

# **CONSULTATION PAPER ON**

THE AMENDMENTS TO SCHEDULE 1,  
SCHEDULE 2 AND SCHEDULE 3 OF THE  
FINANCIAL INTELLIGENCE CENTRE  
ACT, 2001 (ACT 38 OF 2001)

# CONTENTS

<b>INTRODUCTION</b> .....	3
<b>1. BACKGROUND</b> .....	5
<b>2. PROPOSED AMENDMENTS TO SCHEDULE 1 TO THE FIC ACT</b> .....	7
2.1. Item 1 – Legal practitioners - Technical amendment to take into account new legislation.....	7
2.2. Item 2 – Amendment to include Trust and Company Service Providers .....	7
2.3. Item 4 – Authorised user of an exchange – Technical amendment to take into account new legislation .....	9
2.4. New proposed Item 7A – Co-operative banks .....	10
2.5. Item 8 – Long term insurance – Technical amendment to take into account new legislation .....	10
2.6. Item 11 – Inclusion of credit providers .....	11
2.7. Item 12 – Financial Services Providers – Technical amendments to clarify the meaning and to take into account new legislation .....	12
2.8. Item 16 – Ithala Development Finance Corporation .....	12
2.9. Item 19 – Money remitter .....	12
2.10. New Proposed Item 20 – High-Value Goods Dealers .....	14
2.11. New Proposed Item 21 – South African Mint Company (RF) Proprietary Limited.....	15
2.12. New Proposed Item 22 – Crypto Asset Service Providers .....	16
2.13. New Proposed Item 23 – Clearing system participant that facilitates or enables the origination or receipt of any electronic funds transfer .....	17
<b>3. PROPOSED AMENDMENTS TO SCHEDULE 2 TO THE FIC ACT</b> .....	18
<b>4. PROPOSED AMENDMENTS TO SCHEDULE 3 TO THE FIC ACT</b> .....	20
<b>ANNEXURE</b> .....	<b>Error! Bookmark not defined.</b>
Proposed Amendments to Schedules 1, 2 and 3 to the FIC Act .....	<b>Error! Bookmark not defined.</b>

## INTRODUCTION

The Financial Intelligence Centre (the Centre) has undertaken a review of the scope of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001, the FIC Act) as determined by Schedules 1, 2 and 3 to the Act with a view to bringing it in line with the current International Standards of the Financial Action Task Force (FATF) and recent legislative amendments and to accommodate the Centre's experience in the implementation of the Act.

The FIC Act established the Centre as the national point in South Africa for the gathering, analysis and dissemination of financial intelligence. The Centre was established to identify proceeds of crime and combat money laundering and the financing of terrorism and in so doing has a primary role to protect the integrity of South Africa's financial system. The Centre develops and provides financial intelligence to a range of agencies supporting the investigation and prosecution of criminal activity by helping to identify the proceeds of crime, combat money laundering and the financing of terrorism.

A system to combat money laundering and financing of terrorism works effectively if the financial system is transparent, based on robust customer due diligence measures, to ensure that adequate information is captured in the records of accountable institutions and to make the sharing of information that may support further investigation of money laundering and the financing of terrorism possible. The purpose of the FIC Act, among others, is to introduce this transparency in the financial system.

The process of amending the Schedules to the FIC Act will widen the application of the Act by including additional categories of institutions and businesses under its scope. This will improve the Centre's ability to obtain information concerning the identities and financial activities of customers of a wider range of financial and other institutions which in turn will improve the Centre's ability to provide high-quality information to law enforcement and security agencies, as well as to supervisory bodies and policy formulating entities.

It is important to bear in mind that the FIC Act places certain obligations on categories of business that are at risk of being exploited by customers who may launder criminal proceeds or finance terrorist activities. This does not mean that those categories of business are associated with, or suspected of criminal activity. The Centre believes that the inclusion of

the proposed new categories of business as accountable institutions within the framework against money laundering and terrorist financing will add significant value to the work of the Centre and strengthen its ability to support the implementation of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998) and the Protection of Constitutional Democracy against Terrorist and Related activities Act, 2004 (Act 33 of 2004) and the criminal justice system in general.

