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**No. 40821**

## THE PRESIDENCY

No. 396 02 May 2017

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 1 of 2017: Financial Intelligence Centre Amendment Act, 2017**

## DIE PRESIDENSIE

No. 396 02 Mei 2017

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

**Wet No 1 van 2017: Wysigingswet op die Finansiële Intelligensiesentrum, 2017**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

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

————— Words underlined with a solid line indicate insertions in existing enactments.

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*(English text signed by the President)  
(Assented to 26 April 2017)*

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# ACT

To amend the Financial Intelligence Centre Act, 2001, so as to define or further define certain expressions; to extend the objectives of the Centre so as to provide for the additional sharing of information and for the Centre to assist in the implementation of financial sanctions and to administer measures pursuant to resolutions adopted by the Security Council of the United Nations; to extend the functions of the Centre so as to provide for the additional sharing of information and to provide for guidance to accountable institutions in respect of the freezing of property and transactions pursuant to resolutions adopted by the Security Council of the United Nations; to abolish the Counter Money Laundering Advisory Council; to provide for a risk based approach to client identification and verification; to provide for the strengthening of customer due diligence measures including with respect to beneficial ownership and persons in prominent positions; to provide for the obligation to keep identity and verification and transaction records; to set out the procedure in respect of financial sanction control measures pursuant to the notification of persons and entities identified by the Security Council of the United Nations; to specify the content of the memorandum of understanding between the Centre and a supervisory body; to provide for access to information on suspicious and unusual transactions to specified supervisory bodies during inspections; to provide for Risk Management and Compliance Programmes, governance and training relating to anti-money laundering and counter terrorist financing; to provide for a warrant to conduct certain inspections; to provide for a financial penalty to be paid into the National Revenue Fund; to provide for further procedural issues in respect of appeals; to make further provision for offences; to provide that certain types of non-compliance are subject to administrative sanctions; to adjust the regulation-making powers for general matters; to provide for public comment before instruments are issued under the Act and arrangements on consultation with stakeholders on matters of mutual interest; to increase the maximum penalties that may be imposed in the regulations; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 1 of Act 11 of 2008 and section 53 of Act 11 of 2013**

1. Section 1 of the Financial Intelligence Centre Act, 2001 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in subsection (1) for the definition of “administrative sanction” of the following definition: 5  
“**‘administrative sanction’** means an administrative sanction contemplated in section 45C;”;
- (b) by the substitution in subsection (1) for the definition of “authorised officer” of the following definition: 10  
“**‘authorised officer’** means any official of—  
(a) **[the South African Police Service]** an investigating authority authorised by the **[National Commissioner]** head of that investigating authority to act under this Act;  
(b) the **[national prosecuting authority]** National Prosecuting Authority authorised by the National Director of Public Prosecutions to act under this Act; 15  
(c) an intelligence service authorised by the Director-General of that service to act under this Act; **[or]**  
(d) the South African Revenue Service authorised by the Commissioner 20  
for that Service to act under this Act;  
(e) the Independent Police Investigative Directorate authorised by the Executive Director of that Directorate to act under this Act;  
(f) the Intelligence Division of the National Defence Force authorised by the Inspector-General of the National Defence Force to act under this Act; 25  
(g) a Special Investigating Unit authorised by the head of the Special Investigating Unit to act under this Act;  
(h) the office of the Public Protector authorised by the Public Protector to act under this Act; or 30  
(i) an investigative division in an organ of state authorised by the head of the organ of state to act under this Act;”;
- (c) by the deletion in subsection (1) in the definition of “bearer negotiable instrument” of the words “, for the purposes of this Act;”;
- (d) by the insertion in subsection (1) after the definition of “bearer negotiable instrument” of the following definition: 35  
“**‘beneficial owner’**, in respect of a legal person, means a natural person who, independently or together with another person, directly or indirectly—  
(a) owns the legal person; or  
(b) exercises effective control of the legal person;” 40
- (e) by the insertion in subsection (1) after the definition of “Centre” of the following definition:  
“**‘client’**, in relation to an accountable institution, means a person who has entered into a business relationship or a single transaction with an accountable institution;” 45
- (f) by the deletion in subsection (1) of the definition of “Council”;
- (g) by the insertion after the definition of “Director” of the following definition:  
“**‘domestic prominent influential person’** means a person referred to in Schedule 3A;” 50
- (h) by the substitution in subsection (1) in the definition of “entity”, for the expression “2004; and” of the expression “2004;”;
- (i) by the insertion in subsection (1) after the definition of “entity” of the following definitions:  
“**‘foreign prominent public official’** means a person referred to in Schedule 3B; 55  
**‘Independent Police Investigative Directorate’** means the Independent Police Investigative Directorate established by section 3 of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011);”;

- (j) by the insertion in subsection (1) after the definition of “inspector” of the following definition:  
 “**‘Intelligence Division of the National Defence Force’** means the Intelligence Division of the National Defence Force referred to in section 33 of the Defence Act, 2002 (Act No. 42 of 2002);” 5
- (k) by the insertion in subsection (1) after the definition of “investigating authority” of the following definitions:  
 “**‘investigative division in an organ of state’** means an investigative division in an organ of state in the Republic having a function by law to investigate unlawful activity within the organ of state; 10  
**‘legal person’** means any person, other than a natural person, that establishes a business relationship or enters into a single transaction, with an accountable institution, and includes a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association, but excludes a trust, partnership or sole proprietor;” 15
- (l) by the insertion in subsection (1) after the definition of “National Director of Public Prosecutions” of the following definition:  
 “**‘National Prosecuting Authority’** means the National Prosecuting Authority referred to in section 179 of the Constitution of the Republic of South Africa, 1996, and established in terms of section 2 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);” 20
- (m) by the substitution in subsection (1) for the definition of “non-compliance” of the following definition:  
 “**‘non-compliance’** means any act or omission that constitutes a failure to comply with a provision of this Act or any order, determination or directive made in terms of this Act and which does not constitute an offence in terms of this Act, and ‘fails to comply’, ‘failure to comply’, ‘non-compliant’ and ‘not complying’ have [the same] a corresponding meaning;” 25 30
- (n) by the insertion in subsection (1) after the definition of “non-compliance” of the following definition:  
 “**‘offence relating to the financing of terrorist and related activities’** means an offence under section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);” 35
- (o) by the insertion in subsection (1) after the definition of “property” of the following definition:  
 “**‘Public Protector’** means the Public Protector referred to in Chapter 9 of the Constitution of the Republic of South Africa, 1996;” 40
- (p) by the insertion in subsection (1) after the definition of “reporting institution” of the following definition:  
 “**‘Risk Management and Compliance Programme’** means the programme contemplated in section 42(1);”
- (q) by the substitution in subsection (1) for the definition of “single transaction” of the following definition: 45  
 “**‘single transaction’** means a transaction—  
 (a) other than a transaction concluded in the course of a business relationship; and  
 (b) where the value of the transaction is not less than the amount prescribed, except in the case of section 20A;” 50
- (r) by the insertion in subsection (1) after the definition of “South African Revenue Service” of the following definition:  
 “**‘Special Investigating Unit’** means the Special Investigating Unit established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996);” 55
- (s) by the deletion in subsection (1) of the definitions of “offence relating to the financing of terrorist and related activities” and “transaction”; and

- (t) by the insertion in subsection (1) before the definition of “unlawful activity” of the following definition:
- “**‘trust’** means a trust defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), other than a trust established—
- (a) by virtue of a testamentary disposition;
  - (b) by virtue of a court order;
  - (c) in respect of persons under curatorship; or
  - (d) by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund,
- and includes a similar arrangement established outside the Republic;”.

**Amendment of section 3 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004 and section 3 of Act 11 of 2008**

**2. Section 3 of the principal Act is hereby amended—**

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The principal objective of the Centre is to assist in the—
- (a) identification of the proceeds of unlawful activities;
  - (b) combating of money laundering activities and the financing of terrorist and related activities; and
  - (c) implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations, under Chapter VII of the Charter of the United Nations.”;

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) to make information collected by it available to **[investigating authorities, supervisory bodies, the intelligence services and the South African Revenue Services]**—

    - (i) an investigating authority;
    - (ii) the National Prosecuting Authority;
    - (iii) an intelligence service;
    - (iv) the South African Revenue Service;
    - (v) the Independent Police Investigative Directorate;
    - (iv) the Intelligence Division of the National Defence Force;
    - (vii) a Special Investigating Unit;
    - (viii) the office of the Public Protector;
    - (ix) an investigative division in an organ of state; or
    - (x) a supervisory body,

to facilitate the administration and enforcement of the laws of the Republic;”;

(c) by the insertion in subsection (2) after paragraph (a) of the following paragraph:

“(aA) to administer measures requiring accountable institutions to freeze property and transactions pursuant to financial sanctions that may arise from resolutions adopted by the Security Council of the United Nations referred to in a notice contemplated in section 26A;”.

