

South Africa

## Financial Intelligence Centre Act, 2001

Act 38 of 2001

Legislation as at 1 December 2010

FRBR URI: /akn/za/act/2001/38/eng@2010-12-01

There may have been updates since this file was created.

PDF created on 13 May 2024 at 15:23.

[Check for updates](#)



### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from LawLibrary and is presented in collaboration with the African Legal Information Institute, the Judicial Institute for Africa and the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.lawlibrary.org.za](http://www.lawlibrary.org.za) | [info@lawlibrary.org.za](mailto:info@lawlibrary.org.za)

[www.laws.africa](http://www.laws.africa) | [info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

# Financial Intelligence Centre Act, 2001

## Contents

1. Definitions .....	3
1A. Application of Act when in conflict with other laws .....	6
Chapter 1 – Financial Intelligence Centre .....	6
2. Establishment .....	6
3. Objectives .....	7
4. Functions .....	7
5. General powers .....	8
6. Appointment of Director .....	8
7. Removal from office .....	8
8. Acting Director .....	9
9. Proof of appointment .....	9
10. Responsibilities of Director .....	9
11. Staff .....	9
12. Security screening of staff of Centre other than Director .....	10
13. Security screening of Director of Centre .....	10
14. Funds and financial year of Centre .....	11
15. Audit .....	11
16. Delegation .....	11
Chapter 2 – Counter-Money Laundering Advisory Council .....	11
17. Establishment .....	11
18. Functions .....	11
19. Composition .....	12
20. Meetings and procedure .....	12
Chapter 3 – Control measures for money laundering and financing of terrorist and related activities .....	13
Part 1 – Duty to identify clients .....	13
21. Identification of clients and other persons .....	13
Part 2 – Duty to keep record .....	14
22. Record to be kept of business relationships and transactions .....	14
23. Period for which records must be kept .....	15
24. Records may be kept by third parties .....	15
25. Admissibility of records .....	15
26. Centre's access to records .....	15
Part 3 – Reporting duties and access to information .....	16
27. Accountable institutions to advise Centre of clients .....	16

28. Cash transactions above prescribed limit .....	16
28A. Property associated with terrorist and related activities .....	16
29. Suspicious and unusual transactions .....	16
30. Conveyance of cash to or from Republic .....	18
31. Electronic transfers of money to or from Republic .....	18
32. Reporting procedures and furnishing of additional information .....	18
33. Continuation of transactions .....	18
34. Intervention by Centre .....	18
35. Monitoring orders .....	19
36. Information held by supervisory bodies and South African Revenue Service .....	19
37. Reporting duty and obligations to provide information not affected by confidentiality rules .....	20
38. Protection of persons making reports .....	20
39. Admissibility as evidence of reports made to Centre .....	21
40. Access to information held by Centre .....	21
41. Protection of confidential information .....	22
Part 4 – Measures to promote compliance by accountable institutions .....	22
42. Formulation and implementation of internal rules .....	22
43. Training and monitoring of compliance .....	23
43A. Directives .....	23
43B. Registration by accountable institution and reporting institution .....	24
Part 5 – Referral and supervision .....	24
44. Referral of suspected offences to investigating authorities and other public bodies .....	24
45. Responsibility for supervision of accountable institutions .....	24
Chapter 4 – Compliance and enforcement .....	25
45A. Appointment of inspectors .....	25
45B. Inspections .....	26
45C. Administrative sanctions .....	28
45D. Appeal .....	29
45E. Establishment of appeal board .....	30
45F. Application to court .....	31
46. Failure to identify persons .....	32
47. Failure to keep records .....	32
48. Destroying or tampering with records .....	32
49. Failure to give assistance .....	32
50. Failure to advise Centre of client .....	32

51. Failure to report cash transactions .....	33
51A. Failure to report property associated with terrorist and related activities .....	33
52. Failure to report suspicious or unusual transactions .....	33
53. Unauthorised disclosure .....	33
54. Failure to report conveyance of cash or bearer negotiable instrument into or out of Republic .....	33
55. Failure to send report to Centre .....	33
56. Failure to report electronic transfers .....	33
57. Failure to comply with request .....	34
58. Failure to comply with directives .....	34
59. Failure to comply with monitoring order .....	34
60. Misuse of information .....	34
61. Failure to formulate and implement internal rules .....	34
61A. Failure to register with Centre .....	35
62. Failure to provide training or appoint compliance officer .....	35
62A. Offences relating to inspection .....	35
62B. Hindering or obstructing appeal board .....	35
62C. Failure to attend when summoned .....	35
62D. Failure to answer fully or truthfully .....	36
63. Obstructing of official in performance of functions .....	36
64. Conducting transactions to avoid reporting duties .....	36
65. Unauthorised access to computer system or application or data .....	36
66. Unauthorised modification of contents of computer system .....	36
67. Definitions .....	36
68. Penalties .....	37
69. Defences .....	37
70. Search, seizure and forfeiture .....	37
71. Jurisdiction of courts .....	39
Chapter 5 – Miscellaneous .....	39
72. Act not to limit powers of investigating authorities or supervisory bodies .....	39
73. Amendment of list of accountable institutions .....	39
74. Exemptions for accountable institutions .....	40
75. Amendment of list of supervisory bodies .....	40
76. Amendment of list of reporting institutions .....	40
77. Regulations .....	41
78. Indemnity .....	41

