REPUBLIC OF SOUTH AFRICA

FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL

(As amended by the Standing Committee on Finance (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 33B—2015]

ISBN 978-1-4850-0000-0

No. of copies printed 800

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.

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 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.

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 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— 5

(a) by the substitution in subsection (1) for the definition of ''administrative sanction'' of the following definition:

'' **'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:

'' **'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;

(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 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;

(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

(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:

'' **'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;'';

(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;'';

(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;'';

(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;

'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);'';

(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;

'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;'';

(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);'';

(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', 'noncompliant' and 'not complying' have **[the same]** a corresponding meaning;'';

(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);'';

(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;'';

(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:

'' **'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;'';

(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);'';

(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;"; and

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

"*(a*A*)* 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:

"*(a*A*)* 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;

(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:

"*(c*A*)* 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—

(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**

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—

(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 legal persons, trusts and partnerships

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—

(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—

(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;

(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

(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.

(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—

(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;

(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.

(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—

(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; 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;

(f) take reasonable steps to verify the particulars obtained in paragraphs *(a)*, *(b)* and *(e)*(ii); and

(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.

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.

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.

(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.''.

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.

(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.''.

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.

(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;
(e) business correspondence; and
(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:

''**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;
(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.''.

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.

(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.

(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.''.

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.''.

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:

''***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.

(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) 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).

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, 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;

(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,

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 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

(vix) 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.

(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 considers 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

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**";

(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 proclamation 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 the proclamation by the President or the notice by the Director.".

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:

"(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.''.

(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.

(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.''.

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

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

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)*.''.

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:

''**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—**
  (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];

*(a*A*)* the National Prosecuting Authority;

*(a*B*)* the Independent Police Investigative Directorate;

*(a*C*)* an intelligence service;

*(a*D*)* the Intelligence Division of the National Defence Force;

*(a*E*)* a Special Investigating Unit;

*(a*F*)* an investigative division in an organ of state;

*(a*G*)* the Public Protector; or

*(a*H*)* 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;

(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—**

(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];

(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]**;

(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)*—

(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.

(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.

(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

(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.

(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.

(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.

(5) An agreement referred to in subsection (4) does not—

(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—

(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.

(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.

(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—

(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

(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;

(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;

(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;

(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—

(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;

(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;

(k) provide for the manner in which the accountable institution will terminate an existing business relationship as contemplated in section 21E;

(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;

(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;

(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;

(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;

(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;

(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.

(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.

(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).

(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 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.

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

(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)*.

(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.

(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).

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.".

Substitution of section 43 of Act 38 of 2001

29. 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 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].".

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

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

(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.''.

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.

(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;

(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;

(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) **[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 in 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 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 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 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 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 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—'';

(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

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 noncompliant and is subject to an administrative sanction.

(2) An accountable institution that concludes any transaction in contravention of section 21(2) **[is guilty of an offence]** is noncompliant and is subject to an administrative sanction.''.

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 noncompliant and is subject to an administrative sanction.".

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**

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 noncomplaint and is subject to an administrative sanction.".

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.".

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**

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**

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.

(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 noncompliant and is subject to an administrative sanction.''.

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**

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 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;

(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 noncompliant and is subject to an administrative sanction.''.

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.

(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 noncompliant and is subject to an administrative sanction.''.

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.

(2) An accountable institution that fails to comply with a direction of the Centre in terms of section 34(1), is noncompliant 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 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

(ii) section 40(6)**[,]**; or"; and

(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),".

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**

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);

(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);

(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] is noncompliant and is subject to an administrative sanction.

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] is noncompliant 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**

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 noncompliant and is subject to an administrative sanction.

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

(3) A person that fails to ensure compliance in accordance with section 42A(3) is noncompliant 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:

''**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] is noncompliant 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**

''**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 noncompliant 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:

''(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:

''**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

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)*, 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, 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*.

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

(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

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 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—''.

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—

(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.

(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*.

(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

(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**

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

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, 2016, 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.

MEMORANDUM ON THE OBJECTS OF FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL, 2015

1. BACKGROUND TO THE BILL

1.1 South Africa has a long-standing commitment to combating money-laundering and the financing of terrorism, having ratified the United Nations Convention Against Corruption (''UNCAC'') in 2004, and joining the multi-lateral Financial Action Task Force (''FATF'') in 2003. As a result, South Africa enacted the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (''FIC Act''), and other related Acts to assist in combating financial crimes. The FATF is an inter-governmental body which sets standards and develops and promotes policies to combat money laundering, the financing of terrorism, and the proliferation of weapons of mass destruction. These standards are used as benchmarks in formal peer review and evaluation processes to test the robustness of a country's measures against these illicit activities, and the integrity of its financial systems.

