

FINANCIAL INTELLIGENCE CENTRE ACT

[Updated to 1 April 2019]

Act 38 of 2001 (GoN 1262, G. 22886),
Proc. No. 6, G. 23078,
Proc. No. 17, G. 23169,
Proc. No. 5, G. 24349,
Proc. No. 51, G. 25151,
Proc. No. 36, G. 26522,
Act 33 of 2004 (GoN 128, G. 27266, c.i.o 20 May 2005 [Proc. R18, G. 27502]),
Act 11 of 2008 (GoN 922, G. 31365, c.i.o 1 December 2010 [GoN 1106, G. 33781]),
Proc. No. R55, G. 33596,
GoN 1104, G. 33781, c.i.o 1 December 2010,
GoN 1105, G. 33781, c.i.o 1 December 2010,
Act 11 of 2013 (GoN 528, G. 36695, c.i.o 29 July 2013 [Proc. 32, G. 36714]),
Act 1 of 2017 (GoN 396, G. 40821, commencement of certain sections: 13 June 2017 [GoN 563, G. 40916]),
Act 1 of 2017 (GoN 396, G. 40821, commencement of further sections: 2 October 2017 [GoN 563, G. 40916]),
Act 1 of 2017 (GoN 396, G. 40821, commencement of further sections: 1 April 2019 [GoN 519, G. 42360]),
Act 9 of 2017 (GenN 169, G. 41549 c.i.o 7 May 2018).

[Commencement: ss 1 to 20, 72 to 78 and 80 to 82: **1 February 2002**; Schs 1 to 3: **1 March 2002**; ss 27, 29, 32 to 41, 44, 45, 50, 52, 53, 57 to 60, 63 to 67, 68(1), 69, 71, 79 and Sch 4: **3 February 2003**; ss 21(1), 22 to 26, 42 to 43, 46(1), 47 to 49, 61 to 62 and 68(2): **30 June 2003**; s 46(2): **1 July 2004**; ss 28 and 51: **4 October 2010**]

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

ACT

To establish a Financial Intelligence Centre 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.

[Long title subs by s 27 of Act 33 of 2004, s 28 of Act 11 of 2008, s 60 of Act 1 of 2017, wef 13 June 2017.]

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows.

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1. Definitions

(1) In this Act, unless the context indicates otherwise—

“accountable institution” means a person referred to in Schedule 1;

“administrative sanction” means an administrative sanction contemplated in section 45C;
[“administrative sanction” ins by s 1(a) of Act 11 of 2008; subs by s 1(a) of Act 1 of 2017, wef 13 June 2017.]

“appeal board” means the appeal board established by section 45E;
[“appeal board” ins by s 1(a) of Act 11 of 2008.]

“authorised officer” means any official of—

- (a) an investigating authority authorised by the head of that investigating authority to act under this Act;
- (b) the 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;
- (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;

["authorised officer" subs by s 1(b) of Act 1 of 2017, wef 13 June 2017.]

"bearer negotiable instrument" means any instrument that may on demand by the bearer thereof be converted to the currency of the Republic or that of another country, and includes, amongst others, cheques, promissory notes or money orders;

["bearer negotiable instrument" ins by s 1(b) of Act 11 of 2008; am by s 1(c) of Act 1 of 2017, wef 13 June 2017.]

"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;

["beneficial owner" ins by s 1(d) of Act 1 of 2017, wef 2 October 2017.]

"business relationship" means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis;

"cash" means—

- (a) coin and paper money of the Republic or of another country that is designated as legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;

- (b) travellers' cheques;

"Centre" means the Financial Intelligence Centre established by section 2;

"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;

["client" ins by s 1(e) of Act 1 of 2017, wef 2 October 2017.]

"Council" ...

["Council" subs by s 1(c) of Act 11 of 2008; rep by s 1(f) of Act 1 of 2017, wef 13 June 2017.]

"Director" means the Director of the Centre appointed in terms of section 6;

"domestic prominent influential person" means a person referred to in Schedule 3A;

["domestic prominent influential person" ins by s 1(g) of Act 1 of 2017, wef 2 October 2017.]

“entity” has a corresponding meaning with the definition in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;

[“entity” ins by s 27 of Act 33 of 2004; am by s 1(h) of Act 1 of 2017, wef 13 June 2017.]

“foreign prominent public official” means a person referred to in Schedule 3B;

[“foreign prominent public official” ins by s 1(i) of Act 1 of 2017, wef 2 October 2017.]

“Independent Police Investigative Directorate” means the Independent Police Investigative Directorate established by section 3 of the Independent Police Investigative Directorate Act, 2011 (Act 1 of 2011);

[“Independent Police Investigative Directorate” ins by s 1(i) of Act 1 of 2017, wef 13 June 2017.]

“inspector” means a person appointed in terms of section 45A;

[“inspector” ins by s 1(d) of Act 11 of 2008.]

“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 42 of 2002);

[“Intelligence Division of the National Defence Force” ins by s 1(j) of Act 1 of 2017, wef 13 June 2017.]

“intelligence service” means the State Security Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act 65 of 2002);

[“intelligence service” subs by s 53 of Act 11 of 2013.]

“investigating authority” means an authority that in terms of national legislation may investigate unlawful activities;

“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;

[“investigative division in an organ of state” ins by s 1(k) of Act 1 of 2017, wef 13 June 2017.]

“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;

[“legal person” ins by s 1(k) of Act 1 of 2017, wef 2 October 2017.]

“Minister” means the Minister of Finance;

“money laundering” or **“money laundering activity”** means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any

activity which constitutes an offence in terms of section 64 of this Act or section 4, 5 or 6 of the Prevention Act;*

* Sections 4, 5 and 6 of the Prevention Act read as follows—

“Money laundering

4. Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and—

- (a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or
- (b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

which has or is likely to have the effect—

- (i) of concealing or disguising the nature, source, location, disposition or movement of the said property or its ownership or any interest which anyone may have in respect thereof; or
- (ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere—
 - (aa) to avoid prosecution; or
 - (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,shall be guilty of an offence.

5. **Assisting another to benefit from proceeds of unlawful activities**

Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby—

- (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- (b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way,

shall be guilty of an offence.

6. **Acquisition, possession or use of proceeds of unlawful activities**

Any person who—

- (a) acquires;
- (b) uses; or
- (c) has possession of,

property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence.”.

“National Commissioner” means the National Commissioner of the South African Police Service referred to in section 207 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

“National Director of Public Prosecutions” means the National Director of Public Prosecutions referred to in section 179 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

“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 32 of 1998);

[“National Prosecuting Authority” ins by s 1(l) of Act 1 of 2017, wef 13 June 2017.]

“non-compliance” means any act or omission that constitutes a failure to comply with a provision of this Act or any order, determination or directive made in terms of this Act and which does not

constitute an offence in terms of this Act, and ‘fails to comply’, ‘failure to comply’, ‘non-compliant’ and ‘not complying’ have a corresponding meaning;

[“non-compliance” ins by s 1(e) of Act 11 of 2008; subs by s 1(m) of Act 1 of 2017, wef 13 June 2017.]

“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 33 of 2004);

[“offence relating to the financing of terrorist and related activities” ins by s 1(n) of Act 1 of 2017, wef 2 October 2017.]

“offence relating to the financing of terrorist and related activities” ...

[“offence relating to the financing of terrorist and related activities” ins by s 27 of Act 33 of 2004; rep by s 1(s) of Act 1 of 2017, wef 2 October 2017.]

“prescribed” means prescribed by the Minister by regulation in terms of section 77;

“Prevention Act” means the Prevention of Organised Crime Act, 1998 (Act 121 of 1998);

“proceeds of unlawful activities” has the meaning attributed to that term in section 1 of the Prevention Act;*

* In terms of section 1 of the Prevention Act, this term means “any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived”.

“property” has the meaning attributed to that term in section 1 of the Prevention Act;*

* In terms of section 1 of the Prevention Act, this term means “money or any other movable, immovable, corporeal or incorporeal thing, and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof”.

“Public Protector” means the Public Protector referred to in Chapter 9 of the Constitution of the Republic of South Africa, 1996;

[“Public Protector” ins by s 1(o) of Act 1 of 2017, wef 13 June 2017.]

“reporting institution” means a person referred to in Schedule 3;

“Risk Management and Compliance Programme” means the programme contemplated in section 42(1);

[“Risk Management and Compliance Programme” ins by s 1(p) of Act 1 of 2017, wef 2 October 2017.]

“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;

["single transaction" subs by s 1(q) of Act 1 of 2017, wef 2 October 2017.]

"South African Revenue Service" means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 (Act 34 of 1997);

"Special Investigating Unit" means the Special Investigating Unit established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996);

["Special Investigating Unit" ins by s 1(r) of Act 1 of 2017, wef 13 June 2017.]

"supervisory body" means a functionary or institution referred to in Schedule 2;

"terrorist and related activities" has the meaning assigned to it in section 1 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004);

["terrorist and related activities" ins by s 1(f) of Act 11 of 2008.]

"this Act" includes any regulation made or exemption given under this Act;

["this Act" subs by s 1(g) of Act 11 of 2008.]

"transaction" ...

["transaction" rep by s 1(s) of Act 1 of 2017, wef 2 October 2017.]

"trust" means a trust defined in section 1 of the Trust Property Control Act, 1988 (Act 57 of 1988), other than a trust established—

(a) by virtue of a testamentary disposition;

(b) by virtue of a court order;

(c) in respect of persons under curatorship; or

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

and includes a similar arrangement established outside the Republic;

["trust" ins by s 1(t) of Act 1 of 2017, wef 2 October 2017.]

"unlawful activity" has the meaning attributed to that term in section 1 of the Prevention Act.*

* In terms of section 1 of the Prevention Act, this term means "conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere".

- (2) For the purposes of this Act a person has knowledge of a fact if—
- (a) the person has actual knowledge of that fact; or
 - (b) the court is satisfied that—
 - (i) the person believes that there is a reasonable possibility of the existence of that fact; and
 - (ii) the person fails to obtain information to confirm or refute the existence of that fact.
- (3) For the purposes of this Act a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both—
- (a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and
 - (b) the general knowledge, skill, training and experience that he or she in fact has.

1A. Application of Act when in conflict with other laws

If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law existing at the commencement of this Act, save the Constitution, the provisions of this Act prevail.

[S 1A ins by s 2 of Act 11 of 2008.]

CHAPTER 1 FINANCIAL INTELLIGENCE CENTRE

2. Establishment

- (1) A Financial Intelligence Centre is hereby established as an institution outside the public service but within the public administration as envisaged in section 195 of the Constitution.
- (2) The Centre is a juristic person.

3. Objectives

- (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.

[S 3(1) subs by s 27 of Act 33 of 2004, subs by s 2(a) of Act 1 of 2017 wef 1 April 2019.]

