

PROPOSED AMENDMENTS TO THE SCHEDULES TO THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001

Introduction and background

The Financial Intelligence Centre (FIC) has undertaken a review of the scope of the Financial Intelligence Centre Act, 2001 (FIC Act) and released a consultation paper on 23 June 2020 proposing changes to the Schedules of the FIC Act. The proposed changes to the Schedules will widen the application of the FIC Act by changing and including additional categories of businesses and institutions under its scope. The changes will assist the FIC to combat money laundering and financing of terrorism.

The FIC is proposing changes to align with the Financial Action Task Force¹ (FATF) Standards which refer to financial and other institutions, including “designated non-financial businesses and professions” (DNFBPs). DNFBPs include lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones. In terms of the FATF Standards, trust and company service providers must be covered under the scope of the anti-money laundering and combating the financing of terrorism legislation when they prepare for or carry out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;

¹ An intergovernmental organisation founded in 1989 on the initiative of the G7 to develop policies to combat money laundering. In 2001, its mandate was expanded to include terrorism financing (Wikipedia).

- acting as (or arranging for another person to act as) a nominee shareholder for another person.

Changes proposed

The FIC is proposing changes to Schedule 1 to align with the FATF Standards and proposes that the following be classified as accountable institutions:

- 1) A person who is admitted by the High Court to practise and authorised to be enrolled as a legal practitioner, conveyancer or notary in terms of section 24 of the Legal Practice Act, 2014 (Act 28 of 2014) and who is required to have a Fidelity Fund Certificate under section 84 of that Act.
- 2) A person who carries on a business of preparing for or carrying out transactions for a client where:
 - a) a client is assisted in the planning or execution of
 - i) the organisation of contributions necessary for the creation, operation or management of a company, or of an external company or of a foreign company, as defined in the Companies Act, 2008 (Act 71 of 2008);
 - ii) the creation, operation or management of a company, or of an external company or of a foreign company, as defined in the Companies Act, 2008 (Act 71 of 2008);
 - iii) the operation or management of a close corporation, as defined in the Close Corporations Act, 1984 (Act 69 of 1984); or
 - iv) the creation, operation or management of a trust or of a similar structure outside the Republic, except for a trust established by virtue of a testamentary writing or court order;or
 - b) a client is assisted in acting as or arranging for another person to act as a nominee, as defined in the Companies Act, 2008 (Act 71 of 2008).
- 3) An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).
- 4) An authorised user of an exchange as defined in the Financial Markets Act, 2012 (Act 19 of 2012).
- 5) A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of the Collective Investment Schemes Control Act (Act 45 of 2002).
- 6) A person who carries on the 'business of a bank' as defined in the Banks Act, 1990 (Act 94 of 1990).
- 7) A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993).
- 7A) A co-operative bank as defined in the Co-operative Banks Act, 2007 (Act 40 of 2007)
- 8) A person who carries on life insurance business in the "Life Annuities" class, "Individual Investments" class or "Income drawdown" class as described in Table 1 of Schedule 2 to the Insurance Act, 2017 (Act 18 of 2017) or provides rider benefits, as defined in that Act, relating to these classes, but excludes reinsurance business as defined in that Act.
- 9) A person who carries on the business of making available a gambling activity as contemplated in section 3 of the National Gambling Act, 2004 (Act 7 of 2004) in respect of

which a licence is required to be issued by the National Gambling Board or a provincial licensing authority.

- 10) A person who carries on the business of dealing in foreign exchange.
- 11) A person who carries on the business of a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005), excluding credit providers who extend credit under a credit facility as provided for in section 8(3) of that Act.
- 12) A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice or intermediary services in respect of the investment of any financial product (but excluding a non-life insurance policy as defined in the Insurance Act, 2017 (Act 18 of 2017), a life insurance policy in the “Risk” class, “Fund Risk” class, “Credit Life” class, “Funeral” class, “Fund Investment” class and “Reinsurance” class as described in Table 1 of Schedule 2 to the Insurance Act, 2017 and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998).
- 13) A person who issues, sells or redeems travellers’ cheques, money orders or similar instrument.
- 14) The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).

Number 15 to 18 deleted

- 19) A person who carries on the business of a money or value transfer provider.
- 20) A person who carries on the business of dealing in high value goods in respect of any transaction where such a business receives a payment or payments in any form of R100 000,00 or more, whether the transaction is executed in a single operation or in several operations that appear to be linked.
- 21) South African Mint Company (RF) Propriety Limited, only to the extent that it distributes non-circulation coins in retail trade and where in respect of such transaction it receives a payment or payments in any form of R100 000,00 or more, whether the transaction is executed in a single operation or in several operations that appear to be linked.
- 22) A person who carries on the business of one or more of the following activities or operations for or on behalf of a client:
 - a) exchanging a crypto asset for a fiat currency or vice versa;
 - b) exchanging one form of crypto asset for another;
 - c) conducting a transaction that moves a crypto asset from one crypto asset address or account to another;
 - d) safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset, and
 - e) participation in and provision of financial services related to an issuer’s offer or sale of a crypto asset,

where “crypto asset” means a digital representation of perceived value that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act 19 of 2012).

- 23) A clearing system participant as defined in section 1 of the National Payment System Act, 1998 (Act 78 of 1998) that facilitates or enables the origination or receipt of any electronic funds transfer and or acts as an intermediary in receiving or transmitting the electronic funds transfer.

It is important to note that should the services provided by the person fall within the proposed categories there will be certain obligations on these businesses to register with the FIC as an accountable institution and these institutions have various compliance and reporting obligations in terms of the FIC Act.

The obligations of accountable institutions include:

- registration with the FIC;
- conducting of customer due diligence;
- record-keeping of client information and transaction records;
- developing, documenting, maintaining and implementing a Risk Management and Compliance Programme;
- training of employees on the FIC Act compliance obligations;
- appointment of a compliance officer; reporting obligations – cash threshold reports, suspicious transactions reports and terrorist property reports.

Invitation to comment

SAICA members and associates are encouraged to comment and can submit comments to either:

- SAICA, by 5 August 2020, for consideration for inclusion in SAICA's comment letter to the FIC. Comments to be submitted to Juanitas@saica.co.za
- The FIC, by 18 August 2020 (refer to the Consultation Paper link below).

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- Media statement: [Proposed amendments to the Schedules to the Financial Intelligence Centre Act, 2001](#)
- [Consultation Paper](#) on the amendments to Schedule 1, Schedule 2 and Schedule 3 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001)
- Government Gazette No. 43447 of 19 June 2020: [Amendment to Schedules](#)