

# An Analysis of the Impact of the Risk-Based Approach to Combat Money Laundering and the Financing of Terrorism on Financial Inclusion in South Africa

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## Abstract

A risk-based approach entails the development of appropriate risk control measures based on a process of the identification and categorisation of risk in a bid to prevent and combat such risk. This approach includes the tailoring of rules to focus on instances of higher risk and it gives private actors more discretion on how to employ risk-based approach measures. It requires regulated institutions to exercise sound judgement and respond appropriately to any identified risks. The risk-based approach seeks to make regulation better and more cost-effective by ensuring that control requirements are commensurate with actual risk, such that the greatest risks receive the most attention, while lower risk warrants more simplified control measures. In the South African context, the shift from a rules-based to a risk-based approach was formalised through the 2017 amendment of the *Financial Intelligence Centre Act*. This shift introduced flexible customer due diligence (CDD) requirements, empowering financial institutions to align their compliance measures according to the assessed risk of each customer. The aforesaid changes were intended to encourage financial service providers to open their doors to previously excluded customers. This article analyses the implementation of the risk-based approach by South African financial service providers and evaluates its practical implications for financial inclusion. It interrogates whether the risk-based framework has succeeded in balancing the dual objectives of safeguarding financial integrity and expanding access to financial services to the poor, the vulnerable and low-income earners.

## Keywords

Risk-based approach; money laundering; customer due diligence; financial inclusion.

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## 1 Introductory remarks

South Africa amended the *Financial Intelligence Centre Act (FIC Act)* in 2017.<sup>1</sup> This amendment has seen the country transitioning from a rules-based approach to a risk-based approach (RBA) for the combatting of money laundering and the financing of terrorism.<sup>2</sup> The anti-money laundering risk-based measures were initially introduced by the Financial Action Task Force (FATF) in 2007.<sup>3</sup> An RBA generally refers to the development of appropriate risk control measures based on a process of the identification and categorisation of risk.<sup>4</sup> The *FIC Amendment Act* of 2017 was aimed at strengthening the regulatory framework against money laundering and terrorism financing so that it aligns with global Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) standards. The RBA was incorporated into the *FIC Act* following the issuance of several Financial Intelligence Centre (FIC) guidelines that encourage the use of RBA by accountable institutions.<sup>5</sup> It should be noted that the *FIC Act* empowers the FIC to provide guidance in relation to a number of matters concerning compliance with the obligations of the *FIC Act*.<sup>6</sup> In addition to enhancing AML/CFT standards, the RBA was also aimed at improving access to financial services within the country by eliminating burdensome documentation requirements that are needed to establish a

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<sup>1</sup> *Financial Intelligence Centre Act* 38 of 2001 (*FIC Act*) as amended by the *Financial Intelligence Centre Amendment Act* 1 of 2017 (*FIC Amendment Act*) in a bid to enhance the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regulatory framework in South Africa; see section 9.

<sup>2</sup> Henning and Hauman 2017 *JFC* 523; Finmark Trust 2021 [https://finmark.org.za/Publications/impact\\_of\\_RBA\\_on\\_financial\\_inclusion\\_report.pdf](https://finmark.org.za/Publications/impact_of_RBA_on_financial_inclusion_report.pdf); Munedzi *Reliance on Customer Due Diligence*.

<sup>3</sup> The FATF was established in July 1989 by the Group of Seven (G7) countries in Paris *inter alia* to develop and recommend measures to combat money laundering in all G7 member countries. The scope of the duties of the FATF was extended to include the combating of terrorist financing in October 2001. Furthermore, the FATF was also mandated to deal with the financing of the proliferation of weapons of mass destruction in April 2012.

<sup>4</sup> De Koker 2009 *JFC* 342; Simonova 2011 *JMLC* 347; Petrunov "Risk Based Approach in Preventing Money Laundering" 53-58; Chitimira 2021 *JMLC* 797.

<sup>5</sup> FIC 2012 <https://www.fic.gov.za/wp-content/uploads/2023/09/2005.07-Guidance-Guidance-Note-3A-Accountable-institutions-and-CDD.pdf> (FIC Guidance Note 3A); Chitimira 2021 *JMLC* 798.

<sup>6</sup> Section 4(c) of the *FIC Act*; FIC Guidance Note 3A.

relationship with a financial institution. This article explores South Africa's shift from a rule-based approach to an RBA and evaluates the impact of this transition on financial inclusion. The article begins by defining money laundering and then examines the two main approaches to AML/CFT. It further analyses South Africa's AML/CFT regulatory framework, highlighting the shift from a rule-based approach to an RBA and its implications for financial inclusion.

## 2 The definition of money laundering

Various scholars and institutions have offered their own definitions of what constitutes "money laundering". According to Bellomarini, Laurenza and Sallinger,<sup>7</sup> money laundering is the process of making illegally gained money proceeds, that is dirty money, appear legal and clean, by obfuscating the origin of the money. Kumar<sup>8</sup> defines it as the process by which large amounts of illegally obtained money (from drug trafficking, terrorist activity or other serious crimes) is given the appearance of having originated from legitimate sources. Ferguson<sup>9</sup> describes money laundering as a range of practices used to disguise the source of illicit profits and to integrate them into the legitimate economy. The FATF defines it as the processing of criminal proceeds to disguise their illegal origin to legitimise the ill-gotten proceeds of crime.<sup>10</sup> Section 1 of the *FIC Act* provides a similar definition and further states that money laundering is an activity that has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities.<sup>11</sup> An analysis of the definitions reveals that all of them convey the same meaning. All of them provide that money laundering is the act of disguising illegally obtained money or the proceeds of crime to make them appear legitimate and legally obtained. It is important to note that money laundering is a major threat to the good functioning of the financial sector because it introduces large volumes of illicit money into financial systems, distorting currency values, interest rates and investment patterns. To combat money laundering, most countries enacted legislation and policies aimed at detecting, preventing and prosecuting illicit financial activities. Across the globe, AML regulatory

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<sup>7</sup> Bellomarini, Laurenza and Sallinger "Rule-based Anti-Money Laundering in Financial Intelligence Units" 1-12.

