

FINANCIAL INTELLIGENCE AMENDMENT BILL [B 33-2015]

ADDENDUM TO RESPONSES BY NATIONAL TREASURY & FINANCIAL INTELLIGENCE CENTRE TO COMMENTS SUBMITTED TO THE STANDING COMMITTEE ON FINANCE: PROPOSED AMENDMENTS

22 February 2016

Updated 14 March 2016 (changes in red and bold)

CLAUSE	PROPOSED AMENDMENT	MOTIVATION
1	<p>(e) by the insertion in subsection (1) after the definition of “Centre” of the following definition: “‘client’, in relation to an accountable institution, means a person who has entered into a business relationship or a single transaction with an accountable institution;”;</p>	<p>The definition of client is retained. It is proposed that the definition of ‘client’ be deleted and that the concept of client be dealt with in accordance with an accountable institution’s RMCP. This arises from the difficulty expressed by certain sectors (attorneys, casinos) as to who is a client in a transaction. The deletion is also linked to the concerns raised on ‘prospective client’ discussed under that definition. An amendment to clause 27 is also proposed.</p>
	<p>(g) by the insertion after the definition of “Director” of the following definition: “ ‘domestic prominent influential person’ means a person referred to in Schedule 5; an individual who holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic — (a) a prominent public function including that of — (i) the President or Deputy President; (ii) a government minister or deputy minister; (iii) the Premier of a province; (iv) a member of the Executive Council of a province; (v) an executive mayor of a municipality elected in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); (vi) a leader of a political party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996); (vii) a member of a royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003); (viii) a head or chief financial officer of a national or provincial department or government component, as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of</p>	<p>It is proposed that the definition of ‘domestic prominent person’ be amended by removing the list of persons from the definition section and placing it in a Schedule, i.e. Schedule 5. A new provision, section 79A (new clause 57) is proposed which will allow the Minister, after consultation, to add to the list or remove from the list.</p>

	<p>1994);</p> <p>(ix) a municipal manager appointed in terms of section 82(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 111 of 1998);</p> <p>(x) the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of—</p> <p>(aa) a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); or</p> <p>(bb) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);</p> <p>(xi) a constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001);</p> <p>(xii) an ambassador or high commissioner or other senior representative of a foreign government based in the Republic;</p> <p>(xiii) an officer of the South African National Defence Force above the rank of major general;</p> <p>(b) the position of—</p> <p>(i) chairperson of the board of directors;</p> <p>(ii) chairperson of the audit committee;</p> <p>(iii) executive officer; or</p> <p>(iv) chief financial officer,</p> <p>of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the <i>Gazette</i>; or</p> <p>(e) the position of head, or other executive directly accountable to that head, of an international organisation based in the Republic;";</p>	
	<p>(h) by the insertion in subsection (1) after the definition of "entity" of the following definitions:</p> <p>" "executive officer", in relation to a company, means a person who—</p> <p>(a) exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or</p> <p>(b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the company, irrespective of any particular title given by the company to an office</p>	<p>Term "executive officer" iro a company, only used in par (b) of def of domestic prominent influential person, now proposed to be included in Schedule 5. Propose that the definition be omitted since its meaning in the context of Schedule 5 will be clear with reference to the Companies Act.</p> <p>1. It is proposed that the definition of 'executive officer' be deleted from the definition section and</p>

