



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



financial intelligence centre

REPUBLIC OF SOUTH AFRICA

SUMMARY OF COMMENTS ON THE DRAFT FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL, 2015

NO	COMMENT	RESPONSE
1	It is not necessary for the FIC Act to deal with aspects of corruption in view of the Corrupt Activities Act	This view is supported as the proposed amendments should not be seen to deal with the criminal aspects of corruption which are already dealt with in the Corrupt Activities Act.
2	The Bill is not aligned with the Protection of Constitutional Democracy against Terrorist and related Activities Act and does not make provision for the UN Resolution to have legal effect in SA. It is proposed that the Minister set conditions in accordance with UNSC Resolution.	The views are acknowledged. However the process under the POCDATARA Act for the implementation of Resolutions has been found to be cumbersome and time consuming. It is not the intention of the proposed amendments to give general legal effect to the UNSC Resolutions. The suggestion that the Minister of Finance set conditions in accordance with the UNSC Resolution were taken into account and Bill was amended accordingly.
3	<p>Not in favour of requiring information of beneficial owner of corporate vehicles</p> <p>Smaller firms may find it difficult to implement a risk-based approach.</p> <p>Attorneys should be separately governed through regulation to accommodate the needs of the profession and the current</p>	<p>Do not agree as knowing who the beneficial owner of a corporate vehicle is a key component to customer due diligence.</p> <p>Guidance and training will assist in the implementation of the legislation. A risk-based approach for smaller firms does not have to be complex.</p> <p>Do not agree as the FIC Act applies to a number of sectors and it is not practical to deal with each sector differently in</p>

NO	COMMENT	RESPONSE
	<p>exemptions should be retained</p> <p>Sufficient time should be allowed to implement new law</p>	<p>legislation. This introduces the risk of regulatory arbitrage and an uneven commercial playing field.</p> <p>Agreed. This should ideally be done on an industry basis and with close involvement of industry supervisors.</p>
4	<p>Foreign prominent persons do not provide for persons 'acting' in that capacity and contain vague terms.</p> <p>Definition of 'business relationship' does not take into account two single transactions.</p> <p>Concern about obtaining information on ownership and control structure especially international/complex structures and the costs on accountable institutions.</p> <p>Bill does not define 'close associate'.</p> <p>Bill does not address whether customer due diligence records can be exchanged between accountable institutions to reduce compliance costs.</p> <p>Should extend the period of which records should be kept.</p> <p>The requirement to appoint a person responsible for compliance will lead to high costs.</p>	<p>Foreign prominent persons is aligned to international standards.</p> <p>Amended, the definition of business relationship is deleted from the version of the Bill used for consultation.</p> <p>Only need to obtain and not verify.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>The obligation to obtain information on customer due diligence will always remain with the institution.</p> <p>Do not agree as 5 years is sufficient time.</p> <p>Having a compliance officer is a key requirement for successful implementation of compliance measures. This role can be fulfilled by an existing employee in small institutions.</p>
5	<p>RICA and FICA should be harmonized.</p> <p>Schedule 1 should be expanded to include mobile network operators, payment shops, shadow banking, copper cable</p>	<p>Cannot be addressed in the Bill</p> <p>Schedule 1 is in the process of being amended to expand scope and these comments will be taken into account in that</p>

NO	COMMENT	RESPONSE
	thieves and money remitters.	process.
6	<p>Prominent persons requirements should form part of the broader risk assessment and should be in the regulations instead of the main Act</p> <p>Counter-Money Laundering Advisory Council (CMLAC) should be replaced with an independent body to oversee the functions of the FIC in its relations with the supervisory bodies and other stakeholders and resolve disputes between FIC, Supervisory Bodies and accountable institutions. The body should also ensure that directives and guidance are issued after consultation with relevant stakeholders. The body should also deal with exemptions issued in terms of the Act. It should also initiate the assessment of national risks</p> <p>Supervisory Bodies to have power to issue industry specific directives and guidance</p> <p>Bill needs to provide for warrants only in cases of non-routine impromptu inspections based on information and not for routine supervisory inspections</p>	<p>Prominent persons need to form part of the enhanced measures for due diligence and need to be implicit in the Act itself and not be one of the factors to be considered in a risk assessment.</p> <p>The CMLAC was established to advise the Minister on money laundering and terrorist financing issues. The body that is being suggested relates to the functioning of the FIC and this is a separate issue from what is proposed to replace the CMLAC.</p> <p>Supervisory bodies are empowered to issue directives to particular categories of accountable institutions. This will be industry specific. The Act only makes provision for the FIC to issue guidance. This is to avoid inconsistencies in the interpretation of the Act and different supervisory bodies issuing guidance on the same issue that may be inconsistent with the FIC's guidance on a particular issue.</p> <p>The approach taken in the amendments is to not distinguish between routine and non-routine inspections. Rather, it is based on whether it is a private residence and whether the person is registered or licensed to carry on a business. These proposals are in line with the CC judgment and other laws that have been amended to take into account court</p>

