

NAME OF PERSON COMPILING SUBMISSION: SADIYAA AMOD

ORGANISATION: BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: AMENDMENTS TO THE FIC ACT SCHEDULES

Additions are noted in brackets [xxx], and deletions are struck through ~~xxx~~

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	SCHEDULE 1 LIST OF ACCOUNTABLE INSTITUTIONS		
1.	GENERAL BASA is of the view that the list of accountable institutions is too wide.		
2.	Item 1. (a) A [practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979)] <u>person who is admitted and enrolled to practise as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) and who is—</u> <u>(i) an attorney (including a conveyancer or notary) practising for his or her own account</u> <u>as contemplated in section 34(5)(a) of that Act; or</u>	No comments.	

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	<p><u>(ii) an advocate contemplated in section 34(2)(a)(ii) of that Act.</u></p> <p><u>(b) A commercial juristic entity, as contemplated in section 34(7) of the Legal Practice Act, 2014.</u></p>		
3.	<p>Item 2. (a) 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)] <u>person who carries on the business of preparing for, or carrying out, transactions for a client, where–</u></p> <p><u>(i) the client is assisted in the planning or execution of–</u></p> <p><u>(aa) the organisation of contributions necessary for the creation, operation or management of a company, or of an external company or of a foreign company, as defined in the Companies Act, 2008 (Act 71 of 2008);</u></p> <p><u>(bb) the creation, operation or management of a company, or of an external</u></p>	<p>1) The comment only refers to “person acting as nominee....”.</p> <p>a) the reference to the Companies Act should be replaced, as the Companies Act refers to nominee as defined in the Financial Markets Act; It could, however, be of valuable effect if (b.i) is defined with reference to the narrower approved nominee concept in the Financial Markets Act 19 of 2012, which deals with the uncertificated securities environment.</p> <p>b) In this sense, nominees will normally enter into an outsourcing agreement with another entity for example a bank or the broker member to perform its function. In this sense, nominees do not have many clients, typically only one. They are not operational entities and have no capital. They also do no employ</p>	<p>1) We propose that (b) is defined with reference to the narrower approved nominee concept in the Financial Markets Act 19 of 2012, which deals with the uncertificated securities environment.</p> <p>Suggested wording to read:</p> <p><u>(b) A person who carries on the business of–</u></p> <p><u>(i) acting for a client as a nominee as defined in the Companies Act, 2008 [Financial Markets Act (19 of 2012)].</u></p>

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	<p><u>company or of a foreign company, as defined in the Companies Act, 2008; or</u></p> <p><u>(cc) the operation or management of a close corporation, as defined in the Close Corporations Act, 1984 (Act 69 of 1984).</u></p> <p><u>(b) A person who carries on the business of–</u></p> <p><u>(i) acting for a client as a nominee as defined in the Companies Act, 2008; or</u></p> <p><u>(ii) arranging for another person to act for a client as such a nominee.</u></p> <p><u>(c) A person who carries on the business of creating a trust arrangement for a client.</u></p> <p><u>(d) A person who carries on the business of preparing for or carrying out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).</u></p>	<p>staff. So practically all nominees will have to outsource this to an FSP, broker or bank who are already AIs. Hence this inclusion does not add sufficient value in terms of risk management, as the aforementioned entities are already covered as AIs elsewhere.</p> <p>2) Given the criticism in the FATF MER, where there was specific reference to “nominee shareholders” “nominee directors”, this definition of “nominee” is not catering for that position – where is this provided for?</p> <p>3) Clarity is also required for “another person acting as a nominee” – what is meant by this?</p>	
4.	<p>Item 4- An authorised user of an exchange as defined in the [Securities Service Act, 2004 (Act 36 of 2004)] Financial Markets Act, 2012 (Act 19 of 2012).</p>	<p>1) We note that item 4 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</p>	