	<p>held by the person in the company or a function performed by the person for the company; 'foreign prominent public official' means <u>a person listed in Schedule 6</u>; an individual who holds, or has held at any time in the preceding 12 months, in any foreign country a prominent public function including that of a — (a) Head of State or head of a country or government; (b) member of a foreign royal family; (c) government minister or equivalent senior politician or leader of a political party; (d) senior judicial official; (e) senior executive of a state owned corporation; or (f) high ranking member of the military;</p>	<p>become part of Schedule 5. 2. It is proposed that 'foreign prominent public official' be amended by removing the list of persons from the definition section and placing it in Schedule 6. An additional clause is proposed under section 79B (new clause 58) which will allow the Minister to add to the list or remove from the list through a consultative process.</p>
	<p>(n) by the insertion in subsection (1) after the definition of "property" of the following definitions: "'prospective client' means a person seeking to conclude a business relationship or a single transaction with an accountable institution; 'Public Protector' means the Public Protector referred to in Chapter 9 of the Constitution of the Republic of South Africa, 1996;";</p>	<p>It is proposed that the definition of 'prospective client' be deleted and that the concept of 'prospective client' be dealt with in accordance with an accountable institution's RMCP. This arises from comments received that the timing relating to when a prospective client becomes a client becomes problematic when institutions need to perform the full due diligence measures on persons that eventually decide not to enter into a business relationship with the institution.</p>
	<p>(o) by the substitution in subsection (1) of the definition of "single transaction" of the following definition: <u>"single transaction" means a transaction other than a transaction concluded in the course of a business relationship where the value of the transaction is not less than the amount prescribed;</u></p>	<p>It is proposed that a new amendment be inserted that amends the definition of single transaction that will incorporate a single transaction threshold that will be determined by the Minister.</p>
10	<p>Additional due diligence measures relating to legal persons, trusts and partnerships 21B. (1) If a client contemplated in section 21 is a legal person or a natural person acting or purporting to act on behalf of a partnership, trust or similar arrangement between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme establish— (a) the nature of the client's business; and (b) the ownership and control structure of the client. (2) If a client contemplated in section 21 is a legal person, an accountable institution must, subject to subsections (3), (4) and (5); in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme— (a) establish the identity of the beneficial owner of the client by—, and</p>	<p>Propose further amendments to section 21B , i.e. collapsing subsections (3) to (5) into subsection (2). The concerns around the onerous obligations contained section 21B are addressed by proposing wording to make it clear that there is a series of mechanisms by means of which an accountable institution must identify the ultimate beneficial owner. Further, the inclusion that a percentage threshold should be specified is not supported as a specified percentage shareholding or ownership interest does not automatically indicate who the</p>

	<p><u>(i) determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person;</u></p> <p><u>(ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means; or</u></p> <p><u>(iii) if a natural person is not identified as contemplated in subparagraph (ii), determining the identity of each natural person who otherwise exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager or partner; and</u></p> <p><u>(b) take reasonable steps to verify the identity of the beneficial owner of the client, so that the accountable institution is satisfied that it knows who the beneficial owner is.</u></p> <p>(b) take reasonable steps to verify the identity of the beneficial owner of the client, so that the accountable institution is satisfied that it knows who the beneficial owner is.</p> <p>When an accountable institution establishes and verifies the identity of the beneficial owner of a legal person as contemplated in subsection (2), the institution must, subject to subsections (4) and (5)—</p> <p>(a) establish the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the that legal person; and</p> <p>(b) take reasonable steps to verify the identity of each natural person contemplated in paragraph (a).</p> <p>(4) If an accountable institution is in doubt as to whether a natural person contemplated in subsection (3) is the beneficial owner of the that legal person in question, or no natural person has a controlling ownership interest in the that legal person in question, the institution must, subject to subsection (5)—</p> <p>(a) establish the identity of each natural person who exercises control of the that legal person in question through other means; and</p> <p>(b) take reasonable steps to verify the identity of each natural person contemplated in paragraph (a).</p> <p>(5) If an accountable institution is unable to identify a natural person contemplated in subsection (4 5), the institution must —</p> <p>(a) establish the identity of each natural person who otherwise exercises control over the management of the that legal person in question, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner; and</p> <p>(b) take reasonable steps to verify the identity of each natural person contemplated in paragraph (a).</p>	<p>beneficial owner is. It is an important indicator, among others, and should be mentioned in guidance.</p>
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~~determine who the natural person is whose identity must be established and verified~~

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

Management and Compliance Programme—

(a) establish the identifying name of the partnership, if applicable;

(b) establish the identity of every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership;

(c) establish the identity of the person who exercises executive control over the partnership;

(d) establish the identity of each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the partnership;

(e) take reasonable steps to verify the particulars obtained in paragraph (a); and

(f) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (b) to (d) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.

