

South Africa

Financial Intelligence Centre Act, 2001

Exemption from section 21(2), 2004

Government Notice R749 of 2004

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Exemption from section 21(2), 2004

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Financial Intelligence Centre Act, 2001

Exemption from section 21(2), 2004

Government Notice R749 of 2004

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Commenced on 30 June 2004

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By virtue of the powers vested in me by section [74](#) of the Financial Intelligence Centre Act, 2001 ([Act No 38 of 2001](#)), I, Trevor Andrew Manuel, MP, Minister of Finance, hereby make the exemptions set out in the Schedule hereto with effect from 30 June 2004.

T A Manuel, MP

Minister of Finance

1. Interpretation

In this Schedule "the Act" means the Financial Intelligence Centre Act, 2001 ([Act No 38 of 2001](#)), and any expression to which a meaning has been assigned in the Act shall have that meaning, and—

"prescribed steps" means the prescribed steps referred to in section 21(2) of the Act, read with the Regulations;

"risk-framework", in relation to an accountable institution, means the framework referred to in paragraph 2(2)(a) below, of that accountable institution; and

"the Regulations" means the Money Laundering Control Regulations promulgated under section 77 of the Act by Government Notice No. R 1595 in *Gazette* No. 24176 of 20 December 2002.

2. Exemption for banks from section 21(2) of [Act 121 of 2001](#)

- (1) Every accountable institution referred to in item 6, item 7 or item 16 of Schedule 1 to the Act which has established a business relationship with a client on or before 29 June 2003, and which continues with that business relationship on 30 June 2004 may, by way of exemption from section 21(2) of the Act and subject to the conditions set out in paragraph (2) below, conclude transactions in the course of such a business relationship without taking the prescribed steps in respect of that client.
- (2) This exemption is conditional on the accountable institutions referred to in paragraph (1) above meeting all of the following conditions:
 - (a) An accountable institution referred to in paragraph (1) above must develop, by 31 July 2004 and to the satisfaction of the Registrar of Banks, a risk-framework enabling the accountable institution—
 - (i) to determine different categories of risk of abuse for money laundering purposes ranging, from low, medium, to high risk,
 - (ii) to assess on an objective basis all relevant risk indicators describing the different risk categories,
 - (iii) to identify the criteria to characterise clients and products as belonging to one of the risk categories, and

- (iv) to segregate the different risk categories from each other and to ensure that procedures which are appropriate only for clients characterised as falling in lower risk categories are not applied in relation to clients characterised as falling in higher risk categories.
- (b) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 October 2004 in respect of every partnership contemplated in regulation 13 of the Regulations and every trust contemplated in regulation 15 of the Regulations in respect of which it has established a business relationship referred to in paragraph (1) above.
- (c) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 October 2004 in respect of all clients falling in the category of 20% of its individual clients and 20% of its clients which are legal persons with the highest average monthly value of transactions over the period 1 April 2004 to 30 June 2004.
- (d) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 December 2004 in respect of all its clients characterised as high-risk clients in terms of its risk-framework not included in the categories referred to in subparagraph (b) or (c).
- (e) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 May 2005 in respect all clients falling in the category of 50% of clients characterised as medium-risk clients in terms of its risk-framework with the highest average monthly value of transactions over the period 1 April 2004 to 30 June 2004.
- (f) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 30 September 2005 in respect of all clients characterised as medium-risk clients in terms of its risk-framework not included in the category referred to in subparagraph (a).
- (g) An accountable institution referred to in paragraph (1) above must complete the prescribed steps in respect of all clients characterised as low-risk clients in terms of its risk-framework by 30 September 2006.
- (h) Notwithstanding the conditions referred to in subparagraph (b) to (g), an accountable institution referred to in paragraph (1) above must complete the prescribed steps in respect of any client characterised as a medium or low-risk client in terms of its risk-framework in respect of whom those steps had not been completed—
 - (i) whenever there is a material change in the relationship with that client; or
 - (ii) before concluding any transaction which, in terms of its risk-framework, would be commensurate only with a higher risk class than the one as which the client has been characterised.
- (i) Notwithstanding the conditions referred to in subparagraph (b) or (g), an accountable institution referred to in paragraph (1) above must in the mean time—
 - (i) confirm the required information concerning every client characterised as a medium or low-risk client in terms of its risk-framework in respect of whom the institution has not yet completed the prescribed steps, by comparing that information with a combination of databases controlled by parties external to the accountable institution which is capable of confirming the information in question, and
 - (ii) apply enhanced measures to scrutinise transactions concluded by clients in respect of whom a comparison referred to in subparagraph (i) does not achieve a satisfactory level of confirmation to enable the accountable institution to identify transactions referred to in section 29 of the Act.
- (j) An accountable institution referred to in paragraph (1) above must report every three months to the Registrar of Banks and in the form he or she may direct, its progress in completing the prescribed steps in respect of clients referred to in subparagraphs (b) to (g).

