



South African Reserve Bank

National Payment System Department

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Interpretation note for Directive 1 of 2015 for conduct within the national payment system in respect of the Financial Action Task Force recommendations for electronic funds transfers

1. Background and purpose

- 1.1 South Africa is a member of the Financial Action Task Force (FATF) and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). During 2008, South Africa was evaluated in respect of its level of compliance with, and implementation of, the FATF anti-money laundering (AML) and combating the financing of terrorism (CFT) recommendations (FAFT Recommendations).¹ The FATF *Mutual Evaluation Report* on South Africa,² issued in 2009, found South Africa to be partially compliant with the previous Special Recommendation VII (now Recommendation 16) on wire transfers. The summary of factors underlying the rating is attached as Annexure A. The next FATF evaluation of South Africa's compliance with the FATF Recommendations will commence with inspections in 2018, with the report expected to be completed by 2019.

¹ Evaluation is done in terms of the compliance with the FATF Recommendations, and for reviewing the level of effectiveness of a country's anti-money laundering/combating the financing of terrorism (AML/CFT) system.

² Available at:

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20South%20Africa%20full.pdf>

- 1.2 The South African Reserve Bank (SARB) continually collaborates with the Financial Intelligence Centre (FIC) which is responsible for the general administration of the Financial Intelligence Centre Act 38 of 2001 (FIC Act) to ensure South Africa's compliance with FATF Recommendation 16. Following the FATF findings with regards to Special Recommendation VII, the SARB, in its supervisory body function in respect of the national payment system (NPS) issued a directive titled *'Directive for conduct within the national payment system in respect of the Financial Action Task Force (FATF) Recommendation for electronic funds transfers (EFT)'*³ (FATF EFT Directive). The FATF EFT Directive applies to the payment system clearing participants in respect of the origination and facilitation of, or the enabling of the origination the transmission or receipt of electronic funds transfers. Following the issuance of the FATF EFT Directive, the payment industry approached the SARB and raised specific interpretation and implementation concerns with regard thereto; hence the issuing of this interpretation note.
- 1.3 The purpose of this interpretation note is to provide clarity on the scope of application of the FATF EFT Directive, the SARB's National Payment System Department's interpretation of the FATF EFT Directive, and the basis upon which compliance monitoring and supervision will be effected. It does not seek to amend the FIC Act nor the FATF EFT Directive, which means that participants will still be required to comply with the FIC Act, FATF EFT Directive, and applicable AML/CFT legislation and regulations.

2. AML/CFT legislation in South Africa

- 2.1 The FIC was established in terms of the FIC Act to, inter alia, assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities. The legislative framework for AML/CFT in South Africa is primarily provided for in the FIC Act, Prevention of Organised Crime Act 121 of 1998, and the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004.

³ Available at [www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Legal/Documents/Directives](http://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Legal/Documents/Directives).

2.2 The FIC has recently completed the process of reviewing the current AML/CFT legislative framework with the view to improving South Africa's measures to combat money laundering and terrorist financing, which culminated in the promulgation of the FIC Amendment Act 1 of 2017 (FIC Amendment Act) by the President of South Africa in May 2017.

2.3 The amendments also introduce new concepts to the FIC Act which are designed to further safeguard South Africa's financial system against abuse and illicit activities. These include:

- a. the introduction of a risk-based approach to the implementation of the FIC Amendment Act, which will enable institutions and businesses to use more efficient means to comply with their legal obligations and, at the same time, make it easier for their customers to do business with them;
- b. a change in the customer due diligence measures, which will require that institutions understand their relationships with their customers rather than only identifying their customers, as is required currently;
- c. the identification of the beneficial owners of corporate customers, which requires knowing the real, natural persons who benefit from the business done by financial and other institutions with companies, trusts and other similar entities; and
- d. managing relationships with prominent persons.

