

DRAFT AMENDMENTS TO REGULATIONS IN TERMS OF FINANCIAL INTELLIGENCE CENTRE ACT, 2001, PUBLISHED FOR PUBLIC COMMENT

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PART A

DRAFT GOVERNMENT NOTICE

NATIONAL TREASURY

No. R

2017

FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT NO. 38 OF 2001): DRAFT AMENDMENTS TO MONEY LAUNDERING AND TERRORIST FINANCING CONTROL REGULATIONS

The Minister of Finance has, in terms of section 77 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), made the regulations set out in the Schedule.

SCHEDULE

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.

Definitions

1. In these regulations, “the Regulations” mean the Money Laundering and Terrorist Financing Control Regulations, 2002, published in Government Notice No. R. 1595 of 20 December 2002 as amended by GN R456 in Government Gazette 27580 of 20 May 2005 and GN R867 in Government Gazette 33596 of 1 October 2010 and GN 1107 in Government Gazette 33781 of 26 November 2010.

Amendment of regulation 1

2. Regulation 1 of the Regulations is hereby amended by the deletion of the definitions of “close corporation”, “foreign company”, “identification document”, “manager”, “South African company” and “trust”.

Insertion of regulation 1A

3. The following regulation is hereby inserted in the Regulations after regulation 1:

“Prescribed amount of a single transaction

1A. The prescribed value of a transaction to be considered a single transaction is an amount not less than R5 000.00.”

Repeal of Chapter 1

4. Chapter 1 of the Regulations is hereby repealed.

Amendment of Regulation 20

5. Regulation 20 of the Regulations is hereby amended by the substitution for the introductory part preceding paragraph (a) of regulation 20 of the following:

“If an accountable institution appoints a third party to keep on its behalf any records which that institution must retain in terms of the Act, that institution must without delay provide the Centre and the relevant supervisory body with—”.

Repeal of Chapter 3

6. Chapter 3 of the Regulations is hereby repealed.

Insertion of Regulation 24A:

7. The following regulation is hereby inserted after regulation 24 of the Regulations:

“Manner in which and period within additional information to be furnished

24A. An accountable institution, a reporting institution or any other person that receives a request for additional information from the Centre in terms of section 32 of the Act must, after receiving such request from the Centre and within the number of days specified in the request furnish to the Centre the additional information-

(a) in accordance with the format and content specified by the Centre; and

(b) electronically by means of the internet-based reporting portal provided by the Centre at the internet address, <http://www.fic.gov.za>, or by any other means specified by the Centre.”.

Substitution of heading of Chapter 5

8. The following heading is hereby substituted for the heading of Chapter 5:

“[INTERNAL RULES]MEASURES TO PROMOTE COMPLIANCE AND APPEALS”

Repeal of regulations 25, 26 and 27

9. Regulations 25, 26 and 27 of the Regulations are hereby repealed.

Insertion of regulation 27D:

10. The following regulations are hereby inserted in the Regulations after regulation 27C:

“Criteria for supervisory body to request information relating to a report made in terms of section 29

27D. For the purposes of section 45B(2A) of the Act, a supervisory body referred to in section 45B(2A)(c) of the Act may only order from an accountable institution under inspection, the production of a copy of a report, or the furnishing of a fact or information related to the report contemplated in section 29 if, to the satisfaction of the Centre-

- (a) appropriate measures are taken by the supervisory body to ensure that the information obtained from the report is processed only for the purposes of determining compliance with the Act;
- (b) appropriate measures are taken by the supervisory body to prevent unlawful access to the information contained in the report; and
- (c) appropriate security safeguards are in place for the protection of information contained in the report.”.

Substitution of regulation 28

11. The following regulation is hereby substituted for regulation 28 of the Regulations:

“Guidance [notes]

28. (1) The Centre may issue guidance **[notes]** concerning—
- (a) **[the verification of identities]** the application of a risk-based approach to establish and verify the identity of a client;
 - (aA) customer due diligence measures;
 - (aB) the duty to keep records;
 - (aC) financial sanctions;
 - (b) reporting **[of suspicious and unusual transactions]** duties; **[and]**
 - (bA) any obligations imposed on supervisory bodies under the Act; and
 - (c) any other obligations imposed on accountable institutions under the Act.
- (2) Guidance **[notes]** referred to in subregulation (1) may differ for different accountable institutions, reporting institutions or persons, or categories of accountable institutions, reporting institutions or persons and different categories of transactions.”.

