

NATIONAL TREASURY

DRAFT AMENDMENTS TO MONEY LAUNDERING AND TERRORIST FINANCING CONTROL REGULATIONS IN TERMS OF FINANCIAL INTELLIGENCE CENTRE ACT, 2001

The Minister of Finance, in terms of section 77(5)(a) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) ("the FICA"), publishes draft Amendments to the Money Laundering and Terrorist Financing Control Regulations ("the MLTFC Regulations") for public comment.

Section 31 of the FICA has not yet been brought into operation. It must be brought into operation by a proclamation by the President that is published in the *Government Gazette*. For the section to become operative, the Minister of Finance must issue regulations to set the threshold for reportable transactions, and to regulate the reporting requirements in terms of section 31 of the FIC Act.

In the draft Amendments to the MLTFC Regulations, it is proposed that the threshold for the reporting of cross-border electronic funds transfers be set at R5000.00. All electronic cross-border transactions from a value of R5 000.00 and above will have to be reported to the FIC.

It is also proposed that all the relevant information pertaining to reportable cross-border funds transfers that should be included in reports on those transactions be provided for in the MLTFC Regulations. This includes information concerning the reporter, the transaction details, and the parties to the transaction.

In relation to reports on cash transactions in terms of section 28 of the FICA, it is proposed that the threshold amount be increased from the current R24,999.99 to R49,999.99. The obligation to report in terms of the section 28 of the FICA would arise when a transaction is concluded with a client by means of which cash in the amount of R50,000.00 and above is paid by the accountable or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting, or is received by the accountable or reporting institution from the client, or from a person acting on behalf of the client, or to a person on whose behalf the client is acting.

It is also proposed that the threshold amount for reporting transactions in terms of section 28 of the FICA should not be calculated on the basis of an aggregate amount of the transactions that occur over a 24 hour period, as currently provided in regulation 24 of the MLTFC Regulations.

Written comments on the draft amendment to the Financial Sector Regulations should be submitted to commentdraftlegislation@treasury.gov.za by close of business on 01 April 2019.

SCHEDULE

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing Regulations.

_____ Words underlined with a solid line indicate insertions in existing Regulations.

Definitions

1. In these regulations, “the Regulations” means the Money Laundering and Terrorist Financing Control Regulations, 2002, published in Government Notice R.1595 of 20 December 2002, as amended by GN R456 in Government Gazette 27580 of 20 May 2005, GN R867 in Government Gazette 33596 of 01 October 2010, GN 1107 in Government Gazette 33781 of 26 November 2010, and GN R1062 in Government Gazette 41154 of 29 September 2017.

Amendment of Regulation 1

2. Regulation 1 of the Regulations is hereby amended by—
- (a) the insertion after the definition of “guidance” of the following definition:
“‘international funds transfer report’ means a report which must be submitted in terms of section 31 of the Act;”;
- (b) the substitution of the definition of ‘reporter’ for the following definition:
“**‘reporter’** means—
- (a) an accountable institution or reporting institution making a cash threshold report under section 28 of the Act as contemplated in regulation 22C;
- (b) an accountable institution making a terrorist property report under section 28A of the Act as contemplated in regulation 22A; **[and]**
- (c) a natural or legal person making a suspicious or unusual transaction report, suspicious or unusual activity report, terrorist financing transaction report or terrorist financing activity report, under section 29 of the Act as contemplated in regulations 23, 23A, 23B or 23C, or other entity on whose behalf such a report is made; and

- (d) an accountable institution making an international funds transfer report under section 31 of the Act as contemplated in regulation 23E;”.

Substitution of Regulation 22B

3. The following regulation is hereby substituted for regulation 22B :

“Prescribed amount for cash transaction reporting

22B. The prescribed amount of cash above which a transaction must be reported to the Centre under section 28 of the Act is R49 999,99.”.

Substitution of Regulation 22C

4. The following regulation is hereby substituted for regulation 22C:

“Information to be reported concerning a cash threshold report

22C. (1) When a reporter makes a cash threshold report, the report must contain full particulars of—

- (a) the name of the accountable or reporting institution making the report;
- (b) the identifying particulars of the accountable or reporting institution on whose behalf the report is made, including a registration or license number;
- (c) the contact address of the accountable or reporting institution on whose behalf the report is made;
- (d) the type of business or economic sector of the entity on whose behalf the report is made;
- (e) in the case of a legal person or an entity making the report, the surname, first name, date of birth and contact particulars of a contact person who may be contacted in relation to the report; and
- (f) if the contact person mentioned in paragraph (e) is—
 - (i) a South African citizen or resident, the identifying particulars of that person and the type of identifying document from which the particulars were obtained; or
 - (ii) not a South African citizen or resident, the identifying particulars of that contact person and the source of identifying information from which the particulars referred to were obtained and the issuing country thereof.

(2) In respect of the transaction for which a cash threshold report is made, the report must contain—

(a) full particulars of—

- (i) the location where the transaction took place;
- (ii) the date of the transaction;
- (iii) the value of the transaction in local currency; and
- (iv) a description of how the transaction was conducted; and

(b) as much information as is readily available concerning the currency in which the funds were disposed of.