(2) The other objectives of the Centre are—

(a) to make information collected by it available to—

(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;

[Editor's Note: Numbering as per Original Government *Gazette*.]

(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;

[S 3(2)(a) subs by s 3(a) of Act 11 of 2008, s 2(b) of Act 1 of 2017, wef 13 June 2017.]

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

[S 3(2)(aA) ins by s 2(c) of Act 1 of 2017 wef 1 April 2019.]

(b) to exchange information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities;

[S 3(2)(b) subs by s 3(a) of Act 11 of 2008.]

- (c) to supervise and enforce compliance with this Act or any directive made in terms of this Act and to facilitate effective supervision and enforcement by supervisory bodies.

[S 3(2)(c) ins by s 3(b) of Act 11 of 2008.]

4. Functions

To achieve its objectives the Centre must—

- (a) process, analyse and interpret information disclosed to it, and obtained by it, in terms of this Act;

- (aA) where appropriate, initiate analysis based on information in its possession or information received other than by means of reports made to it under Part 3 of Chapter 3;

[S 4(aA) ins by s 3(a) of Act 1 of 2017, wef 13 June 2017.]

- (b) inform, advise and co-operate with—

- (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;

[S 4(b) subs by s 3(b) of Act 1 of 2017, wef 13 June 2017.]

- (c) monitor and give 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;

[S 4(c) subs by s 4(a) of Act 11 of 2008.]

- (cA) provide information and guidance to accountable institutions that will assist accountable institutions in meeting requirements to freeze property and transactions pursuant to resolutions adopted by the Security Council of the United Nations referred to in a notice contemplated in section 26A;

[S 4(cA) inserted by s 3(c) of Act 1 of 2017 wef 1 April 2019.]

- (d) retain the information referred to in paragraph (a) in the manner and for the period required by this Act.

- (e) annually review the implementation of this Act and submit a report thereon to the Minister;

[S 4(e) ins by s 4(b) of Act 11 of 2008.]

- (f) implement a registration system in respect of all accountable institutions and reporting institutions; and

[S 4(f) ins by s 4(b) of Act 11 of 2008.]

- (g) supervise and enforce compliance with this Act or any directive made in terms of this Act by accountable institutions, reporting institutions and other persons to whom the provisions of this Act apply that—

- (i) are not regulated or supervised by a supervisory body in terms of this Act or any other law;
- (ii) are regulated or supervised by a supervisory body in terms of this Act or any other law, if that supervisory body fails to enforce compliance despite any recommendation of the Centre made in terms of section 44(b).

[S 4(g) ins by s 4(b) of Act 11 of 2008.]

5. General powers

- (1) The Centre may do all that is necessary or expedient to perform its functions effectively, which includes the power to—

- (a) determine its own staff establishment and the terms and conditions of employment for its staff within a policy framework determined by the Minister;
- (b) appoint employees and seconded personnel to posts on its staff establishment;
- (c) obtain the services of any person by agreement, including any state department, functionary or institution, to perform any specific act or function;

- (d) acquire or dispose of any right in or to property, but rights in respect of immovable property may be acquired or disposed of only with the consent of the Minister;
- (e) open and operate its own bank accounts, subject to the Public Finance Management Act, 1999 (Act 1 of 1999);
- (f) insure itself against any loss, damage, risk or liability;
- (g) perform legal acts or institute or defend any legal action in its own name;
- (h) engage in any lawful activity, whether alone or together with any other organisation in the Republic or elsewhere, aimed at promoting its objectives;
- (i) do anything that is incidental to the exercise of any of its powers.

6. Appointment of Director

- (1) The Minister must appoint a fit and proper person as the Director of the Centre.
- (2) A person appointed as the Director holds office—
 - (a) for a term not exceeding five years, but which is renewable; and
 - (b) on terms and conditions set out in a written employment contract, which must include terms and conditions setting specific, measurable performance standards.
- (3) ...

[S 6(3) rep by s 4 of Act 1 of 2017, wef 13 June 2017.]

7. Removal from office

- (1) The Minister may remove the Director from office only on the grounds referred to in section 13 or on the grounds of misconduct, incapacity or incompetence.
- (2) The Minister may suspend the Director from office, pending—
 - (a) the determination of any enquiry as to whether grounds of misconduct, incapacity or incompetence exist; or
 - (b) the outcome of a security screening investigation referred to in section 13(3).

8. Acting Director

When the Director is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Director, the Minister may designate another employee of the Centre to act as Director.

9. Proof of appointment

If the Minister has given notice in the *Gazette* of any appointment of a person as the Director or as acting director, this notice may be presented in a Court as proof of the appointment.

10. Responsibilities of Director

(1) The Director—

- (a) is responsible for the performance by the Centre of its functions;
- (b) takes all decisions of the Centre in the exercise of its powers and the performance of its functions, except those decisions taken in consequence of a delegation or instruction in terms of section 16; and
- (c) is the chief executive officer and also the accounting authority of the Centre.

(2) As the chief executive officer, the Director is responsible for—

- (a) the formation and development of an efficient and performance driven administration;
- (b) the management of the administration; and
- (c) the control, and maintenance of discipline, of staff.

(3) As accounting authority of the Centre the Director must perform the functions assigned to accounting authorities in terms of the Public Finance Management Act, 1999 (Act 1 of 1999).

(4) The Director performs the functions of office subject to any policy framework which may be prescribed by the Minister.

11. Staff

(1) The staff of the Centre consists of—

- (a) the Director; and

- (b) persons appointed as employees of the Centre by the Director.
- (2) An employee of an organ of state may be seconded to the Centre by agreement between the Centre and such organ of state.
- (3) Staff members referred to in subsection (1)(b) and persons seconded to the Centre in terms of subsection (2) perform their duties subject to the control and directions of the Director.
- (4) If an officer or employee in the public service is seconded to the Centre, the period of his or her service with the Centre must be calculated as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other condition of service.
- (5) The provisions of any pension law applicable to an officer or employee referred to in subsection (4) or, in the event of his or her death, to his or her dependants, which are not inconsistent with this section, must, with the necessary changes, continue so to apply.
- (6) No person seconded to the Centre or employed by the Centre to perform any of the functions of the Centre may strike or induce or conspire with any other member of the staff of the Centre to strike.
- (7) The services of the Centre, for the purposes of the application of Chapter IV of the Labour Relations Act, 1995 (Act 66 of 1995), are deemed to have been designated as an essential service in terms of section 71 of that Act.
- (8) All other conditions of service of staff of the Centre are as determined in terms of this Act.

12. Security screening of staff of Centre other than Director

- (1) No person other than the Director may be appointed or seconded to perform any of the functions of the Centre unless—
 - (a) information with respect to that person has been gathered in a vetting investigation by the State Security Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act 65 of 2002); and
 - [S 12(1)(a) subs by s 53 of Act 11 of 2013.]
 - (b) the Director, after evaluating the gathered information, is satisfied that such person may be so appointed without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to the objectives or functions of the Centre.
- (2) If the Director is so satisfied, the Director must issue a certificate with respect to such person in which it is certified that such person has successfully undergone a security clearance.

- (3) Any person referred to in subsection (1) may at any time determined by the Director be subjected to a further security screening investigation as contemplated in subsection (1)(a).
- (4) The Director may withdraw a certificate referred to in subsection (2) if the Director obtains information from an investigation referred to in subsection (3) which, after evaluation by the Director, causes the Director to believe that the person in question could be a security risk or could possibly act in any manner prejudicial to the objectives or functions of the Centre.
- (5) If the certificate referred to in subsection (2) is withdrawn, the person concerned may not perform any functions of the Centre and the Director must discharge him or her from the Centre.

13. Security screening of Director of Centre

- (1) No person may be appointed as the Director of the Centre unless—
 - (a) information with respect to that person has been gathered in a vetting investigation by the State Security Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act 65 of 2002);
and
[S 13(1)(a) subs by s 53 of Act 11 of 2013.]
 - (b) the Minister, after evaluating the gathered information, is satisfied that such person may be so appointed without the possibility that such person might be a security risk or that he or she might act in any manner prejudicial to the objectives or functions of the Centre.
- (2) If the Minister is so satisfied, he or she must issue a certificate with respect to such person in which it is certified that such person has successfully undergone a security clearance.
- (3) The Director may at any time determined by the Minister be subjected to a further security screening investigation as contemplated in subsection (1)(a).
- (4) The Minister may withdraw a certificate referred to in subsection (2) if the Minister obtains information from an investigation referred to in subsection (3) which, after evaluation by the Minister, causes the Minister to believe that the Director could be a security risk or could possibly act in any manner prejudicial to the objectives or functions of the Centre.
- (5) If the certificate referred to in subsection (2) is withdrawn, the Director may not perform any functions of the Centre and the Minister must discharge him or her from the Centre.

14. Funds and financial year of Centre

- (1) The funds of the Centre consist of—

- (a) money appropriated annually by Parliament for the purposes of the Centre;
 - (b) any government grants made to it; and
 - (c) any other money legally acquired by it, provided that the Centre may accept donations only with the prior written approval of the Minister.
- (2) The financial year of the Centre ends on 31 March in each year.

15. Audit

The Auditor-General must audit and report on the accounts and financial records of the Centre.

16. Delegation

- (1) The Director may—
- (a) delegate, in writing, any of the powers entrusted to the Centre in terms of this Act to a member of the staff of the Centre; or
 - (b) instruct a member of the staff to perform any of the functions assigned to the Centre in terms of this Act.
- (2) A delegation or instruction in terms of subsection (1)—
- (a) is subject to the limitations or conditions that the Director may impose; and
 - (b) does not divest the Director of the responsibility concerning the exercise of the delegated power or the performance of the assigned function.
- (3) The Director may confirm, vary or revoke any decision taken by a staff member in consequence of a delegation or instruction in terms of subsection (1), as long as no such variation or revocation of a decision detracts from any rights that may have accrued as a result of the decision.
- (4) A person seconded to the Centre in terms of section 11(2) is for the purposes of this section regarded as being a staff member.

CHAPTER 2

[Repealed]

17.—20. ...

[Chapter 2 am by ss 5 and 6 of Act 11 of 2008, s 53 of Act 11 of 2013; Chapter 2 (ss 17—21) rep by s 5 of Act 1 of 2017, wef 13 June 2017.]

CHAPTER 3
CONTROL MEASURES FOR MONEY LAUNDERING AND FINANCING OF TERRORIST AND RELATED
ACTIVITIES

[Chapter heading subs by s 27 of Act 33 of 2004.]

Part 1

Customer due diligence

[Part heading subs by s 7 of Act 1 of 2017, wef 2 October 2017.]

20A. Anonymous clients and clients acting under false or fictitious names

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.