The widening of the scope of the FIC Act will also bring South Africa's legal framework against money laundering and the financing of terrorism in line with the International Standards set by the FATF. The FATF, of which South Africa is a member, is the international standard-setting body on measures to combat money laundering and the financing of terrorism and proliferation. 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.

Schedule 1 contains the list of accountable institutions, Schedule 2 contains the list of supervisory bodies and Schedule 3 contains the list of reporting institutions. The consultation document is aimed at eliciting comments on the proposed amendments to Schedule 1, 2 and 3.

The consultation document is divided into three parts and will discuss the proposed amendments to Schedule 1, 2 and 3 to the FIC Act.

It will be assumed that respondents agree to the Centre quoting from or referring to comments and attributing comments to respondents, unless representations are marked confidential.

## PART 1

### 1. BACKGROUND

- 1.1. The amendments to Schedule 1 entail the inclusion of new categories of businesses and also technical amendments in respect of some Schedule 1 Items.
- 1.2. Schedule 1 to the FIC Act contains the list of accountable institutions and thus effectively determines the scope of the FIC Act. These are businesses that must comply with a number of provisions of the FIC Act when dealing with their customers. The obligations of accountable institutions include: registration with the Centre; conducting of customer due diligence; record-keeping of client information and transaction records; developing, documenting, maintaining and implementing a Risk Management and Compliance Programme; training of employees on the FIC Act compliance obligations; appointment of a compliance officer; reporting obligations – cash threshold reports, suspicious transactions reports and terrorist property reports.
- 1.3. Schedule 2 contains the list of supervisory bodies that are responsible for ensuring compliance with the provisions of the FIC Act. The objective of the proposed amendments to Schedule 2 is to ensure effective supervision of accountable institutions listed in Schedule 1 and those proposed businesses for inclusion as accountable institutions.
- 1.4. Schedule 3 lists reporting institutions, namely, motor vehicle dealers and Kruger rand dealers. For reporting institutions there are just two compliance obligations, namely, to register with the Centre and to file regulatory reports. These reports are the suspicious transactions reports and cash threshold reports. The fact that reporting institutions have no legal obligation to identify and verify clients, or retain client and transactional records, significantly reduces the value of the information they can report to the Centre.
- 1.5. The enactment of the Financial Intelligence Centre Amendment Act, 2017, was a significant step to bring South Africa's measures against money laundering and terrorist financing in line with international best practices. The enactment of the

Financial Sector Regulation Act, 2017 (the FSR Act), further contributes to the protection of the South African financial system from abuse by introducing a robust supervisory framework and establishing the Prudential and the Financial Sector Conduct Authorities.

- 1.6. The consultation paper discusses items where there are proposed amendments of a substantive nature and also those that are technical in nature. Comments are invited on these proposed amendments.

## PART 2

### 2. PROPOSED AMENDMENTS TO SCHEDULE 1 TO THE FIC ACT

#### 2.1. Item 1 – Legal practitioners - Technical amendment to take into account new legislation

2.1.1. The current wording of Item 1 relates to practitioners who practice as defined in the Attorneys Act, 1979 (Act 53 of 1979). The amendment takes into account the fact that the Attorneys Act was repealed and replaced by the Legal Practice Act, 2014 (Act 28 of 2014). Consequent changes that must be made include the inclusion of persons that are admitted by the High Court to practice and authorised to be enrolled as a legal practitioner, conveyancer or notary in terms of section 24 of the Legal Practice Act and who is required to have a Fidelity Fund Certificate under section 84 of that Act.

#### 2.2. Item 2 – Amendment to include Trust and Company Service Providers

2.2.1. Item 2 of Schedule 1 to the FIC Act relates to a board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988). It is proposed that this Item should be amended to include trust and company service providers.

