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Financial sector update

This annexure provides an update on regulatory changes in the financial sector.

Fighting financial crime and corruption

Protecting the integrity of South Africa's financial system

Government is committed to strengthening the country's financial system, promoting capital flows for investment and preventing abuse. The Prudential Authority, Financial Sector Conduct Authority (FSCA) and Financial Intelligence Centre (FIC) are working closely with the South African Revenue Service (SARS) to prevent illegal financial transactions and flows, including regulating transactions in sectors prone to illegal activities, such as the scrap steel market.

The Financial Action Task Force (FATF) mutual evaluation, a peer review of South Africa completed in October 2021, identified significant weaknesses in the country's anti-money-laundering and counter-financing of terrorism systems. Many of these weaknesses relate to institutional weaknesses that developed between 2009 and 2018, coinciding with the period of state capture.

South Africa needs to make significant progress in addressing these weaknesses by October 2022 to avoid being listed as a jurisdiction under increased monitoring (the "grey list") by the FATF. The National Treasury is leading the response through an interdepartmental committee that includes criminal justice institutions, the FIC, the Reserve Bank and SARS. Strengthening the financial system against abuse will require new legislation and improving the functioning of the criminal justice and criminal intelligence systems.

Responding to the State Capture Commission reports

The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector (the State Capture Commission) has published its first two reports and is expected to publish its third and final report shortly. The National Treasury will engage with relevant departments and financial sector regulators on how to respond to the Commission's findings on improving the regulation of cash transactions and public-sector procurement. The response will address specific allegations of wrongdoing, and how regulation and laws can be strengthened to prevent future abuses.

Countering illegal trading and the theft of copper and steel

In 2022, the National Treasury will introduce measures to help address the theft of steel and copper from infrastructure, after engaging with relevant departments and stakeholders. These measures will include:

- Working with the Department of Trade, Industry and Competition to introduce licensing – of companies and individuals – for the selling, buying or trading of all scrap steel, copper and related products.

- Enacting additional anti-money-laundering measures, including customer due diligence and tracking the origins of products, to apply to steel, copper and other metals, and precious stones – and prohibiting cash transactions related to steel, copper and other metals, and precious stones, in favour of credit card payments and electronic transactions.
- Strengthening customs reporting, controls and other measures for exports and imports of these items – and creating criminal and administrative penalties for non-compliance with regulations.

COVID-19 response and recovery measures

Measures to support small and medium enterprises

The COVID-19 loan guarantee scheme, launched to enable commercial banks to support firms affected by the pandemic, has ended. The National Treasury had established the scheme with the Reserve Bank and industry stakeholders, with a particular focus on supporting small and medium enterprises. In October 2021, the Minister of Finance announced the introduction of a new scheme to help small businesses recover from the pandemic and the July 2021 public violence. This arrangement will incorporate lessons from the loan guarantee scheme, including extending the list of eligible institutions and types of financing available. The National Treasury is working with the Reserve Bank and industry stakeholders to finalise the scheme. It is also exploring the feasibility of a form of equity financing as a support mechanism.

Measures to boost long-term investment

Capital flows management framework

The National Treasury continues to modernise South Africa's capital flows management framework. In this context, the following reforms are proposed.

Individuals

The export of dual-listed domestic securities to a recognised foreign share exchange is permitted and limited to the single discretionary allowance and/or foreign capital allowance, provided the South African Reserve Bank's Financial Surveillance Department is duly notified. All tax and anti-money-laundering requirements apply.

Resident individuals may use their single discretionary allowance to participate in online foreign-exchange trading activities but may not use credit or debit cards to do so. Resident individuals may receive and retain gifts from non-residents offshore. In addition, residents may lend or dispose of authorised foreign assets held offshore to other South African residents, subject to local tax disclosure and compliance. However, this dispensation will not apply retrospectively and any contravention before this date must still be regularised. South African residents may transfer, for foreign investment purposes, authorised capital in excess of R10 million per year through offshore trusts, subject to the current tax application and reporting requirements.

