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Mr Allen Wicomb
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Dear Sirs

Citibank, N.A., South Africa Branch Comments to the Financial Intelligence Centre Amendment Bill, 2015

We wish to thank you for the opportunity to comment on this Bill.

Citibank fully supports the long-standing commitment to combat money laundering and financing of terrorism, and in the interest of our commitment, we provide herewith our views, comments and suggestions on the Financial Intelligence Centre Amendment Bill, 2015.

Chapter 1 – Definitions:

The definition of "beneficial owner" under Section 1 (d) only reference natural person who owns the legal person or exercises effective control of the legal person. It is unclear what is incumbent under "effective control" as it relates to a legal person.

The definition of "foreign prominent public official and domestic prominent influential person" is not a definition that is known in the international market. As a bank we are reliant on a database that would incorporate all of the individuals, especially member of a royal family, senior traditional leaders as defined. Will the Financial Intelligence Centre maintain the list of the Companies that provides goods or services to an organ of state in order to enable us as an accountable institution to comply with the act? In respect of Section 1 (g) (c) it is unclear which entities would fall under

the definition of "an international organization" as this could include all legal entities based in South Africa with a foreign shareholder(s).

Amendment to Section 21of Act 38 of 2001

In the previous Financial Intelligence Centre Act and related Regulations, the level of ownership was defined as 25% or more voting rights at the general shareholders meeting however in the Amendment Bill no such shareholding has been specified. Is the expectation from the legislature to require Accountable Institutions to identify and verify its customers to the Ultimate Beneficial Ownership ("UBO") and further to what percentage (25% or 100%)? Is there an expectation that beneficial ownership must be established and verified for all immediate companies leading up to the UBO?

The words "Duty to identify clients" has been replaced with "customer due diligence" however customer due diligence has not been defined as a duty on the Accountable Institution to identify and verify certain information of the client or to merely identify certain information of the client? Further, is there an expectation on the Accountable Institution to identity and verify or only identify the UBO of the client?

Clause Reference – Section 21 (G) - Domestic prominent influential person and Foreign prominent public official

This section requires senior management approval to be obtained when entering into a single transaction or to establish a business relationship, however there is currently no definition of "what would constitute senior management approval" Is senior management approval required from all senior management or just specific executives? Would senior management include the board of directors? Is a senior management the executive manager, Chief Executive Officer, Chief Financial Officer?

Clause Reference – Section 21 (H) - Family members and known close associates

The issue faced by Citibank South Africa and in all likelihood all accountable institutions in South Africa is that there is currently no database which contains records of the Prominent Influential persons including previous spouse, civil partner, children step children, sibling, step sibling, and their spouse, civil partner or life partner. Such information is not readily available in the public domain and if available, the veracity of the information would need to be interrogated.

Clause Reference – Section 26 A Notification of persons and entities identified by Security Council of the United Nations.

Is there an expectation that accountable institutions are required to comply with other Resolutions over and above Resolution 1267 of United Nations Security Council, if so what they are as it is not specifically mentioned in the Amendment Bill?

Clause Reference - Section 14: Proposed substitution of section 24 of the Financial Intelligence Centre Act, 2001

Section 14 of the FIC Amendment Bill seeks to introduce a requirement that documents obtained from clients of an accountable institution pursuant to the provisions of section 21 of must be stored in South Africa. This proposed requirement fails to recognize the international nature of data storage and transfer in the modern world. The advent of cloud computing has enabled companies to efficiently store data around the world in a cost effective manner whilst still being able to retrieve that data.

It is in South Africa's interests to be integrated into the global economy and this requires that South Africa treats data in much the same way as other developed and emerging nations do.

The question of the cross-border transfer of data is an issue that data protection legislators around the world have grappled with for a number of years. Rather than prohibit the cross-border transfer and storage of data, global best practice is to ensure that the confidentiality and integrity of the data is maintained in the country to which it is transferred.

South Africa's new data protection legislation, the *Protection of Personal Information Act, 2013* **(POPI)** (the operative provisions of which are yet to come into force) is no different. Section 72 allows for the cross-border transfer of personal information in the following circumstances:

1 **Adequate protection: Where the personal information will be adequately protected after the transfer in terms of:**

(1) a law;

(2) a binding agreement between the transferor and the foreign recipient; or

(3) binding corporate rules (policies or undertakings with which the transferor and foreign recipient must comply);

which upholds principles similar to those in POPI regarding the lawful processing of personal information and further cross-border transfers of personal information (section 72(1)(a)).

2 **Conclusion or performance of a contract:**

(1) Where the transfer is necessary for the performance of a contract between the data subject and the transferor, or for the implementation of pre-contractual measures taken in response to the data subject's request (section 72(1)(c)).

(2) Where the transfer if necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the transferor and a third party (section 72(1)(d)).

3 **Consent: Where the data subject (the person to whom the personal information relates) consents to the transfer (section 72(1)(b)).**

4 **Benefit of the data subject:** Where the transfer is for the benefit of the data subject and it is not reasonably practicable to obtain their consent to the transfer, but if it were reasonably practicable, the data subject would be likely to give consent (section 72(1)(e)).

The information provided by individuals and legal entities pursuant to the provisions of section 21 of FICA is largely personal information as defined in POPI. The protections afforded to personal information in POPI would therefore apply to such information when stored in foreign jurisdictions for purposes of FICA.

We submit that POPI generally and the cross-border data transfer provisions in particular are adequate in their protection of information and in line with international best practices and legislation. Indeed, POPI goes further than the equivalent legislation in many other countries by protecting corporate personal information too. (Section 1 defines "personal information" as "information relating to an identifiable, living, natural person and where it is applicable, an identifiable, existing juristic person...")

The proposed section 14 of the FIC Amendment Bill contradicts what is intended by POPI and creates an anomalous situation in which information collected for the purposes of the FIC Act may not be stored in a foreign jurisdiction but the same information collected for a different purpose may be stored in a foreign jurisdiction.

It is therefore our submission that the proposed inclusion of section 24(5) of FICA:

1. Negates the Legislature's detailed consideration of South Africa's privacy laws and is in conflict with and undermines the adequate protections afforded by POPI.

2. Constitutes an unjustified limitation on the rights of individuals to conduct their business in the manner they desire, which is not rationally connected to the purpose for which the amendment is sought to be introduced.

3. Is not connected to the objects of FICA and serves no purpose in that the FIC Amendment Bill proposes and amendment to section 24(1) which already permits record keeping by a third party but strictly conditional upon "the records [being] readily available to the Centre and the relevant supervisory body for the purposes of performing its function in terms of [FICA]. Clearly therefore, even data which is stored extra-territorially is accessible to the Centre and the relevant supervisory body.

4. Disregards the substantial costs which will necessarily be incurred to comply with the proposed introduction of section 24(5) some 14 years after the promulgation of FICA.

Your consideration to the abovementioned matters would bring clarity and would assist us in swiftly implementing this important piece of legislation in order to combat money laundering.

Yours sincerely,

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