2.2.2. Experience shows that the trust and company service providers' sector is exposed to potential exploitation by those looking for methods to launder criminal proceeds or raise funds for terrorist activity. This sector would generally include all those persons and entities that, on a professional basis, participate in the creation, administration and management of trusts and corporate vehicles (such as companies).

2.2.3. "Gatekeepers" can be described as those who provide gateways to the financial system through which potential users of the system, including launderers, can pass in order to do business with financial institutions without revealing their own identities. Gatekeepers play varied and significant roles in facilitating the creation of companies, trusts and other corporate vehicles. All their functions may be legitimate but there may also be occasions when crime syndicates or individual criminals seek out these

gatekeepers for the same services albeit for nefarious purposes. This is especially so since gatekeepers are able to offer expertise and can act as intermediaries lending an appearance of legitimacy to criminal transactions.

2.2.4. The infamous “Panama Papers” is a case in point. Millions of financial documents were leaked from a large offshore law firm, Mossack Fonseca, in Panama. These leaked documents detail large amounts of money sheltered in tax havens, pocketed by powerful political players around the world. It also includes the details of approximately 214,000 entities including companies and trusts and exposes how the wealthy and powerful use tax havens to launder money, dodge sanctions and avoid tax. Almost 2000 cases involving South Africans have been identified from the Panama Papers.

2.2.5. This trend toward the involvement of various legal and financial experts, or gatekeepers, in money laundering schemes has been documented previously by the FATF and appears to continue today. The Centre’s experience bears this out.

2.2.6. The FATF Standards apply to a number of financial and other institutions, including what is referred to as “designated non-financial businesses and professions” (DNFBPs). DNFBPs include lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones. In terms of the FATF Standards, trust and company service providers must be covered under the scope of the anti-money laundering and combating the financing of terrorism legislation when they prepare for or carry out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

2.2.7. In terms of the FATF Standard, lawyers, notaries, other legal professionals and accountants should also be covered under the scope of legislation against money laundering and terrorist financing when they prepare for or carry out transactions for a client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

2.2.8. Legal practitioners and estate agents are covered within the scope of the FIC Act. However, accountants are not covered.

2.2.9. It is proposed that Item 2 of Schedule 1 to the FIC Act be amended to take into account the activities that must be covered within the scope of legislation against money laundering and terrorist financing of any person who, as a business, provide the relevant services in terms of trusts and companies.

### 2.3. **Item 4 – Authorised user of an exchange – Technical amendment to take into account new legislation**

2.3.1. Item 4 of Schedule 1 to the FIC Act refers to an authorised user of an exchange as defined in the Securities Services Act, 2004 (Act 36 of 2004). The Securities Services Act was repealed and replaced by the Financial Markets Act, 2012 (Act 19 of 2012). The scope of Item 4 of Schedule 1 to the FIC Act will remain the same but the reference to the relevant legislation will be updated to refer to the Financial Markets Act, 2012.

## 2.4. **New proposed Item 7A – Co-operative banks**

2.4.1. It is proposed to include co-operative banks as a new Item 7A in Schedule 1 to the FIC Act. Banking encompasses a wide range of financial products and services that are associated with different money laundering and the financing of terrorism risks. Although the focus is generally on retail and other banking services as defined in the Banks Act, 1990 (Act 94 of 1990), co-operative banking services can also be attractive to money launderers. With no regulatory requirement for customer identification and verification applied to co-operative banking service providers prior to them undertaking the first business transaction, they are also vulnerable to their businesses being exploited by launderers posing as members.

2.4.2. In addition, according to the FATF Standards, all types of financial institutions that accept deposits from customers have to be covered within the scope of anti-money laundering and combating the financing of terrorism legislation.

2.4.3. It is proposed, therefore that co-operative banks will be included in Schedule 1 by referring to their current definition in the Co-operative Banks Act, 2007 (Act 40 of 2007).

2.4.4. It is understood that co-operative banks and cooperative financial institutions are different to commercial banks and therefore a different type of compliance and supervision will apply. In this respect it should be borne in mind that the FIC Act requires accountable institutions to apply a risk based approach in their compliance with the Act.

