**Report of the Standing Committee on Finance on the Amendment of Schedule 1, 2 and 3 of the Financial Intelligence Centre Act, Act 38 of 2001, dated 30 August 2022**

**Having considered the Amendments to Schedule 1, 2 and 3 of the Financial Intelligence Act, Act 38 of 2001, the Standing Committee on Finance reports as follows**:

1. **Introduction and Background**
	1. On 15 June 2022, the Standing Committee on Finance was briefed by the National Treasury and the Financial Intelligence Centre (“the Centre”) on the amendments to Schedule 1, 2 and 3 of the Financial Intelligence Centre Act, Act 38 of 2001 (“the Act”). The amendments are intended to address the deficiencies relating to the scope of the Schedules by including new sectors and business activities within the scope of regulation.
	2. Sections 73, 75 and 76 of the Act provide respectively for the amendment of Schedule 1, 2 and 3 of the Act. They provide the Minister of Finance (“the Minister”) with powers to amend the list of accountable institutions (Schedule 1), supervisory bodies (Schedule 2), and reporting institutions (Schedule 3), by adding, deleting or making technical changes to the list of persons and institutions listed in these Schedules. It also provides that before the Minister does so, he/she must consult the Centre and the persons and institutions that will be affected. It lastly provides that any addition to or deletion in these Schedules **must,** before publication in the Gazette, be approved by Parliament. Previous amendments to the Schedules in 2010 were only technical as they were amendment to references in legislation that was outdated and did not affect new entities.
2. **BRIEFING BY NATIONAL TREASURY AND FIC**
	1. NT stated that, together with the Centre, was currently reviewing the anti-money laundering and counter terrorism financing legislative framework of South Africa following the recommendations of the Mutual Evaluation Reports on South Africa, including the latest one published in October 2020, by the Financial Action Task Force (FATF); the global standard-setting body on measures to combat money laundering and the financing of terrorism and proliferation.
	2. It stated that the amendments to the Schedules of the Act will widen the application of the Act by including additional categories of institutions and businesses under its scope. It said that the widening of the scope of the Act will bring South Africa’s legislative framework in line with FATF’s standards. NT explained that FATF standards require member countries to extend the scope of the legislative and regulatory framework to a specified list of financial institutions, designated non-financial businesses and professions (DNFBPs) and to virtual asset service providers (VASPs).
	3. NT stated that the amendments were intended to improve the Centre’s ability to provide high-quality financial intelligence to law enforcement agencies.
3. **CONSULTATION PROCESS BY THE MINISTER OF FINANCE**
	1. The consultation process by the Minister commenced in March 2017 with various sectors and supervisory bodies. The proposed amendments were then published by the National Treasury on 19 June 2020, with a closing date of 18 August 2020. 2 295 comments were received, with 312 comments supporting the proposed amendments. The Minister approved the tabling of the amendments in Parliament for consideration and approval at the end of March 2022 and were tabled on 17 May 2022.
	2. The Committee, sitting jointly with the Select Committee on Finance, received a briefing from NT and the Centre on 15 June 2022. The Committee decided that in light of the amendments seeking to include new persons and institutions within the regulatory scope, it will be prudent to invite public involvement and participation.
4. **PUBLIC PARTICIPATION**
	1. After advertising a call for public comments in June, the Committee received written submissions from 11 organisations, namely; OUTsurance, Corwil Investments Ltd, Mineral’s Council of South Africa (MINCOSA), The Agricultural Business Chamber (Agbiz), AgriSA, Banking Association of South Africa (BASA), FEM Construxtion Industry Loan Fund (PTY) Ltd (FEM) , The National Clothing Retail Federation of South Africa (NCRF), South African Institute of Chartered Accountants (SAICA), VALR (PTY) Ltd (VALR), and Franklin Templeton Investments.
	2. On 16 August 2022, public hearings were held where three organisations made oral submissions to the Committee. These were the SAICA, OUTsurance and MINCOSA.
	3. On 24 August 2022, the Committee received responses from NT and the Centre and deliberated and adopted this report, approving the amendments to Schedules 1, 2 and 3 of FICA.
