

Greylisting implications:

Newly designated accountable institutions and their compliance obligations.

April 2023

In February 2023, South Africa became only the second G20 country to be greylisted by the Financial Action Task Force (FATF). The practical implication of this decision needs to be considered at two levels.

We should all be aware of the potential macroeconomic implications – although we as a country will largely be takers of the implications. Considering some of the factors, it's clear that the overarching sentiment is negative. The International Monetary Fund estimates that on average, the capital inflows reduce by over 7.5% in countries once they are greylisted. Immediately following South Africa's greylisting, the Rand weakened. Nigeria, who were greylisted at the same time, have seen financial direct investment fall to record lows.

The more important discussion is in respect of Government's reaction to the greylisting and the steps they are taking to undo South Africa's greylisting over time. A critical action already taken is the December amendment to the Financial Intelligence Centre Act (FICA), which significantly expanded the categories of organisations who have to comply with FICA as Accountable Institutions (AIs).

These new categories of AIs include:

- **High value goods dealers** – any entity selling goods valued at over R100 000;
- **Credit providers** – any entity providing credit (whether or not regulated by the National Credit Act), incidental credit, payment deferral, leases or even staff loans;
- **Life event insurers** – any entity offering insurance products based on life, health and disability events, even if performed so under a short term license;
- **Property practitioners** – any entity doing anything that would be deemed activities of an estate agent;
- **Value transfer providers** – any entity offering banking services, acting as an authorised dealer, offering mobile money or vouchers;
- **Trust and company service providers** – any entity assisting clients to create, operate or manage a company, trust or closed corporation;
- **Legal practitioners** – attorneys, conveyancers, notaries, advocates and their entities;
- **Crypto businesses** – any entity providing services related to crypto;
- **Clearing system participants** – any entity participating in the payment clearing system.

The categories related to high value goods dealers, credit providers and value transfer providers are likely to bring the largest number of entities into the AI net. If any of your business operations touch on these areas, an assessment is required.

For anyone designated as an AI for the first time, compliance with FICA may be a daunting prospect. The first step is registering with the Financial Intelligence Centre (FIC), and in a media release on 17 March 2023, the FIC made it clear that all new AIs should already have registered, and that a failure to register within the allowed 90-day period is a contravention of FICA. The FIC in their media release mentioned that the penalty for such non-compliance could be up to R50 million.

Once registered, certain foundational aspects need to be put in place:

- appointment of a FICA compliance officer;
- conduct a money laundering and terrorist financial risk assessment of the organisation - as per a directive that was published on 31 March 2023; this assessment must be concluded and reported to the FIC by either 31 May 2023 or 31 July 2023 (depending on the category of AI which the organisation falls into).
[We have provided further detail on the next page.](#)
- development of an entity specific Risk Based Approach;
- implement a customer identity and verification onboarding process;
- implement a customer due diligence process (including scanning for sanctions and politically exposed persons);
- training; and
- designing a process to get the existing customer base compliant.

On an ongoing basis, a number of additional processes need to take place:

- implement an enhanced and ongoing customer due diligence process (including adverse media and source of funds information assessment);
- implement and monitor a FICA compliance programme;
- monitor all transactions for suspicious activity, which then needs to be reported to the FIC; and
- monitor all cash transactions, as all cash transactions above R49,999 need to be reported to the FIC.

Directives 6 & 7 issued by the FIC - reporting required for new AIs by either 31 May 2023 and 31 July 2023

As mentioned on the previous page, the pursuant amendment of the FICA in December 2022, the FIC has issued directives in respect of reporting requirements. Directives 6 and 7 inform all AIs (those that always were AIs and those that have recently become AIs) to submit to the FIC, a risk and compliance return. The Directives differ only in the required reporting periods and by setting specific reporting deadlines for the different types of entities listed as accountable institutions. Namely –

1. Directive 6 applies to: Attorneys, Advocates, Conveyances, Trust and Company Service Providers (TCSP), Estate Agents and Casinos and reporting is due by **31 May 2023** and must cover the reporting period from **1 April 2022 to 31 March 2023**.
2. Directive 7 applies to: NCR and Non NCR (providing any credit agreement that is excluded from the NCA Act) Lenders, the South African Postbank, High Value Goods Dealers, South African Mint Company, and Crypto Asset Service Providers and reporting is due by **31 July 2023** and must cover the reporting period from **1 January 2023 to 30 June 2023**.

What reporting is required?

The FIC requires organisations to answer a set of detailed questions based on their understanding of Money Laundering (ML), Terrorist Financing (TF) and Proliferation Financing (PF) risks and their organisations' implementation of their risk-based controls as per the compliance obligations set out in the FICA.

It is important to note that non-submission of the risk and compliance return will be considered non-compliance with the Directives and may result in an administrative sanction, in accordance with section 62E read with section 43A (3) of the FICA. The sanction in question can be a penalty of up to R100 million.

What should you do next?

Newly impacted organisations, that is the non-financial businesses and professions that are now deemed accountable institutions, should have by now confirmed whether or not they are indeed AIs.

If so, those organisations would need to work through the questions that must be responded to and submit the return to the FIC prior to the set deadline.

From the questions set out in the return, it is evident that organisations must conduct a comprehensive risk assessment on their businesses, determining which processes bring about ML, TF and PF risk and confirming their comfort that they have sufficient controls in place to mitigate such risks. This also entails understanding how many transactions are impacted per month and other details about those transactions, such as the method of payment and whether the transaction took place in South Africa or not.

Where organisations reach the conclusion that risks are not sufficiently mitigated, action plans should be documented, implemented and tracked in order to enable future risk mitigation.

In addition, organisations should formally document their approaches to risk and will have to investigate how they implement processes to ensure the ongoing screening of customers and transactions against the necessary sanctions and PEP lists.

In short, a comprehensive review of the business is required and then a prioritised action plan should be put in place where controls are not sufficient. The review, along with the action plan, will enable organisations to respond to the FIC comprehensively and will also demonstrate the organisations willingness to reach compliance over time.

Should you require assistance with the execution of a risk assessment to understand your FICA obligations and develop a plan on how to meet any new obligations, we can assist you with conducting a comprehensive risk assessment to provide a view of the level of ML/TF/PF risk, advise on utilising the assessment report for the completion of the FIC questions and a roadmap for the implementation of the necessary actions to mitigate the non-compliance risks going forward.

Deloitte also has a fully outsourced solution for KYC onboarding requirements in terms of FICA and we would gladly provide you with more information in this regard.

Please feel free to reach out to us if you have any queries on the content of this document.



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