<sup>8</sup> Kumar 2012 *European Journal of Business and Management* 113.

<sup>9</sup> Ferguson *Global Corruption* 306; Morgan 2003 *Berkeley J Int'l L* 776.

<sup>10</sup> FATF 2024 <https://www.fatf-gafi.org/en/the-fatf/what-we-do.html>; Kemsley, Kemsley and Morgan 2022 *JFC* 589.

<sup>11</sup> Section 1 of *FIC Act*; Chitimira 2021 *JMLC* 790.

regimes are based on the FATF Recommendations.<sup>12</sup> The FATF is an intergovernmental body established to promote the development and implementation of policies aimed at combatting money laundering across the globe.<sup>13</sup> At its inception the FATF emphasised the use of a rule-based approach to the regulation of money laundering.<sup>14</sup> However, the advent of technological advancements, especially the rise of machine learning, has introduced new, complex and often unpredictable methods of money laundering. To this extent the FATF Recommendations shifted from the rule-based approach to the RBA to effectively combat money laundering.

### 3 Overview of the South African AML/CFT legislation

South Africa has multiple AML regulations, with the *Prevention of Organised Crime Act (POC Act)*, the *Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA Act)* and the *FIC Act* being the most prominent.<sup>15</sup> The *POC Act* defines the activities that constitute money laundering, while the *FIC Act* outlines the measures for detecting and preventing it.<sup>16</sup> To combat money laundering and terrorism financing, the *FIC Act* obliges accountable institutions to establish and verify the identity of a potential client before onboarding or concluding a single transaction on the client's behalf.<sup>17</sup> This process is known as customer due diligence (CDD). The CDD requirements are outlined in the *Money Laundering and Terrorist Financing Control Regulations (MLTFCR)* issued by the Minister of Finance, which details the measures that accountable institutions must take when establishing and verifying their customers' identities.<sup>18</sup> These regulations are issued in terms of section 77 of the *FIC Act*.<sup>19</sup> Failure to duly verify customers constitutes an offence, and this carries heavy penalties. In 2022 the *FIC Act* was amended as part of the *General Laws (Anti-Money Laundering and Combating Terrorism*

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<sup>12</sup> FATF 2003 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf>.

<sup>13</sup> Sutton 2013 *George Mason Journal of International Commercial Law* 68; Chohan 2019 <https://sci-hub.se/10.2139/ssrn.3362167> 5.

<sup>14</sup> Beekarry 2011 *Northwestern Journal of International Law and Business* 163.

<sup>15</sup> *Prevention of Organised Crime Act* 121 of 1998 (POC Act); *Protection of Constitutional Democracy against Terrorist and Related Activities Act* 33 of 2004 (POCDATARA Act); *FIC Act*.

<sup>16</sup> Chapter 3 of the *POC Act*; De Koker 2004 *TSAR* 715; Mavhuru *Comparative Analysis of the Regulations Governing Mobile Money Services* 93.

<sup>17</sup> Section 21 of the *FIC Act*; FIC Guidance Note 3A; Finmark Trust 2021 [https://finmark.org.za/Publications/impact\\_of\\_RBA\\_on\\_financial\\_inclusion\\_report.pdf](https://finmark.org.za/Publications/impact_of_RBA_on_financial_inclusion_report.pdf).

<sup>18</sup> GN R1595 in GG 24176 of 20 December 2002 (*Money Laundering and Terrorist Financing Control Regulations (MLTFCR)*).

<sup>19</sup> Section 77 of the *FIC Act*.

*Financing) Amendment Act, 2022* to address the technical deficiencies identified in the 2021 Mutual Evaluation Report of South Africa by the FATF.<sup>20</sup> The *FIC Act* works in tandem with the *POC Act*, which primarily addresses offences related to money laundering, racketeering, and the imposition of criminal and civil penalties.<sup>21</sup> The *POC Act* establishes a general reporting duty for companies that may come into possession of goods involved in suspicious transactions. Additionally, the *POCDATARA* is linked to the *FIC Act*, introducing further reporting obligations.<sup>22</sup>

It is equally important to note that the *FIC Act* established the FIC, a statutory body that operates independently from the public service but remains part of the public administration as outlined in section 195 of the *Constitution of South Africa, 1996*.<sup>23</sup> According to the *FIC Act*, the objective of the FIC is to assist in the identification of the proceeds of unlawful activities and the combatting of money laundering activities.<sup>24</sup> The regulatory body is the only entity authorised to receive transaction and other related data from financial and non-financial institutions. It interprets and analyses this information to develop financial intelligence.<sup>25</sup> The resulting financial intelligence reports are requested by or, where necessary, referred to the competent authorities including law enforcement and prosecutorial authorities for their use during investigations, prosecutions, and applications for the forfeiture of criminal assets.<sup>26</sup>

It is important to note that the FIC does not have prosecutorial or criminal investigative powers.<sup>27</sup> Since the FIC cannot directly investigate or prosecute, its role is limited to flagging suspicious activities. This poses problems in combatting money laundering. In cases where the law enforcement agencies do not prioritise or have the capacity to follow up on these reports, criminal activities like money laundering or terrorism financing may continue unchecked. Furthermore, the separation of intelligence gathering and investigation creates a fragmented system where multiple agencies must coordinate, often leading to communication breakdowns,

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<sup>20</sup> *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022*.

<sup>21</sup> Chapters 1 and 2 of the *POC Act*; FIC 2024 <https://www.fic.gov.za/about/>.

<sup>22</sup> *POCDATARA Act*; FIC 2024 <https://www.fic.gov.za/about/>

<sup>23</sup> Section 2 of *FIC Act*; Hugo and Spruyt 2018 *TSAR* 227; De Koker 2004 *TSAR* 717; Van Jaarsveld 2002 *Juta's Business Law* 200.

<sup>24</sup> Section 2 of the *FIC Act*.

<sup>25</sup> FIC 2019 <https://www.masthead.co.za/wp-content/uploads/2019/11/FIC-CASE-STUDIES-INDICATORS-COLLECTION-1.pdf>; Masthead 2019 <https://www.masthead.co.za/newsletter/the-role-of-the-financial-intelligence-centre-clarified/>.