## 2.5. **Item 8 – Long term insurance – Technical amendment to take into account new legislation**

2.5.1. The technical amendment takes into account the new legislation on insurance, that is, the Insurance Act, 2017 (Act 18 of 2017). Major parts of both the Long-Term Insurance Act, 1998 (Act 52 of 1998) and the Short-term Insurance Act, 1998 (Act 53 of 1998) were replaced by the Insurance Act, 2017. In addition, Exemption 7 which dealt with exemptions for insurance and investment providers for products that were regarded as having little or no money laundering or terrorist financing risk, (such as

small funeral policies, policies in terms of which a benefit is only paid upon the death or disability of the policyholder and policies issued to retirement funds,) was withdrawn. Such insurance and investment providers were, under Exemption 7, exempted from the duty to identify clients and keep records.

2.5.2. Taking into account the Insurance Act, 2017, the withdrawal of Exemption 7 and the risk based approach which is catered for in the FIC Amendment Act, the wording has to be amended and also take into account that certain classes of insurance which are regarded as having little or no money laundering or terrorist financing risk has to be excluded. The proposed wording is “A person who carries on life insurance business in the “Life Annuities” class, “Individual Investments” class or “Income drawdown” class as described in Table 1 of Schedule 2 to the Insurance Act, 2017 (Act 18 of 2017) or provide rider benefits, as defined in that Act, relating to these classes, but excludes reinsurance business as defined in that Act.”

## 2.6. **Item 11 – Inclusion of credit providers**

2.6.1. The inclusion of certain credit providers within the framework of measures against money laundering and terrorist financing enhances the country’s ability to disrupt crime and place obstacles in the way of criminals’ profiting from crime. Through compliance with the measures against money laundering and terrorist financing credit providers to be fully aware and understand the identity of their client, the source of funds used by a client for a transaction and the nature of the intended business relationship with the client.

2.6.2. Having information sourced from the credit providers’ sector will provide the Centre with a broader information base for disrupting potential money laundering and financing of terrorism activities. The data and information that this sector holds is significant for fighting crime. Therefore, by including credit providers in the scope of the measures against money laundering and terrorist financing of the FIC Act will build a collaborative partnership between the sector and the Centre and law enforcement agencies to combat and disrupt money laundering and the financing of terrorism. A key benefit, therefore, of including the credit providers’ sector in Schedule 1 to the FIC Act is the positive impact this will have on the Centre’s capability for producing better quality and more substantive financial intelligence reports for use in solving crime.

2.6.3. Furthermore, this inclusion will assist South Africa in meeting the FATF Standards. South Africa was assessed in 2009 by the FATF on its compliance with the FATF Standards. With respect to having “financial institutions” covered under the scope of the FIC Act it was found that under the type of financial activity of “lending”, banks were covered but not “other credit providers”.

2.6.4. A requirement for meeting the FATF Standards is that credit providers, as part of the financial institutions’ sector, have to be included under the scope of the framework of measures against money laundering and terrorist financing. The FATF has also recognised the vulnerabilities of the credit providers’ sector and the benefits of having this sector included under the scope of the measures against money laundering and terrorist financing.

**2.7. Item 12 – Financial Services Providers – Technical amendments to clarify the meaning and to take into account new legislation**

2.7.1. It is proposed that Item 12 of Schedule 1 to the FIC Act be amended in two respects:

2.7.1.1. The first is to replace “and” with “or” so that it would read “to provide advice or intermediary services”. This will make it expressly clear that a person who provides either of those services fall within the scope of this Item.

2.7.1.2. Secondly, to align the description of advisory or intermediary services in respect of certain insurance products with the description of “life insurance business”, as discussed above in respect of Item 8 of Schedule 1 to the FIC Act.

