

# FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001

[ASSENTED TO 28 NOVEMBER 2001]

[DATE OF COMMENCEMENT: 1 FEBRUARY 2002]

(Unless otherwise indicated)

*(English text signed by the President)*

## Regulations under this Act

EXEMPTIONS IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001

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EXEMPTIONS IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001

GUIDANCE CONCERNING IDENTIFICATION OF CLIENTS

MONEY LAUNDERING CONTROL REGULATIONS

## ACT

**To establish a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes; 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.**

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### 1 Definitions

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

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

**'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;

**'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 Money Laundering Advisory Council established by section 17;

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

**'intelligence service'** means the National Intelligence Agency or the South African Secret Service established by section 3 of the Intelligence Services Act, 1994 (Act 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>

**'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 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 108 of 1996);

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

**'Prevention Act'** means the Prevention of Organised Crime Act, 1998 (Act 121 of 1998);

**'proceeds of unlawful activities'** has the meaning attributed to that term in section 1 of the Prevention Act,<sup>2\*3</sup>

**'property'** has the meaning attributed to that term in section 1 of the Prevention Act,<sup>4\*</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;

**'South African Revenue Service'** means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 (Act 34 of 1997);

**'supervisory body'** means a functionary or institution referred to in Schedule 2;

**'this Act'** includes a regulation made in terms of section 77;

**'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>5\*</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.

## **CHAPTER 1**

### **FINANCIAL INTELLIGENCE CENTRE (ss 2-16)**

#### **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.

(2) The other objectives of the Centre are-

- (a) to make information collected by it available to investigating authorities, the intelligence services and the South African Revenue Service to facilitate the administration and enforcement of the laws of the Republic;
- (b) to exchange information with similar bodies in other countries regarding money laundering activities and similar offences.

#### **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 by them of their duties and their compliance with the provisions of this Act;

- (d) retain the information referred to in paragraph (a) in the manner and for the period required by this Act.

## **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 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 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 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 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 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**

### **MONEY LAUNDERING ADVISORY COUNCIL (ss 17-20)**

#### **17 Establishment**

A Money Laundering Advisory Council is hereby established.

#### **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 MONEY LAUNDERING CONTROL MEASURES (ss 21-45)**

[Date of commencement of Chapter 3: to be proclaimed.]

### ***Part 1 Duty to identify clients (s 21)***

## **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.

[Date of commencement of sub-s. (1): 30 June 2003.]

(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.

[Date of commencement of sub-s. (2): to be proclaimed.]

***Part 2***  
***Duty to keep record (ss 22-26)***

**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.

[Date of commencement of s. 22: 30 June 2003.]

### **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.

[Date of commencement of s. 23: 30 June 2003.]

### **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.

[Date of commencement of s. 24: 30 June 2003.]

### **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.

[Date of commencement of s. 25: 30 June 2003.]

## **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.

(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).

[Date of commencement of s. 26: 30 June 2003.]

### ***Part 3***

#### ***Reporting duties and access to information (ss 27-41)***

## **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.

[Date of commencement of s. 27: 3 February 2003.]

## **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.

[Date of commencement of s. 28: to be proclaimed.]

## **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 suspects that-

- (a) the business has received or is about to receive the proceeds of unlawful 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;
  - (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; or
  - (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
- (c) the business has been used or is about to be used in any way for money laundering purposes,

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.

(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.

[Date of commencement of s. 29: 3 February 2003.]

### **30 Conveyance of cash to or from Republic**

(1) A person intending to convey an amount of cash in excess of the prescribed amount to or from the Republic must, before that person conveys the cash into or out of the Republic, report the prescribed particulars concerning that conveyance to a person authorised by the Minister for this purpose.

(2) A person authorised in terms of subsection (1) must without delay send a copy of the report to the Centre.

[Date of commencement of s. 30: to be proclaimed.]

### **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.

[Date of commencement of s. 31: to be proclaimed.]