(3) In respect of a person conducting a transaction for which a cash threshold report is made, or an entity for which a natural person is conducting such a transaction, the report must contain as much of the following information as is readily available—

(a) in the case of a natural person—

- (i) the person's title, gender, names and surname;
- (ii) the person's identifying number, nationality and date of birth;
- (iii) the source of identifying information from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
- (iv) the person's contact address in the Republic;
- (v) the person's contact number;
- (vi) the person's occupation;
- (vii) the person's country of residence;
- (viii) if the person's country of residence is other than the Republic, the person's contact address in the country of residence;
- (ix) the person's alias, if any;
- (x) the person's source of funds;
- (xi) the person's income tax number; and
- (xii) the person's employer's name, contact address and contact particulars; and

(b) in the case of a legal person or other entity—

- (i) the person's or entity's name;
- (ii) the person's or entity's identifying number, if it has such a number;

- (iii) the information referred to in paragraph (a) in respect of the natural person with authority to conduct the transaction on behalf of the person or entity; and
 - (iv) in the case of a company, the information referred to in paragraph (a) in respect of at least one director of that company and the role of such person in that company; or
 - (v) in the case of another type of legal person or other entity, the information referred to in paragraph (a) in respect of at least one natural person associated with that legal person or entity and the role of such person in the legal person or entity.
- (4) A cash threshold report must contain an indicator or indicators in respect of the circumstances that gave rise to the submission of the report.”.

Insertion of Regulation 23D and 23E

5. The following regulations are hereby inserted in the Regulations after regulation 23C:

“Prescribed amount for the reporting of an international funds transfer report

23D. The prescribed amount of funds above which a transaction must be reported to the Centre under section 31 of the Act is R4 999,99.

Information to be reported concerning an international funds transfer report

23E. (1) When a reporter makes an international funds transfer report, the report must contain full particulars of—

- (a) the name of the accountable institution making the report;
- (b) the identifying particulars of the accountable institution, including a registration or license number;
- (c) the contact address of the accountable institution;
- (d) the type of business or economic sector of the accountable institution;

- (e) in the case of a legal person or an entity making a report, the surname, first name, date of birth and contact particulars of a contact person who may be contacted in relation to the report; and
- (f) if the contact person mentioned in paragraph (e) is—
- (i) a South African citizen or resident, the identifying particulars of that person and the type of identifying document from which the particulars were obtained; or
 - (ii) not a South African citizen or resident, the identifying particulars of that contact person and the source of identifying information from which the particulars referred to were obtained and the issuing country thereof.
- (2) In respect of any transaction for which an international funds transfer report is made, the report must contain—
- (a) full particulars of—
- (i) the location where the transaction took place;
 - (ii) the date of the transaction;
 - (iii) the amount of the funds involved in the transaction in local currency; and
 - (iv) a description of how the transaction was conducted; and
- (b) as much of the following information as is readily available—
- (i) the foreign currency amount, currency code and conversion rate applied by the reporter, if the funds or any portion of the funds were converted into foreign currency;
 - (ii) the unique internal reference number for the transaction, if such a number was allocated to the transaction;
 - (iii) the Internet Protocol address pertaining to the device by means of which the transaction was conducted, if the transaction was conducted by means of an internet transaction facility;
 - (iv) the merchant location, if the transaction was conducted by means of a credit or debit card;
 - (v) a description of the South African Reserve Bank Balance of Payments category;
 - (vi) a description of the South African Reserve Bank Balance of Payments subcategory; and

(vii) the stated purpose for the transaction.

(3) In respect of a transaction by which funds are sent out of the Republic for which an international funds transfer report is made, the report must contain—

(a) full particulars of—

- (i) the location of the institution where the funds will be received; and
- (ii) the SWIFT code of the institution where the funds will be received;
and

(b) as much of the following information as is readily available—

- (i) the particulars of the recipient of the funds; and
- (ii) the account number into which the funds will be credited, if the funds are to be credited to an account.

(4) In respect of a transaction by which funds are received in the Republic for which an international funds transfer report is made, the report must contain—

(a) full particulars of—

- (i) the location of the institution from where the transaction originated; and
- (ii) the SWIFT code of the institution from where the transaction originated; and

(b) as much of the following information as is readily available—

- (i) the particulars of the originator of the transaction; and
- (ii) the account number from which the funds are sent, if the funds are sent from an account.