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	<p>Banks may not have the capabilities/systems to limit the categories of transactions set out in section 26C relating to persons on sanctions list being allowed access to certain financial services e.g. food, rent mortgage</p> <p>Bill needs to be clear on where records may or may not be stored</p> <p>The definition of beneficial owner be extended to persons who ultimately benefit from an interest in the juristic person or a person who has a right which, when exercised, will result in him becoming the beneficial owner of a juristic person</p> <p>Suggest that copies of transactions that pose higher risk of Money Laundering should be kept e.g. Transport documents, invoices and swift messages</p> <p>The wording in clause 21(1A) ‘in the course of concluding the single transaction or business relationship’ be put more clearly that Client Identification and Verification (CIV) must be completed before entering business relationship</p> <p>Where clause 21E refers to ‘consider making a report under section 29, it is suggested that Accountable Institutions be obligated to make reports</p> <p>A further subsection should be added to clause 21F which requires Accountable Institutions to conduct on-going due</p>	<p>judgments e.g. Tax Laws</p> <p>A possible option in dealing with this issue raised is to provide additional guidance</p> <p>Agreed. Bill is amended to provide for records to be kept in the Republic.</p> <p>Where there is a change in the beneficial owner, it will be required for institutions to note a change in ownership. Will explore further with DTI on registers to be kept of beneficial owners.</p> <p>The Bill is amended to include correspondence and client files</p> <p>The proposed wording allows for flexibility where documents required for verification are not immediately available so that Accountable Institutions do not have to turn customers away when they can return with the required documents.</p> <p>It is not feasible to make it compulsory to report a transaction as suspicious in every instance an Accountable Institution is unable to verify a client. It may be an administrative issue and have no reason to be suspicious transaction. The focus needs to remain on the quality of reports sent to the FIC.</p> <p>The obligation to conduct on-going due diligence needs to remain with the Accountable Institution and cannot be shifted</p>

NO	COMMENT	RESPONSE
	<p>diligence to place a positive duty on all persons who provide information on Accountable Institutions to inform them of any changes</p> <p>Provision should be made for all electronic records to be backed-up on a regular basis and stored off site and must be date stamped</p> <p>FIC should issue directives to industries that do not have Supervisory Bodies (SBs) and SBs issue directives to Accountable Institutions that are supervised by them</p> <p>Suggest that section 45B(1) be expanded to cater for an inspection at a place where records are kept on behalf of an Accountable Institution</p> <p>Suggest that failure to report a cash transaction in terms of section 28 only carry an administrative sanction</p> <p>Provision in the Bill should be made for disengagement of clients in situations where an Accountable Institution becomes uncomfortable with the money laundering risk a specific client poses</p> <p>Bill does not deal with situations where an Accountable Institution may close down and consequently no longer be subject to the Act</p> <p>Suggest that measures aimed at proactive prevention of ML be written into the Act e.g. widening the scope of section 29 to any crimes</p>	<p>to the consumer.</p> <p>Can be dealt with through directives</p> <p>Do not agree. The FIC needs to be able to issue directives that apply to all Accountable Institutions so that there is uniformity in the application of the Act</p> <p>The scope of the FIC Act does not extend to such premises</p> <p>Do not agree. There may be instances where an Accountable Institution itself is also involved in the facilitation of money laundering or other related crimes.</p> <p>This may not be feasible as legislation can only go so far as to dictate who an institution may or may not do business with without interfering with business decisions of institutions</p> <p>It will be impractical to enforce in some instances depending on the reason for closing down.</p> <p>It is not possible to cast the net very wide iro all crimes for section 29</p>

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	<p>Suggest that section 29 be amended to allow Supervisory Bodies to obtain Suspicious 9"STR') reports from AIs which have been filed with the FIC which is necessary for SB to perform their statutory duties</p> <p>Provision should be made in the FIC Act to oblige financial institutions involved in the electronic transfer space to comply with originator and beneficiary information requirements specifically under section 31 which deals with electronic transfers</p>	<p>Section 40 has been amended to allow Centre to share information related to STRs with supervisory bodies</p> <p>Section 43A has been amended to widen the scope of the Centre and supervisory bodies to issue directives to give effect to the Act's objectives. SARB will be able to issue directives under the Act.</p>
8	<p>Requires definitions for 'ultimate beneficial controller', 'ownership', 'connected person'.</p> <p>Require formula to determine when effective control is achieved.</p> <p>Industry is currently lobbying for a common threshold for ultimate beneficial ownership percentage allocation – if no percentage linked, will result in disparity in the industry.</p> <p>Consider remaining with FATF definition of PEP for domestic prominent persons. The current definition does not align with global industry terminology and as a global bank will be placed at a disadvantage.</p> <p>The list of foreign prominent persons is extremely limiting and not aligned to industry practice.</p> <p>Concern that the objectives of the FIC refers to implementation and not enforcement of financial sanctions – suggest that there</p>	<p>Can be dealt with in guidance rather than in the Bill. The definition of 'beneficial owner' has been revised</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>This has been a common request from most comments received. The definition of owner is revised but a threshold has not been included beneficial.</p> <p>This is a common request from most comments received, however the definition of domestic prominent persons takes into account circumstances that are particular to SA.</p> <p>Definition is closely aligned to FATF definition.</p> <p>A common comment. There is no general legislation for the implementation of sanctions of the United Nations Security</p>

NO	COMMENT	RESPONSE
	<p>be a single regulator for UN sanctions.</p> <p>Should include high court application to freeze assets similar to section 23 of the POCDATARA Act.</p> <p>Requires a definition of regular intervals</p> <p>Requires definition of source of wealth and source of funds</p> <p>Unclear about the purpose of section 21B(1)(b) as the wording is ambiguous. Suggest the section be reworded and clarify the difference between client and partnership/trust or similar relationship.</p> <p>Section 21B(4)(a) and (b) is unclear and terms used needs to be further defined</p> <p>Section 21B(6) and (7) are unclear and what constitutes a trust needs to be further defined.</p> <p>It is not clear if there is a requirement to only establish and not verify source of wealth in section 21D.</p> <p>Require a definition of close associates.</p>	<p>Council. Compliance with financial sanctions by financial institutions must be supervised by supervisors for the financial sector.</p> <p>Do not agree as the requirements are for action to be taken 'without delay' similar to the provisions of section 25 of the POCDATARA Act.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied. This will vary based on circumstances of each case.</p> <p>Guidance will have to provide examples that can be applied.</p> <p>Disagree that the wording is ambiguous. The practical implications can be dealt with in guidance to provide examples of how this may be applied.</p> <p>Do not agree that he terms are unclear.</p> <p>Do not agree that the terms are unclear. Trust is defined in the Bill.</p> <p>The clause does not contain any reference to a requirement to verify this information.</p> <p>This is a common request. This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p>

