Financial Intelligence Centre

CONSULTATION PAPER

relating to the commencement of Section 31 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) and Draft Regulations, and the Amendment of Regulations in respect of Cash Threshold Reporting and Aggregation

INTRODUCTION

1. The Financial Intelligence Centre (the Centre) has embarked on a process to bring section 31 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) into operation. Section 31 of the FIC Act requires those accountable institutions that move funds electronically, across the borders of South Africa, on behalf or on the instruction of another person, to report the information that is prescribed by regulation pertaining to a transaction through which funds are transferred, to the Centre. The section 31 report is to be called an "International Funds Transfer Report" (IFTR). This consultation paper seeks to elicit comments on a number of aspects relating to the implementation of this reporting obligation.

2. The Centre is also considering how the implementation of reporting on cash transactions pursuant to section 28 of the FIC Act can be improved. This consultation paper therefore also seeks to elicit comments on proposed changes to aspects of the legal requirements relating to this form of reporting.

BACKGROUND

3. The Centre is in the process of upgrading and improving its operational capabilities. The Centre has, for years, been receiving section 28, 28A and 29 reports via its preferred IT platform, goAML. goAML is an integrated software solution developed and maintained by the United Nations Office on Drugs and Crime (UNODC). It is a system designed specifically for financial intelligence units such as the Centre and the stakeholders that report to them.

4. The next step in the process of improving the Centre's operational capabilities is to receive IFTRs. A process of consultation and testing the submission of IFTRs with a number of accountable institutions commenced in September 2016 with a view to bring section 31 of the FIC Act into operation. Section 31 must be brought into operation by means of a proclamation by the President.

5. Together with the announcement of the commencement date for section 31 of the FIC Act the Minister of Finance will make regulations for the reporting requirements in terms of section 31 of the FIC Act. These regulations will form part of the Money Laundering and Terrorist Financing Control Regulations (the Regulations) and will provide for matters such as the information required, the amounts involved and the time period within which the report must be made.

6. The Centre’s process of improving its operational capabilities has also caused it to consider improvements that can be made in the efficiency of the cash transaction reporting system. These improvements will entail amendments to the current requirements in the Regulations relating to the prescribed threshold amount that gives rise to cash transaction reporting and the period within which cash threshold reports must be submitted to the Centre.

INTERNATIONAL FUNDS TRANSFER REPORTING

7. Section 31 of the FIC Act states:

   “If an accountable institution through electronic transfer sends money in excess of a prescribed amount out of the Republic or receives money in excess of a prescribed amount from outside the Republic on behalf, or on the instruction, of another person, it must, within the prescribed period after the money was transferred, report the transfer, together with the prescribed particulars concerning the transfer, to the Centre.”

8. Section 31 of the FIC Act applies to the movement of funds into and out of South Africa via electronic transfers. The objective of section 31 is to ensure that information relating to cross-border electronic funds transfers is made available to the Centre as soon as possible to enhance its ability to analyse information concerning financial flows which, in turn, strengthens the Centre’s ability to detect possible suspicious or unusual activity and to disseminating the relevant information to investigating and prosecuting authorities.

What should give rise to an International Funds Transfer Report?

9. The obligation to submit an IFTR will be triggered by the fact that a transaction has taken place by means of which an amount of funds exceeding a prescribed threshold have been transferred electronically into or out of South Africa. Examples of transactions of this nature include remittances through which funds are sent or payments are made to persons located outside of South Africa, remittances through which persons in South Africa receive funds (including payments) from persons located outside of South Africa, credit and debit card transactions with a merchant located outside of South Africa and credit and debit card transactions by a person located outside of South Africa with a merchant in South Africa.

10. Due to the potential terrorist financing threat posed by cross-border electronic funds transfers in small amounts, it is prudent that countries should have mechanisms in place to trace such transfers and should minimise thresholds while being conscious of the risk of driving these transactions underground. It for this reason that the Centre proposes that the threshold for IFTR reporting be set at a relatively low value while avoiding requiring reporting on high volumes of transactions that would comprise of low-value remittances.

11. With this consideration in mind it is proposed that the prescribed threshold amount that should trigger an IFTR should be set at R5 000,00. This means that all electronic cross-border transactions (the sending of funds out of South Africa and the receiving of funds from outside of South Africa) from a value of R5 000,00 and above will have to be reported to the Centre.

Who should submit International Funds Transfer Reports?

