

Financial Intelligence Centre Act 38 of 2001

Joint Communication 2 of 2020

Covid-19: Supervisory response

1. Objective of this communication

This communication sets out the supervisory body responses of the Prudential Authority, the National Payment System Department, the Financial Surveillance Department of the South African Reserve Bank, as well as the Financial Sector Conduct Authority (jointly referred to as the Authorities) having consulted the Financial Intelligence Centre (FIC) regarding the Covid-19 pandemic. This response focuses on the observed and possible impact of the pandemic on South African accountable institutions (AIs) which are supervised by the Authorities. It also relates to ensuring the compliance of AIs with their legislative obligations in terms of the Financial Intelligence Centre Act, Act 38 of 2001 (the FIC Act).

The Authorities recognise that the Covid-19 pandemic may have an impact on the manner in which AIs operate, particularly in regard to their compliance with certain provisions of the FIC Act. The Authorities are also cognisant that the Covid-19 pandemic may present criminals with further opportunities to engage in illicit or unlawful activity.

This communication resonates with the statement¹ published by the Financial Action Task Force (FATF) on 1 April 2020, which encourage governments to work with AIs and other businesses in support of Covid-19 aid and efforts to curtail the spread thereof, whilst remaining alert to new and emerging risks. The statement encouraged applying flexibility to the application of the FATF's risk-based approach, and the fullest use of reliable digital customer on-boarding. Such an approach would accord well with the discretion and flexibility afforded to AIs as reflected in the customer due diligence obligations of the FIC Act.

The Authorities nevertheless expect that AIs continue to operate their businesses in a prudent and socially responsible manner in ensuring compliance with the FIC Act obligations. To this end, the communication further outlines some of the potential actions that can be taken by AIs to assist in achieving compliance with the FIC Act.

The Authorities implore AIs to act prudently whilst remaining cognisant of the role the financial sector plays within the broader South African economy, as well as their role in countering and mitigating money laundering, terrorist financing, and proliferation financing risk in this sector.

The Authorities may engage further with the affected AIs and all other relevant stakeholders during this time and may issue further communication or implement any additional measures as and when necessary as further analysis on the impact of Covid-19 is conducted.

¹ <https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-Covid-19.html>

2. Purpose

This communication sets out the Authorities' current position concerning the Covid-19 pandemic and its impact on the ability of AIs to adhere to their obligations regarding customer due diligence, particularly that of conducting on-going due diligence, in terms of section 21C of the FIC Act.

This communication does not have the force of law, and is intended to signal an indication of the Authorities' supervisory response to the Covid-19 pandemic, in respect of those matters that are an immediate priority to alleviate possible pressure that AIs may experience during the nationwide lockdown. The AIs are urged to continue to act in good faith towards fulfilling their obligations to the greatest extent possible, and to make prudent decisions regarding the management of money laundering, terrorist financing, and proliferation financing risks (ML/TF/PF risks). The possible assistance discussed in this communication should not be seen as a relaxation of the Authorities' supervisory body powers or existing remedial actions regarding a particular AI, except for as provided for in paragraph 4.11 below. The Authorities confirm that this communication should not be interpreted as an opportunity for AIs to unduly benefit from any potential supervisory actions by the Authorities. Accordingly, this communication is issued without prejudice to the supervisory and enforcement powers of the Authorities in terms of the FIC Act, particularly sections 45B and 45C.

3. Introduction

- 3.1 AIs play a critical and unique role in supporting the wider economy, particularly during a period of economic disruption, such as the disruption caused by Covid-19.
- 3.2 The Authorities are cognisant of the impact of Covid-19 on the operational capability of AIs to operate effectively given the social distancing and other measures in place to mitigate the spread of Covid-19.
- 3.3 The Authorities are further cognisant of the impact of Covid-19 on some AIs ability to effectively identify and verify new clients, as well as to conduct ongoing due diligence in a face to face environment (e.g. persons may be reluctant to visit branches during the lockdown period).
- 3.4 The Authorities recognise that during this period, criminals may take advantage of Covid-19 and perpetuate financial fraud and exploitation scams, including advertising and trafficking in counterfeit products, offering fraudulent investment opportunities, and engaging in phishing schemes that prey on Covid-19 related fears, and purport to be bank-related fundraising for Covid-19 human relief purposes. Malicious or fraudulent cybercrimes, fundraising for fake charities, and various medical scams targeting innocent victims may increase².