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

(a) establish the identifying name and number of the trust, if applicable;

(b) establish the address of the Master of the High Court where the trust is registered, if applicable;

(c) establish the identity of the founder;

(d) establish the identity of—

(i) each trustee; and

(ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust;

(e) establish—

(i) the identity of each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; or

(ii) if beneficiaries are not referred to by name in the trust deed or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined;

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

	<p><u>(g) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (c), (d) and (e)(i) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.</u></p> <p><u>(85) This section applies in respect of a legal person, partnership, or trust or similar arrangement between natural persons, whether it is incorporated or originated in the Republic or elsewhere.</u></p>	
	<p>On-going due diligence</p> <p>21C. An accountable institution must, in accordance with its Risk Management and Compliance Programme, conduct on-going due diligence in respect of a business relationship which includes—</p> <p>(a) monitoring of transactions undertaken throughout the course of the relationship, including, where necessary—</p> <p>(i) the source of funds, to ensure that the transactions are consistent with the accountable institution’s knowledge of the client and the client’s business and risk profile; and</p> <p>(ii) the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent business or lawful purpose; and</p> <p>(b) keeping information obtained for the purpose of establishing and verifying the identities of clients pursuant to section sections 21, 21A and 21B of this Act, up to-date.</p>	<p>The following insertions are proposed to ensure that on-going due diligence includes information obtained in terms of sections 21A and 21B.</p>
	<p>Inability to conduct customer due diligence</p> <p>21E. If an accountable institution is unable to—</p> <p>(a) establish and verify the identity of a client or other relevant person in accordance with section 21 or 21B;</p> <p>(b) obtain the information contemplated in section 21A; or</p> <p>(c) conduct on-going due diligence as contemplated in section 21C, the institution—</p> <p>(i) may not establish a business relationship or conclude a single transaction with a client;</p> <p>(ii) may not conclude a transaction in the course of a business relationship, or perform any act to give effect to a single transaction; or</p> <p>(iii) must terminate, in accordance with its Risk Management and Compliance Programme, an existing business relationship with a client, as the case may be, and consider making a report under section 29 of this Act.</p>	<p>There is an error in the type-setting. The text from “the institution” in par (c) and subparagraphs (i), (ii) and (iii) should not be part of par (c).</p>
	<p>Foreign prominent public official</p> <p>21F. If an accountable institution determines in accordance with its Risk Management and Compliance Programme that a prospective client with whom it engages to enter into a single transaction or to establish a business relationship, or the beneficial owner of that prospective client, is a foreign prominent public official, the institution must—</p> <p>(a) obtain senior management approval for establishing the business relationship;</p> <p>(b) take reasonable measures to establish the source of wealth and source of funds of the client; and</p> <p>(c) conduct enhanced on-going monitoring of the business relationship.</p>	<p>Propose that the reference to single transactions be deleted so that the provision only applies to business relationships</p>

	<p>Domestic prominent influential person 21G. If an accountable institution determines that a prospective client with whom it engages to enter into a single transaction or to establish a business relationship, or the beneficial owner of that prospective client, is a domestic prominent influential person and that, in accordance with its Risk Management and Compliance Programme, the prospective business relationship or single transaction entails higher risk, the institution must— (a) obtain senior management approval for establishing the business relationship; (b) take reasonable measures to establish the source of wealth and source of funds of the client; and (c) conduct enhanced on-going monitoring of the business relationship.</p>	<p>It is proposed that the reference to single transactions be deleted so that the provision only applies to business relationships and the wording is similar to foreign prominent influential person</p>
	<p>Family members and known close associates 21H. (1) Sections 21F and 21G apply to immediate family members and known close associates of a person in a foreign or domestic prominent position, as the case may be. (2) For the purposes of subsection (1), an immediate family member includes— (a) the spouse, civil partner or life partner; (b) the previous spouse, civil partner or life partner, if applicable; (eb) children and step children and their spouse, civil partner or life partner; (d-c) parents; and (e d) sibling and step sibling and their spouse, civil partner or life partner.”.</p>	<p>It is proposed that ‘previous spouse, civil partner or life partner’ be deleted in line with the comment on this issue</p>
14	<p>“Records may be kept in electronic form and by third parties and must be kept in the Republic 24. (1)The duties imposed by [section] sections 22 and 22A on an accountable institution to keep a record of the matters specified in [that section] those sections may be performed by a third party on behalf of the accountable institution as long as the accountable institution has free and easy access to the records <u>and the records are readily available to the Centre and the relevant supervisory body for the purposes of performing its functions in terms of this Act.</u> (2)If a third party referred to in subsection (1) fails to properly comply with the requirements of [section] sections 22 and 22A on behalf of the accountable institution concerned, the accountable institution is liable for that failure. (3) If an accountable institution appoints a third party to perform the duties imposed on it by [section] sections 22 and 22A, the accountable institution must forthwith provide the Centre <u>and the supervisory body concerned</u> with the prescribed particulars regarding the third party. (4)<u>Records kept in terms of sections 22 and 22A may be kept in electronic form and must be capable of being reproduced in a legible format.</u> (5) Records kept in terms of sections 22 and 22A must be kept in the Republic”.</p>	<p>It is proposed that the requirement to keep the records in the Republic be deleted. Minimum standards requiring accessibility and security of recorded information can be set by means of a directive.</p>