79. Amendment of laws .....	41
80. Status of footnotes .....	42
81. Transitional arrangements .....	42
82. Short title and commencement .....	42
Schedule 2 .....	43
Schedule 3 .....	44
Schedule 4 .....	44



## **South Africa**

# **Financial Intelligence Centre Act, 2001**

**Act 38 of 2001**

Published in Government Gazette 22886 on 3 December 2001

**Assented to on 28 November 2001**

**There are multiple commencements**

Provisions	Status
Section 1; Chapter 1 (section 2–16); Chapter 2 (section 17–20); Chapter 5, section 72–78, section 80–82	commenced on 1 February 2002 by <a href="#">Proclamation 6 of 2002</a> .
<i>Unknown provisions</i>	commenced on 1 March 2002 by <a href="#">Proclamation 17 of 2002</a> . <i>Note: Date of commencement of Schedules 1, 2 and 3</i>
Chapter 3, Part 3, section 27, section 29, section 32–41; Part 5 (section 44–45); Chapter 4, section 50, section 52–53, section 57–60, section 63–67, section 68(1), section 69, section 71; Chapter 5, section 79	commenced on 3 February 2003 by <a href="#">Proclamation 5 of 2003</a> .
Chapter 3, Part 1, section 21(1); Part 2 (section 22–26); Part 4 (section 42–43); Chapter 4, section 46(1), section 47, section 48–49, section 61–62, section 68(2)	commenced on 30 June 2003 by <a href="#">Proclamation 51 of 2003</a> .
Chapter 3, Part 1, section 21(2)	commenced on 30 June 2004. <i>Note: See section 82(2)(b)</i>
Chapter 4, section 46(2)	commenced on 1 July 2004 by <a href="#">Proclamation 36 of 2004</a> .
Chapter 3, Part 3, section 28A, section 29(1)(b)(v)	commenced on 20 May 2005.
Chapter 3, Part 3, section 28; Chapter 4, section 51	commenced on 4 October 2010 by <a href="#">Proclamation R55 of 2010</a> .
Section 1A; Chapter 1, section 3(2)(c), section 4(e), 4(f), 4(g); Chapter 3, Part 3, section 40(7); Part 4, section 43A, section 43B; Part 5, section 45(1A), 45(1B), 45(1C), 45(1D); Chapter 4, section 45A, section 45B–45F, section 51A, section 57(a), 57(b), section 61A, section 62A–62D	commenced on 1 December 2010.
Chapter 3 (in part)	commenced on 13 June 2017.
Chapter 3, Part 3, section 31; Chapter 4, section 56	commenced on 1 February 2023 by <a href="#">Proclamation 111 of 2023</a> .
<b>Chapter 3, Part 3, section 30; Chapter 4, section 54–55, section 70</b>	<b>not yet commenced.</b>

*[This is the version of this document as it was from 1 December 2010 to 28 July 2013.]*

*[Amended by [Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 \(Act 33 of 2004\)](#) on 20 May 2005]*

*[Amended by [Financial Intelligence Centre Amendment Act, 2008 \(Act 11 of 2008\)](#) on 1 December 2010]*



*[Amended by [Financial Intelligence Centre Act, 2001: Amendment of Schedule 1 \(Government Notice 1104 of 2010\)](#) on 1 December 2010]*

*[Amended by [Financial Intelligence Centre Act, 2001: Amendment of Schedule 2 \(Government Notice 1105 of 2010\)](#) on 1 December 2010]*

(English text signed by the President.)

## ACT

To establish a Financial Intelligence Centre and a Counter-Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to clarify the application of the Act in relation to other laws; to provide for the sharing information by the Centre and supervisory bodies; to provide for the issuance of directives by the Centre and supervisory bodies; to provide for the registration of accountable and reporting institutions; to provide for the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to provide the Centre and supervisory bodies with powers to conduct inspections; to regulate certain applications to Court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.