Substitution of regulation 29

12. The following regulation is hereby substituted for regulation 29 of the Regulations:

“Offences and penalties

29. [(1) Any accountable institution which contravenes regulation 2 (1) is guilty of an offence.
- (2) Any accountable institution which fails to obtain the particulars referred to in regulation 3, 5, 7, 9, 11, 13, 15 or 17 (1) is guilty of an offence.
- (3) Any accountable institution which fails to verify any particulars referred to in regulation 3, 5, 7, 9, 11, 13, 15 or 17 (1) in accordance with regulation 4, 6, 8, 10, 12, 14, 16 or 17 (2) is guilty of an offence.
- (4) Any accountable institution which fails to take reasonable steps to verify information obtained without contact with a natural person or a representative of a legal person, partnership or trust in accordance with regulation 18 is guilty of an offence.
- (5) Any accountable institution which fails to take reasonable steps to maintain the correctness of particulars in accordance with regulation 19 is guilty of an offence.]
- (6) Any accountable institution which fails to inform the Centre or the relevant supervisory body of particulars concerning third parties keeping records in accordance with regulation 20 is guilty of an offence.

(7) Any person or institution which fails to send a report under section 29 of the Act to the Centre within the period referred to in regulation 24 or 24A is guilty of an offence.

[(8) Any accountable institution which fails to develop internal rules in accordance with regulation 25, 26 or 27 is guilty of an offence.]

(9) Any person or institution convicted of an offence under this **[section]** regulation is liable to imprisonment for a period not exceeding **[six months]** three years or a fine not exceeding **[R100 000]** R1 million or such administrative sanction as may apply.”.

13. Commencement

These Regulations take effect on 2 October 2017.

PART B

EXPLANATORY NOTE ON DRAFT AMENDMENTS TO REGULATIONS

1. The Minister of Finance has made a number of exemptions from compliance with a range of requirements under the Financial Intelligence Centre Act, 2001 (FIC Act) which currently applies to accountable institutions. The changes brought about by the Financial Intelligence Centre Amendment Act, 2017 (Act No. 1 of 2017) (Amendment Act) require the withdrawal of many exemptions in addition to substantial amendments to the Money Laundering and Terrorist Financing Control Regulations (Regulations), made under the FIC Act.
2. The amendments to the Regulations and the withdrawal of exemptions will take effect at the same time as relevant sections of the Amendment Act come into operation.
3. The definitions contained in the Regulations that relate to the identification and verification requirements are deleted.
4. The Amendment Act defines a single transaction as a transaction other than a transaction concluded in the course of a business relationship and where the value of the transaction is not less than an amount to be determined by the Minister of Finance in the Regulations. This can be described as occasional or once-off business where there is no expectation on the part of the accountable institution or the customer that the engagements would recur over a period of time. Accountable institutions are not required to carry out the full scope of customer due diligence (CDD) measures in respect of clients conducting single transactions below the value to be set by the Minister. The proposed value of the single transaction is R5 000.
5. With the adoption of a risk based approach accountable institutions will have more flexibility to exercise judgment in determining the extent and the nature of the information required to establish and verify a client's identity in accordance with its Risk Management and Compliance Programme. It is therefore proposed that Chapter 1 of the Regulations relating to client identification and verification be deleted. The repeal of Chapter 3 of the Regulations relating to client profile as well as the deletion of regulations 25, 26 and 27 in respect of internal rules is also proposed.

6. Regulation 24A is inserted to provide for the manner in which and the period within which additional information is to be furnished to the Centre in terms of section 32.
 7. Regulation 27D is inserted to provide for the criteria that supervisory bodies (other than the South African Reserve Bank and Financial Services Board) must meet to be able to request information from an accountable institution relating to a suspicious transaction report during an inspection.
 8. The Regulation relating to guidance has been expanded to take into account the new requirements in terms of the Amendment Act.
 9. The Regulation relating to offences and penalties has been amended to include consequential amendments as well as increase the penalties for an offence in terms of the Regulations as well as provide for administrative sanctions.
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