

Final impact assessment

September 2015

The final impact assessment provides a more detailed assessment of the ultimately legislative proposal. In addition, it identifies (a) mechanisms for monitoring, evaluation and modification as required; and (b) a system for managing appeals that could emerge around the implementation process.

1 Problem statement/Theory of change

1. Summarise the proposal, identifying the problem to be addressed and the roots (causes) of the problem that will be addressed by the new rule.

The Financial Intelligence Centre Amendment Bill, 2015 (the Bill) seeks to address some of the following deficiencies in the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (the FIC Act):

Problem	Root causes
A rules-based approach to customer identification and verification results in complex system of compliance with no flexibility for financial institutions to determine how to verify their customer's identity. With the rules-based approach, the verification of the address of the customer is particularly challenging especially for the category of persons who live in informal settlements or rural areas. Such persons wishing to utilise the financial system face the obstacle of producing the proof of residence which often excludes them from access to financial services. Allowing institutions to apply a risk-based approach when verifying the identity of a client will result in institutions having greater flexibility to determine how they verify their customers' identity	A strict rules-based approach is required by the current Act and regulations. International standards have evolved to include a risk-based approach when institutions verify the identity of a client.
The South African financial system lacks sufficient transparency especially with regard to legal persons and prominent influential persons. A person who wishes to obscure the ownership or control of funds in the financial system will abuse the system by making use of a corporate vehicle to transact with institutions without the institution knowing who the natural person is behind the corporate vehicle. Requiring the identification of the beneficial owner is a key step to bring greater transparency to activities in a financial system. In addition, enhanced measures such as conducting on-going due diligence and determining the source of funds that will be used during the business relationship not only	The FIC Act does not have sufficient measures in place to ensure that there is greater transparency in the financial system especially with regard to legal persons and prominent influential persons. The international standards have changed with the introduction of additional measures to combat money laundering and terrorist financing. These include, among others, ensuring additional measures are in place by institutions in relation to customer due diligence. Examples include having measures in place in respect of beneficial owners and prominent influential persons. The FIC Act currently is deficient in respect of measures to effectively combat money laundering and terrorist financing

enhances the ability of institutions to know who their customers are and to understand their customer's business	particularly in respect of customer due diligence measures and therefore falls short in meeting the international standards. The gaps identified after an international peer review of South Africa's regulatory framework can be resolved by introducing measures in the legislative framework to bring the Act in line with the international standards.
The Constitutional Court in the matter of Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others 2014 (3) SA 106 (CC) made a ruling in February 2014 declaring parts of section 45B of the FIC Act unconstitutional in as far as the section allows for inspections without a warrant in certain instances. The declaration of invalidity is suspended for 24 months to allow the Legislature to amend the section.	The FIC Act does not require an inspector to obtain a warrant to conduct an inspection of an institution for compliance with the FIC Act in any circumstance. There is a need, following the Constitutional Court ruling, to provide for a warrant in certain instances such as if the inspector is intending to enter a private residence or if it is a premises of an institution that is not licenced or registered. The Legislature has until February 2016 to amend the section.
The criminal sanctions in the offence provisions do not allow the option of making the non-compliance of certain sections of the FIC Act subject to purely administrative sanctions. This is especially relevant when it relates to the accountable institution's obligations regarding customer due diligence and record keeping measures.	Following the inclusion of the administrative sanctions provisions in the previous amendments to the FIC Act, it is now proposed that certain acts of non-compliance in respect of the obligations in the FIC Act should carry a purely administrative sanction.
South Africa is unable to give full effect to targeted financial sanctions measures pursuant to resolutions adopted by the Security Council of the United Nations. The measures referred to in the resolutions include measures that require accountable institutions to freeze property and transactions pursuant to financial sanctions imposed in the UNSC Resolutions.	The United Nations Security Council (the UNSC) requires state parties to administer the measures adopted by UNSC in its Resolutions, which include, among others, to freeze without delay the funds and other financial assets or economic resources of designated individuals and entities. There is currently no mechanism in legislation for the implementation and administration of targeted financial sanctions measures emanating from resolutions adopted by the Security Council of the United Nations.

