



# **SAMPLE RISK MANAGEMENT AND COMPLIANCE PROGRAMME**

**LAW SOCIETY OF SOUTH AFRICA**

## IMPORTANT NOTICE AND DISCLAIMER

Please note that the Financial Intelligence Centre Act, No. 38 of 2001 (the Act), as amended, requires an accountable institution **develop, document, maintain and implement** a Risk Management and Compliance Programme (RMCP) which must **enable** the accountable institution to identify; assess; monitor; mitigate; and manage, the risk that the provision *by the accountable institution* of products or services may involve or facilitate money laundering activities or the financing of terrorist and related activities.

By implication:

1. The mere adoption of a 'template/sample' RMCP is not envisaged under the Act;
2. The adoption of a RMCP by itself does not constitute compliance with the Act, which requires implementation of such Programme; and
3. The accountable institution must in addition to the adoption of the RMCP, identify, assess, monitor, mitigate and manage relevant risks in relation to individual client matter

This document is shared as guidance for attorneys and firms to prepare their unique Risk and Management Compliance Programmes.

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## 1. INTRODUCTION

Section 42 of the FIC Act provides that attorneys, as accountable institutions must:

- develop
- document
- maintain
- implement

Risk Management and Compliance (RMC) Programme for anti-money laundering and counter-terrorist financing.

The RMC Programme must enable the attorney/law firm to:

- identify
- assess
- monitor
- mitigate
- manage

the risk that the provision of services rendered by the attorney/Firm may involve or facilitate money laundering activities or the financing of terrorist and related activities.

## 2. IDENTIFICATION OF AML/CFT RISKS

### A. Commencement of attorney-client relationship:

The Firm will, **before entering into a business relationship** with a prospective client determine whether the person:

- a. Wants to enter into a single transaction or a business relationship?
- b. If a single transaction, is it more than the prescribed amount?
- c. Wants to establish a business relationship with the Firm?

A single transaction refers to a transaction (a) other than a transaction concluded in the course of a business relationship; and (b) where the value of the transaction is not less than the amount prescribed, except in the case of section 20A (anonymous client).

### B. Identify the Client

The Firm will, when engaging with a prospective client:

- a. Establish and verify the identity of the client;
- b. If the client is acting on behalf of another person, establish and verify:
  - the identity of that other person; and
  - the client's authority to execute the mandate
- c. If another person is acting on behalf of the client, establish and verify:
  - the identity of that other person; and
  - that other person's authority to act on behalf of the client.

#### **Means to identify a prospective client:**

- (i) **Individuals:** establish and verify the individual's:
  - a) Full names, through identity document, driver's license or passport
  - b) Home address, through documentary proof of residence
  - c) Telephone number
  - d) Occupation; and
  - e) Business address, if applicable.

- (ii) **Prospective client acting on behalf of another person**, establish and verify the client's details, as per above criteria (for individuals) and the below for the entity, together with:
- a) Documentary proof of authority, e.g.: power of attorney, board resolution, court order or letter of authority.
- (iii) With reference to **corporations, partnerships, trusts, associations**, etc., establish and verify the entity's:
- a) legal name – documentation: registration certificate, letters of authority, partnership agreement, memorandum of incorporation, trust deed, letterhead, business invoice, proof of residence,
  - b) registered address – documentation: where applicable, notice of change of address
  - c) telephone number;
  - d) registration certificate, letters of authority, NPO certificate, etc.; and
  - e) proof of physical address for the entity; and
  - f) the name, position and contact information of the individual giving you instructions on behalf of the organisation.

### **C. Understanding and obtaining information on business relationship**

The Firm must when engaging in a business relationship:

- a. Obtain information to reasonably enable the Firm to determine whether future transactions that will be performed are consistent with the Firm's knowledge of that prospective client, including information describing:
  - the nature of the business relationship concerned;
  - the intended purpose of the business relationship concerned; and
  - the source of the funds which that prospective client expects to use in concluding transactions in the course of the business relationship concerned
- b. Determine, if the client is a legal person or a natural person acting on behalf of the legal person (including trust or partnership):
  - the nature of the client's business; and
  - the ownership and control structure of the client.
- c. Establish, if the client is a legal person the attorney/law firm, the identity of the beneficial owner by:

- determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person; or
  - determining the identity of each natural person who exercises control of that legal person through other means; or
  - determining the identity of each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager
- d. Take reasonable steps to verify the identity of the beneficial owner of the client, so that the attorney/law firm is satisfied that it knows who the beneficial owner is.