[S 20A ins by s 8 of Act 1 of 2017, wef 2 October 2017.]

21. Identification of clients and other persons

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

[S 21(1) subs by s 9 of Act 1 of 2017, wef 2 October 2017.]

(2) If an accountable institution had established a business relationship with a client before this Act took effect, the accountable institution may not conclude a transaction in the course of that business relationship, unless the accountable institution has taken the prescribed steps—

- (a) to establish and verify the identity of the client;
- (b) if another person acted on behalf of the client in establishing the business relationship, 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;
- (c) if the client acted on behalf of another person in establishing the business relationship, to establish and verify—
 - (i) the identity of that other person; and
 - (ii) the client's authority to act on behalf of that other person; and
- (d) to trace all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship.

21A. Understanding and obtaining information on business relationship

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.

[S 21A ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

21B. Additional due diligence measures relating to legal persons, trusts and partnerships

- (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.

[S 21B ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

21C. Ongoing due diligence

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.

[S 21C ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

21D. Doubts about veracity of previously obtained information

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.

[S 21D ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

21E. Inability to conduct customer due diligence

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.

[S 21E ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

21F. Foreign prominent public official

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.

[S 21F ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

21G. Domestic prominent influential person

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.

[S 21G ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

21H. Family members and known close associates

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.

[S 21H ins by s 10 of Act 1 of 2017, wef 2 October 2017.]

Part 2

Duty to keep record

22. Obligation to keep customer due diligence records

- (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.

[S 22 subs by s 11 of Act 1 of 2017, wef 2 October 2017.]

22A. Obligation to keep transaction records

- (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.

[S 22A ins by s 12 of Act 1 of 2017, wef 2 October 2017.]

23. Period for which records must be kept

An accountable institution must keep the records 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.

[S 23 subs by s 13 of Act 1 of 2017, wef 2 October 2017.]

24. Records may be kept in electronic form and by third parties

- (1) The duties imposed by sections 22 and 22A on an accountable institution to keep a record of the matters specified in 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 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 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.

[S 24 subs by s 14 of Act 1 of 2017, wef 2 October 2017.]

25. Admissibility of records

A record kept in terms of section 22, 22A or 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.

[S 25 subs by s 15 of Act 1 of 2017, wef 2 October 2017.]

26. ...

[S 26 am by s 7 of Act 11 of 2008; rep by s 16 of Act 1 of 2017, wef 2 October 2017.]

Part 2A

Financial sanctions

26A. Notification of persons and entities identified by Security Council of the United Nations

- (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).

[S 26A ins by s 17 of Act 1 of 2017 wef 1 April 2019.]

26B. Prohibitions relating to persons and entities identified by Security Council of the United Nations

- (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.

[S 26B ins by s 17 of Act 1 of 2017 wef 1 April 2019.]

26C. Permitted financial services and dealing with property

- (1) The Minister may, in writing and on the conditions as he or she considers appropriate and in accordance with a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1), permit a person to conduct financial services or deal with property referred to in section 26B in the circumstances referred to in subsection (2).
- (2) The Minister may permit the provision of financial services or the dealing with property if it is necessary to—
- (a) provide for basic expenses, including, at least—
 - (i) foodstuffs;
 - (ii) rent or mortgage;
 - (iii) medicines or medical treatment;

- (iv) taxes;
 - (v) insurance premiums;
 - (vi) public utility charges;
 - (vii) maintenance orders;
 - (viii) reasonable professional fees, and
 - (ix) reimbursement of expenses associated with the provision of legal services;
- (b) satisfy a judgment or arbitral award that was made before the date on which the person or entity was identified by the Security Council of the United Nations;
- (c) make a payment to a third party which is due under a contract, agreement or other obligation made before the date on which the person or entity was identified by the Security Council of the United Nations;
- (d) accrue interest or other earnings due on accounts holding property affected by a prohibition under section 26B;
- (e) make a payment due to a person or entity affected by a prohibition under section 26B by virtue of a contract, agreement or other obligation made before the date on which the person or entity was identified by the Security Council of the United Nations: Provided that the payment is not directly or indirectly being received by that person or entity.
- (3) The Minister may permit the provision of financial services or the dealing with property under subsection (1) on his or her own initiative or at the request of a person affected by a prohibition under section 26B.
- (4) The Director must, by appropriate means of publication, give notice of the Minister's permission of the provision of financial services or the dealing with property under subsection (1).
- (5)
- (a) The Minister may, in writing, delegate any power conferred in terms of this section, to the Director.
 - (b) A delegation in terms of paragraph (a)—
 - (i) is subject to any limitations or conditions that the Minister may impose;

- (ii) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (c) The Minister may vary or revoke any decision taken by the Director as a result of a delegation in terms of paragraph (a), subject to any rights that may have vested as a consequence of the decision.

[S 26C ins by s 17 of Act 1 of 2017 wef 1 April 2019.]

Part 3

Reporting duties and access to information

27. Accountable institutions, reporting institutions and persons subject to reporting obligations to advise Centre of clients

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—

- (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;
- (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.

[S 27 subs by s 18 of Act 1 of 2017, wef 13 June 2017.]

27A. Powers of access by authorised representative to records in respect of reports required to be submitted to Centre

- (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).

[S 27A ins by s 19 of Act 1 of 2017, wef 2 October 2017.]

28. Cash transactions above prescribed limit

An accountable institution and a reporting institution must, within the prescribed period, report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount—

- (a) is paid by the accountable institution or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
- (b) is received by the accountable institution or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

28A. Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council

[Heading of s 28A subs by s 20(a) of Act 1 of 2017 wef 1 April 2019.]

- (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;
 - (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.

[S 28A(1) subs by s 20(b) of Act 1 of 2017 wef 1 April 2019.]

- (2) The Director may direct an accountable institution which has made a report under subsection (1) to report—
 - (a) at such intervals as may be determined in the direction, that it is still in possession or control of the property in respect of which the report under subsection (1) had been made; and
 - (b) any change in the circumstances concerning the accountable institution's possession or control of that property.
- (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.

[S 28A(3) ins by s 20(c) of Act 1 of 2017 wef 1 April 2019.]

[S 28A ins by s 27 of Act 33 of 2004.]

29. Suspicious and unusual transactions

- (1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that—

- (a) the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
- (b) a transaction or series of transactions to which the business is a party—
 - (i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
 - (ii) has no apparent business or lawful purpose;
 - (iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act;
 - (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;
[S 29(1)(b)(iv) subs by s 21(a) of Act 1 of 2017, wef 13 June 2017.]
 - (v) relates to an offence relating to the financing of terrorist and related activities;
 - (vi) relates to the contravention of a prohibition under section 26B; or
[S 29(1)(b)(vi) subs by s 21(b) of Act 1 of 2017 wef 1 April 2019.]
- (c) the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities,

must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

[S 29(1) subs by s 27 of Act 33 of 2004.]

- (2) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that a transaction or a series of transactions about which enquiries are made, may, if that transaction or those transactions had been concluded, have caused any of the consequences referred to in subsection (1)(a), (b) or (c), must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

- (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—
- [Words preceding s 29(3)(a) subs by s 21(c) of Act 1 of 2017, wef 13 June 2017.]
- (a) within the scope of the powers and duties of that person in terms of any legislation;
 - (b) for the purpose of carrying out the provisions of this Act;
 - (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
 - (d) in terms of an order of court.
- (4) No person who knows or suspects that a report has been or is to be made in terms of this section may disclose that knowledge or suspicion or any information regarding the contents or suspected contents of any such report to any other person, including the person in respect of whom the report is or is to be made, otherwise than—
- (a) within the scope of that person's powers and duties in terms of any legislation;
 - (b) for the purpose of carrying out the provisions of this Act;
 - (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
 - (d) in terms of an order of court.

30. Conveyance of cash to or from Republic

- (1) A person who intends conveying or who has conveyed or who is conveying an amount of cash or a bearer negotiable instrument in excess of the prescribed amount to or from the Republic must, on demand, report the prescribed particulars concerning that conveyance to a person authorised by the Minister for this purpose.

[S 30(1) subs by s 8 of Act 11 of 2008.]

- (2) A person authorised in terms of subsection (1) must without delay send a copy of the report to the Centre.

31. Electronic transfers of money to or from Republic

If an accountable institution through electronic transfer sends money in excess of a prescribed amount out of the Republic or receives money in excess of a prescribed amount from outside the Republic on

behalf, or on the instruction, of another person, it must, within the prescribed period after the money was transferred, report the transfer, together with the prescribed particulars concerning the transfer, to the Centre.

32. Reporting procedures and furnishing of additional information

- (1) A report in terms of section 28, 29 or 31 to the Centre and a report in terms of section 30(1) to a person authorised by the Minister must be made in the prescribed manner
- (2) The Centre 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 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 may reasonably require for the performance by it of its functions.

[S 32(2) subs by s 22(a) of Act 1 of 2017, wef 2 October 2017.]

- (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 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.

[S 32(3) subs by s 22(b) of Act 1 of 2017, wef 2 October 2017.]

33. Continuation of transactions

An accountable institution, reporting institution or person required to make a report to the Centre in terms of section 28 or 29, may continue with and carry out the transaction in respect of which the report is required to be made unless the Centre directs the accountable institution, reporting institution or person in terms of section 34 not to proceed with the transaction.

34. Intervention by Centre

- (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) 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 not longer than 10 days as determined by the Centre, in order to allow the Centre to make the necessary inquiries concerning the transaction and, if the Centre 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 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 Financial Markets Act, 2012 (Act 19 of 2012), apply.

[S 34 am by s 27 of Act 33 of 2004, s 9 of Act 11 of 2008; subs by s 23 of Act 1 of 2017, wef 13 June 2017.]

35. Monitoring orders

- (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).

[S 35(1) subs by s 27 of Act 33 of 2004, subs by s 24 of Act 1 of 2017 wef 1 April 2019.]

- (2) An order in terms of subsection (1) lapses after three months unless extended in terms of subsection (3).
- (3) A judge referred to in subsection (1) may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if—
 - (a) the reasonable grounds for the suspicion on which the order is based still exist; and
 - (b) the judge is satisfied that the interest of justice is best served by monitoring the person, account or facility referred to in subsection (1) in the manner provided for in this section.
- (4) An application referred to in subsection (1) must be heard and an order must be issued without notice to or hearing the person or persons involved in the suspected money-laundering activities.

36. Information held by supervisory bodies and South African Revenue Service

- (1) If a supervisory body or the South African Revenue Service knows or suspects that an accountable institution wittingly or unwittingly has received or is about to receive the proceeds of unlawful activities

or has been used or may be used in future for money laundering purposes or for the purpose of any transaction contemplated in section 29(1)(b), it must advise the Centre and any authority, service or body contemplated in section 3 or any other supervisory body that, in the opinion of the supervisory body or the South African Revenue Service, may have an interest therein, of that fact and furnish them with all information and any records regarding that knowledge or suspicion which they may reasonably require to identify the proceeds of unlawful activities or to combat money laundering activities or financing of terrorist and related activities.