*[longtitle substituted by section 27(1) of [Act 33 of 2004](#) and by section 28 of [Act 11 of 2008](#)]*

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

### 1. Definitions

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

"**accountable institution**" means a person referred to in Schedule 1;

"**administrative sanction**" means a sanction referred to in section 45C;

*[definition of "administrative sanction" inserted by section 1(a) of [Act 11 of 2008](#)]*

"**appeal board**" means the appeal board established by section 45E;

*[definition of "appeal board" inserted by section 1(a) of [Act 11 of 2008](#)]*

"**authorised officer**" means any official of—

- (a) the South African Police Service authorised by the National Commissioner 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; or
- (d) the South African Revenue Service authorised by the Commissioner for that Service to act under this Act;

"**bearer negotiable instrument**", for the purposes of this Act, 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;

*[definition of "bearer negotiable instrument" inserted by section 1(b) of [Act 11 of 2008](#)]*

**"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;

**"Council"** means the Counter-Money Laundering Advisory Council established by section 17;

*[definition of "Council" substituted by section 1(c) of [Act 11 of 2008](#)]*

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

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

*[definition of "entity" inserted by section 27(1) of [Act 33 of 2004](#)]*

**"inspector"** means a person appointed in terms of section 45A;

*[definition of "inspector" inserted by section 1(d) of [Act 11 of 2008](#)]*

**"intelligence service"** means the National Intelligence Agency or the South African Secret Service established by section 3 of the Intelligence Services Act, 1994 ([Act No. 38 of 1994](#));

**"investigating authority"** means an authority that in terms of national legislation may investigate unlawful activities;

**"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;<sup>1</sup>

1

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

#### **"4. Money laundering"**

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.

**"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 \(Act No. 108 of 1996\)](#);

**"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 \(Act No. 108 of 1996\)](#);

**"non-compliance"** means any act or omission, and 'fails to comply', 'failure to comply' and 'not complying' have the same meaning;

*[definition of "non-compliance" inserted by section 1(e) of [Act 11 of 2008](#)]*

**"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;

*[definition of "offence relating to the financing of terrorist and related activities" inserted by section 27(1) of [Act 33 of 2004](#)]*

**"prescribed"** means prescribed by the Minister by regulation in terms of section 77;

**"Prevention Act"** means the Prevention of Organised Crime Act, 1998 ([Act No. 121 of 1998](#));

**"proceeds of unlawful activities"** has the meaning attributed to that term in section 1 of the Prevention Act;<sup>2</sup>

**"property"** has the meaning attributed to that term in section 1 of the Prevention Act;<sup>3</sup>

**"reporting institution"** means a person referred to in Schedule 3;

**"single transaction"** means a transaction other than a transaction concluded in the course of a business relationship;

#### 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.”.

2

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.”

3

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.”

**"South African Revenue Service"** means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 ([Act No. 34 of 1997](#));

**"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 No. 33 of 2004](#));

*[definition of "terrorist and related activities" inserted by section 1(f) of [Act 11 of 2008](#)]*

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

*[definition of "this Act" substituted by section 1(g) of [Act 11 of 2008](#)]*

**"transaction"** means a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution;

**"unlawful activity"** has the meaning attributed to that term in section 1 of the Prevention Act.<sup>4</sup>

- (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.

*[section 1A inserted by section 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 identification of the proceeds of unlawful activities and the combating of money laundering activities and the financing of terrorist and related activities.

*[subsection (1) substituted by section 27(1) of [Act 33 of 2004](#)]*

- (2) The other objectives of the Centre are—

- (a) to make information collected by it available to investigating authorities, supervisory bodies, the intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of the Republic;

*[paragraph (a) substituted by section 3(a) of [Act 11 of 2008](#)]*

- (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;

*[paragraph (b) substituted by section 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.

*[paragraph (c) added by section 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;
- (b) inform, advise and cooperate with investigating authorities, supervisory bodies, the South African Revenue Service and the intelligence services;
- (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;

*[paragraph (c) substituted by section 4(a) of [Act 11 of 2008](#)]*

- (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;

*[paragraph (e) added by section 4(b) of [Act 11 of 2008](#)]*

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

*[paragraph (f) added by section 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\(b\)](#).

*[paragraph (g) added by section 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 No. 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) The Minister must consult the Council before appointing a person or renewing the appointment of a person as the Director, except in the case of the appointment of the first Director.

## 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 No. 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 No. 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 security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 ([Act No. 38 of 1994](#)); and
  - (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 security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 ([Act No. 38 of 1994](#)); and
  - (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 Counter-Money Laundering Advisory Council

*[heading substituted by section 5 of [Act 11 of 2008](#)]*

## 17. Establishment

A Counter-Money Laundering Advisory Council is hereby established.

*[section 17 substituted by section 6 of [Act 11 of 2008](#)]*

## 18. Functions

- (1) The Council must—
  - (a) on the Minister's request or at its own initiative, advise the Minister on—
    - (i) policies and best practices to identify the proceeds of unlawful activities and to combat money laundering activities; and

- (ii) the exercise by the Minister of the powers entrusted to the Minister in terms of this Act;
  - (b) advise the Centre concerning the performance by the Centre of its functions; and
  - (c) act as a forum in which the Centre, associations representing categories of accountable institutions, organs of state and supervisory bodies can consult one another.
- (2) The Centre must provide administrative and secretarial support and sufficient financial resources for the Council to function effectively.