<sup>26</sup> Mostert *Utilisation of the Financial Intelligence Centre* 83.

<sup>27</sup> De Koker 2003 *JMLC* 169; De Koker *et al Money Laundering and Terror Financing Law* 94.

jurisdictional disputes, or inefficiencies in pursuing financial crime cases.<sup>28</sup> The striking off the court roll of the R2.2 billion money laundering case against former Eskom executive Mr Koko due to unreasonable delays in completing the investigation highlights this challenge.<sup>29</sup> Also, the need to transfer cases to the South African Police Services (SAPS) and National Prosecuting Authority (NPA) for further action adds additional layers of bureaucracy, slowing down the legal processes necessary to combat financial crimes. In general terms, without investigative and prosecutorial authority the FIC is restricted to collecting and analysing financial intelligence. This means it must rely on law enforcement agencies to act on its reports, which can result in delays or failures in pursuing financial crimes as in the case with Mr Koko mentioned above.

## 4 Regulatory approaches to AML/CFT

### 4.1 The rule-based approach

The AML/CFT system has the purpose of preventing the process of money laundering as a whole, in all its phases.<sup>30</sup> There are two approaches to implementing the AML/CFT system and ensuring compliance with its measures: the rule-based approach and the RBA.<sup>31</sup> The rule-based approach focusses on establishing specific, predefined rules and thresholds to detect suspicious activities and transactions.<sup>32</sup> It encompasses a tick-box-style approach applied by a regulated entity with a focus on meeting regulatory requirements.<sup>33</sup> Whether a transaction could be called unusual or suspicious is decided by the regulator. It sets the criteria for the identification of a potential money laundering case. Every transaction above a certain threshold amount which is considered suspicious or unusual should be reported. In South Africa for example, section 28 of *FIC Act*

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<sup>28</sup> The South African Revenue Service (SARS) investigates tax evasion and illicit financial flows, often uncovering laundering schemes tied to tax crimes. The National Prosecuting Authority (NPA) prosecutes money-laundering offences based on evidence gathered by the Hawks or other investigative bodies. The Financial Intelligence Centre (FIC) collects, analyses and shares financial intelligence related to suspicious and unusual transactions. The Directorate for Priority Crime Investigation investigates serious financial crimes, including money laundering, corruption, and organised crime.

<sup>29</sup> Viljoen 2023 <https://www.moonstone.co.za/prosecution-challenges-threaten-south-africas-exit-from-fatf-grey-list/>.

<sup>30</sup> Cox *Handbook of Anti-money Laundering* 5; Bellomarini, Laurenza and Sallinger "Rule-based Anti-Money Laundering in Financial Intelligence Units" 8.

<sup>31</sup> Costanzo "Rule Based vs Risk Based Approaches to Control" 1; Unger and Van Waarden 2009 *Review of Law and Economics* 955.

<sup>32</sup> Unger and Van Waarden 2009 *Review of Law and Economics* 957; Ai 2012 *JMLC* 199; Belloa and Harvey 2016 *Security Journal* 25.

<sup>33</sup> Ai, Broome and Yan 2010 *JMLC* 398; Ross and Hannan 2017 *JMLC* 108.

requires an accountable institution and a reporting institution to report to the FIC, within the prescribed period, the specified details of any transaction concluded with a client involving a cash amount exceeding the prescribed threshold.<sup>34</sup> Currently the prescribed amount is set at R49 999.<sup>35</sup> Under the rules-based approach, accountable institutions applied the same control requirements for all customers, applying the same criteria to normal customers as to high-risk customers.<sup>36</sup> The advantage of the rule-based approach is that it provides clear and transparent rules, thus providing legal certainty and legal equality, as all subjects of the regulation are confronted with precisely the same norms. However, it was imperfect. Criminals could adjust their transactions strategically to remain slightly below the threshold.<sup>37</sup> It also led to over-reporting and high reporting costs for the private sector.<sup>38</sup> Broadly speaking, the rule-based approach was rigid, formalistic, bureaucratic, and entailed high administrative burdens and was therefore considered ineffective and inefficient.<sup>39</sup>

## 4.2 The RBA

The prescriptive nature of the rule-based approach to anti-money laundering compliance and the exponential growth of suspicious activity reports resulting from the use of this "tick-box" method led to the adoption of the RBA.<sup>40</sup> The RBA is accordingly the antithesis of a rules-based approach.<sup>41</sup> It involves the development of appropriate risk control measures based on a process of the identification and categorisation of risk.<sup>42</sup> In this context risk refers to potential threats and vulnerabilities that may result in the misuse of an accountable institution's systems, processes or other business components for activities such as money laundering,

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<sup>34</sup> Section 28 of the *FIC Act*.

<sup>35</sup> FIC 2022 <https://www.fic.gov.za/wp-content/uploads/2023/09/2022.10-Guidance-Guidance-Note-5C-CTRs.pdf> (FIC Guidance Note 5C).

<sup>36</sup> Finmark Trust 2021 [https://finmark.org.za/Publications/impact\\_of\\_RBA\\_on\\_financial\\_inclusion\\_report.pdf](https://finmark.org.za/Publications/impact_of_RBA_on_financial_inclusion_report.pdf); Arjoon 2006 *Journal of Business Ethics* 57.

<sup>37</sup> Belloa and Harvey 2016 *Security Journal* 25.

<sup>38</sup> Pellegrina and Masciandro 2008 [https://didattica.unibocconi.it/mypage/upload/48803\\_20090227\\_032023\\_WP22DALLAPELLEGRINAMASCIANDARO.PDF](https://didattica.unibocconi.it/mypage/upload/48803_20090227_032023_WP22DALLAPELLEGRINAMASCIANDARO.PDF) 3; Pieth and Aiolfi 2003 [https://baselgovernance.org/sites/default/files/2019-06/WP01\\_Anti-Money%20Laundering.pdf](https://baselgovernance.org/sites/default/files/2019-06/WP01_Anti-Money%20Laundering.pdf) 13.