2. Describe the intended outcomes (what you wish to achieve/ ultimate end results) of the proposal.
- The amendments will provide for the adoption of a risk-based approach to customer due diligence which will result in institutions having greater flexibility to determine how they verify their customers' identity which will enable institutions to make it simpler for customers to satisfy customer due diligence processes.
 - It is intended that the improvements will assist institutions to strengthen their internal compliance regimes and concentrate their resources more effectively on addressing risks that their products and services may be abused for illicit purposes. This will allow institutions a wider discretion to choose 'smarter' methods of engaging with their customers while still complying with their obligations to maintain transparency in their business relationships.
 - The improvements seek to create opportunities for financial institutions to explore more innovative ways of offering financial services to a broader range of customers and bring previously excluded sectors of society into the formal economy. This will improve the

efficacy of measures to combat money laundering and terrorist financing while also promoting financial inclusion.

- The amendments will bring greater transparency to the financial system as the Bill is designed to better safeguard the integrity of the financial system and protect accountable institutions from abuse by criminals.
- The Bill will give effect to the Constitutional Court judgment in respect of providing for a warrant to be obtained by an inspector in certain instances when conducting an inspection.
- The introduction of purely administrative sanctions will encourage compliance with the Act, which, in turn, will assist in combating money laundering and terrorism financing.
- As a member state of the United Nations, South Africa is obliged to comply with the UNSC resolutions under Chapter VII of the Charter of the United Nations. The mechanism contained in the Bill for the implementation of targeted financial sanctions will give effect to the UNSC resolutions.

3. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. As a minimum, consider if there will be specific benefits or costs for the poorest households (earning R7000 a month or less); for black people, youth or women; for small and emerging enterprise; and/or for rural development. Add more lines if necessary.

a. Beneficiaries

- **Consumers of products and services falling under the scope of the FIC Act**
Poorest households will benefit as where the risk of money laundering and terrorist financing is assessed as low, the customer due diligence requirements are reduced thereby reducing the costs incurred as well as the bureaucratic burden in providing documentation to verify certain information.
- **Financial and non-financial institutions falling under the scope of the FIC Act**
Accountable institutions will concentrate their resources more effectively on addressing risks that their products and services may be abused for illicit purposes. They will also be able to adopt more innovative products and services, making them more competitive in global markets.
- **South African economy especially from a financial integrity perspective**
The reputation of South African financial and other institutions *vis a vis* foreign counter-parts is supported by the fact that they operate in a well-regulated environment according to current international standards and best practices. This makes participation in trade relations with foreign customers easier and more cost effective.
- **Law enforcement**
The additional information obtained during the customer due diligence process and the improved capturing of that information will assist law enforcement in accessing the required information during a criminal investigation based on the financial activity of a suspect.
- **Prosecuting authorities**

The improved capability to conduct financial investigations based on additional information obtained during the customer due diligence process will assist prosecutors in prosecutions as well as in cases to confiscate the proceeds of unlawful activities.

- **Government in terms of meeting its international obligations**

As a member of the G20 and the FATF South Africa has expressed its commitment to the implementation of the international standards on combating money laundering and terror financing. Compliance with a range of other international obligations which apply to South Africa such as those emanating from the United Nations Convention against Transnational Organised Crime, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the United Nations Convention against Corruption, the United Nations International Convention for the Suppression of the Financing of Terrorism, the Resolutions of the United Nations Security Council to combat terrorism, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development and the standards of transparency and exchange of information for tax purposes of the Global Forum on Transparency and Exchange of Information for Tax Purposes are all fundamentally supported by effective measures to combat money laundering and terror financing.

b. Cost bearers

- **Financial and non-financial institutions falling under the scope of the FIC Act**

It is envisaged that accountable institutions will incur initial costs in relation to developing appropriate risk-management systems, updating of IT infrastructure to accommodate the new requirements, the training of staff etc.