**Amendment of section 4 of Act 38 of 2001, as amended by section 4 of Act 11 of 2008**

**3. Section 4 of the principal Act is hereby amended—**

- (a) by the insertion after paragraph (a) of the following paragraph:
- “(aA) where appropriate, initiate analysis based on information in its possession or information received other than by means of reports made to it under Part 3 of Chapter 3;”;
- (b) by the substitution for paragraph (b) of the following paragraph:
- “(b) inform, advise and co-operate with **[investigating authorities, supervisory bodies, the South African Revenue Service and the intelligence services;]**—
- (i) an investigating authority;
  - (ii) the National Prosecuting Authority;
  - (iii) an intelligence service;
  - (iv) the South African Revenue Service;

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- (v) the Independent Police Investigative Directorate;
- (vi) the Intelligence Division of the National Defence Force;
- (vii) a Special Investigating Unit;
- (viii) the Public Protector;
- (ix) an investigative division in an organ of state; or
- (x) a supervisory body;” and
- (c) by the insertion after paragraph (c) of the following paragraph:  
 “(cA) provide information and guidance to accountable institutions that will assist accountable institutions in meeting requirements to freeze property and transactions pursuant to resolutions adopted by the Security Council of the United Nations referred to in a notice contemplated in section 26A;”.

**Amendment of section 6 of Act 38 of 2001**

4. Section 6 is hereby amended by the deletion of subsection (3).

**Repeal of Chapter 2 of Act 38 of 2001**

5. Chapter 2 of the principal Act is hereby repealed.

**Substitution of heading of Chapter 3 of Act 38 of 2001**

6. The following heading is hereby substituted for the heading of Chapter 3:

**“[CONTROL MEASURES FOR] MONEY LAUNDERING, [AND] FINANCING OF TERRORIST AND RELATED ACTIVITIES AND FINANCIAL SANCTIONS CONTROL MEASURES”**

**Substitution of heading to Part 1 of Chapter 3 of Act 38 of 2001**

7. The following heading is hereby substituted for the heading to Part 1 of Chapter 3:

**“[Duty to identify clients] Customer due diligence”.**

**Insertion of section 20A in Act 38 of 2001**

8. The following section is hereby inserted in the principal Act after the heading to Part 1 of Chapter 3:

**“Anonymous clients and clients acting under false or fictitious names**

**20A. An accountable institution may not establish a business relationship or conclude a single transaction with an anonymous client or a client with an apparent false or fictitious name.”.**

**Amendment of section 21 of Act 38 of 2001**

9. Section 21 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

**“(1) [An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps] When an accountable institution engages with a prospective client to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding that single transaction or establishing that business relationship and in accordance with its Risk Management and Compliance Programme—**  
**(a) [to] establish and verify the identity of the client;**

- (b) if the client is acting on behalf of another person, **[to]** establish and verify—
  - (i) the identity of that other person; and
  - (ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
- (c) if another person is acting on behalf of the client, **[to]** establish and verify— 5
  - (i) the identity of that other person; and
  - (ii) that other person's authority to act on behalf of the client.”.

**Insertion of sections 21A, 21B, 21C, 21D, 21E, 21F, 21G and 21H in Act 38 of 2001**

10. The following sections are hereby inserted in the principal Act after section 21:

**“Understanding and obtaining information on business relationship 10**

**21A.** When an accountable institution engages with a prospective client to establish a business relationship as contemplated in section 21, the institution must, in addition to the steps required under section 21 and in accordance with its Risk Management and Compliance Programme, obtain information to reasonably enable the accountable institution to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the institution's knowledge of that prospective client, including information describing— 15

- (a) the nature of the business relationship concerned;
- (b) the intended purpose of the business relationship concerned; and 20
- (c) the source of the funds which that prospective client expects to use in concluding transactions in the course of the business relationship concerned.

**Additional due diligence measures relating to legal persons, trusts and partnerships 25**

**21B.** (1) If a client contemplated in section 21 is a legal person or a natural person acting on behalf of a partnership, trust or similar arrangement between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme, establish— 30

- (a) the nature of the client's business; and
- (b) the ownership and control structure of the client.

(2) If a client contemplated in section 21 is a legal person, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme— 35

- (a) establish the identity of the beneficial owner of the client by—
  - (i) determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person; 40
  - (ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means; or 45
  - (iii) if a natural person is not identified as contemplated in subparagraph (ii), determining the identity of each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer,

- non-executive director, independent non-executive director,  
director or manager; and
- (b) take reasonable steps to verify the identity of the beneficial owner of the client, so that the accountable institution is satisfied that it knows who the beneficial owner is. 5
- (3) If a natural person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting on behalf of a partnership between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme— 10
- (a) establish the identifying name of the partnership, if applicable;
- (b) establish the identity of every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership;
- (c) establish the identity of the person who exercises executive control over the partnership; 15
- (d) establish the identity of each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the partnership; 20
- (e) take reasonable steps to verify the particulars obtained in paragraph (a); and
- (f) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (b) to (d) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned. 25
- (4) If a natural person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting in pursuance of the provisions of a trust agreement between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme— 30
- (a) establish the identifying name and number of the trust, if applicable;
- (b) establish the address of the Master of the High Court where the trust is registered, if applicable;
- (c) establish the identity of the founder; 35
- (d) establish the identity of—
- (i) each trustee; and
- (ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust; 40
- (e) establish—
- (i) the identity of each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; or
- (ii) if beneficiaries are not referred to by name in the trust deed or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined; 45
- (f) take reasonable steps to verify the particulars obtained in paragraphs (a), (b) and (e)(ii); and 50
- (g) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (c), (d) and (e)(i) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.
- (5) This section applies in respect of a legal person, partnership or trust or a similar arrangement between natural persons, whether it is incorporated or originated in the Republic or elsewhere. 55



**Ongoing due diligence**

**21C.** An accountable institution must, in accordance with its Risk Management and Compliance Programme, conduct ongoing due diligence in respect of a business relationship, which includes—

- (a) monitoring of transactions undertaken throughout the course of the relationship, including, where necessary—
  - (i) the source of funds, to ensure that the transactions are consistent with the accountable institution's knowledge of the client and the client's business and risk profile; and
  - (ii) the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent business or lawful purpose; and
- (b) keeping information obtained for the purpose of establishing and verifying the identities of clients pursuant to sections 21, 21A and 21B of this Act, up to date.

**Doubts about veracity of previously obtained information**

**21D.** When an accountable institution, subsequent to entering into a single transaction or establishing a business relationship, doubts the veracity or adequacy of previously obtained information which the institution is required to verify as contemplated in sections 21 and 21B, the institution must repeat the steps contemplated in sections 21 and 21B in accordance with its Risk Management and Compliance Programme and to the extent that is necessary to confirm the information in question.

**Inability to conduct customer due diligence**

- 21E.** If an accountable institution is unable to—
- (a) establish and verify the identity of a client or other relevant person in accordance with section 21 or 21B;
  - (b) obtain the information contemplated in section 21A; or
  - (c) conduct ongoing due diligence as contemplated in section 21C, the institution—
    - (i) may not establish a business relationship or conclude a single transaction with a client;
    - (ii) may not conclude a transaction in the course of a business relationship, or perform any act to give effect to a single transaction; or
    - (iii) must terminate, in accordance with its Risk Management and Compliance Programme, an existing business relationship with a client,
 as the case may be, and consider making a report under section 29 of this Act.

**Foreign prominent public official**

- 21F.** If an accountable institution determines in accordance with its Risk Management and Compliance Programme that a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is a foreign prominent public official, the institution must—
- (a) obtain senior management approval for establishing the business relationship;
  - (b) take reasonable measures to establish the source of wealth and source of funds of the client; and
  - (c) conduct enhanced ongoing monitoring of the business relationship.

**Domestic prominent influential person**

**21G.** If an accountable institution determines that a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is a domestic prominent influential person

and that, in accordance with its Risk Management and Compliance Programme, the prospective business relationship entails higher risk, the institution must—

- (a) obtain senior management approval for establishing the business relationship;
- (b) take reasonable measures to establish the source of wealth and source of funds of the client; and
- (c) conduct enhanced ongoing monitoring of the business relationship.

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#### **Family members and known close associates**

**21H.** (1) Sections 21F and 21G apply to immediate family members and known close associates of a person in a foreign or domestic prominent position, as the case may be.

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(2) For the purposes of subsection (1), an immediate family member includes—

- (a) the spouse, civil partner or life partner;
- (b) the previous spouse, civil partner or life partner, if applicable;
- (c) children and step children and their spouse, civil partner or life partner;
- (d) parents; and
- (e) sibling and step sibling and their spouse, civil partner or life partner.

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#### **Substitution of section 22 of Act 38 of 2001**

11. The following section is hereby substituted for section 22 of the principal Act:

##### **“Obligation to keep customer due diligence records**

**22.** (1) When an accountable institution is required to obtain information pertaining to a client or prospective client pursuant to sections 21 to 21H the institution must keep a record of that information.

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(2) Without limiting subsection (1), the records must—

- (a) include copies of, or references to, information provided to or obtained by the accountable institution to verify a person's identity; and
- (b) in the case of a business relationship, reflect the information obtained by the accountable institution under section 21A concerning—
  - (i) the nature of the business relationship;
  - (ii) the intended purpose of the business relationship; and
  - (iii) the source of the funds which the prospective client is expected to use in concluding transactions in the course of the business relationship.”

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#### **Insertion of section 22A in Act 38 of 2001**

12. The following section is hereby inserted in the principal Act after section 22:

##### **“Obligation to keep transaction records**

**22A.** (1) An accountable institution must keep a record of every transaction, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, that are reasonably necessary to enable that transaction to be readily reconstructed.