Companies

Debt securities are classified as referencing domestic or foreign assets, depending on whether they are linked to domestic or foreign companies. In the 2020 *Medium Term Budget Policy Statement*, the National Treasury announced that it would consider reclassifying all debt securities referencing foreign assets that are inward-listed on local stock exchanges as domestic assets. This consideration was detailed in a Reserve Bank publication, *Exchange Control Circular 15/2020*. After public consultation and a review, enactment of the circular was postponed in 2021. Following the review, it has been decided that all debt securities referencing foreign assets listed on South African stock exchanges remain classified as foreign.

Capital flows management framework (continued)

Institutional investors

The offshore limit for all insurance, retirement and savings funds is harmonised at 45 per cent inclusive of the 10 per cent African allowance. The previous maximum limits were set at 30 per cent or 40 per cent for different investors.

Institutional investors may open foreign-currency accounts with authorised dealers – banks that are authorised to trade in foreign exchange – for funding purposes and to accept foreign-currency deposits from the disinvestment proceeds of foreign assets, pending the reinvestment of the funds offshore.

The foreign direct investment limit for companies investing funds offshore will increase from R1 billion to R5 billion, provided the stipulated investment conditions, tax obligations and reporting requirements are met. Excess income or profits of offshore branches and offices of South African firms may be retained offshore, subject to annual reporting.

Authorised dealers may process transfers from the parent company to the domestic treasury management companies up to a maximum of R5 billion (an increase from R3 billion) per calendar year for listed entities; and up to R3 billion (an increase from R2 billion) per calendar year for unlisted entities. Funds transferred under this dispensation may be used for new investments, expansions as well as other transactions of a capital nature.

Authorised dealers may, on a once-off basis, remit abroad the remaining cash balances (of up to R100 000 in total) of people who have ceased to be residents for tax purposes, without reference to SARS.

Long-term alternative investment framework

In 2022, the National Treasury and the FSCA will introduce a framework to encourage private investment in areas that are critical for growth and employment. These include infrastructure, small and medium enterprises, and sustainable finance – a concept that broadly refers to environmental, social and governance considerations in investment. The framework may be established through the regulatory framework defined by the Collective Investment Schemes Control Act (2002) or within the successor to that act – the Conduct of Financial Institutions Bill – which is in development. In 2022, a draft framework will be released for public consultation for implementation by 2024.

Responding to climate risks and building a sustainable economy

In October 2021, the National Treasury released an updated version of its technical paper *Financing a Sustainable Economy*, which was first published in May 2020. The paper lays the foundation for facilitating long-term investment in sustainable economic assets, activities and projects needed to support the transition to a low-carbon and climate-resilient economy, including net-zero carbon emissions by 2050.

The original paper established the Climate Risk Forum, chaired by the National Treasury, to develop an approach to meeting the net-zero emissions target on a voluntary basis. In 2022, the forum will publish its green taxonomy and principles for effective climate-related disclosures. In late 2021, the National Treasury established the Intergovernmental Sustainable Finance Working Group to ensure that regulatory instruments to manage climate-related risks to the financial sector are developed in a coordinated and coherent manner. The Prudential Authority and the FSCA, both within the group, will publish guidance on a green taxonomy and disclosure framework in 2022, to inform the development of future regulatory instruments. This regulatory guidance will take into account emerging international best practice and approaches, including work led by the International Sustainability Standards Board to deliver a comprehensive global baseline for sustainability-related disclosure standards. These standards provide investors and other capital market participants with information about companies' sustainability-related risks and help them make informed decisions. The National Treasury will also work towards harmonising the current reporting systems to deliver on these objectives.

Promoting financial innovation to improve competition and inclusion

Crypto assets

The Intergovernmental Fintech Working Group (IFWG) published a position paper on crypto assets in June 2021, setting out a coordinated and phased approach to regulating crypto assets. Regulatory authorities are developing several interventions based on the recommendations in this paper, including:

- Including crypto asset service providers as accountable institutions within the Financial Intelligence Centre Act (2001). This change would address concerns around money laundering and terror risk financing through crypto assets and align the act to the standards set by the FATF for virtual assets and related service providers. The proposed amendments to the act were published in June 2020 for public consultation and are expected to be finalised during 2022.
- Protecting consumers by considering the declaration of crypto assets as a financial product under the Financial Advisory and Intermediary Services Act (2002). According to this declaration, any person providing advice or intermediary services related to crypto assets must be recognised as a financial services provider under the act and must comply with the act's requirements. This will include crypto asset exchanges and platforms, as well as brokers and advisors. This work is expected to be finalised during 2022.
- Enhancing monitoring and reporting of crypto asset transactions to comply with the Exchange Control Regulations of 1961. The process to include crypto assets in the regulations is under way.