<sup>39</sup> Unger and Van Waarden 2009 *Review of Law and Economics* 957; Ai 2012 *JMLC* 199.

<sup>40</sup> Belloa and Harvey 2016 *Security Journal* 24; Pieth and Aiolfi 2003 [https://baselgovernance.org/sites/default/files/2019-06/WP01\\_Anti-Money%20Laundering.pdf](https://baselgovernance.org/sites/default/files/2019-06/WP01_Anti-Money%20Laundering.pdf) 13; Simonova 2011 *JMLC* 347.

<sup>41</sup> Hugo and Spruyt 2018 *TSAR* 228; Spruyt "Financial Intelligence Centre Amendment Act" 19-31.

<sup>42</sup> De Koker 2009 *JFC* 334; Chitimira 2021 *JMLC* 797; Mavhuru *Comparative Analysis of the Regulations Governing Mobile Money Services* 93.

terrorism financing, the circumvention of international sanctions, or even the proliferation of weapons. Rather than imposing absolute minimum requirements, the RBA allows an accountable institution to make informed decisions tailored to managing its specific risks. However, it does not exempt the institution from addressing money laundering or terrorist financing risks, even when these are deemed low, nor from meeting minimum regulatory requirements. Risk-based decision-making requires thoughtful consideration and meticulous documentation of all decisions, including the reasoning behind them.<sup>43</sup> As Spruyt explains, the RBA therefore does not constitute a free-for-all in terms of AML/CFT risk management and compliance but demands maturity and rational thinking.<sup>44</sup>

This approach was initially introduced by the FATF in 2007.<sup>45</sup> FATF requires countries, competent authorities, banks and other relevant persons to assess, detect, isolate and understand all money laundering and terrorist financing risks and to employ appropriate mitigation measures in accordance with the applicable levels of risk.<sup>46</sup> It is important to note that the RBA is central to the effective implementation of the revised *FATF International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, which were adopted in 2012.<sup>47</sup> Regulatory bodies and financial institutions such as banks are required to carefully adopt a risk-management process to prevent and/or ameliorate the negative effects of money laundering and terrorist financing in all countries.<sup>48</sup> According to the FATF, the RBA enables countries to adopt a more flexible set of measures within the framework of FATF requirements.<sup>49</sup> This allows them to allocate resources more efficiently and implement preventive measures that are proportionate to the nature of the risks, thereby focussing their efforts in the most effective manner.<sup>50</sup> As far as the

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<sup>43</sup> Hugo and Spruyt 2018 *TSAR* 228; Dementis *Technology and Anti-money Laundering* 137.

<sup>44</sup> Spruyt "Financial Intelligence Centre Amendment Act" 19-31.

<sup>45</sup> Chitimira 2021 *JMLC* 797; Hugo and Spruyt 2018 *TSAR* 237. The FATF was founded in July 1989 in Paris by the Group of Seven (G7) nations with the primary goal of developing and proposing measures to combat money laundering across all G7 member countries. Its responsibilities were expanded in October 2001 to encompass the fight against terrorist financing. Additionally, in April 2012 the FATF was tasked with addressing the financing associated with the proliferation of weapons of mass destruction.

<sup>46</sup> Spruyt "Financial Intelligence Centre Amendment Act" 21; Chitimira 2021 *JMLC* 797; Hugo and Spruyt 2018 *TSAR* 237; Simonova 2011 *JMLC* 347.

<sup>47</sup> FATF 2014 <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Risk-Based-Approach-Banking-Sector.pdf.coredownload.pdf> 3; De Koker 2009 *JFC* 337.

<sup>48</sup> Henning and Hauman 2017 *JFC* 520; *FIC Amendment Act*.

<sup>49</sup> FATF 2014 <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Risk-Based-Approach-Banking-Sector.pdf.coredownload.pdf> 3.

<sup>50</sup> Ai 2012 *JMLC* 199; Chitimira 2021 *JMLC* 797.

CDD and know-your-client (KYC) procedures are concerned, the RBA allows for a less cumbersome approach to CDD, as the extent of the effort applied to preventative measures is determined by the level of risk that the customer poses to the financial institution. Thus, this approach emphasises that countries should adopt a more flexible set of measures in order to dispose of their resources more effectively and apply preventive measures that are commensurate with the nature of the relevant risks, thereby focussing their efforts where they will have the greatest impact.

## 5 The adoption of the RBA in South Africa

South Africa adopted the RBA through the *Financial Intelligence Centre Amendment Act (FIC Amendment Act)*.<sup>51</sup> The amendment introduced far-reaching and fundamental changes that also bring South African law, in this regard, in line with international standards.<sup>52</sup> The amendment puts the RBA at the centre of South Africa's AML/CFT regime and recognises that the risks of money laundering and terrorist financing vary within and between sectors.<sup>53</sup> The RBA was adopted on the understanding that it provides a superior, more cost-effective alternative to the prescriptive "tick-box" approach, allowing accountable institutions to focus more efficiently on customers identified as high-risk in order to meet the compliance requirements more efficiently. The amendment mandates that an accountable institution must develop, document, maintain, and implement a Risk Management and Compliance Programme (RMCP).<sup>54</sup> Such an RMCP should document how an accountable institution applies an RBA, complies with the requirements contained in *FIC Act*, and effectively manages its money laundering or terrorism financing risk. The programme must enable the institution to identify, assess, monitor, mitigate and manage the risks it faces, as well as to outline how these risks will be addressed.<sup>55</sup> Once an accountable institution has finalised its risk management strategy, it will be presented to the FIC, which can then approve or reject the strategy.<sup>56</sup> This means that it is the responsibility of financial institutions to identify risks and take the necessary steps to mitigate those risks. An RMCP therefore

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<sup>51</sup> Van Wyk *Analysis of Anti-money Laundering Measures* 4; s 9 of the *FIC Amendment Act*; De Jager *Comparative Study Between Anti-money Laundering Legislation* 42.

<sup>52</sup> Hugo and Spruyt 2018 *TSAR* 228.

