The South African Institute of Professional Accountants isn’t just about the title, it’s about meaningful contributions to the accountancy profession as a whole, as well as your personal career aspirations.
LEGAL FRAMEWORK FOR TRAINEES

PRESENTED BY: FAITH NGWENYA
TECHNICAL AND STANDARDS EXECUTIVE
TOPICS

COMPANIES ACT

B-BBEE ACT

FINANCIAL INTELLIGENCE ACT
Companies Act 71 of 2008

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Contents

1. Close corporations
2. Company names
3. Company formations
4. Transitional arrangements
5. Ring Fencing
6. Registration requirements
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8. Directors
9. Annual returns
Close corporations

- Existing corporations continue to exist until their members decide to convert to a company
- No new CC are registered post 1 May 2011, however CK2 will remain indefinitely
- Names reserved prior to 1 May 2011 have six months to register, last registrations was 31 October 2011
Requirements for conversion of CC to company

- Completed form CoR 18.1 with:
- Written statement that 75% of members consented
- Memorandum of Incorporation CoR 15.1(a) or(b)
Company names

- Name reservations are no more mandatory i.e. if a name is rejected the registration number can be used as the name of the company
- Business/trading names to be registered in terms of the Consumer Protection Act
Company formation

- If you want to reserve a name file CoR9.1
- Notice of incorporation file CoR14.1 and 14.1A
  - Initial directors
- File CoR15.1A or B MOI [Pty Ltd]

Public & State owned companies 15.1B
Transitional arrangements

- MOI: any changes to the existing memorandum and articles must be filed before 30 April 2013 (2 years post implementation of the act)
- Only file MOI if there are changes or old Memorandum contradicts the new Act
- No fee is payable when lodging an amended MOI during the transitional period of 2 years
Ring fencing

- Section 11(3) introduced RF as a suffix to a company name where the MOI contains certain restrictions on the company
- In CoR 14.1 option 2 must be selected and Annexure C submitted, together with
  - CoR 15.1A, D or E
- The article in the memorandum with the restriction must be provided
Registration requirements

Valid customer code must used and be the same as the name reservation

Customer code must have enough funds

MOI 15.1A may only be used for a private company
Profit company: long form

CoR 14.1 and Cor 15.1B

CoR 14.1 Annexure A

CoR 14.1 Annexure B if no name was reserved

Annexure C if ring fencing

Annexure D if appointing an auditor, audit committee, or company
# Summary of company registration

<table>
<thead>
<tr>
<th>Incorporators</th>
<th>Pvt Co short 15.1A</th>
<th>Pvt Co Long 15.1B</th>
<th>Incorporated 15.1B</th>
<th>Ltd 15.1B</th>
<th>SOC Ltd 15.1B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directors</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Alternate directors</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Company secretary</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Audit committee</td>
<td>x</td>
<td>0(3)</td>
<td>0(3)</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Auditor</td>
<td>N/Y</td>
<td>N/Y</td>
<td>N/Y</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>

14
Financial Statements & audit

- All companies must prepare annual financial statements that comply with Section 29 of the Act and regulations 26 & 27

- A person is guilty of an offence if he is a party to the preparation, approval, dissemination or publication of any financial statements, that
  - Fail in a material way to comply with the requirements, or
  - Are materially false or misleading
## Financial Reporting Standards

<table>
<thead>
<tr>
<th>Type of entity</th>
<th>Public interest score</th>
<th>Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public company listed on the JSE</td>
<td></td>
<td>IFRS</td>
</tr>
<tr>
<td>State owned company</td>
<td></td>
<td>IFRS or where it conflicts with the PFMA the latter prevails</td>
</tr>
<tr>
<td>Public company (not listed)</td>
<td></td>
<td>IFRS; or IFRS for SME</td>
</tr>
<tr>
<td>Profit companies either than state owned and listed companies</td>
<td>350+</td>
<td>IFRS or IFRS for SME</td>
</tr>
<tr>
<td>Profit company</td>
<td>100 less than 350</td>
<td>IFRS</td>
</tr>
<tr>
<td>Profit company</td>
<td>Less than 100</td>
<td>SA GAAP</td>
</tr>
</tbody>
</table>
## Non Profit Companies