- (3) This exemption will lapse on 30 September 2006.

3. Exemption for members of exchanges from section 21(2) of [Act 121 of 2001](#)

- (1) Every accountable institution referred to in item 4 or item 15 of Schedule 1 to the Act which has established a business relationship with a client on or before 29 June 2003, and which continues with that business relationship on 30 June 2004 may, by way of exemption from section 21(2) of the Act and subject to the conditions set out in paragraph (2) below, conclude transactions in the course of such a business relationship without taking the prescribed steps in respect of that client.
- (2) This exemption is conditional on the accountable institutions referred to in paragraph (1) above meeting all of following conditions:
- (a) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 October 2004 before concluding a transaction with any person representing or purporting to represent a partnership contemplated in regulation 13 of the Regulations or a trust contemplated in regulation 15 of the Regulations in respect of which it has established a business relationship referred to in paragraph (1) above.
 - (b) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 October 2004 before concluding a transaction with any client falling in the category of 20% of its individual clients, or 20% of its clients which are legal persons with the highest average monthly value of transactions over the period 1 April 2004 to 30 June 2004.
 - (c) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 30 April 2005 before concluding a transaction with any client falling in the category of 30% of its individual clients and 30% of its clients which are legal persons with the next highest average monthly value of transactions over the period 1 April 2004 to 30 June 2004 after the category referred to in subparagraph (b).
 - (d) An accountable institution referred to in paragraph (1) must complete the prescribed steps by 30 June 2005 in respect of any other client not referred to in subparagraph (a) to (c) before concluding a transaction with such a client.
 - (e) An accountable institution referred to in paragraph (1) must report every three months to the JSE Securities Exchange and in the form the JSE Securities Exchange may direct, its progress in completing the prescribed steps in respect of clients referred to in subparagraphs (a) to (c).
 - (f) An accountable institution referred to in paragraph (1) above must apply enhanced measures to scrutinise transactions concluded with clients in respect of whom the accountable institution has not yet completed the prescribed steps, so as to enable the accountable institution to identify transactions referred to in section 29 of the Act.
- (3) This exemption will lapse on 30 June 2005.

4. Exemption for investment managers from section 21(2) of [Act 121 of 2001](#)

- (1) Every accountable institution referred to in item 17 or item 18 of Schedule 1 to the Act which has established a business relationship with a client on or before 29 June 2003, and which continues with that business relationship on 30 June 2004 may, by way of exemption from section 21(2) of the Act and subject to the conditions set out in paragraph (2) below, conclude transactions in the course of such a business relationship without taking the prescribed steps in respect of that client.
- (2) This exemption is conditional on the accountable institutions referred to in paragraph (1) above meeting all of following conditions:
- (a) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 October 2004 before concluding a transaction with any person representing or purporting to represent a partnership contemplated in regulation 13 of the Regulations or a

trust contemplated in regulation 15 of the Regulations in respect of which it has established a business relationship referred to in paragraph (1) above.