1.2 The improvements to the legislation seek to enable accountable institutions to make it simpler for customers to satisfy customer due diligence processes. It is intended that the improvements will assist institutions to strengthen their internal compliance regimes and concentrate their resources more effectively on addressing risks that their products and services may be abused for illicit purposes.

1.3 In addition, the improvements seek to create opportunities for financial institutions to explore more innovative ways of offering financial services to a broader range of customers, and bring previously excluded sectors of society into the formal economy. This will improve the efficacy of measures to combat terrorism financing and money laundering, while also promoting financial inclusion.

1.4 In order to address the deficiencies in the FIC Act, it is necessary to amend the customer due diligence provisions of the Act, by requiring accountable institutions to have appropriate risk-management systems in place that focus their efforts on those cases where there is a higher probability that their products and services will be abused by criminals. This will enable them to take proactive steps to determine the risks of abuse associated with various customer relationships. On the basis of an understanding of the risks, an institution can apply measures to mitigate those risks, by gathering information on the customer's source of wealth, and monitoring the customer's transaction behaviour to spot transactions that seem anomalous given the recognised customer profile. In situations where transactions differ significantly from the profile, these will need to be reported to the authorities such as the Financial Intelligence Centre (''the FIC'').

2. OBJECTS OF THE BILL

2.1 The primary objective of the Bill is to establish a stronger anti-money laundering (''AML'') and combating of terrorist financing (''CFT'') regulatory framework, by enhancing the customer due diligence requirements, providing for the adoption of a risk based approach in the identification and assessment of AML and CFT risks, providing for the implementation of the United Nations Security Council Resolutions relating to the freezing of assets, dissolving the Counter-Money Laundering Advisory Council (''the CMLAC''), extending the objectives and functions of the FIC in relation to the sharing of information as well as the functions of the FIC in respect of suspicious transactions, and enhancing certain administrative and enforcement mechanisms.

2.2 The Bill addresses the following matters—

2.2.1 *Enhancing the Customer Due Diligence requirements for Accountable Institutions*

Customer due diligence refers to the knowledge that an accountable institution has about its customer and the accountable institution's understanding of the business that the customer is conducting with it. The Bill broadens and enhances the elements of customer due diligence requirements, namely: the determination of the customer's identity, the duty to keep records, identifying the beneficial owner and understanding the purpose and the intended nature of the business relationship. The Bill introduces two new concepts under customer due diligence requirements: the on-going due diligence of the customers transaction records and the enhanced measures for persons entrusted in prominent public or private sector positions, whenever accountable institutions establish business relationships with customers.

2.2.2 *Providing for the adoption of a Risk-Based Approach to Customer Due Diligence*

Provision is made in the Bill for the application of a risk-based approach to customer due diligence, which entails that an accountable institution should identify, assess, and understand its AML and CFT risks. The effective implementation and application of the risk-based approach is largely dependent on an accountable institution's AML and CFT Risk Management and Compliance Programme. The Bill places a responsibility on accountable institutions to develop, document, maintain and implement AML and CFT Risk Management and Compliance Programmes. The responsibility for complying with the FIC Act and the Risk Management and Compliance Programme is placed on the board of directors and the senior management of accountable institutions.

2.2.3 *Providing for the Implementation of the United Nations Security Council Resolutions relating to the Freezing of Assets*

(a) The Bill empowers the FIC to administer the measures adopted by the United Nations Security Council (''UNSC'') in its Resolutions, which require accountable institutions to freeze property and transactions pursuant to financial sanctions imposed in the UNSC Resolutions. Mechanisms for the implementation of the UNSC Resolutions shall include the publication in the Government *Gazette* by the Minister of Finance of a Notice of the adoption of the UNSC Resolution, and the publication of a Notice by the executive head of the FIC of persons who are subject to the sanction measures (''the sanctions list''). These Notices may be revoked if it is considered that they are no longer necessary to give effect to the applicable UNSC Resolutions.

(b) The acquisition, collection or use of the property of persons or an entity whose names appear in the sanctions list shall be prohibited, including the provision of financial services and products to those persons or entities. Access to financial services and products by persons identified in the sanctions list shall only be for ordinary and necessary expenses, such as food, rent or mortgage and medical treatment. For compliance purposes, an obligation is placed on accountable institutions to report to the FIC, the property in the accountable institution's possession or under its control which is owned or controlled by

or on behalf of a person or an entity identified in the sanctions list.

2.2.4 *Dissolving the CMLAC*

(a) The Bill repeals Chapter 2 of the FIC Act, which establishes the CMLAC. It is envisaged that collaboration will be facilitated at the policy level between the public sector participants in the country's AML and CFT framework with the structures that will be implemented to direct the application of risk assessments and the management of identified AML and CFT risks.

