

REPUBLIC OF SOUTH AFRICA

DRAFT

FINANCIAL INTELLIGENCE CENTRE

AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

- [] 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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BILL

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 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 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 delete provisions relating to 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 making provision for the customer due diligence measures in respect of beneficial ownership and prominent persons; to provide for the obligation to keep identity and verification records as well as 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 provide for Risk Management and Compliance Programs, governance and training relating to anti-money laundering and counter terrorist financing; to provide for a warrant to conduct 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; and to provide for matters connected therewith.

BE 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 1 of Act 11 of 2008

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

(a) by the insertion in subsection (1) after the definition of "**bearer negotiable instrument**" of the following definition:

" **beneficial owner** in respect of a juristic person, means a natural person who, independently or together with a connected person, directly or indirectly, including through bearer share holdings—

(a) owns the juristic person; or

(b) exercises effective control of the juristic person;";

(b) by the substitution in subsection (1) for the definition of "**business relationship**" of the following definition:

" **business relationship**—

- (a) means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis; and
- (b) includes three or more single transactions that appear to be connected to the same person utilising the same product or service at regular intervals";
- (c) by the deletion in subsection (1) of the definition of "**Council**";;
- (c) by the insertion in subsection (1) after the definition of "**Director**" of the following definition:
- " **'domestic prominent influential person'** means 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 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 as 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 defined in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);
- (viii) a head or chief financial officer of a national or provincial department or government component, defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
- (ix) a municipal manager appointed in terms of section 82(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 111 of 1998);
- (x) the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of—
- (aa) a public entity listed in Schedule 2, or Part B or D of Schedule 3, to the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- (bb) a municipal entity defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (xi) a constitutional court judge or any other judge defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001);
- (xii) an ambassador or high commissioner or other senior representative of a foreign Government based in the Republic;
- (xiii) 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) chief 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;";
- (d) by the insertion in subsection (1) after the definition of "**entity**" of the following definitions:
"**chief executive officer**' means a person who—
 (a) exercises general executive control over and management of the whole, or a significant portion, of the business and activities of a company; or
 (b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of a company, irrespective of any particular title given by the company to an office held by the person in the company or a function performed by the person for the company;
'foreign prominent public official' means 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;";
- (e) 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' and 'not complying' have the [same] corresponding meaning;";
- (f) 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 of the Act;";
- (g) by the deletion in subsection (1) of the definition of "**transaction**"; and

- (h) by the insertion in subsection (1) after the definition of "**transaction**" of the following definition:

"**trust**" means a trust defined in section 1 of the Trust Property Control Act, 1988 (Act 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:
3. (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 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 from a source other than from information disclosed to it;"; and
- (b) 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. The following section is hereby substituted for section 6 of the principal Act:

"Appointment of Director

6. (1) The Minister must appoint a fit and proper person as the Director of the Centre.

(2) A person appointed as the Director holds office—
 (a) for a term not exceeding five years, but which is renewable; and
 (b) on terms and conditions set out in a written employment contract, which must include terms and conditions setting specific, measurable performance standards.

[(3) The Minister must consult the Council before appointing a person or renewing the appointment of a person as the Director, except in the case of the appointment of the first Director.]".

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".

Amendment of section 21 of Act 38 of 2001

8. Section 21 of the principal Act is hereby amended—
 (a) 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] an anonymous client [unless the accountable institution has taken the prescribed steps—**

- (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—

- (i) **the identity of that other person; and**
 - (ii) **that other person's authority to act on behalf of the client]**
- or a client who is entering into that business relationship or single transaction under an apparent false or fictitious name.";
- (b) by the insertion of the following subsections:
- "(1A) Whenever 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) establish and verify the identity of the client;
 - (b) if the client is acting on behalf of another person, 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;
 - (c) if another person is acting on behalf of the client, establish and verify—
 - (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 and 21F in Act 38 of 2001

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

"Understanding and obtaining information on business relationship

21A. Whenever an accountable institution engages with a prospective client to establish a business relationship as contemplated in section 21(1A) the institution must, in addition to the steps required under section 21(1A) 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—

- (a) the nature of the business relationship concerned;
- (b) the intended purpose of the business relationship concerned, and
- (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 corporate vehicles

21B. (1) If a client contemplated in section 21 is a juristic person or a natural person acting or purporting to act on behalf of a partnership, trust or similar arrangement between natural persons, an accountable institution

must, in addition to the steps required under section 21 and in accordance with its Risk Management and Compliance Programme—

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

(2) If a client contemplated in section 21 is a juristic person, an accountable institution must, subject to subsections (3), (4) and (5), in addition to the steps required under section 21 and in accordance with its Risk Management and Compliance Programme—

- (a) establish the identity of the beneficial owner of the client, 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.