## 19. Composition

- (1) The Council consists of the Director and each of the following, namely—
- (a) the Director-General of the National Treasury;
  - (b) the Commissioner of the South African Police Service;
  - (c) the Director-General of the Department of Justice and Constitutional Development;
  - (d) the National Director of Public Prosecutions;
  - (e) the Director-General of the National Intelligence Agency;
  - (f) the Director-General of the South African Secret Service;
  - (g) the Governor of the South African Reserve Bank;
  - (h) the Commissioner for the South African Revenue Service;
  - (i) persons representing categories of accountable institutions requested by the Minister to nominate representatives;
  - (j) persons representing supervisory bodies requested by the Minister to nominate representatives; and
  - (k) any other persons or bodies requested by the Minister to nominate representatives.
- (2) The Minister must appoint a member of the Council as the chairperson of the Council. The chairperson of the Council serves as such until the chairperson resigns or until a new chairperson is appointed by the Minister.
- (3) The Director and each of the persons referred to in paragraphs (a) to (h) of subsection (1) may appoint a member of his or her staff to represent him or her at any meeting of the Council which he or she is unable to attend.
- (4) The accountable institutions and supervisory bodies referred to in paragraphs (i) and (j) of subsection (1) and the persons and bodies referred to in paragraph (k) of subsection (1) may—
- (a) appoint alternates to represent them at any meeting of the Council;
  - (b) change their representatives to the Council when they consider it appropriate to do so.

## 20. Meetings and procedure

- (1) The chairperson of the Council may call a meeting of the Council, but must call a meeting if the Minister so requests.
- (2) The Council—
- (a) must meet regularly, but not less than once per year;
  - (b) may determine its own procedures at meetings;

- (c) may request advice and assistance from such persons as it considers necessary to assist it to perform its functions;
  - (d) may appoint committees from its members to assist it in the performance of its functions.
- (3) A committee appointed in terms of subsection (1)(d) may co-opt any person who is not a member of the Council as a member of the committee, whether for a particular period or in relation to a particular matter dealt with by that committee.
- (4) When a provision of this Act requires consultation with the Council on any specific matter before a decision may be taken on that matter and it is not feasible to call a meeting of the Council, that provision is satisfied if—
- (a) a proposed decision on that matter is circulated in writing to the members of the Council; and
  - (b) an opportunity is given to each of them to comment in writing on the proposed decision within a reasonable time.

### Chapter 3

#### Control measures for money laundering and financing of terrorist and related activities

*[heading substituted by section 27(1) of Act 33 of 2004]*

#### Part 1 – Duty to identify clients

##### 21. Identification of clients and other persons

- (1) An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps—
  - (a) to establish and verify the identity of the client;
  - (b) if the client is acting on behalf of another person, to establish and verify—
    - (i) the identity of that other person; and
    - (ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
  - (c) if another person is acting on behalf of the client, to establish and verify—
    - (i) the identity of that other person; and
    - (ii) that other person's authority to act on behalf of the client.
- (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.

## Part 2 – Duty to keep record

### 22. Record to be kept of business relationships and transactions

- (1) Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, the accountable institution must keep record of—
  - (a) the identity of the client;
  - (b) if the client is acting on behalf of another person—
    - (i) the identity of the person on whose behalf the client is acting; and
    - (ii) the client's authority to act on behalf of that other person;
  - (c) if another person is acting on behalf of the client—
    - (i) the identity of that other person; and
    - (ii) that other person's authority to act on behalf of the client;
  - (d) the manner in which the identity of the persons referred to in paragraphs (a), (b) and (c) was established;
  - (e) the nature of that business relationship or transaction;
  - (f) in the case of a transaction—
    - (i) the amount involved; and
    - (ii) the parties to that transaction;
  - (g) all accounts that are involved in—
    - (i) transactions concluded by that accountable institution in the course of that business relationship; and
    - (ii) that single transaction;
  - (h) the name of the person who obtained the information referred to in paragraphs (a), (b) and (c) on behalf of the accountable institution; and
  - (i) any document or copy of a document obtained by the accountable institution in order to verify a person's identity in terms of section 21(1) or (2).
- (2) Records kept in terms of subsection (1) may be kept in electronic form.

## 23. Period for which records must be kept

An accountable institution must keep the records referred to in section 22 which relate to—

- (a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;
- (b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded.

## 24. Records may be kept by third parties

- (1) The duties imposed by section 22 on an accountable institution to keep record of the matters specified in that section 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.
- (2) If a third party referred to in subsection (1) fails to properly comply with the requirements of section 22 on behalf of the accountable institution concerned, the accountable institution is liable for that failure.
- (3) If an accountable institution appoints a third party to perform the duties imposed on it by section 22, the accountable institution must forthwith provide the Centre with the prescribed particulars regarding the third party.

## 25. Admissibility of records

A record kept in terms of section 22 or section 24, or a certified extract of any such record, or a certified printout 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.