12. It is important to note that only some categories of accountable institutions are authorised to conduct the business of cross-border funds transfers. These are institutions that are authorised in terms of the Regulations under the Currency and Exchanges Act, 1933 (Act 9 of 1933) (the Exchange Control Regulations) to conduct authorised transactions under the Regulations. Institutions with this authorisation are Authorised Dealers (ADs) and Authorised Dealers with Limited Authority (ADLAs) as well as a category of financial services providers that have a direct reporting dispensation under the Exchange Control Regulations. In addition to ADs, ADLAs and financial services providers with a direct reporting dispensation under the Exchange Control Regulations, the Post Office is also allowed to conduct transactions to transfer funds out of South Africa and to receive funds from outside South Africa and does so through the use of postal orders and money orders.

13. ADs, ADLAs, financial services providers with a direct reporting dispensation under the Exchange Control Regulations and the Post Office are accountable institutions that fall within the scope of Items 6, 12 and 19 of Schedule 1 to the FIC Act. This means that, in practise, the obligation to report information under section 31 of the FIC Act will fall only on the accountable institutions in these categories that may legally conduct transactions to transfer funds into and out of South Africa.

What information should be reported in an International Funds Transfer Report?

14. The information relating to the transfer to be reported to the Centre under section 31 of the FIC Act will be prescribed in the Regulations. The information about the transfer that should be required must be sufficient to provide the Centre with the necessary transparency and traceability concerning the transfer to enable it to properly analyse the financial flows that are enabled through the transfer. This includes information on all the parties that are associated with a transfer, including those who are not the reporting accountable institution's customers, and details such as the amounts, dates, currencies, origin and destination, account numbers, transaction numbers, the intended purpose of the transfer, etc.

15. The prescribed information to be reported in respect of an international funds transfer will consist of certain compulsory information that is essential for the Centre's analysis process and further information that will have to be supplied if it is readily available to the reporting institution. The full description of the proposed information to be contained in an IFTR can be found in the proposed amendments to the Regulations in Annexure A (new proposed regulation 23E to be inserted in the Regulations).

The period for submitting an International Funds Transfer Report

16. It is proposed that a report under section 31 of the FIC Act be sent to the Centre as soon as possible, but not later than three days (excluding Saturdays, Sundays and public holidays) after the accountable institution has become aware of the fact that the transaction has occurred.

How should an International Funds Transfer Report be submitted to the Centre?

17. It is proposed that reports under section 31 of the FIC Act be submitted directly to the Centre by means of the goAML platform.

What should the consequence of a failure to report an International Funds Transfer be?

18. When section 31 of the FIC Act comes into operation, section 56 of the FIC Act will also take effect. Section 56 deals with the failure of accountable institutions to report electronic transfers. A person that fails to report such transactions may be found guilty of an offence or may be found non-compliant and subject to an

administrative sanction. Section 68 of the FIC Act states that a person convicted of such offence is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million.

19. In addition to the provisions of the FIC Act that will apply to a failure to report an international funds transfer, it is proposed that regulation 29 of the Regulations be amended to reflect that a failure to provide the prescribed information to be reported concerning an international funds transfer in accordance with the new proposed regulation 23E would amount to an offence, or alternatively to non-compliance that would be subject to an administrative sanction.

CASH TRANSACTION REPORTING

Increasing the threshold for Cash Transaction Reports

20. It is proposed that the prescribed threshold amount that should trigger a cash transaction report be increased to R49 999,99. This means that the obligation to report information concerning cash transactions in terms of section 28 of the FIC Act will arise when a transaction is concluded with a client by means of which cash in the amount of R50 000,00 and above:

- is paid by the accountable or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
- is received by the accountable or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

21. It is further proposed that be no aggregation be applied in the calculation of the threshold amount. In other words, the threshold will simply be a threshold pertaining to a specific transaction.

22. It is proposed that regulations 22B and 22C of the Regulations be amended as reflected in Annexure A to take into account the above.

Increasing the period within which Cash Threshold Reports should be submitted to the Centre

23. It is proposed that regulation 24 of the Regulations be amended to require that a report under section 28 of the Act be sent to the Centre as soon as possible but not later than three days (excluding Saturdays, Sundays and public holidays) after

24. a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of a single cash transaction that has exceeded the prescribed limit.

CONCLUSION

25. The proposed wording for the proposed amendments to the Regulations is contained in the draft "Amendments to the Money Laundering and Terrorist Financing Control Regulations" as published for public comment. Comments on the proposed amendments to the Regulations should be submitted to National Treasury at commentdraftlegislation@treasury.gov.za by close of business on 01 April 2019.

Issued by the Director

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CENTURION

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The Centre can be contacted for further information at the contact particulars above or at the following telephone number: (012) 641 6000.