<sup>53</sup> BASA 2018 <https://www.banking.org.za/news/fica-amendments-impact-south-african-accountable-institutions/>; National Treasury 2017 <https://www.treasury.gov.za/legislation/regulations/FICA/A%20new%20approach%20to%20combat%20money%20laundering%20and%20terrorist%20financing.pdf>.

<sup>54</sup> Section 42 of the *FIC Act*; FIC 2023 <https://www.fic.gov.za/wp-content/uploads/2023/09/2022.12-CG-FIC-Act-reference-guide.pdf> 8.

<sup>55</sup> Henning and Hauman 2017 *JFC* 520.

<sup>56</sup> Henning and Hauman 2017 *JFC* 520.

constitutes a collection of documents, including all policies, procedures, processes, controls and systems used for AML/CFT risk management and compliance purposes. Accountable institutions were granted an eighteen-month grace period to align control measures with the requirements under the *FIC Amendment Act*.<sup>57</sup>

Furthermore, the *FIC Amendment Act* enables accountable institutions to exercise a greater discretion in determining the appropriate due diligence requirements. This means that under the RBA accountable institutions have the flexibility to choose the type of information by means of which they will establish their clients' identities and also the means of verification of their clients' identities.<sup>58</sup> The amendments permit accountable institutions to simplify their due diligence measures where the money laundering and terrorism financing risk is low.<sup>59</sup>

## 6 The promotion of financial inclusion in South Africa

Financial inclusion involves ensuring that all individuals have access to affordable and useful financial products and services such as payments, savings, credit and insurance in a responsible and sustainable manner, and that these products are provided by various institutions within a well-regulated environment.<sup>60</sup> In recent years financial inclusion has emerged as an effective way to provide financial services, particularly to low- and middle-income households, who are often excluded due to factors such as their income level and inability to offer sufficient collateral to secure credit.<sup>61</sup> It improves the quality of financial development, thereby magnifying the effect of financial development on economic growth and reducing the extreme vulnerability of the poor to risks and adverse shocks.<sup>62</sup> When measured by the share of the population with a bank account, South Africa boasts the highest level of financial inclusion in Africa. According to the World Bank's Global Findex Database, 85% of South Africans had a bank account in 2021.<sup>63</sup> Regarding other indicators of financial inclusion, South

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<sup>57</sup> West 2019 *Without Prejudice* 12.

<sup>58</sup> FIC 2017 <https://lawlibrary.org.za/akn/za/doc/guidance-note/fic/2017-10-02/7/eng@2017-10-02> (FIC Guidance Note 7) 13.

<sup>59</sup> FIC Guidance Note 7 15.

<sup>60</sup> Chitimira and Torerai 2021 *PELJ* 3; Sarma and Pais 2011 *Journal of International Development* 613; Tweneboah and Nsiah 2024 *Economic Notes* 2; Ojah and Kodongo 2024 *International Review of Financial Analysis* 1.

<sup>61</sup> Tweneboah and Nsiah 2024 *Economic Notes* 2.

<sup>62</sup> Gwatidzo and Simbanegavi 2024 <https://www.resbank.co.za/content/dam/sarb/publications/working-papers/2024/financial-inclusion-and-banking-sector-competition-in-south-africa.pdf> 2; Beck, Senbet and Simbanegavi 2015 *Journal of African Economies* 131; Aaron 2018 *World Bank Research Observer* 138.

<sup>63</sup> Demirgüç-Kunt *et al* *Financial Inclusion* 15-20.

Africa performs poorly. When measured by access to credit cards, only a modest 13% of adults in South Africa have a credit card.<sup>64</sup>

The causes of financial exclusion have been classified into demand and supply factors.<sup>65</sup> Demand factors concern barriers to access that can undermine the willingness of consumers to engage in formal financial services or that affect their capacity to do so.<sup>66</sup> On the other hand, supply factors restrict the ability of financial institutions to provide products and services to underserved or unserved segments of society.<sup>67</sup> This article focuses on the demand factors, specifically examining government regulations and policies. It is noteworthy that through the National Treasury, the South African Reserve Bank (SARB) and other stakeholders, the South African government has introduced several initiatives, such as the Financial Sector Charter and the Financial Sector Code of 2012, to stimulate and promote financial inclusion in the country.<sup>68</sup> The Financial Sector Charter led to the introduction of the Mzansi Account by South African banks.<sup>69</sup> This transactional account was designed to offer affordable banking services to the country's poor and unbanked population.<sup>70</sup> The adoption of the RBA to money laundering was also aimed at increasing access to financial services.<sup>71</sup> One of the aims of the 2017 *FIC Act* amendment is to promote financial inclusion by simplifying compliance for low-risk clients.<sup>72</sup> The next section will examine and analyse how the adoption of the RBA under the

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<sup>64</sup> Gwatidzo and Simbanegavi 2024 <https://www.resbank.co.za/content/dam/sarb/publications/working-papers/2024/financial-inclusion-and-banking-sector-competition-in-south-africa.pdf> 3.

<sup>65</sup> Mavhuru *Comparative Analysis of the Regulations Governing Mobile Money Services* 51.

<sup>66</sup> Ngwenya, Pelse and Chivaura 2018 *South African Journal of Economic and Management Sciences* 10; Mavhuru *Comparative Analysis of the Regulations Governing Mobile Money Services* 51.

<sup>67</sup> World Bank 2024 <https://digitalfinance.worldbank.org/supply-side-barriers>.

<sup>68</sup> The Financial Sector Charter (FSC) is a voluntary agreement involving all members of the National Economic Development and Labour Council (NEDLAC), a multilateral forum for social dialogue on economic, social and labour policy. The FSC aims to promote social and economic integration and improve access to financial services. It commits participants to actively fostering a transformed, vibrant and globally competitive financial sector that reflects South Africa's demographics and contributes to an equitable society by making financial services accessible to black people and directing investments into targeted sectors of the economy.

<sup>69</sup> Kostov, Arun and Annim 2015 *Review of Development Finance* 36.