[S 36(1) subs by s 10(a) of Act 11 of 2008.]

- (2) If the Centre believes that a supervisory body or the South African Revenue Service may have information indicating that an accountable institution wittingly or unwittingly has received or is about to receive the proceeds of unlawful activities or has been used or may be used in future for money laundering purposes or for the purpose of any transaction contemplated in section 29(1)(b), the Centre may request that supervisory body or the South African Revenue Service to confirm or rebut that belief and the supervisory body or South African Revenue Service, as the case may be, must do so and, if that belief is confirmed, must furnish the Centre and any authority, service or body referred to in section 3 or any other supervisory body identified by the Centre that may have an interest in that matter with all information and any records regarding that knowledge or suspicion which the Centre may reasonably require for the achievement of its objectives.

[S 36(2) subs by s 10(a) of Act 11 of 2008.]

- (3) The Commissioner for the South African Revenue Service and the chief executive officer of a supervisory body may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in subsections (1) and (2) as the Commissioner or such officer considers appropriate to maintain the confidentiality, if any, of that information.

37. Reporting duty and obligations to provide information not affected by confidentiality rules

- (1) Subject to subsection (2), no duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance by an accountable institution, supervisory body, reporting institution, the South African Revenue Service or any other person with a provision of this Part, Part 4 and Chapter 4.

[S 37(1) subs by s 11 of Act 11 of 2008.]

- (2) Subsection (1) does not apply to the common law right to legal professional privilege as between an attorney and the attorney's client in respect of communications made in confidence between—
- (a) the attorney and the attorney's client for the purposes of legal advice or litigation which is pending or contemplated or which has commenced; or

- (b) a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced.

38. Protection of persons making reports

- (1) No action, whether criminal or civil, lies against an accountable institution, reporting institution, supervisory body, the South African Revenue Service or any other person complying in good faith with a provision of this Part, Part 4 and Chapter 4, including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person.

[S 38(1) subs by s 12 of Act 11 of 2008.]

- (2) A person who has made, initiated or contributed to a report in terms of section 28, 29 or 31 or who has furnished additional information concerning such a report or the grounds for such a report in terms of a provision of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.
- (3) No evidence concerning the identity of a person who has made, initiated or contributed to a report in terms of section 28, 29 or 31 or who has furnished additional information concerning such a report or the grounds for such a report in terms of a provision of this Part, or the contents or nature of such additional information or grounds, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

39. Admissibility as evidence of reports made to Centre

A certificate issued by an official of the Centre that information specified in the certificate was reported or sent to the Centre in terms of section 28, 29, 30(2) or 31 is, subject to section 38(3), on its mere production in a matter before a court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

40. Access to information held by Centre

- (1) 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 in the Republic;
 - (aA) the National Prosecuting Authority;
 - (aB) the Independent Police Investigative Directorate;
 - (aC) an intelligence service;

(aD) the Intelligence Division of the National Defence Force;

(aE) a Special Investigating Unit;

(aF) an investigative division in an organ of state;

(aG) the Public Protector; or

(aH) the South African Revenue Service;

(b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic;

(c) ...

(d) a supervisory body;

(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 (1A) or (1C) must be in writing and must specify the 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 the reasonable procedural arrangements and impose the reasonable safeguards regarding the furnishing of such information that the Director considers appropriate to maintain the confidentiality of that information before the information is provided.
- (4) Information 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 the entity or the authority which is responsible for the entity or authority, regulating the exchange of information between the Centre and 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 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 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 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 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.

[S 40 am by s 27 of Act 33 of 2004, s 13 of Act 11 of 2008; subs by s 25 of Act 1 of 2017, wef 13 June 2017.]

41. Protection of confidential information

No person may disclose confidential information held by or obtained from the Centre except—

- (a) within the scope of that person's powers and duties in terms of any legislation;
- (b) for the purpose of carrying out the provisions of this Act;
- (c) with the permission of the Centre;
- (d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (e) in terms of an order of court.

41A. Protection of personal information

- (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 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.

[S 41A ins by s 26 of Act 1 of 2017, wef 13 June 2017.]

Part 4

Measures to promote compliance by accountable institutions

42. Risk Management and Compliance Programme

- (1) An accountable institution must develop, document, maintain and implement a programme for anti-money laundering and counter-terrorist financing risk management and compliance.

- (2) 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 subparagraph (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 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 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.

[S 42 subs by s 27 of Act 1 of 2017, wef 2 October 2017.]

42A. Governance of anti-money laundering and counter-terrorist financing compliance

(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).

[S 42A ins by s 28 of Act 1 of 2017, wef 2 October 2017.]

42B. Consultation process for issuing guidance

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.

[S 42B ins by s 28 of Act 1 of 2017, wef 13 June 2017.]

43. Training relating to anti-money laundering and counter-terrorist financing compliance

An accountable institution must provide ongoing training to its employees to enable them to comply with the provisions of this Act and the Risk Management and Compliance Programme which are applicable to them.

[S 43 subs by s 29 of Act 1 of 2017, wef 2 October 2017.]

43A. Directives

(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.

[S 43A(1) subs by s 30(a) of Act 1 of 2017, wef 13 June 2017.]

(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 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.

[S 43A(2) subs by s 30(a) of Act 1 of 2017, wef 13 June 2017.]

- (3) The Centre or a supervisory body may in writing, over and above any directive contemplated in subsection (1) or (2), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom the provisions of this Act apply, to—
- (a) provide the Centre or that supervisory body, as the case may be—
 - (i) with the information, reports or statistical returns specified in the notice, at the time or at the intervals specified in the notice; and
 - (ii) within the period specified in the notice, with any document in its possession or custody or under its control;
 - (b) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;
 - (c) perform acts necessary to remedy an alleged non-compliance with this Act; or
 - (d) perform acts necessary to meet any obligation imposed by this Act.
- (4) The Centre or supervisory body may examine a document submitted to it in terms of subsection (3)(a) or make a copy thereof or part thereof.
- (5) The costs incurred in complying with a directive must be borne by the accountable institution, reporting institution or person concerned.
- (6)
- (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—
 - (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) after consultation with the relevant supervisory body.
[S 43A(6)(a) subs by s 30(b) of Act 1 of 2017, wef 13 June 2017.]
 - (b) A supervisory body may issue a directive in terms of this section only after consulting the Centre on that directive.
- (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.

[S 43A ins by s 14 of Act 11 of 2008; s 43A(7) ins by s 30(c) of Act 1 of 2017, wef 13 June 2017.]

43B. Registration by accountable institution and reporting institution

- (1) Every accountable institution referred to in Schedule 1 and every reporting institution referred to in Schedule 3 must, within the prescribed period and in the prescribed manner, register with the Centre.
- (2) The registration of an accountable institution and a reporting institution contemplated in subsection (1) must be accompanied by such particulars as the Centre may require.
- (3) The Centre must keep and maintain a register of every accountable institution and reporting institution registered in terms of subsection (1).
- (4) A registered accountable institution or reporting institution must notify the Centre, in writing, of any changes to the particulars furnished in terms of this section within 90 days after such a change.

[S 43B ins by s 14 of Act 11 of 2008.]

Part 5

Referral and supervision

44. Referral of suspected offences to investigating authorities and other public bodies

If the Centre in the performance of its functions has reasonable grounds to suspect that an accountable institution, or any other person other than a supervisory body who is subject to the provisions of this Act, has contravened or failed to comply with any provision of this Act or any rule or guideline applicable to that accountable institution or person which facilitates compliance with this Act, it may, if it considers it appropriate to do so, refer the matter to—

- (a) a relevant investigating authority; or
- (b) an appropriate supervisory body or other public body or authority affected by it, together with any recommendation the Centre considers appropriate.

45. Responsibility for supervision of accountable institutions

- (1) Every supervisory body is responsible for supervising and enforcing compliance with this Act or any order, determination or directive made in terms of this Act by all accountable institutions regulated or supervised by it.

[S 45(1) subs by s 15(a) of Act 11 of 2008.]

(1A)

- (a) The obligation referred to in subsection (1) forms part of the legislative mandate of any supervisory body and constitutes a core function of that supervisory body.
- (b) Any Act that regulates a supervisory body or authorises that supervisory body to supervise or regulate any accountable institution must be read as including subsection (1), and a supervisory body may utilise any fees or charges it is authorised to impose or collect to defray expenditure incurred in performing its obligations under this Act or any order, determination or directive made in terms of this Act.

[S 45(1A) ins by s 15(b) of Act 11 of 2008.]

- (1B) A supervisory body, in meeting its obligation referred to in subsection (1), may—

- (a) in addition to any powers it has in terms of another Act, exercise any power afforded to it in this Act;
- (b) delegate the exercise of any power contemplated in paragraph (a) to any of its members, employees or any other suitable person;
- (c) take any measures it considers necessary or expedient to meet its obligations imposed by this Act or any order, determination or directive made in terms of this Act, or to achieve the objectives of the Centre or this Act;
- (d) require an accountable institution supervised or regulated by it to report on that institution's compliance with this Act or any order, determination or directive made in terms of this Act in the form, manner and timeframes determined by the supervisory body;
- (e) issue or amend any licence, registration, approval or authorisation that the supervisory body may issue or grant in accordance with any Act, to include the following conditions—
- (i) compliance with this Act; and
- (ii) the continued availability of human, financial, technological and other resources to ensure compliance with this Act or any order, determination or directive made in terms of this Act; and

(f) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in an accountable institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any order, determination or directive made in terms of this act, or, prior to the commencement of this Act or at any time thereafter, any involvement in—

(i) any money laundering activity; or

(ii) any terrorist or related activity.

[S 45(1B) ins by s 15(b) of Act 11 of 2008.]

(1C) A supervisory body must submit to the Centre, within the prescribed period and in the prescribed manner, a written report on any action taken against any accountable institution in terms of this Act or any order, determination or directive made in terms of this Act.

[S 45(1C) ins by s 15(b) of Act 11 of 2008.]

(1D)

(a) The Centre and a supervisory body must co-ordinate 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) co-operation 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.

[S 45(1D) ins by s 15(b) of Act 11 of 2008; subs by s 31 of Act 1 of 2017, wef 13 June 2017.]