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	<p>How should section 21H and 21F reconcile which states only when in doubt to apply section 21F or is it when in doubt as well as regularly.</p> <p>Require a definition of financial sanctions.</p> <p>It is unclear what the difference is between financial services and economic support in section 26B.</p> <p>The grounds for issuing a warrant is dealt with in the Criminal/Civil Procedure law and the Bill limits the grounds the judge can consider.</p> <p>Section 28A(3) should include a provision for the notice issued by the Minister to be published in the Government Gazette</p> <p>Possible dual reporting into section 28A and section 29.</p> <p>Include a definition of sufficient competence.</p> <p>Include a definition of juristic person.</p> <p>It is unclear if one fails to respond to a section 27 relating to section 29 whether section 50 or section 52 will be applicable.</p> <p>Consider only applying administrative sanctions to sections 51A, 56 and 58.</p>	<p>Interpretation issue</p> <p>Not necessary for a definition as the meaning will be implicit from the content of the relevant United Nations Security Council Resolutions.</p> <p>Disagree. The two terms do not have similar meanings.</p> <p>Do not agree as it is an administrative action.</p> <p>Do not agree as the Gazette is not as accessible as placing on the website for example.</p> <p>Do not agree as it is dealing with different issues.</p> <p>Disagree as this is not a term of art. It will depend on the circumstances of each institution what competence is required.</p> <p>A definition of legal person is inserted in the Bill.</p> <p>Interpretation issue.</p> <p>Do not agree as criminal involvement on the part of an institution cannot be ruled out.</p>

NO	COMMENT	RESPONSE
	<p>It is unclear if section 69 defence can be used in the context of contravening section 26B.</p> <p>The status of the current exemptions are unclear and should be removed.</p> <p>Amend the regulations to allow for a risk-based approach.</p>	<p>Difference between reporting on suspicion and factual based obligations.</p> <p>The exemptions on customer due diligence will be re-visited and withdrawn where appropriate.</p> <p>Agree.</p>
9	<p>Use of a quantitative approach to identify beneficial owners is not adequate. It should be just one of the evidential factors among others.</p> <p>Legal persons should maintain beneficial ownership information onshore and that information is adequate, accurate and current.</p> <p>A central register is suggested to be the most effective way to record information on BO and facilitate access to authorities. Register should be publicly available, in open data format and free of charge.</p> <p>There is a lack of consistency in relation to the definition of close associates and family members.</p> <p>The definition of prominent persons is limiting and should be expanded to include public functions considered high risk.</p> <p>If CMLAC is dissolved it is unclear how the work of the FIC will be coordinated with other state bodies, working groups and departments.</p> <p>Recommends amendments to address the hiatus which results</p>	<p>Agree.</p> <p>Agree. Guidance will have to provide examples that can be applied to determine beneficial ownership.</p> <p>Will be holding discussions with DTI on this issue.</p> <p>Will be dealt with in guidance.</p> <p>Do not agree as the definition encompasses specific categories of persons.</p> <p>The maturity of the country's AML/CFT framework has evolved and a number of fora exists for discussion of matters of common concern.</p> <p>See comment above.</p>

NO	COMMENT	RESPONSE
	<p>from the dissolution of the CMLAC and to ensure that there are holistic and practical steps introduced to co-ordinate referrals, information gathering and sharing. In light of the FIC's increased powers to deal with reports and initiate investigations it is uncertain as to whether there will be coordination with civil society organisations.</p> <p>It is recommended that provision be made for better coordination with the DHA and additional validation procedures especially for high risk individuals and relationships e.g. gambling.</p> <p>The Bill does not address the inadequate measures for the sanctioning of accountable institutions by supervisory bodies.</p> <p>It is recommended that the Bill provide for the FIC to hold supervisory bodies accountable for non-compliance.</p> <p>Recommend that the amendments differentiate between lesser acts of administrative non-compliance and more egregious acts of non-compliance so that the amendments do not diminish its impact and efficacy.</p>	<p>Agree but does not have to be included in a provision in the Bill. Can be done outside of regulatory framework.</p> <p>Do not agree. Act has adequate measures in place.</p> <p>It was not intended to have measures in place in legislation to sanction supervisory bodies.</p> <p>It is not possible to do this through legislation.</p>
10	<p>The current exemptions relating to casinos must remain in force and additional exemptions should be granted.</p> <p>The definition of business relationship will have far reaching consequences for the casino industry as they will have to comply with onerous and impractical requirements. Exemptions should be granted for casinos</p> <p>In the absence of exemptions for casinos further impracticalities will result from the additional due diligence</p>	<p>The exemptions on customer due diligence will be re-visited and withdrawn where appropriate</p> <p>The amended definition of business relationship has been deleted.</p> <p>Guidance and training will alleviate some of these concerns.</p>