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(2) Without limiting subsection (1), records must reflect the following information:

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- (a) The amount involved and the currency in which it was denominated;
- (b) the date on which the transaction was concluded;
- (c) the parties to the transaction;
- (d) the nature of the transaction;
- (e) business correspondence; and

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- (f) if an accountable institution provides account facilities to its clients, the identifying particulars of all accounts and the account files at the accountable institution that are related to the transaction.”.

#### Substitution of section 23 of Act 38 of 2001

13. The following section is hereby substituted for section 23 of the principal Act: 5

##### “Period for which records must be kept

**23.** An accountable institution must keep the records [referred to in section 22] which relate to—

- (a) the establishment of a business relationship referred to in section 22, for at least five years from the date on which the business relationship is terminated; 10
- (b) a transaction referred to in section 22A which is concluded, for at least five years from the date on which that transaction is concluded; and
- (c) a transaction or activity which gave rise to a report contemplated in section 29, for at least five years from the date on which the report was submitted to the Centre.”. 15

#### Substitution of section 24 of Act 38 of 2001

14. The following section is hereby substituted for section 24 of the principal Act:

##### “Records may be kept in electronic form and by third parties

**24.** (1) The duties imposed by [section] sections 22 and 22A on an accountable institution to keep a record of the matters specified in [that section] those sections may be performed by a third party on behalf of the accountable institution as long as the accountable institution has free and easy access to the records and the records are readily available to the Centre and the relevant supervisory body for the purposes of performing its functions in terms of this Act. 20 25

(2) If a third party referred to in subsection (1) fails to properly comply with the requirements of [section] sections 22 and 22A on behalf of the accountable institution concerned, the accountable institution is liable for that failure. 30

(3) If an accountable institution appoints a third party to perform the duties imposed on it by [section] sections 22 and 22A, the accountable institution must forthwith provide the Centre and the supervisory body concerned with the prescribed particulars regarding the third party.

(4) Records kept in terms of sections 22 and 22A may be kept in electronic form and must be capable of being reproduced in a legible format.”. 35

#### Substitution of section 25 of Act 38 of 2001

15. The following section is hereby substituted for section 25 of the principal Act:

##### “Admissibility of records

**25.** A record kept in terms of section 22, 22A or [section] 24, or a certified extract of any such record, or a certified print-out of any extract of an electronic record, is on its mere production in a matter before a court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.”. 40 45

**Repeal of section 26 of Act 38 of 2001, as amended by section 7 of Act 11 of 2008**

16. Section 26 of the principal Act is hereby repealed.

**Insertion of Part 2A and sections 26A, 26B and 26C in Act 38 of 2001**

17. The following heading and sections are hereby inserted in the principal Act after section 26: 5

**“Part 2A**

***Financial sanctions***

**Notification of persons and entities identified by Security Council of the United Nations**

**26A.** (1) Upon the adoption of a resolution by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution, the Minister must announce the adoption of the resolution by notice in the *Gazette* and other appropriate means of publication. 10  
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(2) This section does not apply to resolutions of the Security Council of the United Nations contemplated in section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004). 20

(3) Following a notice contemplated in subsection (1) the Director must, from time to time and by appropriate means of publication, give notice of—  
 (a) persons and entities being identified by the Security Council of the United Nations pursuant to a resolution contemplated in subsection (1); and 25  
 (b) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1) to previously identified persons or entities.

(4) The Minister may revoke a notice contemplated in subsection (1) if the Minister is satisfied that the notice is no longer necessary to give effect to financial sanctions in terms of a resolution contemplated in subsection (1). 30

**Prohibitions relating to persons and entities identified by Security Council of the United Nations**

**26B.** (1) No person may, directly or indirectly, in whole or in part, and by any means or method— 35

- (a) acquire, collect, use, possess or own property;
- (b) provide or make available, or invite a person to provide or make available property;
- (c) provide or make available, or invite a person to provide or make available any financial or other service; 40
- (d) provide or make available, or invite a person to provide or make available economic support; or
- (e) facilitate the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support, 45

intending that the property, financial or other service or economic support, as the case may be, be used, or while the person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part, for the benefit of, or 50

on behalf of, or at the direction of, or under the control of a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1).

(2) No person may, directly or indirectly, in whole or in part, and by any means or method deal with, enter into or facilitate any transaction or perform any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, collected, used, possessed, owned or provided for the benefit of, or on behalf of, or at the direction of, or under the control of a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1).

(3) No person who knows or ought reasonably to have known or suspected that property is property referred to in subsection (1), may enter into, or become concerned in, an arrangement which in any way has or is likely to have the effect of—

- (a) making it possible for a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1) to retain or control the property;
- (b) converting the property;
- (c) concealing or disguising the nature, source, location, disposition or movement of the property, the ownership thereof or any interest anyone may have therein;
- (d) removing the property from a jurisdiction; or
- (e) transferring the property to a nominee.

#### **Permitted financial services and dealing with property**

**26C.** (1) The Minister may, in writing and on the conditions as he or she considers appropriate and in accordance with a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1), permit a person to conduct financial services or deal with property referred to in section 26B in the circumstances referred to in subsection (2).

(2) The Minister may permit the provision of financial services or the dealing with property if it is necessary to—

- (a) provide for basic expenses, including, at least—
  - (i) foodstuffs;
  - (ii) rent or mortgage;
  - (iii) medicines or medical treatment;
  - (iv) taxes;
  - (v) insurance premiums;
  - (vi) public utility charges;
  - (vii) maintenance orders;
  - (viii) reasonable professional fees, and
  - (ix) reimbursement of expenses associated with the provision of legal services;
- (b) satisfy a judgment or arbitral award that was made before the date on which the person or entity was identified by the Security Council of the United Nations;
- (c) make a payment to a third party which is due under a contract, agreement or other obligation made before the date on which the person or entity was identified by the Security Council of the United Nations;
- (d) accrue interest or other earnings due on accounts holding property affected by a prohibition under section 26B;
- (e) make a payment due to a person or entity affected by a prohibition under section 26B by virtue of a contract, agreement or other obligation made before the date on which the person or entity was identified by the Security Council of the United Nations: Provided that the payment is not directly or indirectly being received by that person or entity.

(3) The Minister may permit the provision of financial services or the dealing with property under subsection (1) on his or her own initiative or at the request of a person affected by a prohibition under section 26B.

(4) The Director must, by appropriate means of publication, give notice of the Minister's permission of the provision of financial services or the dealing with property under subsection (1).

(5) (a) The Minister may, in writing, delegate any power conferred in terms of this section, to the Director.

(b) A delegation in terms of paragraph (a)—

- (i) is subject to any limitations or conditions that the Minister may impose;
- (ii) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(c) The Minister may vary or revoke any decision taken by the Director as a result of a delegation in terms of paragraph (a), subject to any rights that may have vested as a consequence of the decision.”.

#### **Amendment of section 27 of Act 38 of 2001**

18. The following section is hereby substituted for section 27 of the principal Act:

#### **“Accountable institutions, reporting institutions and persons subject to reporting obligations to advise Centre of clients**

27. If an authorised representative of the Centre requests an accountable institution, a reporting institution or a person that is required to make a report in terms of section 29 of this Act to advise [**whether**]—

- (a) whether a specified person is or has been a client of the accountable institution, reporting institution or person;
- (b) whether a specified person is acting or has acted on behalf of any client of the accountable institution, reporting institution or person; [**or**]
- (c) whether a client of the accountable institution, reporting institution or person is acting or has acted for a specified person;
- (d) whether a number specified by the Centre was allocated by the accountable institution, reporting institution or person to a person with whom the accountable institution, reporting institution or person has or has had a business relationship; or
- (e) on the type and status of a business relationship with a client of the accountable institution, reporting institution or person, the accountable institution, reporting institution or person must inform the Centre accordingly.”.

#### **Insertion of section 27A in Act 38 of 2001**

19. The following section is hereby inserted in the principal Act after section 27:

#### **“Powers of access by authorised representative to records in respect of reports required to be submitted to Centre**

27A. (1) Subject to subsection (2), an authorised representative of the Centre has access during ordinary working hours to any records kept by or on behalf of an accountable institution in terms of section 22, 22A or 24, and may examine, make extracts from or copies of, any such records for the purposes of obtaining further information in respect of a report made or ought to be made in terms of section 28, 28A, 29, 30 (1) or 31.

(2) The authorised representative of the Centre may, except in the case of records which the public is entitled to have access to, exercise the powers mentioned in subsection (1) only by virtue of a warrant issued in chambers by a magistrate or regional magistrate or judge of an area of jurisdiction within which the records or any of them are kept, or within which the accountable institution conducts business. 5

(3) A warrant may only be issued if it appears to the judge, magistrate or regional magistrate from information on oath or affirmation that there are reasonable grounds to believe that the records referred to in subsection (1) may assist the Centre to identify the proceeds of unlawful activities or to combat money laundering activities or the financing of terrorist and related activities. 10

(4) A warrant issued in terms of this section may contain such conditions regarding access to the relevant records as the judge, magistrate or regional magistrate considers appropriate. 15

(5) An accountable institution must without delay give to an authorised representative of the Centre all reasonable assistance necessary to enable that representative to exercise the powers mentioned in subsection (1).”.