(b) The decision to dissolve the CMLAC has been informed by the fact that a number of platforms exist within the country to discuss matters of concern and mutual interest, which obviates the need for consultations by a platform such as the CMLAC. Consequential amendments have also been effected to remove reference to the CMLAC in other provisions of the FIC Act.

2.2.5 *Objectives and Functions of the FIC*

The Bill extends the ability of the Centre to share information held by it. In addition, the Bill confirms explicitly that the functions of the FIC include the analysis of suspicious transactions based on information in its possession or information received other than by means of reports made to the FIC. The Bill also mandates the FIC to provide information and guidance to accountable institutions, which will assist the FIC to meet the requirements to freeze property and transactions pursuant to the sanctions list. In addition, the Bill extends the ability of the FIC to share information held by it to support other government entities more effectively in carrying out their mandates.

2.2.6 *Enhancing the supervisory powers*

(a) The Bill ensures that proper safeguards are in place in respect of the information in the possession of the FIC, in compliance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

(b) The Bill also gives effect to the Constitutional Court's decision in the matter of Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others (CCT 94/13) [2014] ZACC 3; 2014 (3) SA 106 (CC); 2014 (4) BCLR 373 (CC) (27 February 2014). Section 45B of the FIC Act was declared by the Constitutional Court to be unconstitutional, as it allows for the inspector to conduct inspections, for the purpose of determining compliance with the FIC Act, without a warrant in certain instances. The Bill amends section 45B of the FIC Act, to provide for a warrant requirement, and to state in which circumstances a warrant would not be required.

2.2.7 *Enhancing Administrative and Enforcement Mechanisms*

(a) The enforcement mechanisms in the FIC Act are enhanced, in order to encourage compliance with the Act, and to assist in combating money laundering and terrorism financing. The Bill provides for financial penalties paid in respect of financial sanctions to be paid into the National Revenue Fund, instead of into the Criminal Assets Recovery Account, which is currently the case.

(b) The quorum of the adjudication panel has been reduced for practical reasons, and the Appeal Board will be empowered to condone delays, on good cause shown, in the lodging of appeals. Certain criminal sanctions in the offence provisions will be replaced, by making non-compliance with certain sections of the Act subject to administrative sanctions. These changes in sanctions are only in respect of an accountable institution's obligations regarding customer due diligence and record keeping measures. Certain penalty fines are increased in the Bill.

(c) The FIC is empowered to issue directives, after consultation with the relevant supervisory body, in instances of general application of the Act, or in specific instances set out in the Bill.

3. SUMMARY OF THE BILL

3.1 *Definitions (Clause 1)*

3.1.1 An amendment to the definition of ''administrative sanction'' provided for in section 45C and referred to in a number of new or amended provisions, is proposed.

3.1.2 The definition of ''authorised officer'' is amended to expand the scope of the persons who may request information from the FIC.

3.1.3 A definition of ''beneficial owner'' is inserted in the FIC Act, to define a beneficial owner, in respect of a legal person, to mean the natural person who, independently or together with another person, owns or controls the legal person directly or indirectly.

3.1.4 New definitions, namely of ''client'' and ''prospective client'', are also proposed.

3.1.5 Definitions are inserted in the Bill, to define ''domestic prominent influential person'', ''executive officer'' and ''foreign prominent public official''.

3.1.6 A definition of legal person is proposed, stipulating that such a 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.

3.1.7 The definition of ''non-compliance'' is amended, to make a distinction between what constitutes non-compliance that attracts an administrative sanction from non-compliance that is subject to a criminal sanction.

3.1.8 A definition of ''Risk Management and Compliance Programme'' is inserted in the FIC Act, which is further detailed in Clause 25 (which amends section 42 of the FIC Act).

3.1.9 A definition of ''trust'' is inserted in the FIC Act, meaning a trust as defined in the Trust Property Control Act, 1988 (Act No. 57 of 1988), but excludes trusts established—

(a) by virtue of a testamentary writing;

(b) by virtue of a court order;

(c) for persons under curatorship; or

(d) by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund.

3.1.10 Definitions of ''Independent Police Investigative Directorate'', ''Intelligence Division of the National Defence Force'', ''investigative division in an organ of state'', ''Public Protector'' and ''Special Investigating Unit'' have been inserted to make it clearer with whom the FIC may share information held by it.

3.2 *Objectives (Clause 2)*

3.2.1 The objectives of the FIC have been extended in order for the FIC to be able to share information held by it with other authorities to support other government entities to carry out their mandates more effectively.