2.4 The commencement date for the FIC Amendment Act is yet to be determined by the Minister of Finance. The SARB has, in the interim, implemented a process, in consultation with the FIC, to determine the impact of the FIC Amendment Act on the FATF EFT Directive, particularly the risk-based approach and customer due diligence provisions, and whether additional amendments are required to the FATF EFT Directive in this regard. This process does not impact the legal status of the current FATF EFT Directive,

which remains in force until such time that it is replaced by the revised Directive and the latter is published in the *Government Gazette*.

3. Definitions

3.1 Definitions of an ordering financial institution, intermediary financial institution and a beneficiary financial institution

3.1.1 FATF Recommendation 16 defines an ordering, intermediary and beneficiary financial institution as follows:

- a. Ordering financial institution: refers to the financial institution which initiates the electronic funds transfer and transfers the funds upon receiving the request for the transfer from, or on behalf of, the originator (sending customer of the ordering institution).
- b. Intermediary financial institution: refers to a financial institution in a serial or cover payment chain that receives and transmits an electronic funds transfer on behalf of the ordering financial institution and the beneficiary financial institution, or another intermediary financial institution. The definition of an intermediary financial institution includes sponsoring participants and intermediary institutions in corresponding banking relationships. The sponsoring clearing participants or the principal participants in the agency clearing arrangement are required to comply with the requirements in the FATF EFT Directive as applicable to intermediary financial institutions.
- c. Beneficiary financial institution: refers to the financial institution which receives an electronic funds transfer from the ordering financial institution, directly or through an intermediary financial institution, and makes the funds available to the beneficiary (receiving customer of the beneficiary institution). Direct clearing participants are required to comply with the

FATF EFT Directive as either the ordering and/or beneficiary financial institution.

3.1.3 Exclusions

The following are excluded from the definition of ordering, intermediary and beneficiary financial institutions:

- a. payment clearing house system operators (PCH SOs) as defined in the National Payment System Act 78 of 1998 (NPS Act), which are Strate Limited, BankservAfrica Limited (Bankserv), Visa and MasterCard;
- b. the South African Multiple Option Settlement (SAMOS) system; and
- c. the Southern African Development Community (SADC) Integrated Regional Electronic Settlement System (SIRESS).

3.2 Definition of EFT

3.2.1 The following transactions are excluded from the definition of EFT:

- a. Any transfer that flows from a transaction carried out using a credit, debit or prepaid card for the purchase of goods or services, so long as the credit, debit or prepaid card number accompanies all transfers flowing from the transaction. However, when a credit, debit or prepaid card is used to effect a person-to-person EFT (i.e. a money/funds transfer) the transaction is covered by the FATF EFT Directive, and the necessary information should be included in the transaction message.
- b. Any transfers and settlements between financial institutions, where both the originator person and the beneficiary person are financial institutions acting on their own behalf.

- c. EFT debits.

4. Scope and application of the FATF EFT Directive

In addition to the scope in 1.3.7 of the FATF EFT Directive, clarity is hereby provided regarding the scope and application of the FATF EFT Directive.

4.1 Participants and systems

4.1.1 The FATF EFT Directive applies to clearing participants, including banks and non-banks participating in the EFT environment, comprising the networks and payment clearing houses (PCHs) listed in section 1.3.7 of the FATF EFT Directive.

4.1.2 Participants and systems listed in 3.1.3 of this interpretation note are excluded from the scope of the FATF EFT Directive.

4.1.3 Any other systems and or products that are able to initiate or process an EFT are included in the scope of the FATF EFT Directive and should comply with the requirements of the FATF EFT Directive. The SARB, however, reserves the right to determine the systems that will be included in the scope of the FATF EFT Directive based on the nature of such transactions and potential risks that they could pose to the integrity of the NPS.

4.2 Cross-border (including Common Monetary Area) or domestic transactions

4.2.1 The FATF EFT Directive applies to cross-border and domestic transactions. For purposes of the FATF EFT Directive, the EFT transactions effected within the Common Monetary Area (CMA) are regarded as cross-border transactions and must comply with the cross-border and other relevant requirements provided for in the FATF EFT Directive. The SARB confirms that as there is no de minimus threshold for cross-border EFTs in South Africa, thus all cross-

border EFTs are regarded as qualifying EFT transactions, and all the required information must be present.