- (b) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 31 October 2004 before concluding a transaction with any client falling in the category of 20% of its individual clients or 20% of its clients which are legal persons with the highest average monthly value of transactions over the period 1 April 2004 to 30 June 2004.
 - (c) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 30 April 2005 before concluding a transaction with any client falling in the category of 30% of its individual clients and 30% of its clients which are legal persons with the next highest average monthly value of transactions over the period 1 April 2004 to 30 June 2004 after the category referred to in subparagraph (b).
 - (d) An accountable institution referred to in paragraph (1) above must complete the prescribed steps by 30 June 2005 in respect of any other client not referred to in subparagraph (a) to (c) before concluding a transaction with such a client.
 - (e) An accountable institution referred to in paragraph (1) above must report every three months to the Registrar of Financial Markets or the Registrar of Stock Exchanges, as the case may be, and in the form the Registrar of Financial Markets the Registrar of Stock Exchanges may direct, its progress in completing the prescribed steps in respect of clients referred to in subparagraphs (a) to (d).
 - (f) An accountable institution referred to in paragraph (1) above must apply enhanced measures to scrutinise transactions concluded with clients in respect of whom the accountable institution has not yet completed the prescribed steps, so as to enable the accountable institution to identify transactions referred to in section 29 of the Act.
- (3) This exemption will lapse on 30 June 2005.

Explanatory memorandum to the exemptions in terms of the Financial Intelligence Centre Act, 2001

Involving the financial system in money-laundering schemes necessarily means involving those institutions that serve as intermediaries to the financial system. Involvement of financial institutions in criminal activity erodes public confidence and undermines the stability of the financial system. Indifference to this fact may cause financial institutions to suffer losses through fraud and the adverse effects of being associated with criminals.

Consequently the Basel Committee on Banking Supervision at the Bank for International Settlements stated the following:

“[T]he first and most important safeguard against money laundering is the integrity of banks’ own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used, as a channel for money laundering”

and

“The adoption of effective know-your-customer (KYC) standards is an essential part of banks’ risk management practices. As discussed in the Customer due diligence for banks (CDD) paper, banks with inadequate KYC standards may be subject to significant risks, especially legal and reputational risk. Sound KYC policies and procedures not only contribute to a bank’s overall safety and soundness, they also protect the integrity of the banking system by reducing the likelihood of banks becoming vehicles for money laundering, terrorist financing and other unlawful activities.”

The “know your client” provisions of section 21 of the Financial Intelligence Centre Act, 2001, (“the Act”) require accountable institutions (which include banks and other financial institutions) to establish and verify the identities of their clients. This requirement currently applies in respect of all new clients who have started doing business with these institutions since 30 June 2003.

Accountable institutions are also prevented by section 21(2) of the Act from transacting with their existing clients after 30 June 2004, if these institutions have not verified the identities of those clients in accordance with the Act and the Money Laundering Control Regulations made under it.

Certain institutions have approached the Minister for more time to continue transacting with existing clients while updating the verification on those clients. These institutions have indicated that they are encountering difficulty in obtaining the required information concerning their clients before 30 June 2004. These institutions expect to be unable to transact legally with large numbers of clients as from 1 July 2004.

Through the exemption powers under the Act, these institutions can be accommodated by granting them an appropriately structured exemption on terms that would seek to move them to full compliance through a series of specific targets and objectives. These exemptions apply to certain sectors of the financial services industry, such as the banking sector and certain providers of investment services.

These exemptions in no way allow institutions to suspend their efforts to obtain and verify the required information concerning their clients. The exemptions merely create a window of opportunity for the institutions in question to continue, and even increase, their efforts to establish and verify the identities of existing clients while allowing these institutions to continue doing business with clients on a legitimate basis.

It is important to note that certain conditions to the exemptions are imposed to minimise the risk of abuse of the financial system during the period of these exemptions. Compliance with these conditions will be carefully monitored. Where an accountable institution does not adhere to a condition the exemption in question will cease to apply to that institution. When this happens the accountable institution in question would contravene the law if it continues transacting with its clients whose identities have not been verified in accordance with the Act and the Money Laundering Control Regulations.

The exemptions will lapse on certain specified dates in the future. Once the exemptions have lapsed all accountable institutions will be expected to comply fully with the law in respect of all clients to which their obligations apply.