5. **SUMMARY OF AMENDMENTS**
	1. **Schedule 1**
		1. Amendments to Schedule 1 related to: Item 1: Legal practitioners (technical amendment); Items 2: Trust Service Providers- (amendment to include certain activities carried out by trust and company services providers, including accountants); Item 4: Authorized user of an exchange (technical amendment); New Item 7A: Co-operative Banks; Item 8: Long-term insurance business (amendment); Item 11: credit providers (amendment to include a wider sector of credit providers); Item 12: Financial Service Providers (technical amendment); Item 16: Ithala Development Finance Corporation (amendment); Item 19: Money remitters (amended to widen the category); New Item 20: High-value goods dealers; New Item 21: South African Mint Company (RF) Propritary Limited (SA Mint); New Item 22: Crypto asset services providers (CASPs); and New Item 23: Clearing system participants for facilitation of electronic funds transfer.
	2. **Schedule 2**
		1. Amendment to Schedule 2 is aimed at reorganizing the structure of supervisory bodies that are responsible for supervising compliance with the Act. This reorganization is required partly because of amendments in other legislation and partly because supervisory bodies do not actively perform a supervisory function.
		2. Technical amendments to Item 1 and 2 of Schedule result from the enactment of the Financial Sector Regulation Act, Act 9 of 2017. This includes replacing the reference to the Financial Services Board with a reference to the Financial Sector Conduct Authority and reference to the Registrar of Banks with reference to the Prudential Authority.
		3. Item 5- relates to the deletion of the Independent Regulatory Board for Auditors as its functions do not fall within any category of accountable institutions. Item 6 relates to the deletion of the National Gambling Board. Item 8 relates to the deletion of reference to Law Societies as they were replaced by the Legal Practice Act, Act 28 of 2014.
	3. **Schedule 3**
		1. Deletion of items 1 and 2: motor vehicle dealers and Kruger Rand Dealers as these will be made accountable institutions under schedule 1- as high-value goods dealers.
6. **ISSUES RAISED DURING PUBLIC HEARINGS**
	1. Comments received by the Committee on the Schedules were roughly around the following issues: the wording of certain items in Schedule 1 and requests for the exclusion of their business sectors from regulation.
	2. Participants expressed support for the country’s need to strengthen its regulatory framework. Comments were received on Schedule 1 in relation to accountable institutions, particularly on Items 2 (trust and company service providers), Item 8 (Life Insurers), Item 11 (credit providers), and Item 20 (high-value goods dealers).
	3. On item 2 (trust and company service providers), comments were received that the scope of amendments appeared to be wider than proposed in the FATF standards. Concerns were raised that the changes will burden small practitioners and increase the burden on the Centre. An issue was also raised that this may create challenges of overlap and co-ordination among different supervisory bodies and increase costs of compliance.
	4. In its response to these concerns, the FIC and NT stated that the proposed item 2 changes were aligned with the FATF standards framework and was adapted to fit within South African legislative framework on companies and trusts. They stated that the prevalence of the misuse of trust and company service providers in cases of money laundering underscored the new to include this category in measures to combat money laundering. They also explained that there was no potential overlap of supervision as designated non-financial businesses and professions were not subject to PA and FSCA supervision. They further explained that there was an existing Memorandum of Understanding between the FIC, PA and FSCA that deals with issues of overlap and conflicting mandates regarding the supervision of accountable institutions in all categories.
	5. On life insurers, comments were received that, given the minimal risks of life insurers being abused for money laundering and related activities, the amendments be more circumspect. On the other end, comments were received that the proposed amendment should not introduce exclusions/exemptions for specific product types.
	6. NT and FIC responded that the proposed changes to item 8 will reduce the current scope of the FIC Act. They emphasized that the compliance framework encouraged a risk-based approach which requires life insurers to apply enhanced measures in cases where they assess money laundering and related risks to be high, but simplified measures where risks were low. They also clarified that the amendments envisaged no exemptions except in instances where life insurance businesses were engaged in reinsurance business with each other.
	7. On credit providers (item 11), comments received proposed wording to exclude credit providers that offer credit in terms of a credit facility and the exclusion of certain credit transactions such as mortgage agreements, secured loans and leases. Other proposals included the conducting of an independent risk assessment to assess risk on retail credit to determine the level of money laundering and related activities. Other alternative proposals included the setting of monetary limits that would exclude low value credit facilities.