NO	COMMENT	RESPONSE
	<p>measures e.g. on-going due diligence, establishing source of funds and the inclusion of foreign and domestic prominent persons</p> <p>3 single transactions at regular intervals occurs frequently in casinos making it more difficult and not easier for casinos to comply</p> <p>The customer due diligence requirements for business relationships would mean that repeated CIV requirements would nevertheless need to be carried out for single transactions in the context of business relationship</p> <p>Concern about the requirements for prominent persons as casinos will face difficulties to identify these individuals as information will not be readily available especially for foreign prominent persons</p> <p>Because of the high paced operations in casinos it is impractical to obtain approval of senior management for foreign prominent persons</p> <p>There is no provision for the sharing of information between accountable institutions to enable casinos to comply.</p> <p>If CMLAC is dismantled, need to address participation of the private sector by formalizing links with replaced structures.</p>	<p>The amended definition of business relationship has been deleted.</p> <p>The amended definition of business relationship has been deleted.</p> <p>Guidance and training will alleviate some of these concerns.</p> <p>Having proper processes in place will address this concern.</p> <p>Customer due diligence remains the responsibility of the accountable institution listed in Schedule 1 and reliance cannot automatically be shifted to another accountable institution.</p> <p>The maturity of the country's AML/CFT framework has evolved and a number of fora exist for discussion of matters of common concern.</p>

NO	COMMENT	RESPONSE
	Due to the impact of the amendments on the casino industry there should be sufficient time for the implementation of the new legislation.	Agree.
11	<p>The meaning of the term non-compliance should be considered in relation to the adoption of a risk based approach as accountable institutions will be faced with circumstances that will be uncertain and will represent practical compliance risk identification and assessment challenges.</p> <p>There is ground to cover in understanding how the ML/TF risk should be regulated and supervised where a full risk based approach is implemented. A national risk assessment should be undertaken prior to making changes to the Act.</p> <p>There are high levels of uncertainty relating to what will meet the regulatory requirements for the different levels of risk. The enablement of regulatory guidance at country, sector or institutional levels should involve private and public sector stakeholders and the revised risk based regulatory framework should be specified in the Act or regulations.</p> <p>The new requirements will result in significant operational complexities and challenges.</p> <p>Has an impact study been done on the implications of the Bill on the under-served/under-banked consumers?</p> <p>The requirements to understand and obtain information on business relationships will have significant operational due diligence implications.</p> <p>There appears to place the entire risk framework on</p>	<p>Do not agree as obligations placed on institutions cannot be circumvented by adopting a risk based approach to compliance.</p> <p>Processes are underway to develop a national risk assessment.</p> <p>Agree but this should be addressed through engagement with industry supervisors.</p> <p>Guidance and training will alleviate some of these concerns.</p> <p>No.</p> <p>Once proper systems are in place, it will reduce the operational implications.</p> <p>See comment above on NRA. In addition, the Centre will be</p>

NO	COMMENT	RESPONSE
	accountable institutions where there is not adequate support at country level.	issuing guidance on the implementation of the Act.
12	<p>ID verification must be done at point of opening of account and the information must be sent to all accounts of the bank. It must be centralized so that you do not have to produce your ID for other accounts.</p> <p>Expressed frustration at providing proof of residence if living in rented property if property is in a spouse's name.</p> <p>RICA and FICA should be integrated.</p> <p>Exemptions must be given to businesses registered with CIPC, the employed and accounts below a certain amount.</p> <p>It is a hassle to get all directors to go to a bank to produce ID and proof of residence.</p> <p>Banks have started blocking accounts when proof of residence has not been produced even though these accounts have been opened for years.</p> <p>There must be alternate ways to monitor ML without and not punish ordinary citizens.</p>	<p>Agree on the single view of client approach.</p> <p>A risk-based approach will allow more flexibility on how to verify customer information – proof of residence will not be an express requirement.</p> <p>Cannot be dealt with in the Bill.</p> <p>Cannot be dealt with in the Bill.</p> <p>It is not a requirement that identities of all directors be verified. Institutions need to know who their clients are as well as understand the ownership and control structure of their client and identify the ultimate beneficial owner. Proof of residence will not be an express requirement, including for beneficial owners. risk-based approach will allow institutions to identify low risk clients and apply reduced customer due diligence where appropriate.</p> <p>Cannot respond on behalf of banks.</p> <p>Agree. The Bill attempts to provide accountable institution with more flexibility which should relieve the burden on the consumer.</p>

NO	COMMENT	RESPONSE
13	<p>The significant impact of the new provisions should not be underestimated e.g. changes to existing processes and procedures, IT systems, training of employees etc.</p> <p>It will not be simpler for high risk categories and those who qualify as beneficial owners and prominent persons. Accountable institutions will require increased guidance from the FIC i.r.o implementation of a risk-based approach</p> <p>It is essential that FIC conduct a country AML/CFT risk assessment and publish the result. The Bill does not make provision for the FIC to conduct a country/sectoral risk assessment. It should form part of the objectives of the Centre</p> <p>FIC's assistance in identifying and endorsing relevant data sources will be fundamental to the implementation of enhanced customer due diligence requirements</p> <p>Request further engagement to deliberate a practical, efficient and cost effective solution to avoid regulatory arbitrage and to enable accountable institutions to access reliable and trustworthy information esp iro prominent persons</p> <p>There is no alternative consultation mechanism to replace the CMLAC. A similar mechanism to those contained in the Financial Sector Regulation Bill should be considered.</p> <p>There is no indication how the Bill will affect the current regulations and exemptions which will influence the comments on the Bill.</p> <p>It is suggested that the misalignment of section 26B and</p>	<p>Noted.</p> <p>Agree.</p> <p>Agree. Processes are underway to develop a national risk assessment.</p> <p>Agree.</p> <p>Agree.</p> <p>The maturity of the country's AML/CFT framework has evolved and a number of fora exist for discussion of matters of common concern.</p> <p>Current regulations and exemptions will be substantially redrafted with a large number of regulations being repealed and a number of exemptions withdrawn.</p> <p>Section 26B deals specifically with targeted financial</p>