27	<p>“[Formulation and implementation of internal rules] Risk Management and Compliance Programme</p> <p>42. (1) An accountable institution must [formulate] develop, document, maintain and implement [internal rules concerning—</p> <p>(a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of this Chapter;</p> <p>(b) the information of which record must be kept in terms of Part 2 of this Chapter;</p> <p>(c) the manner in which and place at which such records must be kept;</p> <p>(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</p> <p>(e) such other matters as may be prescribed] a programme for anti-money laundering and counter-terrorist financing risk management and compliance.</p> <p>(2) [Internal rules must comply with the prescribed requirements] A Risk Management and Compliance Programme must—</p> <p>(a) enable the accountable institution to—</p> <p>(i) identify;</p> <p>(ii) assess;</p> <p>(iii) monitor;</p> <p>(iv) mitigate, and</p> <p>(v) manage,</p> <p>the risk that the provision by the accountable institution of products or services may involve or facilitate money laundering activities or the financing of terrorist and related activities;</p> <p><u>(b) provide for the manner in which the institution determines if a person is—</u></p> <p><u>(i) a prospective client in the process of establishing a business relationship or entering into a single transaction with the institution; or</u></p> <p><u>(ii) a client who has established a business relationship or entered into a single transaction is a client with the institution;</u></p> <p>(be) provide for the manner in which and the processes by which the establishment and verification of the identity of persons whom the accountable institution must identify in terms of Part 1 of this Chapter is performed in the institution;</p> <p>(ed) provide for the manner in which the institution determines whether future transactions that will be performed in the course of the business relationship are consistent with the institution’s knowledge of a prospective client;</p> <p>(de) provide for the manner in which and the processes by which the institution conducts additional due diligence measures in respect of legal persons, trust and partnerships;</p> <p>(ef) provide for the manner in which and the processes by which ongoing due diligence and account monitoring in respect of business relationships is conducted by the institution;</p> <p>(fg) provide for the manner in which the examining of—</p> <p>(i) complex or unusually large transactions; and</p> <p>(ii) unusual patterns of transactions which have no apparent business or lawful purpose,</p>	<p>It is proposed that ‘client’ and ‘prospective client’ be determined by an institution in line with its RMCP. In 22 Feb Addendum in par (q) but now proposed to be a new par (b).</p>
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	<p>and keeping of written findings relating thereto, is done by the institution;</p> <p><i>(gl)</i> provide for the manner in which and the processes by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information;</p> <p><i>(hi)</i> provide for the manner in which and the processes by which the institution will perform the customer due diligence requirements in accordance with sections 21, 21A, 21B and 21C when, during the course of a business relationship, the institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29;</p> <p><i>(ij)</i> provide for the manner in which the accountable institution will terminate an existing business relationship as contemplated in section 21E;</p> <p><i>(jk)</i> provide for the manner in which and the processes by which the accountable institution determines whether a prospective client is a foreign prominent public official or a domestic prominent influential person;</p> <p><i>(kl)</i> provide for the manner in which and the processes by which enhanced due diligence is conducted for higher-risk business relationships and when simplified customer due diligence might be permitted in the institution;</p> <p><i>(lm)</i> provide for the manner in which and place at which the records are kept in terms of Part 2 of this Chapter;</p> <p><i>(mn)</i> enable the institution to determine when a transaction or activity is reportable to the Centre under Part 3 of this Chapter;</p> <p><i>(no)</i> provide for the processes for reporting information to the Centre under Part 3 of this Chapter;</p> <p><i>(op)</i> provide for the manner in which—</p> <p>(i) the Risk Management and Compliance Programme is implemented in branches, subsidiaries or other operations of the institution in foreign countries so as to enable the institution to comply with its obligations under this Act;</p> <p>(ii) the institution will determine if the host country of a foreign branch or subsidiary permits the implementation of measures required under this Act; and</p> <p>(iii) the institution will inform the Centre and supervisory body concerned if the host country contemplated in sub-paragraph (ii) does not permit the implementation of measures required under this Act;</p> <p><i>(p)</i> provide for the processes for the institution to implement its Risk Management and Compliance Programme;</p> <p><i>(qr)</i> provide for any prescribed matter.</p> <p>(2A) The board of directors, senior management or other person or group of persons exercising the highest level of authority in an accountable institution must approve the Risk Management and Compliance Programme of the institution.</p> <p>(2B) An accountable institution must review its Risk Management and Compliance Programme at regular intervals to ensure that the Programme remains relevant to the accountable institution's operations and the achievement of the requirements contemplated</p>	
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	<p>in subsection (2).</p> <p>(3) An accountable institution must make [its internal rules] documentation describing its Risk Management and Compliance Programme available to each of its employees involved in transactions to which this Act applies.</p> <p>(4) An accountable institution must, on request, make a copy of [its internal rules] the documentation describing its Risk Management and Compliance Programme available to—</p> <p>(a) the Centre; or</p> <p>(b) a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution.”.</p>	
New clause 29	<p><u>Consultation process for issuing guidance</u></p> <p><u>42B. Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their duties and obligations in terms of this Act or any directive made in terms of this Act, the Centre must—</u></p> <p><u>(a) publish a draft of the guidance by appropriate means of publication and invite submissions; and</u></p> <p><u>(b) consider submissions received.</u></p>	<p>It is proposed that a new clause be inserted to provide for guidance to be issued after consultation.</p> <p>Propose express requirement to consider submissions received on the draft guidance.</p>
30	<p>30. Section 43A of the principal Act is hereby amended—</p> <p>(a) by the substitution for subsections (1) and (2) of the following subsections:</p> <p>“(1) (a) The Centre may, by notice in the <i>Gazette</i>, issue a directive to all institutions to whom the provisions of this Act apply[,]—</p> <p>(i) regarding the application of this Act; or</p> <p>(ii) which reasonably may be required to give effect to the Centre’s objectives contemplated in section 3.</p> <p>(b) The Centre may issue a directive in terms of paragraph (a) only after consulting with supervisory bodies on that directive.</p> <p>(2) The Centre or a supervisory body may, in writing, issue a directive to any category of accountable institutions or category of reporting institutions or other category of [person] persons to whom the provisions of this Act apply[,]—</p> <p>(a) regarding the application of this Act; or</p> <p>(b) which reasonably may be required to give effect to the Centre’s objectives contemplated in section 3.</p> <p>(b) by the substitution in subsection (6) for paragraph (a) of the following paragraph:</p> <p>“(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]—</p> <p>(i) if a supervisory body failed to issue a directive despite any recommendation of the Centre made in terms of section 44(b); or</p> <p>(ii) [failed to issue a directive within the period specified by the Centre] after consultation with the relevant supervisory body.”</p>	<p>It is proposed that a subsection be inserted that provide for consultation before a directive is issued.</p> <p>Correction of original text.</p>

