

DRAFT – 22/4/2016

REPUBLIC OF SOUTH AFRICA

STANDING COMMITTEE AMENDMENTS

TO

FINANCIAL INTELLIGENCE CENTRE

AMENDMENT BILL

[B 33—2015]

(As agreed to by the Standing Committee on Finance (National Assembly))

[B 33A—2015]

AMENDMENTS AGREED TO

FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL

[B 33—2015]

CLAUSE 1

1. On page 3, in line 27, to omit “bearer of negotiable instrument” and to substitute “bearer negotiable instrument”.
2. On page 3, from line 43, to omit the definition of **‘domestic prominent influential person’** and to substitute:

“‘domestic prominent influential person’ means a person referred to in Schedule 3A; ”;
3. On page 4, after line 29, to insert the following paragraph:

(h) by the substitution in subsection (1) in the definition of “entity”, for the expression “2004; and” of the expression “2004;”;
4. On page 4, from lines 32 to 41, to omit the definition of **‘executive officer’**.
5. On page 4, from lines 42 to 51, to omit the definition of **‘foreign prominent public official’** and to substitute:

“‘foreign prominent public official’ means a person referred to in Schedule 3B;
6. On page 5, in line 20, after ‘failure to comply’, to insert:

, ‘noncompliant’
7. On page 5, in line 21, to omit “the **[same] corresponding**” and to substitute:

[the same] a corresponding
8. On page 5, from line 28, to omit paragraph (n) and to substitute:

(n) by the insertion in subsection (1) after the definition of “property” of the following definition:

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

9. On page 5, after line 37, to insert the following paragraph:

(q) by the substitution in subsection (1) for the definition of “**single transaction**” of the following definition:

“ **‘single transaction’** means a transaction—

(a) other than a transaction concluded in the course of a business relationship; and

(b) where the value of the transaction is not less than the amount prescribed, except in the case of section 20A;”;

CLAUSE 3

1. On page 6, in line 39, to omit “**services];**” and to substitute “**services;]**”.

CLAUSE 8

1. On page 7, from lines 16 to 17, to omit “who is entering into that business relationship or single transaction under” and to substitute “with”.

CLAUSE 9

1. On page 7, in line 29, to omit “[**to**]” and to substitute “[**to**]”.

2. On page 7, in line 30, to omit “[**to**]” and to substitute “[**to**]”.

3. On page 7, in line 34, to omit “[**to**]” and to substitute “[**to**]”.

CLAUSE 10

1. On page 8, from line 10, to omit section 21B and to substitute:

21B. (1) If a client contemplated in section 21 is a legal person or a natural person acting on behalf of a partnership, trust or similar arrangement between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme establish—

(a) the nature of the client's business; and

(b) the ownership and control structure of the client.

(2) If a client contemplated in section 21 is a legal person, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme—

(a) establish the identity of the beneficial owner of the client by—

(i) determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person;

(ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means; or

(iii) if a natural person is not identified as contemplated in subparagraph (ii), determining the identity of each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager; and

(b) take reasonable steps to verify the identity of the beneficial owner of the client, so that the accountable institution is satisfied that it knows who the beneficial owner is.

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

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

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

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

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

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

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

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

- (a) establish the identifying name and number of the trust, if applicable;
- (b) establish the address of the Master of the High Court where the trust is registered, if applicable;
- (c) establish the identity of the founder;
- (d) establish the identity of—
 - (i) each trustee; and
 - (ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust;
- (e) establish—
 - (i) the identity of each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; or
 - (ii) if beneficiaries are not referred to by name in the trust deed or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined;
- (f) take reasonable steps to verify the particulars obtained in paragraphs (a), (b) and (e)(ii); and
- (g) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (c), (d) and (e)(i) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.

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

2. On page 9, in line 42, to omit “on-going” and to substitute “ongoing”.
3. On page 9, in line 44, to omit “on-going” and to substitute “ongoing”.
4. On page 9, line 55, to omit “section 21” and to substitute “sections 21, 21A and 21B”.
5. On page 10, from line 7, to omit section 21E and to substitute:

21E. If an accountable institution is unable to—

- (a) establish and verify the identity of a client or other relevant person in accordance with section 21 or 21B;
- (b) obtain the information contemplated in section 21A; or

(c) conduct ongoing due diligence as contemplated in section 21C, the institution—

- (i) may not establish a business relationship or conclude a single transaction with a client;
- (ii) may not conclude a transaction in the course of a business relationship, or perform any act to give effect to a single transaction; or
- (iii) must terminate, in accordance with its Risk Management and Compliance Programme, an existing business relationship with a client, as the case may be, and consider making a report under section 29 of this Act.