**Amendment of section 28A of Act 38 of 2001, as inserted by section 27 of Act 33 of 2004** 20

20. Section 28A of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**“Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council”;** 25

(b) by the substitution for subsection (1) of the following subsection:

“(1) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of—

(a) any entity which has committed, or attempted to commit, or facilitated the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; [or] 30

(b) a specific entity identified in a notice issued by the President, under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or 35

(c) a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1),

must within the prescribed period report that fact and the prescribed particulars to the Centre.”; and 40

(c) by the addition of the following subsection:

“(3) An accountable institution must upon—

(a) publication of a proclamation by the President under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or 45

(b) notice being given by the Director under section 26A(3), scrutinise its information concerning clients with whom the accountable institution has business relationships in order to determine whether any such client is a person or entity mentioned in the proclamation by the President or the notice by the Director.”. 50

**Amendment of section 29 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004**

21. Section 29 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(b) for subparagraph (iv) of the following subparagraph: 55

“(iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by

legislation administered by the Commissioner for the South African Revenue Service; **[or]**”;

(b) by the addition to subsection (1)(b) of the following subparagraph:

“(vi) relates to the contravention of a prohibition under section 26B; or.”; and

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) No person who made or must make a report in terms of this section may, subject to subsection 45B(2A), disclose that fact or any information regarding the contents of any such report to any other person, including the person in respect of whom the report is or must be made, otherwise than—”.

#### Amendment to section 32 of Act 38 of 2001

22. Section 32 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The Centre[, **or an investigating authority acting with the permission of the Centre or under the authority of an authorised officer,**] may request an accountable institution, a reporting institution or any other person that has made a report in terms of section 28, 29 or 31 to furnish the Centre [**or that investigating authority**] with such additional information, including prescribed information relating to transactional activity and supporting documentation, concerning the report and the grounds for the report as the Centre [**or the investigating authority**] may reasonably require for the performance by it of its functions.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) When an institution or a person referred to in subsection (2) receives a request under that subsection, that institution or person must furnish the Centre [**without delay**] in the prescribed manner and within the prescribed period with such additional information concerning the report and the grounds for the report as that institution or person may have available.”.

#### Amendment to section 34 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004 and section 9 of Act 11 of 2008

23. The following section is hereby substituted for section 34 of the principal Act:

##### “Intervention by Centre

34. (1) If the Centre, after consulting an accountable institution, a reporting institution or a person required to make a report in terms of section 28, 28A or 29, has reasonable grounds to suspect that a transaction or a proposed transaction may—

(a) involve—

(i) the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities; or

(ii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1); or

(b) **[may]** constitute—

(i) money laundering; or

(ii) a transaction contemplated in section 29(1)(b),

it may direct the accountable institution, reporting institution or person in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period **[as may be]** not longer than



10 days as determined by the Centre, [**which may not be more than five days,**] in order to allow the Centre[—

(a) to make the necessary inquiries concerning the transaction[;] and,  
 [(b) if the Centre [**deems**] considers it appropriate, to inform and advise  
 an investigating authority or the National Director of Public  
 Prosecutions. 5

(2) For the purposes of calculating the period of [**five**] 10 days in  
 subsection (1), Saturdays, Sundays and proclaimed public holidays must  
 not be taken into account.

(3) Subsection (1) does not apply to the carrying out of a transaction to  
 which the rules of an exchange licensed in terms of the [**Securities Services  
 Act, 2004 (Act No. 36 of 2004)**] Financial Markets Act, 2012 (Act No. 19  
 of 2012), apply.”. 10

**Substitution of section 35 of Act 38 of 2001, as amended by section 27 of Act 33 of  
 2004** 15

24. Section 35 of the principal Act is hereby amended by the substitution for  
 subsection (1) of the following subsection:

“(1) A judge designated by the Minister of Justice for the purposes of the  
 Regulation of Interception of Communications and Provision of Communication-  
 related Information Act, 2002 (Act No. 70 of 2002), may, upon written application 20  
 by the Centre, order an accountable institution to report to the Centre, on such  
 terms and in such confidential manner as may be specified in the order, all  
 transactions concluded by a specified person with the accountable institution or all  
 transactions conducted in respect of a specified account or facility at the  
 accountable institution, if there are reasonable grounds to suspect that— 25

(a) that person has transferred or may transfer to the accountable institution—  
 (i) the proceeds of unlawful activities;  
 (ii) property which is connected to an offence relating to the financing of  
 terrorist and related activities; or  
 (iii) property owned or controlled by or on behalf of, or at the direction of a 30  
 person or entity identified pursuant to a resolution of the Security  
 Council of the United Nations contemplated in a notice referred to in  
 section 26A(1);

(b) that account or other facility has received or may receive— 35  
 (i) the proceeds of unlawful activities;  
 (ii) property which is connected to an offence relating to the financing of  
 terrorist and related activities; or  
 (iii) property owned or controlled by or on behalf of, or at the direction of a  
 person or entity identified pursuant to a resolution of the Security  
 Council of the United Nations contemplated in a notice referred to in 40  
 section 26A(1);

(c) that person is using or may use the accountable institution for money  
 laundering purposes or for the financing of terrorist acts or for the purpose of  
 any transaction contemplated in section 29(1)(b); or  
 (d) that account or other facility is being or may be used for money laundering 45  
 purposes or for the financing of terrorist or related activities or for the purpose  
 of any transaction contemplated in section 29(1)(b).”.

**Substitution of section 40 of Act 38 of 2001, as amended by section 27 of Act 33 of  
 2004 and section 13 of Act 11 of 2008**

25. The following section is hereby substituted for section 40 of the principal Act: 50

**“Access to information held by Centre**

**40. (1) [No person is entitled to information held by the Centre,  
 except] Subject to this section, the Centre must make information reported**

to it, or obtained by it under this Part and information generated by its analysis of information so reported or obtained, available to—

- (a) an investigating authority [**inside**] in the Republic[, **the South African Revenue Service and the intelligence services, which may be provided with such information—** 5
  - (i) **on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or**
  - (ii) **at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity];** 10
- (aA) the National Prosecuting Authority;
- (aB) the Independent Police Investigative Directorate;
- (aC) an intelligence service;
- (aD) the Intelligence Division of the National Defence Force; 15
- (aE) a Special Investigating Unit;
- (aF) an investigative division in an organ of state;
- (aG) the Public Protector; or
- (aH) the South African Revenue Service;
- (b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic [which may, at the initiative of the Centre or on written request, obtain information which the Centre reasonably believes is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which that entity is established; 20 25
- (c) an accountable institution or reporting institution which or any other person who may, at the initiative of the Centre or on written request, be provided with information regarding the steps taken by the Centre in connection with transactions reported by such accountable institution, reporting institution or person, unless the Centre reasonably believes that disclosure to such accountable institution, reporting institution or person of the information requested could— 30 35
  - (i) **inhibit the achievement of the Centre's objectives or the performance of its functions, or the achievement of the objectives or the performance of the functions of another organ of state; or**
  - (ii) **prejudice the rights of any person];** 40
- (d) a supervisory body[, which may at the initiative of the Centre or on written request be provided with information which the Centre reasonably believes is relevant to the exercise by that supervisory body of its powers or performance by it of its functions in relation to an accountable institution]; 45
- (e) a person who is entitled to receive such information in terms of an order of a court; or
- (f) a person who is entitled to receive such information in terms of other national legislation.
  - (1A) Information contemplated in subsection (1) may only be made available to an entity referred to in subsection (1)(a), (aA), (aB), (aC), (aD), (aE), (aF), (aG) or (aH)— 50
    - (a) at the initiative of the Centre or at the request of an authorised officer of the entity; and
    - (b) if the Centre reasonably believes such information is required to investigate suspected unlawful activity. 55
  - (1B) Information contemplated in subsection (1) may only be made available to an entity or authority referred to in subsection (1)(b)—

- (a) at the initiative of the Centre or at the request of the entity or authority; and
- (b) if the Centre reasonably believes such information is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which the entity or authority is established. 5
- (1C) Information contemplated in subsection (1) may only be made available to a supervisory body referred to in subsection (1)(d)—
- (a) at the initiative of the Centre or at the request of the supervisory body; and 10
- (b) if the Centre reasonably believes such information is relevant to the exercise by the supervisory body of its powers or performance by it of its functions under any law.
- (2) A request for information contemplated in subsection [(1)(b), (c) or (d)] (1A) or (1C) must be in writing and must specify the **[desired]** required information and the purpose for which the information is required. 15
- (3) The Director may, as a condition to the provision of any information contemplated in subsection (1), make **[such]** the reasonable procedural arrangements and impose **[such]** the reasonable safeguards regarding the furnishing of such information **[referred to in subsection (1)(a), (b), (c) or (d) as]** that the Director considers appropriate to maintain the confidentiality of that information before the information is provided. 20
- (4) Information **[held by the Centre]** contemplated in subsection (1) may only be provided to an entity or authority referred to in subsection (1)(b) pursuant to a written agreement between the Centre and **[such]** the entity or the authority which is responsible for **[that]** the entity or authority, regulating the exchange of information between the Centre and **[such]** the entity or authority. 25
- (5) An agreement referred to in subsection (4) does not— 30
- (a) take effect until it has been approved in writing by the Minister;
- (b) permit the Centre to provide any category of information to the entity or authority in respect of which the agreement is concluded which **[that]** the entity or authority is not permitted to provide to the Centre.
- (6) A person who obtains information from the Centre may use that information only— 35
- (a) within the scope of that person's powers and duties; and
- (b) in the case of a request contemplated in subsection (2), for the purpose specified in **[terms of subsection (2)]** that request.
- (7) The Centre may make available any information obtained by it during an inspection to an organ of state, a supervisory body, other regulatory authority, self-regulating association or organisation **[that]** which the Centre reasonably believes is affected by or has an interest in that information. 40
- (8) The Centre must make information it holds available to the appropriate National Intelligence Structure, as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), if it reasonably believes that the information relates to any potential threat or threat to the national security, as defined in section 1 of that Act. 45
- (9) The Centre may, at the initiative of the Centre or on written request, disclose information it holds, other than information contemplated in subsections (1), (7) and (8), to an accountable institution or class of accountable institutions or any other person unless the Centre reasonably believes that the disclosure may— 50
- (a) inhibit the achievement of the Centre's objectives or the performance of its functions, or the achievement of the objectives or the performance of the functions of another organ of state; or 55
- (b) prejudice the rights of any person.”.