	<p>(c) by the addition of the following subsection: <u>“(7) Before the Centre or supervisory body concerned issues a directive, it must, -</u> <u>(a) in the case of a directive in terms of—</u> <u>(i) subsection (1), in the <i>Gazette</i>, give notice where a draft of the directive will be available and invite submissions;</u> <u>(ii) a directive in terms of subsection (2), publish a draft of the directive by appropriate means of publication and invite submissions; and</u> <u>(b) consider submissions received.”</u></p>	<p>Propose express requirement to consider submissions received on the draft directive.</p>
32(e)	<p>(e) by the substitution in subsection (5)(b) for subparagraph (iv) of the following subparagraph: <u>“(iv) except information contemplated in subsections (2A) and (2C), if the Director or supervisory body is satisfied that it is in the public interest.”</u>;</p>	<p>Correction</p>
53	<p>“Exemptions for accountable institutions 74. (1) The Minister may, after consulting [the Council and] the Centre, and on conditions and for a period determined by the Minister, exempt from compliance with— (a) any of the provisions of this Act— (i) a person; (ii) an accountable institution; or (iii) a category of persons or accountable institutions; (b) any or all of the provisions of this Act, a person or category of persons or an accountable institution or category of accountable institutions in respect of any one or more categories of transactions. (2) Any exemption referred to in subsection (1)— (a) must be by notice in the <i>Gazette</i> and may be withdrawn or amended by the Minister, after consulting [with the Council and] the Centre <u>and, in respect of an exemption referred to in subsection (1A), the responsible supervisory body;</u> and (b) must be tabled in Parliament before being published in the <i>Gazette</i>. <u>(3) Before the Minister issues or withdraws an exemption referred to in subsection (1), the Minister must—</u> <u>(a) in the <i>Gazette</i>, give notice where a draft of the exemption or withdrawal notice of an exemption will be available and invite submissions; and</u> <u>(b) consider submissions received.”</u></p>	<p>It is proposed that a subsection be inserted that provide for consultation before an exemption is issued or withdrawn.</p> <p>Propose express requirement to consider submissions received on new exemption or the withdrawal of an exemption.</p>
56	<p>“Regulations 77. (1) The Minister, after consulting [the Council and] the Centre, may make, repeal and amend regulations concerning— (a) any matter that may be prescribed in terms of this Act; and (b) any [other] ancillary or incidental administrative or procedural matter which is necessary [or expedient] to prescribe [to promote the objectives] for the proper</p>	<p>It is proposed that a subsection be inserted that provide for consultation before a regulation is made, repealed or amended.</p>