In 2022, the IFWG will publish a follow-up paper to address risks posed by so-called stablecoins. The National Treasury is also exploring measures to regulate electricity-intensive crypto mining, which is environmentally harmful.

Open finance

In November 2021, the IFWG published a paper articulating the policy rationale and priorities for open finance, which is the ability of a customer to transfer all data linked to their financial activity, such as credit and payment histories. Open finance may improve the way consumers and businesses use financial services, and deepen competition among financial services providers. This could spur innovation and the development of new offerings through the sharing of data needed to assess risk and customer profiles. These benefits will be measured against the risks to cybersecurity and rules that protect financial stability. Financial authorities will consider the potential impact of open finance in light of this paper.

Exploring digitalisation in financial markets

The Reserve Bank continues to explore the policy and regulatory implications of digitalisation in financial markets. Following the review of a wholesale digital central bank currency or digital cash, the second phase of this project explores digital financial assets based on distributed ledger technology and the use of digital money to settle payments. It highlights the potential impact of this technology and digitalisation on financial markets, and clarifies the relevant operational, legal and policy questions around a potential change. The project findings are expected to be released in April 2022.

Boosting savings and providing for an adequate retirement

In 2021 the National Treasury released two papers addressing outstanding issues from the retirement reform process initiated in 2011. The first, *Encouraging South African Households to Save More for Retirement*, proposed increasing household savings by ensuring better preservation before retirement, and increasing flexibility through partial access to retirement funds through the introduction of the "two-pot" system. The aim is also to widen coverage, because it is currently not compulsory for employers to provide employee retirement benefits. The paper also proposes the introduction of automatic enrolment, leading to mandatory enrolment, of employed individuals (including those who are self-employed) who are not members of a retirement fun.

The second paper, *Governance of Umbrella Funds*, seeks to improve the governance of retirement funds, particularly for commercial umbrella funds. It proposes that members of a commercial umbrella fund should elect at least 50 per cent of the members of the board of trustees. At present, this is not a requirement for commercial umbrella funds, unlike in other occupational funds.

During 2022, work will continue on amending the relevant legislation to implement the above proposals.

Regulation 28 of the Pension Funds Act (1956) provides maximum investment limits for retirement funds. The Minister of Finance initiated a process to amend this regulation to enable greater infrastructure investment by retirement funds and improve data reporting on such investment by the funds. The amendments have been through two rounds of public consultations, and will be gazetted into law by March 2022.

Other reforms

The Conduct of Financial Institutions Bill

The National Treasury has revised the Conduct of Financial Institutions Bill based on feedback from stakeholders. The bill is expected to be tabled in Parliament in early 2022. It will empower the FSCA to deliver the mandate set out in the Financial Sector Regulation Act (2017), which includes the fair treatment of customers and the integrity of the financial system.

Transformation and financial inclusion

The FSCA will publish its transformation strategy in February 2022, outlining its approach to promoting financial sector transformation within the existing policy framework, including the Financial Sector Regulation Act, and under the future Conduct of Financial Institutions Bill. It will set out how the FSCA intends to effect key proposals in the bill. The strategy will be published for public comment and consultations will be held with stakeholders.

The subcommittees of the Financial Sector Transformation Council have been reviewing the transformation targets in the Financial Sector Code. They are expected to conclude their review and submit the revised targets to the council for approval this year. The Department of Trade, Industry and Competition will publish the revised targets for public comment.

Financial inclusion strategy

The National Treasury facilitated workshops with stakeholders during 2021 to discuss the comments received on the draft policy paper *An Inclusive Financial Sector for All*. The policy framework, aimed at promoting financial inclusion in South Africa, has been revised and will be finalised for formal adoption. The National Treasury will work with industry and civil society working groups and forums to develop a financial inclusion strategy to implement the new policy framework from 2023 to 2033, by setting targets and monitoring and evaluation mechanisms.

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