NADA quick guide to the coming Financial Intelligence Centre Act and related laws

Disclaimer – this document is a basic guideline only and does not constitute legal or compliance advice and does not cover all aspects of the regulatory changes proposed by Government. NADA strongly encourages all members and readers to consult with Legal/Compliance experts.

South Africa was subject to a country assessment by a joint IMF, Eastern and Southern African Anti Money Laundering Group and the Financial Action Task Force (FATF) assessment team that assessed South Africa's anti money laundering, terrorist financing and proliferation financing controls and enforcement as well as the supervisory and regulatory systems in place. The assessment resulted in a Mutual Evaluation Report (MER) being published in October 2021 detailing weaknesses identified and highlighting the need to ensure that South Africa has a "robust regulatory framework".

Based on the above, South Africa is required to provide the FATF with a series of reports, the first of which being due in October 2022 detailing the steps taken to improve the South African system to combat money laundering, terrorism financing and proliferation financing.
Should the FATF, in their February Review, find that South Africa has not adequately addressed its shortcomings, the FATF will move South Africa on to it "grey list" which will deem South Africa to be a higher risk country for money-laundering, terrorist financing and proliferation financing which could lead to:

- Classification as a high-risk nation in the EU and the UK (with associated ratings downgrades, removal of investments and restrictions on new foreign investment)
- Closer scrutiny from the FATF and other international bodies
- Banking and trade restrictions from the US, EU, UK and other jurisdictions.
- Significantly increased local client due diligence and onboarding requirements

Over the course of the past few weeks, in preparation for the October deadline, Treasury has introduced a number of proposed amendments to several pieces of legislation (across various Ministries).

PROPOSED CHANGES UNDER THE OMNIBUS LAWS:

- **Trust Property Control Act** – adds definitions of Accountable Institution, Beneficial Ownership. Enhances disclosure requirements to the Master of the High Court and adds penalties for non-compliance
- **Non-Profit Organisation Act** - enhances rules relating to governance, transparency, and accountability for NPO's

- **Financial Intelligence Centre Act** – renames and adds new Prominent Person and beneficial ownership definitions, adds Proliferation Financing as a Key compliance monitoring element, expands the powers and role of the FIC, adds new Client Due Diligence onboarding and relationship requirements, clarifies the freezing of client asset requirements, significantly enhances the requirements of a Risk Management Compliance Programme (RMCP).
- **Companies Act** – adds beneficial ownership definitions, CIPC and company processes to identify and report on beneficial owners and adds new offences and penalties for non-compliance
- **Financial Sector Regulation Act** – adds a definition of beneficial owner and enhances enforcement and compliance processes for entities under its jurisdiction (such as FSP's)

SEPARATE PROPOSED CHANGES TO FICA:

Although not a part of the Omnibus Changes to the FIC Act, the removal of reporting institutions and the introduction of a new type of Accountable Institution (which will cover dealers under the High Value Goods Dealer -HVGD – definition) is also under consideration by Parliament's Standing Committee on Finance. This is expected to come into operation shortly after the Omnibus Laws take effect.

HOW SHOULD DEALERS PREPARE FOR THE CHANGES COMING?

A. Dealers moving from Reporting to Accountable Institutions (HVGD)

a. Develop an RMCP (approved by the Board, Owners) in line with Public Compliance Communication 53 and Guidance Notes 7 and 7A
b. Review and apply the disclosures set out in Public Compliance Communication 22A relating to Know Your Client ("KYC") provisions and data protection laws
c. Implement a staff risk rating assessment and rules related to each type of rating as well as screening of employees in line with Directive 6 and Public Compliance Communication 116
d. Develop full FICA training (both on the Act as well as very detailed implementation training on the dealers specific RMCP) as well as a rollout plan for new and existing staff members and ongoing renewals
e. Design and Develop (in line with the dealer's approved RMCP) a process to electronically (if possible) onboard clients (sales, parts, workshop – depending on identified risk levels in the RMCP Risk Based Assessment)
f. Ensure that FICA is discussed in all meetings (dealer, exco, board)

B. Omnibus Laws Implementation (imminent)

a. Develop and implement a Beneficial Owner document detailing the full business structure and who the ultimate beneficial owners of the entity are.
b. Update CIPC (for companies) or the Master of the High Court (for trusts) on all beneficial owner details in the prescribed manner (when published) of the dealer/ dealer group/ dealer trust
c. Be ready to provide all banking and insurance partners (and any other Accountable Institution partner) with the beneficial ownership details of the dealer/ dealer group/ dealer trust
d. Dealers that are registered Financial Services Providers to implement **Part A** above without delay