(3) When an accountable institution establishes and verifies the identity of the beneficial owner of a juristic person as contemplated in subsection (2) the institution must, subject to subsections (4) and (5)—

- (a) establish the identity of each natural person who, independently or together with a connected person, has a controlling ownership interest in the juristic person; and
- (b) take reasonable steps to verify the identity of each natural person contemplated in paragraph (a).

(4) If an accountable institution is in doubt as to whether a natural person contemplated in subsection (3) is the beneficial owner of the juristic person in question, or no natural person has a controlling ownership interest in the juristic person in question, the institution must, subject to subsection (5)—

- (a) establish the identity of each natural person who exercises control of the juristic person in question through other means; and
- (b) take reasonable steps to verify the identity of each natural person contemplated in paragraph (a).

(5) If an accountable institution is unable to identify a natural person contemplated in subsection (4), the institution must—

- (a) establish the identity of each natural person who otherwise exercises control over the management of the juristic person in question, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner; and
- (b) take reasonable steps to verify the identity of each natural person contemplated in paragraph (a).

(6) If a natural person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting or purporting to act on behalf of a partnership or similar arrangement between natural persons, an accountable institution must, in addition to the steps required under section 21 and in accordance with its Risk Management and Compliance Programme—

- (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;

- (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, and
- (e) 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.

(7) If a natural person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting or purporting to act in pursuance of the provisions of a trust agreement or similar arrangement between natural persons, an accountable institution must, in addition to the steps required under section 21 and in accordance with its Risk Management and Compliance Programme—

- (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;
- (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;
- (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; and
 - (ii) the particulars of how the beneficiaries of the trust are determined; and
- (f) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (a) to (e) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.

(8) This section applies in respect of a juristic person, partnership, or trust or similar arrangement between natural persons, whether it is incorporated or originated in the Republic or elsewhere.

Foreign prominent public official

21C. An accountable institution must, if the accountable institution determines in accordance with its Risk Management and Compliance Programme that a prospective client with whom it engages to enter into a single transaction or to establish a business relationship, or the beneficial owner of such a prospective client, is a foreign prominent public official, then the accountable 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

21D. If an accountable institution determines that a prospective client with whom it engages to enter into a single transaction or to establish a business relationship, or the beneficial owner of such a prospective client, is a domestic prominent influential person and that, in accordance with its Risk Management and Compliance Programme, the prospective business relationship or single transaction entails higher risk, then the accountable 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.

Family members and known close associates

21E. (1) Sections 21C and 21D apply to immediate family members and known close associates of a foreign prominent public official or domestic prominent influential person, as the case may be.

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

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

Doubts about veracity of previously obtained information

21F. Whenever circumstances arise where an accountable institution, subsequent to entering into a single transaction or establishing a business relationship as contemplated in sections 21 to 21C has doubts about the veracity or adequacy of previously obtained identification information, that accountable institution must repeat the steps contemplated in sections 21 to 21C to the extent that is necessary to confirm the information in question.

Inability to verify identity

21G. If an accountable institution is unable to establish and verify the identity of a client or other relevant person in accordance with section 21(1A), the accountable institution must—

- (a) not establish a business relationship or conclude a single transaction with a client, or
- (b) terminate any existing business relationship with a client, as the case may be, and consider making a report under section 29 of this Act.

On-going due diligence

21H. An accountable institution must, in accordance with its Risk Management and Compliance Programme, conduct on-going due diligence in respect of a business relationship which include—

- (a) monitoring of transactions undertaken throughout the course of the relationship, including, where necessary, the source of funds, to ensure that the transactions are consistent with the accountable institution's knowledge of the client, the client's business and risk profile; and
- (b) keeping information obtained for the purpose of establishing and verifying the identities of clients pursuant to section 21 of this Act, up-to-date."

Amendment of section 22 of Act 38 of 2001

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

"Obligation to keep customer due diligence records

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

- (2) Without limiting subsection (1), those 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."