4.3 Single or batched transactions

4.3.1 Single and batched transactions (i.e. payments cleared through a PCH which receives, processes and clears payments in batches) are included in the scope of the FATF EFT Directive. With regard to batched transactions, the required information must be provided by the originating financial institutions when requested.

4.4 Low or high-value transactions

4.4.1 FATF Recommendation 16 does not distinguish between low- or high-value transactions. Low- and high-value transactions fall within the scope of the FATF EFT Directive, unless specifically excluded in the FATF EFT Directive.

4.5 FATF Recommendations or Recommendation 16

4.5.1 The scope of the FATF EFT Directive is limited to Recommendation 16 of the FATF Recommendations, except where reference is made to other recommendations within Recommendation 16.

5. FATF Recommendation 16: required information/qualifying EFT

The general rule is that for all EFT transactions (both cross-border and domestic) the following required information must be present:

5.1 In respect of the Originator:

5.1.1 name;

5.1.2 account number (if the transaction is funded from an account); and

- 5.1.3 address, national identity number or date and place of birth (or, as an alternative, a customer identification number which refers to a record of the originating institution containing the originator's address, national identity number or date and place of birth).

5.2 In respect of the Beneficiary:

- 5.2.1 name; and
- 5.2.2 account number (if an account is used to process the receipt of the transaction).

5.3 Domestic EFT transaction exceptions

- 5.3.1 As a general rule, the information referred to in paragraph 5.1 above must accompany domestic EFT transactions. In the event that the above-mentioned required information cannot be included in a domestic EFT transaction, this information should be maintained and made available to the beneficiary financial institution and appropriate authorities by other means when requested. In this event, the ordering financial institution must include the account number of the account from which the transaction is funded or a unique transaction reference number in the message, provided that this number or identifier will permit the transaction to be traced back to the originator or the beneficiary.
- 5.3.2 The account number or unique transaction reference number should be made available by the ordering financial institution within three business days (72 hours) (excluding weekends and public holidays) of receiving a request for this information either from the beneficiary financial institution or from appropriate competent authorities. Law enforcement authorities should be able to compel the immediate production of such information.

5.4 Cross-border EFT exceptions

- 5.4.1 Information/messages accompanying cross-border EFTs should include all the required originator and required beneficiary information as stipulated in paragraph 5.1 and 5.2 above.
- 5.4.2 As there is no de minimus threshold for cross-border EFTs, as provided for in paragraph 6 of Recommendation 16, all cross-border EFTs are regarded as qualifying EFT transactions, and all the required information must be present.
- 5.4.3 If there is no account number, a unique transaction reference number should be included, which would permit traceability of the transactions.
- 5.4.4 For batched cross-border transactions, only the originator's account number or unique transaction reference number must remain with the EFT transfer throughout the payment chain, provided that the batch file containing all the required originator and beneficiary information as stipulated in paragraph 5.1 above is traceable and made available upon request.

6. Responsibilities of ordering financial institutions, intermediary financial institutions and beneficiary financial institutions for domestic and cross-border EFTs

6.1 Ordering financial institutions

6.1.1 Cross-border EFT transactions

- 6.1.1.1 The onus is on the ordering financial institution to ensure that all the required and accurate originator and the required beneficiary information (as stipulated in 5.1 and 5.2 above) is included in all cross-border EFT transactions. There is currently no de minimus threshold for cross-border EFT transactions, which means that all cross-border EFT transaction should include the required and accurate originator information and the required beneficiary information.