## 26. Centre's access to records

- (1) 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 or section 24, and may examine, make extracts from or copies of, any such records for the purposes of obtaining further information in respect of a report made in terms of section 28, 28A, 29, 30(1) or 31.  
*[subsection (1) substituted by section 7 of [Act 11 of 2008](#)]*
- (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.
- (4) A warrant issued in terms of this section may contain such conditions regarding access to the relevant records as the judge, magistrate or regional magistrate may deem appropriate.
- (5) An accountable institution must without delay give to an authorised representative of the Centre all reasonable assistance necessary to enable that representative to exercise the powers mentioned in subsection (1).

### Part 3 – Reporting duties and access to information

#### 27. Accountable institutions to advise Centre of clients

If an authorised representative of the Centre requests an accountable institution to advise whether—

- (a) a specified person is or has been a client of the accountable institution;
- (b) a specified person is acting or has acted on behalf of any client of the accountable institution; or
- (c) a client of the accountable institution is acting or has acted for a specified person, the accountable institution must inform the Centre accordingly.

#### 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

- (1) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of—
  - (a) any entity which has committed, or attempted to commit, or facilitated the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or
  - (b) a specific entity identified in a notice issued by the President, under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004,must within the prescribed period report that fact and the prescribed particulars to the Centre.
- (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.

*[section 28A inserted by section 27(1) 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; or
  - (v) relates to an offence relating to the financing of terrorist and related activities; or
- (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.

*[subsection (1) substituted by section 27(1) 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 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—
  - (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.

*[subsection (1) substituted by section 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, or an investigating authority acting with the permission of the Centre or under the authority of an authorised officer, may request an accountable institution, a reporting institution or any other person that has made a report in terms of section [28](#), [29](#) or [31](#) to furnish the Centre or that investigating authority with such additional information concerning the report and the grounds for the report as the Centre or the investigating authority may reasonably require for the performance by it of its functions.
- (3) When an institution or a person referred to in subsection (2) receives a request under that subsection, that institution or person must furnish the Centre without delay with such additional information concerning the report and the grounds for the report as that institution or person may have available.

### 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 involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or may constitute money laundering or a transaction contemplated in section [29\(1\)\(b\)](#) it may direct the accountable institution, reporting institution or person in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the Centre, which may not be more than five days, in order to allow the Centre—
  - (a) to make the necessary inquiries concerning the transaction; and



- (b) if the Centre deems it appropriate, to inform and advise an investigating authority or the National Director of Public Prosecutions.

*[subsection (1) substituted by section 27(1) of Act 33 of 2004]*

- (2) For the purposes of calculating the period of five days in subsection (1), Saturdays, Sundays and proclaimed public holidays must not be taken into account.
- (3) Subsection (1) does not apply to the carrying out of a transaction to which the rules of an exchange licensed in terms of the Securities Services Act, 2004 (Act No. 36 of 2004), apply.

*[subsection (3) substituted by section 9 of Act 11 of 2008]*

### 35. Monitoring orders

- (1) A judge designated by the Minister of Justice for the purposes of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), may, upon written application by the Centre, order an accountable institution to report to the Centre, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specified person with the accountable institution or all transactions conducted in respect of a specified account or facility at the accountable institution, if there are reasonable grounds to suspect that—

- (a) that person has transferred or may transfer the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities to the accountable institution or 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

*[paragraph (a) substituted by section 27(1) of Act 33 of 2004]*

- (b) that account or other facility has received or may receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or 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).

*[paragraph (b) substituted by section 27(1) of Act 33 of 2004]*

- (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.

*[subsection (1) substituted by section 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.

*[subsection (2) substituted by section 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](#).

*[subsection (1) substituted by section 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.

*[subsection (1) substituted by section 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) No person is entitled to information held by the Centre, except—

- (a) an investigating authority inside the Republic, the South African Revenue Service and the intelligence services, which may be provided with such information—
  - (i) on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or
  - (ii) at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity;
- (b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic which may, at the initiative of the Centre or on written request, obtain information which the Centre reasonably believes is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which that entity is established;

*[paragraph (b) substituted by section 27(1) of Act 33 of 2004]*

- (c) an accountable institution or reporting institution which or any other person who may, at the initiative of the Centre or on written request, be provided with information regarding the steps taken by the Centre in connection with transactions reported by such accountable institution, reporting institution or person, unless the Centre reasonably believes that disclosure to such accountable institution, reporting institution or person of the information requested could—
    - (i) inhibit the achievement of the Centre's objectives or the performance of its functions, or the achievement of the objectives or the performance of the functions of another organ of state; or
    - (ii) prejudice the rights of any person;
  - (d) a supervisory body, which may at the initiative of the Centre or on written request be provided with information which the Centre reasonably believes is relevant to the exercise by that supervisory body of its powers or performance by it of its functions in relation to an accountable institution;
  - (e) in terms of an order of a court; or
  - (f) in terms of other national legislation.
- (2) A request for information contemplated in subsection (1)(b), (c) or (d) must be in writing and must specify the desired information and the purpose for which the information is required.
- (3) The Director may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in subsection (1)(a), (b), (c) or (d) as the Director considers appropriate to maintain the confidentiality of that information.