**2.8. Item 16 – Ithala Development Finance Corporation**

2.8.1. It is proposed that Item 16 of Schedule 1 to the FIC Act, “Ithala Development Finance Corporation Limited”, be deleted from Schedule 1. This is a consequential amendment to the proposed inclusion of certain credit providers in Item 11 of Schedule 1 to the FIC Act, as discussed above.

**2.9. Item 19 – Money remitter**

2.9.1. Item 19 of Schedule 1 to the FIC Act currently refers to a “person who carries on the business of a money remitter”. In applying the FATF Standard, South Africa has to

ensure that this Item fully covers the concept of “money or value transfer providers” as described in the Standard.

- 2.9.2. The FATF Standard describes “money or value transfer services” as “financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTS provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party, and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, including *hawala*, *hundi*, and *fei-chen*”.
- 2.9.3. The reference in this description to services which “have ties to particular geographic regions and are described using a variety of specific terms, including *hawala*, *hundi*, and *fei-chen*” confirms that the FATF Standard applies also to so-called informal money remitters who arrange for the transfer and receipt of funds or equivalent value and settle through trade, cash and net settlement over a period of time.
- 2.9.4. The FATF Standard has a number of implications for money or value transfer services, including that they should be “licensed or registered, and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations” and that countries “should take action to identify natural or legal persons that carry out money or value transfer services without a license or registration, and to apply appropriate sanctions”.
- 2.9.5. During the FATF’s 2009 assessment it was found with respect to Item 19 of Schedule 1 to the FIC Act that “the authorities have not taken any substantial action to address the informal (underground) remittance sector”.
- 2.9.6. Based on the above it is proposed that Item 19 of Schedule 1 to the FIC Act be amended to reflect the inclusion of “value transfer providers”.

## 2.10. New Proposed Item 20 – High-Value Goods Dealers

- 2.10.1. According to the FATF Standards the non-financial businesses that should be covered by a country's legislation against money laundering and terrorist financing include dealers in precious metals and precious stones. Currently, this category of business is not covered within the scope of Schedule 1.
- 2.10.2. It is proposed that a category of high-value goods dealers be included in Schedule 1. High-value goods are vulnerable to misuse for money laundering and the financing of terrorism purposes because these goods can be readily purchased and sold anonymously. In addition, individual items of high value are used as a store of value and are easily transportable, offering criminals the opportunity to transfer value between persons and/or countries in a manner that minimises the chance of detection. While criminals can potentially use any high-value goods to launder illicit funds, some high-value goods are more vulnerable to being misused for money laundering or the financing of terrorism than others, such as dealers in precious metals and precious stones (i.e. jewellers), antiques and collectibles, fine art, aircraft, boats and luxury motor vehicles.
- 2.10.3. It has been mentioned above that reporting institutions mentioned in Schedule 3 to the FIC Act have just two compliance obligations, namely, to register with the Centre and to file statutory reports. The fact that reporting institutions have no customer due diligence obligations constitutes a severe loss to the Centre when dealing with money laundering and terrorist financing cases.
- 2.10.4. The experience concerning the risk relating to high value goods dealers and the inclusion of such a category within the scope of the country's legislation against money laundering and terrorist financing is in line with developments in other jurisdictions. The 4th Anti-Money Laundering Directive ("**AMLD4**"), adopted by the European Union on 20 May 2015, applies anti-money laundering initiatives to dealers in high-value goods. The obligations in terms of AMLD4 extend to persons who trade in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 (ten thousand Euro).

2.10.5. Likewise, in the United Kingdom, high-value dealers are subject to the Money Laundering Regulations, 2007. A person is classed as a high-value dealer if he/she accepts cash payments of EUR 15,000 (fifteen thousand Euro) or more (or equivalent in any currency) in exchange for goods.

2.10.6. A proposed category of high value goods dealers will be focussed on the retail sector as the risk of money laundering and terrorist financing lies in this area. Consultation with, amongst others, the Diamond Council and the Jewellery Council has confirmed the view that the risk lies in the retail sector as compared to the manufacturing or wholesale sector in so far as trade in precious metals and stones is concerned.