3.2.2 As a Member State of the United Nations, South Africa is obliged to implement targeted financial sanctions measures to comply with the UNSC Resolutions under Chapter VII of the Charter of the United Nations. These resolutions often, in conjunction with other forms of sanctions, such as arms embargoes and travel bans, require countries to freeze, without delay, the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by the UNSC Resolutions under Chapter VII of the UN Charter.

3.2.3 The FIC Act is best placed to provide for the mechanism for the implementation of financial sanctions pursuant to the UNSC Resolutions, taking into account the current obligations placed on accountable institutions under the FIC Act. Clause 2 of the Bill extends the objectives of the FIC to include administering measures requiring accountable institutions to freeze property and transactions pursuant to financial sanctions that may arise from UNSC Resolutions.

3.3 *Functions (Clause 3)*

3.3.1 The functions of the FIC are extended, to allow explicitly for the FIC to initiate an analysis based on information in its possession but which is not sourced from reported information or on information it has received. This clarifies the fact that the FIC can conduct an analysis which is not predicated on the receipt of a suspicious transaction report.

3.3.2 The functions of the FIC have been extended in order for the FIC to be able to share information held by it with other authorities to support other government entities to carry out their mandates more effectively.

3.3.3 In addition, clause 3 makes provision for the FIC to provide information and guidance to accountable institutions that will assist in meeting requirements to freeze property and transactions pursuant to UNSC Resolutions.

3.4 *Appointment of Director (Clause 4)*

The subsection requiring consultation with the CMLAC has been deleted. This relates to paragraphs 2.2.4 and 3.5 regarding the abolishing of the CMLAC.

3.5 *CMLAC (Clause 5)*

3.5.1 Chapter 2 of the FIC Act, relating to the CMLAC, is repealed. Collaboration at a policy formulation level between the public sector participants in the country's framework to combat money laundering and terrorism financing can be facilitated better if it is linked with structures that will be implemented to direct the application of risk assessments and the management of identified money laundering and terrorism financing risks.

3.5.2 The implementation of risk-based processes in the AML and CFT framework will greatly reduce the need for policy advice to be provided to the Minister on matters such as the detailed content of regulations and the granting of exemptions from AML and CFT requirements. Instead of relying on rigid requirements in regulations and exemptions granted at the executive level, accountable institutions will have greater discretion to determine the appropriate compliance steps to be taken in given instances, in accordance with their internal AML and CFT compliance and risk management programmes.

3.5.3 The maturity of the country's framework to combat money laundering and terrorism financing has increased to the point where a number of fora exist for the discussion of matters of mutual interest or concern. This has obviated the need for a rigid platform in the form of a statutory body for consultations to happen.

3.6 *Identification of clients and other persons (Clauses 7, 8 and 9)*

3.6.1 Customer due diligence refers to the knowledge that an accountable institution has about its customer and the accountable institution's understanding of the business that the customer is conducting with it.

3.6.2 A customer due diligence programme, if properly implemented, enables an accountable institution to better manage its relationships with customers, and to better identify possible attempts by customers to abuse the accountable institution's products and services for illicit purposes.

3.6.3 Clause 8 of the Bill prevents an institution from entering into a business relationship or concluding a single transaction with an anonymous client.

3.6.4 Clause 9 of the Bill provides for a risk-based approach to customer due diligence. The application of a risk-based approach entails that an accountable institution should identify, assess, and understand its money laundering and terrorism financing risks. The notion of ''money laundering and terrorism financing risks'', in this context, refers to the risk that an accountable institution's products or services may be abused by its customers in order to carry out money laundering or terrorism financing activities. These risks emanate from a combination of factors, such as the customers, countries, products, delivery channels, etc., involved in a given scenario. An accountable institution should then apply its knowledge and understanding of its money laundering and terrorism financing risks in the development of control measures to prevent or mitigate the risks identified.

3.6.5 By adopting a risk-based approach, both the supervisory body and accountable institutions are able to ensure that measures to prevent or mitigate money laundering and terrorism financing are commensurate with the risks identified. This will ensure that resources are directed in accordance with priorities, so that the greatest risks receive the highest attention. Where lower risks are identified, the requirements to identify and verify are lowered, creating opportunities for accountable

institutions to explore more innovative ways of offering financial services to a broader range of customers, and bring previously excluded sectors of society into the formal economy. This will improve the efficacy of measures to combat terrorism financing and money laundering, while also promoting financial inclusion.

3.7 *Understanding and obtaining information on business relationship (Clause 10 — new section 21A)*

Clause 10 requires accountable institutions to ascertain from a prospective client what the purpose and intended nature of the business relationship will be, as well as to obtain information on the source of funds that the prospective client expects to use in the course of the business relationship.

