

NATIONAL TREASURY

NO. 684

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PROPOSED AMENDMENTS TO SCHEDULES TO FINANCIAL INTELLIGENCE CENTRE ACT, 2001

The Minister of Finance, in terms of sections 73, 75 and 76 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001- "the FIC Act"), proposes to amend Schedules 1, 2 and 3 to the FIC Act as set out in the Schedule.

Written comments are invited on the proposed amendments, which should be submitted to commentdraftlegislation@treasury.gov.za by close of business on the date that is 60 days from the date of publication of this Notice. Any clarification questions can be emailed to Jeannine Bednar-Giyose at: Jeannine.Bednar-Giyose@treasury.gov.za.

A consultation paper providing further explanation of the proposed amendments is available on the National Treasury website, <http://www.treasury.gov.za/public%20comments/default.aspx>

SCHEDULE

PROPOSED AMENDMENTS TO SCHEDULES 1, 2 AND 3

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

**PROPOSED WORDING FOR SCHEDULE 1
LIST OF ACCOUNTABLE INSTITUTIONS**

ITEM	CURRENT WORDING	PROPOSED WORDING
1	A practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979).	[A practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979).] <u>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.</u>
2	A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).	[A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).] <u>A person who carries on a business of preparing for or carrying out transactions for a client where-</u> <u>a) a client is assisted in the planning or execution of-</u> <u>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);</u> <u>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);</u>

ITEM	CURRENT WORDING	PROPOSED WORDING
		<p>iii) <u>the operation or management of a close corporation, as defined in the Close Corporations Act, 1984 (Act 69 of 1984); or</u></p> <p>iv) <u>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;</u></p> <p><u>or</u></p> <p>b) <u>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).</u></p>
3	An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).	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 Securities Service Act, 2004 (Act 36 of 2004).	An authorised user of an exchange as defined in the [Securities Service Act, 2004 (Act 36 of 2004)] <u>Financial Markets Act, 2012 (Act 19 of 2012).</u>
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).	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).	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).	A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993).
7A		<u>A co-operative bank as defined in the Co-operative Banks Act, 2007 (Act 40 of 2007).</u>
8	A person who carries on a 'long-term insurance business' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998).	<p>[A person who carries on a 'long-term insurance business' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998).]</p> <p><u>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 provide rider benefits, as defined in that Act, relating to these classes, but excludes reinsurance business as defined in that Act.</u></p>
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 license is required to be issued by the National Gambling Board or a provincial licensing authority.	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 license 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.	A person who carries on the business of dealing in foreign exchange.
11	A person who carries on the business of lending money against the security of securities.	<p>[A person who carries on the business of lending money against the security of securities.]</p> <p><u>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</u></p>

ITEM	CURRENT WORDING	PROPOSED WORDING
		<u>extend credit under a credit facility as provided for in section 8(3) of that Act.</u>
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 and intermediary services in respect of the investment of any financial product (but excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) 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).	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 [and] or intermediary services in respect of the investment of any financial product (but excluding a [short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998)] <u>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).</u>
13	A person who issues, sells or redeems travellers' cheques, money orders or similar instruments.	A person who issues, sells or redeems travellers' cheques, money orders or similar instruments.
14	The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).	The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).
15
16	The Ithala Development Finance Corporation Limited.	[The Ithala Development Finance Corporation Limited.]
17
18
19	A person who carries on the business of a money remitter.	A person who carries on the business of a money [remitter] or <u>value transfer provider.</u>
<u>20</u>		<u>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.</u>
<u>21</u>		<u>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.</u>
<u>22</u>		<u>A person who carries on the business of one or more of the following activities or operations for or on behalf of a client:</u> <u>a) exchanging a crypto asset for a fiat currency or vice versa;</u> <u>b) exchanging one form of crypto asset for another;</u> <u>c) conducting a transaction that moves a crypto asset from one crypto asset address or account to another;</u>

ITEM	CURRENT WORDING	PROPOSED WORDING
		<p><u>d) safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset, and</u></p> <p><u>e) participation in and provision of financial services related to an issuer's offer or sale of a crypto asset.</u></p> <p><u>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).</u></p>
23		<p><u>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.</u></p>

**PROPOSED WORDING FOR SCHEDULE 2
LIST OF SUPERVISORY BODIES**

ITEM	CURRENT WORDING	PROPOSED WORDING
1	<p>The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990).</p>	<p>[The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990).]</p> <p><u>The Financial Sector Conduct Authority established by the Financial Sector Regulation Act, 2017 (Act 9 of 2017) in respect of accountable institutions referred to in items 4, 5 and 12 of Schedule 1.</u></p>
2	<p>The South African Reserve Bank in respect of the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989, (Act 90 of 1989) and the Registrar as defined in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990) and the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961.</p>	<p>The South African Reserve Bank in [respect] <u>the performance of-</u></p> <p><u>(a) the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989 (Act 90 of 1989) in respect of accountable institutions referred to in items 6 and 23 of Schedule 1; [and]</u></p> <p><u>(b) [the Registrar as defined in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990)] the Prudential Authority established by the Financial Sector Regulation Act, 2017 (Act 9 of 2017) in respect of accountable institutions referred to in items 6, 7, 7A and 8 of Schedule 1; and</u></p> <p><u>(c) the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961, in respect of accountable institutions referred to in items 10, 13 and 19 of Schedule 1.</u></p>
3	...	
4	<p>The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976 (Act 112 of 1976).</p>	<p>[The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976 (Act 112 of 1976).]</p>

5	The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005).	[The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005).]
6	The National Gambling Board established in terms of the National Gambling Act, and retained in terms of the National Gambling Act, 2004 (Act 7 of 2004).	[The National Gambling Board established in terms of the National Gambling Act, and retained in terms of the National Gambling Act, 2004 (Act 7 of 2004).]
7	...	
8	A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).	[A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).]
9	A provincial licensing authority as defined in section 1 the National Gambling Act, 2004 (Act 7 of 2004).	[A provincial licensing authority as defined in section 1 the National Gambling Act, 2004 (Act 7 of 2004).]

**PRPOSED WORDING FOR SCHEDULE 3
LIST OF REPORTING INSTITUTIONS**

ITEM	CURRENT WORDING	PROPOSED WORDING
1	A person who carries on the business of dealing in motor vehicles.	[A person who carries on the business of dealing in motor vehicles.]
2	A person who carries on the business of dealing in Kruger rands.	[A person who carries on the business of dealing in Kruger rands.]