

DRAFT WITHDRAWAL NOTICE OF EXEMPTIONS IN TERMS OF FINANCIAL INTELLIGENCE CENTRE ACT, 2001, PUBLISHED FOR PUBLIC COMMENT

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PART A
DRAFT GOVERNMENT NOTICE
NATIONAL TREASURY

No. R

2017

WITHDRAWAL OF EXEMPTIONS ISSUED IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT NO. 38 OF 2001)

In terms of section 74 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), I, Malusi NK Gigaba, Minister of Finance, hereby, with effect from 2 October 2017, withdraw Government Notices-

- (a) R1596 of 20 December 2002;
- (b) 1353 of 19 November 2004;
- (c) 560 of 25 June 2010; and
- (d) 461 of 5 June 2015.

MALUSI NK GIGABA
MINISTER OF FINANCE

PART B

**EXPLANATORY NOTE ON DRAFT WITHDRAWAL NOTICE OF EXEMPTIONS APPROVED
IN TERMS OF FINANCIAL INTELLIGENCE CENTRE ACT, 2001**

1. The Minister of Finance has approved a number of exemptions from compliance with a range of requirements under the Financial Intelligence Centre Act, 2001 (FIC Act) which currently applies to accountable institutions. The changes brought about by the Financial Intelligence Centre Amendment Act, 2017 (Act No. 1 of 2017) (Amendment Act) require the withdrawal of many exemptions in addition to substantial amendments to the Money Laundering and Terrorist Financing Control Regulations (Regulations), made under the FIC Act.
2. The amendments to the Regulations and the withdrawal of exemptions are proposed to take effect at the same time as relevant sections of the Amendment Act are proposed to take effect.
3. The majority of exemptions made under section 74 of the FIC Act were intended to simplify compliance requirements, based on the regulators' understanding of lower money laundering and terrorist financing (ML/TF) risks. The introduction of a risk-based approach, proposed to take effect on 2 October 2017, as an integral concept directing compliance with the requirements of the FIC Act will make these exemptions redundant.
4. Accountable institutions may still be guided by the content of the exemptions to determine the appropriate verification measures to be taken, in accordance with their Risk Management and Compliance Programme (RMCP). Accountable institutions will have to differentiate between the means of identification and verification used in respect of clients in different risk categories, applying simplified measures in cases of lower risk and applying enhanced measures in cases of higher risk.
5. The table below provides an overview of the Exemptions that will become redundant in the context of the Amendment Act and are proposed to be withdrawn.

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ACT, 2001**

EXEMPTION	MOTIVATION
Exemption 2: Timing of verification	<p>The exemption was intended to allow an accountable institution to accept a mandate from a prospective client to establish a business relationship before the institution could complete the verification of identity.</p> <p>This is now included implicitly in the Amendment Act and must be addressed in an institution's RMCP.</p>
Exemption 3: Partnerships	<p>The exemption was intended to allow for the centralisation of compliance within a partnership etc. of professionals practising as accountable institutions.</p> <p>This is now included implicitly in the provisions of Amendment Act and should be provided for in a professional partnership's RMCP.</p>
Exemption 4: Reliance on primary accountable institution	<p>The exemption was intended to avoid a duplication of customer due diligence (CDD) obligations where one accountable institution refers a client to another.</p> <p>This is now included implicitly in the provisions of the Amendment Act. The manner and processes for the identification of clients and verification of their identities described in an accountable institution's RMCP must also provide for the extent to which the institution relies on CDD performed by another accountable institution which has referred a client.</p>
Exemption 5: Where AML/CFT laws are equivalent	<p>This exemption was intended to facilitate compliance with section 21 in as far as it requires the verification of the identity of a client situated in a country where, to the satisfaction of the relevant supervisory body, anti-money laundering regulation and supervision is equivalent to that which applies to the accountable institution by allowing that a person/institution in that country confirms in writing to the satisfaction of the accountable institution that they have verified the particulars concerning the client which the accountable institution has identified.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a low ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
Exemption 6: Public companies listed on recognised securities exchanges and exemption for tax information	<ol style="list-style-type: none"> 1. This exemption was intended to simplify identification, verification and record keeping requirements in respect of clients which are public companies the securities of which are listed on a recognised securities exchange. 2. The regulations require accountable institutions to obtain the client's tax number and to verify this against a South African Revenue Service (SARS) document. Paragraph 6(2) exempts them from these obligations. <p>These are now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable</p>