- (2) When the Centre refers a matter to a supervisory body or other public body or authority in terms of section 44, that supervisory body or other public body or authority must investigate the matter and may, after consultation with the Centre, take such steps within the scope of its powers as it considers appropriate to remedy the matter.
- (3) Should a supervisory body or other public body or authority to which a suspected contravention or failure is referred in terms of section 44 fail to take adequate steps to ensure that the suspected contravention ceases or the suspected failure is rectified, the Centre may, after consultation with the supervisory body or other public body or authority concerned, take such steps within the scope of its powers as the Centre considers appropriate to remedy the matter.

CHAPTER 4 COMPLIANCE AND ENFORCEMENT

[Chapter heading subs by s 16(a) of Act 11 of 2008.]

45A. Appointment of inspectors

- (1) The Director or the head of a supervisory body, as the case may be, may appoint any person in the service of the Centre or supervisory body or any other suitable person as an inspector.
- (2) The Director or the head of a supervisory body may determine the remuneration to be paid to a person who is appointed in terms of subsection (1) that is not in the full-time service of the Centre or supervisory body.
- (3)
 - (a) The Director or the head of a supervisory body must issue an inspector contemplated in subsection (1) with a certificate of appointment signed by the Director or the head of that supervisory body.
 - (b) A certificate of appointment must specify—
 - (i) the full name of the person so appointed;
 - (ii) his or her identity number;

- (iii) his or her signature;
- (iv) his or her photograph;
- (v) a description of the capacity in which he or she is appointed; and
- (vi) the extent of his or her powers to inspect.

(4)

- (a) Where the head of a supervisory body is authorised by any other Act to appoint inspectors, the head may extend the appointment and functions of inspectors under that Act to include the undertaking of inspections under this Act.
- (b) An inspector whose appointment or functions have been extended under paragraph (a) may, in undertaking inspections under this Act, in addition to the functions afforded to such inspector under the Act, contemplated in paragraph (a), perform the functions afforded in this Act.
- (c) Any extension contemplated in paragraph (a) must be reflected in any certificate or appointment document issued by the head of the supervisory body to an inspector under the Act contemplated in that paragraph.

(5) When an inspector undertakes an inspection in terms of this Act, the inspector must—

- (a) be in possession of a certificate of appointment issued in terms of subsection (3) or contemplated in subsection 4(c); and
- (b) on request, show that certificate to any person who is—
 - (i) affected by the performance of the functions of the inspector; or
 - (ii) is in charge of any premises to be inspected.

[S 45A ins by s 16(b) of Act 11 of 2008.]

45B. Inspections

(1)

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

- (b) An inspector appointed in terms of section 45A may enter the premises, excluding a private residence, of an accountable institution or reporting institution which is registered in terms of section 43B or otherwise licensed or authorised by a supervisory body and inspect the affairs of the accountable institution or reporting institution, as the case may be, for the purposes of determining compliance.

[S 45B(1) subs by s 32(a) of Act 1 of 2017, wef 13 June 2017.]

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

- (a) a private residence; or
- (b) any premises other than premises contemplated in subsection (1)(b) or paragraph (a) (in this section referred to as 'unlicensed business premises'),

if the Centre or a supervisory body reasonably believes that the residence or premises are used for a business to which the provisions of this Act apply.

[S 45B(1A) ins by s 32(b) of Act 1 of 2017, wef 13 June 2017.]

- (1B) A magistrate or judge may issue a warrant contemplated in subsection (1A)—

- (a) on written application by the Centre or a supervisory body setting out under oath or affirmation why it is necessary for an inspector to enter and inspect the private residence or unlicensed business premises; and

- (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 and inspection of the private residence or unlicensed business premises are likely to yield information pertaining to the non-compliance; and
- (iii) entry and inspection of that residence or those premises are reasonably necessary for the purposes of determining compliance.

[S 45B(1B) ins by s 32(b) of Act 1 of 2017, wef 13 June 2017.]

- (1C) An inspector otherwise required to obtain a warrant for entry and inspection of a private residence or unlicensed business premises in terms of subsection (1A), may enter and inspect that residence or those premises without a warrant—

- (a) with the consent of—

- (i) in the case of a private residence—
 - (aa) the person apparently in control of the business reasonably believed to be conducted at the private residence; and
 - (bb) the occupant of the part of the private residence to be entered and inspected; or
- (ii) in the case of unlicensed business premises, the person apparently in control of the business reasonably believed to be conducted at the premises,
 - after informing him or her that he or she is under no obligation to admit the inspector in the absence of a warrant; or
 - (b) with the prior authority of the Director or the head of a supervisory body, or a senior staff member of the Centre or supervisory body delegated to perform the function, if the Director, head or senior staff member on reasonable grounds believes that—
 - (i) a warrant will be issued under subsection (1B) if applied for;
 - (ii) the delay in obtaining the warrant is likely to defeat the purpose for which entry and inspection of the private residence or unlicensed business premises is sought; and
 - (iii) it is necessary to enter and inspect that residence or those premises to perform any or all of the actions contemplated in section 45B(2)(a) to (f).

[S 45B(1C) ins by s 32(b) of Act 1 of 2017, wef 13 June 2017.]

- (1D) Where an inspector enters and inspects premises in terms of subsection (1)(b), or a private residence or unlicensed business premises in terms of subsection (1C), he or she must do so—
 - (a) at a reasonable time within ordinary business hours or, in the case of an entry and inspection in terms of subsection (1C)(b), if the inspector on reasonable grounds believes that the purpose for which the entry and inspection is sought, is likely to be defeated by a delay, as closely to ordinary business hours as the circumstances reasonably permit;
 - (b) on reasonable notice, where appropriate;
 - (c) with strict regard to an affected person's right to—
 - (i) dignity;
 - (ii) freedom and security;
 - (iii) privacy; and
 - (iv) other constitutional rights; and

(d) with strict regard to decency and good order as the circumstances require, in particular by—

- (i) entering and inspecting only such areas or objects as are reasonably required for purposes of section 45B(2);
- (ii) conducting the inspection discreetly and with due decorum;
- (iii) causing as little disturbance as possible; and
- (iv) concluding the inspection as soon as possible.

[S 45B(1D) ins by s 32(b) of Act 1 of 2017, wef 13 June 2017.]

- (1E) Subsection (1D)(c) and (d) apply with the necessary changes where an inspector enters and inspects premises on the authority of a warrant issued under subsection (1B).

[S 45B(1E) ins by s 32(b) of Act 1 of 2017, wef 13 June 2017.]

(2) An inspector, in conducting an inspection, may—

- (a) in writing direct a person to appear for questioning before the inspector at a time and place determined by the inspector;
- (b) order any person who has or had any document in his, her or its possession or under his, her or its control relating to the affairs of the accountable institution, reporting institution or person—
 - (i) to produce that document; or
 - (ii) to furnish the inspector at the place and in the manner determined by the inspector with information in respect of that document;
- (c) open any strongroom, safe or other container, or order any person to open any strongroom, safe or other container, in which the inspector suspects any document relevant to the inspection is kept;
- (d) use any computer system or equipment on the premises or require reasonable assistance from any person on the premises to use that computer system to—
 - (i) access any data contained in or available to that computer system; and
 - (ii) reproduce any document from that data;
- (e) examine or make extracts from or copy any document in the possession of an accountable institution, reporting institution or person or, against the issue of a receipt, remove that document temporarily for that purpose; and

- (f) against the issue of a receipt, seize any document obtained in terms of paragraphs (c) to (e), which in the opinion of the inspector may constitute evidence of non-compliance with a provision of this Act or any order, determination or directive made in terms of this Act.

(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.

[S 45B(2A) ins by s 32(c) of Act 1 of 2017, wef 13 June 2017.]

(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.

[S 45B(2B) ins by s 32(c) of Act 1 of 2017, wef 13 June 2017.]

(2C) For purposes of subsection (2B), the Centre must provide the information to the inspector of the supervisory body in accordance with section 40.

[S 45B(2C) ins by s 32(c) of Act 1 of 2017, wef 13 June 2017.]

(3) An accountable institution, reporting institution or other person to whom this Act applies, must without delay provide reasonable assistance to an inspector acting in terms of subsection (2).

(4) The Centre or a supervisory body may recover all expenses necessarily incurred in conducting an inspection from an accountable institution or reporting institution inspected.

[S 45B(4) subs by s 32(d) of Act 1 of 2017, wef 13 June 2017.]

(5)

(a) Subject to section 36 and paragraph (b), an inspector may not disclose to any person not in the service of the Centre or supervisory body any information obtained in the performance of functions under this Act.

(b) An inspector may disclose information—

- (i) for the purpose of enforcing compliance with this Act or any order, determination or directive made in terms of this Act;
- (ii) for the purpose of legal proceedings;
- (iii) when required to do so by a court; or
- (iv) except information contemplated in subsections (2A) and (2C), if the Director or supervisory body is satisfied that it is in the public interest.

[S 45B(5)(b)(iv) subs by s 32(e) of Act 1 of 2017, wef 13 June 2017.]

(6)

- (a) An inspector appointed by the Director may, in respect of any accountable institution regulated or supervised by a supervisory body in terms of this Act or any other law, conduct an inspection only if a supervisory body failed to conduct an inspection despite any recommendation of the Centre made in terms of section 44(b) or failed to conduct an inspection within the period recommended by the Centre.

(b) ...

[S 45B(6)(b) rep by s 32(f) of Act 1 of 2017, wef 13 June 2017.]

- (c) An inspector appointed by the Director may on the request of a supervisory body accompany and assist an inspector appointed by the head of a supervisory body in conducting an inspection in terms of this section.

(7) ...

[S 45B ins by s 16(b) of Act 11 of 2008; s 45B(7) rep by s 32(g) of Act 1 of 2017, wef 13 June 2017.]