<table>
<thead>
<tr>
<th>Description</th>
<th>Score</th>
<th>Reporting Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non profit companies required by Regulation 28 (2)(b) to have its financial statements audited</td>
<td></td>
<td>IFRS or where it conflicts PFMA</td>
</tr>
<tr>
<td>Non profit companies with a score</td>
<td>350+</td>
<td>IFRS, IFRS for SME, SA GAAP</td>
</tr>
<tr>
<td>NPC with independently prepared financial statements</td>
<td>Greater than 100</td>
<td>IFRS, IFRS for SME, SA GAAP</td>
</tr>
<tr>
<td>NPC with internally prepared financial</td>
<td>Less than 100</td>
<td>Financial reporting standard as determined by the entity</td>
</tr>
</tbody>
</table>
Audit

- Private companies only require audit when:
  - PI score is 350 and above
  - PI score is at least 100 - 349 and the financial statements have been internally compiled
- All public companies must be audited
- All SOC’s must be audited
1. Is the company a public company or a state-owned company?

2. Is the company a private company and controls fiduciary assets > R5m?

- **Application of PIS to Private Companies and CCs**
  - **Owner Managed**
    - Greater/= than 350 PIS
      - **Acc Officer**
        - Yes
          - Is entity CC
            - **Ext**
              - No
                - **Less than 350 PIS and greater/equal to than 100 PIS**
              - **Int**
                - **CA**
                  - **Independent Review**
                - **Non CA/CA**
                  - **Less than 100 PIS**
    - **Non-Owner Managed**

- **OM < 100**
  - No Aud/IR
  - Duties of Acc Off

- **Greater/= than 350 PIS**
  - **Audit**
Appointing an auditor

- CoR 14.1 Annexure D
- Auditor may not be a director
- May be natural or juristic
- Rotated every 5 years
- Not required to file proof of consent
- Must indicate practice number and not registration/ID
- Must provide postal address cell & email
Change of auditor

- Where CoR 14.1 annexure D was not filed at incorporation, form CoR 44 must be filed within 40 business days
- Removal of auditor – CoR 44
- Appointment of Secretary CoR 44
- Appointment of Audit committee CoR 44
Directors

- Within 10 business days of change in directors, CIPC must be notified in CoR39
- Only one form is required should the Co have more directors, repeat the blocks
- Particulars of directors must be kept by all companies in terms of S 24(3)(b)
Annual returns

- All companies must file annual returns within 30 days after anniversary date of incorporation
- Audited entities must lodge audited F/S where appropriate
- Non audited companies may optionally file AFS or
- CoR30.2 Financial accountability supplement
AR Restorations

- The company is restored to “in deregistration”
- All o/s AR’s must be filed and sufficient funds in agents account must be available
- Status will change to “in business”
- Notice will be published in local newspapers
BROAD-BASED BLACK ECONOMIC EMPOWERMENT

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What will be covered

- BEE legislation in brief
- The revised B-BBEE codes of good practice
- Preparing for accreditation as BEE verification Professional
Broad Based Black Economic Empowerment

Legislation

- Act 53 of 2003 amended to
- Act 46 of 2013
- Codes of good practice
Broad-Based Black Economic Empowerment

- **Broad-based**: covers many aspects of the business, economy, society
- **Black**: Black people as defined
- **Economic Empowerment**: Objective is to grow the economy
Black people means Africans, Coloureds, and Indians
(a) who are citizens of the Republic of South Africa by birth or descent; or
(b) who became citizens of the Republic of South Africa by naturalisation—
   (i) before 27 April 1994; or
   (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but were precluded from doing so by Apartheid policies
Broad-based black economic empowerment is a viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to—
(a) increasing the number of black people that manage, own and control enterprises and productive assets;

(b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;

(c) human resource and skills development;
(d) achieving equitable representation in all occupational categories and levels in the workforce;

(e) preferential procurement from enterprises that are owned or managed by black people;

(f) investment in enterprises that are owned or managed by black people.
Objectives of the Act

To facilitate broad-based black economic empowerment by promoting economic transformation in order to enable meaningful participation of black people in the economy;

Achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises:

Increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training:
Objectives cont...

- Increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;
- Promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;
- Empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and
- Promoting access to finance for black economic empowerment.
Fronting

**means** a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of this Act, including but not limited to practices in connection with a B-BBEE initiative—
(a) in terms of which black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise;

(b) in terms of which the economic benefits received as a result of the broad-based black economic empowerment status of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation;
(c) involving the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of broad-based black economic empowerment compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person; or

(d) involving the conclusion of an agreement with another enterprise in order to achieve or enhance broad-based black economic empowerment status in circumstances in which—
(i) there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;

(ii) the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available;

(iii) the terms and conditions were not negotiated at arm’s length and on a fair and reasonable basis;
Cancellation of contracts

Any contract or authorisation awarded on account of false information furnished by or on behalf of an enterprise in respect of its broad-based black economic empowerment status, may be cancelled by the organ of state or public entity without prejudice to any other remedies that the organ of state or public entity may have.
B-BBEE verification professional’ means a person who performs any work in connection with rating the status of enterprises in terms of broad-based black economic empowerment compliance on the authority of, or for a rating agency accredited by, a B-BBEE Verification Professional Regulator;

‘B-BBEE Verification Professional Regulator’ means a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification professionals;
(1) All spheres of government, public entities and organs of state must report on their compliance with broad-based black economic empowerment in their audited annual financial statements and annual reports required under the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) All public companies listed on the Johannesburg Stock Exchange must provide to the Commission, in such manner as may be prescribed, a report on their compliance with broad-based black economic empowerment.

(3) All Sectoral Education and Training Authorities contemplated in the Skills Development Act, 1998 (Act No. 97 of 1998), must report on skills development spending and programmes to the Commission.
(1) Subject to the provisions of this Act, the Commission has the power, on its own initiative or on receipt of a complaint in the prescribed form, to investigate any matter arising from the application of the Act, including any B-BBEE initiative or category of B-BBEE initiatives.

(2) The format and the procedure to be followed in conducting any investigation must be determined by the Commission with due regard to the circumstances of each case, and may include the holding of a formal hearing.
(3) Without limiting the powers of the Commission, the Commission may make a finding as to whether any B-BBEE initiative involves a fronting practice.

(4) The Commission may institute proceedings in a court to restrain any breach of this Act, including any fronting practice, or to obtain appropriate remedial relief.

(5) If the Commission is of the view that any matter it has investigated may involve the commission of a criminal offence in terms of this Act or any other law, it must refer the matter to the National Prosecuting Authority or an appropriate division of the South African Police Service.
(6) The Commission may, if it has investigated a matter and justifiable reasons exist, refer to—

(a) the South African Revenue Services any concerns regarding behaviour or conduct that may be prohibited or regulated in terms of legislation within the jurisdiction of that Service; or

(b) any regulatory authority any concerns regarding behaviour or conduct that may be prohibited or regulated in terms of legislation within the jurisdiction of that regulatory authority.
Offences and Penalties

(1) A person commits an offence if that person knowingly—

(a) misrepresents or attempts to misrepresent the broad-based black economic empowerment status of an enterprise;

(b) provides false information or misrepresents information to a B-BBEE verification professional in order to secure a particular broad-based black economic empowerment status or any benefit associated with the compliance with this Act;
(c) provides false information or misrepresents information relevant to assessing the broad-based black economic empowerment status of an enterprise to any organ of state or public entity; or

(d) engages in a fronting practice.
(2) A B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity who becomes aware of the commission of, or any attempt to commit, any offence referred to in subsection (1) and fails to report it to an appropriate law enforcement agency, is guilty of an offence.
(3) Any person convicted of an offence in terms of this Act, is liable

(a) in the case of a contravention of subsection (1), to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover; or

