**DOCUMENT SETTING OUT THE COMMENTS RECEIVED AND THE RESPONSES THERETO IN RESPECT OF THE PROPOSED AMENDMENTS ON THE SCHEDULES TO THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001) PUBLISHED FOR COMMENT BY PARLIAMENT - 21 JULY 2022**

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| **ITEM** | **CURRENT WORDING** | **RECOMMENDED WORDING (before Parliament)** | **COMMENTS RECEIVED** | **RESPONSES** |
| **Item 2 (amended to include activities of TCSPs, including accountants)** | 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). | *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)]** person who carries on the business of preparing for, or carrying out, transactions for a client, where–  (i) the client is assisted in the planning or execution of–  *(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);  *(bb)* 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; or  *(cc)* the operation or management of a close corporation, as defined in the Close Corporations Act, 1984 (Act 69 of 1984).  *(b)* A person who carries on the business of–  (i) acting for a client as a nominee as defined in the Companies Act, 2008; or  (ii) arranging for another person to act for a client as such a nominee.  *(c)* A person who carries on the business of creating a trust arrangement for a client.  *(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). | * Commentator - 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. 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 concept in the Financial Markets Act.   * Clarify - for “another person acting as a nominee”. * 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? * Commentator - There is a lack of clarity on what types of service offerings fall within the activities proposed in Schedule 1. * With respect to a FATF comment in respect of SA’s mutual evaluation report (MER) that Designated Non-Financial Businesses and Professions (DNFBPs) are focused on compliance, not on identifying and understanding risks, this is not a finding of malice and non-compliance but rather of lack of understanding and knowledge. This cannot be corrected by mere regulation and enforcement but requires a concerted effort of education and raising of competency levels. * A fundamental risk of scope creep and overlap between supervisory bodies and challenges in coordination and alignment to avoid duplication and wasteful cost increases for duplicate compliance process and reporting. * Proposed changes increase the burden for small practitioners, but it will also increase the burden on the FIC as the protector of the integrity of South Africa’s financial system and it should therefore be ensured that the FIC is prepared and will be able to cope with the increased number of accountable institutions that will be required to register. * Failure by the FIC to appropriately monitor the compliance with the final legislation will render any changes introduced as meaningless and this will not assist in ensuring that South Africa remains off the FATF ‘grey list’. * Cost compliance for small practitioners may be too onerous. * Transitional provisions should be provided to allow for practitioners to evaluate whether the requirements apply to them, and if applicable, to provide time to implement the compliance requirements. * Wording in the FATF standard pertaining to “company services” is specified, inter alia, as acting as company formation agents, directors, secretaries, trustees and nominee shareholders. The FATF wording evolves around designations and creates a degree of legal certainty in that designations can be attributed to specific offices or functions in or outside a company. Item 2 of the amendments to Schedule 1 of FICA appears wider in scope. * FICA in Section 1 does not define the term “person” but defines the term “legal person” instead. * Clarity is provided on the intention of the legislature -people merely employed at accountable institutions should not themselves also be accountable institutions. Individuals should only be accountable institutions where they trade as sole proprietor or in partnership. * Clarify in guidance “Carrying on of a business”; “creation, operation or management of a company”; whether practitioners providing accounting, auditing and tax services (completion and submitting of tax returns) are excluded from the ambit of “operation or management”; who are regarded as accountable institutions where only some practitioners in a practice perform the activities; * Clarify “business of creating a trust arrangement” – would this include testamentary trusts or only “inter vivos” trusts or all trusts as identified by the SARS | The Department advises that item 2(b)(i) should not make reference to the Financial Markets Act as proposed.  The definitions of the Companies Act apply to all companies (private and public), while the Financial Markets Act relates to public companies and the trading of their securities on an exchange. The definition of a nominee in the FMA is therefore too narrow as the category of Company Service Providers should include service providers in respect of both public and private companies.  Moreover, the definition of nominee in Companies Act is substituted by section 111 of the FM Act.  The Department therefore advises that the drafting as tabled be retained.  The phrase “another person acting as a nominee” is not used in the proposed item 2. The item contemplates two possibilities: i) a service provider who, as a service to their client, acts as the registered holder of securities or an interest in securities on behalf of their client (item 2(b)(i)), and  ii) a service provider who, as a service to their client, arranges for another person to act as the registered holder of securities or an interest in securities on behalf of their client (item 2(b)(ii)).  