2.10.7. It is proposed therefore that a new Item be inserted in Schedule 1 to the FIC Act in referring to businesses in respect of any transaction for which the business receives a payment or payments of R100 000, 00 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked. This category will include the categories of business that are currently referred to in Schedule 3 of the FIC Act, namely, Kruger rand dealers and motor vehicle dealers.

## 2.11. **New Proposed Item 21 – South African Mint Company (RF) Proprietary Limited**

2.11.1. The South African Mint Company (RF) Proprietary Limited (South African Mint), is a subsidiary of the South African Reserve Bank (SARB). Part of their business includes the selling of a range of collectable coins of different precious metals to the retail trade. During consultations with the Centre, the SARB and South African Mint, it was agreed that the South African Mint be specifically listed in Schedule 1 as an accountable institution. The scope of business that will be covered would be to the extent that the South African Mint distributes non-circulation coins in retail trade and where in respect of such transaction it receives a payment or payments in any form of R100 000,00 or more, whether the transaction is executed in a single operation or in several operations that appear to be linked.

## 2.12. **New Proposed Item 22 – Crypto Asset Service Providers**

- 2.12.1. Crypto assets are digital representations of value that are decentralised, peer-to-peer traded, cryptographically signed and convertible. The creation, management and maintenance is dealt with in a peer-to-peer environment where the protocol (or software) maintains the rules and regulations based on a strict mathematical basis. This means that transactions can take place without the involvement of any central authority such as a central bank or any traditional financial institution.
- 2.12.2. The question of whether or not crypto assets can be used for money laundering seems to be a moot point since there are already known cases globally and in South Africa where they have been used for such activities. It has also been recognised by the FATF that crypto asset payment products and services present money laundering and terrorist financing risks. The risk of anonymity in the use of crypto assets should be addressed. Convertible crypto assets that can be exchanged for fiat currency or other crypto assets are potentially vulnerable to money laundering and the financing of terrorism. They may allow greater anonymity than traditional non-cash payment methods. Crypto asset systems can be traded on the Internet, are generally characterised by non-face-to-face customer relationships, and may permit anonymous funding (cash funding or third-party funding through virtual exchanges that do not properly identify the funding source). These exchanges may also permit anonymous transfers, if senders and recipients are not adequately identified.
- 2.12.3. The FATF stated that it is prudent for countries to identify and mitigate these risks to protect the integrity and transparency of its financial environment. On this basis the FATF Standards were amended in 2018 to expressly require that countries apply their frameworks of measures against money laundering and terrorist financing to businesses that provide certain services in respect of crypto assets. In this context the FATF's focus is on the point of intersection between crypto assets and the regulated financial system.
- 2.12.4. It is proposed therefore that a new Item be inserted in Schedule 1 to the FIC Act referring to service providers in respect of crypto assets that will include

businesses that exchange crypto assets for fiat currencies or vice versa, conduct transactions that move crypto assets from one crypto asset address or account to another, provide facilities for the safekeeping or administration of crypto assets or instruments that enable the control of crypto assets and participate in or provide financial services related to issuers' offers or sale of crypto assets.

**2.13. New Proposed Item 23 – Clearing system participant that facilitates or enables the origination or receipt of any electronic funds transfer**

2.13.1. This Item was proposed by the National Payment System Department of the South African Reserve Bank. The proposed inclusion is of a clearing system participant as defined in section 1 of the National Payment System Act, 1998 (Act 78 of 1998) that facilitates or enables the origination or receipt of any electronic funds transfer and or acts as an intermediary in receiving or transmitting the electronic funds transfer.

