

Proposed amendments to The Financial Intelligence Centre Act, 2001

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On 19 June 2020^[1], the Minister of Finance published proposed amendments to Schedules 1, 2 and 3 to the Financial Intelligence Centre Act, 38 of 2001, as amended ("**FICA**"). Members of the public were invited to comment on the proposed amendments for a period of 60 days from the date of publication of the notice. The proposed amendments to FICA are being contemplated in order to strengthen South Africa's financial system and to provide additional protection against the abuse of the system by money launderers and to inhibit the financing of terrorist activities.

Following on the 2009 Financial Action Task Force ("**FATF**") mutual evaluation process as well as the 2015 International Monetary Fund Financial Sector Assessment Programme, a number of weaknesses have been identified in South Africa's anti-money laundering/combating of terrorist financing systems in South Africa. The weaknesses which have been identified include compliance, supervision and sanctions in relation to non-bank financial institutions.

The amendments which have now been proposed to Schedule 1 of FICA will widen the application of FICA by including additional categories of institutions and businesses as "*accountable institutions*". Following on such proposed changes, the Financial Intelligence Centre ("**FIC**") will be able to obtain additional information relating to the identities and financial activities of customers from a larger group of institutions, not purely limited to financial institutions. This will then improve the FIC's ability to provide financial intelligence to law enforcement and security agencies as well as supervisory bodies and policy formulating entities. The proposed amendments to FICA will also bring South Africa's legal framework in relation to money laundering and the financing of terrorism in line with international standards recommended by the FATF.

The amendments which have been contemplated to the list of accountable institutions in Schedule 1 include, *inter alia*,

1. a number of technical amendments in order to take into account new legislation and/or amendments to legislation (i.e. to amend references to the Legal Practice Act, 2014, the Financial Markets Act, 2012 and the Insurance Act, 2017);
2. extending the list of accountable institutions to include trusts as well as company service providers. Currently the FATF Standards apply to financial institutions including institutions which are referred to as "*designated non-financial businesses and professions*". These designated non-financial businesses and professions include, *inter alia*, lawyers, accountants, trusts, company service providers, real estate agents and dealers in precious metals and stones. Under the FATF Standards, trust and company service providers must be covered under the scope of anti-money laundering and combating the financing of terrorism legislation when they prepare for or carry out transactions for a client concerning, amongst others, providing a registered office, business address or accommodation, correspondence or administrative address, acting as a trustee or performing the equivalent function for another form of legal arrangement, acting as a nominee shareholder for another person, or acting as director or secretary of a company, partner or partnership or a similar position in relation to any other legal person. Furthermore, under the FATF Standards, lawyers, notaries, other professional advisors and accountants should also be covered under the scope of legislation against money laundering and terrorist financing when they prepare for or carry out transactions for a client concerning, amongst others, the creation, operation or management of legal persons or arrangements, buying or selling of business entities, buying or selling of real estate, management of banks, savings or securities accounts or management of companies;
3. the inclusion of a co-operative bank as an accountable institution. Currently there is no regulatory requirement to undertake any form of customer identification and verification by co-operative banking service providers prior to undertaking a business transaction with a

- customer. The FATF Standards require that all types of financial institutions who accept deposits from customers must be covered within the scope of all anti-money laundering and combating of financing of terrorism legislation;
4. the inclusion of credit providers as contemplated under the National Credit Act, 2005. It is again a requirement for meeting the FATF Standards that credit providers, as part of the financial institutions sector, be included under the scope of the framework of measures against money laundering and terrorist financing;
 5. extending the scope of accountable institutions to not only refer to money remitters, but also to include a reference to a money or value transfer provider. Under the FATF Standards, reference is included to "*money or value transfer service providers*", being financial services involving the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer or through a clearing network to which the money or value transfer provider belongs. The FATF Standards also apply to informal money remitters who arrange the transfer and receipt of funds or equivalent value and then settle trades through cash and net settlements over a period of time. It is therefore proposed to include value transfer providers under the scope of an accountable institution;
 6. it is contemplated that any person who carries on a business of dealing in high value goods, where in respect of such transaction or a series of transactions, payment in an amount of ZAR100,000 or more is received, be included as an accountable institution. In essence, this would extend the scope of accountable institutions to include non-financial businesses in order to protect the country against money laundering and terrorist financing activities. High value goods are vulnerable to misuse for money laundering and the financing of terrorism activities since these goods can be readily purchased and sold anonymously. As such, the focus will be on the retail sector. It is further contemplated under the proposed amendments that this category will include the category of businesses who are currently referred to in Schedule 3 of FICA as reportable institutions, namely dealers in Kruger rands and motor vehicles;
 7. one of the most decisive proposed inclusions to the list of accountable institutions is that of crypto asset service providers. The FATF Standards were amended in 2018 to provide for additional protection in respect of crypto assets. As such, it is proposed to include a reference to service providers in respect of crypto assets which will then address businesses that exchange crypto assets for fiat currencies or *vice versa*, businesses which conduct transactions that move crypto assets from one crypto asset address or account to another, businesses that provide facilities for the safe keeping or administration of crypto assets or instruments that enable a control of crypto assets and participate or provide financial services related to the issuer's office, or sale of crypto assets; and
 8. finally, there is a proposal to include clearing system participants that facilitate or enable the origination or receipt of any electronic funds transfer and/or who act as intermediaries in receiving or transmitting any electronic funds transfer as accountable institutions. This is in order to ensure that payment system participants are included in the scope of the legislation.

In terms of the proposed amendments to Schedule 2, the FIC would take over the responsibility of overseeing and enforcing compliance with FICA in respect of non-financial sector activities involving, *inter alia*, gambling institutions, trusts, company service providers, legal practitioners and estate agents. Accordingly, it is envisaged that non-financial supervisory bodies will play a supportive role in the enforcement of compliance with FICA as they lack the resources which the FIC has in order to undertake these activities. The list of supervisory bodies have also been amended to include, the Financial Sector Conduct Authority, the Prudential Authority, the South African Reserve Bank and the Financial Surveillance Department of the South African Reserve Bank and in relation to each such supervisory body specific accountable institutions have been identified for such body. It is pertinent to note that the proposed changes to Schedule 2 have had the effect of removing the references to the supervisory bodies who are responsible for supervision of non-financial accountable institutions from the Schedule. As the FIC has embarked on extensive internal processes introducing new procedures to enhance its own supervision capabilities, it is contemplated that the FIC will undertake the relevant supervisory functions for non-financial accountable institutions.

Whilst Schedule 3 previously identified institutions who were only reporting institutions under FICA, given the proposed amendments to Schedule 1 to include dealers in motor vehicles and Kruger rands within the realm of accountable institutions as part of high value goods dealers, a consequential amendment to Schedule 3 is necessary as it is proposed that these reporting institutions will now become accountable institutions and will be required to report on all transactions.

Whilst some of the proposed amendments to FICA may be far reaching, they will certainly serve to go a long way in extending the scope of FICA to a number of non-financial institutions which currently fall outside of the realm of FICA and will further serve to bring South Africa in further alignment with the FATF Standards and recommendations. In addition, the proposed amendments will have an impact on the way in which a number of companies currently do business and accordingly it would be wise for non-financial institutions who may well fall to become accountable institutions should the proposed amendments be enforced, to take cognisance of the proposed amendments and to look towards updating their policies and procedures in order to, *inter alia*, undertake the additional identification and verification requirements as well as compliance with additional reporting obligations pursuant to the provisions of FICA.

[1] Under Notice No. 684, in Government Gazette 43447, dated 19 June 2020.



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