the ownership and control structures of the client.

- In terms of section 21C Institutions must conduct ongoing due diligence investigations in respect of its businesses relationship with its clients in monitoring the transactions, source of funds, background and purpose of large and complex transactions and keeping information obtained for these purposes.
- Section 21D - if an Institution doubts the adequacy of information previously obtained it must repeat the steps set out in sections 21, 21A and 21B.
- Section 21E if the Institution is unable to establish or verify a client's identity, or conduct an ongoing due diligence the Institution may not establish or continue a relationship with such client.
- Section 21F and 21G deal with the manner of dealing with foreign prominent officials and domestic prominent officials (21H similarly sets out these processes apply to family members and close associates of such persons), as defined in the Amendment Act and which processes are to be included in the RMCP.
- In terms of sections 22 and 22A records must be kept of customer due diligence investigations and transaction records with clients. These sections set out the minimum requirements of such records.
- Section 26A and 26B deals with prohibitions on dealings with persons and entities identified by the Security Council of the United Nations.

A number of other material amendments and substitution of the Act have been made by the Amendment Act including: dealing with property associated with terrorist activities and financial sanctions; suspicious and unusual transactions; reporting procedures; intervention by the Centre; monitoring orders; access to information held by the Centre; protection of personal information; training; directives; inspections by inspectors; appeals procedures; the inclusion of additional non-compliance provisions.

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