



THE FICA ACT

THE FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT (FICA ACT)

The FICA Act amends the existing Financial Intelligence Centre Act (2001) to strengthen South Africa's (SA) ability to fight illicit financial flows and other forms of financial crimes, which include money laundering, corruption, terrorism financing and tax evasion. SA has been a member of the Financial Action Task Force (FATF) since 2003. FATF is an international body of countries tasked with setting best practices to combat money laundering and terrorism financing. SA is also a signatory to and ratified the United Nations (UN) Convention Against Corruption in 2004.

HOW THE LAW FIGHTS FINANCIAL CRIME AND ILLICIT FINANCIAL FLOWS

Foreign countries, international standards and South Africa fight financial crimes by requiring financial and other entities to know the customers they provide services to. This is commonly known as Know-Your-Customer ("KYC") or Customer Due Diligence ("CDD"). This requirement was first introduced in SA in 2001 by the FIC Act. The FIC Amendment Act (FICA Act) strengthens and modernises this CDD/KYC requirement by:

1. requiring financial entities to identify the natural persons who ultimately own and use legal structures like companies / trusts (known as beneficial owners). This will make tax evasion more difficult;
2. introducing a risk-based system of Knowing-Your-Customer (KYC). This will make it easier for customers to comply with the FIC Act (popularly known as being "FICAD") if they pose less risk to committing financial crimes;

3. requiring financial entities to better manage their relationships with foreign Prominent Public Officials and domestic Prominent Influential Persons;
4. assisting with freezing of assets for those identified by the UN Security Council as involved in terrorism.



WHO WILL BE AFFECTED

Every person in SA is subject to standard CDD/KYC:

- Those who carry out their business and private affairs legitimately need NOT worry about the FICA Act;
- Foreign politicians (called Politically Exposed Persons or foreign Prominent Public Officials in SA) will go through an enhanced CDD/KYC;
- Domestic politicians/senior Government officials/certain persons in certain companies doing business with Government (called domestic Prominent Influential Persons) who might be targets of financial crimes, i.e. are considered risky, will go through an enhanced CDD/KYC;
- Enhanced CDD/KYC requires risky customers to provide information about their source of wealth/income, getting senior management approval and undergoing on-going monitoring of the business relationship by the financial institution;

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- Standard CDD/KYC entails only identifying (and verifying) who your customer is;
- Companies and trusts with beneficial owners will be affected too.

WHY THE LAW AND ITS AMENDMENT

- Ensures that criminals cannot use SA's financial system to commit crime or hide its proceeds;
- Supports SA's economic growth by ensuring that SA remains part of the global financial system which facilitates trade and investment flows;
- Upholds our membership commitments to FATF and the UN;
- SA Government (and business) will be able to continue borrowing internationally to deliver critical social services;
- Modernises compliance;
- Makes it easier for people to comply with the FICA Act and enhances financial inclusion.

WHAT THE FICA ACT IS NOT ABOUT

Amendments are NOT about giving banks unlimited power - only the regulators can ensure banks comply with FICA Act

- FICA Act, and NOT banks, defines what is a domestic and foreign Prominent (influential) Person;

// The FICA Act ensures that criminals cannot use SA's financial system to commit crime or hide its proceeds //

- FICA Act does NOT deem Prominent (Influential) Persons like politicians or Government tender recipients as criminals and therefore not able to transact with banks;
- FICA Act does NOT introduce crimes of bribery, money laundering or terror financing, as these are already contained in other Acts preceding it;
- FICA Act does NOT empower supervisors to investigate and criminally prosecute, only law enforcement agencies can do so;
- It does NOT trump the Constitution.



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