



South African Reserve Bank



Financial
Intelligence Centre

JOINT CONSULTATION PAPER

Concerning draft Directive 01 of 2019 and related draft Guidance Note in terms of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) in respect of the Financial Action Task Force Recommendations for electronic funds transfers

23 September 2019

INTRODUCTION

1. The South African Reserve Bank (the SARB) acting pursuant to its mandate in terms of section 10(1) (c) of the South African Reserve Bank Act 90 of 1989 (SARB Act), to regulate and supervise payment, clearing or settlement systems, and in terms of section 12 of the National Payment System Act 78 of 1998 (NPS Act), issued on 26 June 2015, a *Directive for conduct within the national payment system (NPS) in respect of the Financial Action Task Force (FATF) Recommendations for electronic funds transfers (the FATF electronic funds transfer Directive 1 of 2015)*¹.
2. This FATF electronic funds transfer directive 1 of 2015 was followed by the issuance by SARB of an *Interpretation Note*² on 1 June 2017 (the Interpretation Note to the FATF electronic funds transfer directive 1 of 2015).
3. Following consultation with the Financial Intelligence Centre (FIC) and engagements with the participants/stakeholders in the National Payment System (NPS) and the Payments Association of South Africa (PASA), the SARB has embarked in a process of replacing the FATF electronic funds transfer directive 1 of 2015 with the proposed draft directive 1 of 2019, which is released for consultation. Furthermore, the FIC intends to supplement this directive by issuing a draft Guidance Note 102, which is also released for consultation.
4. Both the attached draft directive 1 of 2019, and the draft Guidance Note 102 for conduct within the NPS in respect of the FATF recommendations for electronic funds transfers will be issued respectively in terms of section 43A(2) and section 4 (c) of the Financial Intelligence Centre Act 38 of 2001, as amended (FIC Act).

POSITION OF THE FIC AND SARB IN RESPECT OF FATF RECOMMENDATIONS

5. The FIC is the administrator of the FIC Act and was established in terms of section 2 of the FIC Act.

¹ Available at [www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Legal/Documents/Directives](http://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Legal/Documents/Directives).

² Available at:

[http://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Legal/Documents/Directives/Interpretation%20note%20for%20Directive%201%20of%202015.pdf](http://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Legal/Documents/Directives/Interpretation%20note%20for%20Directive%201%20of%202015.pdf)

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6. The SARB is a supervisory body in terms of schedule 2 of the FIC Act in respect of the powers and duties performed under section 10(1)(c) of the SARB Act as amplified by and discharged under the NPS Act.
7. The South African anti-money laundering and combatting terror financing regime as enshrined in the FIC Act, is aligned and subject to the international standards on combating money laundering and the financing of terrorism and proliferation, universally known as the FATF Recommendations.
8. On 15 February 2012, the FATF released its revised Forty Recommendations, of which FATF Recommendation 16 applies to cross border and domestic “wire transfers” (known as electronic funds transfer in South Africa). FATF Recommendation 16 directly impacts the accountable institutions participating in the NPS that facilitates or enables the origination or receipt of electronic funds transfer and or acts as an intermediary in receiving or transmitting the electronic funds transfer.
9. It is on these matters that the SARB is collaborating with the FIC to ensure South Africa’s compliance with FATF Recommendation 16 read in conjunction with the FATF Interpretative Note to Recommendation 16.
10. The SARB supports the FATF Recommendations and requires all accountable institutions participating in the NPS to ensure that electronic funds transfers meets the requirements of FATF Recommendation 16, read in conjunction with the FATF Interpretative Note to Recommendation 16, which documents are attached hereto as Annexure A.
11. Accordingly, the SARB as a supervisory body, is empowered by section 43A(2) of the FIC Act to issue proposed directive 1 of 2019 under the FIC Act. In terms of section 43A(2) of the FIC Act, the FIC or a supervisory body may, in writing, issue a directive to any category of accountable institutions or category of reporting institutions or other category of persons to whom the provisions of the FIC Act apply, (a) regarding the application of the FIC Act; or (b) which reasonably may be required to give effect to the FIC’s objectives contemplated in section 3 of the FIC Act.