The Department is of the view that the proposed amendment addresses the FATF’s findings in respect of nominees, fully. The concept of a nominee shareholder is covered in the proposed item 2(b). The Companies Act does not cater for the concept of a “nominee director” as used in the FATF Recommendations, i.e. an individual or legal entity that exercises the functions of a director in a company on behalf of another person.  It is not clear to the Department in which respects the service offerings that will be covered by the proposed item 2 are unclear.  The Department points out that the proposed amendments to the Schedules to the FIC Act are not intended to address the finding in the mutual evaluation report to which the commentator is referring. The proposed amendments are intended to address the finding that the scope of the FIC Act does not include all categories of financial institutions and DNFBPs that are required by the FATF Recommendations.  The Department is of the view that the proposed amendments to Schedule 2 will enable the PA, FCSA and FIC to avoid overlaps and conflicting mandates between them through appropriate MoUs that are already in place, in so far as they may each be responsible for the supervision of accountable institutions that will fall in this category.  The Department is of the view that the application of a risk-based approach that is required by the FIC Act, allows for a business to manage their own risks. The FIC Act does not contemplate a rules-based approach where a small business must deal with AML/CFT compliance in the same manner as a large business.  Further, it cannot be assumed that small businesses deal with low-risk customers only and as a result should be excluded from the scope of the FIC Act.  The FIC and National Treasury have been in ongoing consultation to discuss adequate resources to deal with the additional workload of the FIC as a result of the Schedules amendments in addressing the MER deficiencies.    The Department advises that the Minister of Finance will determine a fixed commencement date by Notice in the Gazette for the amendments to come into operation. Supervisors are sensitive to the fact that new categories of accountable institutions will not be ready to comply with the FIC Act from the outset and set clear expectations for institutions to improve compliance with the FIC Act within reasonable timelines, as was done when the most recent amendments to the FIC Act FIC Amendment Act came into operation in 2017.  The Department is of the view that the proposed item 2 does not go wider than the FATF Standards. The terminology that the FATF uses in its Standards cannot be transferred into the South African legislation directly.  Moreover, the prevalence of the misuse of trust and company service providers in cases of money laundering underscores the need to include this category in measures to combat money laundering.  The Department advises that that the drafting as tabled be retained.  The Department advises that a term that is defined in the Interpretation Act has that meaning in all other legislation, unless it is given a specific meaning in an Act. The term “person” is defined in the Interpretation Act to include both a natural and a legal person.  The Department advises that employees of an accountable institution are not themselves accountable institutions.  The Department advises that the scope of the proposed item 2 will cover all persons who provide the services mentioned as a part of their business, regardless of the profession they are in. The item does not mention, and therefore does not cover, accounting, auditing, completion of tax returns. A business that offers these services only would not be an accountable institution. A business that offers the services that are mentioned in the proposed item 2 in addition to the abovementioned services would be an accountable institution. In a business such as partnership that centralises its functions to comply with the FIC Act each individual who provides the relevant services does not have to comply with the FIC Act in their own capacity.  The Department advises that scope of the wording in Item 2 in respect of trust services will apply to trusts that fall within the definition of “trust” as defined in section 1 of the FIC Act – “trust” means a trust defined in section 1 of the Trust Property Control Act – other than a trust established by virtue of a testamentary disposition, by virtue of a court order, in respect of persons under curatorship or by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund. |
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| **Item 8**  **(life insurers)** | A person who carries on a ‘long-term insurance business’ as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998). | A person who carries on a ’**[long­term]** life insurance business’ as defined in the **[Long­Term Insurance Act,** **1998 (Act No.** **52 of 1998)]** Insurance Act, 2017 (Act 18 of 2017), but excludes reinsurance business as defined in that Act. | * 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 – recommends that it be worded more restrictively. * The FIC had previously published its intention to significantly amend the content in Schedule 1 of the FIC Act. It was our interpretation that long-term risk products would no longer fall into the ambit of the FIC Act, due to the low money laundering and terrorist financing risk that these products pose. Concern is, that as accountable institutions, we would still be required to apply stringent FIC Act controls for products that carry virtually no risk and result in us not being able to provide these products to certain classes of individuals. From a financial inclusion perspective, we are failing to provide services to a range of perspective clients such as foreign nationals legally present in South Africa. | The Department advises that the current scope of item 8 envisages no exclusions for certain types of long-term insurance.  