CONSULTATION PAPER RELATING TO THE PROPOSED AMENDMENTS OF THE SCHEDULES TO THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001)

Tuesday, 23 June 2020: The Financial Intelligence Centre ("FIC") is pleased to advise that 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.

The consultation paper which provides an explanation of the proposed amendments [click to view], the proposed amendments [click to view], including a media release, are published on the National Treasury website [click to view].

Background on the proposed amendments to the Schedules to the FIC Act

The FIC began a process of reviewing the legislative framework against money laundering and terrorist financing with the view to improving South Africa's measures to combat money laundering and terrorist financing. The Financial Intelligence Centre Amendment Act, 2017 (Act No. 1 of 2017) was one initiative in the review process. The amendments to Schedules 1, 2 and 3 to the FIC Act are another initiative in the review process.

During 2017 to 2019, the FIC consulted with a number of industry bodies/institutions, businesses and regulators on the proposed amendments to the Schedules. The process of amending the Schedules to the FIC Act is intended to widen the application of the Act by including additional categories of institutions and businesses under its scope. This will improve the FIC's ability to obtain information concerning the identities and financial activities of customers of a wider range of financial and other institutions. This will in turn improve the FIC's ability to produce high-quality analysis for law enforcement and security agencies, as well as to supervisory bodies and policy formulating entities.

The widening of the scope of the FIC Act will also bring South Africa's legal framework against money laundering and terrorist financing in line with international standards set by the Financial Action Task Force ("the FATF"). South Africa is a member of the FATF, an international standard-setting body on measures to combat money laundering and terrorist financing. It was created at a G-7 Summit that was held in Paris in 1989 in response to mounting concern over money laundering and in recognition of the threat posed to banking systems and financial institutions worldwide.

Based on its experience in implementing the provisions of the FIC Act and supporting efforts of law enforcement and other agencies in combating money laundering and terrorist financing, the FIC has identified a number of activities that should be brought within the scope of the FIC Act, with a view to improving the transparency of the financial system. The proposal to include certain businesses or institutions is based, in part, on the FIC's view that these businesses or institutions may present a higher risk of being used to carry out money laundering or terrorist financing activities. Further, the revision to FATF Recommendation 15 on new technologies in October 2018 requires jurisdictions to regulate virtual assets and virtual asset service providers for anti-money laundering and combating the financing of terrorism purposes.

In addition, during the FATF's 2009 assessment of South Africa's compliance of the FATF Recommendations, it commented negatively on the low level of compliance within certain non-financial sectors and the absence of a robust framework for supervision and enforcement to address non-compliance with the FIC Act. The proposed amendments to Schedule 2 are intended to address this negative finding.

Written comments on the proposed amendments are invited and these should be submitted to National Treasury at e-mail commentdraftlegislation@treasury.gov.za before close of business on 18 August 2020. Questions for clarification can be directed to Jeannine Bednar-Giyose at Jeannine.Bednar-Giyose@treasury.gov.za

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