- 6. On page 10, in line 26, to omit “to enter into a single transaction or”.
- 7. On page 10, in line 36, to omit “to enter into a single transaction or”.
- 8. On page 10, in line 40, to omit “or single transaction”.

CLAUSE 14

- 1. On page 12, from lines 3 to 4, to omit **“and must be kept in the Republic”**.
- 2. On page 12, from lines 23 to 24, to omit subsection (5).

CLAUSE 17

- 1. On page 13, from lines 30 to 31, to omit “intending that the property, financial or other service or economic support,”.
- 2. On page 13, in line 32, before “as the case may be”, to insert:

intending that the property, financial or other service or economic support,
- 3. On page 14, in line 50, to omit “an official” and to substitute “the Director”.

CLAUSE 20

- 1. On page 16, in line 14, to omit “2004; or” and to substitute “2004; or”.
- 2. On page 16, from line 21, to omit subsection (3) and to substitute:

- “(3) An accountable institution must upon—
- (a) publication of a proclamation by the President under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or
- (b) notice being given by the Director under section 26A(3),
scrutinise its information concerning clients with whom the accountable institution has business relationships in order to determine whether any such client is a person or entity mentioned in the proclamation by the President or the notice by the Director.”.

CLAUSE 21

1. On page 16, in line 48, to omit “than—,” and to substitute “than—”.

CLAUSE 23

1. On page 17, in line 38, to omit “Prosecutions.”;” and to substitute:
 Prosecutions.
2. On page 17, in line 44, to omit “Financial Markets Act” and to substitute “Financial Markets Act, 2012”.

CLAUSE 25

1. On page 18, in line 28, to omit “The Centre may” and to substitute:
Subject to this section, the Centre must
2. On page 18, in line 30, to omit “only”.
3. On page 18, in line 46, after “Protector;”, to insert “or”.
4. on page 19, from lines 19 to 39, to omit subsection (1A) and to substitute:
(1A) Information contemplated in subsection (1) may only be made available to an entity referred to in subsection (1)(a), (aA), (aB), (aC), (aD), (aE), (aF), (aG) or (aH)—
(a) at the initiative of the Centre or at the request of an authorised officer of the entity; and
(b) if the Centre reasonably believes such information is required to investigate suspected unlawful activity.

(1B) Information contemplated in subsection (1) may only be made available to an entity or authority referred to in subsection (1)(b)—

(a) at the initiative of the Centre or at the request of the entity or authority; and

(b) if the Centre reasonably believes such information is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which the entity or authority is established.

(1C) Information contemplated in subsection (1) may only be made available to a supervisory body referred to in subsection (1)(d)—

(a) at the initiative of the Centre or at the request of the supervisory body; and

(b) if the Centre reasonably believes such information is relevant to the exercise by the supervisory body of its powers or performance by it of its functions under any law.

5. On page 19, in line 41, to omit “(1A)(a)(ii), (b)(ii) or (c)(ii)” and to substitute “(1A) or (1C)”.

6. On page 19, from lines 60 to 63, to omit subsection (6) and to substitute:

(6) A person who obtains information from the Centre may use that information only—

(a) within the scope of that person’s powers and duties; and

(b) in the case of a request contemplated in subsection (2), for the purpose specified in **[terms of subsection (2)]** that request.

7. On page 20, from lines 6 to 14, to omit subsection (8) and to substitute:

(8) The Centre must make information it holds available to the appropriate National Intelligence Structure, as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), if it reasonably believes that the information relates to any potential threat or threat to the national security, as defined in section 1 of that Act.

CLAUSE 26

1. On page 20, in line 30, after “information;” to insert “and”.

CLAUSE 27

1. On page 21, in line 13, to omit “, and” and to substitute “; and”.

2. On page 21, after line 17, to insert the following paragraphs:

- (b) provide for the manner in which the institution determines if a person is—
 - (i) a prospective client in the process of establishing a business relationship or entering into a single transaction with the institution; or
 - (ii) a client who has established a business relationship or entered into a single transaction is a client with the institution;
- (c) provide for the manner in which the institution complies with section 20A;

3. On page 21, in line 45, to omit “coure” and to substitute “course”.
4. On page 21, in line 46, to omit “conteplated” and to substitute “contemplated”.
5. On page 21, in line 49, to omit “relationship” and to substitute “relationship”.
6. On page 22, after line 17, to insert the following subsection:

(2A) An accountable institution must indicate in its Risk Management and Compliance Programme if any paragraph of subsection (2) is not applicable to that accountable institution and the reason why it is not applicable.