Comments received during and after the Minister’s consultation process (including from a life insurer) advised that the amended item 8 should not introduce exclusions for specific product types, and should reinforce the principle that life insurers should apply a risk-based approach and demonstrate the requisite rationale for the assessment of risk in relation to product types they offer.  This approach maintains the status quo for life insurers and provides the basis for a risk-sensitive approach at an industry level by requiring life insurers to apply enhanced measures in cases where they assess money laundering or terrorist financing risk to be high and allowing them to apply simplified measures where they assess the risk to be low.  The Department advises therefore that exemptions from the scope of the FIC Act should not be created through the descriptions of the items in Schedule 1 to the FIC Act and that the principle of risk-based compliance with the Act should be maintained.  The only exception to this approach in respect of life insurance business is with regard to reinsurance business, which involves business between two accountable institutions and does not involve business with the general public.  The Department advises therefore that the current drafting as tabled be retained. |
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| **Item 12 (FSPs)** | 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 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) and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998) | 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 scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998.)) | Commentator – Intermediary acts as a middleman between the life insurer and the insured. Life insurance should bear the burden of compliance not the intermediary. | The Department’s earlier comment advising against creating exemptions from the scope of the FIC Act and maintaining the principle of risk-based compliance with the Act, also applies in respect of this item.  The inclusion of insurance business in the FATF Standards includes the business of insurance intermediaries. Insurance intermediaries are financial services providers (FSPs) in terms of FAIS Act, 2002, and are under the scope of the FSCA. The current scope of item 12 includes all FSPs (except those that deal with short-term insurance and medical aid schemes, which are not covered by the FATF standards).  The Department advises that the current status quo and the drafting as tabled be retained. |
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| **Item 11 (Credit providers)** | A person who carries on the business of lending money against the security of securities. | 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).  *(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 (Act 34 of 2005) by virtue of section 4(1)*(a)* or *(b)* of that Act. | Commentator - a transitional period is requested to provide new accountable institutions sufficient time to implement and comply with the provisions of the Act.   * Commentator - These clauses relate to credit providers and dealers in high-value goods in excess of R100 000. Argues that compliance with FICA for members who fall in these categories will add to the cost of doing business and that the agricultural sector should be excluded due to it not being a high-risk sector. * Commentator’s proposed wording –   “A person who carries on the business of a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005), excluding credit providers who offer credit as provided for in section 8(1)(a) read with section 8(3) as well as section 8(1)(b) read with section  8(4) of the National Credit Act, 2005 (Act 34 of 2005).”   * Commentator – An amendment to clause 11(b) is proposed, to provide for organisations who may no longer be providing credit, however, may still be managing a runoff loan book. * 11. (b) A person who carries on the business of actively 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.   Alternatively, clarity is requested with regards to clause 11(b) and whether it is intentioned to include organisations who only administer existing loans.  Will this include credit providers who are registered credit providers but only extend credit on an *ad-hoc* basis and where this credit extension is not part of the core business of the entity? Guidance is required where the extension of credit is ancillary to the services or does not constitute the core business of a firm, these persons are excluded from the ambit of this item. | The Department refers to its earlier comment regarding the commencement of the amendments to Schedules that the commencement date will be determined by the Minister of Finance. Supervisors are sensitive to the fact that new categories of accountable institutions will not be ready to comply with the FIC Act from the outset and set clear expectations for institutions to improve compliance with the FIC Act within reasonable timelines.  The Department’s earlier comment advising against creating exemptions from the scope of the FIC Act and maintaining the principle of risk-based compliance with the Act, also applies in respect of this item.  