



DA Proposal to Amend the Financial Intelligence Centre Amendment Bill B33B- 2015

Words in **[bold type in square brackets]** indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

Words in **red** indicate omissions or insertions by National Treasury in their proposal.

Words in **yellow highlighter** indicate DA proposed omissions or insertions in Treasury's proposal.

32. Section 45B of the principal Act is hereby amended—

- (1) (a) In this section “compliance” means compliance with 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 **and inspect** 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] for the purpose of conducting a routine inspection of** the affairs of **[an] the** accountable institution or reporting institution, as the case may be, **[for the purposes of determining] to determine** 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.]

(c) The routine inspections contemplated in subsection (a) may be conducted without a warrant, but must be conducted-

(i) with reasonable notice having been given to, or consent having been acquired from, the accountable institution or reporting institution, as the case may be; and

(ii) in a manner that is consistent with the provisions set out in Section 45B(1D) below.

(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;

(b) any premises other than premises contemplated in subsection (1)(b) or paragraph

(a) [(in this section referred to as “unlicensed business premises”)]; or

(c) any premises contemplated in subsection (1)(b), where reasonable grounds for suspecting that an act of non-compliance has occurred.

Provided that in the case of a private residence or business premises referred to in (a) and (b) [if the Centre or, when acting in terms of section 45(1), the supervisory body, as the case may be,] reasonably believes that the private residence or business premises referred to in (a) and (b) 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 enter and inspect [have access to] 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 [to] the private residence or [unlicensed] business premises are [is] likely to yield information pertaining to the non-compliance; and

(iii) entry and inspection of [to] the private residence or [unlicensed] business premises are [is] reasonably necessary for the purposes of this Act.

(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 (1A[B]) may enter and inspect that private residence or those [unlicensed] business [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 business premises, the person apparently in physical control of the business reasonably believed to be conducted at the business premises, after informing him or her [that owner or person was informed] that he or she is under no obligation to admit the inspector in the absence of a warrant; or

(b) with the prior authorisation of the Director or the head of a supervisory body, or a senior staff member of the Centre delegated to perform the function, if the Director, head or senior staff member and the inspector on reasonable grounds believe[s] 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) in respect of a private residence: the premises are used for business purposes by an accounting institution or reporting institution which is registered in terms of section 43B or otherwise licensed or authorised by the supervisory body; and

(iv) it is necessary to enter and inspect that private residence or business premises in order to perform any or all of the actions contemplated in section 45B(2)(a) to (f); or

(1D) Where an inspector enters and inspects a private residence or [unlicensed] business premises with or 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,] inspection is in terms of (1C)(b) or (c) as close 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;

(v) Limiting the scope of the inspection to only such documents and items as are reasonably relevant to the purpose of the inspection.

(e) Only for the purpose of determining compliance with this Act or any order, determination or directive made under this Act, which for the purpose of this section means compliance with an accountable institution's or reporting institution's obligations under sections 46, 46A, 47, 51(2), 51A(4)(c), 56(2), 58(2), 61, 61B, 62 or 62E or an order, determination or directive related to any of those sections.

[(1E) Subsections (1D)(c) applies with the necessary changes where an inspector enters premises on the authority of a warrant.]