Insertion of section 22A in Act 38 of 2001

11. 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.

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

- (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, and
 (e) if an accountable institution provides account facilities to its clients, the identifying particulars of all accounts at the accountable institution that are involved in the transaction.".

Amendment of section 23 of Act 38 of 2001

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

"Period for which records must be kept

23. An accountable institution must keep the records referred to in section 22 and section 22A which relate to—
- (a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;
- (b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded; and
- (c) a transaction which gave rise to a suspicious or unusual transaction report contemplated in section 29, for at least five years from the date on which the report was submitted to the Centre.".

Amendment of section 24 of Act 38 of 2001

13. 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 22 and section 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.

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

(3) If an accountable institution appoints a third party to perform the duties imposed on it by section 22 and section 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 section 22A may be kept in electronic form and must be capable of being reproduced in a legible format.".

Amendment of section 25 of Act 38 of 2001

14. 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, section 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."

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

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

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

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

"Part 2A **Financial sanctions**

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

26A. (1) Upon the Security Council of the United Nations adopting a resolution 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 give notice of the adoption of such a resolution by Notice in the *Gazette* and other appropriate means of publication.

(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).

(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

(b) decisions of the Security Council of the United Nations to no longer apply resolutions 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 pursuant to a resolution contemplated in subsection (1).

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—

(a) acquire property;

(b) collect property;

(c) use property;

(d) possess property;

(e) own property;

(f) provide or make available, or invite a person to provide or make available property;

(g) provide or make available, or invite a person to provide or make available any financial or other service;

(h) provide or make available, or invite a person to provide or make available economic support; or

(i) facilitate the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support,

intending that the property, financial or other service or economic support, as the case may be, be used, or while such 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 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 such property;

(b) converting such property;

- (c) concealing or disguising the nature, source, location, disposition or movement of such property, the ownership thereof or any interest anyone may have therein;
- (d) removing such property from a jurisdiction; or
- (e) transferring such 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 may deem fit, 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—

- (a) to provide for basic expenses, including—
 - (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
 - (vix) reimbursement of expenses associated with the provision of legal services;
- (b) to satisfy a judgment or arbitral award that was made prior to the date on which the person or entity was identified by the Security Council of the United Nations;
- (c) to 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) to accrue interest or other earnings due on accounts holding property affected by a prohibition under section 26B, and
- (e) to 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)."

Amendment of section 27 of Act 38 of 2001

17. 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] that** accountable institution, reporting institution or person;
 - (b) whether a specified person is acting or has acted on behalf of any client of **[the] that** accountable institution, reporting institution or person; **[or]**
 - (c) whether a client of **[the] that** 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 that accountable institution, reporting institution or person to a person with whom that 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 that accountable institution, reporting institution person,
- the accountable institution, reporting institution or person must inform the Centre accordingly."

Insertion of section 27A

18. The following sections are 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 section 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.

(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.

(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 may deem appropriate.

(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

19. 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";
- (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]**
 (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
 (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
- (c) by the addition of the following subsection:
 "(3) An accountable institution must upon—
 (a) publication of a Notice by the President under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or
 (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 such a Notice by the President or notice by the Director."

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

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

- (a) by the substitution in subsection (1)(b) for subparagraph (iv) of the following subparagraph:
 "(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]**"; and
- (b) by the addition to subsection (1)(b) of the following subparagraph:
"(vi) relates to the contravention of a prohibition under section 26B; or."

Amendment to section 32 of Act 38 of 2001

- 21.** 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."
- (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

22. 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 involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or 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) may constitute money laundering or 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 determined by the Centre, which may not be more than **[five] 10** days, in order to allow the Centre—

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

(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 (Act No. 19 of 2012), apply."

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

23. 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 Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), may, upon written application 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—

- (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 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-
 - (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 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 purposes or for the financing of terrorist or related activities or for the purpose of any transaction contemplated in section 29(1)(b)."

Insertion of section 41A

24. The following section is hereby inserted in the principle 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;
- (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."