(b) in the case of a contravention of subsection (2) or section 13N, to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.
(4) For the purpose of determining a fine to be imposed for an offence in terms of subsection (1), the court must take into account the value of the transaction which was derived from, or sought to be derived from, the commission of the offence.
(5) A court in which any person is convicted of an offence in terms of subsection (3) must report the conviction-

(a) to the B-BBEE Verification Professional Regulator, if that person is a B-BBEE verification professional; and

(b) to in any other case, to the Council and to that person’s employer.
Professional Skepticism

- Verification should be performed with an attitude of scepticism recognising that circumstances may exist that cause the measured entity’s information to be materially misstated.
- B-BBEE verification professional should make a critical assessment, with a questioning mind, of the validity of evidence obtained and is alert to any contradicting evidence.
- Investigation of and reasonable questioning on documentation presented and management’s representations to assess the effect of potential misstatements on scores awarded to individual score cards.
Revised Codes of Good Practice 2013
Compulsory elements

Ownership

Enterprise & Supplier Development

Skills Development
Priority elements
Compliance

- Large entity:
  Comply with all priority elements

- Qualifying Small Enterprise (QSE)
  Comply with all priority elements
Exempted Micro Enterprise (EME)

Enhanced recognition status

Annual turnover threshold increased from R5m to R10m

EME to obtain a sworn affidavit confirming turnover and ownership
EME

- Deemed to be level 4 contributor
- 100% black owned elevated to Level 1 contributor
- At least 51% Black owned elevated to Level 2 contributor
QSE levels

Level 1
• 100% Black owned

Level 2
• 51% Black owned

• Otherwise level 4
Start-up

- Measured as an EME
- Provide an independent confirmation of its status
## Economic impact of the thresholds

<table>
<thead>
<tr>
<th>Size of the company</th>
<th>No</th>
<th>%</th>
<th>BEE compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Survivalists, Micro and very small</td>
<td>878 032</td>
<td>95%</td>
<td>No compliance EME</td>
</tr>
<tr>
<td>QSE (R10m to R50m)</td>
<td>34 118</td>
<td>3%</td>
<td>Relaxed compliance</td>
</tr>
<tr>
<td>Large corporates greater than R50m</td>
<td>11 871</td>
<td>2%</td>
<td>Full compliance</td>
</tr>
<tr>
<td>B-BBEE status</td>
<td>Current qualification</td>
<td>New Qualification</td>
<td>B-BBEE recognition level</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------------</td>
<td>------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Level 1 contributor</td>
<td>$\geq 100$ points on the generic scorecard</td>
<td>$\geq 100$ points on the generic scorecard</td>
<td>135%</td>
</tr>
<tr>
<td>Level 2 contributor</td>
<td>$\geq 85$ but $&lt; 100$ on the generic score card</td>
<td>$\geq 95$ but $&lt; 100$ on the generic score card</td>
<td>125%</td>
</tr>
<tr>
<td>Level 3 contributor</td>
<td>$\geq 75$ but $&lt; 85$ on the generic score card</td>
<td>$\geq 90$ but $&lt; 95$ on the generic score card</td>
<td>110%</td>
</tr>
<tr>
<td>Level 4 contributor</td>
<td>$\geq 65$ but $&lt; 75$ on the generic score card</td>
<td>$\geq 80$ but $&lt; 90$ on the generic score card</td>
<td>100%</td>
</tr>
<tr>
<td>Level 5 contributor</td>
<td>$\geq 55$ but $&lt; 65$ on the generic score card</td>
<td>$\geq 75$ but $&lt; 80$ on the generic score card</td>
<td>80%</td>
</tr>
<tr>
<td>Level 6 contributor</td>
<td>$\geq 45$ but $&lt; 55$ on the generic score card</td>
<td>$\geq 70$ but $&lt; 75$ on the generic score card</td>
<td>60%</td>
</tr>
<tr>
<td>Level 7 contributor</td>
<td>$\geq 40$ but $&lt; 45$ on the generic score card</td>
<td>$\geq 55$ but $&lt; 70$ on the generic score card</td>
<td>50%</td>
</tr>
<tr>
<td>Level 8 contributor</td>
<td>$\geq 30$ but $&lt; 40$ on the generic score card</td>
<td>$\geq 40$ but $&lt; 55$ on the generic score card</td>
<td>10%</td>
</tr>
<tr>
<td>Non compliant</td>
<td>$&lt; 30$ on the generic score card</td>
<td>$&lt; 40$ on the generic score card</td>
<td>0%</td>
</tr>
</tbody>
</table>
FAIS ACT 2002
FINANCIAL SERVICES BOARD/FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)
PURPOSE OF FAIS ACT