- 6.1.1.2 The ordering institution is not obliged to verify the accuracy of the beneficiary information. The beneficiary name provided by the originator should be included in the EFT transaction.
- 6.1.1.3 The ordering financial institution must conduct customer due diligence as provided for in the customer due diligence provisions in the current FIC Act, or sections 20A to 21H of the FIC Amendment Act once the FIC Amendment Act comes into effect, in respect of its customer (originator). This includes the following:
- a. screening the originator against all United Nations (UN) Security Council sanctions lists to determine that the originator is not a designated person or entity in terms of a UN Security Council sanctions list as intended by FATF Recommendation 16, subject to the following:
 - i. When a business relationship is established, the screening of the originator should be done at the on-boarding stage and, if performed by a separate department within the ordering financial institution, the necessary controls should be put in place to the satisfaction of the ordering financial institution to determine that screening has been done prior to effecting the EFT transaction.
 - ii. Where there is no business relationship, the ordering financial institution should perform the screening at the time of the transaction, prior to effecting the EFT transaction.
 - b. screening the EFT transaction to detect those which lack the required originator and beneficiary information; and
 - c. screening the beneficiary's details against all UN Security Council sanctions lists prior to effecting the EFT transaction.

6.1.2 Domestic EFT transactions

6.1.2.1 As in the case of cross-border EFT transactions, the ordering financial institution must conduct customer due diligence as provided for in the customer due diligence provisions in the current FIC Act, or sections 20A to 21H of the FIC Amendment Act once the FIC Act comes into effect, in respect of its customer (originator) in the case of domestic EFT transactions.

6.1.2.2 With regard to screening, the following is applicable:

- a. The ordering financial institution should screen the originator against all UN Security Council sanctions lists to determine that the originator is not a designated person or entity in terms of a UN Security Council sanctions list as intended by FATF Recommendation 16 subject to the following:
 - i. When a business relationship is established, screening should be done at the on-boarding stage and, if performed by a separate department within the ordering financial institution, the necessary controls should be put in place to the satisfaction of the ordering financial institution to determine that screening has been done prior to effecting the EFT transaction;
 - ii. Where there is no business relationship, the ordering financial institution should perform the screening at the time of the transaction, prior to effecting the EFT transaction.
 - iii. Screen the EFT transaction's to detect those which lack required originator and beneficiary information.
 - iv. The ordering financial institution is not obliged to screen the beneficiary's details against all UN Security Council sanctions lists prior to effecting the EFT transaction. The ordering financial institution is responsible for customer due diligence in respect of the originator as provided for in the customer due diligence provisions in the current FIC Act, or sections 20A to 21H of the FIC Amendment

Act once the FIC Act comes into effect, in respect of its customer (originator) in the case of domestic EFT transactions.

6.1.3 Monitoring of EFT transactions

- 6.1.3.1 With regard to both cross-border and domestic EFT transactions, the ordering financial institution **must not execute** an EFT transaction which lacks the required and accurate originator and the required beneficiary information, that is, where the required and accurate originator information and the required beneficiary information is not included in the EFT transaction and/or where the originator or beneficiary is listed on the UN Security Council sanctions list. In addition, the ordering institution should monitor these transactions to determine when it should consider reporting a transaction as being suspicious or unusual in accordance with section 29 of the FIC Act.

6.2 Intermediary financial institutions

- 6.2.1 For cross-border EFT transactions, financial institutions that process an intermediary element of such chains of an EFT should ensure that all originator and beneficiary information that accompanies the EFT is retained with it. The following actions are thus required on the part of the intermediary financial institution:
- a. monitoring of transactions to ensure that the required originator and beneficiary information remains with the payment message throughout the payment chain;
 - b. screening of originator and beneficiary information against the UN Security Resolution Council sanctions list for cross-border EFT transactions only; and
 - c. for domestic transactions, the intermediary financial institution is not obliged to screen the originator and beneficiary information against the

UN Security Council sanctions lists. The ordering and beneficiary financial institutions are responsible for conducting customer due diligence on their respective customers. However, the intermediary financial institutions should have processes in place to satisfy themselves that the financial institutions on whose behalf they are acting have adequate control to conduct the required screening.