Amendment of section 42 of Act 38 of 2001

25. Section 42 of the principal Act is hereby amended by the substitution for section 42 of the following section:

"[Formulation and implementation of internal rules] Risk Management and Compliance Programmes

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] an anti-money laundering and counter-terrorist financing risk management and compliance programme.**

(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 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;

(c) provide for the manner in which and the processes by which ongoing due diligence in respect of business relationships is conducted in the institution;

(d) 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 domestic prominent influential person;

(e) provide for the manner in which and place at which the records are kept of the information of which the accountable institution must keep record in terms of Part 2 of this Chapter;

(f) enable the accountable institution to determine when a transaction is reportable to the Centre under Part 3 of this Chapter;

(g) provide for the processes by which the accountable institution reports reportable information to the Centre under Part 3 of this Chapter;

(h) provide for the manner in which the Risk Management and Compliance Programme is implemented in branches, subsidiaries or other operations of the accountable institution in foreign countries so as to enable the accountable institution to comply with its obligations under this Act, and

(i) provide for such other matters as may be prescribed.

(2A) 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 accountable institution's Risk Management and Compliance Programme.

(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—

- (a) the Centre; or
- (b) a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution."

Insertion of section 42A in Act 38 of 2001

26. The following section is 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 juristic 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 the accountable institution's Risk Management and Compliance Programme.

(2) An accountable institution which is a juristic person must—

(a) establish a compliance function, or maintain such a function if it already exists, to assist the board of directors or the senior management, as the case may be, of the accountable institution in discharging their obligation 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).

(3) The person or persons exercising the highest level of authority in an accountable institution which is not a juristic person must ensure compliance by the employees of that accountable institution with the provisions of this Act and the accountable institution's Risk Management and Compliance Programme, in so far as the functions of those employees relate to the obligations of the institution.

(4) An accountable institution which is not a juristic 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)."

Substitution of section 43 of Act 38 of 2001

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

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

43. An accountable institution must[—
- (a)] provide training to its employees to enable them to comply with the provisions of this Act and of the [internal rules] accountable institution's 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].".

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

28. Section 43A of the principal Act is hereby amended 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.".

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

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

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

"(1) **[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 the supervisory body and inspect the affairs of an 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].";

(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 with this Act or any order, determination or directive made in terms of this Act, and on the authority of a warrant issued under subsection (1B), enter—
(a) a private residence; or
(b) any premises other than premises contemplated subsection (1), if the Centre or, when acting in terms of section 45(1), the supervisory body, as the case may be, reasonably believes that the residence or premises are used for a business to which the provisions of this Act apply.

(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 have access to the premises; and

(b) if it appears to the magistrate or judge from the information under oath or affirmation that—

(i) there are reasonable grounds for suspecting that an act of non-compliance has occurred;

(ii) entry to the residence or premises is likely to yield information pertaining to the non-compliance; and

(iii) entry to the residence or premises is reasonably necessary for the purposes of this Act.

(1C) An inspector otherwise required to obtain a warrant under subsection (1B) may enter any premises without a warrant—

(a) with the consent of the owner or person apparently in physical control of the premises after that owner or person was informed that he or she is under no obligation to admit the inspector in the absence of a warrant; or

(b) if the inspector on reasonable grounds believes that—

(i) a warrant will be issued under subsection (1B) if the inspector applied for it; and

(ii) the delay in obtaining the warrant is likely to defeat the purpose for which the inspector seeks to enter the premises.

(1D) Where an inspector enters premises without a warrant, he or she must do so—

(a) at a reasonable time;

(b) on reasonable notice, where appropriate, and

(c) with strict regard to decency and good order, including to a person's right to—

(i) respect for and the protection of dignity;

(ii) freedom and security; and

(iii) personal privacy.

(1E) Subsection (1D)(c) applies with the necessary changes where an inspector enters premises on the authority of a warrant."

(c) 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.";

(d) by the deletion in subsection (6) of paragraph (b); and

(e) 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

30. 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

31. Section 45D of the principal Act is hereby amended by—
(a) 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) 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."

(c) by the insertion after subsection (3) of the following subsections:

"(3A) Subject to the provisions of 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.

(3B) Despite the provisions of 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.

(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.

(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.";
- (d) by the substitution for subsection (4) of the following subsection:
 "(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—
 (a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his, her or its possession, custody or control any document which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and retain for examination any document so produced;
 (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and
 (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control, and such a person shall be entitled to legal representation at his or her own expense.";
- (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.";
- (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.", 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.".

Substitution of section 46 of Act 38 of 2001

32. 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]** sections 21(1) and 21(1A) **[is guilty of an offence]** commits an act

of non-compliance and is subject to administrative sanctions in terms of section 45C.