PROTECT CONSUMERS OF FINANCIAL SERVICES AND PRODUCTS

REGULATES THE SELLING AND ADVICE-GIVING ACTIVITIES BY FINANCIAL SERVICE PROVIDERS

ENSURE THAT THE CONSUMERS ARE PROVIDED WITH ADEQUATE

ESTABLISH A PROPERLY REGULATED FINANCIAL SERVICES PROFESSION
LICENSING OF FSPs

- All FSPs must obtain a licence for the class or classes of business they provide advice on.
- To be issued a licence you must considered fit & proper by the regulatory board (FSCA).
- Must comply with the code of conduct and relevant laws governing the type of business you are in.
FIT & PROPER TEST

INTEGRITY

FINANCIAL SOUNDNESS

HONESTY

COMPETENCY BASED QUALIFICATION

FIT & PROPER

OPERATIONAL ABILITY

RELEVANT EXPERIENCE
CAN A SAIPA MEMBER BE AN FSP?
CAN A SAIPA MEMBER BE AN ACCOUNTANT/ACCOUNTING OFFICER FOR A FINANCIAL SERVICES ENTITY?
(a) An authorised financial services provider must cause the statements referred to in subsection (1)(b) to be audited and reported on in accordance with *auditing pronouncements* as defined in section 1 of the Auditing Professions Act, 2005 (Act 26 of 2005) by an external auditor approved by the registrar;
FINANCIAL REQUIREMENTS

- (a) maintain full and proper accounting records on a continual basis, brought up to date monthly; and
- (b) annually prepare, in respect of the relevant financial year of the provider, financial statements reflecting:
  - (i) the financial position of the entity at its financial year end;
  - (ii) the results of operations, the receipt and payment of cash and cash equivalent balances;
FINANCIAL REQUIREMENTS

(a) maintain full and proper accounting records on a continual basis, brought up to (iii) all changes in equity for the period then ended, and any additional components required in terms of South African Generally Accepted Accounting Practices issued by the Accounting Practices Board or International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; and

(iv) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (i) to (iii).
Exemption from audit

- Intermediary entities are, in respect of an intermediary service referred to in the definition of an intermediary entity, hereby exempted from section 19(2)(a), (2)(b) and (3) to (6) of the Act to the extent that reference is made therein to an auditor, or an audit of an auditor, or to statements or reports by an auditor, subject to the conditions that:

- (a) the exemptions will not apply where an intermediary entity is in any case obliged by any other law to cause financial statements to be audited and reported on, or otherwise prepared, in which case section 19 remains applicable;
Exemption from audit

I (b) in any case other than the case envisaged in sub-paragraph (a), an intermediary entity must appoint an accounting officer who must on prior written application to the registrar be approved by the registrar;

(c) any such approved accounting officer must certify and report on the financial statements of the intermediary entity referred to in section 19(1) in conformity with the practices of the accounting officer’s profession, and that section 19(2)(a)(i) to (iii), (b)(ii) to (iv), and (3) to (6) of the Act will apply with the necessary changes to any such officer, any certification and reports by the officer and termination of appointment.
EXTENT AND CONDITIONS OF EXEMPTION

(1) An FSP is exempted from section 19(2)(a) and (3) to (6) of the Act unless:

(a) it is obliged by law to cause financial statements to be audited and reported on; or