45C. Administrative sanctions

- (1) The Centre or a supervisory body may impose an administrative sanction on any accountable institution, reporting institution or other person to whom this Act applies when satisfied on available facts and information that the institution or person—

- (a) has failed to comply with a provision of this Act or any order, determination or directive made in terms of this Act;

- (b) has failed to comply with a condition of a licence, registration, approval or authorisation issued or amended in accordance with section 45(1B)(e);

- (c) has failed to comply with a directive issued in terms section 34(1) or 43A(3); or

- (d) has failed to comply with a non-financial administrative sanction imposed in terms of this section.
- (2) When determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors—
- (a) The nature, duration, seriousness and extent of the relevant non-compliance;
 - (b) whether the institution or person has previously failed to comply with any law;
 - (c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;
 - (d) any steps taken or to be taken against the institution or person by—
 - (i) another supervisory body; or
 - (ii) a voluntary association of which the institution or person is a member; and
 - (e) any other relevant factor, including mitigating factors.
- (3) The Centre or supervisory body may impose any one or more of the following administrative sanctions—
- (a) A caution not to repeat the conduct which led to the non-compliance referred to in subsection (1);
 - (b) a reprimand;
 - (c) a directive to take remedial action or to make specific arrangements;
 - (d) the restriction or suspension of certain specified business activities; or
 - (e) a financial penalty not exceeding R10 million in respect of natural persons and R50 million in respect of any legal person.
- (4) The Centre or supervisory body may—
- (a) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any order, determination or directive made in terms of this Act;

- (b) direct that a financial penalty must be paid by a natural person or persons for whose actions the relevant institution is accountable in law, if that person or persons was or were personally responsible for the non-compliance;
 - (c) suspend any part of an administrative sanction on any condition the Centre or the supervisory body deems appropriate for a period not exceeding five years.
- (5) Before imposing an administrative sanction, the Centre or supervisory body must give the institution or person reasonable notice in writing—
 - (a) of the nature of the alleged non-compliance;
 - (b) of the intention to impose an administrative sanction;
 - (c) of the amount or particulars of the intended administrative sanction; and
 - (d) that the institution or person may, in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.
- (6)
 - (a) After considering any representations and the factors referred to in subsection (2), the Centre, subject to paragraph (c), or supervisory body may impose an administrative sanction the Centre or supervisory body considers appropriate.
 - (b) Upon imposing the administrative sanction the Centre or supervisory body must, in writing, notify the institution or person—
 - (i) of the decision and the reasons therefor; and
 - (ii) of the right to appeal against the decision in accordance with section 45D.
 - (c) The Centre must, prior to taking a decision contemplated in paragraph (a), consult the relevant supervisory body, if applicable.
- (7)
 - (a) Any financial penalty imposed must be paid into the National Revenue Fund within the period and in the manner as may be specified in the relevant notice.

[S 45C(7)(a) subs by s 33 of Act 1 of 2017, wef 13 June 2017.]

- (b) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the Centre or supervisory body may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in subsection (6)(b), and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of the Centre or supervisory body.
- (8) An administrative sanction contemplated in this section may not be imposed if the respondent has been charged with a criminal offence in respect of the same set of facts.
- (9) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of this Act, the court must take into account any administrative sanction imposed under this section in respect of the same set of facts.
- (10) An administrative sanction imposed in terms of this Act does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act 51 of 1977).
- (11) Unless the Director or supervisory body is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of a decision the Director or supervisory body must make public the decision and the nature of any sanction imposed if—
 - (a) an institution or person does not appeal against a decision of the Centre or supervisory body within the required period; or
 - (b) the appeal board confirms the decision of the Centre or supervisory body.

[S 45C ins by s 16(b) of Act 11 of 2008.]

45D. Appeal

- (1)
 - (a) Any institution or person may appeal against a decision of the Centre or supervisory body made in terms of section 45C(6) to the appeal board.
 - (b) An appeal must be lodged within 30 days in the manner, and on payment of the fees, prescribed by the Minister.
 - (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).
- (2) An appeal under subsection (1) shall take place on the date and at the place and time determined by the appeal board.

[S 45D(1)(c) ins by s 34(a) of Act 1 of 2017, wef 13 June 2017.]

- (3) An appeal is decided on the 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.

[S 45D(3) subs by s 34(b) of Act 1 of 2017, wef 13 June 2017.]

- (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.

[S 45D(3A) ins by s 34(c) of Act 1 of 2017, wef 13 June 2017.]

- (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.

[S 45D(3B) ins by s 34(c) of Act 1 of 2017, wef 13 June 2017.]

- (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.

[S 45D(3C) ins by s 34(c) of Act 1 of 2017, wef 13 June 2017.]

- (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.

[S 45D(3D) ins by s 34(c) of Act 1 of 2017, wef 13 June 2017.]

- (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.

[S 45D(3E) ins by s 34(c) of Act 1 of 2017, wef 13 June 2017.]

- (4) For the purposes of allowing further oral evidence in terms of subsection (3B) the appeal board may—
[Words preceding s 45D(4)(a) subs by s 34(d) of Act 1 of 2017, wef 13 June 2017.]

- (a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his, her or its possession, custody or control any document

which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and retain for examination any document so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and

(c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control, and such a person shall be entitled to legal representation at his or her own expense.

(5) The chairperson of the appeal board determines the rules of the appeal and any other procedural matters relating to an appeal.

[S 45D(5) subs by s 34(e) of Act 1 of 2017, wef 13 June 2017.]

(6) Any party to an appeal is entitled to be represented at an appeal by a legal representative.

(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.

[S 45D(6A) ins by s 34(f) of Act 1 of 2017, wef 13 June 2017.]

(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.

[S 45D(6B) ins by s 34(f) of Act 1 of 2017, wef 13 June 2017.]

(7) The appeal board may—

(a) confirm, set aside or vary the relevant decision of the Centre or supervisory body; or

(b) refer a matter back for consideration or reconsideration by the Centre or the supervisory body concerned in accordance with the directions of the appeal board.

(8) The decision of a majority of the members of an adjudication panel shall be the decision of the appeal board.

[S 45D(8) subs by s 34(g) of Act 1 of 2017, wef 13 June 2017.]

(9) The decision of the appeal board must be in writing, and a copy thereof must be made available to the appellant and the Centre or supervisory body.

(10)

- (a) If the appeal board sets aside any decision of the Centre or supervisory body, the fees contemplated in subsection (1)(b) paid by the appellant in respect of the appeal in question must be refunded to the appellant.
- (b) If the appeal board varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

(11)

- (a) Subject to paragraph (b), a decision of the appeal board may be taken on appeal to the High Court as if it were a decision of a magistrate in a civil matter.
- (b) The launching of appeal proceedings in terms of paragraph (a) does not suspend the operation or execution of a decision, unless the chairperson of the appeal board directs otherwise.

[S 45D ins by s 16(b) of Act 11 of 2008.]

45E. Establishment of appeal board

- (1) An appeal board is hereby established.
- (2) The members of the Financial Sector Tribunal established in terms of section 219 of the Financial Sector Regulation Act, 2017, and appointed in terms of section 220 of that Act, are the members of the appeal board.
[S 45E(2) subs by s 290 of Act 9 of 2017, wef 7 May 2018.]
- (3) Proceedings before the appeal board are to be conducted and determined in accordance with this Act.
[S 45E(3) subs by s 290 of Act 9 of 2017, wef 7 May 2018.]

(4) – (11) ...

[S 45E(4) to (11) rep by s 290 of Act 9 of 2017, wef 7 May 2018.]

(12) The Centre must provide administrative support for the appeal board.

(13) ...

[S 45E(13) rep by s 290 of Act 9 of 2017, wef 7 May 2018.]

[S 45E ins by s 16(b) of Act 11 of 2008.]

45F. Application to court

(1)

- (a) The Centre, in respect of any accountable institution regulated or supervised by a supervisory body in terms of this Act or any other law, may institute proceedings in accordance with this section only if a supervisory body failed to institute proceedings despite any recommendation of

the Centre made in terms of section 44(b) or failed to institute proceedings within the period recommended by the Centre.

- (b) A supervisory body may institute proceedings in accordance with this section only after consultation with the Centre on that application to court.
- (2) Subject to subsection (1), the Centre or any supervisory body may institute proceedings in the High Court having jurisdiction against any accountable institution, reporting institution or person to whom this Act applies, to—
- (a) discharge any obligation imposed on the Centre or supervisory body in terms of this Act;
 - (b) compel that institution or person to comply with any provision of this Act or to cease contravening a provision of this Act;
 - (c) compel that institution or person to comply with a directive issued by the Centre or supervisory body under this Act; or
 - (d) obtain a declaratory order against that institution or person on any point of law relating to any provision of this Act or any order, determination or directive made in terms of this Act.
- (3) Subject to subsection (1), if the Centre or a supervisory body has reason to believe that an institution or person is not complying with this Act or any order, determination or directive made in terms of this Act, it may, if it appears that prejudice has occurred or might occur as a result of such non-compliance, apply to a court having jurisdiction for—
- (a) an order restraining that institution or person from continuing business pending an application to court by the Centre or supervisory body as contemplated in subsection (2); or
 - (b) any other legal remedy available to the Centre or supervisory body.

[S 45F ins by s 16(b) of Act 11 of 2008.]

46. Failure to identify persons

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

[S 46 subs by s 35 of Act 1 of 2017, wef 2 October 2017.]

46A. Failure to comply with duty in regard to customer due diligence

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

[S 46A ins by s 36 of Act 1 of 2017, wef 2 October 2017.]

47. Failure to keep records

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 24(1); or
- (c) comply with the provisions of section 24(3),

is non-compliant and is subject to an administrative sanction.

[S 47 subs by s 37 of Act 1 of 2017, wef 2 October 2017.]

48. Destroying or tampering with records

Any person who wilfully tampers with a record kept in terms of section 22 or section 24(1), or wilfully destroys such a record, otherwise than in accordance with section 23, is guilty of an offence.

49. Failure to give assistance

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

[S 49 subs by s 38 of Act 1 of 2017, wef 2 October 2017.]

49A. Contravention of prohibitions relating to persons and entities identified by Security Council of United Nations

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

[S 49A ins by s 39 of Act 1 of 2017 wef 1 April 2019.]

50. Failure to advise Centre of client

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.

[S 50 subs by s 40 of Act 1 of 2017, wef 13 June 2017.]

51. Failure to report cash transactions

- (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 non-compliant and is subject to an administrative sanction.

[S 51 subs by s 41 of Act 1 of 2017, wef 13 June 2017.]

51A. Failure to report property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council

- (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 non-compliant and is subject to an administrative sanction.

[S 51A ins by s 17 of Act 11 of 2008, subs by s 42 of Act 1 of 2017 wef 1 April 2019.]

52. Failure to report suspicious or unusual transactions

- (1) Any person who fails, within the prescribed period, to report to the Centre the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry in accordance with section 29(1) or (2), is guilty of an offence.

- (2) Any person referred to in section 29(1) or (2) who reasonably ought to have known or suspected that any of the facts referred to in section 29(1)(a), (b) or (c) or section 29(2) exists, and who negligently fails to report the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry, is guilty of an offence.

53. Unauthorised disclosure

- (1) Any person referred to in section 29(3) who discloses a fact or information contemplated in that section, otherwise than in the circumstances or for the purposes authorised in that section, is guilty of an offence.
- (2) Any person referred to in section 29(4) who discloses a knowledge or suspicion or any information contemplated in that section, otherwise than in the circumstances and for the purposes authorised in that section, is guilty of an offence.

54. Failure to report conveyance of cash or bearer negotiable instrument into or out of Republic

Any person who wilfully fails to report the conveyance of cash or a bearer negotiable instrument into or out of the Republic in accordance with section 30(1), is guilty of an offence.

[S 54 subs by s 18 of Act 11 of 2008.]

55. Failure to send report to Centre

A person referred to in section 30(2) who fails to send a report regarding the conveyance of cash or a bearer negotiable instrument to the Centre in accordance with that section, is guilty of an offence.