6.2.2 An intermediary financial institution should take reasonable measures to identify cross-border EFT transactions that lack required originator or beneficiary information, as the risk is higher for cross-border transactions than domestic transactions.

6.2.3 An intermediary financial institution should use its discretion in determining when to execute, reject or suspend an EFT transaction that lacks the required originator or beneficiary information, and take the appropriate follow-up action. The intermediary institution should also consider reporting a transaction that lacks this required information as being suspicious or unusual in accordance with section 29 of the FIC Act.

6.3 Beneficiary financial institution

6.3.1 The beneficiary financial institution must conduct customer due diligence as provided for in the customer due diligence provisions in the current FIC Act, or sections 20A to 21H of the FIC Amendment Act once the Amendment Act comes into effect, in respect of its customer (beneficiary).

6.3.2 The beneficiary financial institution should screen the beneficiary against all UN Security Council sanctions lists to determine that the beneficiary is not a designated person or entity as intended by FATF Recommendation 16, subject to the following:

- a. When a business relationship is established, this should be done at the on-boarding stage and, if performed by a separate department within the ordering financial institution, the necessary controls should be put in place

to the satisfaction of the ordering financial institution to determine that screening has been done prior to effecting the EFT transaction.

- b. Where there is no business relationship, the beneficiary financial institution should perform the screening at the time of the transaction, prior to making funds available to the beneficiary.

6.3.3 A beneficiary financial institution should take reasonable measures to identify cross-border EFT transactions that lack required originator or accurate beneficiary information. Such measures may include real-time monitoring or post-event monitoring. Domestic transactions are excluded from this provision.

6.3.4 Where the beneficiary information on the payment message is not correct or does not match the beneficiary information held in the records of the beneficiary financial institution, the beneficiary financial institution should use its discretion based on its risk-based policies and procedures to determine when to execute, reject or suspend an EFT that lacks the required originator or beneficiary information, and should take appropriate follow-up action which must include giving consideration to reporting the transaction as being suspicious or unusual in accordance with section 29 of the FIC Act.

6.3.5 The beneficiary financial institution is not obliged to screen the originator against the UN Security Council sanction lists. The beneficiary financial institution is responsible for customer due diligence in respect of their clients.

Enquiries in this regard can be directed to npsdirectives@resbank.co.za.



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Annexure A:

The FATF *Mutual Evaluation Report* on South Africa⁴: Rating of compliance with FATF Special Recommendation VII (now Recommendation 16) on wire transfers

The rating of compliance with regard to the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 methodology, namely (i) compliant (C); (ii) largely compliant (LC) partially compliant (PC) (iv) non-compliant (NC) or could, in exceptional cases, be marked as not applicable (NA).

Table 1: Ratings of compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating
SR VII wire transfer rules	PC	• There is no general legal requirement for all wire transfers to be accompanied by full originator information. • For domestic transfers, there is no general requirement that, where full originator information does not accompany the wire transfer, such information can be made available to the appropriate authorities within three business days of receiving the request. • There is no general requirement on intermediary financial institutions to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. • There is no obligation on beneficiary financial institutions to consider restricting or terminating the business relationship with financial institutions that fail to meet the requirements of Special Recommendation VII.

⁴ Available at:

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20South%20Africa%20full.pdf>

		• There is no indication that PASA specifically checks for compliance with Rule 2.16 to ensure that financial institutions are indeed entering the originator's name and address (in Field 50a), and account number (in Field 57a in the case of debit transfers) or a reference number (in Field 20) as required. • There is no indication that compliance with the requirement on beneficiary financial institutions to file an STR in situations where originator information is missing is tested, or that any tests are conducted to ensure that the information entered into the fields is accurate and complete. • There are no specific sanctions associated with failing to include full, accurate and meaningful originator information in a message conveying payment instructions across borders. • Although MoneyGram's agent banks collect full originator information, in practice not all the information that is collected is transferred to the receiving MoneyGram agent or office outside of South Africa.
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