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		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.	
5.	Item 5- A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of [the Collective Investment Schemes Control] <u>that Act [(Act 45 of 2002)]</u> .	No comments.	
6.	<u>Item 7A. A co-operative bank as defined in the Co-operative Banks Act, 2007 (Act 40 of 2007).</u>	No comments.	
7.	Item 8. A person who carries on a “ [long-term] <u>life insurance business</u> ” as defined in the [Long-Term Insurance Act, 1998 (Act 52 of 1998)] <u>Insurance Act, 2017 (Act 18 of 2017)</u> , but <u>excludes reinsurance business as defined in that Act.</u>	<p>1) It is noted that all the concessions/exclusions provided for in the previous version of the Schedule amendments have now been removed.</p> <p>2) Given the construct of the pure risk event life insurance products, there are very little, if any, risk of AML/CTF/CPF abuse through it, and</p>	<p>1) It is recommended that the item be amended to only include specific items as provided for in the Insurance Act:</p> <p>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 this class these classes, but excludes reinsurance business as defined in that Act.”</p>

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		it is recommended that this item be worded in a more restricted fashion	
8.	<p>Item 11 (a) A person who carries on the business of [lending money against the security of securities] a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005).</p> <p>(b) A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1)(a) or (b) of that Act.</p>	No comments.	
9.	<p>Item 12. A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice [and] or intermediary services in respect of the investment of any financial product (but excluding a [short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998)] non-life insurance policy, reinsurance business as defined in the Insurance Act, 2017 (Act 18 of 2017) and [a health service benefit provided by] the business of a medical</p>	No comments.	

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	scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998.))		
10.	Item 14. The <u>South African Postbank Limited</u> referred to in section [51] 3 of the [Postal Services Act, 1998 (Act No. 124 of 1998)] <u>South African Postbank Act, 2010 (Act 9 of 2010).</u>	No comments.	
11.	Item 16. [The Ithala Development Finance Corporation Limited.]	No comments.	
12.	Item 19. A person who carries on the business of a money [remitter] or <u>value transfer provider.</u>	<p>1) It would be helpful to obtain further clarity whether the scope includes those products and services offered by means of the National Payments System only (i.e., 4 party model), or does it cover those conducted by the entity alone (e.g. on-us, interbank etc.)?</p> <p>2) We note that money remitter was previously interpreted as external/cross-border remittance as per the provisions of the Exchange Control Manuals and therefore limited to ADs and ADLAs. We suggest that by removing reference to "remitter" and replacing the word with "transfer provider", that this</p>	<p>1) We suggest that the Regulator provides further guidance whether this is meant to cover payments conducted on the National Payments Network only, or products and services provided directly to customers (i.e., these would already have been included in item 6 "business of the bank" registration)</p> <p>2) We suggest that cash aggregators, who not only collect cash from clients but who also deliver cash to beneficiaries who requested the delivery of cash (by "buying" the cash from the cash aggregator) be included as accountable institutions given the high-risk of money laundering presented by the nature of their business. If the cash aggregator's business only includes the collection of cash for payment into its client's account, then there is of course no</p>

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		<p>item (19) will now include all domestic money transfer providers like Checkers, Pep, etc which is much wider than AD/ADLA.</p> <p>3) There is no definition of a “value transfer provider”, although Exchange Control Manual currently include this term in its description of ADLAs:</p> <ul style="list-style-type: none"> Category Three: Independent money transfer operator or value transfer service provider, facilitating transactions not exceeding R5 000 per transaction per day within a limit of R25 000 per applicant per calendar month. Category Four: A combination of the services provided by Category Two and Category Three ADLAs. <p>4) Clarity is sought on whether this definition is intended to include providers of any other payment service other than those provided by Clearing System Participants as defined in Section 1 of the NPS Act (i.e. interoperable payment systems falling under PASA).</p>	<p>beneficiary involved and as such it should not be regarded as a money or value transfer provider.</p> <p>3) We suggest that third party payment providers (“TPPPs”) (see item 8 under comments) be included as accountable institutions. Inclusion of such TPPPs in general would assist in achieving oversight over payments made by TPPP on behalf of their clients which the bank who holds the account of the TPPP has no insight into, thereby including the ultimate originator or beneficiary into the supervisory framework.</p> <p>4) There needs to be clarity on the extent of “Money transfer provider” as well as “value transfer provider” and whether this covers only AD/ADLA or also all informal/unlicensed providers.</p> <p>5) We recommended that the wording of the Consultation Document be added into the description to provide clarity in this regard:</p> <p>“financial services that involve the acceptance of cash, cheques, other monetary instruments <u>or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary</u> by means of a communication, message, transfer, or through a clearing network to which the MVTs provider belongs; either domestic or cross-border, including CMA.”</p>

