



The Contemporary Gazette

relevant new legislation for your business

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This newsletter

This newsletter overviews new relevant National laws up to **26th September 2017**. Log-in to www.gazette.co.za, peruse the list and follow the hyperlinks to laws that interest you.

Please note that **[words in bold brackets]** in www.gazette.co.za show proposed deletions, and underlined words in www.gazette.co.za show proposed insertions - this allows you to see current and planned requirements at the same time, and helps with giving context to changes/proposed changes.



Index



Financial

1. Financial Intelligence Centre Act: Amendment Act 2017 Part 2 (Customer due diligence) 



General

2. Higher Education Act: Amendment Act 2016 
3. Draft Political Party Funding Bill 



General

4. Notable one liners



Financial

1. FINANCIAL INTELLIGENCE CENTRE ACT: AMENDMENT ACT 2017 PART 2 (CUSTOMER DUE DILIGENCE)

The [previous overview](#) highlighted significant changes brought about by the Financial Intelligence Centre Amendment Act 2017, which comes into operation on 2 October 2017.

It also stressed, [with reasons](#), that those changes should be considered at the highest level of authority of an [accountable institution](#) (the board of directors, general management or other highest level of authority).

This overview focuses on the extension and strengthening of customer due diligence requirements - statutory requirements regarding due diligence in respect of customers and their transactions that has to be conducted by an accountable institution.

CLIENTS WHO ARE ANONYMOUS OR USE FALSE OR FICTITIOUS NAMES

A new [section 20A](#) will prohibit an accountable institution from establishing a business relationship or concluding a single transaction with an anonymous client or a client with an apparent false or fictitious name.

It is to be noted that the minimum amount of R5 000 prescribed for a single transaction to be subject to the provisions of the FIC Act will not apply to the new [section 20A](#). No transaction of any amount may be concluded with such a client.

IDENTIFICATION

[Section 21](#), as amended from 2 October 2017, requires an accountable institution to establish and verify certain information in the course of concluding a [single transaction](#) or establishing a [business relationship](#) with a prospective client.

It has to establish and verify the identity of the client.

If the client is acting on behalf of another person, the institution has to establish and verify:

- (i) The identity of that other person; and
- (ii) The client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person.

If another person is acting on behalf of the client, the institution has to establish and verify:

- (i) The identity of that other person; and
- (ii) The authority of that other person to act on behalf of the client.

The accountable institution's Risk and Compliance Programme must provide for the manner in which and the processes by which the establishment and verification of the identification of persons, and their authority, are to be performed by the accountable institution, and this must be complied with.

BUSINESS RELATIONSHIP

A new [section 21A](#) will require additional steps to be taken when an accountable institution engages with a prospective client to establish a business relationship.

The institution must also obtain information to reasonably enable it to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the accountable institution's knowledge of that prospective client.

LEGAL PERSONS, TRUSTS AND PARTNERSHIPS

If the prospective client is a [legal person](#) or is a natural person acting on behalf of a partnership, [trust](#) or similar arrangement between natural persons, further additional due diligence measures will be required by the newly inserted [section 21B](#).

The accountable institution must then also establish:

- (i) The nature of the client's business; and
- (ii) The ownership and control structure of the client.

Beneficial ownership

Where the prospective client is a legal person the accountable institution will now also have to establish the identity of the **beneficial owner(s)** of the client.

This is required to be done by determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person.

A further step is required where no natural person has a controlling ownership interest in the legal person, or if there is doubt whether a natural person who alone or with others have a controlling ownership interest is the beneficial owner of the legal person.

The institution must then determine the identity of each natural person who exercises control of that legal person through other means.

If no such natural person is identified the institution has to determine the identity of each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager.

The institution will then furthermore have to take reasonable steps to verify the identity of the beneficial owner of the client, so that the institution is satisfied that it knows who the beneficial owner is.

Partnerships

Where the prospective client is a natural person acting on behalf of a partnership between natural persons, the institution will have to perform the following additional due diligence measures:

- (i) Establish the identifying name of the partnership, if applicable, and take reasonable steps to verify it;
- (ii) Establish the identity of every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership;
- (iii) Establish the identity of the person who exercises executive control over the partnership;

(iv) Establish the identity of each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the partnership; and

(v) Take reasonable steps to verify the identity established for the natural persons concerned so that the institution is satisfied that it knows their identities.

Trust agreements

Additional steps are also required where a natural person who is entering into a single transaction or a business relationship is acting in pursuance of a trust agreement between natural persons.