3.8 *Additional due diligence measures relating to legal persons, trusts and partnerships (Clause 10 — new section 21B)*

3.8.1 A key component of customer due diligence measures is the identification of beneficial owners. In many instances (including in the case of corruption) where criminals wish to obscure the ownership or control of funds in the financial system, they will make use of a corporate vehicle to transact with accountable institutions ''at arm's length''.

3.8.2 Requiring the identification of the beneficial ownership of customers which are not natural persons is a key step to bring greater transparency to activities in a financial system. This not only enhances the ability of accountable institutions to better assess customer related risks in the course of managing business relationships, but also greatly improves the ability of authorities to detect, investigate and prosecute abuses of accountable institutions for money laundering and terrorism financing purposes.

3.8.3 Linked to identifying the beneficial owner is the issue of the responsibility of a country to ensure that accurate and current information on the beneficial ownership and control of companies and other legal persons can be accessed in a timely fashion by the relevant authorities.

3.9 *On-going due diligence (Clause 10 — new section 21C)*

Clause 10 of the Bill provides for on-going due diligence measures. These measures include the scrutiny of transactions undertaken throughout the course of a relationship, to ensure that the transactions being conducted are consistent with that accountable institution's knowledge of the customer, and the customer's business and risk profile, including, where necessary, the source of funds. It also requires accountable institutions to ensure that the information that an accountable institution has about a client is still accurate and relevant.

3.10 *Doubts about veracity of previously obtained information (Clause 10 — new section 21D)*

Clause 10 of the Bill provides for measures that accountable institutions are required to take if doubts about the veracity or adequacy of previously obtained customer due diligence information arise later on in the relationship, or where a suspicion of money laundering or terrorism financing is formed at a later stage.

3.11 *Inability to verify identity (Clause10 — new section 21E)*

The FIC Act currently does not provide expressly that an accountable institution which is unable to comply with the identification and verification

requirements, may not commence a business relationship or perform a transaction. The Act also does not specifically state that a suspicious transaction report ought to be made if the accountable institution is unable to comply with the identification and verification requirements in suspicious circumstances. Clause 10 of the Bill now makes provision for those circumstances.

3.12 *Persons entrusted in prominent public or private sector positions (Clause 10 — new sections 21F, 21G and 21H)*

3.12.1 The starting point for the effective implementation of measures relating to persons who are entrusted in prominent public or private sector positions, is for all accountable institutions to have effective measures in place to know who their customers are and to understand their customers' business.

3.12.2 Typically, this process happens when an institution takes on a new customer. The institution needs to establish who the prospective customer is, by using reliable and independent source documents. In instances where the customer is a business, the institution will need to make sure that it knows, among other matters, who the beneficial owner is, what the ownership and control structure of the business is, and the nature of the business. Over the lifetime of the relationship with the customer, the institution is required to monitor the customer's on-going transactions, to ensure that they fit the profile of the customer.

3.12.3 The current South African legislation lacks some of these elements, such as express requirements for accountable institutions to identify their customers' beneficial owners, to apply on-going due diligence to their relationships with their customers, and to determine if they are dealing with a person in a prominent position in a given instance.

3.12.4 If an institution finds out that it is dealing with a foreign prominent public official, senior management approval, among other, is needed to establish the business relationship. If a customer is regarded as being a domestic prominent influential person, then the accountable institution will need to decide if the customer brings higher risk. If so, then the accountable institution will need to determine, among other, the source of wealth and funds, and thereafter monitor the account to spot transactions that seem anomalous given the recognised customer profile. The amendments also apply to immediate family members of such prominent persons, as well as known close associates.

3.13 *Obligation to keep customer due diligence records (Clause 11)*

Clause 11 of the Bill allows accountable institutions more flexibility in the manner in which records are kept for purposes of identification and verification. This will improve the ease of compliance with the obligations in terms of the FIC Act, and reduce compliance costs for accountable institutions.

3.14 *Obligation to keep transaction records (Clause 12)*

A new section 22A is included in clause 12 of the Bill, relating to the accountable institution's obligation to keep records in respect of a customer's transaction activity. This will ensure that adequate information will be captured in an accountable institution's records to be able to reconstruct a trail of transactions to assist investigators in the reconstruction of transaction activities and flows of funds when performing their investigative functions.

3.15 *Period for which records must be kept (Clause 13)*

Clause 13, amending section 23, provides clarity regarding the period for which records must be kept in instances where an accountable institution has made a suspicious transaction report.