	<p>implementation or administration of this Act.</p> <p>(2) Regulations in terms of subsection (1) may—</p> <p>(a) differ for different accountable institutions, reporting institutions, persons, categories of accountable institutions, reporting institutions and persons and different categories of transactions;</p> <p>(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</p> <p>(c) for a contravention of or failure to comply with any specific regulation, prescribe imprisonment for a period not exceeding [six months] three years or a fine not exceeding [R100 000] R1 000 000 or such administrative sanction as may apply.</p> <p>[(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.]</p> <p>(4) The Minister must table regulations, repeals and amendments made under subsection (1) in Parliament before publication in the <i>Gazette</i>.</p> <p><u>(5) Before making, repealing or amending regulations in terms of subsection (1), the Minister must -</u></p> <p><u>(a) in the Gazette give notice where a draft of the regulations will be available and invite submissions; and</u></p> <p><u>(b) consider submissions received.</u>”</p>	<p>Propose express requirement to consider submissions received on draft regulations.</p>
<p>New clause 57</p>	<p>Arrangements for consultations with stakeholders</p> <p><u>77A. The Centre must, after consulting with supervisory bodies, establish and give effect to arrangements to facilitate consultation with, and the exchange of information with, relevant stakeholders on matters of mutual interest.</u></p>	<p>Propose consultation and exchange of information provision similar to cl 273 of the Financial Sector Regulation Bill.</p>
<p>New clause 58</p>	<p>Amendment of list of domestic prominent influential persons</p> <p><u>79A. (1) The Minister may, by notice in the Gazette, amend the list of domestic prominent influential persons in Schedule 5 to-</u></p> <p><u>(a) add to the list any person or category of persons;</u></p> <p><u>(b) delete any person or category of persons mentioned in paragraph (a)(x) in the list;</u></p> <p><u>(c) make technical changes to the list.</u></p> <p><u>(2) Before the Minister amends Schedule 5 in terms of subsection (1), the Minister must-</u></p> <p><u>(a) in the Gazette give notice where a draft of the amendments will be available and invite submissions; and</u></p> <p><u>(b) consider submissions received.</u></p> <p><u>(3) Any addition to or deletion from the list of persons in Schedule 5 in terms of subsection (1) must, before publication in the Gazette, be submitted to Parliament for its</u></p>	<p>Propose to limit the Minister’s power to delete to only those that justify flexibility, i.e. current application to all the mentioned office-bearers of public entities and/or all public entities regardless of their budget.</p> <p>Propose express requirement to consider submissions received on draft amendments.</p>