- (4) Information held by the Centre may only be provided to an entity referred to in subsection (1)(b) pursuant to a written agreement between the Centre and such entity, or the authority which is responsible for that entity, regulating the exchange of information between the Centre and such entity.
- (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 in respect of which the agreement is concluded which that entity is not permitted to provide to the Centre.
- (6) A person who obtains information from the Centre may use that information only within the scope of that person's powers and duties and for the purpose specified in terms of subsection (2).
- (7) The Centre may make available any information obtained by it during an inspection to an organ of state, a supervisory body, other regulatory authority, self-regulating association or organisation that is affected by or has an interest in that information.

*[subsection (7) added by section 13 of [Act 11 of 2008](#)]*

#### **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.

### **Part 4 – Measures to promote compliance by accountable institutions**

#### **42. Formulation and implementation of internal rules**

- (1) An accountable institution must formulate and implement internal rules concerning—
  - (a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of this Chapter;
  - (b) the information of which record must be kept in terms of Part 2 of this Chapter;
  - (c) the manner in which and place at which such records must be kept;
  - (d) the steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties under this Act; and
  - (e) such other matters as may be prescribed.
- (2) Internal rules must comply with the prescribed requirements.
- (3) An accountable institution must make its internal rules available to each of its employees involved in transactions to which this Act applies.
- (4) An accountable institution must, on request, make a copy of its internal rules available to—
  - (a) the Centre;
  - (b) a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution.

### 43. Training and monitoring of compliance

An accountable institution must—

- (a) provide training to its employees to enable them to comply with the provisions of this Act and the internal rules applicable to them;
- (b) appoint a person with the responsibility to ensure compliance by—
  - (i) the employees of the accountable institution with the provisions of this Act and the internal rules applicable to them; and
  - (ii) the accountable institution with its obligations under this Act.

#### 43A. Directives

- (1) The Centre may, by notice in the *Gazette*, issue a directive to all institutions to whom the provisions of this Act apply, regarding the application of this Act.
- (2) The Centre or a supervisory body may, in writing, issue a directive to any category of accountable institutions or category of reporting institutions or other category of person to whom the provisions of this Act apply, regarding the application of this Act.
- (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 if a supervisory body—
    - (i) failed to issue a directive despite any recommendation of the Centre made in terms of section 44(b); or
    - (ii) failed to issue a directive within the period specified by the Centre.
  - (b) A supervisory body may issue a directive in terms of this section only after consulting the Centre on that directive.

[section 43A inserted by section 14 of [Act 11 of 2008](#)]

**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.

*[section 43B inserted by section 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.

*[subsection (1) substituted by section 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.

*[subsection (1A) inserted by section 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.

*[subsection (1B) inserted by section 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.

*[subsection (1C) inserted by section 15(b) of [Act 11 of 2008](#)]*

- (1D) 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.

*[subsection (1D) inserted by section 15(b) of [Act 11 of 2008](#)]*

- (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**

*[heading substituted by section 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.

*[section 45A inserted by section 16(b) of [Act 11 of 2008](#)]*

#### **45B. Inspections**

- (1) For the purposes of determining compliance with this Act or any order, determination or directive made in terms of this Act, an inspector may at any reasonable time and on reasonable notice, where appropriate, enter and inspect any premises at which the Centre or, when acting in terms of section [45\(1\)](#), the supervisory body reasonably believes that the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted.
- (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.
- (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, reporting institution or person inspected.
- (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) if the Director or supervisory body is satisfied that it is in the public interest.
- (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) An inspector of a supervisory body may conduct an inspection, other than a routine inspection in terms of this section, only after consultation with the Centre on that inspection.
  - (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) No warrant is required for the purposes of an inspection in terms of this section.

*[section 45B inserted by section 16(b) of [Act 11 of 2008](#)]*

#### **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 anyone 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 Criminal Assets Recovery Account established by section 63 of the Prevention Act within the period and in the manner as may be specified in the relevant notice.
  - (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 No. 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.

*[section 45C inserted by section 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.
- (2) An appeal under subsection (1) shall take place on the date and at the place and time determined by the appeal board.
- (3) An appeal is decided on the affidavits and supporting documents presented to the appeal board by the parties to the appeal.
- (4) Despite the provisions of subsection (3) the appeal board may—
  - (a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his, her or its possession, custody or control any document which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and retain for examination any document so produced;
  - (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and
  - (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control, and such a person shall be entitled to legal representation at his or her own expense.
- (5) The chairperson of the appeal board determines any other procedural matters relating to an appeal.
- (6) Any party to an appeal is entitled to be represented at an appeal by a legal representative.
- (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 the appeal board shall be the decision of that board.
- (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.

*[section 45D inserted by section 16(b) of [Act 11 of 2008](#)]*

#### **45E. Establishment of appeal board**

- (1) An appeal board is hereby established.