**Insertion of section 41A in Act 38 of 2001**

26. The following section is hereby inserted in the principal Act after section 41:

**“Protection of personal information**

- 41A.** (1) The Centre must ensure that appropriate measures are taken in respect of personal information in its possession or under its control to prevent—
- (a) loss of, damage to or unauthorised destruction of the information; and
  - (b) unlawful access to or processing of personal information, other than in accordance with this Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).
- (2) In order to give effect to subsection (1) the Centre must take reasonable measures to—
- (a) identify all reasonable and foreseeable internal and external risks to personal information in its possession or under its control;
  - (b) establish and maintain appropriate safeguards against the risks identified;
  - (c) regularly verify that the safeguards are effectively implemented; and
  - (d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.”

**Substitution of section 42 of Act 38 of 2001**

27. The following section is hereby substituted for section 42 of the principal Act:

**“[Formulation and implementation of internal rules] Risk Management and Compliance Programme**

- 42.** (1) An accountable institution must ~~[formulate]~~ develop, document, maintain and implement [internal rules concerning—
- (a) **the establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of this Chapter;**
  - (b) **the information of which record must be kept in terms of Part 2 of this Chapter;**
  - (c) **the manner in which and place at which such records must be kept;**
  - (d) **the steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties under this Act; and**
  - (e) **such other matters as may be prescribed]** a programme for anti-money laundering and counter-terrorist financing risk management and compliance.
- (2) **[Internal rules must comply with the prescribed requirements]** A Risk Management and Compliance Programme must—
- (a) enable the accountable institution to—
    - (i) identify;
    - (ii) assess;
    - (iii) monitor;
    - (iv) mitigate; and
    - (v) manage,
 the risk that the provision by the accountable institution of products or services may involve or facilitate money laundering activities or the financing of terrorist and related activities;
  - (b) provide for the manner in which the institution determines if a person is—
    - (i) a prospective client in the process of establishing a business relationship or entering into a single transaction with the institution; or

- (ii) a client who has established a business relationship or entered into a single transaction;
- (c) provide for the manner in which the institution complies with section 20A;
- (d) provide for the manner in which and the processes by which the establishment and verification of the identity of persons whom the accountable institution must identify in terms of Part 1 of this Chapter is performed in the institution; 5
- (e) provide for the manner in which the institution determines whether future transactions that will be performed in the course of the business relationship are consistent with the institution's knowledge of a prospective client; 10
- (f) provide for the manner in which and the processes by which the institution conducts additional due diligence measures in respect of legal persons, trust and partnerships; 15
- (g) provide for the manner in which and the processes by which ongoing due diligence and account monitoring in respect of business relationships is conducted by the institution;
- (h) provide for the manner in which the examining of— 20
- (i) complex or unusually large transactions; and
- (ii) unusual patterns of transactions which have no apparent business or lawful purpose,
- and keeping of written findings relating thereto, is done by the institution;
- (i) provide for the manner in which and the processes by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information; 25
- (j) provide for the manner in which and the processes by which the institution will perform the customer due diligence requirements in accordance with sections 21, 21A, 21B and 21C when, during the course of a business relationship, the institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29; 30
- (k) provide for the manner in which the accountable institution will terminate an existing business relationship as contemplated in section 21E; 35
- (l) provide for the manner in which and the processes by which the accountable institution determines whether a prospective client is a foreign prominent public official or a domestic prominent influential person; 40
- (m) provide for the manner in which and the processes by which enhanced due diligence is conducted for higher-risk business relationships and when simplified customer due diligence might be permitted in the institution; 45
- (n) provide for the manner in which and place at which the records are kept in terms of Part 2 of this Chapter;
- (o) enable the institution to determine when a transaction or activity is reportable to the Centre under Part 3 of this Chapter;
- (p) provide for the processes for reporting information to the Centre under Part 3 of this Chapter; 50
- (q) provide for the manner in which—
- (i) the Risk Management and Compliance Programme is implemented in branches, subsidiaries or other operations of the institution in foreign countries so as to enable the institution to comply with its obligations under this Act; 55
- (ii) the institution will determine if the host country of a foreign branch or subsidiary permits the implementation of measures required under this Act; and
- (iii) the institution will inform the Centre and supervisory body concerned if the host country contemplated in sub-paragraph (ii) does not permit the implementation of measures required under this Act; 60

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- (r) provide for the processes for the institution to implement its Risk Management and Compliance Programme; and
- (s) provide for any prescribed matter.
- (2A) An accountable institution must indicate in its Risk Management and Compliance Programme if any paragraph of subsection (2) is not applicable to that accountable institution and the reason why it is not applicable. 5
- (2B) The board of directors, senior management or other person or group of persons exercising the highest level of authority in an accountable institution must approve the Risk Management and Compliance Programme of the institution. 10
- (2C) An accountable institution must review its Risk Management and Compliance Programme at regular intervals to ensure that the Programme remains relevant to the accountable institution's operations and the achievement of the requirements contemplated in subsection (2). 15
- (3) An accountable institution must make [its internal rules] documentation describing its Risk Management and Compliance Programme available to each of its employees involved in transactions to which this Act applies.
- (4) An accountable institution must, on request, make a copy of [its internal rules] the documentation describing its Risk Management and Compliance Programme available to— 20
- (a) the Centre; or
- (b) a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution.”. 25

#### Insertion of sections 42A and 42B in Act 38 of 2001

28. The following sections are hereby inserted in the principal Act after section 42:

#### “Governance of anti-money laundering and counter terrorist financing compliance

- 42A.** (1) The board of directors of an accountable institution which is a legal person with a board of directors, or the senior management of an accountable institution without a board of directors, must ensure compliance by the accountable institution and its employees with the provisions of this Act and its Risk Management and Compliance Programme. 30
- (2) An accountable institution which is a legal person must— 35
- (a) have a compliance function to assist the board of directors or the senior management, as the case may be, of the institution in discharging their obligations under subsection (1); and
- (b) assign a person with sufficient competence and seniority to ensure the effectiveness of the compliance function contemplated in paragraph (a). 40
- (3) The person or persons exercising the highest level of authority in an accountable institution which is not a legal person must ensure compliance by the employees of the institution with the provisions of this Act and its Risk Management and Compliance Programme, in so far as the functions of those employees relate to the obligations of the institution. 45
- (4) An accountable institution which is not a legal person, except for an accountable institution which is a sole practitioner, must appoint a person or persons with sufficient competence to assist the person or persons exercising the highest level of authority in the accountable institution in discharging their obligation under subsection (3). 50

**Consultation process for issuing guidance**

**42B.** Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their duties and obligations in terms of this Act or any directive made in terms of this Act, the Centre must—

- (a) publish a draft of the guidance by appropriate means of publication and invite submissions; and
- (b) consider submissions received.”.

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**Substitution of section 43 of Act 38 of 2001**

**29.** The following section is hereby substituted for section 43 of the principal Act: 10

**“Training [and monitoring of] relating to anti-money laundering and counter terrorist financing compliance**

**43.** An accountable institution must[—

- (a) provide ongoing training to its employees to enable them to comply with the provisions of this Act and **[the internal rules] the Risk Management and Compliance Programme** which are applicable to them[;
- (b) **appoint a person with the responsibility to ensure compliance by—**
  - (i) **the employees of the accountable institution with the provisions of this Act and the internal rules applicable to them; and**
  - (ii) **the accountable institution with its obligations under this Act].”.**

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**Amendment of section 43A of Act 38 of 2001, as inserted by section 14 of Act 11 of 2008** 25

**30.** Section 43A of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections:

“(1) (a) The Centre may, by notice in the *Gazette*, issue a directive to all institutions to whom the provisions of this Act apply[, ]—

- (i) regarding the application of this Act; or
- (ii) which reasonably may be required to give effect to the Centre’s objectives contemplated in section 3.

(b) The Centre may issue a directive in terms of paragraph (a) only after consulting with supervisory bodies on that directive.

(2) The Centre 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 **[person]** persons to whom the provisions of this Act apply[, ]—

- (a) regarding the application of this Act; or
- (b) which reasonably may be required to give effect to the Centre’s objectives contemplated in section 3.”;

- (b) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) The Centre, in respect of any accountable institution or category of accountable institutions regulated or supervised by a supervisory body in terms of this Act or any other law, may issue a directive in accordance with subsections (2) and (3) only **[if a supervisory body]**—

- (i) if a supervisory body failed to issue a directive despite any recommendation of the Centre made in terms of section 44(b); or
- (ii) **[failed to issue a directive within the period specified by the Centre] after consultation with the relevant supervisory body.”;** and

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(c) by the addition of the following subsection:

“(7) Before the Centre or supervisory body concerned issues a directive, it must—

(a) in the case of a directive in terms of—

(i) subsection (1), in the *Gazette*, give notice where a draft of the directive will be available and invite submissions;

(ii) subsection (2), publish a draft of the directive by appropriate means of publication and invite submissions; and

(b) consider submissions received.”.