	8. NT and FIC responded that the FATF Standards required that lending businesses be included in the regulatory measures against money laundering and related activities. These included the provision of consumer credit and the financing of commercial transactions. They however assured that the application of risk-based measures will allow businesses to manage risks and apply simplified measures where money laundering risks were low.
	9. On high-value goods dealers (item 20), various comments were received. Some were on the definitions of terms such as “dealer” or “high –value goods”, as these terms were considered to be broad and vague. It was also submitted that the term “dealer” should exclude holders of permits under the Mineral and Petroleum Resources Development Act.
	10. It was further submitted that high-value goods dealers should exclude a vendor that carries on agricultural, pastoral or other farming activities. Other comments included that the reporting requirements only involve cash transactions, while others proposed the inclusion of both cash and electronic transactions.
	11. NT and FIC responded that it was not advisable to create exemptions from the scope of the Act based on product categories or transaction types. Instead, the risk-based approach to compliance was advised as it determined the priority to be accorded to high and low risk products. They said that the objectives for including this category was to provide for an audit trail in instances where persons can afford purchases of high-value items from their disposable income. They also said that the FATF Standards required the inclusion of dealers in precious metals and stones to combat money laundering and related activities taking place using such products.
7. **COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**
	1. While sections 73, 75 and 76 of the FIC Act provide that the Minister of Finance may amend the list of accountable institutions (Schedule 1), supervisory bodies (Schedule 2), and reporting institutions (Schedule 3) with Parliament only having to approve such amendments, the Committee decided to follow all processes of public involvement and participation on these amendments as it involved the inclusion of new businesses within the ambit of the legislative and regulatory framework.
	2. The Committee welcomes and approves these measure to improve the country’s compliance with the global standards against money laundering, terrorist financing and proliferation of weapons of mass destruction. FATF’s Mutual Evaluation Report on South Africa of October 2020 identified some sectors, including potential high risk designated non-financial business and professions as not yet captured by the country’s legislative and regulatory framework. It also identified dealers in precious stones and other value goods as not adequately covered by the country’s regime. The Committee notes that the amendments are aimed at rectifying these short-comings.
	3. However, while the Committee welcomes and approves these measures, it is concerned about the increasing costs of regulation and compliance for all the sectors that fall within the regulatory space of the FIC Act, both new and old. The Committee encourages the implementation of the risk-based approach to these regulations so that low risk sectors do not carry unnecessary regulatory costs and burden, as this has implications for consumers.
	4. The Committee believes that while it is necessary to ramp up the country’s compliance measures to be in line with the FATF Standards, it is also important to ensure that the financial intelligence produced assists in combatting money laundering and seizing and confiscating the proceeds of crime, including illicit financial flows. After 20 years of implementation, the country’s framework still seems to be too biased towards compliance rather than actually assisting the country to solve crime and seizing assets derived from such activities. The Committee believes that law enforcement agencies need to up their game when it comes to prosecuting financial crimes and pursuing illicit financial flows.
	5. The Committee is concerned about the delays in tabling the amendments to the FIC Act Schedules in Parliament for consideration and approval. While the Minister of Finance started consulting on these amendments in 2017, the proposed amendments were only tabled in Parliament on 17 May 2022. The briefing could only be accommodated in June 2022, when Parliament was going on recess. The Committee wishes to state that contrary to media reports, the delays were not on the part of Parliament.
	6. The Committee is concerned about the possible “grey-listing” of the country by FATF, should the country not implement measures in the set deadline of October 2022. The Committee believes that “grey-listing” will have dire consequences for financial institutions and businesses in South Africa as this could make it difficult to transact internationally, with serious implications for trade and business. The Committee notes that we are only two-months away from this deadline. The Committee however notes the introduction of the Financial Sector Laws Amendment Bills that will deal with the country’s deficiencies against money laundering and related activities. The Committee will be processing this Bill from tomorrow and will ensure that there is public involvement and participation in the processing of such legislation.
	7. The Committee believes that the Minister of Finance and National Treasury needs to develop a risk strategy for mitigating the possible grey-listing of South Africa by FATF, and report this to the Committee in the next quarterly briefing.
	8. The Committee recommends that the National Assembly approves the amendments to Schedule 1, 2 and 3 of the Financial Intelligence Centre Act, Act 38 of 2001.

The Democratic Alliance and Freedom-Front Plus reserve their position

Report to be considered