These additional steps are that the accountable institution must establish the following particulars:

- (i) The identifying name and number of the trust, if applicable;
- (ii) The address of the Master of the High Court where the trust is registered, if applicable; and
- (iii) The particulars of how the beneficiaries of the trust are determined, if beneficiaries are not referred to by name in the trust deed or other founding document creating the trust.

The institution must also take reasonable steps to verify these particulars.

Other additional steps required is that the identity of the following persons must be established:

- (i) The founder of the trust;
- (ii) Each trustee;
- (iii) Each natural person who purports to be authorised to enter into a single transaction or to establish a business relationship with the institution on behalf of the trust; and
- (iv) Each beneficiary referred to by name in the trust deed or other instrument creating the trust.

The institution must also verify the identities of all these persons, so that it is satisfied that it knows the identities of the persons concerned.

APPLICATION TO NON-SOUTH AFRICAN ENTITIES

The requirements set out above applies in respect of a legal person, partnership or trust or a similar arrangement between natural persons, whether it is incorporated or originated in South Africa or elsewhere.

ONGOING DUE DILIGENCE

The newly inserted [section 21C](#) will require an accountable institution to conduct ongoing due diligence in respect of a business relationship.

This includes that the information obtained for the purpose of establishing and verifying the identities of clients has to be kept up-to-date.

It also includes the monitoring of transactions undertaken throughout the course of business relationships, including where necessary:

- (i) The source of funds, to ensure that the transactions are consistent with the institution's knowledge of the client's business and risk profile; and
- (ii) The background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent business or lawful purpose.

INABILITY TO CONDUCT DUE DILIGENCE

New additional provisions will prescribe what an accountable institution must do and not do if it is unable to:

- (i) Establish and verify the identity of a client or other relevant person as required by [section 21](#) or [21B](#);
- (ii) Obtain the information regarding a prospective business relationship as required by [section 21A](#); or
- (iii) Conduct ongoing due diligence as required by [section 21C](#).

In such circumstances [section 21E](#) provides that the institution:

- (i) May not establish a business relationship or conclude a single transaction with a client;
- (ii) May not conclude a transaction in the course of a business relationship or perform any act to give effect to a single transaction; or
- (iii) Must terminate an existing business relationship with a client.

In addition, the institutions must consider making a report under [section 29](#) dealing with suspicious and unusual transaction.

DOUBTS ABOUT PREVIOUSLY OBTAINED INFORMATION

A new [section 21D](#) deals with what an accountable institution must do, if, subsequent to or establishing a business relationship entering into a single transaction, if doubts the veracity or adequacy of previously obtained information which it is required to verify.

In such a case the institution must repeat the required steps to establish and verify that information to the extent that is necessary to confirm the information in question.

FOREIGN PROMINENT PUBLIC OFFICIALS

In keeping with international financial sector requirements a greater extent of due diligence will be required by the new [section 21F](#) in respect of foreign prominent public officials.

Categories

For purposes of the Act a foreign prominent public official is defined as an individual who holds, or who has held at any time in the preceding 12 months, in any foreign country, a prominent public function, including that of a:

- (i) Head of state or head of a country or government;
- (ii) Member of a royal family;
- (iii) Government minister or equivalent senior politician or leader of a political party;
- (iv) Senior judicial official;
- (v) Senior executive of a state owned corporation; or
- (vi) High-ranking member of the military.

This list of categories may be amended by notice in the Government Gazette.

Family members and known close associates

The enhanced due diligence requirements to be applied in respect of foreign prominent public official also apply in respect of their immediate family members and known close associates.

Immediate family member for these purposes include:

- (i) The spouse, civil partner or life partner;
- (ii) The previous spouse, civil partner or life partner, if applicable;
- (iii) Children and stepchildren and their spouse, civil partner or life partner;
- (iv) Parents; and
- (v) Siblings and step-siblings and their spouse, civil partner or life partner.

Enhanced due diligence required

An accountable institution must determine whether a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is:

- (i) A foreign prominent public official;
- (ii) An immediate family member of such official; or
- (iii) A known close associate of such official.

If this is the case, the institution must:

- (i) Obtain senior management approval for establishing the business relationship;
- (ii) Take reasonable measures to establish the source of wealth and source of funds of the client; and
- (iii) Conduct enhanced ongoing monitoring of the business relationship.

DOMESTIC PROMINENT INFLUENTIAL PERSONS

Internationally financial sector regulation also require greater due diligence when dealing with persons who are prominent and influential domestically. In keeping with these international requirements, categories of such persons are identified in the new [section 21G](#) in respect of whom enhanced due diligence is required.