- (2) The Minister must appoint as members of the appeal board so many persons as the Minister may consider necessary, with an alternate for each of them, of whom—
  - (a) one must be an advocate or attorney with at least ten years experience, who will be the chairperson; and
  - (b) at least two must be persons with experience and expert knowledge of financial institutions and financial services.
- (3) A member of the appeal board holds office for a period of three years and is eligible for reappointment on the expiration of his or her term of office.
- (4) An alternate acts as a member when—
  - (a) a member is absent, has recused himself or herself or is suspended; or
  - (b) the filling of a vacancy on the appeal board is pending.
- (5) Any vacancy that occurs on the appeal board must be filled in accordance with subsection (2) and any person so appointed holds office for the unexpired portion of the period of office of his or her predecessor.
- (6) The appeal board may co-opt any person having expert knowledge of a particular matter to assist the board in considering an appeal.
- (7) A person co-opted under subsection (6) may not participate in any decision of the appeal board.
- (8) If before or during the consideration of any appeal it transpires that any member of the appeal board has any direct or indirect personal interest in the outcome of that appeal, that member must recuse himself or herself and must be replaced by the alternate member.
- (9) The Minister may terminate the period of office of a member of the appeal board—
  - (a) if the performance of the member is unsatisfactory; or
  - (b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively.
- (10)
  - (a) The Minister may, if the performance of the appeal board is unsatisfactory, terminate the period of office of all the members of the appeal board.
  - (b) In the event of the dismissal of all the members of the appeal board, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of subsection (2).
- (11) A member of the appeal board may be paid such remuneration and allowances as the Minister may from time to time determine.
- (12) The Centre must provide administrative support for the appeal board.
- (13) The Centre is responsible for the expenditure of the appeal board.

*[section 45E inserted by section 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.

*[section 45F inserted by section 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\(1\)](#) is guilty of an offence.
- (2) An accountable institution that concludes any transaction in contravention of section [21\(2\)](#) is guilty of an offence.

#### **47. Failure to keep records**

An accountable institution that fails to—

- (a) keep record of information in terms of section [22\(1\)](#); or
- (b) keep such records in accordance with section [23](#) or section [24\(1\)](#); or
- (c) comply with the provisions of section [24\(3\)](#),

is guilty of an offence.

#### **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 [26\(5\)](#), is guilty of an offence.

#### **50. Failure to advise Centre of client**

An accountable institution that fails to inform the Centre in accordance with section [27](#), is guilty of an offence.

## 51. Failure to report cash transactions

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.

### 51A. Failure to report property associated with terrorist and related activities

- (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.

*[section 51A inserted by section 17 of [Act 11 of 2008](#)]*

## 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.

*[section 54 substituted by section 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.

*[section 55 substituted by section 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.

*[section 57 substituted by section 20 of [Act 11 of 2008](#)]*

**58. Failure to comply with directives**

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

*[section 58 substituted by section 21 of [Act 11 of 2008](#)]*

**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](#);

*[paragraph (a) substituted by section 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; or

- (c) uses information obtained 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\(6\)](#),

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 formulate and implement internal rules**

An accountable institution that fails to—

- (a) formulate and implement internal rules in accordance with section [42\(1\)](#) and (2);



- (b) make the internal rules available to its employees in accordance with section [42\(3\)](#); or
- (c) make a copy of its internal rules available to the Centre or a supervisory body in terms of section [42\(4\)](#),

is guilty of an offence.

#### **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 guilty of an offence.

*[section [61A](#) inserted by section 23 of [Act 11 of 2008](#)]*

#### **62. Failure to provide training or appoint compliance officer**

An accountable institution that fails to—

- (a) provide training to its employees in accordance with section [43\(a\)](#); or
- (b) appoint the person referred to in section [43\(b\)](#), is guilty of an offence.

#### **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.

*[section [62A](#) inserted by section 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.

*[section [62B](#) inserted by section 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.

*[section 62C inserted by section 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.

*[section 62D inserted by section 24 of [Act 11 of 2008](#)]*

#### **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, 61, 61A, 62, 62A, 62B, 62C or 62D, is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R10 million.

*[section 68 substituted by section 25 of [Act 11 of 2008](#)]*

## 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 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 this Act; or
- (c) reported the matter to his or her superior, if any, if—
  - (i) the accountable institution had not appointed such a person or established such rules; or
  - (ii) the accountable institution had not complied with its obligations in section 42(3) in respect of that person; or
  - (iii) the internal rules were not applicable to that person.