(5) In respect of a person conducting a transaction for which an international funds transfer report is made, or an entity for which a natural person is conducting such a transaction, the report must contain as much of the following information as is readily available—

(a) in the case of a natural person—

- (i) the person's title, gender, names and surname;
- (ii) the person's identifying number, nationality and date of birth;
- (iii) the source of identifying information from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
- (iv) the person's contact address in the Republic;

- (v) the person's contact number;
- (vi) the person's occupation;
- (vii) the person's country of residence;
- (viii) if the person's country of residence is other than the Republic, the person's contact address in the country of residence;
- (ix) the person's alias, if any;
- (x) the person's source of funds;
- (xi) the person's income tax number; and
- (xii) the person's employer's name, contact address and contact particulars; and

(b) in the case of a legal person or entity—

- (i) the person's or entity's name;
- (ii) the person's or entity's identifying number, if it has such a number;
- (iii) the information referred to in paragraph (a) in respect of the natural person with authority to conduct the transaction on behalf of the person or entity; and
- (iv) in the case of a company, the information referred to in paragraph (a) in respect of at least one director of that company and the role of such person in that company; or
- (v) in the case of another type of legal person or other entity, the information referred to in paragraph (a) in respect of at least one natural person associated with that legal person or entity and the role of such person in the legal person or entity.

(6) If any account held at the reporter was involved in the transaction for which an international funds transfer report is made, the report must contain—

(a) full particulars in respect of each such account, of—

- (i) the account number;
- (ii) the name and identifying particulars of the branch or office of the reporter where each account is held;
- (iii) the type of account;
- (iv) the currency in which this account is denominated; and
- (v) the date on which the account was opened; and

(b) as much of the following information as is readily available in respect of each signatory on each such account—

- (i) the person's title, gender, names and surname;
- (ii) the person's identifying number, nationality and date of birth;
- (iii) the source of identifying information from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
- (iv) the person's alias, if any;
- (v) the person's contact address in the Republic;
- (vi) the person's country of residence;
- (vii) if the person's country of residence is other than the Republic, the person's contact address in the country of residence;
- (viii) the person's contact number;
- (ix) the person's occupation;
- (x) the source of funds of the person;
- (xi) the person's income tax number;
- (xii) the person's employer's name, contact address and contact particulars; and
- (xiii) the role of the signatory.

(7) In respect of each holder of each account referred to in subregulation (6), the report must contain—

(a) in the case of a natural person—

- (i) full particulars of—
 - (aa) the person's names and surname;
 - (bb) the person's identifying number and date of birth; and
- (ii) as much of the following information as is readily available—
 - (aa) the person's title, gender, nationality and alias, if any;
 - (bb) the person's contact address in the Republic;
 - (cc) the person's country of residence;
 - (dd) if the person's country of residence is other than the Republic, the person's contact address in the country of residence;
 - (ee) the person's contact number;
 - (ff) the person's occupation;
 - (gg) the person's source of funds;

- (hh) the person's income tax number; and
 - (ii) the person's employer's name, contact address and contact particulars; or
 - (b) in the case of a legal person or other entity—
 - (i) full particulars of—
 - (aa) the person's or entity's name; and
 - (bb) the person's or entity's identifying number, if it has such a number; and
 - (ii) as much of the following information as is readily available—
 - (aa) the person's or entity's contact address in the Republic;
 - (bb) the type of business conducted by the person or entity;
 - (cc) the person's or entity's country of incorporation or origin;
 - (dd) if the country of incorporation or origin is other than the Republic, the person's or entity's contact address in the country of incorporation or origin;
 - (ee) in the case of a company, the information referred to in paragraph (a)(i) and (ii), in respect of at least one director of that company and the role of such person in that company; and
 - (ff) the tax number of the person or entity.
- (8) In respect of a person on whose behalf, or on whose instruction, a transaction is conducted for which an international funds transfer report is made, the report must contain as much of the following information as is readily available—
 - (a) in the case of a natural person—
 - (i) the person's title, gender, names and surname;
 - (ii) the person's identifying number, nationality, country of residence and date of birth; and
 - (iii) the person's contact address in the Republic; and
 - (b) in the case of a legal person or entity—
 - (i) the person's or entity's name;
 - (ii) the person's or entity's identifying number, if it has such a number; and
 - (iii) the person's or entity's contact details in the Republic.

(9) An international funds transfer report must contain an indicator or indicators in respect of the circumstances that gave rise to the submission of the report.”.

Amendment of Regulation 24

6. Regulation 24 of the regulations is hereby amended by—

(a) the substitution for subregulation (4) of the following subregulation:

“(4) A report under section 28 of the Act must be sent to the Centre as soon as possible but not later than **[2] 3** days after a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of a **[single] cash transaction [or series of cash transactions]** that has exceeded the prescribed limit.”; and

(b) the insertion after subregulation (4) of the following subregulation:

“(5) A report under section 31 of the Act must be sent to the Centre as soon as possible, but not later than 3 days after a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of an international funds transfer that has exceeded the prescribed limit.”.

Amendment of Regulation 29

7. Regulation 29 is hereby amended by the insertion after subregulation (6L) of the following subregulations:

“(6M) Any person or institution which fails to provide the information to be reported concerning an international funds transfer report in accordance with regulation 23E is guilty of an offence.

“(6N) Any person or institution which fails to provide the information to be reported concerning an international funds transfer report in accordance with regulation 23E is non-compliant and is subject to an administrative sanction.”.

Commencement

8. These Regulations take effect on .