(2) An accountable institution that concludes any transaction in contravention of section 21(2) **[is guilty of an offence]** commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.".

Insertion of section 46A

33. 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. (1) An accountable institution that fails to comply with the duty to perform additional due diligence measures in accordance with sections 21A, 21B, 21C, 21D, 21E, 21F, 21G and 21H commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.".

Substitution of section 47 of Act 38 of 2001

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

"Failure to keep records

47. An accountable institution that fails to—

- (a) keep record of information in terms of **[section 22(1)]** sections 22(1), 22A(1) and 22A(2); or
- (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] commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.".

Substitution of section 50 of Act 38 of 2001

35. The following section is hereby substituted for section 50 of the principle Act:

"Failure to advise Centre or client

50. An accountable institution, reporting institution or person that is required to make a report in terms of section 29 of this Act 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

36. The following section is hereby substituted for section 51 of the principle 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.

(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, commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C."

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

37. 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

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.

(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.

(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-
 (a) to 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;
 (b) to comply with a direction by the Director in accordance with section 28A(2); or
 (c) to scrutinise the information as contemplated in section 28A(3), commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C."

Substitution of section 56 of Act 38 of 2001

38. The following section is hereby substituted for section 56 of the principle 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.

(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, commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.

Substitution of section 58 of Act 38 of 2001

39. 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.

(2) An accountable institution that fails to comply with a direction of the Centre in terms of section 34(1), commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.

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

40. The following sections are hereby substituted for section 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

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

[is guilty of an offence] commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.

Failure to register with Centre

61A. Any accountable institution or reporting institution that—
 (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] commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.".

Insertion of section 61B

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

"Failure to comply with duty in regard to governance

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) commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.

(2) An accountable institution that fails to appoint a person in accordance with section 42A(2) or 42A(4) commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.

(3) A person that fails to ensure compliance in accordance with section 42A(3) commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.".

Substitution of section 62 of Act 38 of 2001

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

"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),
is guilty of an offence] commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.".

Insertion of section 62E in Act 38 of 2001

43. The following section is hereby inserted in the principal Act after section 61D:

"Failure to comply with directives of Centre or supervisory body

"**61E.** 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(c)(3) commits an act of non-compliance and is subject to administrative sanctions in terms of section 45C.".

Insertion of section 67A in Act 38 of 2001

44. The following section is hereby inserted in the principal Act after section 67:

"Contravention of prohibitions relating to persons and entities identified by Security Council of the United Nations"

67A. Any person who contravenes a prohibition under section 26B is guilty of an offence.".

Substitution of section 68 of Act 38 of 2001

45. The following section is hereby substituted for section 68 of the principal Act:

"Penalties"

68. (1) A person convicted of an offence mentioned in this Chapter, other than an offence mentioned in subsection (2), is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million.

(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

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

"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—

- (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;
- (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."

Amendment of section 73 of Act 38 of 2001

47. Section 73 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

- (a) if only one person or institution will be affected by the proposed amendment, give that person or institution at least 30 days' written notice to submit written representations to the Minister; or
- (b) if a category of persons or institutions will be affected by the proposed amendment, by notice in the *Gazette* give persons or institutions belonging to that category at least 60 days' written notice to submit written representations to the Minister."

Amendment of section 74 of Act 38 of 2001

48. 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, 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
 - (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)—

- (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*."

Amendment of section 75 of Act 38 of 2001

49. 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 least 60 days' written notice to submit written representations to the Minister."

Amendment of section 76 of Act 38 of 2001

50. Section 76 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(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—

- (a) if only one person will be affected by the proposed amendment, give the person at least 30 days' written notice to submit written representations to the Minister; or
- (b) if a category of persons will be affected by the proposed amendment, by notice in the *Gazette* give persons belonging to that category at least 60 days' written notice to submit written representations to the Minister."

Amendment of section 77 of Act 38 of 2001

51. 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—

- (a) any matter that may be prescribed in terms of this Act; and
- (b) any other matter which is necessary or expedient to prescribe to promote the objectives of this Act.

- (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
 - (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.

[(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.]

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

Substitution of long title of Act 38 of 2001

52. 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 a risk based approach to client identification and verification; to extend the objectives of the Centre so as to provide 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 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 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 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 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

53. This Act is called the Financial Intelligence Centre Amendment Act, 2015, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.