LEGAL PRACTITIONERS' OBLIGATIONS IN TERMS OF THE FIC ACT

Legal practitioners that fall within the scope of Item 1 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) must comply with all the obligations required of accountable institutions.

Legal practitioners are considered accountable institutions in terms of the FIC Act. Item 1 of Schedule 1 of the FIC Act defines this as *"practitioners who practice as defined in Section 1 of the Attorneys Act, 1979 (Act 53 of 1979) (Attorneys Act)".*

Broadly, accountable institutions' obligations include but are not limited to:

- Applying a Risk Based Approach (RBA)
- Implementing a Risk Management and Compliance Programme (RMCP)
- Customer due diligence (CDD)
- Record keeping
- Registration with the FIC
- Reporting
- Appointing persons responsible for compliance
- Training

Customer Due Diligence

As part of the CDD obligations, legal practitioners are required to identify and verify clients in compliance with Chapter 3 of the FIC Act, and in accordance with the legal

practitioner's RMCP. Section 42 of the FIC Act sets out all obligations that must be dealt with in the RMCP.

The legal practitioner must follow an RBA which requires that the controls implemented to comply with the FIC Act must be proportionate to the money laundering and terrorist financing risk the legal practitioner faces.

When dealing with legal persons, trusts and partnerships, the legal practitioner must establish the nature of the client's business, the ownership, as well as the control structure of the client as part of additional due diligence. Where the client is a legal person, the legal practitioner must identify the beneficial owner of the client. Fulfilling this is an important requirement to understand exactly who the legal practitioner is providing services and products to.

As part of the legal practitioner's RBA, it must determine the level of money laundering and terrorist financing risk each client poses. To do this, numerous factors can be considered, including but not limited to:

- The client type
- Jurisdiction
- Distribution channel
- Product and services
- Any other relevant factors

Where the legal practitioner determined that a client poses a high risk from a money laundering and/or terrorist financing perspective, it must obtain senior management approval to establish a business relationship with such a client. In addition, the legal practitioner must employ enhanced monitoring of the client's transactions (refer to Guidance Note 7).

Targeted Financial Sanctions

On 1 April 2019 the financial sanctions provisions – sections 26A, 26B and 26C – of the FIC Act commenced. These provisions and sections 4 and 25 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) (POCDATARA) form the basis of the sanctions regimes in South Africa. No person may provide finances to or facilitate financing for a person who is on the sanctions list. The FIC recently published draft Public Compliance Communication

(PCC) 104 which provides guidance on the application of targeted financial sanctions within South Africa.

Reporting to the FIC

In terms of the reporting obligations:

- Section 28A specifically requires that where a legal practitioner identifies a person on a sanctions list, the legal practitioner must report that fact to the FIC.
- Section 28 deals with cash threshold reporting (refer to Guidance note 5B)
- Section 29 deals with suspicious and unusual transactions and activities (refer to Guidance Note 4B).

The legal practitioner must register on the FIC's reporting platform, GoAML, and submit all reports online.

In addition to the guidance notes, the FIC publishes user guides to aid legal practitioner's in submitting reports. The user guides are available on the FIC website at www.fic.gov.za

Written by the FIC.