<sup>70</sup> Kostov, Arun and Annim 2015 *Review of Development Finance* 36; Kostov, Arun and Annim 2014 *Contemporary Economics* 193.

<sup>71</sup> IMF *Country Reports 21/227* 114.

<sup>72</sup> National Treasury 2017 <https://www.fic.gov.za/wp-content/uploads/2023/09/2017.6-MR-The-FIC-Amendment-Act-signed-into-law-.pdf>.

*FIC Amendment Act* has either promoted inclusion in South Africa or created new barriers for vulnerable and previously excluded persons.

## **7 Possible effects of the RBA on financial inclusion in South Africa**

The introduction of the RBA has made compliance easier for low-risk clients. Low-risk clients, who are often poor and vulnerable, are no longer burdened unnecessarily with a bureaucratic or "tick-box" approach to compliance and are thus not excluded from the financial system solely because they are unable to produce a particular document that may not be readily available to them or easily accessible.<sup>73</sup> To this extent, most banks in South Africa are offering low-risk accounts that attract little or no monthly bank fees and require only one's national identity number. The First National Bank (FNB) has the Easy Zero account, Nedbank has introduced the MiGoal account and Standard Bank has the My Mo Bank account.<sup>74</sup> In addition, South Africa has witnessed the emergence of digital banks such as Bank Zero, Discovery Bank and TymeBank.<sup>75</sup> These are purely digital banks operating in South Africa, with no branch or automatic teller machine (ATM) infrastructure in the country. These banks generally offer low-cost accounts with easy access to funds.<sup>76</sup> As of January 2024 TymeBank reported having amassed over 8.5 million customers in the country.<sup>77</sup> Discovery Bank has reached 2 million accounts, doubling from the 1 million accounts announced in June 2022. These measures have led to an increase in financial inclusion levels in South Africa, rising from 69% in 2017 to 85% in 2022.<sup>78</sup> This

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<sup>73</sup> FIC Guidance Note 7 para 30; National Treasury 2017 <https://www.treasury.gov.za/legislation/regulations/FICA/A%20new%20approach%20to%20combat%20money%20laundering%20and%20terrorist%20financing.pdf>.

<sup>74</sup> FNB 2024 <https://www.fnb.co.za/for-you/easy-zero-account/?srsltid=AfmBOoo7JsJLaU27D289oayyJ5JIUnLjqNchG7TwatM8vA8HJKTYd8YP>; Nedbank 2024 <https://personal.nedbank.co.za/bank/bank-accounts/everyday-banking/migoals.html>; Standard Bank 2024 <https://www.standardbank.co.za/southafrica/personal/products-and-services/bank-with-us/bank-accounts/compare-accounts>.

<sup>75</sup> Discovery Bank is the oldest of the three prominent digital banks, having launched in 2018. TymeBank followed in 2019, and Bank Zero launched in 2021.

<sup>76</sup> Jeník 2022 [https://www.cgap.org/sites/default/files/publications/2022\\_01\\_Case\\_Study\\_TymeBank.pdf](https://www.cgap.org/sites/default/files/publications/2022_01_Case_Study_TymeBank.pdf) 2; Jeník, Flaming and Salman 2020 <https://documents1.worldbank.org/curated/en/099420002142211027/pdf/P16768404eeaca0550a94c071433b7d8fea.pdf> 12.

<sup>77</sup> Illidge 2024 <https://mybroadband.co.za/news/banking/562811-digital-banking-shift-in-south-africa.html>.

<sup>78</sup> World Bank 2024 <https://www.worldbank.org/en/publication/globalindex/brief/financial-inclusion-in-sub-saharan-africa-overview>; Gwatidzo and Simbanegavi 2024 <https://www.resbank.co.za/content/dam/sarb/publications/working-papers/2024/financial-inclusion-and-banking-sector-competition-in-south-africa.pdf> 3.

represents a growth of 16%. Notably, between 2014 and 2017, before the adoption of the RBA, the growth was limited to just 1 percentage point.

The RBA has allowed room for flexibility and further innovation in onboarding customers.<sup>79</sup> It is important to note that before the adoption of the RBA, onboarding a new customer required extensive documentation and a lengthy in-person process.<sup>80</sup> Prospective customers had to visit a branch and interact face-to-face with a consultant to open an account. However, the introduction of the RBA has enabled banks to onboard new customers virtually.<sup>81</sup> Banks and financial institutions are using digital platforms to onboard customers.<sup>82</sup> There has been a growing trend to use WhatsApp, selfies, and other facial recognition technologies to verify customer identities during onboarding, rather than to rely on traditional documentation.<sup>83</sup>

The virtual onboarding system utilises biometric technology to capture information about the customer that is compared with third-party source data such as that provided by credit providers, or databases from the Department of Home Affairs, to build the customer profile and as a means of identification.<sup>84</sup> WhatsApp for onboarding, selfie verification tools, Power BI dashboards and biometric verification technologies are among the most common onboarding tools used by financial institutions.<sup>85</sup> Biometrics are the digital measurement and collection of data related to a person's unique physical features, such as the customer's fingerprints, or facial recognition.<sup>86</sup> Digital onboarding has helped overcome the challenge of limited access to physical documentation, which previously prevented many poor individuals from accessing banking services.<sup>87</sup> This has led to an

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<sup>79</sup> Innovative onboarding in banking refers to the use of modern technologies, strategies and customer-centric processes to make the process of opening and accessing a bank account faster, simpler, more secure and more inclusive than traditional methods; Finmark Trust 2021 [https://finmark.org.za/Publications/impact\\_of\\_RBA\\_on\\_financial\\_inclusion\\_report.pdf](https://finmark.org.za/Publications/impact_of_RBA_on_financial_inclusion_report.pdf) 21.

<sup>80</sup> AFI 2019 [https://www.afi-global.org/sites/default/files/publications/2019-03/KYC-Innovations-Financial-Inclusion-Integrity-Selected-AFI-Member-Countries\\_0.pdf](https://www.afi-global.org/sites/default/files/publications/2019-03/KYC-Innovations-Financial-Inclusion-Integrity-Selected-AFI-Member-Countries_0.pdf) 62.