(b) it is otherwise obliged by law to cause financial statements to be independently reviewed by an independent reviewer or otherwise prepared, in which case section 19(2)(a) and (3) to (6) applies with the necessary changes.
FSP CATEGORIES

- Category I sole proprietors that receive short term insurance premiums in terms of section 45 of the Short-term Insurance Act;
- Category I sole proprietors who receive any client funds and/or premiums;
- Category II sole proprietors;
- Category IV sole proprietors
Who is exempt

- An authorised Category I FSP who does not receive premiums (contemplated in the Short-term Insurance Act, 1998, and the Long-term Insurance Act, 1998) or otherwise receive or hold clients' money or assets
are not required to:

- submit audited financial statements; or
- appoint an accounting officer;

Sole proprietors are required to register for the exemption and submit a copy of the application form to Faisfins4@fsb.co.za
FSP LIMITED BY PRODUCT

An authorised Category I FSP who renders financial services limited to financial products belonging to Long-term Insurance subcategory A or friendly society benefits provided by a friendly society contemplated in paragraph (d)(ii) of the definition of financial product in section 1(1) of the Act and who receives or holds clients' money.
FSP LIMITED BY PRODUCT

3) An FSP and FSP limited by product who wish to benefit from this Notice must within six months after publication of the Notice or upon application for authorisation in case of an unauthorised FSP:

- (a) register the exemption with the Registrar within the prescribed format and manner; and
- (b) must inform the Registrar in writing within 15 days after the change has taken place, of any change in respect of the information that was submitted for purposes of registering the exemption.
Exempt from audit

- (4) In the case of a close corporation, an auditor's involvement is not obligatorily, only that of an accounting officer.
- The Registrar is satisfied that similar considerations justify less onerous requirements for FSPs and FSPs limited by product who are close corporations.
An FSP limited by product, unless obliged by law to cause financial statement to be audited and reported on, is exempted from section 19(2)(a) and (3) to (6) of the Act to the extent that reference is made to an auditor, audit or statement or report by an auditor subject to the conditions that it:

- (a) must appoint an accounting officer approved by the Registrar;
- (b) the accounting officer must certify and report on the financial statements referred to in section 19(1) of the Act in conformity with the practices of the accounting officer's profession; and
- (c) section 19(2) to (6) applies with the necessary changes to the accounting officer, any certification and report by the officer and termination of appointment.
A person to be appointed as compliance officer other than a director, member, auditor, trustee, principal officer, public officer or company secretary of a particular authorised financial service provider as contemplated in section 17(1)(b) of the Act must be a person complying with the following qualifications and experience, namely, the person must:
- hold a legal or accountancy university degree, and with at least 3 years experience as regards the financial services industry; or
- have passed any specific financial services industry, or compliance related course recognised by the registrar by notice in the Gazette, with 3 year’s experience as regards the financial services industry; or
- already be appointed as a compliance officer by virtue of a law other than the Act relating to the financial services industry; or
- be an accredited member of the Compliance Institute of South Africa, or any other organisation recognised by the registrar by notice in the Gazette, and who has at least 3 years’ experience as regards the financial services industry
FINANCIAL INTELLIGENCE CENTRE ACT
DUTY TO IDENTIFY CLIENTS

(1) An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps-

- (a) to establish and verify the identity of the client;
- (b) if the client is acting on behalf of another person, 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; and
CHAPTER 3: ACCOUNTABLE INSTITUTIONS

Accountable institutions to advise Centre of clients

- If an authorised representative of the Centre requests an accountable institution to advise whether-
  - (a) a specified person is or has been a client of the accountable institution;
  - (b) a specified person is acting or has acted on behalf of any client of the accountable institution; or
  - (c) a client of the accountable institution is acting or has acted for a specified person,

- the accountable institution must inform the Centre accordingly.
Suspicious and unusual transactions

- (1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that-
  - (a) the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
a transaction or series of transactions to which the business is a party-

(i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;

(ii) has no apparent business or lawful purpose;

(iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act;

(iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or

(v) relates to an offence relating to the financing of terrorist and related activities; or
the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.
PROPOSED INCLUSION OF THE PROFESSIONAL ACCOUNTANTS INDUSTRY

