

When is my practice

The Financial Intelligence Centre Act 2001 (FICA) was introduced to fight financial crime such as money laundering, tax evasion, and terrorist financing activities by making it more difficult for criminals to benefit from the proceeds of crime. The FIC Amendment Act (FICAA) brings South Africa closer to international standards and best practices recommended by the Financial Action Task Force (FATF).

The major question that smaller practitioners often ask and have had to grapple with, is who would need to register as an accountable institution.

ACCOUNTABLE INSTITUTIONS

Amendments to the Financial Intelligence Centre Act 2001 (FICA) (defining accountable institutions) were published on 29 November 2022. These came into effect on 19 December 2022, ahead of the possible grey-listing of South Africa.

The following entities (amongst others) will now become accountable institutions:

- A person who carries on a life insurance business as defined in the Insurance Act 2017. This excludes a reinsurance business as defined in this Act
 - A person who carries on the business of a credit provider as defined in the National Credit Act 2005
 - A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act 2005 because the credit is being provided to certain juristic persons, the state or an organ of state
 - A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act 57 of 1988
 - A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act 2002 to provide advice or intermediary services in respect of the investment of any financial product (but excluding a non-life insurance policy, reinsurance business as defined in the Insurance Act 2017 and the business of a medical scheme as defined in the Medical Schemes Act 1998
- A person who carries on the business of a money or value transfer provider
 - A person who carries on the business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of ZAR100 000 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked, where 'high-value goods' means any item that is valued in that business at ZAR100 000 or more
 - A person who carries on the business of one or more of the following activities or operations for or on behalf of a client:
 - o Exchanging a crypto asset for a fiat currency or vice versa
 - o Exchanging one form of crypto asset for another
 - o Conducting a transaction that transfers a crypto asset from one crypto asset address or account to another
 - o Safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset
 - o Participation in and provision of financial

services related to an issuer's offer or sale of a crypto asset, and

- o A clearing system participant as defined in section 1 of the National Payment System Act 1998 that facilitates or enables the origination or receipt of any electronic funds transfer and or acts as an intermediary in receiving or transmitting the electronic funds transfer

These entities will no longer merely claim to perform customer due diligence or monitor whether transactions may involve money laundering or unlawful activities. Compliance by these newly added institutions will be on the radar of the Financial Intelligence Centre (FIC).

OBLIGATIONS

The FIC places various obligations on accountable institutions. These include the obligation to –

- Register as an accountable institution with the FIC
- Formulate and implement a risk management and compliance programme (RMCP)
- Appoint a money laundering control officer

- Train employees
- Identify and verify new clients
- Perform ongoing due diligence in respect of existing clients
- Keep records of the identities of clients and transactions entered into with clients
- Provide sanction screening, and
- Report certain transactions to the FIC

The board of directors of an accountable institution which is a legal person with a board of directors, or the senior management of an accountable institution without a board of directors, must ensure compliance by the accountable institution and its employees with the provisions of FICA and its RMCP.

Non-compliance with FICA can lead to hefty penalties, including imprisonment for a period not exceeding 15 years or a fine not exceeding ZAR100 million.

To simplify the decision for SAICA small practitioners, please refer to the infographic below to assist in deciding if you have a responsibility to register as an accountable institution at the FIC.

SERVICE	FICA REGISTRATION REQUIRED?
Accounting processing	No
Independent review	No
External audit	No
AFS compilation from trial balance	No
Income tax	No
VAT	No
Payroll	No
Secretarial	No; the exception is that company trust formation requires FICA registration
Consulting	Yes, if advice constitutes any of Ref Z below
Valuations	Yes, if the valuation constitutes any of Ref Z below
Due diligence	No FICA registration if ONLY performs the due diligence work, which is generally a findings engagement. Due diligence will be relied upon to make a decision: the decision is independent of the due diligence work. If assist with the decision per Ref Z that the due diligence influences, require FICA registration.
Feasibility studies	Yes, if the feasibility study constitutes any of Ref Z below
Management accounting	No, management accounting presents the trial balance in a different format, for example variable or absorption costing compiles the trial balance in a different format
Social and Ethics Committee	Yes, assists with ongoing operations

REF Z

- Assisting or advising clients on raising capital or funds
- Assisting a client on the registration or administrative process to register a company
- Assisting with the ongoing operations of the client
- Performing an active role or making decisions that steer the direction of the business