<sup>81</sup> AFI 2019 [https://www.afi-global.org/sites/default/files/publications/2019-03/KYC-Innovations-Financial-Inclusion-Integrity-Selected-AFI-Member-Countries\\_0.pdf](https://www.afi-global.org/sites/default/files/publications/2019-03/KYC-Innovations-Financial-Inclusion-Integrity-Selected-AFI-Member-Countries_0.pdf) 10.

<sup>82</sup> Mothibi and Rahulani 2021 <https://www.fsca.co.za/Regulatory%20Frameworks/FinTechDocuments/Digital%20Banking%20Slides.pdf>.

<sup>83</sup> Manwani 2025 *International Journal of Trend in Scientific Research and Development* 683-685.

<sup>84</sup> Masheleni *Fourth Industrial Banking* 60; GPMI 2018 <https://www.gpmi.org/sites/default/files/documents/GPMI%20Argentina%20Priorities%20Paper%202018.pdf> 25.

<sup>85</sup> Jeník 2022 [https://www.cgap.org/sites/default/files/publications/2022\\_01\\_CaseStudy\\_TymeBank.pdf](https://www.cgap.org/sites/default/files/publications/2022_01_CaseStudy_TymeBank.pdf) 2; Masheleni *Fourth Industrial Banking* 60.

<sup>86</sup> Migliorini 2023 *Law, Technology and Humans* 238.

<sup>87</sup> Aamer and Milan 2023 *Baltic Journal of Modern Computing* 608-610.

increase in the number of people with bank accounts. According to Jenik, the virtual onboarding network extended the bank's reach to areas that are underserved by traditional players.<sup>88</sup> The RBA has had a positive impact on financial inclusion as many banks have been able to successfully onboard higher volumes of lower-risk customers.

The adoption of the RBA has also positively impacted on the operations of authorised dealers with limited authority (ADLAs), which are using it to better serve migrant workers. Access to formal financial services at banks is not permitted for informal migrants due to the documentary requirements such as a valid work permit.<sup>89</sup> Banks commit an offence if they do not report irregular migrants to the authorities.<sup>90</sup> They therefore choose not to provide services to them, which then leads to a large informal money transfer market for migrants who are excluded. ADLAs are bridging this gap and offering financial services to their client base by partnering with banks to provide a broader array of financial services beyond money transfer.<sup>91</sup> Since the adoption of the RBA in 2017, ADLAs have begun accepting migrants' passports, allowing them to access remittance services and basic banking. As a result, migrants can now access banking and remittance services offered by ADLAs with only a passport.<sup>92</sup> A good example is Mukuru,<sup>93</sup> which now offers a prepaid reloadable debit card. Salaries can be paid directly onto the card and cash can be withdrawn from ATMs.<sup>94</sup> The card can also be used to purchase airtime, and since it is Mastercard-enabled, it allows for payments for goods without additional charges. However, this is applicable only to customers who fall into the lowest KYC category, who have an allowance to remit the lowest range of money.<sup>95</sup>

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<sup>88</sup> Jenik 2022 [https://www.cgap.org/sites/default/files/publications/2022\\_01\\_Case\\_Study\\_TymeBank.pdf](https://www.cgap.org/sites/default/files/publications/2022_01_Case_Study_TymeBank.pdf) 5; Jenik, Flaming and Salman 2020 <https://documents1.worldbank.org/curated/en/099420002142211027/pdf/P16768404eeaca0550a94c071433b7d8fea.pdf> 12.

<sup>89</sup> Lawack 2014 *Obiter* 362; Ncube and Hougaard 2010 [https://cenfri.org/wp-content/uploads/2011/08/So-near-yet-so-far-Assessing-the-90-day-permit-for-Zimbabwean-migrant-\\_Cenfri\\_December-2010.pdf](https://cenfri.org/wp-content/uploads/2011/08/So-near-yet-so-far-Assessing-the-90-day-permit-for-Zimbabwean-migrant-_Cenfri_December-2010.pdf) 1.

<sup>90</sup> See ch 4 of the *FIC Act*.

<sup>91</sup> Remitscope Africa 2020 [https://remitscope.org/wp-content/uploads/2023/06/South\\_Africa\\_Diagnostic\\_Remitscope\\_Africa\\_EN.pdf](https://remitscope.org/wp-content/uploads/2023/06/South_Africa_Diagnostic_Remitscope_Africa_EN.pdf) 25.

<sup>92</sup> SARB 2017 <https://www.resbank.co.za/content/dam/sarb/what-we-do/financial-surveillance/general-public/Currency%20and%20Exchanges%20Manual%20for%20ADLAs.pdf> 39.

<sup>93</sup> Mukuru is a digital financial services platform that specialises in international money transfers, with a strong focus on facilitating remittances to Africa, Europe and Asia.

<sup>94</sup> Mukuru 2024 <https://www.mukuru.com/sa/services/mukuru-card/>.

<sup>95</sup> Finmark Trust 2021 [https://finmark.org.za/Publications/impact\\_of\\_RBA\\_on\\_financial\\_inclusion\\_report.pdf](https://finmark.org.za/Publications/impact_of_RBA_on_financial_inclusion_report.pdf).