**Means to obtain further information:**

The Firm will ordinarily obtain information to determine whether:

- a) any conflicting interests exist; and
- b) the Firm is equipped to render the requested services.

The Firm will, where applicable, review the following:

- a) Documentary information pertaining to shareholding: memorandum of incorporation; share holders' agreement; trust deed; constitution; share certificates; minutes of shareholders' meetings;
- b) Annual reports, integrated reports, annual financial statements;
- c) Data publicly available from a public database relating to the potential client, including: the CIPC, Masters' office, Department of Social Development (NPOs) and websites

The Firm will, where applicable, obtain information on the:

- d) Source of funds of the client;
- e) Reasons for intended business relationship and the legal services;
- f) Required approvals provided by the governing board or senior management
- g) Controlling ownership interest, whether through controlling the management of a legal person or a hidden beneficial owner.

The Firm realises that the concept of a beneficial owner is widely defined and would encompass a person having a controlling ownership interest would include a person(s) having the power to:

- Dispose of or control the legal entity's property;
- Amend or terminate the legal entity;
- Remove or add board members, shareholders or beneficiaries or to give another individual control over the legal entity; and
- veto specified decisions or resolutions.

In some instances, a review of the official documents may suffice, whereas in other instances, the Firm may be required to conduct a fuller investigation, including a more detailed interview with the client and a review of their website.

#### **D. Examining complex large transactions and unusual patterns of transactions**

The Firm will examine:

- (i) complex or unusually large transactions; and
- (ii) unusual patterns of transactions which have no apparent business or lawful purpose

The Firm will keep written findings of the above.

#### **Factors to be considered:**

The examination of the above transactions will depend on several factors, including:

- The nature of the legal services required and underlying purpose;
- The legislation, regulatory requirements and industry standards (or lack thereof) applicable to the transactions;
- The unusual and disproportionate amounts involved and disparate exchange of value.
- The sourcing of substantial funds from high-risk countries without any apparent linkage.
- The rendering of services or goods that are mismatched within the context.
- The use of multiple bank accounts without any apparent reason.
- Deposits of large sums of money without genuine business activities or acumen.
- Unusual payment instructions taking into consideration industry practices.
- Increase of assets or income in either local or foreign countries without plausible economic justification.



- Substantially large financial transactions for recently incorporated entities without any apparent economic reason.
- Substantially large financial transactions that are unsuitable for the prospective client's business profile or commercial status.

## **E. Terminating existing business relationships**

The Firm will not establish a business relationship or conclude a single transaction with a client if it is unable to:

- Establish and verify the identity of a client or other relevant person as required under the FIC Act.
- Obtain information to reasonably enable the attorney/law firm to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the attorney/law firm's knowledge of that prospective client.
- Obtain conduct ongoing due diligence as required under the Act.

If the Firm is unable to establish the above with reference to an existing client relationship:

- The relationship with the client will be terminated; and
- Consideration must be given as to whether a report should be made pursuant to the FIC Act.

## **F. Dealing with domestic prominent influential person or foreign prominent public official**

- Domestic Prominent Influential Person:** If the Firm determines that a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is a domestic prominent influential person (DPIP) as per the list of examples below and that, in accordance with this RMC Programme, the prospective business relationship or single transaction entails higher risk, the Firm will:
  - obtain senior management approval for establishing the business relationship;
  - take reasonable measures to establish the source of wealth and source of funds of the client; and

- conduct enhanced ongoing monitoring of the business relationship.

To identify if a potential client is a DPIP, including immediate family members, the Firm will, amongst other:

- Obtain a confirmation from prospective client as to whether he or she is DPIP or immediate family members are DPIPs.
- Where applicable, conduct an online search to determine whether a prospective client is a DPIP.

**Determine risk profile:** The Firm will determine if the DPIP (where applicable, the immediate family members) presents a higher risk.