	<u>approval.</u>	
New clause 59	<p>Amendment of list of foreign prominent public officials</p> <p>79B. <u>(1) The Minister may, by notice in the <i>Gazette</i>, amend the list of foreign prominent public officials in Schedule 6 to-</u></p> <p><u>(a) add to the list any person or category of persons;</u></p> <p><u>(b) delete any person or category of persons from the list; or</u></p> <p><u>(c) make technical changes to the list.</u></p> <p><u>(2) Before the Minister amends Schedule 6 in terms of subsection (1), the Minister must—</u></p> <p><u>(a) in the <i>Gazette</i> give notice where a draft of the amendments will be available and invite submissions; and</u></p> <p><u>(b) consider submissions received.</u></p> <p><u>(3) Any addition to or deletion from the list of persons in Schedule 6 in terms of subsection (1) must, before publication in the <i>Gazette</i>, be submitted to Parliament for its approval.</u></p>	<p>Propose express requirement to consider submissions following invite on the draft amendments.</p>
52	<p>Short title <u>and commencement</u></p> <p>52. (1) This Act is called the Financial Intelligence Centre Amendment Act, 20152016, and takes effect on a date determined by the Minister by notice in the <i>Gazette</i>.</p> <p>(2) Different dates may in terms of subsection (1) be determined for different —</p> <p>(a) provisions of this Act;</p> <p>(b) categories of accountable institutions or transactions.</p>	<p>Propose that the Amendment Act be brought into operation by the Minister by notice in the <i>Gazette</i> and that different dates may be determined for different provisions and different categories of accountable institutions or transactions.</p>
New Schedule 5 (moved from definition clause)	<p>“<u>SCHEDULE 5</u></p> <p><u>LIST OF DOMESTIC PROMINENT INFLUENTIAL PERSONS</u></p> <p><u>A domestic prominent influential person is an individual who holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic—</u></p> <p><u>(a) a prominent public function including that of—</u></p> <p><u>(i) the President or Deputy President;</u></p>	

<p><u>(ii) a government minister or deputy minister;</u> <u>(iii) the Premier of a province;</u> <u>(iv) a member of the Executive Council of a province;</u> <u>(v) an executive mayor of a municipality elected in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);</u> <u>(vi) a leader of a political party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996);</u> <u>(vii) a member of a royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);</u> <u>(viii) the head, accounting officer or chief financial officer of a national or provincial department or government component, as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);</u> <u>(ix) the municipal manager of a municipality appointed in terms of section 82(1) 54A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or a chief financial officer designated in terms of section 80(2) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003);</u> <u>(x) the chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); or</u> <u>(xi) the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);</u> <u>(xii) a constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001);</u> <u>(xiii) an ambassador or high commissioner or other senior representative of a foreign government based in the Republic;</u> <u>(xiv) an officer of the South African National Defence Force above the rank of major-general;</u></p> <p><u>(b) the position of—</u> <u>(i) chairperson of the board of directors;</u> <u>(ii) chairperson of the audit committee;</u> <u>(iii) executive officer; or</u> <u>(iv) chief financial officer,</u> <u>of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the Gazette; or</u></p>	<p>Propose addition in (viii) accounting officer, since in terms of the Public Finance Management Act (PFMA) (s36(3)), a person other than the head may be the accounting officer</p> <p>Propose in (ix) the addition of the chief financial officer of a municipality to align it to national and provincial departments and municipal entities (par (viii) and (xii))</p> <p>Propose addition in (x) reference to an accounting office since in terms of the PFMA (49(3)), an individual other than the board or CEO may be the accounting authority</p>
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	<u>(c) the position of head, or other executive directly accountable to that head, of an international organisation based in the Republic.”.</u>	
New Schedule 6 (moved from definition clause)	<p style="text-align: center;"><u>“SCHEDULE 6 FOREIGN PROMINENT PUBLIC OFFICIAL</u></p> <p><u>A foreign prominent public official is an individual who holds, or has held at any time in the preceding 12 months, in any foreign country a prominent public function including that of</u></p> <p><u>a—</u></p> <p><u>(a) Head of State or head of a country or government;</u></p> <p><u>(b) member of a foreign royal family;</u></p> <p><u>(c) government minister or equivalent senior politician or leader of a political party;</u></p> <p><u>(d) senior judicial official;</u></p> <p><u>(e) senior executive of a state owned corporation; or</u></p> <p><u>(f) high-ranking member of the military.”.</u></p>	