The FATF Standards require that “lending” business be included in the scope of a country’s measures against money laundering and terrorist financing. The Standards include consumer credit and financing of commercial transactions. The Standards envisage no exclusions for credit in particular economic sectors.  The Department advises therefore that the current drafting as tabled be retained.  The Department refers to its earlier comment advising against creating exemptions from the scope of the FIC Act and maintaining the principle of risk-based compliance with the Act. The Department advises therefore that the current drafting as tabled be retained.  The Department advises that a business that administers existing loans will only be included in the scope of this item if that business acquires the rights of a credit provider under a credit agreement after it was entered into.  The Department refers to its earlier comment advising against creating exemptions from the scope of the FIC Act and maintaining the principle of risk-based compliance with the Act. The Department advises therefore that the current drafting as tabled be retained. |
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| **Item 19 (amended**) | A person who carries on the business of a money remitter. | A person who carries on the business of a money **[remitter]** or value transfer provider. | * Commentator - 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.)? * 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 beneficiary involved and as such it should not be regarded as a money or value transfer provider. * Propose the inclusion of a local definition for “money or value transfer provider” -implication if this is not done is that this would only mean remittances in respect of crypto assets. * Suggest that third party payment providers (TPPPs) be included as AIs. Inclusion of such TPPPs in general would assist in achieving oversight over payments made by TPPPs on behalf of their clients which the bank holds the account of the TPPP has no insight into, thereby including the ultimate originator or beneficiary into the supervisory framework. | The Department advises that this proposed amendment would extend the concept of "remittance business" to businesses that remit funds in the form of value, but the item would still apply to the same underlying business activity. The phrase "carrying on the business of" implies that this is provided as a service to customers, i.e. not as "interbank/back office" transactions to settle the banks' own positions. However, banks are already covered by item 19 when they perform remittance transactions for their customers and this amendment would therefore not affect banks.  The Department advises that cash aggregators do not provide the same service as remitters. Consideration as to whether cash-aggregators (and other cash handlers such as security services) should be included under Schedule 1 is a substantive policy issue that would require the Minister to consult the affected businesses and to make the appropriate amendments to create a new item in Schedule 1. This cannot be done in the current process of amending the Schedule.  The Department advises therefore that the current drafting as tabled be retained.  The Department advises that the ordinary meaning of “value transfer” would include value in any form and is not limited to the transfer of value in the form of crypto assets only.  The concept of a value transfer provider includes the transfer of value through alternative remittance systems that do not make use of regulated financial institutions. In line with the FATF standards.  The Department advises therefore that the current drafting as tabled be retained.  The Department’s earlier comment in respect of cash aggregators also applies in respect of third-party payment providers.  The Department advises therefore that the current drafting as tabled be retained. |
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| **New 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. | * It is not clear who the large market is nor what the threshold will be for becoming a dealer in high-value goods. * There are no definitions of the terms “dealer” or “high-value goods”. These terms should be defined as they are very vague and broad. * Argue that the agricultural sector should be excluded in these definitions, as the agricultural sector is not a high-risk sector in terms of money laundering and the impact of applying FICA. * If the sector is not excluded that “high value transactions” should be defined as cash transactions only. * Commentator - supports compliance with the FATF standards and that a grey- listing should be avoided, however, are of the view that the Draft Amendments are too wide – * AMLD4 and the UK Regulations limit the trigger for AML/CTF regulation of high-value dealers to cash transactions, the Draft Amendments refer to businesses receiving “payment ~~in any form~~” to the value of R100 000,00. * It is unclear what is meant by “item”. What is clear, however, is that giving the word its ordinary meaning, it would include items not identified as posing a high risk of money laundering. * Proposes the following: "20. A high-value goods dealer [rather than 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, where the payment is made in cash, 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." * “Dealer” should be defined as dealers within the retail sector and sellers in respect of once off or occasional transactions in high-value goods should be excluded from the definition. Alternatively, the definition of “dealer” should exclude any holder of a permit under the Mineral and Petroleum Resources Development Act 28 of 2002 as follows:   "High-value goods dealer" is any person who is involved in the retail and sale of goods of a high value and excludes the holder of a right in terms of the Mineral and Petroleum Resources Development Act, 2002”.   * Commentator – rationale for the R100 000 threshold? * 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? * Suggested re-drafting –   “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 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.” | The Department is of the view that the threshold of R100 000 and the description of “high-value goods” being items that are valued at R100 000 or more, are clear in the proposed item.  Terms such as ”carries on the business of”, “dealer”, “dealing in” and “item” have their ordinary meaning if not defined and is therefore also not considered to be vague.  The Department’s earlier comment advising against creating exemptions from the scope of the FIC Act and maintaining the principle of risk-based compliance with the Act, also applies in respect of this item.  The Department advises that the objective of this proposed amendment is not to deal with cash transactions only but to have all types of payments methods included, as persons can mobilise funds to purchase such high value goods through a variety of means.  Moreover, the FATF Standards require the inclusion of dealers in precious metals and stones, which will fall under this category, in the scope of a country’s measures to combat money laundering and terrorist financing. The Department advises therefore that the current drafting as tabled be retained.  The Department advises that the ordinary meaning of the terms “caries on the business off” and “dealing in” would exclude businesses that perform once-off or occasional transactions for the sale of items valued at R100 000 or more.  In addition, the Department refers to its earlier comment advising against creating exemptions from the scope of the FIC Act and maintaining the principle of risk-based compliance with the Act. However, the Department is of the view that the proposed item would not include the holders of permits in terms of the Mineral and Petroleum Resources Act, 2002.  The Department advises therefore that the current drafting as tabled be retained.  The Department refers to its earlier comment on the objective of this proposed amendment.  The Department is of the view that Kruger Rand dealers do not deal exclusively in Kruger Rands, but also other high-value items. The nature of the item is therefore not the determinant factor for the scope of this item. Therefore, the proposed item would include Kruger Rand dealers when they conduct transactions that are covered by this item.  The Department advises against a designation process as the FIC Act already enables the Minister to amend Schedule 1 to the Act. The FIC Act does not contain provisions that enable the Minister to adjust the scope of the Schedule further through a designation process. In addition, the Department is of the view that the additional drafting suggestions do not provide greater clarity as to the meaning of the proposed item.  The Department advises therefore that the current drafting as tabled be retained. |
| **New Item 21 (SA Mint)** |  | 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. | * Commentator – agree with this inclusion but suggest that the AI status should not be linked to the value of the transaction. | The Department advises that the reason for the R100 000,00 threshold is to maintain a level playing field with institutions that are covered by the previous item. The Department advises therefore that the current drafting as tabled be retained. |
| **New Item 22 (Crypto Asset Service Providers)** |  | A person who carries on the business of one or more of the following activities or operations for or on behalf of a client:  *a)* exchanging a crypto asset for a fiat currency or vice versa;  *b)* exchanging one form of crypto asset for another;  *c)* conducting a transaction that moves a crypto asset from one crypto asset address or account to another;  *d)* safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset, and  *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). | * Commentator – requests more guidance from the FIC in respect of complying with section 26B of the FIC Act (Prohibitions relating to persons and entities identified by the UN Security Council) and guidance for CASPs to implement a Risk Management and Compliance Programme. * Commentator – agree with the inclusion, however, is this an additional registration for the banks? * For clarity of implications, a definition or reference to another government- issued instrument that contains a definition, will be most helpful. | The commentator merely requires guidance from the FIC. The FIC develops guidance in consultation with affected parties as required by the FIC Act. This will be done in relation to this and the other new items in this proposed amendment.  The Department advises that any institution, including a bank, that performs the activity described in an item in Schedule 1 to the FIC Act is required to register with the FIC under the registration provisions of the FIC Act in respect of that activity.  The Department advises that there is no definition for this activity in other legislative or regulatory material that can be cross-referenced in this proposed item.  The Crypto Assets Regulatory Working Group of the Inter-Departmental Fintech Working published a position paper on Crypto Assets for comment in 2019, which contains a similar definition, but this does not have any legal status and can therefore not be cross-referenced in an Act. The full definition must therefore be contained in this item.  The Department advises therefore that the current drafting as tabled be retained. |