- **Regulatory authorities falling under the scope of the FIC Act**

It is envisaged that supervisory bodies may incur costs in respect of training of inspectors in ensuring that the FIC Act is properly implemented.

- **Financial Intelligence Centre**

While it is envisaged that initially the Centre will use existing staff to absorb the extra responsibilities in respect of implementing the UN financial sanctions provisions in the Bill, in the long term, dedicated staff may be required to be employed to carry out the function. Awareness raising programmes in the form of road shows on the implementation of the Bill is also envisaged. It is not envisaged that the supervisory role that the Centre is responsible for will require the appointment of additional inspectors, at this stage, and will in all probability be absorbed by existing staff.

4. Describe the behaviour that must be changed, and the main mechanisms to achieve the necessary changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

The behaviour that must be changed	Mechanism to achieve the necessary changes
The financial and non-financial institutions falling under the scope of the FIC Act must move away from a rigid rule-based approach in fulfilling their obligations under the FIC Act to a risk-based approach.	These institutions will be required to have appropriate risk-management systems in place that focus their efforts on those cases where there is a higher probability that their products and services will be abused by criminals. This will enable them

	to take proactive steps to determine the risks of abuse associated with various customer relationships.
Accountable institutions will also be required to perform enhanced due diligence in certain instances such as when dealing with prominent influential persons and corporate vehicles.	Through a risk management system, financial and other institutions will be able to adopt more flexible approaches to selecting the most appropriate methods of meeting their obligations under the FIC Act.
The Financial Intelligence Centre and supervisory bodies will need to modify the procedures in respect of obtaining a warrant in certain circumstances	The training manual on inspections would require modifications. Additional training of inspectors is also envisaged

5. Identify the groups inside and outside of government whose behaviour will have to change to implement the proposal (add more lines if required).
 - **The financial and other institutions that are subject to the FIC Act.**
 - **The Financial Intelligence Centre and supervisory bodies**

6. Report on consultations on the proposal with the affected government agencies, business and other groupings noted in the previous point. What do they see as the main benefits, costs and risks? Do they support or oppose the proposal? What amendments do they want, and have these amendments been incorporated in your proposal?

National Treasury and Financial Intelligence Centre consulted with all supervisory bodies and key industry bodies representing all the categories of institutions to which the FIC Act applies when it developed a Consultation Paper that identified key areas of reform and provided examples of how the FIC Act would be amended. While there was overall support of the reforms, the main areas of concern lay with the implementation of the enhanced measures proposed, specifically in relation to beneficial ownership and prominent influential persons. The draft Bill was developed based on the Consultation Paper and some improvements to the definitions and other clauses impacting on the enhanced due diligence measures were made. The first step in the legislative process was to obtain Cabinet approval to publish the proposed Bill for public comments. The proposed Bill was presented to the Cabinet Committee for the Economic Sectors, Employment and Infrastructure Development in October 2014 and, following recommendations made by the Cabinet Committee, was considered further by a joint session of the Cabinet Committees for the Economic Sectors, Employment and Infrastructure Development; Justice, Crime Prevention and Security as well as International Co-operation, Trade and Security. Recommendations from the various Cabinet Committees were incorporated in the proposed Amendment Bill and in March 2015 the Cabinet Committee for the Economic Sectors, Employment and Infrastructure Development recommended that the Bill be published for public comment. Cabinet approved the Bill to be published for public comment on 15 April 2015. The closing date for comments was on 31 May 2015. The comments were evaluated and further improvements to the draft Amendment Bill were made taking into account the comments received. The comments received are summarised in the Table below.