For purposes of the Act a domestic prominent influential person is defined as an individual who holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, one of the following:

A prominent public function

This includes the function of:

- (i) The President or Deputy President;
- (ii) A government minister or deputy minister;
- (iii) The Premier of a province;
- (iv) A member of the Executive Council of a province;
- (v) An executive mayor of a municipality;
- (vi) A leader of a registered political party;
- (vii) A member of a royal family or a senior traditional leader;
- (viii) The head, accounting officer or chief financial officer of a national or provincial government department or government component;
- (ix) The municipal manager or chief financial officer of a municipality;
- (x) The chairperson of the controlling body of a public entity, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity;
- (xi) The chairperson of the controlling body of a municipal entity, or the chief executive officer, chief financial officer or chief investment officer of a municipal entity;
- (xii) A constitutional judge or any other judge;
- (xiii) An ambassador or high commissioner or other senior representative of a foreign government based in South Africa; or
- (xiv) An officer of the South African national Defence Force above the rank of major-general.

A top position in a company dealing with an organ of state

Where a company provides goods and/or services to an organ of state with a transactional value in excess of an amount determined by notice in the Government Gazette, the following persons are also classified as domestic prominent influential persons for purposes of this Act:

- (i) The chairperson of the board of directors;
- (ii) The chairperson of the audit committee;
- (iii) The executive officer; and
- (iv) The chief financial officer.

Head of international organisations

A person who holds the position of head, or other executive directly accountable to that head, of an international organisation based in South Africa.

The list of categories may be amended by notice in the Government Gazette.

Family members and known close associates

The enhanced due diligence requirements to be applied in respect of domestic prominent influential persons also apply in respect of their immediate family members and known close associates.

Immediate family members for these purposes include the following:

- (i) The spouse, civil partner or life partner;
- (ii) The previous spouse, civil partner or life partner, if applicable;
- (iii) The children and stepchildren and their spouse, civil partner or life partner;
- (iv) The parents; and
- (v) The siblings and step-siblings and their spouse, civil partner or life partner.

Enhanced due diligence required

An accountable institution must determine whether a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is:

- (i) A domestic prominent influential person;
- (ii) An immediate family member of such a person; or
- (iii) A known close associate of such a person.

The institution must also determine whether the prospective business relationship entails higher risk.

If an institution makes these determinations, it must:

- (i) Obtain senior management approval for establishing the business relationship;
- (ii) Take reasonable measures to establish the source of wealth and source of funds of the client; and
- (iii) Conduct enhanced ongoing monitoring of the business relationship.

The next newsletter will contain Part 3 (Risk Management and Compliance Programme).

GN601 GG40939/28 June 2017 (Incorporated into the [Financial Intelligence Centre Act and Regulations](#))



[Back to index](#)



2. HIGHER EDUCATION ACT: AMENDMENT ACT 2016

The [Higher Education Amendment Act 2016](#) commenced on 22 September 2017 (except for the amendment to [section 54](#)), and made extensive changes to the higher education regulatory parameters including, amongst many others:

- (i) A [qualification obtained through fraud or dishonesty](#) MAY be withdrawn;
- (ii) A [qualification obtained due to a material error](#) made by the institution MAY be withdrawn IF 2 years has not passed since it was conferred - **note:** *This justification of a qualification that never took place will likely be actionable in court - focus may have been better placed on recipients considering civil action for damages caused;*
- (iii) Certain qualifications must be [in line with actual trade and occupation needs](#);
- (iv) The Minister decides, at any time, on fundamental matters affecting higher education institutions including [transformation goals](#), [conditions for recognition](#), mergers, institution conversions, and disestablishment - which flags Regulatory Uncertainty concerns; and
- (v) Positive steps to improve internal governance duties of institutions BUT combined with the possibility of severe [Minister directives](#) based on PERCEPTION of unfair treatment, non-compliance with any applicable law, impropriety etc.

GN1012 GG41132 / 22 September 2017



[Back to index](#)



3. DRAFT POLITICAL PARTY FUNDING BILL

The [Draft Bill](#) proposes, amongst others:

- (i) Limiting funding to political parties [by legislatures and Municipal Councils](#);
- (ii) Limiting direct cash donations or in kind donations [from foreign persons or entities](#);
- (iii) Prohibiting accepting donations that the political party should reasonably have been aware [originated from the proceeds of crime](#);

Note: *A political party will have a duty to report such knowledge or suspicion.*

- (iv) Prohibiting direct cash donations or in kind donations [from foreign governments or agencies, or from organs of state or state-owned enterprises](#);
- (v) Prohibiting [donations to a member of political party](#), as well as prohibiting the acceptance of such a donation;and
- (vi) [Compulsory disclosure of all donations received](#) above a prescribed threshold.