NO	COMMENT	RESPONSE
	<p>sections 2 to 14 of POCDATARA be corrected to address the potential dual reporting duty under POCDATARA and FIC Act iro persons subject to UNSC sanctions and the potential inconsistencies in defences available to persons making reports to FIC.</p> <p>Request an implementation period of at least 18 months to ensure orderly transition to the new requirements to effectively manage the expected significant increase in financial and human resources and to allow adequate time to engage on appropriate guidance from the FIC.</p> <p>Connected person and effective control are not defined which places accountable institutions at an high risk of non-compliance and should be aligned to terms used in the Companies Act to increase legal certainty.</p> <p>A threshold should be included iro beneficial owner and 20% shareholding threshold should be considered. In the absence of a threshold the 10% shareholding FATCA requirement will be deemed to apply.</p> <p>The definition of prominent persons is practically impossible because of the numerous persons included in it and accountable institutions have extremely limited/no access to data sources to identify majority of persons on the list</p> <p>NT/FIC to publish a list of prominent persons or identify a data source that would provide such information</p> <p>Request further engagement to deliberate a practical, efficient and cost effective solution to avoid regulatory arbitrage and to</p>	<p>sanctions while POCDATARA deals with the criminal aspects of terrorism.</p> <p>While it is agreed that institutions will require sufficient time to prepare for the implementation of new law the time period still needs to be fixed.</p> <p>The definition of beneficial owner is amended.</p> <p>The definition of beneficial owner is amended however a threshold is not included.</p> <p>Guidance and training may resolve these concerns.</p> <p>While it may not be possible to develop a list, guidance will be provided as far as possible.</p> <p>Agree.</p>

NO	COMMENT	RESPONSE
	<p>enable accountable institutions to identify prominent persons.</p> <p>In respect of additional due diligence measures for partnerships and in the absence of an indication of the status of the regulations and exemptions, the partnerships in the Collective Investment Schemes (CIS) / hedge funds context which does not disclose the identities of its investors to other accountable institutions will require the current exemptions on CIS/ hedge funds to remain.</p> <p>In respect of prominent persons, how is the identifying of immediate family members and known close associates envisaged and when will previous spouses be applicable.</p> <p>Consequential amendments should be made to POCDATARA to align it with section 26A of the Bill.</p> <p>Sections 51, 51A, 56 and 58 provide no differentiation other than the type of sanction and no indication under which circumstances an act will constitute an offence and when will it be subject to administrative sanctions.</p> <p>Some technical errors in the Bill where highlighted</p>	<p>Will be addressed in accountable institutions risk management and compliance programme.</p> <p>Can be dealt with in guidance.</p> <p>Agree.</p> <p>The level of detail cannot be included in the Act and is dependent on the facts of a particular case.</p> <p>Agreed</p>
14	<p>In respect of the definition of business relationship the use of the word 'and' creates the impression that both (a) and (b) have to be the case in order to be considered a business relationship whereas the intention seems to be that 3 or more single transactions are considered to be a business relationship independent of any arrangement envisaged in (a)</p> <p>The definition of prominent person should be aligned with the FATF guidance in respect of time limits of prominent person status which has an open-ended approach.</p>	<p>The amended definition of business relationship has been deleted.</p>

NO	COMMENT	RESPONSE
	<p>Provide a definition or clarity on international organization.</p> <p>The reference to similar arrangement between natural person in section 21B(1) infers only natural person and should consider partnerships that are established between juristic entities and trust parties that are juristic persons.</p> <p>Provide a definition of juristic person.</p> <p>The inclusion of specific provisions relating to partnership and trusts raises the issue of the status of the regulations.</p> <p>Iro domestic prominent persons should the presence of a prominent person not automatically escalate the risk rating of a client to high risk.</p> <p>Clarification of known close associates is required.</p> <p>Section 26A states that the section does not apply to resolutions made under section 25 of POCDATARA but the latter also refers to Chapter VII of the UN Charter.</p> <p>The practical implementation of section 26C(2)(a) is questioned and if an accountable institution deems it too onerous to deal with a client can it rely on the freedom to contract principle to choose not to enter into a contract with a person.</p> <p>How will the conflicts of different jurisdictional requirements e.g. UN sanctioned but SA permits the payment of basic expenses in section 26C(2)(a).</p>	<p>The definition is aligned to the FATF definition of PEP.</p> <p>Guidance issue.</p> <p>The section is intended to mean only natural persons.</p> <p>A definition of legal person has been inserted</p> <p>The regulations relating to partnerships and trusts will be deleted.</p> <p>Do not agree as only domestic prominent persons who pose a high risk will require enhanced due diligence.</p> <p>Guidance issue.</p> <p>Section 25 of POCDATARA deals with the terrorist acts, whereas section 26A covers targeted financial sanctions.</p> <p>Guidance will assist in alleviating this concern.</p> <p>This is a UN requirement.</p>