2.13.2. The purpose of this inclusion is to capture the payment system participants supervised by the NPSD with the assistance of the Prudential Authority. Currently, without the proposed amendments, Schedule 1 to the FIC Act provides for deposit-taking institutions but excludes participants in the payment system that are facilitating domestic and cross-border electronic funds transfer as accountable institutions. Section 6(1) and 6(3) of the National Payment System Act enables the NPSD to designate a non-bank as a designated clearing system participant to participate in any of the existing payment streams, e.g. electronic funds transfer payment clearing house (PCH) agreement, debit and credit card PCH agreements, etc.). As of the date of this submission, all the institutions that provide services as clearing system participants (and will therefore be covered by the inclusion) are authorised banks operating in South Africa under the regulation of the Prudential Authority. These intuitions are accountable institutions by virtue of the coverage of item 6 of Schedule 1 to the FIC Act. Furthermore, should any institutions that are not banks be accepted as clearing system participants in future, those institutions would automatically become accountable institutions by virtue of the coverage of this new item.

## PART 3

### 3. PROPOSED AMENDMENTS TO SCHEDULE 2 TO THE FIC ACT

- 3.1. The supervisory bodies that fall within the scope of the FIC Act are listed in Schedule 2 to the Act. They are the following:
- the Financial Services Board
  - the South African Reserve Bank
  - the Estate Agency Affairs Board
  - the Independent Regulatory Board for Auditors
  - the National Gambling Board
  - a Law Society of South Africa
  - Provincial licensing authorities as defined in the National Gambling Act, 2004 (Act 7 of 2004)
- 3.2. During November 2017, the then Minister of Finance, M K N Gigaba, approved a recommendation from the Centre that it start a process to exit the Estate Agency Affairs Board, Independent Regulatory Board for Auditors, Gambling Boards and Law Societies as supervisory bodies, as listed in Schedule 2 to the FIC Act.
- 3.3. During the FATF's 2009 assessment 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.
- 3.4. Subsequent to the 2009 FATF peer review process, the FIC Act was amended to introduce an enhanced system of supervision and administrative enforcement provisions, directed at addressing the identified weaknesses in South Africa's measures against money laundering and terrorist financing through strengthening the supervision and enforcement powers of the Centre and supervisory bodies. Consequently, the Centre embarked on an extensive internal process introducing new processes and procedures to enhance its own supervision capabilities, and guiding and encouraging other supervisory bodies to do the same.

- 3.5. Over the last five years the supervisory bodies that are responsible for supervision of non-financial accountable institutions have demonstrated little or no significant improvement in the level of supervision and enforcement of the FIC Act. In particular, very few administrative sanctions have been issued against non-compliant institutions by supervisory bodies in the non-financial sector.
- 3.6. Against this background it is proposed to remove the references to the supervisory bodies that are responsible for supervision of non-financial accountable institutions from Schedule 2 to the FIC Act. This will imply that the Centre will have the responsibility to oversee and enforce compliance with the FIC Act in respect of those categories of accountable institutions that are currently supervised by the relevant bodies.
- 3.7. In addition, it is proposed that certain technical amendments be made to Schedule 2 to the FIC Act in line with the enactment of the Financial Sector Regulation Act, 2017 (Act 9 of 2017). This includes replacing the reference to the Financial Services Board with a reference to the Financial Sector Conduct Authority and the reference to the Registrar of Banks with a reference to the Prudential Authority.
- 3.8. Lastly, it is proposed that references to the categories of accountable institutions for which the supervisory bodies will be responsible be inserted in each of the Items in Schedule 2 to the FIC Act

## PART 4

### 4. PROPOSED AMENDMENTS TO SCHEDULE 3 TO THE FIC ACT

- 4.1. Schedule 3 to the FIC Act lists reporting institutions, namely, motor vehicle dealers and Kruger rand dealers. For reporting institutions, they are required to register with the Centre and to file regulatory reports. These reports are the suspicious transactions reports (a legal obligation for all businesses) and cash threshold reports.
  
- 4.2. As indicated above it is proposed that a new category of accountable institutions be created that will cover high value goods dealers. A consequential amendment to the inclusion of such a category of accountable institutions would be to delete the references to Items 1 and 2 of Schedule 3 to the FIC Act, since these two categories of reporting institutions will be included in the new category of high value goods dealers.