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**Amendment of section 45 of Act 38 of 2001, as inserted by section 15 of Act 11 of 2008**

31. Section 45 of the principal Act is hereby amended by the substitution for subsection (1D) of the following subsection:

“(1D) (a) The Centre and a supervisory body must coordinate their approach to exercising their powers and performing their functions in terms of this Act to ensure the consistent application of the Act, and must enter into a written memorandum of understanding in respect thereof.

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(b) The memorandum of understanding must provide for—

(i) the sharing of information between the parties, which must include—

(aa) the types of information to be furnished by each party; or

(bb) measures to protect confidentiality of the information, including limiting access to specified persons or incumbents of specified positions, subject to section 40(3) and other provisions of this Act and other applicable legislation;

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(ii) cooperation between the parties and assisting each other in the exercise of their respective powers and the performance of their respective duties in terms of this Act;

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(iii) a dispute resolution mechanism; and

(iv) such other matters as may be prescribed.”.

**Amendment of section 45B of Act 38 of 2001, as inserted by section 16 of Act 11 of 2008**

32. Section 45B of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) (a) In this section ‘**compliance**’ means compliance with a provision of this Act or any order, determination or directive made in terms of this Act and which, if not complied with, constitutes non-compliance.

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(b) [For] An inspector appointed in terms of section 45A may enter the premises, excluding a private residence, of an accountable institution or reporting institution which is registered in terms of section 43B or otherwise licensed or authorised by a supervisory body and inspect the affairs of the accountable institution or reporting institution, as the case may be, for the purposes of determining compliance [with this Act or any order, determination or directive made in terms of this Act, an inspector may at any reasonable time and on reasonable notice, where appropriate, enter and inspect any premises at which the Centre or, when acting in terms of section 45(1), the supervisory body reasonably believes that the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted].”;

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(b) by the insertion after subsection (1) of the following subsections:

“(1A) An inspector appointed in terms of section 45A may, for the purposes of determining compliance and on the authority of a warrant issued under subsection (1B), enter and inspect—

(a) a private residence; or

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- (b) any premises other than premises contemplated in subsection (1)(b) or paragraph (a) (in this section referred to as 'unlicensed business premises'),  
if the Centre or a supervisory body reasonably believes that the residence or premises are used for a business to which the provisions of this Act apply. 5
- (1B) A magistrate or judge may issue a warrant contemplated in subsection (1A)—
- (a) on written application by the Centre or a supervisory body setting out under oath or affirmation why it is necessary for an inspector to enter and inspect the private residence or unlicensed business premises; and 10
- (b) if it appears to the magistrate or judge from the information under oath or affirmation that— 15
- (i) there are reasonable grounds for suspecting that an act of non-compliance has occurred;
- (ii) entry and inspection of the private residence or unlicensed business premises are likely to yield information pertaining to the non-compliance; and
- (iii) entry and inspection of that residence or those premises are reasonably necessary for the purposes of determining compliance. 20
- (1C) An inspector otherwise required to obtain a warrant for entry and inspection of a private residence or unlicensed business premises in terms of subsection (1A), may enter and inspect that residence or those premises without a warrant— 25
- (a) with the consent of—
- (i) in the case of a private residence—
- (aa) the person apparently in control of the business reasonably believed to be conducted at the private residence; and 30
- (bb) the occupant of the part of the private residence to be entered and inspected; or
- (ii) in the case of unlicensed business premises, the person apparently in control of the business reasonably believed to be conducted at the premises, 35
- after informing him or her that he or she is under no obligation to admit the inspector in the absence of a warrant; or
- (b) with the prior authority of the Director or the head of a supervisory body, or a senior staff member of the Centre or supervisory body delegated to perform the function, if the Director, head or senior staff member on reasonable grounds believes that— 40
- (i) a warrant will be issued under subsection (1B) if applied for;
- (ii) the delay in obtaining the warrant is likely to defeat the purpose for which entry and inspection of the private residence or unlicensed business premises is sought; and 45
- (iii) it is necessary to enter and inspect that residence or those premises to perform any or all of the actions contemplated in section 45B(2)(a) to (f).
- (1D) Where an inspector enters and inspects premises in terms of subsection (1)(b), or a private residence or unlicensed business premises in terms of subsection (1C), he or she must do so— 50
- (a) at a reasonable time within ordinary business hours or, in the case of an entry and inspection in terms of subsection (1C)(b), if the inspector on reasonable grounds believes that the purpose for which the entry and inspection is sought, is likely to be defeated by a delay, as closely to ordinary business hours as the circumstances reasonably permit; 55
- (b) on reasonable notice, where appropriate;
- (c) with strict regard to an affected person's right to— 60
- (i) dignity;
- (ii) freedom and security;

- (iii) privacy; and  
 (iv) other constitutional rights; and  
 (d) with strict regard to decency and good order as the circumstances require, in particular by—
- (i) entering and inspecting only such areas or objects as are reasonably required for purposes of section 45B(2);
  - (ii) conducting the inspection discreetly and with due decorum;
  - (iii) causing as little disturbance as possible; and
  - (iv) concluding the inspection as soon as possible.
- (1E) Subsection (1D)(c) and (d) apply with the necessary changes where an inspector enters and inspects premises on the authority of a warrant issued under subsection (1B).”;
- (c) by the insertion after subsection (2) of the following subsection:  
 “(2A) When acting in terms of subsection (2)(b) or (d), an inspector of—
- (a) the Centre;
  - (b) a supervisory body referred to in item 1 or 2 of Schedule 2; or
  - (c) any other supervisory body meeting the prescribed criteria,
- may order from an accountable institution or reporting institution under inspection, the production of a copy of a report, or the furnishing of a fact or information related to the report, contemplated in section 29.
- (2B) If the inspector of a supervisory body, referred to in subsection (2A)(b) or (c), obtained a report, or a fact or information related to the report, under subsection (2A), that supervisory body must request information from the Centre under section 40(1C) relating to the report contemplated in section 29 which may be relevant to such inspection.
- (2C) For purposes of subsection (2B), the Centre must provide the information to the inspector of the supervisory body in accordance with section 40.”;
- (d) by the substitution for subsection (4) of the following subsection:  
 “(4) The Centre or a supervisory body may recover all expenses necessarily incurred in conducting an inspection from an accountable institution[, ] or reporting institution [or person] inspected.”;
- (e) by the substitution in subsection (5)(b) for subparagraph (iv) of the following subparagraph:  
 “(iv) except information contemplated in subsections (2A) and (2C), if the Director or supervisory body is satisfied that it is in the public interest.”;
- (f) by the deletion in subsection (6) of paragraph (b); and  
 (g) by the deletion of subsection (7).

#### **Amendment of section 45C of Act 38 of 2001, as inserted by section 16 of Act 11 of 2008**

33. Section 45C of the principal Act is hereby amended by the substitution in subsection (7) for paragraph (a) of the following paragraph:

- “(7) (a) Any financial penalty imposed must be paid into the **[Criminal Assets Recovery Account established by section 63 of the Prevention Act]** National Revenue Fund within the period and in the manner as may be specified in the relevant notice.”.

#### **Amendment of section 45D of Act 38 of 2001, as inserted by section 16 of Act 11 of 2008**

34. Section 45D of the principal Act is hereby amended—

- (a) by the addition to subsection (1) of the following paragraph:  
 “(c) The appeal board may, on good cause shown, grant condonation to an appellant who has failed to lodge an appeal timeously as provided for in paragraph (b).”;

- (b) by the substitution for subsection (3) of the following subsection:  
 “(3) An appeal is decided on the **[affidavits and supporting documents presented to the appeal board by the parties to the appeal]** written evidence, factual information and documentation submitted to the Centre or the supervisory body before the decision which is subject to the appeal was taken.” 5
- (c) by the insertion after subsection (3) of the following subsections:  
 “(3A) Subject to subsection (4), no oral or written evidence or factual information and documentation, other than that which was available to the Centre or supervisory body and the written reasons for the decision of the Centre or the supervisory body, may be submitted to the appeal board by a party to the appeal. 10  
 (3B) Despite subsection (3), the chairperson of the appeal board may on application by—  
 (a) the appellant concerned, and on good cause shown, allow further oral and written evidence or factual information and documentation not made available to the Centre or the supervisory body prior to the making of the decision against which the appeal is lodged; or  
 (b) the Centre or the supervisory body concerned, and on good cause shown, allow further oral and written evidence or factual information and documentation to be submitted and introduced into the record of the appeal. 20  
 (3C) If introduction by an appellant of further oral and written evidence or factual documentation is allowed into the record of the appeal under subsection (3B)(a), the matter must be submitted to the Centre or the supervisory body in question for reconsideration. 25  
 (3D) When an appeal is submitted to the Centre or a supervisory body as contemplated in subsection (3C), the appeal is deferred pending the final decision of the Centre or the supervisory body.  
 (3E) If, after the Centre or the supervisory body concerned has made a final decision as contemplated in subsection (3D), the appellant continues with the appeal by giving written notice to the appeal board, the record must include the further oral evidence properly transcribed, the written evidence or factual information or documentation allowed, and the further reasons or documentation submitted by the Centre or the supervisory body concerned. 30 35
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:  
 “(4) **[Despite the provisions of subsection (3) the appeal board may]** For the purposes of allowing further oral evidence in terms of subsection (3B) the appeal board may—” 40
- (e) by the substitution for subsection (5) of the following subsection:  
 “(5) The chairperson of the appeal board determines the rules of the appeal and any other procedural matters relating to an appeal.” 45
- (f) by the insertion after subsection (6) of the following subsections:  
 “(6A) The chairperson of the appeal board manages the case load of the appeal board and must assign each appeal to an adjudication panel comprising of not less than three members of the appeal board.  
 (6B) The chairperson of the appeal board appoints a chairperson of an adjudication panel who presides over the proceedings of that panel and that chairperson has a deciding vote in the case of an equality of votes.” 50  
 and
- (g) by the substitution for subsection (8) of the following subsection:  
 “(8) The decision of a majority of the members of [the appeal board] an adjudication panel shall be the decision of [that] the appeal board.” 55

