

**AMENDMENTS PROPOSED BY NATIONAL TREASURY AND FINANCIAL
INTELLIGENCE CENTRE TO SECTION 45B IN CLAUSE 32 OF FINANCIAL
INTELLIGENCE CENTRE AMENDMENT BILL [B 33B-2015]**

TEXT IN RED: PROPOSED AMENDMENTS

TEXT IN BLACK AND UNDERLINED: INSERTIONS IN BILL PASSED BY PARLIAMENT

TEXT IN BLACK, BOLD AND SQUARE BRACKETS: DELETIONS IN BILL PASSED BY PARLIAMENT

45B. Inspections

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

(b) [For]An inspector appointed in terms of section 45A may enter the premises, excluding a private residence, of an accountable institution or reporting institution which is registered in terms of section 43B or otherwise licensed or authorised by ~~the~~ a supervisory body and inspect the affairs of ~~an~~**the** accountable institution or reporting institution, as the case may be, for the purposes of determining compliance **[with this Act or any order, determination or directive made in terms of this Act {an inspector may at any reasonable time and on reasonable notice, where appropriate, enter and inspect any premises at which the Centre or, when acting in terms of section 45(1), the supervisory body reasonably believes that the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted}]**.

(1A) An inspector appointed in terms of section 45A may, for the purposes of determining compliance ~~with this Act or any order, determination or directive made in terms of this Act~~, and on the authority of a warrant issued under subsection (1B), enter **and inspect**—

(a) a private residence; or

(b) any premises other than premises contemplated in subsection (1)(b) or paragraph (a) (in this section referred to as “**unlicensed business premises**”), if the Centre or, ~~when acting in terms of section 45(1)~~, a supervisory body, ~~as the case may be~~, reasonably believes that the residence or premises are used for a business to which the provisions of this Act apply.

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

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

(b) if it appears to the magistrate or judge from the information under oath or affirmation that—

(i) there are reasonable grounds for suspecting that an act of non-compliance has occurred;

(ii) entry **and inspection** of the **private** residence or **unlicensed business** premises are likely to yield information pertaining to the non-compliance; and

(iii) entry and inspection of ~~the~~ that residence or those premises ~~is~~ are reasonably necessary for the purposes of ~~this Act~~ determining compliance.

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

(a) with the consent of—

(i) in the case of a private residence—

(aa) the ~~owner or~~ person apparently in ~~physical~~ control of the ~~premises~~ business reasonably believed to be conducted at the private residence; and

(bb) the occupant of the part of the private residence to be entered and inspected; or

(ii) in the case of unlicensed business premises, the person apparently in control of the business reasonably believed to be conducted at the premises,

after ~~that owner or person was informed~~ informing him or her that he or she is under no obligation to admit the inspector in the absence of a warrant; or

(b) with the prior authority of the Director or the head of a supervisory body, or a senior staff member of the Centre or supervisory body delegated to perform the function, if the ~~inspector~~ Director, head or senior staff member on reasonable grounds believes that—

(i) a warrant will be issued under subsection (1B) if ~~the inspector~~ applied for ~~it~~; and

(ii) the delay in obtaining the warrant is likely to defeat the purpose for which ~~the inspector seeks to enter~~ entry and inspection of the private residence or unlicensed business premises is sought; and

(iii) it is necessary to enter and inspect that residence or those premises to perform any or all of the actions contemplated in section 45B(2)(a) to (f).

(1D) Where an inspector enters and inspects a private residence or unlicensed business premises without a warrant, he or she must do so—

(a) at a reasonable time within ordinary business hours or, if the inspector on reasonable grounds believes that the purpose for which the entry and inspection is sought, is likely to be defeated by a delay, as closely to ordinary business hours as the circumstances reasonably permit;

(b) on reasonable notice, where appropriate; and

(c) with strict regard to ~~decency and good order, including to a~~ an affected person's right to—

(i) ~~respect for and the protection of~~ dignity;

(ii) freedom and security; and

(iii) ~~personal~~ privacy; and

(iv) other constitutional rights; and

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

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

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

- (2) An inspector, in conducting an inspection, may—
- (a) in writing direct a person to appear for questioning before the inspector at a reasonable 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 to whom this Act applies—
 - (i) to produce that document; or
 - (ii) to furnish the inspector at the place and in the manner reasonably 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 reasonably 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 to whom this Act applies or, against the issue of a receipt, remove that document temporarily for that purpose; and
 - (f) against the issue of a receipt, seize any document obtained in terms of paragraphs (c) to (e), which in the opinion of the inspector may constitute evidence of non-compliance with a provision of this Act or any order, determination or directive made in terms of this Act.

(2A) When acting in terms of subsection (2)(b) or (d), an inspector of—

- (a) the Centre;
- (b) a supervisory body referred to in item 1 or 2 of Schedule 2;
- (c) any other supervisory body meeting the prescribed criteria,
may order from an accountable institution or reporting institution under inspection the production of a copy of a report, or the furnishing of a fact or information related to the report, contemplated in section 29.

(2B) If the inspector of a supervisory body, referred to in subsection (2A)(b) or (c), obtained a report, or a fact or information related to the report, under subsection (2A), that supervisory body must request information from the Centre under section 40(1A)(c) relating to the report contemplated in section 29 which may be relevant to such inspection.

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

- (3) An accountable institution, reporting institution or other person to whom this Act applies, must without delay provide reasonable assistance to an inspector acting in terms of subsection (2).
- (4) The Centre or a supervisory body may recover all expenses necessarily incurred in conducting an inspection from an accountable institution or reporting institution **[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) except information contemplated in subsections (2A) and (2C), 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.]