

DRAFT
GOVERNMENT NOTICE
NATIONAL TREASURY

No.

2024

**FINANCIAL INTELLIGENCE CENTRE ACT, 2001: AMENDMENT OF 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 Act' means the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act has that meaning, and—

“the Regulations” means the Money Laundering and Terrorist Financing Control Regulations, 2002, promulgated by Government Notice No. R. 1595 of 20 December 2002 as amended by Government Notice R456 in Government Gazette 27580 of 20 May 2005, Government Notice R867 in Government Gazette 33596 of 01 October 2010, Government Notice 1107 in Government Gazette 33781 of 26 November 2010, Government Notice R1062 in Government Gazette 41154 of 29 September 2017 and Government Notice 2943 in Government Gazette 47883 of 20 January 2023.

Amendment of regulation 1 of Regulations

2. Regulation 1 of the Regulations is hereby amended by the insertion before the definition of “cash threshold report” of the following definitions:

“**authorised official**” means an officer as defined in the Customs and Excise Act, 1964 (Act 91 of 1964);

‘**cash conveyance report**’ means a report which must be submitted in terms of section 30 of the Act in respect of the conveyance of cash or bearer negotiable instruments into or out of the Republic;”.

Insertion of Regulation 21A

3. The following regulation is hereby inserted after the heading to Chapter 4 of the Regulations:

“Authorisation of persons to receive reports under section 30 of Act

21A Every authorised official is hereby authorised to demand and receive reports concerning the conveyance of an amount of cash exceeding the prescribed threshold into or out of the Republic under section 30 of the Act.”.

Amendment of regulation 22 of Regulations

4. Regulation 22 of the Regulations is hereby amended by—

(a) the substitution for subregulation (1) of the following subregulation:

“(1) Subject to subregulation (2), a report made under **[Part 3 of Chapter 3]**sections 28, 28A, 29 and 31 of the Act must be made in accordance with the format specified by the Centre, and sent to the Centre electronically by means of—

- (a) the internet-based reporting portal provided by the Centre for this purpose at the following internet address: <http://www.fic.qov.za>; or
- (b) a method developed by the Centre for this purpose and made available to a person who is required to make such reports.”; and

(b) the addition of the following subregulation:

“(3) A report made under section 30 of the Act must be made in the manner and in accordance with the format specified by the South African Revenue Service for this purpose.”.

Insertion of Regulations 23F and 23G

5. The following regulations are hereby inserted after regulation 22C of the Regulations:

“Prescribed amount for reporting of conveyance of cash or bearer negotiable instruments

23F. The prescribed amount above which the conveyance of an amount of cash or bearer negotiable instruments into or out of the Republic must be reported

to an authorised official under section 30 of the Act is R24 999,99 or the equivalent thereof in any foreign currency.

Information to be reported when amount of cash or bearer negotiable instruments being conveyed into or out of Republic is above prescribed threshold

23G. When a report under section 30 of the Act is made to an authorised official, the report must contain—

(a) in respect of the person making the report to an authorised official, full particulars of—

- (i) the full names and surname of the person;
- (ii) the date of birth of the person
- (iii) the nationality of the person;
- (iv) the unique number of the person's travel document; and
- (v) the name of issuing country of the travel document;

(b) in respect of the conveyance of the reported cash or bearer negotiable instruments into the Republic, full particulars of—

- (i) the date of entry into the Republic;
- (ii) the name of the place of entry into the Republic;
- (iii) the place where the person making the report exited the country from which he or she travelled to the Republic;
- (iv) the last place where the person making the report has made a declaration in relation to the conveyance of cash while travelling to the Republic; and
- (v) the means of travel by which the person making the report is travelling to the Republic, including the flight or vessel number or the vehicle registration number, as the case may be;

(c) in respect of the conveyance of the reported cash or bearer negotiable instruments out of the Republic, full particulars of—

- (i) the date of exit from the Republic;