Note: *Although the proposed [maximum fines for non-compliance](#) are quite low it should be noted that other laws may also be triggered by non-compliance with these requirements, for example, potentially, the [general corruption offence](#).*

Comment deadline 16 October 2017.

GN726 GG41125 / 19 September 2017



[Back to index](#)



General

4. NOTABLE ONE LINERS

Broad-based Black Economic Empowerment Act : A draft process to establish a Petroleum and Liquid Fuels Sector Code has been gazetted. No comment deadline provided.

Children's Act: The national integrated early childhood development policy has been adopted by the Cabinet.

Civil Aviation Act:

- (i) The Air Traffic and Navigation Services Company Amendment Bill 2014 proposes changing the internal governance requirements relating to the Company.
- (ii) The Airports Company Amendment Bill 2017 proposes substantively changing the internal governance requirements relating to the Airports Company.

Competition Act:

- (i) **The lower threshold amounts** will increase on 1 October 2017. **Note:** *The higher and lower threshold amounts determine whether a merger is large (above higher threshold), intermediate (between the two thresholds) or small (below the lower threshold). Such classification triggers notification obligations (if a large or intermediate merger) and determines the approval process that may be followed. Small mergers do not require mandatory notification, but the Competition Commission may require that such mergers be notified and approved.*
- (ii) **The fee for filing an intermediate or large merger notice** will increase on 1 October 2017.
- (iii) **Draft amendments** have been proposed to clarify the method of calculating assets and annual turnover of firms (in respect of mergers), and to replace GAAP with IFRS. Comment deadline 30 days from 15 September 2017.
- (iv) A **draft voluntary code of conduct for competition in the SA automotive industry** has been gazetted, and will be incorporated into www.gazette.co.za in due course. Comment deadline 3 November 2017.

Critical Infrastructure Bill : Notice has been given that **the Bill** will be introduced into the National Assembly soon. Note: It is recommended that you consider the Bill, together with the **Cybercrimes and Cybersecurity Bill**. You may also wish to consider the **past overview of the Bill**.

Customs and Excise Act: Richards Bay and Saldanha Bay added as **places where container depots may be established**.

Electronic Communications Act:

- (i) Reminder that from 23 September 2017 the **SA music content regulations** impose compulsory percentages and spreads on when local music must be played - also see the **position paper on local content**.
- (ii) **Call termination regulation** rates have been gazetted for 1 October 2017 to 30 September 2018.

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act: With regards to **fertilizers regulations**, notice was gazetted that regulations regarding to fertilizers is available from www.daff.gov.za. Note: The only fertilizer regulations on the website as at 14 September 2017 refer to proposed regulations (with no comment deadline), so that it is not certain what the actual regulatory change may involve.

Labour Relations Act: Private sector (Industries related to Clothing, Sugar, Canvas Goods, Diamond Cutting, and Chemical) and public sector **bargaining councils have been accredited** ('Co-ordinating', 'General', and 'Safety and Security').

National Environmental Management Act: **Draft regulations for the procedure to adopt environmental management instruments** (that allow for activities that do not require environmental authorisation) have been gazetted. Comment deadline 30 days from 15 September 2017.

National Health Act: Request for comments gazetted on **phased implementation of GTIN-14 Datamatrix Barcodes**. Comment deadline 6 weeks from 15 September 2017.

[National Key Points Act](#) : The Critical Infrastructure Bill [proposes repealing this Act](#).

[National Regulator for Compulsory Specifications Act](#): Reminder that both the compulsory specification for [Edison screw and bayonet lampholders and lampholder adaptors \(VC 8011\)](#), and the compulsory specification for [Safety of medium-voltage electric cables \(VC 8077\)](#), commences October 2017 - also see the [general overview of specifications](#).

[National Water Act](#): Water Services Act norms and standards for domestic water and sanitation services are now available from the Department of Water and Sanitation. Note: A [later notice](#) refers to draft norms and standards (not included in the notice) with a comment deadline of 30 days from 15 September. It is possible, but not certain, that the 8 September and 15 September notices are related.

[Prescription Act](#) : The Constitutional Court (CCT248/16) held that as a general rule prescription begins to run when a debt arises, unless the parties clearly stipulated otherwise. It further held that with regards to [section 12](#) prescription is generally not delayed when a debt is “due and payable” only after demand.

[Public Funding of Represented Political Parties Act](#): The Draft Political Party Funding Bill 2017 proposes repealing [this Act](#).

[Tax Administration Act](#): A draft list of jurisdictions contemplated in article 2(2)(ii)(b) of the [country-by-country regulations specifying the country-by-country reporting standard for multinational enterprises](#) has been published. Comment deadline 6 October 2017.



[Back to index](#)