[S 55 subs by s 19 of Act 11 of 2008.]

56. Failure to report electronic transfers

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.

57. Failure to comply with request

An accountable institution, reporting institution or any other person that fails to comply with a request made by—

- (a) the Centre or an investigating authority acting under the authority of an authorised officer in terms of section 32(2); or
- (b) a supervisory body in terms of section 45(1B)(d),

is guilty of an offence.

[S 57 subs by s 20 of Act 11 of 2008.]

58. Failure to comply with direction of Centre

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

[S 58 subs by s 21 of Act 11 of 2008, s 44 of Act 1 of 2017, wef 13 June 2017.]

59. Failure to comply with monitoring order

An accountable institution that fails to comply with an order by a judge in accordance with section 35, is guilty of an offence.

60. Misuse of information

(1) Any person who—

(a) discloses confidential information held by or obtained from the Centre otherwise than in accordance with section 40 or 41;

[S 60(1)(a) subs by s 22 of Act 11 of 2008.]

(b) wilfully destroys or in any other way tampers with information kept by the Centre for the purposes of this Act;

[S 60(1)(b) subs by s 45(a) of Act 1 of 2017, wef 13 June 2017.]

(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

[S 60(1)(c) subs by s 45(a) of Act 1 of 2017, wef 13 June 2017.]

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

[S 60(1)(d) ins by s 45(b) of Act 1 of 2017, wef 13 June 2017.]

is guilty of an offence.

- (2) Any person who knows, suspects or ought reasonably to have known or suspected—
- (a) that information has been disclosed to the Centre; or
 - (b) that an investigation is being, or may be, conducted as a result of information that has been or is to be disclosed to the Centre,
- and who directly or indirectly alerts, or brings information to the attention of, another person which will or is likely to prejudice such an investigation, is guilty of an offence.

61. Failure to comply with duty in respect of Risk Management and Compliance Programme

An accountable institution that fails to—

- (a) develop, document, maintain and implement an anti-money laundering and counter-terrorist financing Risk Management and Compliance Programme in accordance with section 42(1), (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 Risk Management and Compliance Programme available to its employees in accordance with section 42(3); or
- (c) make a copy of its Risk Management and Compliance Programme available to the Centre or a supervisory body in terms of section 42(4),

is non-compliant and is subject to an administrative sanction.

[S 61 subs by s 46 of Act 1 of 2017, wef 2 October 2017.]

61A. Failure to register with Centre

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 non-compliant and is subject to an administrative sanction.

[S 61A ins by s 23 of Act 11 of 2008; subs by s 46 of Act 1 of 2017, wef 13 June 2017.]

61B. Failure to comply with duty in regard to governance

- (1) The board of directors or senior management, or both, of an accountable institution that fails to ensure compliance in accordance with section 42A(1) is non-compliant and is subject to an administrative sanction.
- (2) An accountable institution that fails to appoint a person in accordance with section 42A(2) or 42A(4) is non-compliant and is subject to an administrative sanction.
- (3) A person that fails to ensure compliance in accordance with section 42A(3) is non-compliant and is subject to an administrative sanction.

[S 61B ins by s 47 of Act 1 of 2017, wef 2 October 2017.]

62. Failure to provide training

An accountable institution that fails to provide training to its employees in accordance with section 43 is non-compliant and is subject to an administrative sanction.

[S 62 subs by s 48 of Act 1 of 2017, wef 2 October 2017.]

62A. Offences relating to inspection

A person who—

- (a) fails to appear for questioning in terms of section 45B(2)(a);
- (b) fails to comply with an order contemplated in section 45B(2)(b);
- (c) wilfully gives false information to an inspector;
- (d) fails to comply with any reasonable request by an inspector in the performance of his or her functions; or
- (e) wilfully hinders an inspector in the performance of his or her functions,

is guilty of an offence.

[S 62A ins by s 24 of Act 11 of 2008.]

62B. Hindering or obstructing appeal board

Any person who wilfully interrupts the proceedings of the appeal board or who wilfully hinders or obstructs the appeal board in the performance of its functions, is guilty of an offence.

[S 62B ins by s 24 of Act 11 of 2008.]

62C. Failure to attend when summoned

Any person who, having been summoned to attend and give evidence or to produce any book, document or object before the Centre or a supervisory body or the appeal board—

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
- (b) attends as required, but—
 - (i) refuses to take an oath or to make affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person,

is guilty of an offence.

[S 62C ins by s 24 of Act 11 of 2008.]

62D. Failure to answer fully or truthfully

Any person who, having been sworn in or having made an affirmation before the Centre or a supervisory body or the appeal board—

- (a) fails to answer any question fully and to the best of that person's ability; or
- (b) gives false evidence, knowing or believing it to be false,

is guilty of an offence.

[S 62D ins by s 24 of Act 11 of 2008.]

62E. Failure to comply with directives of Centre or supervisory body

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

63. Obstructing of official in performance of functions

Any person who obstructs, hinders or threatens an official or representative of the Centre in the performance of their duties or the exercise of their powers in terms of this Act, is guilty of an offence.

64. Conducting transactions to avoid reporting duties

Any person who conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act, is guilty of an offence.

65. Unauthorised access to computer system or application or data

(1) Any person who, without authority to do so, wilfully accesses or causes any other person to access any computer system that belongs to, or is under the control of, the Centre, or any application or data held in such a computer system, is guilty of an offence.

(2) Any person who, without authority to do so, wilfully causes any computer system that belongs to, or is under the control of, the Centre, to perform or fail to perform a function, is guilty of an offence.

66. Unauthorised modification of contents of computer system

Any person who, without authority to do so, wilfully causes a computer system that belongs to, or is under the control of, the Centre, or any application or data held in such a computer system, to be modified, destroyed, erased or the operation or reliability of such a computer system, application or data to be otherwise impaired, is guilty of an offence.

67. Definitions

For the purposes of sections 65 and 66—

(a) “**access**” in relation to an application or data means rendering that application or data, by whatever means, in a form that would enable a person, at the time when it is so rendered or subsequently, to take account of that application or data, and includes using the application or data or having it output from the computer system in which it is held in a displayed or printed form or to a storage medium or by means of any output device, whether attached to the computer system in which the application or data are held or not;

(b) “**application**” means a set of instructions that, when executed in a computer system, causes a computer system to perform a function;

- (c) **“computer system”** means an electronic, magnetic, optical, electrochemical or other data processing device, including the physical components thereof, and any removable storage medium that is for the time being therein or connected thereto, or a group of such interconnected or related devices, one or more of which is capable of—
- (i) containing data; or
 - (ii) performing a logical, arithmetic or any other function in relation to data;
- (d) **“data”** means any representation of information, knowledge, facts or concepts, capable of being processed in a computer system.

68. Penalties

- (1) A person convicted of an offence mentioned in this Chapter, other than an offence mentioned in subsection (2), is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million.
- (2) A person convicted of an offence mentioned in section 55, 62A, 62B, 62C or 62D, is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R10 million.

[S 68 subs by s 25 of Act 11 of 2008; s 68(2) subs by s 50 of Act 1 of 2017 (deletion of reference to s 61A cio on 13 June 2017 and deletion of reference to ss 61A and 62 cio on 2 October 2017.)

69. Defences

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 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 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 Risk Management and Compliance Programme was not applicable to that person.

[S 69 subs by s 51 of Act 1 of 2017, wef 2 October 2017.]

70. Search, seizure and forfeiture

- (1) A police official or person authorised by the Minister to receive a report under section 30(1), who has reasonable grounds to suspect that an offence under section 54 has been or is about to be committed, may at any time search any person, container or other thing in which any cash or bearer negotiable instrument contemplated in section 30(1) is suspected to be found.
- (2) A police official or person authorised by the Minister referred to in subsection (1) may seize any cash or bearer negotiable instrument contemplated in section 30(1).
- (3) Any cash or bearer negotiable instrument seized under subsection (2) must be returned to the person from whom it was seized as soon as possible—
 - (a) after the expiry of a period of 90 days from the date of the seizure, unless, before the expiry of that period—
 - (i) that person has been arrested without a warrant of arrest being issued;
 - (ii) a warrant for the arrest of that person has been issued; or
 - (iii) a summons has been issued for that person to appear in court,in connection with the suspected commission of an offence under section 54 in respect of that cash or bearer negotiable instrument or any portion of it;
 - (b) after the expiry of a period of 90 days from the date of the seizure, unless, before the expiry of that period, an application for a preservation order in terms of section 38 of the Prevention Act in respect of that cash or bearer negotiable instrument is pending before the High Court;
 - (c) if that person is acquitted on a charge of committing an offence under section 54; or
 - (d) if a forfeiture order in terms of section 50 of the Prevention Act is not made in respect of that cash or bearer negotiable instrument.
- (4) Whenever any person is convicted of an offence under section 54 the court convicting that person must, in addition to any punishment which that court may impose in respect of the offence, declare

any cash or bearer negotiable instrument contemplated in section 30(1) that was seized under subsection (2), or is in the possession or custody or under the control of the convicted person, to be forfeited to the State.

- (5) Whenever a person is convicted of an offence under section 64 the court convicting that person must, in addition to any punishment which that court may impose in respect of the offence, declare any property in respect of which those transactions were conducted to be forfeited to the State.
- (6) A declaration of forfeiture shall not affect any interest which any person other than the convicted person may have in the cash or bearer negotiable instrument or property concerned if that person proves—
 - (a) that he or she acquired the interest in that cash or bearer negotiable instrument or property in good faith; and
 - (b) that he or she did not know that the cash or bearer negotiable instrument or property in question was—
 - (i) conveyed as contemplated in section 30(1) or that he or she could not prevent the cash or bearer negotiable instrument from being so conveyed; or
 - (ii) used in the transactions contemplated in section 64 or that he or she could not prevent the property from being so used,

as the case may be.

- (7) Subject to subsection (6), the court concerned or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court, may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person other than the convicted person who claims that he or she has any interest in the cash or bearer negotiable instrument in question, inquire into and determine any such interest.
- (8) Subject to subsection (6), if a court referred to in subsection (7) finds that—
 - (a) the cash or bearer negotiable instrument or property in question belonged to the applicant at the time of the forfeiture, the court must set aside the declaration of forfeiture in question and direct that the cash or bearer negotiable instrument or property be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State in an amount equal to the amount of cash or bearer negotiable instrument or the value of the property forfeited; or

- (b) the applicant had an interest in the cash or bearer negotiable instrument or property in question at the time of the forfeiture, the court must direct that the applicant be compensated by the State in an amount equal to the value of his or her interest in the cash or bearer negotiable instrument or property.
- (9) Any person aggrieved by a determination made by a court under subsection (8), may appeal against the determination as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.
- (10) In order to make a declaration of forfeiture or to determine any interest under subsection (8), the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it may deem fit.