**Procedural steps:** If the DPIP (where applicable, the immediate family members) presents a higher risk, the required approval must be obtained, reasonable measures should be applied to establish the source of funds and the enhanced ongoing monitoring should be applied.

The attorney/law firm will, before obtaining approval by senior management, attempt to establish the source of wealth and source of funds of the client, which the client may confirm. The Firm should have an understanding of the client's wealth profile, e.g.: shares, sale of assets, inheritance and sources of income, including employment income, directors' fees, offshore accounts, etc.

<b>DOMESTIC PROMINENT INFLUENTIAL PERSONS</b>	<b>YES</b>	<b>NO</b>
President or Deputy President of South Africa		
Government minister or deputy minister		
Premier of a province		
Member of the Executive Council of a province		
Executive mayor of a municipality		
Elected in terms of the Local Government: Municipal Structures Act		
Leader of a political party registered in terms of the Electoral Commission Act, 1996		
Member of a royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003		
Head, accounting officer or chief financial officer of a national or provincial department or government component, as defined in section 1 of the Public Service Act, 1994		
The municipal manager of a municipality or chief financial officer		
Chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of <b>a public entity listed in Schedule 2 or 3 to the Public Finance Management Act.</b> <u>List inserted below.</u>		
the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000		
a constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001		
an ambassador or high commissioner or other senior representative of a foreign government based in the Republic		
an officer of the South African National Defence Force above the rank of major- general		
chairperson of the board of directors; (ii) chairperson of the audit committee; (iii) executive officer; or (iv) chief financial officer, of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the Gazette; or		
the position of head, or other executive directly accountable to that head, of an international organisation based in the Republic.		

## **SCHEDULE 2 OR 3 TO THE PUBLIC FINANCE MANAGEMENT ACT**

**PLEASE NOTE:** Users of this Programme must consult the most recent version of the Public Finance Management Act to obtain the most recent version of the Schedules.

### **Schedule Two**

This includes the following entities and any subsidiary or entity under the ownership control of the following entities:

Air Traffic and Navigation Services Company, Airports Company, Alexkor Limited, Armaments Corporation of South Africa, Broadband Infraco (Proprietary) Limited, Broadband Infraco Limited, CEF (Pty) Ltd, DENEL, Development Bank of Southern Africa, ESKOM, Independent Development Trust, Industrial Development Corporation of South Africa Limited, Land and Agricultural Bank of South Africa, SA Broadcasting Corporation Limited, South African Express (Proprietary) Limited, SA Forestry Company Limited, SA Nuclear Energy Corporation, SA Post Office Limited, South African Airways Limited, Telkom SA Limited, TransCaledon Tunnel Authority, Transnet Limited

### **Schedule Three**

This includes the following entities and any subsidiary or entity under the ownership control of the following entities:

Accounting Standards Board, Africa Institute of South Africa, Pretoria, African Renaissance and International Cooperation Fund, Afrikaanse Taalmuseum, Agricultural Research Council, AGRISSETA, Artscape, Banking Sector Education and Training Authority, Boxing South Africa, Brand SA, BreedeGouritz Catchment Management Agency, Castle Control Board, Chemical Industries Education and Training Authority, Commission for Conciliation, Mediation & Arbitration, Community Schemes Ombud Service, Companies and Intellectual Property Commission, Companies Tribunal, Competition Commission, Construction Education and Training Authority, Construction Industry Development Board, Council for Built Environment (CBE), Council for Geoscience, Council for Medical Schemes, Council on Higher Education, CrossBorder Road Transport Agency, Culture, Arts, Tourism, Hospitality and Sports Education and Training Authority (CATHSSETA), Education, Training and Development Practices SETA (ETDP), Electricity Distribution Industry Holdings (Pty) Ltd, Electronic Communications Security (Pty) Ltd, Energy and Water Sector Education and Training Authority (EWSETA), Fibre Processing Manufacturing Sector Education and Training Authority (FPMSETA), Film and Publication Board, Financial and Accounting Services SETA (FASSET), Financial Intelligence Centre, Food and Beverages Manufacturing Industry (FOODBEV), Freedom Park Trust, Health and Welfare Sector Education and Training Authority, Housing Development Agency, Human Sciences Research Council, Independent Regulatory Board for Auditors, Information Systems, Electronics and Telecommunications Technologies Training Authority, Ingonyama Trust Board, Catchment Management Agency, Insurance Sector Education and Training Authority, International Trade Administration Commission, iSimangaliso Wetland Park, Iziko Museums of South Africa, KwaZuluNatal Museum, Legal Aid South Africa, Local Government Education and Training Authority (LGSETA), Manufacturing, Engineering and Related Services Education and Training Authority, Marine Living Resources Fund, Market Theatre Foundation, Media Development and Diversity Agency, Media, Information and Communication Technologies Sector Education and Training Authority (MICTS), Mine Health & Safety Council, Mining Qualifications Authority, Municipal Infrastructure Investment Unit, National Agricultural Marketing Council, National Arts Council, National Consumer Commission, National Consumer Tribunal, National Credit Regulator, National Development Agency, National Economic, Development and Labour Council, National Electronic Media Institute of SA, National Empowerment Fund, National Energy Regulator of South Africa, National Film and Video Foundation, National Gambling Board of SA, National Health Laboratory Service, National Heritage Council (NHC), National Home Builders Registration Council—NHBRC, National Housing Finance Corporation, National Library, Pretoria/Cape Town, National Lotteries Commission, National Metrology Institute of South Africa, National Museum, Bloemfontein, National Nuclear Regulator, National Regulator for Compulsory Specifications, National Research Foundation, National Student Financial Aid Scheme, National Urban Reconstruction and Housing Agency, National Youth Development Agency, Nelson Mandela Museum, Umtata, Office of Health Standards Compliance, Office of the Ombudsman for Financial Services Providers, Office of the Pension Funds Adjudicator, Performing Arts Council of the Free State, Perishable Products Export Control Board, Private Security Industry Regulatory Authority, Productivity SA, Public Service Sector Education and

Training Authority (PSETA), Quality Council for Trades and Occupations (QCTO), Railway Safety Regulator, Road Accident Fund, Road Traffic Infringement Agency (RTIA), Road Traffic Management Corporation, Robben Island Museum, Cape Town, Rural Housing Loan Fund, Safety and Security Sector Education and Training Authority (SASSETA), SA Civil Aviation Authority, SA Council for Educators, South African Diamond and Precious Metals Regulator, SA Heritage Resources Agency, SA Library for the Blind, SA Local Government Association, SA Maritime Safety Authority, SA Medical Research Council, SA National Accreditation System, South African Health Products Regulatory Authority (SAHPRA), South African National Biodiversity Institute (SANBI), South African National Energy Development Institute (SANEDI), South African National Parks, SA National Roads Agency, South African National Space Agency, SA Qualifications Authority, SA Revenue Service, South African Social Security Agency, SA Tourism Board, South African Weather Service, Servcon, Small Enterprise Development Agency (SEDA), Special Investigation Unit, State Information Technology Agency, State Theatre, Pretoria, The Cooperative Banks Development Agency, The National English Literary Museum, Grahamstown, The National Radioactive Waste Disposal Institute (NRWDI), The National Skills Fund (NSF), The Playhouse Company, Durban, The Social Housing Regulatory Authority (SHRA), Thubelisha Homes, Tourism and Hospitality Education and Training Authority, Transport Education and Training Authority, uMalusi Council for Quality Assurance in General and Further Education and Training, Unemployment Insurance Fund, Universal Service and Access Agency of South Africa, Universal Service and Access Fund, Urban Transport Fund, War Museum of the Boer Republics, Bloemfontein, Water Research Commission, Wholesale and Retail Sector Education and Training Authority, William Humphreys Art Gallery,

#### Part B: National Government Business Enterprises

Amatola Water Board, Aventura, Bloem Water, Council for Scientific and Industrial Research (CSIR), Export Credit Insurance Corporation of South Africa Limited, Inala Farms (Pty) Ltd, Lepelle Northern Water, Magalies Water, Mhlathuze Water, Mintek, Ncera Farms (Pty) Ltd, Onderstepoort Biological Products, Overberg Water, Passenger Rail Agency of South Africa, Public Investment Corporation Limited, Rand Water, SA Bureau of Standards (SABS), Sasria Limited, Sedibeng Water, Sentech, State Diamond Trader, Umgeni Water