REASON FOR PROPOSED AMENDMENT OF THE FATF EFT DIRECTIVE 1 OF 2015 AND RELATED GUIDANCE NOTE

12. While applying and implementing the FATF electronic funds transfer directive 1 of 2015, the SARB and payment industry stakeholders discovered certain limitations and shortcomings in respect of the FATF electronic funds transfer directive 1 of 2015. The main shortcomings and limitations identified related to the following:
 - 12.1. The issuing of the FATF electronic funds transfer directive 1 of 2015 under the NPS Act resulted in uncertainty in the payment industry regarding the link between the FATF electronic funds transfer directive 1 of 2015 and the FIC Act, and whether compliance with the FIC Act was a requirement. As a result, the SARB, after consultation with the FIC, embarked in the process of replacing the FATF electronic funds transfer directive 1 of 2015 with directive 1 of 2019 issued in terms of the FIC Act.
 - 12.2. In exercising its oversight role over the NPS, the SARB became aware of divergent interpretations of FATF Recommendation 16 and Interpretative Note among the industry participants, and between the SARB and the industry participants. These among others related to, the scope and application of the FATF electronic funds transfer directive (e.g. coverage of debit or credit EFTs, batched or single transactions, domestic or cross border, etc.), the applicable FATF Recommendations relating to the transaction screening requirements, the applicability of the directive to Common Monetary Area (CMA) electronic funds transfer transactions, and clarity on the roles of the originating, intermediary and receiving financial institutions. Divergent interpretations on these aspects highlighted confusion and lack of common understanding and interpretation of the FATF electronic funds transfer directive between the SARB and industry participants, and among industry participants.
13. The issues and shortcomings necessitated a review of the FATF electronic funds transfer directive 1 of 2015. The SARB through the draft directive 1 of 2019, and the FIC through Guidance Note 102 seek to address the divergent views and a lack of common understanding and interpretation of the FATF electronic funds transfer directive. The draft directive 1 of 2019 should bring clarity and legal certainty required to ensure common interpretation of the FATF electronic funds

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transfer directive and ultimately strengthen compliance with FATF Recommendation 16.

14. The SARB has consulted with the FIC as the administrator of the FIC Act regarding the importance of adhering to the FATF Recommendations and in particular Recommendation 16, the interpretation of Recommendation 16, the formulation of a revised draft directive 1 of 2019, and the procedure to issue this directive in terms of section 43A(2) of the FIC Act.
15. The SARB has further consulted with the FIC as the administrator of the FIC Act regarding the proposed draft Guidance Note of 2019 to draft directive 1 of 2019, which is released for consultation simultaneously with draft directive 1 of 2019.

CONSULTATION PERIOD AND CONSULTATION OUTCOME

16. Given that the issues relating to the interpretation and application of the FATF electronic funds transfer directive have been vigorously engaged on since June 2015, and based on the feedback from industry, the SARB is of the view that the issues of concern have been adequately addressed in the draft directive 1 of 2019, and accordingly envisages conducting a focussed and short consultation period of 20 business days.
17. Upon the conclusion of the consultation period, and consideration of comments, the SARB and FIC have agreed the following:
 - 17.1. the SARB, in consultation with the FIC will issue this draft directive 1 of 2019, in terms of section 43A (2) of the FIC Act;
 - 17.2. the FIC in consultation with the SARB will issue this draft Guidance Note 2019 in terms of section 4 (c) to the FIC Act, and
 - 17.3. these documents will provide for the conduct of accountable institutions relating to electronic fund transfers in South Africa in order to align the AML/CFT regime and NPS in South Africa to the FATF Recommendations.

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CONCLUSION

18. The proposed wording of draft directive 1 of 2019 is outlined in Annexure “B” of this consultation paper while the proposed wording of draft Guidance Note of 2019 is outlined in Annexure “C”.
19. Comments on the draft directive 1 of 2019 and draft Guidance Note 102 should be submitted to the SARB and FIC at the contact details below on or before, and no later than close of business on **Tuesday, 15 October 2019**.
20. FATF electronic funds transfer directive 1 of 2015 will remain in effect, and must be applied until such time as formally withdrawn and replaced with directive 1 of 2019.

Issued **23 September 2019**:

The Head: National Payment System Department
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E-mail: npsdirectives@resbank.co.za.

The SARB can be contacted for further information at the contact particulars above.

Issued **23 September 2019**:

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The FIC can be contacted for further information at the contact particulars above or at telephone number: (012) 641 6000.

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ANNEXURES A, B and C

- A** **FATF RECOMMENDATION 16 WITH FATF INTERPRETATION NOTE TO RECOMMENDATION 16**
- B** **PROPOSED DRAFT DIRECTIVE 01 OF 2019**
- C** **RELATED DRAFT GUIDANCE NOTE**