Affected stakeholders	What do they see as main <u>benefits, costs and risks</u>	Do they <u>support or oppose</u> the proposal	What <u>amendments</u> do they propose	Have these amendments been <u>incorporated</u> in your proposal
1. Government	It is not necessary for the FIC Bill to deal with aspects relating to corruption in view of the Prevention of Corrupt Activities Act.	Support		N/A
2. Business	<p>1. One of the issues raised is that while the due diligence measures are useful it appears to be cumbersome for institutions to establish the ownership and control structures accurately and economically especially in cases of international and complex structures and the additional costs will be passed on to the consumers.</p> <p>2. Some of the concerns were on the definitions of beneficial ownership and prominent influential persons and implementation of the provisions were raised. Also concerned that the definition of domestic prominent person will cause operational challenges especially as there is no database available</p> <p>3. A concern was raised that if the current exemptions relating to casinos are withdrawn it will be impossible for the casino industry to comply with the FIC Act. There are also</p>	General principles in the Bill are supported. However there is a concern about the initial implementation costs on the part of business	<p>Technical amendments to specific clauses in the Bill were proposed</p> <p>Several proposals were made to specific clauses in the Bill</p> <p>Proposed changes to the definition of domestic prominent persons, as it will be extremely difficult to implement; adding a threshold in respect of beneficial ownership, CDD for partnerships and trusts should be simplified</p> <p>Suggest adding a definition of client and prospective client and known close associates.</p>	<p>Some technical comments were taken in to account while other issues will be dealt with in guidance</p> <p>Some of the suggestions have been incorporated into the draft Bill</p> <p>The Bill has been revised in respect of business relationship</p> <p>The definition of beneficial owner is redrafted</p> <p>The definition clause has been amended taking into account the comments made.</p>

	<p>concerns on the implementation of provisions relating to prominent persons in the casino environment.</p> <p>4. A common issue raised was that institutions require sufficient time to implement new law. Also, the changes required by institutions in respect of systems change and training will require a phased approach to implementation</p> <p>5. One of the suggestions is that a national risk assessment would assist the institutions in developing their own risk matrix.</p> <p>6. Regulatory guidance will be crucial for the proper implementation of the Bill.</p> <p>7. The additional CDD measures will not make it simpler in instances of high risk customers.</p> <p>8. Suggest that with the dissolution of the CMLAC, an appropriate consultation measure to replace it.</p>			
3. Supervisory Bodies	<p>1. One of the concerns is that smaller firms may have difficulty implementing a risk-based approach.</p> <p>2. A further concern is that institutions</p>	Support	<p>Attorneys should be separately governed by regulations</p> <p>The Bill needs to provide for warrants only in case of non-routine impromptu</p>	Changes were made to the Bill in respect of proposals around changes to the definitions and record keeping

	<p>will require sufficient time to amend internal controls and procedures.</p> <p>3. Some of the concerns centre around the CMLAC being dissolved and no other body is replacing the CMLAC.</p>		<p>inspections based on information and not for routine supervisory inspections.</p> <p>The Bill needs to be clear on where records may or may not be stored.</p>	
4. Private individuals	<p>1. To consider expanding the scope of the FIC Act and to align the FIC Act with RICA.</p> <p>2. Raised the issue about the difficulty in having to provide proof of address.</p>	<p>Did not specify clearly whether in favour of the Bill or not</p> <p>Did not specify clearly whether in favour of the Bill or not</p>	None	N/A

7. Describe possible disputes arising out of the proposal, and the system for settling and appealing them. How onerous will it likely be for members of the public to lodge a complaint and how burdensome and expeditious is the proposed dispute-settlement procedure?

The FIC Act has mechanisms in place in respect of appeals on any decision made by a supervisory body or the Financial Intelligence Centre against a respondent in respect of any administrative sanction imposed on it.

2 Impact assessment

1. Describe the costs and benefits of implementing the proposal to the groups identified in point 6 above, using the following chart. Add more lines if required.