² Para 2; <https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-Covid-19.html>

4. Impact on certain regulatory requirements

- 4.1 The Authorities consider it critical that AIs continue to comply with their legislative obligations in terms of the FIC Act.
- 4.2 The anti-infection measures which AIs have put in place in their branches to maintain essential banking and/or financial services to the public in the light of Covid-19 are noted. The Authorities are of the view that the use of financial technology (FinTech³) will assist in managing some of the challenges presented during this time.
- 4.3 The Authorities adopt the stance of FATF as mentioned in its recent publication following the onset of Covid-19, whereby it encourages the use of technology, including Fintech, Regtech⁴ and Suptech⁵ to the fullest extent possible.
- 4.4 The Authorities urge AIs to give regard to the recently released Guidance⁶ on Digital ID by FATF, which highlights the benefits of trustworthy digital identity for improving the security, privacy and convenience of identifying clients and prospective clients remotely for both onboarding and conducting transactions while also mitigating ML/TF/PF risks.
- 4.5 The Authorities call upon AIs to explore using digital identity, as appropriate, to aid financial transactions while managing ML/TF/PF risk.
- 4.6 When AIs identify clients with lower ML/TF/PF risks, the provisions of the FIC Act allow for simplified due diligence measures to be undertaken at on boarding, which may help them adapt to the current situation imposed by the nationwide lockdown.
- 4.7 Amidst Covid-19, AIs are encouraged to continue to work closely with their respective supervisory body to provide greater convenience for account opening and continued access, physically and digitally, to essential banking and other relevant financial services to the public.
- 4.8 With regards to ensuring that on-going due diligence obligations are met in terms of section 21C of the FIC Act, the Authorities expect that AIs will seek to utilise technology to the greatest extent possible to achieve compliance therewith.

³ The use of technologically enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services: <https://www.fsb.org/work-of-the-fsb/policy-development/additional-policy-areas/monitoring-of-fintech/>

⁴ The use of innovative technologies that support compliance with regulatory and reporting requirements by regulated financial institutions: <https://www.bis.org/fsi/publ/insights9.pdf>

⁵ The use of innovative technology by supervisory agencies to support supervision: <https://www.bis.org/fsi/publ/insights9.pdf>

⁶ <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/digital-identity-guidance.html>

- 4.9 The Authorities expect that high and medium risk customers are prioritised in terms of conducting on-going due diligence as per the requirements of the FIC Act.
- 4.10 In respect of affected existing clients (in respect of whom on-going due diligence was required to take place from 1 March to 4 May 2020 in a face-to-face manner), taking into account the impact of the nationwide lockdown due to Covid-19, the Authorities do not expect that there should be any freezing or closure of accounts due to the inability of AIs to obtain identification and verification information, or procure other information as may be required to conduct requisite on-going due diligence where the information would have been necessary to have been obtained in a face-to-face manner.
- 4.11 The Authorities expect that AIs would have already commenced with planning and discussions as to how the affected clients will be dealt with post the lockdown period, and communicate detailed plans with requisite deadlines for completion, in writing to their respective supervisory body by no later than 15 May 2020. The Authorities require that each AI's submitted plan contain completion dates that do not extend further than 4 December 2020.

As criminals may seek to use Covid-19 as an opportunity to exploit and abuse the financial system and perpetrate further financial crimes during this period, the Authorities urge AIs to be vigilant and ensure that they continue to comply with their reporting, information and intervention obligations in terms of sections 27, 28, 28A, 29, 32, 34 and 35 of the FIC Act, in a timely manner.

Should a particular reporting entity, owing to its extenuating circumstances and money laundering and terrorist financing risk assessment, determine that it will not be able to timeously report a particular suspicious and unusual transaction in terms of section 29 of the FIC Act or a terrorist property report in terms of section 28A of the FIC Act, they may apply to the FIC in terms Regulations 24 of the Money Laundering and Terrorist Financing Control Regulations (MLTFC Regulations), for an extension of the applicable reporting period. Such request will be considered by the FIC in accordance with Regulation 24 of the MLTFC Regulations.

- 4.12 The Authorities will periodically review this guidance in light of new information on the duration and extent of the Covid-19 lockdown.

5. Further Action

- 5.1 AIs that are uncertain about the intended application of this communication should contact their respective supervisory body contacts below for further direction.

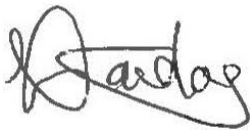
- 5.2 The Authorities will continue to engage with the financial sector and all other relevant stakeholders during this time and will provide further direction to Als or implement any additional measures as and when necessary.

Requests for further information about this Communication may be submitted via email to: Denzel.Bostander@resbank.co.za for the Prudential Authority, Elijah.Mazibuko@resbank.co.za for the Financial Surveillance Department, npsdirectives@resbank.co.za for the National Payment System Department, and Kedibone.Dikokwe@fsca.co.za for the Financial Sector Conduct Authority.



FINANCIAL SECTOR CONDUCT AUTHORITY

Date: 21 April 2020



SOUTH AFRICAN RESERVE BANK AND PRUDENTIAL AUTHORITY

Date: 21 April 2020

Endorsed by:



FINANCIAL INTELLIGENCE CENTRE

Date: 21 April 2020