- (ii) the name of the place where the person making the report is exiting the Republic; and
 - (iii) the means of travel by which the person making the report is travelling to the Republic, including the flight number or the vehicle registration number;
- (d) in respect of the person who owns the cash or bearer negotiable instruments to which the report refers, full particulars of—
 - (i) the name and surname of the person;
 - (ii) the date of birth of the person;
 - (iii) the nationality of the person;
 - (iv) the number of the person's travel document; and
 - (v) the name of issuing country of the travel document;
- (e) in respect of the cash or bearer negotiable instruments concerned, full particulars of—
 - (i) the amount conveyed;
 - (ii) the country from which the funds originated;
 - (iii) the details as to how the funds were obtained; and
 - (iv) the intended purpose for which the cash or bearer negotiable instruments are conveyed into or out of the Republic.”.

Amendment of regulation 24 of Regulations

6. Regulation 24 of the Regulations is hereby amended by the addition of the following subregulation:

“(5) A report made under section 30 of the Act must be sent to the Centre as soon as possible, but not later than two days after an authorised official has obtained such a report.”.

Amendment of regulation 29 of Regulations

7. Regulation 29 of the Regulations is hereby amended by the insertion after subregulation (6N) of the following subregulation:

“(6O) Any person or who fails to provide the information to be reported concerning a cash conveyance report in accordance with regulation 23G is guilty of an offence.”.

Commencement

8. These Regulations take effect on ...

EXPLANATORY MEMORANDUM

INTRODUCTION

1. A process has been initiated to bring section 30 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) into operation. Section 30 of the FIC Act requires the reporting of the conveyance of cash or bearer negotiable instruments in excess of a prescribed amount across the borders of South Africa. It is important to note that this requirement will apply to any person who conveys an amount of cash in any currency, or bearer negotiable instruments, that exceeds the prescribed threshold. This report under section 30 of the FIC Act is to be called the “Cash Conveyance Report” (CCR).
2. Section 30 of the FIC Act must be brought into operation by means of a proclamation by the President. The Minister of Finance must also make regulations for the reporting requirements in terms of section 30 of the FIC Act. The information required, the amounts involved and the time within which the report must be made will be prescribed through amendments to the Money Laundering and Terrorist Financing Control Regulations (the Regulations) made in terms of the FIC Act.

CASH CONVEYANCE REPORTING

3. Section 30(1) of the FIC Act provides as follows:

“A person who intends conveying or who has conveyed or who is conveying an amount of cash or a bearer negotiable instrument in excess of the prescribed amount to or from the Republic must, on demand, report the prescribed particulars concerning that conveyance to a person authorised by the Minister for this purpose.”.
4. Due to the potential money laundering and terrorist financing vulnerabilities posed by cross-border movements of cash or bearer negotiable instruments, it is prudent that countries should have mechanisms in place to trace such transfers. The objective of section 30 is to ensure that information relating to cross-border

movements of cash or bearer negotiable instruments is made available to the Financial Intelligence Centre (FIC) as soon as possible to enhance its ability to analyse information concerning financial flows which, in turn, strengthens the FIC's ability to detect possible suspicious or unusual activity and to disseminate the relevant information to investigating and prosecuting authorities.

WHAT SHOULD GIVE RISE TO A CASH CONVEYANCE REPORT?

5. The obligation to report the cross-border conveyance of cash or bearer negotiable instruments will be triggered by the fact that the amount of cash or bearer negotiable instruments in question exceeds a prescribed threshold.
6. "Cash" is defined in the FIC Act to include coin and paper money of the Republic or of any other country, as well as travellers' cheques. This means that the conveyance of the cash is reportable regardless of the currency in which the amount is held.
7. The obligation also applies to the cross-border conveyance of bearer negotiable instruments where the combined value of such instruments exceeds the prescribed threshold. A bearer negotiable instrument is an instrument that is not legal tender, but which can be exchanged upon its presentation for an amount of money that is specified in the instrument, and which entitles the holder of the instrument to the funds it represents. Examples of bearer negotiable instruments include bills of exchange, letters of credit, money orders, postal orders, and promissory notes.
8. It is proposed that the prescribed threshold amount that should trigger a report of the cross-border conveyance of cash or bearer negotiable instruments should be set at R25 000,00. This means that all cross-border movements of cash or bearer negotiable instruments from R25 000,00 and above will have to be reported.