CLAUSE 28

1. On page 22, in line 36, to omit “**section 42A**” and to substitute “**sections 42A and 42B**”.
2. On page 22, in line 37, to omit “section is” and to substitute “sections are”.
3. On page 23, in line 2, to omit “(3).” and to substitute “(3).”
4. On page 23, after line 2, to insert the following new clause:

Consultation process for issuing guidance

42B. Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their duties and obligations in terms of this Act or any directive made in terms of this Act, the Centre must—

- (a) publish a draft of the guidance by appropriate means of publication and invite submissions; and
- (b) consider submissions received.”.

CLAUSE 29

1. On page 23, in line 8, to omit “on-going” and to substitute “ongoing”.

CLAUSE 30

1. On page 23, in line 32, to omit “person” and to substitute “[**person**] persons”.
2. On page 23, in line 36, to omit “section 3.”, and to substitute:

section 3.”;

3. On page 23, in line 46, to omit “body.” and to substitute
body.”; and

4. On page 23, after line 46, to insert paragraph (c):

(c) by the addition of the following subsection:

“(7) Before the Centre or supervisory body concerned issues a directive, it must—

(a) in the case of a directive in terms of—

(i) subsection (1), in the Gazette, give notice where a draft of the directive will be available and invite submissions;

(ii) subsection (2), publish a draft of the directive by appropriate means of publication and invite submissions; and

(b) consider submissions received.”.

CLAUSE 31

1. On page 24, in line 3, after “party.”, to insert “or”.

CLAUSE 32

1. On page 25, in line 18, after “Schedule 2.”, to insert “or”.
2. On page 25, in line 26, to omit “40(1A)(c)” and to substitute “40(1C)”.
3. On page 25, in line 38, after “contemplated”, to insert “in”.

CLAUSE 34

1. On page 26, in line 35, to omit “documentationsubmitted” and to insert “documentation submitted”.
2. On page 26, in line 41, to omit “may—;” and to insert “may—”.

CLAUSE 35

1. On page 27, in line 6, to omit “or 1A)” and to substitute “or (1A)”.
2. On page 27, in line 6, to omit “commits an act of non-compliance” and to substitute “is noncompliant”.
3. On page 27, in line 9, to omit “commits an act of non-compliance” and to substitute “is noncompliant”.
4. On page 27, in line 10, to omit “sanction.” and to substitute “sanction.”.

CLAUSE 36

1. On page 27, in line 16, to omit “commits an act of non-compliance” and to substitute “is noncompliant”.

CLAUSE 37

1. On page 27, in line 22, after “keep”, to insert “a”.
2. On page 27, in line 25, to omit “commits an act of non-compliance” and to substitute “is noncompliant”.

CLAUSE 41

1. On page 28, from lines 9 to 10, to omit “commits an act of non-compliance” and to substitute “is noncompliant”.

CLAUSE 42

1. On page 28, in line 36, to omit "commits an act of non-compliance" and to substitute "is noncompliant".

CLAUSE 43

1. On page 28, in line 46, to omit "commits an act of non-compliance" and to substitute "is noncompliant".

CLAUSE 44

1. On page 29, in line 8, to omit "commits an act of non-compliance" and to substitute "is noncompliant".

CLAUSE 46

1. On page 29, in line 35, to omit "42(1) and (2)" and to substitute "42(1), **[and]** (2) and (2A)".
2. On page 29, in line 37, to omit "42(2A)" and to substitute "42(2B)".
3. On page 29, in line 37, to omit "42(2B)" and to substitute "42(2C)".
4. On page 29, in line 46, to omit "commits an act of non-compliance" and to substitute "is noncompliant".
5. On page 30, in line 5, to omit "commits an act of non-compliance" and to substitute "is noncompliant".

CLAUSE 47

1. On page 30, in line 12, to omit "commits an act of non-compliance" substitute and to "is noncompliant".
2. On page 30, in line 15, to omit "commits an act of non-compliance" and to substitute "is noncompliant".
3. On page 30, in line 18, to omit "commits an act of non-compliance" and to substitute "is noncompliant".

CLAUSE 48

1. On page 30, in line 26, to omit "commits an act of non-compliance" and to substitute "is noncompliant".

CLAUSE 49

1. On page 30, in line 33, to omit "commits an act of non-compliance" and to substitute "is noncompliant".

CLAUSE 53

1. On page 31, after line 42, to insert the following subsection:

(3) Before the Minister issues, withdraws or amends an exemption referred to in subsection (1), the Minister must—
(a) in the Gazette, give notice where a draft of the exemption or withdrawal notice of an exemption will be available and invite submissions; and
(b) consider submissions received."

CLAUSE 56

1. On page 32, after line 32, to insert the following subsection:

(5) Before making, repealing or amending regulations in terms of subsection (1), the Minister must—
(a) in the Gazette, give notice where a draft of the regulations will be available and invite submissions; and
(b) consider submissions received."