[S 70 am by s 26 of Act 11 of 2008.]

71. Jurisdiction of courts

- (1) A regional court has penal jurisdiction to impose any penalty mentioned in section 68(1), even though that penalty may exceed the penal jurisdiction of that court.
- (2) A magistrate's court has penal jurisdiction to impose any penalty mentioned in section 68(2), even though that penalty may exceed the penal jurisdiction of that court.
- (3) A magistrate's court or regional court has jurisdiction to make any order of forfeiture referred to in section 70, even though the amount forfeitable under that order may exceed the civil jurisdiction of a magistrate's court or regional court.

CHAPTER 5 MISCELEANEOUS

72. Act not to limit powers of investigating authorities or supervisory bodies

This Act does not detract from—

- (a) an investigating authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations; or
- (b) a supervisory body's duties or powers in relation to the entities supervised or regulated by it.

73. Amendment of list of accountable institutions

- (1) The Minister may, by notice in the *Gazette*, amend the list of accountable institutions in Schedule 1 to—
- (a) add to the list any person or category of persons if the Minister reasonably believes that that person or category of persons is used, or is likely to be used in future, for money laundering purposes;
 - (b) delete any institution or category of institutions from the list if the Minister reasonably believes that that institution or category of institutions is not being used, and is not likely to be used in the future, for money laundering purposes; or
 - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 1 in terms of subsection (1)(a) or (b), the Minister must consult the Centre, and—
- [Words preceding s 73(2)(a) subs by s 52 of Act 1 of 2017, wef 13 June 2017.]
- (a) if only one person or institution will be affected by the proposed amendment, give that person or institution at least 30 days' written notice to submit written representations to the Minister; or
 - (b) if a category of persons or institutions will be affected by the proposed amendment, by notice in the *Gazette* give persons or institutions belonging to that category at least 60 days' written notice to submit written representations to the Minister.
- (3) Any addition to or deletion from the list of accountable institutions in Schedule 1 in terms of subsection (1)(a) or (b) must, before publication in the *Gazette*, be approved by Parliament.

74. Exemptions for accountable institutions

- (1) The Minister may, after consulting 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 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.

[S 74 subs by s 53 of Act 1 of 2017, wef 13 June 2017.]

75. Amendment of list of supervisory bodies

- (1) The Minister may, by notice in the *Gazette*, amend the list of supervisory bodies in Schedule 2 to—
- (a) add to the list any entity or functionary which performs supervisory or regulatory functions in relation to any category of accountable institutions;
 - (b) delete any supervisory body from the list if that supervisory body no longer performs supervisory or regulatory functions in relation to any category of accountable institutions; or
 - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 2 in terms of subsection (1)(a) or (b), the Minister must consult 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.

[S 75(2) subs by s 54 of Act 1 of 2017, wef 13 June 2017.]

- (3) Any addition to or deletion from the list of supervisory bodies in Schedule 2 in terms of subsection (1)(a) or (b) must, before publication in the *Gazette*, be approved by Parliament.

76. Amendment of list of reporting institutions

- (1) The Minister may, by notice in the *Gazette*, amend the list of reporting institutions in Schedule 3 to—
 - (a) add to the list any person or category of persons if the Minister reasonably believes that the person or category of persons is used, or is likely to be used in future, for money laundering purposes but it is not appropriate to impose on such person or category of persons the duties which apply to an accountable institution under this Act;
 - (b) delete any person or category of persons from the list if—
 - (i) the Minister reasonably believes that the person or category of persons is not being used, and is not likely to be used in the future, for money laundering purposes; or
 - (ii) the person or category of persons is to be added to the list of accountable institutions; or
 - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 3 in terms of subsection (1)(a) or (b), the Minister must consult the Centre, and—

[Words preceding s 76(2)(a) subs by s 55 of Act 1 of 2017, wef 13 June 2017.]

 - (a) if only one person will be affected by the proposed amendment, give the person at least 30 days' written notice to submit written representations to the Minister; or
 - (b) if a category of persons will be affected by the proposed amendment, by notice in the *Gazette* give persons belonging to that category at least 60 days' written notice to submit written representations to the Minister.
- (3) Any addition to or deletion from the list of reporting institutions in Schedule 3 in terms of subsection (1)(a) or (b) must, before publication in the *Gazette*, be approved by Parliament.

77. Regulations

- (1) The Minister, after consulting the Centre, may make, repeal and amend regulations concerning—
 - (a) any matter that may be prescribed in terms of this Act; and
 - (b) any ancillary or incidental administrative or procedural matter which is necessary to prescribe 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 three years or a fine not exceeding R1 000 000 or such administrative sanction as may apply.
- (3) ...
- (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.

[S 77 subs by s 56 of Act 1 of 2017, wef 13 June 2017.]

77A. Arrangements for consultations with stakeholders

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.

[S 77A ins by s 57 of Act 1 of 2017, wef 13 June 2017.]

78. Indemnity

The Minister, the Centre or an employee or representative of the Centre, or any other person performing a function or exercising a power in terms of this Act, is not liable for anything done in good faith in terms of or in furthering the objectives of this Act.

79. Amendment of laws

The Acts mentioned in Schedule 4 are hereby amended to the extent set out in Schedule 4.

79A. Amendment of list of domestic prominent influential persons

(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.

[S 79A ins by s 58 of Act 1 of 2017, wef 2 October 2017.]

79B. Amendment of list of foreign prominent public officials

(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.

[S 79B ins by s 58 of Act 1 of 2017, wef 2 October 2017.]

80. Status of footnotes

The footnotes in this Act have been inserted only for ease of reference to relevant provisions of the Prevention Act. They are not part of this Act. They do not have the force of law.

81. Transitional arrangements

- (1) Until the date referred to in section 82(2), the person designated for the purposes of section 7 of the Prevention Act will be deemed to have been duly designated and will continue to hold office as if this Act had not been passed.
- (2) All proceedings in relation to an offence in terms of section 7(7) of the Prevention Act that were instituted before the date on which section 79 of this Act takes effect and that are pending before any court of law or reviewing authority on that date, must be dealt with as if this Act had not been passed.
- (3) An investigation or prosecution or other legal proceeding in respect of conduct which would have constituted an offence under section 7(7) of the Prevention Act and which occurred after the commencement of that Act but before section 79 of this Act takes effect, may be instituted and continued as if this Act had not been passed.

82. Short title and commencement

- (1) This Act is called the Financial Intelligence Centre Act, 2001, and takes effect on a date fixed by the President by proclamation in the *Gazette*.
- (2) Despite subsection (1)—
 - (a) section 79 does not take effect before the date on which section 29 takes effect; and
 - (b) section 21(2) takes effect one year after section 21(1) takes effect.

LIST OF ACCOUNTABLE INSTITUTIONS

1. A practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979).
2. A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).
3. An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).
4. An authorised user of an exchange as defined in the Securities Service Act, 2004 (Act 36 of 2004).
5. A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of the Collective Investment Schemes Control Act (Act 45 of 2002).
6. A person who carries on the “business of a bank” as defined in the Banks Act, 1990 (Act 94 of 1990).
7. A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993).
8. A person who carries on a “long-term insurance business” as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998).
9. A person who carries on the business of making available a gambling activity as contemplated in section 3 of the National Gambling Act, 2004 (Act 7 of 2004) in respect of which a license is required to be issued by the National Gambling Board or a provincial licensing authority.
10. A person who carries on the business of dealing in foreign exchange.
11. A person who carries on the business of lending money against the security of securities.
12. A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice and intermediary services in respect of the investment of any financial product (but excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998).
13. A person who issues, sells or redeems travellers’ cheques, money orders or similar instruments.
14. The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).

15. ...
16. The Ithala Development Finance Corporation Limited.
17. ...
18. ...
19. A person who carries on the business of a money remitter.
[Sch 1 subs by GoN 1104 of 2010.]

SCHEDULE 2
LIST OF SUPERVISORY BODIES

- 1 The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990).
- 2 The South African Reserve Bank in respect of the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989, (Act 90 of 1989) and the Registrar as defined in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990) and the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961.
- 3 ...
- 4 The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976 (Act 112 of 1976).
- 5 The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005).
- 6 The National Gambling Board established in terms of the National Gambling Act, and retained in terms of the National Gambling Act, 2004 (Act 7 of 2004).
- 7 ...
- 8 A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).
- 9 A provincial licensing authority as defined in section 1 the National Gambling Act, 2004 (Act 7 of 2004).

[Sch 2 subs by GoN 1105 of 2010.]

SCHEDULE 3
LIST OF REPORTING INSTITUTIONS

1. A person who carries on the business of dealing in motor vehicles.
2. A person who carries on the business of dealing in Kruger rands.

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 117 of 1998);
 - (vi) a leader of a political party registered in terms of the Electoral Commission Act, 1996 (Act 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 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 (Proc. 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 32 of 2000), or a chief financial officer designated in terms of section 80(2) of the Municipal Finance Management Act, 2003 (Act 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 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 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 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 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.

[Sch 3A ins by s 59 of Act 1 of 2017, wef 2 October 2017.]

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.

[Sch 3B ins by s 59 of Act 1 of 2017, wef 2 October 2017.]

SCHEDULE 4

AMENDMENT OF SECTIONS OF PREVENTION OF ORGANISED CRIME ACT 121 OF 1998

- 1. The repeal of section 7.
- 2. The substitution for section 7A of the following section—

Defence

7A.

- (1) If a person is charged with committing an offence under section 2(1)(a) or (b), 4, 5 or 6, that person may raise as a defence the fact that he or she had reported a knowledge or suspicion in terms of section 29 of the Financial Intelligence Centre Act, 2001.
- (2) If a person who is an employee of an accountable institution as defined in the Financial Intelligence Centre Act, 2001, is charged with committing an offence under section 2(1)(a) or (b), 4, 5 or 6, that person may also raise as a defence that fact that he or she had—
 - (a) complied with the applicable obligations in terms of the internal rules 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 that Act; or
 - (c) reported a suspicion to his or her superior, if any, if—
 - (i) the accountable institution had not appointed such a person or established such rules;
 - (ii) the accountable institution had not complied with its obligations in section 42(3) of that Act in respect of that person; or
 - (iii) those rules were not applicable to that person.

3. The amendment of section 8 by the deletion of subsection (2).

4. The amendment of section 77—

3.1 by the deletion from subsection (1) of paragraph (b); and

3.2 by the deletion from subsection (1) of paragraph (c).

AMENDMENT OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

The amendment of Part 1 of the Schedule by the addition of the following item—

“Act 38 of 2001 Financial Intelligence Centre Act Section 36”.