#### Part C: Provincial Public Entities – as listed under the Schedule.

#### Part D: Provincial Government Business Enterprises – as listed under the Schedule.

### **b) Foreign Prominent Public Official**

The Firm will adopt a similar process in relation to a foreign prominent public official (FPPO), as listed under **Schedule 3B of the FIC Act** who is an individual who holds, or has held at any time in the preceding twelve months, in any foreign country a prominent public function including that of a:

- (a) Head of State or head of a country or government;
- (b) member of a foreign royal family;
- (c) government minister or equivalent senior politician or leader of a political party;
- (d) senior judicial official;
- (e) senior executive of a state-owned corporation; or
- (f) high-ranking member of the military.

## **3. ASSESSMENT OF AML/CFT RISKS**

It is important for the Firm to understand the risks posed within the context of the services being rendered by the Firm and through monies deposited into the trust account. Accordingly, the risks are dependent upon the services being rendered.

The assessment process, as captured below, will provide the Firm with an understanding of the following features:

- i. Knowledge of the client or potential client;
- ii. If applicable, the regulatory requirements;
- iii. Where applicable, the nature and location of the business structure involved,
- iv. The reason behind the business structure, including controlling mechanisms,
- v. Details of the beneficial owner; and
- vi. If applicable, details of the client's representative.

### **Service-related risks:**

The following are examples of the risks associated with specific legal services:

- a. **Conveyancing-related transactions and transfers** – Property transfers represent a particular area of vulnerability. The FATF<sup>1</sup> indicates that, 'money launderers are increasingly forced to develop elaborate schemes to work around AML/CFT controls. This has often meant seeking out the experience of professionals such as lawyers, tax advisors, accountants, financial advisors, notaries and registrars in order to create the structures needed to move illicit funds unnoticed.' Criminals may also invest criminal proceeds in immovable property.
- b. **Commercial and other entities** – Criminals may hide their identities or proceeds of crime within complicated legal structures or shelf companies.
- c. **Commercial, B-BBEE, tax and other transactions** – Criminals may use intricate transactions to facilitate the flow of illegal funds.
- d. **Trust-related services** – Criminals may appoint attorneys as directors or trustees to increase the impression of legitimacy within the context of concealed criminality.
- e. **Deceased estate** – Deceased criminals may want to transfer the proceeds of unlawful activities through structures created under their wills.

### **Higher Risk Factors:**

The Firm will determine whether a client poses a higher risk and lists the following higher risk factors for some clients:

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<sup>1</sup> [Money laundering & terrorist financing](#) through the real estate sector

- a. Conducting businesses with domestic prominent influential persons and those closely associated with or related to DPIPs.
- b. Conducting business relationships in unusual circumstances.
- c. Obscuring the identity of beneficial owners or controlling interests through shelf or front companies or nominee shares or bearer shares.
- d. Enabling company formation and asset administration over different countries without any ostensible legal, tax, business, economic or other reason.
- e. Conducting business involving unusual and unexplained complexity in control or ownership structures without an economic purpose.
- f. Conducting business in unconventional circumstances considering full context.
- g. Conducting business with extraordinary and substantial amounts of cash.
- h. Conducting business using new technologies may have inherent weaknesses for exploitation by criminals.
- i. Operating as non-profit organisations engaging in transactions having no logical economic purpose or ostensible purpose with other parties.
- j. Acting on behalf of an undisclosed person.
- k. Entering into transactions being affected mainly through the use of virtual assets to preserve anonymity, without motivation.
- l. Offering unusually high levels of fees for services not warranting such a premium, except legitimate contingency fee arrangements.
- m. Entering into transactions involving inexplicable and unusual high levels of assets or amounts given the client's profile.
- n. Involving transactions beyond the attorney's understanding of the client's business or economic situation.
- o. Applying for residency or citizenship in exchange for capital transfers, purchase of property or government bonds, or investment in corporate entities in that jurisdiction.
- p. Being suspected of being engaged in falsifying or misleading activities.
- q. Conducting business and employing staff numbers that are divergent from the industry norm.