NEW CLAUSES

1. That the following be new clauses to follow clause 56:

Insertion of section 77A in Act 38 of 2001

59. The following section is hereby inserted in the principal Act after section 77:

"Arrangements for consultations with stakeholders

77A. The Centre must, after consulting with supervisory bodies, establish and give effect to arrangements to facilitate consultation with,

and the exchange of information with, relevant stakeholders on matters of mutual interest.”.

Insertion of sections 79A and 79B in Act 38 of 2001

60. The following sections are hereby inserted in the principal Act after section 78:

“Amendment of list of domestic prominent influential persons

79A. (1) The Minister may, by notice in the *Gazette*, amend the list of domestic prominent influential persons in Schedule 3A to—

(a) add to the list any person or category of persons;

(b) delete any person or category of persons mentioned in paragraph (a)(x) in the list; or

(c) make technical changes to the list.

(2) Before the Minister amends Schedule 3A in terms of subsection (1), the Minister must—

(a) in the *Gazette*, give notice where a draft of the amendments will be available and invite submissions; and

(b) consider submissions received.

(3) Any addition to or deletion from the list of persons in Schedule 5 in terms of subsection (1) must, before publication in the *Gazette*, be submitted to Parliament for its approval.

Amendment of list of foreign prominent public officials

79B. (1) The Minister may, by notice in the *Gazette*, amend the list of foreign prominent public officials in Schedule 3B to—

(a) add to the list any person or category of persons;

(b) delete any person or category of persons from the list; or

(c) make technical changes to the list.

(2) Before the Minister amends Schedule 6 in terms of subsection (1), the Minister must—

(a) in the *Gazette*, give notice where a draft of the amendments will be available and invite submissions; and

(b) consider submissions received.

(3) Any addition to or deletion from the list of persons in Schedule 3B in terms of subsection (1) must, before publication in the *Gazette*, be submitted to Parliament for its approval.”.

Insertion of Schedules 3A and 3B in Act 38 of 2001

60. The following schedules are hereby inserted after Schedule 3 to the principal Act:

“SCHEDULE 3A

DOMESTIC PROMINENT INFLUENTIAL PERSON

A domestic prominent influential person is an individual who holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic—

- (a) a prominent public function including that of—
- (i) the President or Deputy President;
 - (ii) a government minister or deputy minister;
 - (iii) the Premier of a province;
 - (iv) a member of the Executive Council of a province;
 - (v) an executive mayor of a municipality elected in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
 - (vi) a leader of a political party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996);
 - (vii) a member of a royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);
 - (viii) the head, accounting officer or chief financial officer of a national or provincial department or government component, as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
 - (ix) the municipal manager of a municipality appointed in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or a chief financial officer designated in terms of section 80(2) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
 - (x) the chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
 - (xi) the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

- (xii) a constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001);
- (xiii) an ambassador or high commissioner or other senior representative of a foreign government based in the Republic;
- (xiv) an officer of the South African National Defence Force above the rank of major-general;
- (b) the position of—
 - (i) chairperson of the board of directors;
 - (ii) chairperson of the audit committee;
 - (iii) executive officer; or
 - (iv) chief financial officer,of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the Gazette; or
- (c) the position of head, or other executive directly accountable to that head, of an international organisation based in the Republic.

SCHEDULE 3B

FOREIGN PROMINENT PUBLIC OFFICIAL

A foreign prominent public official is an individual who holds, or has held at any time in the preceding 12 months, in any foreign country a prominent public function including that of a—

- (a) Head of State or head of a country or government;
- (b) member of a foreign royal family;
- (c) government minister or equivalent senior politician or leader of a political party;
- (d) senior judicial official;
- (e) senior executive of a state owned corporation; or
- (f) high-ranking member of the military.”.

CLAUSE 57

1. On page 32, line 40, after “**activities;**”, to insert:

to provide for customer due diligence measures including with respect to beneficial ownership and persons in prominent positions;

2. On page 33, in line 2, after “**bodies;**” to insert:

to provide for arrangements on consultation with stakeholders;

CLAUSE 58

1. On page 33, from line 6, to omit section 58 and to substitute:

Short title and commencement

61. (1) This Act is called the Financial Intelligence Centre Amendment Act, 2016, and takes effect on a date determined by the Minister by notice in the Gazette.

(2) Different dates may in terms of subsection (1) be determined for different—

- (a) provisions of this Act;
- (b) categories of accountable institutions or transactions.

LONG TITLE

1. On page 2, in the twenty-sixth line, after “**matters;**”, to insert:

to provide for public comment before instruments are issued under the Act and arrangements on consultation with stakeholders on matters of mutual interest;