



12 August 2022

The Committee Secretaries  
Mr Allen Wicomb and Ms Teboho Sepanya  
Standing Committee on Finance  
Via email: [awicomb@parliament.gov.za](mailto:awicomb@parliament.gov.za)  
[/ tsepanya@parliament.gov.za](mailto:tsepanya@parliament.gov.za)

Dear Mr Wicomb and Ms Sepanya

**RE: Draft Amendments to Schedules 1, 2 and 3 to the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001) ("FICA")**

**The NCRF**

A member organisation, the NCRF comprises the clothing retail entities commonly named as Truworts; TFG (The Foschini Group); MRP (The Mr Price Group); Woolworths, The LA Group, Cape Union Mart, Pick n Pay Clothing and Queenspark. Within these entities are various business units which are and will be impacted by the subjects addressed in this correspondence.

**Support in principle**

The NCRF supports the review of the current legislative framework against money laundering and terrorist financing. The NCRF is also aware of and concerned about South Africa's potential grey listing for perceived deficiencies in our financial intelligence legislation.

But this potential for grey listing should not cloud the issues, nor should it result in enforcing compliance where there is no need to do so. The unintended consequences and unnecessary broad reach of these proposed changes need to be brought to the attention of the Standing Committee on Finance (Committee).

We therefore make a similar submission as we did in 2017, when the amendments to Schedule 1 were first proposed.



## **Learning from our African neighbours with regards to Financial Intelligence Act changes**

### *Botswana*

In October 2018, Botswana was grey listed. As a result of this, the authorities amended their Financial Intelligence legislation wholesale, effectively making any entity registered in terms of any law, subject to the Act. The results were untenable and the cost of compliance was substantial. Since then, the Act has been revised again, to limit the application of the Act and reverse the effects of the prior (rushed) poor decision-making.

### *Namibia*

Namibia took the approach of conducting risk assessments in a number of industries, methodically determining the level of risk in a particular sector.

### **Submissions**

The NCRF's members are retailers who sell mostly clothing and footwear merchandise and offer (in-house) credit to selected customers mainly for the use of purchasing such retailers' merchandise. The risk of money laundering and/or terrorist financing happening via one of its retailers is extremely remote, hence the proposed changes to Schedule 1, bringing the retailers into the fold of know-your-client (KYC) processes, record-keeping and reporting (amongst other compliance requirements), are of concern to the NCRF.

#### **(a) Credit providers (proposed item11(a) of Schedule 1)**

The aim of improving the transparency of the financial system to combat financial crime and terrorist financing, is praise worthy but the proposed inclusion of all credit providers (who are not always/automatically financial institutions such as banks) will not necessarily assist with this aim, given that retailers' businesses and transactions differ greatly from those of financial institutions.

It is highly unlikely that a customer will purchase retail merchandise (such as clothing) in order to launder money or participate in the financing of terrorist activities. In the view of the NCRF the risk of money laundering through customer accounts with such retailers appears extremely low because the accounts have small balances and are subject to credit checks. In addition such retailers do not



accept deposits from customers that would give rise to accounts with credit balances. Furthermore such retailers already have in place processes to report suspicious or unusual transactions to the Financial Intelligence Centre (FIC).

As such, retailers (due to their registration with and regulation by the National Credit Regulator as credit providers offering credit facilities and transactions) should not be included in Schedule 1 of FICA.

The NCRF suggests that retailers be excluded hence the addition of the wording underlined in proposed item11(a) of Schedule 1: "*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).*"

In the alternative, given that the costs of compliance are immense, before this change is finalised, the NCRF would propose that an independent risk assessment be conducted on retail credit in order to determine its level of risk as regards money laundering and terrorist financing and therefore its inclusion/exclusion from Schedule 1.

In the event that the Committee is unwilling to consider this revision, the NCRF would ask the Committee to consider setting monetary limits to exclude low value credit facilities and transactions. In the further alternative, the Committee should consider whether the Minister should apply his powers to grant an exemption to certain parties from the provisions of the Act in this regard.

#### (b) Financial Service Providers (proposed item12 of Schedule 1)

While we note the South African Reserve Bank's (SARB) risk assessment in relation to Life insurance sector, we hold the view that not all insurance products classified as Life insurance are created equal.

The SARB's risk assessment focussed on Life Insurers, with no consideration given to intermediaries. The assumptions made from the assessment, in so far as they can be related to intermediaries, are questionable.



Various parties have a role to play in the insurance relationship. The role of insurers for example will differ from that of an intermediary. The proposed changes to Schedule 1, in effect duplicate the FICA compliance requirements for the intermediary, who acts as the middleman between the Life Insurer and the insured. It is the NCRF's submission that it is the Life Insurer who should bear the burden of compliance, not the intermediary.

Most retailers offer credit life insurance, written under a Life licence to customers. The benefit is directly linked to the outstanding balance on the retail account at date of claim event and is paid directly to the credit provider on the death/disability/retrenchment of the customer. Premiums are small and normally calculated based on the outstanding balance (for example: R3,30 for every R1000 outstanding). No benefit is paid to the customer and there is no function in the credit life policy to save money. Some retailers offer other optional insurance products to their customers. This way, customers who are usually unable to obtain insurance through traditional means, are able to benefit from one size/tick-box insurance cover by obtaining optional insurance cover from retailers acting as intermediaries. This supports the principle of financial inclusion. These products are similar in nature to Non-Life products, involve no underwriting, commissions are legislated, policies are not cedable, premiums are charged to customers' retail accounts or cash (through typically small premiums of between R15 - R150), pay-outs are up to R50 000 (at most) and are made to a customer's beneficiaries, in terms of a rigorous claims process, on the customer's death.

In addition, this role as an intermediary is an ancillary role for retailers as it is not their main line of business.

The NCRF therefore proposes that the proposed item 12 of Schedule 1 is amended as follows (as per the underlined and highlighted parts):

*"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.)] but excluding financial service providers which are licensed as scripted intermediaries, scripted other and intermediary (non-*



advice), in terms of Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), where the intermediation involves any life insurance policy”.

In the event that the Committee is unwilling to consider this revision, the NCRF would ask the Committee to consider setting product payment limits to exclude these simplistic Life products offered by intermediaries. In the further alternative, the Committee should consider whether the Minister should apply his powers to grant an exemption to certain parties from the provisions of the Act in this regard.

#### Next steps

The NCRF would like to attend the public hearing on 16 August 2022 together with representatives from its members. The NCRF welcomes any further opportunity to meet with the Committee to explain its position with a view to ensuring that whatever is legislated or regulated is based on an assessment of the risks of money laundering and terrorist financing and is a workable solution for all.

Yours sincerely

A handwritten signature in black ink that reads "Michael J Lawrence".

Michael J Lawrence  
EXECUTIVE DIRECTOR  
[michaell@ncrfsa.org](mailto:michaell@ncrfsa.org)