- r. Seeking advice for arrangements that have indicators of a tax evasion purpose.
- s. Transferring a company's seat to another jurisdiction without any genuine economic activity in that jurisdiction.
- t. Performing sudden and inexplicable activity from a previously dormant company.
- u. Conducting business with unexpected profile or abnormal business cycles or entering into new/emerging markets.
- v. Wishing not to obtain necessary governmental approvals/filings.
- w. Changing professional advisers recurrently or inexplicably.
- x. Providing incorrect or insufficient information to the attorney.
- y. Facing criminal charges on white collar and/or unlawful income generating crimes.

### **Transaction risk**

The Firm will take into account that the following services may present higher risk:

- a. The Firm being expected to act as a financial intermediary in a business transaction by receiving and transmitting funds through accounts under their control.
- b. Clients depositing funds in the Firm's trust account which do not involve legal services rendered by the Firm
- c. Clients requesting financial transactions to occur outside the Firm's trust account, i.e.: through the Firm's general, personal or business account.
- d. Services involving the Firm may represent or assure the client's reputation and credibility to third parties, without an appropriate knowledge of the client's affairs.
- e. Services facilitating the concealment of beneficial ownership from competent authorities.
- f. Services where the Firm does not have expertise, unless where the matter is referred to a trained professional.
- g. Services relying heavily on new technologies with inherent vulnerabilities to exploitation by criminals.
- h. Transfer of fixed property or other high value assets a time that is unusually short for similar transactions with no ostensible economic or other legitimate reason.
- i. Payments received from unfamiliar or unknown third parties and unconventional cash payments.



- j. Transactions involving inadequate consideration and without any legitimate reasons.
- k. Deceased estates involving persons who have been convicted of proceeds generating crimes.
- l. The use of shell companies without apparent legal, tax, business, economic or other legitimate reason.
- m. Legal arrangements that may lead to obscuring real ownership or economic purpose, including; providing advice on a discretionary trust that empowers the trustee power to name a class of beneficiaries other than the real beneficiary.
- n. Settlement of default judgments or alternative dispute resolutions in unusual ways.
- o. Use of anonymous and/or unusual payment methods, virtual currency and wealth transfer without a clear economic or other legitimate reason.
- p. Postponement of a payment for an asset or service to a distant date in circumstances where payment would ordinarily take place immediately, without appropriate assurances.
- q. Unexplained and unusual provisions in credit arrangements that do not reflect the commercial reality of parties.
- r. Transfers of unique or hard-to-value goods (e.g. precious stones, antiques, virtual assets) that are uncommon to the client, or beyond the attorney's normal course of business.
- s. Short and recurring capital or pecuniary contributions to the same entity with no apparent economic or other legitimate reason.
- t. Acquisitions of businesses in business rescue or liquidation with no apparent economic or other legitimate reason.
- u. Power of attorney given in unusual and for unclear or illogical reasons.
- v. Transactions involving closely connected persons with no rational explanations and no apparent economic or other legitimate reason.
- w. Commercial or conveyancing transactions to be carried out by the client with no apparent economic or other legitimate reason.
- x. Transactions not adequately accounted for, including: incorrect invoicing of goods/services, falsely described goods/services, and multiple trading of goods/services.

The Firm will not consider the above risk categories in isolation. A holistic approach will accordingly be adopted to ensure a suitable risk assessment.

## **4. MONITORING OF AML/CFT RISKS**

The Firm will, in the context of an extended client relationship, likely be exposed to changes in the client's risk profile. The Firm will, where appropriate, conduct ongoing risk and control assessments to monitor a client's risk profile.

The degree of ongoing monitoring will depend on several factors, including:

- a. The size of the Firm;
- b. The Firm's available resources;
- c. The risk profile of the client, as assessed at the inception of the client relationship;
- d. The nature of changes that have occurred since inception of the client relationship;
- e. Changes in sources of funds to which the client may have accessed; and
- f. Instructions to execute further risk-related services or transactions.

The Firm, where appropriately, regularly:

- Assess the effectiveness of its policies, systems and controls; and
- Set up systems to detect unusual and suspicious transactions with reference to beneficial ownership.

## **5. MITIGATING AML/CFT RISKS**

The Firm will adopt relevant policies to guide the implementation of this Programme and ensure that training is being offered to attorneys and staff members.