3.16 *Records may be kept in electronic form and by third parties and must be kept in the Republic (Clause 14)*

Section 24 of the FIC Act is amended to provide for accountable institutions that have outsourced the keeping of records to third parties, to make the records readily available to the FIC and the relevant supervisory bodies. In addition, records may be kept in electronic form, and in a manner that will enable the accountable institution to reproduce it in a legible format. In addition, the Bill makes provision for the records to be kept in the Republic.

3.17 *Admissibility of records (Clause 15)*

This clause contains a technical amendment to section 25.

3.18 *FIC's access to records (Clause 16)*

Section 26 is repealed from the Act, and is inserted elsewhere in the Act under the provisions relating to reporting obligations.

3.19 *Financial sanctions (Clause 17)*

3.19.1 Clause 17 sets out the mechanisms to identify and initiate proposals for designations of persons and entities targeted by UNSC Resolution. When a UNSC Resolution is adopted, the Minister must publish a notice of the adoption of the resolution in the *Government Gazette* and other appropriate means of publication. This does not apply to resolutions of the UNSC contemplated in section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004) (''POCDATARA'').

3.19.2 Following the notice published by the Minister, the Director of the Financial Intelligence Centre must, from time to time and by appropriate means of publication, give notice of—

(a) persons and entities being identified by UNSC Resolutions; and

(b) decisions of the UNSC to no longer apply Resolutions to previously identified persons or entities.

3.19.3 Clause 17, in addition, enables the Minister to revoke a notice, if the Minister is satisfied that the Notice is no longer necessary to give effect to financial sanctions pursuant to a UNSC Resolution.

3.19.4 Clause 17 provides that no person may, among other matters, acquire, collect, use property or provide or make available, or invite a person to provide or make available any financial or other service, intending that the property, financial or other service will be used for the benefit of or on behalf of a person or an entity identified pursuant to a UNSC Resolution.

3.19.5 In terms of clause 17, the Minister may permit a person to conduct financial services or deal with property if it is necessary to provide for basic expenses, including, among other things, foodstuffs, rent or mortgage and medicines or medical treatment. Provision is made for the Director of the FIC to publish a notice of the Minister's permission for the provision of financial services or dealing with property.

3.20 *Accountable institutions, reporting institutions and persons subject to reporting obligations to advise the FIC of clients (Clause 18)*

Clause 18 of the Bill makes provision for accountable institutions, reporting institutions, as well as any person required to make a report in terms of the FIC Act, to advise the FIC whether a specified account number corresponds with a client, as well as the type and status of the business relationship. The amendments are necessary to enhance the FIC's analysis capability.

3.21 *Authorised representative's access to records in respect of reports required to be submitted to the FIC (Clause 19)*

The current section 26 of the FIC Act is moved and inserted as section 27A, as it is more appropriate to deal with access to information relating to reports submitted to the FIC under Part 3 of Chapter 3 of the FIC Act. The section is also amended to provide for instances where a report ought to be made, but the accountable institution failed to make a report in terms of the Act.

3.22 *Property associated with terrorist and related activities and financial sanctions pursuant to UNSC Resolutions (Clause 20)*

(a) Provision is made for an accountable institution to report to the FIC property in its possession or under its control that is owned or controlled by or on behalf of a person or an entity identified pursuant to a UNSC Resolution.

(b) An accountable institution must, after publication of a notice by the President under section 25 of the POCDATARA, or a notice being given by the Director of the FIC, scrutinise its information concerning clients with whom the accountable institution has business relationships, in order to determine whether a client is a person or entity mentioned in a notice by the President or notice by the Director.

3.23 *Reporting of suspicious and unusual transactions (clause 21)*

Clause 21 contains a technical amendment to section 29(1) and an amendment to section 29(3) to align it with proposed amendments to section 45B pertaining to access to information reported in terms of section 29 during inspections from accountable institutions and reporting institutions.

3.24 *Reporting procedures and furnishing of additional information (Clause 22)*

Clause 22 contains amendments to section 32 of the FIC Act, to enhance the FIC's analysis capability in respect of the information that should be provided by persons making a report to the FIC, and makes further provision for the additional information to be provided in the prescribed manner and within the prescribed period.

3.25 *Intervention by Centre (Clause 23)*

(a) Clause 23 amends section 34 of the FIC Act, by increasing the number of days during which an accountable institution may be prevented from continuing with a transaction based on a report submitted to the FIC from 5 to 10 days. This amendment is to allow more time for the FIC and investigating authorities to make the necessary inquiries in respect of a transaction.

(b) Provision is also made for the intervention by the FIC to be extended to include property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a UNSC Resolution contemplated in a Notice.

3.26 *Monitoring orders (Clause 24)*

Clause 24 amending section 35, allows for the monitoring order issued by a judge to be extended to include property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a UNSC Resolution contemplated in a Notice.