**Substitution of section 46 of Act 38 of 2001**

35. The following section is hereby substituted for section 46 of the principal Act:

**“Failure to identify persons**

46. (1) An accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 21(1) or (1A) [is guilty of an offence] is non-compliant and is subject to an administrative sanction. 5

(2) An accountable institution that concludes any transaction in contravention of section 21(2) [is guilty of an offence] is non-compliant and is subject to an administrative sanction.” 10

**Insertion of section 46A in Act 38 of 2001**

36. The following section is hereby inserted in the principal Act after section 46:

**“Failure to comply with duty in regard to customer due diligence**

46A. An accountable institution that fails to comply with the duty to perform additional due diligence measures in accordance with section 21A, 21B, 21C, 21D, 21E, 21F, 21G or 21H is non-compliant and is subject to an administrative sanction.” 15

**Substitution of section 47 of Act 38 of 2001**

37. The following section is hereby substituted for section 47 of the principal Act:

**“Failure to keep records 20**

47. An accountable institution that fails to—  
 (a) keep a record of information in terms of section 22(1), or 22A(1) or (2);  
 (b) keep such records in accordance with section 23 or [section] 24(1); or  
 (c) comply with the provisions of section 24(3), [is guilty of an offence] is non-compliant and is subject to an administrative sanction.” 25

**Substitution of section 49 of Act 38 of 2001**

38. The following section is hereby substituted for section 49 of the principal Act:

“49. An accountable institution that fails to give assistance to a representative of the Centre in accordance with section [26(5)] 27A(5), is guilty of an offence.” 30

**Insertion of section 49A in Act 38 of 2001**

39. The following section is hereby inserted in the principal Act after section 49:

**“Contravention of prohibitions relating to persons and entities identified by Security Council of United Nations 35**

49A. Any person who contravenes a provision of section 26B is guilty of an offence.”

**Substitution of section 50 of Act 38 of 2001**

40. The following section is hereby substituted for section 50 of the principal Act:

**“Failure to advise Centre of client 40**

50. An accountable institution, reporting institution or person that is required to make a report in terms of section 29 that fails to inform the Centre in accordance with section 27, is guilty of an offence.”

**Substitution of section 51 of Act 38 of 2001**

41. The following section is hereby substituted for section 51 of the principal Act:

**“Failure to report cash transactions**

51. (1) An accountable institution or reporting institution that fails, within the prescribed period, to report to the Centre the prescribed information in respect of a cash transaction in accordance with section 28, is guilty of an offence. 5

(2) An accountable institution or reporting institution that fails, within the prescribed period, to report to the Centre the prescribed information in respect of a cash transaction in accordance with section 28, is non-compliant and is subject to an administrative sanction.” 10

**Substitution of section 51A of Act 38 of 2001, as inserted by section 17 of Act 11 of 2008**

42. The following section is hereby substituted for section 51A of the principal Act:

**“Failure to report property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council 15**

51A. (1) An accountable institution that has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of an entity contemplated in section 28A(1), and that fails, within the prescribed period, to report that fact and the prescribed information in respect of such property to the Centre in accordance with that section, is guilty of an offence. 20

(2) An accountable institution that fails to comply with a direction by the Director in accordance with section 28A(2), is guilty of an offence. 25

(3) An accountable institution that fails to scrutinise the information as contemplated in section 28A(3), is guilty of an offence.

(4) An accountable institution that fails to—  
 (a) report to the Centre in accordance with section 28A(1), within the prescribed period, the prescribed information in respect of its possession or control of property owned or controlled by or on behalf of, or at the direction of an entity contemplated in that section; 30  
 (b) comply with a direction by the Director in accordance with section 28A(2); or  
 (c) scrutinise the information as contemplated in section 28A(3), is non-compliant and is subject to an administrative sanction.” 35

**Substitution of section 56 of Act 38 of 2001**

43. The following section is hereby substituted for section 56 of the principal Act:

**“Failure to report electronic transfers**

56. (1) An accountable institution that fails to report to the Centre the prescribed information in respect of an electronic transfer of money in accordance with section 31, is guilty of an offence. 40

(2) An accountable institution that fails to report to the Centre the prescribed information in respect of an electronic transfer of money in accordance with section 31, is non-compliant and is subject to an administrative sanction.” 45

**Substitution of section 58 of Act 38 of 2001**

44. The following section is hereby substituted for section 58 of the principal Act:

**“Failure to comply with [directives] direction of Centre**

**58.** (1) An accountable institution that fails to comply with a **[directive]** direction of the Centre **[or a supervisory body]** in terms of section 34(1)[, **43A(3) or 45C(c)(3)**], is guilty of an offence. 5

(2) An accountable institution that fails to comply with a direction of the Centre in terms of section 34(1), is non-compliant and is subject to an administrative sanction.

**Amendment of section 60 of Act 38 of 2001, as amended by section 22 of Act 11 of 2008**

45. Section 60 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:

“(b) willfully destroys or in any other way tampers with information 15  
kept by the Centre for the purposes of this Act; **[or]**

(c) uses information from the Centre otherwise than in accordance with—

(i) any arrangements or safeguards made or imposed by the Director in terms of section 40(3); or 20

(ii) section 40(6)[,]; or”;

(b) by the insertion in subsection (1) after paragraph (c) of the following paragraph:

“(d) discloses a fact or information contemplated in section 45B(2A), or uses such information, otherwise than as permitted by section 45B(5).” 25

**Substitution of sections 61 and 61A of Act 38 of 2001**

46. The following sections are hereby substituted for sections 61 and 61A of the principal Act:

**“Failure to [formulate and implement internal rules] comply with duty in respect of Risk Management and Compliance Programme** 30

**61.** An accountable institution that fails to—

(a) **[formulate]** develop, document, maintain and implement [internal rules] an anti-money laundering and counter-terrorist financing risk management and compliance programme in accordance with section 42(1), **[and]** (2) and (2A); 35

(aA) obtain approval for its Risk Management and Compliance Programme in accordance with section 42(2B);

(aB) review its Risk Management and Compliance Programme at regular intervals in accordance with section 42(2C); 40

(b) make the [internal rules] Risk Management and Compliance Programme available to its employees in accordance with section 42(3); or

(c) make a copy of its [internal rules] Risk Management and Compliance Programme available to the Centre or a supervisory body in terms of section 42(4), 45

**[is guilty of an offence]** is non-compliant and is subject to an administrative sanction.

**Failure to register with Centre**

**61A.** Any accountable institution or reporting institution that— 50

(a) fails to register with the Centre in terms of section 43B; or

(b) fails to provide information in terms of section 43B,

[is guilty of an offence] is non-compliant and is subject to an administrative sanction.”.

#### Insertion of section 61B in Act 38 of 2001

47. The following section is hereby inserted in the principal Act after section 61A:

**“Failure to comply with duty in regard to governance** 5

**61B.** (1) The board of directors or senior management, or both, of an accountable institution that fails to ensure compliance in accordance with section 42A(1) is non-compliant and is subject to an administrative sanction.

(2) An accountable institution that fails to appoint a person in accordance with section 42A(2) or 42A(4) is non-compliant and is subject to an administrative sanction. 10

(3) A person that fails to ensure compliance in accordance with section 42A(3) is non-compliant and is subject to an administrative sanction.”.

#### Substitution of section 62 of Act 38 of 2001

48. The following section is hereby substituted for section 62 of the principal Act: 15

**“Failure to provide training [or appoint compliance officer]**

**62.** An accountable institution that fails to[—  
(a) provide training to its employees in accordance with section 43[(a); or  
(b) appoint the person referred to in section 43(b), 20  
is guilty of an offence] is non-compliant and is subject to an administrative sanction.”.

#### Insertion of section 62E in Act 38 of 2001

49. The following section is hereby inserted in the principal Act after section 62D:

**“Failure to comply with directives of Centre or supervisory body** 25

**“62E.** An accountable institution that fails to comply with a directive of the Centre or a supervisory body in terms of section 43A(3) or 45C(3)(c) is non-compliant and is subject to an administrative sanction.”.

