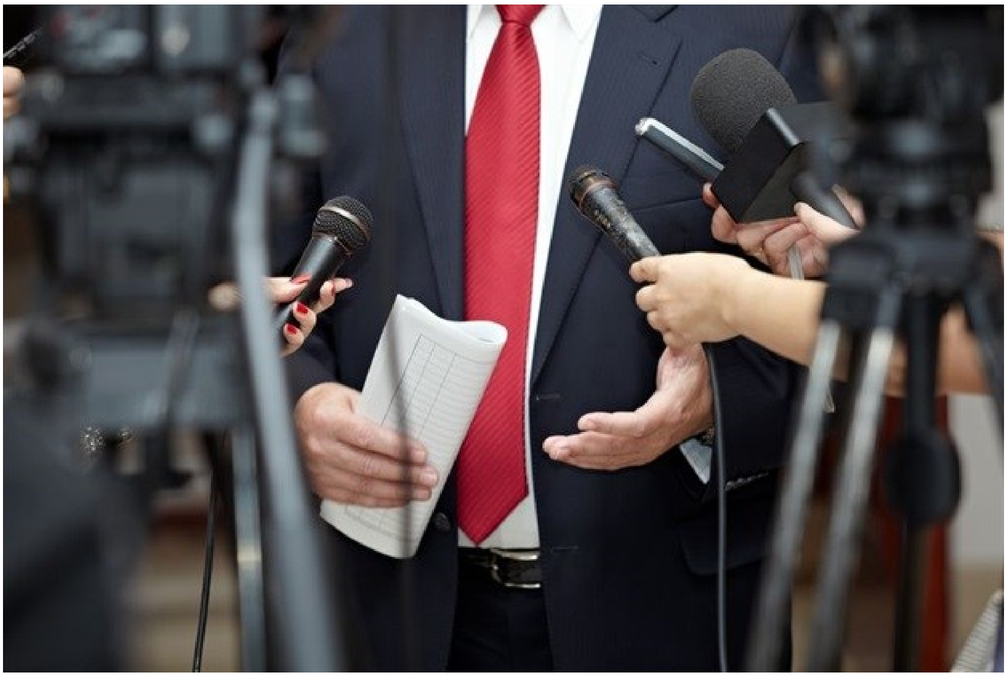
How Fica affects politically exposed persons

President Jacob Zuma signed the Financial Intelligence Centre Amendment Act 1 of 2017 (FICA) into law on 26 April 2017, avoiding expulsion from the Financial Action Task Force (FATF), an intergovernmental organisation that develops global policies to prevent money laundering, terrorist funding and tax evasion.



© picsfive – 123RF.com

“This empowers the country to meet its obligations to the FATF,” points out Michael Denenga, a partner at the South African division of Dentons global law firm.

“With the current political climate, probably of greatest interest to the public and business are the amendments concerning politically exposed persons (PEPs). South Africa sorely needs to regain the trust of the international community in general, and investors in particular, and this enhanced legislation is intended to provide the required assurances.”

Identifying PEPs

It is especially relevant to banks, who must adapt their systems to assess, monitor and report on any suspicious transactions by this group. However, what is a PEP and how should they be managed?

The FIC’s guidelines define a PEP as ‘an individual who is or has in the past been entrusted with prominent public functions in a particular country’. This includes politically connected persons, their families and close associates. Further details and practices can be found in Wolfsberg Guidance on PEPs, published in May 2017.

Dealing with PEPs

First, sufficient customer due diligence must be performed. Banks should also have reliable risk management systems to ascertain if a person is indeed a PEP. Additionally, senior management must approve establishing business relationships with PEPs and maintaining those relationships afterwards. Further, they should reasonably determine a PEP’s source of wealth and funds, and carry out continuous, enhanced monitoring of their transactions.

Policies for PEPs

Banks must factor PEPs into their risk framework and money laundering policies. As high-risk clients, PEPs require stronger due diligence, with closer scrutiny of family members or close associates involved in transactions. In identifying PEPs, it should be standard practice to ask about any political functions, especially if they come from corruption prone countries.

Bank advisers should only deal with clients from a specific region to enhance their political knowledge of that area. Banks should also include PEP instruction in their regular Know Your Customer training programmes. Lastly, banks can keep a database of PEPs, their families and close associates.

Implementation of Fica

The new legislation will be implemented in phases. The first phase started on 13 June 2017 and requires no changes to existing practices. The second requires accountable institutions to implement new practices, including those for PEPs, and commences on 2 October 2017.

“Note that penalties for non-compliance will be delayed to allow sufficient time to implement Fica correctly. But this is only for the amendments. Previous FIC requirements must be adhered to, and banks must at all time maintain records of whom they are doing business with,” concludes Denenga.

The remaining phases should be implemented no later than 2018 and South Africa will next report its progress to the FATF in October 2017.