3.27 *Access to information held by the Centre (Clause 25)*

Clause 25, amending section 40, extends the ability of the FIC to share information held by it to support other government entities more effectively in carrying out their mandates.

3.28 *Protection of personal information (Clause 26)*

To ensure that proper safeguards are in place in respect of the information in the possession of the Centre and to comply with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), it is necessary for the FIC Act to include provision for measures to be taken to prevent the loss of or damage to information. Provision is also made to prevent the unlawful access to or processing of information, other than in accordance with the FIC Act or the Protection of Personal Information Act.

3.29 *Risk Management and Compliance Programs (Clause 27)*

The customer due diligence measures mentioned above are linked with an accountable institution's application of a risk-based approach through the institution's AML and CFT compliance and risk management programme. Clause 27, amending section 45, states that accountable institutions must develop, document, maintain and implement a Risk Management and Compliance Programme. The clause also provides details in respect of the Program, including, among other matters, measures to assess the risks that the products or services that the accountable institution provides may involve money laundering or the financing of terrorism. The board of directors, senior management or other person exercising the highest level of authority in that institution must approve the Risk Management and Compliance Programme.

3.30 *Governance of AML and CFT compliance (Clause 28)*

Clause 28, amending section 42A, sets out the governance obligations for accountable institutions. The board of directors or the senior management of an accountable institution is responsible for ensuring compliance with the FIC Act and its Risk Management and Compliance Programme.

3.31 *Training relating to AML and CFT compliance (Clause 29)*

Clause 29 amends section 43 of the Act, by placing the obligation on the accountable institution to ensure that its employees are trained to enable them to comply with the FIC Act as well as its Risk Management and Compliance Programme.

3.32 *Directives (Clause 30)*

Clause 30 of the Bill amends section 43A of the FIC Act, to allow the FIC to issue a directive, after consultation with (i) supervisory bodies, in instances of general application of the Act, and (ii) the specific supervisory body, in specific instances as set out in section 43A. In addition, the clause expands the Centre as well as a supervisory body's ability to issue a directive which may reasonably be required to give effect to the Centre's objectives.

3.33 *Responsibility of supervision of accountable institutions (Clause 31)*

Clause 31, amending clause 45 to specify the content of the memorandum of understanding between the Centre and a supervisory body to enhance information sharing, cooperation, assistance and provide for a dispute resolution mechanism.

3.34 *Inspections (Clause 2)*

The Constitutional Court, in the matter of *Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others* 2014 (3) SA 106 (CC) (27 February 2014), made a ruling declaring parts of section 45B of the FIC Act to be unconstitutional, to the extent that the section allows for inspections without a warrant in certain instances. The declaration of invalidity was suspended for 24 months, to allow Parliament to amend the section. Clause 29 gives effect to the Constitutional Court's judgment, by amending section 45B to provide for a warrant requirement, and to state in which circumstances a warrant would not be required.

In addition amendments are proposed to enable inspectors of the FIC and specified supervisory bodies to access during inspections information from accountable and reporting institutions regarding reporting on suspicious and unusual transactions in terms of section 29.

3.35 *Administrative sanctions (Clause 33)*

Clause 32 amends section 45C of the FIC Act, to provide for the financial penalties paid in respect of a financial sanction to be paid into the National Revenue Fund. The Act currently provides for the monies to be paid into the Criminal Assets Recovery Account.

3.36 *Appeal (Clause 34)*

(a) Section 45D of the FIC Act provides that an appeal must be lodged within 30 days. However, the Act does not make provision for condonation for the late filing of an appeal. Clause 32 of the Bill provides for the appeal board to condone delay in lodging an appeal, on good cause shown.

(b) The FIC Act makes provision for the Chairperson of the appeal board to determine any procedural matter relating to the appeal process. Clause 33 provides that the Chairperson may also make rules in respect of procedures relating to an appeal.

(c) To ensure that the appeal board is not burdened with irrelevant and frivolous information that may not be relevant to the appeal, it is necessary to amend the FIC Act to provide that an appeal is decided on the written evidence, factual information and documentation which was submitted to the FIC or supervisory body before the decision was taken.

(d) Clause 33, in addition, provides that the appellant, the FIC, or the supervisory body may, on application to the appeal board and on good cause shown, introduce evidence which was not given to either party prior to a decision being taken.

(e) The existing provisions of the FIC Act that provide that the decision of the majority of the appeal board is the decision of the appeal board has proven to be impractical, as there are currently nine members appointed to the appeal board. This effectively means that at every appeal hearing, all nine members will have to hear the appeal. Clause 33 provides for the establishment of an adjudication panel which will consist of not less than three members of the appeal board, and the

decision of the majority of the panel will be the deciding vote, and the chairperson will have the deciding vote in the case of an equality of votes.

