

Corporate & Commercial ALERT

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INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

New accountable institutions beware: Deadline ahead for submission of a risk and compliance return.

On 31 March 2023 the Financial Intelligence Centre (FIC) issued Directive 7 in terms of section 43A(3)(a) of the Financial Intelligence Centre Act 28 of 2001 (FIC Act). Directive 7 makes it mandatory for a specified list of accountable institutions to submit a risk and compliance return to the FIC by 17h00 on 31 July 2023.

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New accountable institutions beware: Deadline ahead for submission of a risk and compliance return.

On 31 March 2023 the Financial Intelligence Centre (FIC) issued Directive 7 in terms of section 43A(3)(a) of the Financial Intelligence Centre Act 28 of 2001 (FIC Act). Directive 7 makes it mandatory for a specified list of accountable institutions to submit a risk and compliance return to the FIC by 17h00 on 31 July 2023.

Accountable institutions listed in schedule 1 of the FIC Act as **items 11, 14, 20, 21 and 22** must complete the return, covering **the reporting period from 1 January 2023 to 30 June 2023**, both dates inclusive. The below table sets out the categories of business that fall under these items:

SCHEDULE 1 ITEM	ACCOUNTABLE INSTITUTION
11. Credit providers	<ul style="list-style-type: none">A person who carries on the business of a credit provider as defined in the National Credit Act 34 of 2005 (National Credit Act).A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act.
14. SA Postbank	The South African Postbank Limited referred to in section 3 of the South African Postbank Act 9 of 2010.
20. High-value goods dealers	A person who carries on the business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of R100,000 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked, where "high-value goods" means any item that is valued in that business at R100,000 or more.
21. SA Mint Company	The South African Mint Company (RF) (Pty) Ltd, only to the extent that it distributes non-circulation coins in retail trade and where in respect of such transactions it receives payment in any form to the value of R100,000 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked.

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SCHEDULE 1 ITEM	ACCOUNTABLE INSTITUTION
22. Crypto asset service providers	<p>A person who carries on the business of one or more of the following activities or operations for or on behalf of a client:</p> <ul style="list-style-type: none">• Exchanging a crypto asset for a fiat currency or vice versa.• Exchanging one form of crypto asset for another.• Conducting a transaction that transfers a crypto asset from one crypto asset address or account to another.• Safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset.• Participation in and provision of financial services related to an issuer's offer or sale of a crypto asset. <p>Where "<i>crypto asset</i>" means a digital representation of perceived value that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account or store of value and use it for payment or investment purposes but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act 19 of 2012.</p>

These accountable institutions must submit the return, which will comprise information regarding the accountable institution's understanding of money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risks and their assessment of compliance with obligations in terms of the FIC Act.

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The questions on the return run the gamut of FIC Act compliance, with questions on different types of risk including client, transaction, distribution channel, product, geographic and ML/TF/PF risks. The return also asks general FIC Act compliance questions on registration, risk management and compliance programmes, customer due diligence, employee training, record keeping and reporting to the FIC, including questions on the three major categories of reports – cash threshold reports, terrorist property and financial sanctions reports, and suspicious and unusual transactions reports.

As stated above, the return must be submitted to the FIC no later than 17h00 on Monday, 31 July 2023. Return submission is automated and

accountable institutions are required to populate the information on the return directly via the following link made available by the FIC: **Risk and Compliance Return**.

The information obtained from the return will assist the FIC in forming an understanding of the levels of risk awareness and compliance of the responding accountable institution with the FIC Act and in identifying the ML, TF and PF risks facing different accountable institutions.

Non-submission of the return will be considered non-compliance with Directive 7 and may result in an administrative sanction, including financial penalties of up to R50 million. However, in a media release, the FIC has stated that in the first 18 months from the date of commencement of the amendments

it will focus on entrenching the FIC Act risk and compliance provisions and implementation them among the new sectors in Schedule 1 to the FIC Act. In respect of the new sectors, the FIC does not envisage issuing financial penalties for non-compliance with the FIC Act during the transitional 18-month period.

CDH's FICA Queries team is available to assist clients with legal advice and training on FICA compliance.

Vivien Chaplin,
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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