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		<p>5) We propose the inclusion of a local definition for “money or value transfer provider”.</p> <p>6) Whilst the NT guidance explains that “money or value transfer services” as defined 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” the use of the word “value transfer provider” is primarily used in the context of remittance services using crypto assets as a means of facilitating credit transfers (remitter or value transfer provider). The implication is thus, in the absence of a comprehensive definition, that the usage of the term will be curtailed to the crypto asset environment only. It bears mentioning that the term with its limited scope is also used in this limited context throughout the guidance issued by the National treasury and the Intergovernmental</p>	

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		<p>Fintech Working Group (IFWG) on crypto assets.</p> <p>7) Would a cash aggregator or cash-in transit company (i.e., a company that collects, distributes, transports and deposits cash based on agreement with retailers and/or banks) be included within the definitions? These entities not only collect cash from their client for payment into that client's account, but may also provide cash to beneficiaries who request the delivery of cash (i.e. the beneficiary "buys" the cash from the cash aggregator). They may also act as third-party payment providers as set out in item 8 below.</p> <p>8) It is not clear whether the intention was to include third party payment providers ("TPPPs") as contemplated under section 7 (c) of the National Payment System Act 78 of 1998. According to section 7 (c), a person may as a regular feature of that person's business accept money or payment instructions from any other person for purposes of making payment on behalf of that other person to a third person to whom that payment is due, if the</p>	

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		money is accepted or payment made in accordance with directives issued by the Reserve Bank from time to time in terms of section 12. Money or value is thus transferred by the TPPP to a beneficiary, the only difference being that the money may not be due to the beneficiary.	
13.	<u>Item 20. A person who carries on the business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of R100 000,00 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked, where "high-value goods" means any item that is valued in that business at R100 000,00 or more.</u>	<ol style="list-style-type: none"> 1) What was the rationale behind the R100K limit as it seems to be an arbitrary amount? 2) Clarify what financial crime risk is posed by these businesses that they are to be defined as an AI. 3) We will appreciate clarity and guidance on the following: <ol style="list-style-type: none"> a. What is meant by "<i>or in more than one operation that appears to be linked.</i>" b. How multiple payments, should be calculated (i.e. within what period of time should the multiple payments be made in relation to the one transaction of R100 000 or more). 4) Are the obligations only applicable to those <i>transactions</i> in excess of the R100,000.00 threshold (single or combined), or does it apply to all products and services offered by the 	<ol style="list-style-type: none"> 1) We propose that the definition of high-value goods be included in legislation to avoid confusion. 2) We also suggest that as per the consultation document, specific classes of business/ traders are designated by the Minister, as mentioned within the item: "such as dealers in precious metals and precious stones (i.e. jewellers), antiques and collectibles, fine art, aircraft, boats and luxury motor vehicles." 3) As the intention is clearly that motor vehicle dealers/Kruger Rand dealers must be included under this item, they need to be specifically included either by name or product/industry. 4) We suggest the following wording may be helpful: <p><u>"A person who carries on the business of dealing [or facilitating a trade of] high value goods[, as designated by the Minister,] in respect of any transaction where such a business receives a payment or payments in any form to the value of</u></p>