3.37 *Provisions on offences (Clauses 35 to 49)*

Following the inclusion of the administrative sanctions provisions in the previous amendments to the FIC Act, it is now proposed that certain acts of non-compliance in respect of the obligations in the FIC Act should carry only an administrative sanction. Criminal sanctions for certain offence provisions are replaced by administrative sanctions (clauses 35 to 44 and 46 to 49). The clauses that will provide for only administrative sanctions relate to the accountable institution's obligations regarding customer due diligence and record keeping measures. The offence provisions regarding the misuse of information are expanded in clause 45 to include information referred to in section 45B(2A).

3.38 *Technical Amendments (Clauses 50 to 56)*

These clauses contain technical amendments. Clause 56 also increases the fine for a failure to comply with the regulations from a maximum amount of R100 000 to R1 000 000, or such administrative sanction as may apply.

3.39 *Long title of principal Act (Clause 57)*

Clause 57 proposed amendments to the long title of the principal Act to align it with the changes to the mandate of the FIC concerning the implementation of financial sanctions imposed by the Security Council of the United Nations and also to provide for the introduction of the new risk management and compliance requirements.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The National Treasury and the Financial Intelligence Centre published the draft Financial Intelligence Centre Amendment Bill, 2015, as approved by Cabinet, for public comment. Written comments were received from the following persons:

- Department of Justice and Constitutional Development
- Department of Home Affairs
- South African Institute of Professional Accountants
- Barclays
- Corruption Watch
- Casino Association of SA
- Compliance and Risk Resources
- Association for Savings and Investments South Africa
- Macquarie
- Standard Bank
- Banking Association of South Africa
- JSE
- Law Society of the Northern Provinces;

- South African Reserve Bank
- Investec
- Alf Allen
- Goolam Kolia

5. FINANCIAL IMPLICATIONS FOR THE STATE

There are no immediate financial implications envisaged for the FIC. While it is envisaged that initially the FIC will use existing staff to absorb the extra responsibilities in respect of implementing the UN financial sanctions provisions in the Bill, in the long term, dedicated staff need to be employed to carry out the function. Awareness raising programmes in the form of road shows on the implementation of the Bill is also envisaged. It is not envisaged that the supervisory role that the FIC is responsible for will require the appointment of additional inspectors, at this stage.

6. CONSTITUTIONAL IMPLICATIONS

The Bill proposes to amend section 45B of the FIC Act, as required by the Constitutional Court judgment in the matter of *Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others* 2014 (3) SA 106 (CC) (27 February 2014), to ensure that the section complies with the Constitution.

7. PARLIAMENTARY PROCEDURE

7.1 The Constitution of the Republic of South Africa regulates the manner in which legislation may be enacted by Parliament. It prescribes different procedures for different kinds of Bills.

7.2 Section 75 of the Constitution sets out a procedure to be followed when National Assembly passes a Bill other than a Bill to which the procedure sets out in section 74 or 76 of the Constitution applies.[1]

7.3. Section 76 of the Constitution on the other hand provides for a procedure that must be followed for all the Bills referred to in this section under subsections (3), (4) and (5).[2]

7.4. In **Tongoane v Minister of Agriculture and others CCT 100/09 [2010] ZACC 10**, the Constitutional Court confirmed and upheld the test for tagging that was formulated in **Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill [1999] ZACC 15; 2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC)**, where the Constitutional Court held that—

> ''*the heading of section 76, namely, 'Ordinary Bills affecting provinces' provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.*''.

7.5. At paragraph 58 the Constitutional Court held that ''What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill ''in substantial measure fall within a functional area listed in schedule 4''.

---

[1] See section 75(1) of the Constitution.
[2] See section 76(1) of the Constitution.

7.6. At paragraph 72 the Constitutional Court stated that any Bill whose provisions substantially affect the interest of the provinces must be enacted in accordance with the procedure stipulated in section 76. This also includes Bills providing for legislation envisaged in the further provisions set out in section 76(3)*(a)* to *(f)*, as well as Bills the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not in substantial measure affect the provinces.

7.7. The State Law Advisers have carefully considered the Bill and are of the view that the Bill can be distinguished from the Tongoane judgment, as the Bill does not deal with any of the matters listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) or Schedule 5 to the Constitution.

7.8. Since the Bill does not fall within a functional area listed in Schedule 4 or Schedule 5 to the Constitution, we are of the view that a procedure set out in section 76 of the Constitution cannot be applied and the Bill cannot be tagged as a section 76 Bill.

7.9 We are of the view that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.

7.10 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.