## 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.

[section 70 amended by section 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 Miscellaneous

## 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 Council and the Centre, and—
  - (a) if only one person or institution will be affected by the proposed amendment, give that person or institution at least 30 days' written notice to submit written representations to the Minister; or

- (b) if a category of persons or institutions will be affected by the proposed amendment, by notice in the *Gazette* give persons or institutions belonging to that category at least 60 days' written notice to submit written representations to the Minister.
- (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 Council and the Centre, and on conditions and for a period determined by the Minister, exempt from compliance with—
  - (a) any of the provisions of this Act—
    - (i) a person;
    - (ii) an accountable institution; or
    - (iii) a category of persons or accountable institutions;
  - (b) any or all of the provisions of this Act, a person or category of persons or an accountable institution or category of accountable institutions in respect of any one or more categories of transactions.
- (2) Any exemption referred to in subsection [\(1\)](#)—
  - (a) must be by notice in the *Gazette* and may be withdrawn or amended by the Minister, after consulting with the Council and the Centre;
  - (b) must be tabled in Parliament before being published in the *Gazette*.

#### 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 Council and the Centre, and give the entity or functionary concerned, or the supervisory body concerned, as the case may be, at least 60 days' written notice to submit written representations to the Minister.
- (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 the Council, and—
- (a) if only one person will be affected by the proposed amendment, give the person at least 30 days' written notice to submit written representations to the Minister; or
  - (b) if a category of persons will be affected by the proposed amendment, by notice in the *Gazette* give persons belonging to that category at least 60 days' written notice to submit written representations to the Minister.
- (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 Council and the Centre, may make, repeal and amend regulations concerning—
- (a) any matter that may be prescribed in terms of this Act; and
  - (b) any other matter which is necessary or expedient to prescribe to promote the objectives of this Act.
- (2) Regulations in terms of subsection (1) may—
- (a) differ for different accountable institutions, reporting institutions, persons, categories of accountable institutions, reporting institutions and persons and different categories of transactions;
  - (b) be limited to a particular accountable institution or reporting institution or person or category of accountable institutions or reporting institutions or persons or a particular category of transactions; and
  - (c) for a contravention of or failure to comply with any specific regulation, prescribe imprisonment for a period not exceeding six months or a fine not exceeding R100 000.
- (3) Regulations in terms of subsection (1) must be reviewed by the Council within two years after being published in the *Gazette* and thereafter at such intervals as the Council deems appropriate.
- (4) The Minister must table regulations, repeals and amendments made under subsection (1) in Parliament before publication in the *Gazette*.

## 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.

## 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.

## Schedule 1

### List of accountable institutions

[Schedule 1 amended by [Government Notice 1104 of 2010](#)]

1. A practitioner who practices as defined in section 1 of the Attorneys Act, 1979 ([Act 53 of 1979](#)).  
[item 1 substituted by [Government Notice 1104 of 2010](#)]
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](#)).  
[item 3 substituted by [Government Notice 1104 of 2010](#)]
4. An authorised user of an exchange as defined in the Securities Service Act, 2004 ([Act 36 of 2004](#)).  
[item 4 substituted by [Government Notice 1104 of 2010](#)]
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, 2002 ([Act 45 of 2002](#)).  
[item 5 substituted by [Government Notice 1104 of 2010](#)]
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](#)).  
*[item 8 substituted by [Government Notice 1104 of 2010](#)]*
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.  
*[item 9 substituted by [Government Notice 1104 of 2010](#)]*
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](#))).  
*[item 12 substituted by [Government Notice 1104 of 2010](#)]*
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. *[item 15 deleted by [Government Notice 1104 of 2010](#)]*
16. The Ithala Development Finance Corporation Limited.
17. *[item 17 deleted by [Government Notice 1104 of 2010](#)]*
18. *[item 18 deleted by [Government Notice 1104 of 2010](#)]*
19. A person who carries on the business of a money remitter.

## Schedule 2

### List of supervisory bodies

*[Schedule 2 amended by [Government Notice 1105 of 2010](#)]*

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 22E of the Exchange Control Regulations, 1961.  
*[item 2 substituted by [Government Notice 1105 of 2010](#)]*
3. *[item 3 deleted by [Government Notice 1105 of 2010](#)]*
4. The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976 ([Act 112 of 1976](#)).  
*[item 4 amended by [Government Notice 1105 of 2010](#)]*
5. The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 ([Act 26 of 2005](#)).  
*[item 5 substituted by [Government Notice 1105 of 2010](#)]*

6. The National Gambling Board established in terms of the National Gambling Act, 1996 and retained in terms of the National Gambling Act, 2004 ([Act 7 of 2004](#)).  
*[item 6 amended by [Government Notice 1105 of 2010](#)]*
7. *[item 7 deleted by [Government Notice 1105 of 2010](#)]*
8. A law society as contemplated in section 56 of the Attorneys Act, 1979 ([Act 53 of 1979](#)).  
*[item 8 substituted by [Government Notice 1105 of 2010](#)]*
9. A provincial licensing authority as defined in section 1 the National Gambling Act, 2004 ([Act 7 of 2004](#)).  
*[item 9 added by [Government Notice 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 4

#### Amendment of sections of Prevention of Organised Crime Act, 1988 (Act 121 of 1998)

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

##### 7A. Defence

- (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, 2000 (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"
-----------------	-----------------------------------	-------------