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
a. Supervisory Bodies	<p>Training of inspectors on new legislation</p> <p>Awareness-raising in respect of institutions falling under the supervisory body</p>	Costs related to enforcement of the FIC Act	Will have well trained inspectors to ensure proper compliance with FIC Act	
b. Industry Bodies	Awareness raising in respect of institutions falling under the Industry body	Costs incurred in respect of developing codes of conduct to assist accountable institutions to comply with FIC Act	Accountable institutions will be made aware of their new obligations in terms of the new provisions in the FIC Act that affect them	
c. Accountable Institutions	<p>Required to develop a Risk Management and Compliance Framework.</p> <p>Will have to have new measures/systems in place to apply a risk-based approach.</p> <p>Will need to integrate current systems, if necessary.</p>	<p>The costs related to on- going compliance with the FIC Act e.g managing and updating the Risk Management and Compliance Framework.</p> <p>Costs related to on-going training of staff</p>	While the initial costs to implement the new provisions is expected to increase, once the system is in place the costs of compliance will be reduced as the resources will then be focused on higher risk areas	

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
	Will be required to train staff on new legislation			
d. Members of the Public	There is a possibility that the initial costs of implementing a risk-based approach will be transferred to the consumer by the accountable institutions	<p>Service fees or charges for high risk customers may increase in respect of additional information to be provided in accordance with enhanced due diligence measures.</p> <p>Concurrently the cost of providing financial services to low-risk customers should decrease which should result in lower service fees or charges for such customers.</p>	The necessity of having to produce a number of documents to verify the customer's identity will be reduced for low risk customers	

2. Describe the changes required in budgets and staffing in government in order to implement the proposal. Identify where additional resources would be required for implementation. It is

assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

While it is envisaged that initially the Centre will use existing staff to absorb the extra responsibilities in respect of implementing the UN financial sanctions provisions in the Bill, in the long term, dedicated staff may be required to be employed to carry out the function. Awareness raising programmes in the form of road shows on the implementation of the Bill is also envisaged. It is not envisaged that the supervisory role that the Centre is responsible for will require the appointment of additional inspectors, at this stage, and will in all probability be absorbed by existing staff.

3. Describe how the proposal minimises implementation and compliance costs.

While the initial costs to implement the new provisions is expected to increase, once the system is in place the costs of compliance will be reduced as the resources will then be focused on higher risk areas

4. Describe the main risks to the achievement of the desired ends of the legislation and/or to national aims that could arise from adoption of the proposal. Add more lines if required.

- a. **If the provisions of the Bill are not properly implemented, the objective that the Bill seeks to achieve will not be achieved. This will weaken South Africa's ability to combat money laundering and financing of terrorist activities and other related crimes as it will prevent law enforcement agencies from having access to information about criminals who are abusing the services of financial institutions to commit crime, launder the proceeds of crime and support terrorist activities. The increased exposure of financial and other institutions to this type of abuse will cause reputational damage for the South African financial system resulting in reduced stability of the system.**
- b. **If the necessary buy-in from the stakeholders is not received, it will affect the objective of the FIC Act. The main thrust to the objective of the amendments to the FIC Act is that accountable institutions will be in a better position to know who they are doing business with and to have a proper audit trail of records. If the institutions do not comply with the additional requirements it will impact the efficacy of the FIC Act negatively.**
- c. **Persons that are identified as foreign and domestic prominent influential persons and ultimate beneficial owners may perceive the Bill to target a particular group of persons or have a negative stigma attached to the position.**
- d. **Institutions may adopt a high risk approach as a method to be seen to comply with its obligations in terms of the FIC Act which may inadvertently lead to financial exclusion.**
- e. **Failure to provide for a mechanism to implement UNSC resolutions will result in South Africa not adhering to its international obligations.**

- f. **If the Constitutional Court judgment is not given effect within the 2 year period it will result in the need for a condonation application to be made to the Constitutional Court.**