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		<p>AI? We request that certainty be provided regarding the definition and scope of this Item and the practical impact on the conversion of existing reporting institutions to accountable institutions.</p> <p>5) “More than one operation that appears to be linked” will include all credit instalment agreements >R100K, inclusive of home renovations, property transactions, vehicle purchases, could be lump sum investments/policies – and this will cause overlap with other Schedule 1 Items.</p> <p>6) We suggest that although there is full agreement with the reason for the inclusion of this item as argued in the consultation document, it is quite possible that the current phrasing will not achieve the purpose. Designation as an AI requires registration with the FIC – if “high value goods” are only defined by the value, then smaller sales of “high value goods” e.g. precious metals/stones and art/antiques will not require registration. It may be helpful to rather define it by industry/nature of the business – once the industry/nature of the</p>	<p><u>R100 000,00 or more [in cash or any other electronic means], whether the transaction is executed in a single operation or in several operations that appear to be linked”</u></p>

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		<p>business is settled, then the minimum threshold can be applied.</p> <p>7) We suggest that there should be clear distinction between entities that trade Kruger Rand coins versus the dealing in Kruger Rand coins. CAT III FSPs in banks allow clients to buy and sell (trade) Kruger Rands via its platform. The banks do not accept physical coins from clients (no new introduction of Kruger Rand coins). However, they do deliver the coins purchased through the platform if the client requests same. If trading/dealing is dealt with in the same way, this implies that those Units within a bank are required to meet the R100 000 threshold as set out in Schedule 1 Item 20.</p> <p>8) It is believed that Kruger Rand dealers will fall under this section, but Kruger Rands do not cost R 100 000.00 each – does that mean we only have to look at transactions over R 100 000.00?</p> <p>9) It is not clear whether all Kruger Rand dealers have to register under this item or is it only if they amass sale of more than R 100 000.00.</p>	

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14.	<u>Item 21. The South African Mint Company (RF) (Pty) Ltd, only to the extent that it distributes non-circulation coins in retail trade and where in respect of such transactions it receives payment in any form to the value of R100 000,00 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked.</u>	1) We suggest that although there is full agreement with the reason for the inclusion of this item as argued in the consultation document, the current formulation may be problematic. Reference to the nature of the function of the SA Mint in respect of which it will be considered and AI necessary, we suggest that the AI status should not be linked to the value of the transaction.	

15.	<p>Item 22. A person who carries on the <u>business of one or more of the following activities or operations for or on behalf of a client:</u></p> <p><u>(a) Exchanging a crypto asset for a fiat currency or vice versa;</u></p> <p><u>(b) exchanging one form of crypto asset for another;</u></p> <p><u>(c) conducting a transaction that transfers a crypto asset from one crypto asset address or account to another;</u></p> <p><u>(d) safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset; and</u></p> <p><u>(e) participation in and provision of financial services related to an issuer's offer or sale of a crypto asset, where "crypto asset" means a digital representation of perceived value that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act 19 of 2012).</u></p>	<p>1) We agree with inclusion of item 22, but we request assistance and clarity on the following in terms of item 22 (c):</p> <p>a. Should this then be an additional AI registration for banks?</p> <p>b. Will this also cover normal retail/wholesale business (of whatever nature) that accepts crypto assets for payment of goods, as this happens in the context of "carries on the business of"?</p>	<p>1) FATF recommendation 15 refers specifically to "virtual asset service providers" and such are defined in the same way as item 22.</p> <p>2) We suggest that for clarity of implications, a definition or reference to another government-issued instrument that contains a definition, will be most helpful.</p>
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16.	<u>Item 23. 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.</u>	<p>1) We request assistance and clarity on the following:</p> <p>a. Would money remitters be required to register under item 19 and then again under item 23 if they clear funds through a network to which they are a participant.</p> <p>b. Currently banks, are licensed as Authorised Dealers and would have registrations in terms of Schedule 1 items 6 (business of a bank), 10 (foreign exchange dealer), 13 (traveller's cheques, money orders or similar instruments) and 19 (money remitter). Simultaneously, banks are also considered to be clearing participants. Would banks need to register an additional AI under item 23 again (which will be a duplication of other existing registrations), or is this only for new participants that are not licensed as Authorised Dealers or Authorised</p>	<p>1. We will appreciate the Regulator to confirm whether banks need to also register under this item, and if indeed so, how this item and the products and services under items 6, 10, 13 & 19 needs to be separated to avoid duplication and ensure products and services mappings remains adequate.</p> <p>2. Is a single registration under item 23 required, or per each PCH in which the entity is licensed? Also see general comments in this regard.</p>