WHO SHOULD SUBMIT A CASH CONVEYANCE REPORT?

9. The obligation to report the conveyance of cash or bearer negotiable instruments in the circumstances mentioned above, will be on the person who is conveying the cash or bearer negotiable instruments. This will include instances where such a person is conveying the cash or bearer negotiable instruments on the instruction, or on behalf of, another person.

WHAT INFORMATION SHOULD BE REPORTED IN A CASH CONVEYANCE REPORT?

10. The information relating to the conveyance of cash or bearer negotiable instruments that will have to be reported under section 30 of the FIC Act, will be prescribed in the Regulations. This information must be sufficient to provide the FIC with the necessary transparency and traceability concerning the conveyance of the cash or bearer negotiable instruments to enable it to properly analyse the financial flows that are enabled through the conveyance. This includes information about all the parties that are associated with the conveyance of the cash or bearer negotiable instruments, dates, currencies, origin and destination, and details of how the cash or bearer negotiable instruments were obtained and the intended purpose for which the cash or bearer negotiable instruments are conveyed into or out of the Republic. The full description of the proposed information to be contained in a CCR is provided in the proposed amendments to the Regulations in Annexure A (new proposed regulation 23G to be inserted in the Regulations).

HOW SHOULD A CASH CONVEYANCE REPORT BE MADE?

11. Cash conveyance reporting will be integrated with process for travellers to make declarations that are required under customs legislation. This means that the conveyance of cash or bearer negotiable instruments must be done in the manner and in accordance with the process that will be specified by the South African Revenue Service for this purpose.
12. The South African Revenue Service has developed an online declaration system that will be used for the purpose of capturing CCRs. In addition to this system,

CCRs may also be made by means of the manual declaration process that is used to implement the legal obligation to declare goods including currency in a traveller's possession.

13. Officials of the South African Revenue Service who are designated as customs officers under the Customs and Excise Act, 1964, will be entitled to demand reports relating to the conveyance of cash or bearer negotiable instruments from persons entering or leaving the Republic.

THE PERIOD FOR SUBMITTING A CASH CONVEYANCE REPORT

14. A CCR must be done before or upon entering or leaving the Republic. This means that persons who will be making use of the online declaration system to report the required information about the conveyance of the cash or bearer negotiable instruments, will have to do so before crossing the border with the cash or bearer negotiable instruments that exceeds the prescribed threshold. Travellers will be provided with information to guide them about this process. Persons who do not make use of the online declaration system will have to approach a customs official at a border crossing to make a CCR by means of the manual customs declaration process before crossing the border with the cash or bearer negotiable instruments that exceeds the threshold.

WHAT WILL THE CONSEQUENCE BE OF A FAILURE TO MAKE A CASH CONVEYANCE REPORT?

15. When section 30 of the FIC Act comes into operation, section 54 of the FIC Act will also take effect. Section 54 makes the failure to make a CCR an offence. Section 68 of the FIC Act provides that a person who is convicted of such offence is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million.
16. In addition, section 70 of the FIC Act will also take effect together with sections 30 and 54 of the Act. Section 70 of the FIC Act provides for the seizure of the cash or

bearer negotiable instruments in question, and the eventual forfeiture thereof, if a person contravenes section 30 of the Act.

17. Apart from the provisions of the FIC Act that will apply to a failure to make a CCR, regulation 29 of the Regulations will also be amended to reflect that a failure to provide the prescribed information to be contained in a CCR in accordance with the new proposed regulation 23G, would amount to an offence. Such an offence would be punishable with imprisonment for a maximum of three years or a fine not exceeding R1 million.

CONCLUSION

18. 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 19 April 2024.