3 Managing risk

1. Describe the measures taken to manage the identified risks. Add more rows if necessary.

Identified risk	Mitigation measures
a. The amendments contained in the Bill are not properly implemented	Awareness raising and training will assist in ensuring that the proposed amendments are properly implemented
b. Buy-in from stakeholders	Regular consultation and engagement with stakeholders and awareness raising and training will assist in ensuring that the amendments contained in the Bill are properly implemented
c. Perceived negative stigma associated with particular groups of persons	Creating awareness and guidance on what the Bill seeks to achieve holistically will assist those affected by these provisions to understand and cooperate with the obligations in terms of the legislation

2. Describe the mechanisms included in the proposal for monitoring implementation, evaluating the outcomes, and modifying the implementation process if required. Estimate the minimum amount of time it would take from the start of the implementation process to identify a major problem and remedy it.

A compliance model which relies on partnerships with entities across the private sector has developed over the years for the implementation of the obligations in terms of the FIC Act and will continue to be used for monitoring implementation of the amendments contained in the Bill. Existing and amended memoranda of understanding with all supervisory bodies that oversee compliance with the FIC Act will take into account monitoring from a compliance perspective

4 Summary

1. Summarise the impact of the proposal on the main national priorities.

Priority	Impact

Social cohesion	The Risk-based approach will encourage financial inclusion to a large extent. The Bill is intended to reduce compliance costs and bring more of the unbanked/low income earners into the formal financial sector. The Bill is intended to make it easier to comply with the FIC Act and the off-spin will result in consumers having a lesser burden to produce specific documents for identification purposes.
Security	Institutions have been following a tick-box approach to prevent money laundering/terrorist financing when complying with their obligations under the FIC Act. The new provisions in the Bill will force institutions to apply their minds in respect of the money laundering risks their business faces when they assess the risks and the measures they need to have in place to manage that risk in respect of their respective business. It is intended that the improvements will assist institutions to strengthen their internal compliance regimes and concentrate their resources more effectively on addressing risks that their products and services may be abused for illicit purposes. The new provisions places an obligation on institutions to know who they are doing business with and keep proper records so that law enforcement for example is able to follow the money trail if it becomes necessary for a criminal investigation
Economic growth and investment	If South Africa is seen to not have sufficient AML/CFT controls in place it places the country at a higher risk globally and negatively impacts the rating of the country from both an investment as well as a global market player. The Bill seeks, as one of the main objectives, to bring the AML/CFT regulatory framework in line with international standards.
Economic inclusion (employment creation and equity)	The Risk-based approach also encourages financial inclusion to a large extent.
Environmental sustainability	It is envisaged that the institutions will keep records in electronic form and therefore reduce the need to keep hard copies of records which would have a positive impact on the environment.

- Identify the social and economic groups that would benefit most and that would bear the most cost. Add more rows if required.

Main beneficiaries	Main cost bearers
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1 Consumers of products and services falling under the scope of the FIC Act	1 Financial and non-financial institutions falling under the scope of the FIC Act in the short-term
2 Financial and non-financial institutions falling under the scope of the FIC Act in the long-term	2 Regulatory authorities falling under the scope of the FIC Act
3 South African economy especially from a financial integrity perspective	3 Financial Intelligence Centre
4. Law enforcement	
5. Prosecuting authorities	
6. Government in terms of meeting its international obligations	

3. In conclusion, summarise what should be done to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation. Note supplementary measures (such as

educational campaigns or provision of financing) as well as amendments to the draft itself, if appropriate. Add more lines if required.

- a. **Creating awareness on what the Bill seeks to achieve holistically will assist those affected by these provisions to understand and cooperate with the obligations in terms of the legislation**
 - b. **Awareness raising and training will assist in ensuring that the proposed amendments are properly implemented**
 - c. **Well trained inspectors to ensure proper compliance with FIC Act**
 - d. **While the initial costs to implement the new provisions is expected to increase, once the system is in place the costs of compliance will be reduced as the resources will then be focused on higher risk areas**
4. Please identify areas where additional research would improve understanding of the costs, benefits and/or risks of the legislation.

Additional research on the impact on the financial system should the passing of the legislation not be done timeously

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