The FIC specific measures to be considered with reference to of higher AML/CFT risks, include:

- a. Increased automated transaction monitoring.
- b. Increased review periods of client information.
- c. Utilising more or higher quality sources for the vetting of information (impacts both quality and quantity).
- d. Senior management involvement in decisions to on-board clients.
- e. Dedicated specialist staff managing enhanced due diligence for specific clients.
- f. Limited reliance on another accountable institution's controls.

Simplified due diligence will be implemented by Firm where the risks are assessed as lower.

## **6. RECORD-KEEPING AND REPORTING**

## **Record-keeping**

The Firm will keep a record of the information required under sections 21 to 21H of the Act, which includes information relating to:

- a. Verification of client's details;
- b. With reference to a business relationship, the nature and intended purpose of the business relationship and the source of the funds which the prospective client is expected to use in concluding transactions in the course of the business relationship.
- c. Every transaction, whether the transaction is a single transaction or concluded in the course of a business relationship which the attorney/law firm has with the client, that are reasonably necessary to enable that transaction to be readily reconstructed, which must, amongst other, reflect the following information:
  - The amount and currency involved;
  - the parties to and date on which the transaction was concluded; and
  - the nature of the transaction and business correspondence.

## **Determining whether a transaction or activity is reportable**

Subject to legal professional privilege, section 29 of the FIC Act requires any person who is employed by a business to report to the FIC suspicious and unusual transactions relating to the proceeds of unlawful activities connected to the affairs of such business.

Accordingly, a report may need to be made to the FIC where an employee knows or suspects (or ought reasonably to have known or suspected) that Firm:

- a. has or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
- b. is party to a transaction that:
  - facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
  - has no business or lawful purpose;
  - is constructed to avoid any reporting duty under the FIC Act; or
  - may be relevant to the investigation of any evasion or attempted evasion of a duty to pay tax or any other duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or
  - relates to an offence relating to the financing of terrorist and related activities;

- relates to the contravention of a prohibition under section 26B dealing with prohibitions relating to persons and entities identified by Security Council of the United Nations.
- c. has been or is about to be used for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities;

must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the FIC the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

In terms of section 1(2) of the FIC Act, a person has knowledge of a fact if:-

- a. the person has actual knowledge of that fact; or
- b. the court is satisfied that the person believes that there is a reasonable possibility of the existence of that fact; and the person fails to obtain information to confirm or refute the existence of that fact.

The FIC Act ascribes the following meaning to the following definitions:

**‘unlawful activity’** - “conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere.

**‘Money laundering’** or **‘money laundering activity’** means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of section 64 of this Act or section 4, 5 or 6 of the Prevention of Organised Crime Act, contains the following definitions:

**‘Money laundering’** - *any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and-*  
*(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or (b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect-*

*(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or its ownership or any interest which anyone may have in respect thereof; or*

*(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere- (aa) to avoid prosecution; or (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, shall be guilty of an offence.*

***‘Assisting another to benefit from proceeds of unlawful activities’*** – means any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby-  
(a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or  
(b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way, shall be guilty of an offence.

The term “**terrorist activity**” and the offence of terrorism and offences associated or connected with terrorist activities were introduced into FIC Act when the Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA) was enacted. With the enactment of POCDATARA, FIC Act imposes a reporting obligation in connection with property associated with terrorist and related activities which may come into the attorney/ law firm’s possession or under its control.

## 7. READING LIST:

1. [Guidance for a Risk-Based Approach for Legal Professionals](#), Financial Action Task Force, June 2019;
2. [Guidance Note 05B on Cash Threshold Reporting to the Financial Intelligence Centre in terms of Section 28 of the Financial Intelligence Centre Act, 2001](#), Financial Intelligence Centre;
3. [Money laundering & terrorist financing through the real estate sector](#), Financial Action Task Force, June 2007;
4. [South Africa Financial Sector Assessment Program, Anti-Money Laundering and Combating the Financing of Terrorism \(AML/CFT\)—Technical Note](#), International Monetary Fund, March 2015
5. [Guidance Note 7, On the Implementation of Various Aspects of the Financial Intelligence Centre Act, 2001](#), Financial Intelligence Centre In Collaboration with the National Treasury, South African Reserve Bank and Financial Services Board