NO	COMMENT	RESPONSE
	<p>The entering of premises in the inspections is unclear and requires clarity on when an inspector may enter a premises with/without a warrant.</p>	<p>Interpretation issue.</p>
15	<p>Establishing the identity of the natural person behind every trustee and beneficiary will be challenging when dealing with large multinational trusts e.g. World Wildlife Trust which has thousands of trustees throughout the world. The same applies to large partnerships e.g. law firms which may have hundreds of partners. It is suggested that the level of detail required wrt BO of large trusts and partnerships be determined by an accountable institutions Risk and Compliance Management Programme.</p> <p>The nature of ownership of a listed entity makes it extremely difficult to identify and verify each natural person behind each shareholder. Tracking of ultimate beneficial owners(UBO) in these circumstances will be operationally and practically challenging. UBO should be determined on a risk-based approach.</p> <p>Establishing identities of these institutions requires access to public registers. This is dependent on efficiencies of 3rd parties such as CIPC. CIPC mechanisms do not capture accurate and current information on BO and control of legal persons neither is the information verified. Without credible and timeous information from entities such as CIPC and the Deeds Office, accountable institutions will not be able to effectively fulfil their enhanced responsibilities under the draft Bill. Suggest an MOU is entered between CIPC, JSE and FIC to ensure access to information.</p>	<p>The requirements contained in the Bill are not unique to SA and are international best practices implemented by other jurisdictions. Once proper systems are in place, it will reduce the operational implications.</p> <p>See response in above paragraph.</p> <p>Discussions will be held with DTI to address these issues.</p>

NO	COMMENT	RESPONSE
	<p>The Bill should specifically address the issue of customer due diligence of controlling persons of foreign organs of state because of the challenges of identifying controlling persons. Such provisions should allow SA accountable institutions to discharge this obligation by obtaining written agreement by the foreign organ of state that personal information of controlling persons will be supplied on request of SA regulators, for example.</p> <p>The consequences of terminating the business relationship contemplated in clause 21G(b) may have disproportionately negative implications e.g. debit orders, inability to pay wages. The clause should be clear that accountable institutions are not immediately required to terminate the existing business relationship e.g. if the client owes the institution large amounts of money the accountable institution must have an opportunity to recover outstanding debts.</p> <p>The Twin Peaks system presents an opportunity to facilitate greater harmonization and consistency across the financial sector regulatory framework. Combatting financial crime should be brought within the Twin Peaks system and AML/CFT is a central component of this</p> <p>Request a phased in approach to implementation of the Bill as a result of the practical implications such as training and changing of systems etc.</p> <p>The definition of domestic prominent person be deleted and aligned with the definition of foreign prominent person. Also propose that accountable institutions must determine whether a person is a prominent person ito a risk-based approach.</p>	<p>Do not agree as knowing your client is the key component to customer due diligence.</p> <p>Section 21G is revised to make the interpretation of the clause clearer.</p> <p>Agree to a certain extent but AML/CFT can only be dealt with in FIC Act as both financial and non-financial institutions fall under the scope of the FIC Act.</p> <p>Agree.</p> <p>This is a common request from most comments received, however the definition of domestic prominent persons takes into account circumstances that are particular to SA.</p>

NO	COMMENT	RESPONSE
	<p>Regulators should work with the industry to create a national data base of fraudsters and accountable institutions should have access to this.</p> <p>Guidance on the principles underlying the new approach to customer due diligence should be communicated to the industry</p> <p>Suggest simplified requirements for dealing with large trusts and partnerships to ensure that it is workable and enforceable</p> <p>The requirement to establish whether a BO is a prominent person should be proportional and this could be achieved by imposing a threshold for identification of BO.</p> <p>The definition of family member should be limited to one up or one down relationship and only include spouse, parents, children and siblings. The requirement should be that accountable institution take reasonable measures to CIV these persons.</p> <p>Section 26B should be reworded to reflect that culpability will only be where the name of the person/entity on the published list appears in connection with the transaction or where the accountable institution intentionally or negligently circumvent these sanctions.</p> <p>Reference to suspicion in section 29 should be removed to take into account factual list of names published.</p>	<p>It is not an issue that can be dealt with in the Bill.</p> <p>Agree.</p> <p>The use of simplified measures will be within the discretion of an accountable institution.</p> <p>The definition of beneficial owner is amended however a threshold is not included.</p> <p>The definition of family member also takes siblings into account. Requirements in respect of identification apply to all clients and cannot be left to the institution to decide who they should establish the identity of.</p> <p>Section 26B will only be applicable if a list is published. The offences clause deals contraventions of section 26B.</p> <p>Do not agree as the requirement to report transactions based on a suspicion is key to assisting in curbing money laundering and terrorist financing.</p>

NO	COMMENT	RESPONSE
	<p>There should be a clear differentiation between current terrorist property reporting obligations and new financial sanctions reporting obligations.</p> <p>The additional information required in section 32 should be limited to the person who was the subject of the initial report.</p> <p>The intervention order in section 34 should only be capable of being renewed once.</p> <p>Section 41A(1) and (2) should be subject to POPI as this is unclear from the wording. There should be an obligation placed on the FIC to report regularly on the efficacy of its protection of personal information measures.</p> <p>For banks, the issue of application of domestic legislation to foreign subsidiaries should be regulated in section 52 of the Banks Act.</p>	<p>Guidance issue.</p> <p>It is intended to limit it to a report made.</p> <p>There may be instances where it may be necessary to renew an order.</p> <p>Do not agree. There are mechanisms in the FIC Act for the FIC to report on its functions and responsibilities in the FIC Act.</p> <p>Do not agree on the fragmentation of laws to deal with AML/CFT issues.</p>
14	<p>The list of accountable institutions has not been expanded to take into account the new thrust of the Financial Sector Regulation Bill. It is recommended that all providers of financial services and products have equivalent know your customer, identification, verification and reporting obligations.</p> <p>The detailed customer due diligence requirements in the Bill will result in more onerous and prescriptive requirements than the current FIC Act.</p> <p>Recommend that the requirement to identify and verify every director, partner or trustee be removed and that a risk-based approach be applied to focus on those persons in effective control and who transact on behalf of the institution.</p>	<p>Schedule 1 is in the process of being amended in a parallel process.</p> <p>Guidance and training will alleviate these concerns to some extent.</p> <p>Do not agree as knowing your client is the key component to customer due diligence.</p>