An evaluation of the above shows that the change from a rule-based approach to an RBA approach has had a positive impact on financial inclusion in South Africa. However, the quality of the services that are being extended to the low-risk clients by financial institutions should be improved. The low-risk accounts currently provided by financial institutions have limits on the amount of money that can be deposited, transferred or withdrawn. For example, FNB's Zero Easy bank account allows customers to maintain a bank balance of up to R14,000 per month.<sup>96</sup> It should be noted that such thresholds are too low and should be adjusted based on the risk posed by each individual client instead of being fixed in all cases, a practice which reflects the outdated rule-based approach. While there is an increase in the number of people with access to banking services, the quality of the services offered by the providers is basic. These accounts often come with fewer features than regular accounts. For instance, services like credit facilities, overdrafts or investment options may not be available, limiting the account's utility for financial growth.<sup>97</sup> The low-risk banking accounts offered by FNB, Nedbank and Standard Bank do not include all standard banking services. While low-risk accounts aim to promote financial inclusion, their restrictions might still limit access to comprehensive banking services that could empower individuals to grow economically. Since low-risk accounts may employ simplified verification methods, there could be a higher risk of fraud or unauthorised access. Fraudsters may deliberately target simplified accounts because they are easier to open, use and abandon, leaving little trace, especially when the client conducts multiple small transactions to avoid detection. The lighter regulatory requirements might expose users to security vulnerabilities if they are not managed carefully.<sup>98</sup>

It is worth noting that the adoption of the RBA by financial institutions may lead to a new form of exclusion, especially as digital innovations advance. While these technologies are designed to improve accessibility, they can inadvertently exclude those who lack the resources or digital literacy needed to use them, such as where potential clients are without access to smartphones or reliable internet, or do not have the skills to navigate online banking platforms. A study by Mwansa and Ngandu reveals that only 52.3 percent of South Africans have access to reliable internet.<sup>99</sup> High data costs

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<sup>96</sup> FNB 2025 <https://www.fnb.co.za/downloads/pricing-guides/FNB-Easy-Zero-Account.pdf>.

<sup>97</sup> FNB 2025 <https://www.fnb.co.za/downloads/pricing-guides/FNB-Easy-Zero-Account.pdf>.

<sup>98</sup> First National Bank 2025 FNB Easy PAYU <https://www.fnb.co.za/for-you/easy-payu-account/>.

<sup>99</sup> Mwansa, Ngandu and Mkwambi 2025 *Discover Global Society* 1-5.

and low smartphone penetration can hinder customers from successfully onboarding through digital channels. According to Dyongo and Mwansa, the cost of data plans and digital devices in South Africa often exceeds what rural residents can afford, forcing them to rely on intermittent and limited internet access.<sup>100</sup> A report by Harrisberg and Mensah further highlights that mobile data prices in South Africa remain among the highest globally, disproportionately affecting rural communities.<sup>101</sup> Moreover, over-compliance on the part of financial services providers and reliance on a de-risking process could ultimately lead to financial exclusion, particularly for low-income individuals and marginalised communities who may be perceived as high-risk or unprofitable. This de-risking is exemplified by Capitec Bank's blanket closure of all bank accounts belonging to Zimbabwean nationals holding Zimbabwean Special Exemption Permits (ZSEPs) in 2024, when their permits expired.<sup>102</sup>

## 8 Concluding remarks

It is submitted that South Africa has successfully transitioned from a rule-based approach to an RBA to combatting money laundering and the financing of terrorism. Accordingly, we argue that the adoption of the RBA has to some extent positively impacted on the promotion of financial inclusion in South Africa. This follows the fact that the streamlining of the CDD processes has made it somewhat easier for poor and vulnerable persons who previously lacked the necessary documentation to access low-risk bank accounts to access some formal financial services. The four largest banks in South Africa have introduced simplified, low-risk bank accounts, drawing a significant number of people into formal financial services. This success is largely due to the adoption of innovative onboarding mechanisms by financial institutions, such as digital or online onboarding, which make it convenient to open a bank account without visiting a branch. However, it is important to note that these low-risk accounts come with limited services. Additionally, the digital onboarding methods adopted could unintentionally exclude individuals who do not have smartphones, internet access or financial literacy. It is recommended that South African financial institutions offering low-risk bank accounts should consider expanding the range of their available financial services. For instance, they could introduce more credit facilities and increase the

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<sup>100</sup> Dyongo and Mwansa "Investigating the Effectiveness of Zero-rated Website" 765-769.

<sup>101</sup> Harrisberg and Mensah 2022 <https://news.trust.org/item/20220614123128-f5ske/>; see also Mwansa, Ngandu and Mkwambi 2025 *Discover Global Society* 3.

<sup>102</sup> Oluwatosin 2025 <https://www.billionaires.africa/2025/01/08/capitec-shuts-accounts-of-zimbabwean-exemption-permit-holders-raising-concerns/>.

transaction limits to promote the financial growth of their account holders. It is also essential to develop alternative onboarding methods that are easily accessible, beyond online channels, to accommodate individuals who do not have smartphones, data access and the necessary technological skills. Financial institutions should carefully adopt and utilise the RBA to curb financial exclusion and de-risking challenges. This could be achieved by adopting the compliance through design (CTD) approach.<sup>103</sup> The CTD is an approach that integrates regulatory and legal compliance requirements directly into the design, development and operation of systems, products, services and processes from the very beginning. The CTD approach should be informed by and responsive to detailed data on CDD risks, money laundering, terrorist financing, proliferation financing and customer profiling. This would enhance the adoption and utilisation of the RBA. Banks should implement robust regulatory strategies that balance risk management with financial inclusion to ensure that the poor and low-income earners have access to essential formal banking services.

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<sup>103</sup> De Koker and Casanovas "'De-risking', De-banking and Denials of Bank Services" 45-63.

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## List of Abbreviations

ADLAs	authorised dealers with limited authority
AFI	Alliance for Financial Inclusion
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ATM	automated teller machine
BASA	Banking Association of South Africa
Berkeley J Int'l L	Berkeley Journal of International Law
CDD	customer due diligence
CTD	compliance through design
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
FIC Act	Financial Intelligence Centre Act 38 of 2001
FIC Amendment Act	Financial Intelligence Centre Amendment Act 1 of 2017
FNB	First National Bank
FSC	Financial Sector Charter
GPFI	Global Partnership for Financial Inclusion
IMF	International Monetary Fund
JFC	Journal of Financial Crime
JMLC	Journal of Money Laundering Control
KYC	know-your-client
MLTFCR	Money Laundering and Terrorist Financing Control Regulations
NPA	National Prosecuting Authority

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PELJ	Potchefstroom Electronic Law Journal
POC Act	Prevention of Organised Crime Act 121 of 1998
POCDATARA Act	Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004
RBA	risk-based approach
RMCP	Risk Management and Compliance Programme
SARB	South African Reserve Bank
TSAR	Tydskrif vir die Suid-Afrikaanse Reg