

RISK MANAGEMENT AND COMPLIANCE PROGRAMME

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1. INTRODUCTION

A trust and company service provider (TCSP) as listed in item 2 of Schedule 1 of the FIC Act as an accountable institution must, develop, document, maintain and implement Risk Management and Compliance (RMC) Programme for anti-money laundering and counter-terrorist financing.

The RMC Programme must enable the TCSP to, identify, assess, monitor, mitigate and manage the risk that the provision of services rendered by the TCSP may involve or facilitate money laundering activities or the financing of terrorist and related activities.

The TCSP Ensure that they fulfil their FIC Act obligations such as:

- Risk based approach and Risk management and compliance programme
- Monitoring and Reporting STR, CTR, TPR, IFTR (where required)
- Customer due diligence
- Targeted financial sanctions
- Foreign politically exposed persons, domestic politically exposed persons, prominent influential persons
- Appointing a compliance officer,
- Training employees on the FIC Act and RMCP
- Completing the Directive 6
- Conducting employee screening as per Directive 8

2. IDENTIFICATION OF AML/CFT/CPF RISKS

A. Commencement of client relationship:

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

Wants to enter into a single transaction or a business relationship?

B. Identify the Client

The Practice 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:

This is detailed in the Acffin Sky software and may be amended from time to time, the initial requirements are as follows

- (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, then 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 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, SARS

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

- d) Source of funds of the client;
- e) Reasons for intended business relationship;
- 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.

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 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.
- 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:

- a) Establish and verify the identity of a client or other relevant person as required under the FIC Act.
- b) Obtain information to reasonably enable the Firm to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the Firm 's knowledge of that prospective client.
- c) 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 Politically Exposed Person (DPEP), Foreign Politically Exposed Person (FPEP), and Prominent Influential Person (PIP).

To identify if a potential client is a DPEP, FPEP or PIP, an immediate family member or known close associate, the Firm will, amongst other:

- Obtain a confirmation from prospective client of this, the declarations are as defined in Accfin Sky
- Where applicable, conduct an online search to determine whether a prospective client is as above.

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 politically exposed person (DPEP) or is an immediate family member or known close associate of a DPEP, 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.

Determine risk profile: The Firm will determine if the DPEP (where applicable, the immediate family members or known close associates) presents a higher risk.

Procedural steps: If the DPEP (where applicable, the immediate family members or known close associate) 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 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.

3. INHERENT RISKS AND POTENTIAL RISK INDICATORS

It is important for the Firm to understand the risks posed within the context of the services being rendered by the Firm. Accordingly, the risks are dependent upon the services being rendered. Given the unique nature of the services offered by TCSPs, they are susceptible to abuse by entities seeking to misuse corporate structures to facilitate the movement of illicit funds.

3.1. TCSPs are included as an accountable institution given their susceptibility to exploitation by those looking for methods to launder criminal proceeds or raise funds for terrorist activity.

3.2. The knowledge and expertise in creating, administering and managing trusts and other business entities is particularly attractive to potential abuse. The use of legal persons (business entities) can be used to attempt disguising beneficial ownership, and the TCSP's involvement therein could provide an appearance of legitimacy and creating an air of respectability for their customers and their newly created corporate vehicles.

3.3. TCSPs are also considered to be gatekeepers in providing access points into the financial system, through which potential criminals could pass, to do business with financial institutions without revealing their own identities.

3.4. Although the business of the TCSP may be legitimate, crime syndicates or individual criminals may seek out their services in the facilitation of ML, TF and PF. A TCSP may unwittingly be part of such ML, TF and PF attempts.

3.5. A TCSP should be reviewed holistically, to take into account all of the services provided by the institution. Where a TCSP offers multiple different services relating to the entity's business, such as using auditing, legal services, accounting, taxation as well as entity creation (legal person or trust), administration and management. Such engagements could intensify the disguising of the entity or trust to such an extent that the identity is mainly linked to the TCSP themselves.

3.6. Based on the nature of the business offering provided by a TCSP, the following could be considered as inherent ML or TF risks posed by the TCSP sector. It is important to first understand the ML and TF risks that the industry faces before considering specific indicators. Such ML or TF risks could include:

1. Disguising ultimate beneficial owners through a corporate structure, to limit the detection of a sanctioned or designated person, an associated sanctioned

person, a politically exposed person (PEP), such as a foreign prominent public official (FPPO) or domestic prominent influential person (DPIP), or a person linked to criminal activity.

2. Facilitating the movement of illegal proceeds from a foreign client's country to South Africa. This is the primary reason why sufficient care and application of the mind is used to scrutinise client details to ensure that they are not a FPPO or DPIP.
3. Companies based in foreign countries hiding the origin of their money, while attempting to distance themselves from the source of funds and to avoid paying for tax in South Africa.

3.7. The risk indicators as detailed in the Acffin Sky software and which may be amended from time to time will be used when evaluating risk in the ordinary course of business for a TCSP. Each risk will be allocated a risk score and the total score of these risk factors will be used as a risk indicator when assessing client risk.

The assessment process, as detailed in the Acffin Sky software and which may be amended from time to time, 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:

There are several listed money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risk indicators that can be considered by TCSPs.

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

- a. **Commercial and other entities** – Criminals may hide their identities or proceeds of crime within complicated legal structures or shelf companies.
- b. **Commercial, B-BBEE, tax and other transactions** – Criminals may use intricate transactions to facilitate the flow of illegal funds.
- c. **Trust-related services** – Criminals may appoint accountants as trustees to increase the impression of legitimacy within the context of concealed criminality.

- d. **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:

- a. Conducting businesses with domestic prominent influential persons and those closely associated with or related to DPEPs.
- 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 firm's understanding of the client's business or economic situation.
- o. Being suspected of being engaged in falsifying or misleading activities.
- p. Conducting business and employing staff numbers that are divergent from the industry norm.
- q. Seeking advice for arrangements that have indicators of a tax evasion purpose.
- r. Transferring a company's seat to another jurisdiction without any genuine economic activity in that jurisdiction.
- s. Performing sudden and inexplicable activity from a previously dormant company.
- t. Conducting business with unexpected profile or abnormal business cycles or entering into new/emerging markets.
- u. Wishing not to obtain necessary governmental approvals/filings.
- v. Changing professional advisers recurrently or inexplicably.
- w. Providing incorrect or insufficient information to the firm.
- x. 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. 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.
- c. Services facilitating the concealment of beneficial ownership from competent authorities.
- d. Services where the Firm does not have expertise, unless where the matter is referred to a trained professional.
- e. Services relying heavily on new technologies with inherent vulnerabilities to exploitation by criminals.

- f. Transfer of fixed property or other high value assets at a time that is unusually short for similar transactions with no ostensible economic or other legitimate reason.
- g. Payments received from unfamiliar or unknown third parties and unconventional cash payments.
- h. Transactions involving inadequate consideration and without any legitimate reasons.
- i. Deceased estates involving persons who have been convicted of proceeds generating crimes.
- j. The use of shell companies without apparent legal, tax, business, economic or other legitimate reason.
- k. 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.
- l. Use of anonymous and/or unusual payment methods, virtual currency and wealth transfer without a clear economic or other legitimate reason.
- m. 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.
- n. Short and recurring capital or pecuniary contributions to the same entity with no apparent economic or other legitimate reason.
- o. Acquisitions of businesses in business rescue or liquidation with no apparent economic or other legitimate reason.
- p. Transactions involving closely connected persons with no rational explanations and no apparent economic or other legitimate reason.
- q. 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/CPF 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, will 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/CPF RISKS

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

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.