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	<p>institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
<p>Exemption 7: Exemption for insurance and investment providers</p>	<p>This exemption was intended to relieve the compliance burden in respect of certain types of business activities that pose little risk of money laundering.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a low ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
<p>Exemption 8: Exemptions for members of exchanges</p>	<p>The exemption exempts a financial instrument trader and a member of the Johannesburg Stock Exchange (JSE) from the identification and verification requirements and record keeping requirements in respect of foreign brokers from countries recognised for this purpose on certain conditions.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
<p>Exemption 9: Exemption for members of exchanges for legal persons and non-controlled clients</p>	<p>The rules of the JSE provide for the members of the JSE to obtain sufficient information concerning each client to identify the beneficiary of the account. The majority of non-controlled clients are legal persons such as insurance and investment houses. This exemption was granted as there is a relatively low risk of money laundering in respect of trades on the JSE by legal persons who are non-controlled clients.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
<p>Exemption 10: Exemption for Attorneys and Administrators of property</p>	<p>This exemption focused on both the high-risk and low-risk services performed by an attorney in relation to the facilitation of money laundering. A withdrawal of the exemption would mean that services performed by an attorney that had previously fallen outside the scope of the FIC Act will now be included in the scope of the Act. This implies that an attorney would have to determine for itself which services pose a lower or higher risk for money laundering and apply the necessary CDD requirements in accordance with its RMCP.</p>

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Exemption 11: Exemption for estate agents	<p>The definition of “estate agent” in the Estate Agency Affairs Act includes estate agents who render services to body corporates of sectional title schemes and share block companies. This exemption was initiated as the business of a managing agent does not hold a risk of being abused for money laundering purposes.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an estate agent to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution’s RMCP.</p>
Exemption 12: Exemption for entertainment activities in gambling institutions	<p>Schedule 1 specifically refers to a gambling activity which makes this exemption superfluous.</p>
Exemption 13: Exemption for gambling institutions in respect of single transactions	<p>This exemption was intended to relieve the compliance burden for gambling institutions in relation to certain circumscribed single transactions.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows a gambling institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution’s RMCP.</p>
Exemption 14: Exemption for gambling institutions for single transactions	<p>This exemption applies to all other single transactions that do not fall under exemption 13.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows a gambling institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution’s RMCP.</p>
Exemption 15: Exemption for banks for unsecured loans	<p>This exemption relates to unsecured loans of relatively small amounts. This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution’s RMCP.</p>
Exemption 16: Exemption for foreign banks	<p>This exemption was to simplify identification and verification requirements intended for banks in relation to transactions with banks from foreign countries where the institutions are subject to anti-money laundering measures which, to the satisfaction of a supervisory body, are equivalent to those of the FIC Act.</p>

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	<p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
<p>Exemption 17: Exemption for banks for low value products</p>	<p>The exemption was intended to simplify identification and verification requirements for low value products.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
<p>Exemption on prepaid instruments (25 June 2010)</p>	<p>The exemption was intended to simplify identification and verification requirements for low value products.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>
<p>Exemption on cross border remittance</p>	<p>The exemption was intended to simplify identification and verification requirements for low value products.</p> <p>This is now included implicitly in the Amendment Act with the introduction of a risk-based approach which allows an accountable institution to determine which business relationships or transactions pose a lower ML/TF risk and apply the necessary CDD requirements as described in the institution's RMCP.</p>