NO	COMMENT	RESPONSE
	<p>The concept of a risk-based approach has not been defined.</p> <p>No country AML/CFT risk assessment has been done or released by local authorities as it is key to a successful implementation of a risk-based approach.</p> <p>Recommend that clarity be provided relating to exemptions and that any exemptions be removed per a negotiated transition process.</p> <p>The Bill does not provide for a minimum threshold below which simplified due diligence is conducted for once-off transactions.</p> <p>Suggest that a phased implementation and adequate transition period be allowed especially wrt existing clients.</p> <p>Suggest that the definition of BO be aligned to FATF definition and the level of detail required wrt BO of public companies be determined by the accountable institutions risk management and compliance programme. The current 25% shareholding should be retained. The use of the term bearer share holding has no alignment to the Companies Act and recommend that it be substituted to securities as defined in the Companies Act.</p> <p>There is no obligation on foreign and juristic person to disclose required information nor on any local or foreign registers of juristic persons to record such information. CIV is almost impossible to achieve by the accountable institution without support of the authorities. Suggest that in the short term the</p>	<p>The concept is clearly spelled out in the provisions of the Bill itself and a definition will not assist.</p> <p>See comment above on NRA.</p> <p>Agree.</p> <p>A risk-based approach will be better suited to deal with this as low risk clients will require simplified customer due diligence as per sector and not a blanket threshold amount.</p> <p>Agree.</p> <p>The definition of beneficial owner is amended however a threshold is not included.</p> <p>Do not agree as the requirement for obtaining information on the beneficial owner needs to occur so that the institution knows who it is doing business with. The Bill provides for instances where information cannot be reasonably obtained.</p>

NO	COMMENT	RESPONSE
	<p>requirements should be restricted to 'disclosure where possible of UBO/BO by the legal entity, with verification when appropriate official disclosure and records are made available.</p> <p>Connected person should be deleted and replaced with related party. If connected person is retained it should be aligned to the definition in the Income Tax Act.</p> <p>The definition of business relationship is ambiguous and creates practical and operational challenges and the existing definition should be retained. Low value transactions should be excluded from the definition.</p> <p>The definition of domestic prominent person differs from the FATF definition and will be practically impossible to implement in the absence of approved publically available database. The interaction with correspondent banks will also be impacted negatively if this unique locally imposed concept is retained.</p> <p>Require a definition of close associates.</p> <p>Recommend that Risk Management and Compliance Programme be amended to Risk Management and Compliance Policies, for approval by the Board.</p> <p>Monitoring, Enhanced Monitoring, On-going Monitoring and Profile Monitoring should be defined.</p> <p>The Bill does not state which regulator will be tasked with the enforcement of compliance to financial sanctions nor does it align with the enforcement mechanisms in POCDATARA.</p>	<p>The definition has been amended taking comment in to account.</p> <p>The amended definition of business relationship has been deleted.</p> <p>Guidance and training will alleviate these concerns to some extent. The definition of domestic prominent persons takes into account persons that are particular to SA.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>It is not intended for the programme to be a policy issue.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>There is no general legislation for the implementation of sanctions of the United Nations Security Council. Compliance with financial sanctions by financial institutions</p>

NO	COMMENT	RESPONSE
	<p>The concept of financial sanctions is not defined and all UN sanctions should be included. Either US/OFAC or other major sanctions regimes should be included or banks' position regarding such sanctions should be clarified.</p> <p>'client' should be defined.</p> <p>Organ of state should be defined.</p> <p>Personal information should be defined.</p> <p>Senior management should be defined where reference is made in s21D and 21E.</p> <p>The definition of chief executive officer should be confined to the definition of prominent person as it conflicts with other sections of the Bill which refers to the Director of the Centre as the chief executive officer.</p> <p>The amendment of the definition of non-compliance requires certain sections in the Act to be amended e.g. s45(f) and 45B(f) by deleting reference to or any order, determination or directive</p> <p>The definition of transaction should be retained.</p> <p>Section 40 the FIC Act should be aligned to section 41A.</p>	<p>must be supervised by supervisors for the financial sector.</p> <p>It is not the intention to deal with unilateral sanctions in the Bill.</p> <p>Agree. Definition added.</p> <p>Organ of state is defined in the Constitution.</p> <p>Disagree. This is a general term and the ordinary meaning should be applied.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>Agreed. Definition amended.</p> <p>Do not agree as non-compliance extends to any order, determination or directive.</p> <p>Do not agree as this is better dealt with in guidance depending on the sector involved.</p> <p>Section 41A is applicable to section 40.</p>