#### Amendment of section 68 of Act 38 of 2001, as substituted by section 25 of Act 11 of 2008

50. Section 68 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) A person convicted of an offence mentioned in section 55[, 61, 61A, 62], 62A, 62B, 62C or 62D, is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R10 million.”.

#### Substitution of section 69 of Act 38 of 2001

51. The following section is hereby substituted for section 69 of the principal Act: 35

**“Defences**

**69.** If a person who is an employee, director or trustee of, or a partner in, an accountable institution is charged with committing an offence under section 52, that person may raise as a defence the fact that he or she had— 40  
(a) complied with the applicable obligations in terms of the **[internal rules] Risk Management and Compliance Programme** relating to the reporting of information of the accountable institution; or

- (b) reported the matter to the person charged with the responsibility of ensuring compliance by the accountable institution with its duties under this Act; or
- (c) reported the matter to his or her superior, if any, if—
  - (i) the accountable institution had not appointed such a person or established such **[rules; or] Risk Management and Compliance Programme**; 5
  - (ii) the accountable institution had not complied with its obligations in section 42(3) in respect of that person; or
  - (iii) the **[internal rules were] Risk Management and Compliance Programme was** not applicable to that person.” 10

#### **Amendment of section 73 of Act 38 of 2001**

**52.** Section 73 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) Before the Minister amends Schedule 1 in terms of subsection (1)(a) or (b), 15 the Minister must consult **[the Council and]** the Centre, and—”.

#### **Substitution of section 74 of Act 38 of 2001**

**53.** The following section is hereby substituted for section 74 of the principal Act:

##### **“Exemptions for accountable institutions**

**74.** (1) The Minister may, after consulting **[the Council and]** the Centre, 20 and on conditions and for a period determined by the Minister, exempt from compliance with—

- (a) any of the provisions of this Act—
  - (i) a person;
  - (ii) an accountable institution; or 25
  - (iii) a category of persons or accountable institutions;
- (b) any or all of the provisions of this Act, a person or category of persons or an accountable institution or category of accountable institutions in respect of any one or more categories of transactions.

(2) Any exemption referred to in subsection (1)— 30

- (a) must be by notice in the *Gazette* and may be withdrawn or amended by the Minister, after consulting **[with the Council and]** the Centre; and
- (b) must be tabled in Parliament before being published in the *Gazette*.

(3) Before the Minister issues, withdraws or amends an exemption referred to in subsection (1), the Minister must— 35

- (a) in the *Gazette*, give notice where a draft of the exemption or withdrawal notice of an exemption will be available and invite submissions; and
- (b) consider submissions received.”.

#### **Amendment of section 75 of Act 38 of 2001**

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**54.** Section 75 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Before the Minister amends Schedule 2 in terms of subsection (1)(a) or (b), the Minister must consult **[the Council and]** the Centre, and give the entity or functionary concerned, or the supervisory body concerned, as the case may be, at 45 least 60 days’ written notice to submit written representations to the Minister.”.



**Amendment of section 76 of Act 38 of 2001**

55. Section 76 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) Before the Minister amends Schedule 3 in terms of subsection (1)(a) or (b), the Minister must consult the Centre **[and the Council]**, and—”.

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**Substitution of section 77 of Act 38 of 2001**

56. The following section is hereby substituted for section 77 of the principal Act:

**“Regulations**

77. (1) The Minister, after consulting **[the Council and]** the Centre, may make, repeal and amend regulations concerning— 10

(a) any matter that may be prescribed in terms of this Act; and

(b) any **[other]** ancillary or incidental administrative or procedural matter which is necessary **[or expedient]** to prescribe **[to promote the objectives]** for the proper implementation or administration of this Act. 15

(2) Regulations in terms of subsection (1) may—

(a) differ for different accountable institutions, reporting institutions, persons, categories of accountable institutions, reporting institutions and persons and different categories of transactions;

(b) be limited to a particular accountable institution or reporting institution or person or category of accountable institutions or reporting institutions or persons or a particular category of transactions; and 20

(c) for a contravention of or failure to comply with any specific regulation, prescribe imprisonment for a period not exceeding **[six months]** three years or a fine not exceeding **[R100 000]** R1 000 000 or such administrative sanction as may apply. 25

**[(3) Regulations in terms of subsection (1) must be reviewed by the Council within two years after being published in the Gazette and thereafter at such intervals as the Council deems appropriate.]** 30

(4) The Minister must table regulations, repeals and amendments made under subsection (1) in Parliament before publication in the *Gazette*.

(5) Before making, repealing or amending regulations in terms of subsection (1), the Minister must—

(a) in the *Gazette*, give notice where a draft of the regulations will be available and invite submissions; and 35

(b) consider submissions received.”.

**Insertion of section 77A in Act 38 of 2001**

57. The following section is hereby inserted in the principal Act after section 77:

**“Arrangements for consultations with stakeholders**

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**77A.** The Centre must, after consulting with supervisory bodies, establish and give effect to arrangements to facilitate consultation with, and the exchange of information with, relevant stakeholders on matters of mutual interest.”.

**Insertion of sections 79A and 79B in Act 38 of 2001**

58. The following sections are hereby inserted in the principal Act after section 78:

**“Amendment of list of domestic prominent influential persons**

- 79A.** (1) The Minister may, by notice in the *Gazette*, amend the list of domestic prominent influential persons in Schedule 3A to—
- (a) add to the list any person or category of persons;
  - (b) delete any person or category of persons mentioned in paragraph (a)(x) in the list; or
  - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 3A in terms of subsection (1), the Minister must—
- (a) in the *Gazette*, give notice where a draft of the amendments will be available and invite submissions; and
  - (b) consider submissions received.
- (3) Any addition to or deletion from the list of persons in Schedule 3A in terms of subsection (1) must, before publication in the *Gazette*, be submitted to Parliament for its approval.

**Amendment of list of foreign prominent public officials**

- 79B.** (1) The Minister may, by notice in the *Gazette*, amend the list of foreign prominent public officials in Schedule 3B to—
- (a) add to the list any person or category of persons;
  - (b) delete any person or category of persons from the list; or
  - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 3B in terms of subsection (1), the Minister must—
- (a) in the *Gazette*, give notice where a draft of the amendments will be available and invite submissions; and
  - (b) consider submissions received.
- (3) Any addition to or deletion from the list of persons in Schedule 3B in terms of subsection (1) must, before publication in the *Gazette*, be submitted to Parliament for its approval.”.

**Insertion of Schedules 3A and 3B in Act 38 of 2001**

59. The following schedules are hereby inserted after Schedule 3 to the principal Act:

**“SCHEDULE 3A****DOMESTIC PROMINENT INFLUENTIAL PERSON** 35

- A domestic prominent influential person is an individual who holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic—
- (a) a prominent public function including that of—
    - (i) the President or Deputy President;
    - (ii) a government minister or deputy minister;
    - (iii) the Premier of a province;
    - (iv) a member of the Executive Council of a province;
    - (v) an executive mayor of a municipality elected in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
    - (vi) a leader of a political party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

- (vii) a member of a royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);
- (viii) the head, accounting officer or chief financial officer of a national or provincial department or government component, as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
- (ix) the municipal manager of a municipality appointed in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or a chief financial officer designated in terms of section 80(2) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
- (x) the chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (xi) the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (xii) a constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001);
- (xiii) an ambassador or high commissioner or other senior representative of a foreign government based in the Republic; or
- (xiv) an officer of the South African National Defence Force above the rank of major-general;
- (b) the position of—
  - (i) chairperson of the board of directors;
  - (ii) chairperson of the audit committee;
  - (iii) executive officer; or
  - (iv) chief financial officer, of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the *Gazette*; or
- (c) the position of head, or other executive directly accountable to that head, of an international organisation based in the Republic.

**SCHEDULE 3B**

**FOREIGN PROMINENT PUBLIC OFFICIAL**

- A foreign prominent public official is an individual who holds, or has held at any time in the preceding 12 months, in any foreign country a prominent public function including that of a—
- (a) Head of State or head of a country or government;
  - (b) member of a foreign royal family;
  - (c) government minister or equivalent senior politician or leader of a political party;
  - (d) senior judicial official;
  - (e) senior executive of a state owned corporation; or
  - (f) high-ranking member of the military.”

**Substitution of long title of Act 38 of 2001**

60. The following long title is hereby substituted for the long title to the principal Act:

“To establish a Financial Intelligence Centre [and a Counter-Money Laundering Advisory Council] in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to provide for customer due diligence measures including with respect to beneficial ownership and persons in prominent positions; to provide for a risk based approach to client identification and verification; to provide for the implementation of financial sanctions and to administer measures pursuant to resolutions adopted by the Security Council of the United Nations; to clarify the application of the Act in relation to other laws; to provide for the sharing of information by the Centre and supervisory bodies; to provide for risk management and compliance programmes, governance and training relating to anti-money laundering and counter terrorist financing; to provide for the issuance of directives by the Centre and supervisory bodies; to provide for the registration of accountable and reporting institutions; to provide for the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to provide the Centre and supervisory bodies with powers to conduct inspections; to regulate certain applications to Court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; to provide for arrangements on consultation with stakeholders; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.”

**Short title and commencement**

61. (1) This Act is called the Financial Intelligence Centre Amendment Act, 2017, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may in terms of subsection (1) be determined for different—

- (a) provisions of this Act; or
- (b) categories of accountable institutions or transactions.