- Professional accountants, meaning those running independent practices, are exposed to potential exploitation by criminals looking for ways to launder criminal proceeds or to raise funds for terrorist activity by involving those sectors that are currently not included in South Africa's anti-money laundering / combating the financing of terrorism (AML/CFT) regulatory framework.
ACCOUNTANTS, LAWYERS – AS GATEKEEPERS

“Gatekeepers” can be described as those who provide gateways to the financial system through which potential users of the system, including launderers, can pass in order to do business with financial institutions.
money launderers find accountants particularly useful for tasks including:

- Seek financial and tax advice – criminals posing as individuals with the intent of reducing their tax liabilities or looking to place vast amounts of proceeds may approach an accountant for advice.
- The formation of corporate vehicles and other complex legal arrangements such as trusts to divert attention from proceeds of crime and the perpetrator of crime.
VULNERABILITIES OF THE PROFESSIONAL ACCOUNTANTS’ INDUSTRY

- Assistance during the layering or integration stages of ML such as property transfers as a cover for moving illegal funds (the layering stage) and during the integration stage, representing the final investment after it has passed through the laundering process.

- Carrying out financial processes such as: making cash deposits or withdrawals on accounts; issuing or cashing cheques; selling or purchasing stocks; sending or receiving international fund transfers and so on, on behalf of clients.

- Facilitating access to financial institutions.
ability to disrupt crime and place obstacles in the way of criminals’ profiting from crime.

intention is to make the financial system intolerant to abuse and to make South Africa a more attractive destination for growth and an option for domestic and foreign investment.
BENEFITS TO REGULATING THE PROFESSIONAL ACCOUNTANTS’ INDUSTRY

- Strengthen the reputation of the industry as a trusted intermediary and build a collaborative partnership with FIC and law enforcement agencies to combat and disrupt ML/TF.

- Fill intelligence gaps and improve the ability for the FIC’s intelligence community to discover, understand, and disrupt money laundering, terrorist financing and the serious offences that predicate these activities.

- Reduce the harm and adverse impacts of ML and TF on the South African economy and society.
BENEFITS TO REGULATING THE PROFESSIONAL ACCOUNTANTS’ INDUSTRY

- Enhance national security and South Africa’s reputation as a destination for domestic and foreign business and investment.
- Intelligence from the professional accountants’ industry could generate leads which may result in section 34 FIC Act directives (freezing) orders and section 35 applications (monitoring orders).
accountants should be covered under the scope of the FIC Act when they prepare for or carry out transactions for a client concerning the following activities:

- Buying and selling of real estate
- Managing of client money, securities or other assets
- Management of bank, savings or securities accounts;
- Organisation of contributions for the creation, operation or management of companies
- Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
WHAT DOES IT MEAN TO BE AN ACCOUNTABLE INSTITUTION- SCHEDULE 1

- Identify and verify clients
- Keep records of clients identity and transactions
- File statutory reports – cash threshold, suspicious and unusual transaction and terror property reports
- Appoint compliance officers
- Train employees on how to comply
- Register with the FIC
- Formulate and implement internal rules
WHAT DOES IT MEAN TO BE AN REPORTING INSTITUTION- SCHEDULE 3

- Register with the FIC
- File statutory reports – cash threshold and suspicious and unusual transaction reports
OBLIGATIONS IN BEING INCLUDED IN SCHEDULE 1

- Registration
- Identification and verification of clients
- Keeping records of clients
- Appointment of a compliance officer
- Setting of internal rules related to compliance
- Training staff on company compliance rules
- Submitting reports to the FIC.
It is in the interest of included institutions to ensure that they are aware of updates in regulations and legislation related to the FIC Act at all times. They are also reminded that after registration, reporting stands at the crux of effective compliance. Among the statutory reports required of institutions are:

- Suspicious transaction reports
- Cash threshold reports – on transactions of R25 000 and above
- Terrorist property reports (applicable to accountable institutions only)
WHERE ARE?
Thank you