NO	COMMENT	RESPONSE
	<p>Section 21(1) should be deleted.</p> <p>Section 21B(7)(e)(ii) should be deleted or be clarified.</p> <p>There should be relaxations in place to ensure that dealing with large multinational trusts is practically possible.</p> <p>Inspectors appointed to section 45A should only be allowed access to the premises with consent or with a warrant</p>	<p>Section 21(1) is the basis on which the customer due diligence requirements emanate and other provisions in the Bill cannot exist without this section.</p> <p>Do not agree that it be deleted but guidance can be provided.</p> <p>Do not agree as knowing who the institution is doing business with is a key component of customer due diligence</p> <p>Inspection provisions have been amended in line with Constitutional Court judgment.</p>
15	<p>'bearer' in 'bearer share holdings' requires clarification especially in 'nominees' in definition of FMA.</p> <p>The definition of BO refers to ownership in (a), OR, control. Clarity is required as to what the word "own" means in this context as all shareholders collectively "own" a juristic person. Given that the current definition contemplates "ownership" being different to "control" it is not clear which natural persons would be regarded as "owning" a juristic person</p> <p>The definition of business relationship is unclear.</p> <p>Requires a definition of connected person.</p> <p>Should include Directors-General of national government departments in definition of prominent person.</p> <p>'non-compliance' should include both criminal and</p>	<p>Deleted.</p> <p>The definition of beneficial owner has been amended taking comment into account</p> <p>The amended definition of business relationship has been deleted.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>They are included.</p> <p>The intention is to create the option of taking purely</p>

NO	COMMENT	RESPONSE
	<p>administrative breaches.</p> <p>The reference to “prospective client” in section 21(A) is confusing when taken in relation to s21 where obligations under the Act cannot (and should not) flow unless a business relationship or a single transaction has been concluded. No obligations under the Act should arise in terms of “prospective clients”. This section seems to suggest that certain information must be obtained even if the business relationship is not concluded or a transaction is not entered into. We believe it would be clearer to state that the information must be obtained prior to the business relationship being established or a transaction being concluded.</p> <p>It is unclear if new provisions only apply to new clients or whether all existing clients would require re-identification in accordance with new provisions. There should be a transitional provision if this is the case.</p> <p>The term ownership needs to be clarified in the context of ownership and control structure.</p> <p>It is not clear where reference is made of persons who exercise control over the management of a juristic person, it includes all executive and non-executive directors as well as executive managers</p> <p>Sections 51(2), 56(2), 58(2) conflict with the definition of non-compliance which states that non-compliance can only be in respect of breaches that are not offences but the sub-section provides for breaches that are offences. The distinction between criminal offence and administrative breaches are not</p>	<p>administrative action in some instances of non-compliance.</p> <p>The proposed wording allows for flexibility where documents required for verification is not immediately available so that accountable institutions do not have to turn customers away when they can return with the required documents.</p> <p>The Bill is not retrospective.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>Do not agree. The section lists the categories of persons.</p> <p>The clause makes provision for either a criminal action or administrative action to be taken in instances of compliance breaches.</p>

NO	COMMENT	RESPONSE
	<p>obvious.</p> <p>Section 61B should refer to directors only and not to board of directors as the board cannot be subjected to administrative sanctions.</p>	<p>The intention of the provision to make the board accountable for non-compliance.</p>
16	<p>Suggested that certain definitions be included such as ‘anonymous client’, ‘client’, ‘prospective client’ ‘connected person’, ‘juristic person’, ‘corporate vehicle’, ‘known close associates’, ‘indirectly’, ‘enhanced due diligence’, source of wealth/funds.</p> <p>No reference is made of OFAC in the Bill</p> <p>The provision for understanding the obtaining information on business relationship seems prescriptive.</p> <p>The term ‘foreign prominent public official’ is not recognised internationally and may cause confusion for accountable institution’s dealing with foreign entities.</p> <p>The inclusion of ‘sibling’ in definition of family members should be reconsidered as it will be difficult to determine.</p> <p>Clarification was requested on clauses 21E,21F,21G, 21H.</p> <p>Requested further guidance on the obligations imposed by</p>	<p>Some definitions have been included, other terms such as ‘connected persons’ and ‘corporate vehicle’ have been removed. A definition of ‘legal person’ has been provided. Other terms such as ‘known close associates’ and ‘enhanced due diligence’, source of wealth/funds can be dealt with in guidance.</p> <p>It is not intended to deal with unilateral sanctions in the Bill.</p> <p>Obtaining information relating to business relationships is a basic requirement of international standards on customer due diligence.</p> <p>While the Bill makes reference to ‘foreign prominent public official’, the accountable institution may, in its internal procedures dealing with foreign entities use a term equivalent to this as long as it does not detract from the intent of the Bill.</p> <p>Disagree. The term has a general meaning.</p> <p>These relate to interpretation issues and additional guidance will be provided where necessary for institutions to better implement the provisions.</p> <p>Agree.</p>

NO	COMMENT	RESPONSE
	<p>section 26A, 26B and 26C.</p> <p>The use of the word 'without delay' requires clarity.</p> <p>Requested further guidance on the obligations imposed by section 28A.</p> <p>A reasonable turnaround time is requested for clause 32 in respect of furnishing additional information.</p> <p>The term 'senior management' is unclear.</p> <p>The inclusion of both committing an act of non-compliance and an offence is ambiguous. It should be one or the other.</p> <p>It is unclear whether the exemptions and regulations will be amended</p>	<p>Guidance issue.</p> <p>Agree.</p> <p>This will be provided in the regulations.</p> <p>This will vary based on circumstances of each case. Guidance will have to provide examples that can be applied.</p> <p>Disagree.</p> <p>Current regulations and exemptions will be substantially redrafted and some exemptions deleted.</p>

End

2015