| **New Item 23 (clearing system participants)** |  | 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. | Commentator - Request 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.  Is a single registration under item 23 required, or per each PCH in which the entity is licensed? | The Department advises that a bank would only be required to register with the FIC under the registration requirements of the FIC Act in respect of this item if the activities of a bank that would be covered under this item are different from the activities that are covered by items 6, 10, 13, and 19 for which the bank would be registered already. |

**SCHEDULE 2**

**LIST OF SUPERVISORY BODIES**

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| **ITEM** | **CURRENT WORDING** | **RECOMMENDED WORDING** | **COMMENTS RECEIVED** | **RESPONSES** |
|  |  |  | General comment - 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. | The Department advises that the inclusion of a reference to the FIC in Schedule 2 would create inconsistencies in the provisions of the FIC Act that relate to the functions of the FIC in respect of supervisory bodies, the sharing of information between the FIC and supervisory bodies and consultation requirements between the FIC and supervisory bodies.  The Department advises therefore that the current drafting as tabled be retained. |
| 1 | The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990). | **[The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990).]**  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. | Corwil Investments Group - inappropriate to expect the FSCA to be the Primary Supervisory Body responsible for those Accountable Institutions defined as " Authorized Users [ Category 4 ] per Schedule 1 " since the FSCA would be solely dependent upon the JSE Ltd for support in executing its Statutory Supervisory Role since the information which it would need to rely upon is proprietary to the JSE Ltd. | The Department advises that the function to supervise accountable institutions that are covered by items 4, 5 and 12 of Schedule 1 to the FIC Act was previously entrusted to the Financial Services Board, not the JSE. This is a technical amendment to refer to the successor to the Financial Services Board in terms of the legislation that replaced the Financial Services Board Act, 1990, namely the Financial Sector Conduct Authority.  The Department advises therefore that the current drafting as tabled be retained. |
| 2 | The South African Reserve Bank in respect of the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989, (Act 90 of 1989) and the Registrar as defined in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990) and the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961. | 2. The South African Reserve Bank **[in respect of]** with regard to–  *(a)* the performance of the powers and duties contemplated in section 10(1)(c) in the South 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;  *(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; and  *(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. |  |  |
| 3 | … |  |  |  |
| 4 | The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976 (Act 112 of 1976). | The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976 (Act 112 of 1976), in respect of accountable institutions referred to in item 3 of Schedule 1. |  |  |
| 5 | The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005). | **[The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005).]** |  |  |
| 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). | **[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).]** |  |  |
| 7 | … |  |  |  |
| 8 | A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979). | **[A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).]** |  |  |
| 9 | A provincial licensing authority as defined in section 1 the National Gambling Act, 2004 (Act 7 of 2004). | A provincial licensing authority as defined in section 1 of the National Gambling Act, 2004 (Act 7 of 2004), in respect of accountable institutions referred to in item 9 of Schedule 1. |  |  |

**SCHEDULE 3**

**LIST OF REPORTING INSTITUTIONS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ITEM** | **CURRENT WORDING** | **RECOMMENDED WORDING** | **COMMENTS RECEIVED** | **RESPONSES** |
| 1 | A person who carries on the business of dealing in motor vehicles. | **[A person who carries on the business of dealing in motor vehicles.]** | BASA - 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. | The Department advises that it is of the policy view that there is no value in retaining the current items listed in Schedule 3 to the FIC Act. The reporting institutions referred to in these items reports can provide little useful information to the FIC in their report under the FIC Act as they are not obliged to identify and verify clients, or to retain client and transactional records. The reporting institutions referred to in these items will be covered by the proposed item 20 (high-value goods dealers) as accountable institutions when they perform transactions that are covered by that item.  The Department advises therefore that the current drafting as tabled be retained. |
| 2 | A person who carries on the business of dealing in Kruger rands. | **[A person who carries on the business of dealing in Kruger rands.]** |  |  |