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		Dealers with Limited Authority? 2) We also request clarity on the following. Banks are typically members of up to 19 different PCH PG's at the Payments Association of South Africa. A bank is currently a CSP by virtue of being a bank. Hence, we assume that the bank will require only one license as a CSP, not one per payment stream.	
<p align="center">SCHEDULE 2</p> <p align="center">LIST OF SUPERVISORY BODIES</p>			
<p>GENERAL</p> <p>It is suggested that the FIC be included in Schedule 2 as a supervisory body and that the items of Schedule 1 over which the FIC exercises supervision and enforcement are stipulated.</p>			
17.	Item 1- [The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990)] <u>The Financial Sector Conduct Authority established by the Financial Sector Regulation Act, 2017 (Act 9 of 2017), in respect of accountable institutions referred to in items 4, 5 and 12 of Schedule 1.</u>	No comments.	

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18.	<p>Item 2. The South African Reserve Bank [in respect of] <u>with regard to</u>–</p> <p><u>(a) the performance of</u> the powers and duties contemplated in section 10(1)(c) in the South</p> <p>African Reserve Bank Act, 1989 (Act 90 of 1989) [and the Registrar as defined in section 3 and 4 of the Banks Act, 1990, (Act 94 of 1990)], in respect of accountable institution referred to in item 23 of Schedule 1;</p> <p><u>(b) the Prudential Authority established by the Financial Sector Regulation Act, 2017 (Act 9 of 2017), in respect of accountable institutions referred to in items 6, 7, 7A, 8, 19 and 23 of Schedule 1;</u> and</p> <p><u>(c) the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961, in respect of accountable institutions referred to in items 10, 13 and 19 of Schedule 1.</u></p>	<p>1) There seems to be an overlap between item 2 (a) and (b) in respect of item 23, as well as between (b) and (c) in respect of item 19</p>	
19.	<p>Item 4–The Estate Agency Affairs Board established [in terms of] by the Estate Agency Affairs Act, 1976 (Act 112 of 1976),</p>	No comments.	

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	<u>in respect of accountable institutions referred to in item 3 of Schedule 1.</u>		
20.	Item 5- [The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005).]	No comments.	
21.	Item 6 [The National Gambling Board established in terms of the National Gambling Act, and retained in terms of the National Gambling Act, 2004 (Act 7 of 2004).]	No comments.	
22.	Item 8- [A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).]	No comments.	
23.	Item 9- A provincial licensing authority as defined in section 1 <u>of</u> the National Gambling Act, 2004 (Act 7 of 2004), <u>in respect of accountable institutions referred to in item 9 of Schedule 1.</u>	No comments.	
<p style="text-align: center;">SCHEDULE 3 LIST OF REPORTING INSTITUTIONS</p>			

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24.	1. [A person who carries on the business of dealing in motor vehicles.]	1) By removing item 1 of Schedule 3, the risk posed by second hand car dealers are not mitigated as they will no longer be a reporting institution if they resell vehicle under R100 000 to avoid regulatory implications.	
25.	2. [A person who carries on the business of dealing in Kruger rands.]	No comments.	