### **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.

[Date of commencement of s. 32: 3 February 2003.]

### **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.

[Date of commencement of s. 33: 3 February 2003.]

### **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 or 29, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or may constitute money laundering or may constitute 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.

(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 Stock Exchanges Control Act, 1985, or the Financial Markets Control Act, 1989, apply.

[Date of commencement of s. 34: 3 February 2003.]

### **35 Monitoring orders**

(1) A judge designated by the Minister of Justice for the purposes of the Interception and Monitoring Prohibition Act, 1992 (Act 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 to the accountable institution or is using or may use the accountable institution for money laundering purposes or for the purpose

of any transaction contemplated in section 29 (1) (b); or

- (b) that account or other facility has received or may receive the proceeds of unlawful activities or is being or may be used for money laundering purposes or for the purpose of any transaction contemplated in section 29 (1) (b).

(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.

[Date of commencement of s. 35: 3 February 2003.]

### **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, as a result of a transaction concluded by or with the 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 of that fact and furnish the Centre with all information and any records regarding that knowledge or suspicion which the Centre may reasonably require for the achievement of its objectives.

(2) If the Centre believes that a supervisory body or the South African Revenue Service may have information indicating that an accountable institution, as a result of a transaction concluded by or with the 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 with all information and any records regarding that

knowledge or suspicion which the Centre may reasonably require for the achievement of its objectives.

(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.

[Date of commencement of s. 36: 3 February 2003.]

### **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.

(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.

[Date of commencement of s. 37: 3 February 2003.]

### **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, 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.

(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.

[Date of commencement of s. 38: 3 February 2003.]

### **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.

[Date of commencement of s. 39: 3 February 2003.]

### **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 activities or similar offences in the country in which that entity is established;
- (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).

[Date of commencement of s. 40: 3 February 2003.]

#### **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.

[Date of commencement of s. 41: 3 February 2003.]

#### ***Part 4***

#### ***Measures to promote compliance by accountable institutions (ss 42-43)***

#### **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.

[Date of commencement of s. 42: 30 June 2003.]

#### **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.

[Date of commencement of s. 43: 30 June 2003.]

### ***Part 5*** ***Referral and supervision (ss 44-45)***

#### **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.

[Date of commencement of s. 44: 3 February 2003.]

#### **45 Responsibility for supervision of accountable institutions**

(1) Each supervisory body is responsible for supervising compliance with the provisions of this Chapter by each accountable institution regulated or supervised by it.

(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.

[Date of commencement of s. 45: 3 February 2003.]

## **CHAPTER 4 OFFENCES AND PENALTIES (ss 46-71)**

### **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.

[Date of commencement of sub-s. (1): 30 June 2003.]

(2) An accountable institution that concludes any transaction in contravention of section 21 (2) is guilty of an offence.

[Date of commencement of s. 46 (2): 1 July 2004.]

### **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.

[Date of commencement of s. 47: 30 June 2003.]

#### **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.

[Date of commencement of s. 48: 30 June 2003.]

#### **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.

[Date of commencement of s. 49: 30 June 2003.]

#### **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.

[Date of commencement of s. 50: 3 February 2003.]

#### **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.

[Date of commencement of s. 51: to be proclaimed.]

#### **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.

[Date of commencement of s. 52: 3 February 2003.]

#### **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.

[Date of commencement of s. 53: 3 February 2003.]

#### **54 Failure to report conveyance of cash into or out of Republic**

Any person who wilfully fails to report the conveyance of cash into or out of the Republic in accordance with section 30 (1), is guilty of an offence.

[Date of commencement of s. 54: to be proclaimed.]

#### **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 to the Centre in accordance with that section, is guilty of an offence.

[Date of commencement of s. 55: to be proclaimed.]

#### **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.

[Date of commencement of s. 56: to be proclaimed.]

#### **57 Failure to comply with request**

An accountable institution, reporting institution or any other person that fails to comply with a request made by the Centre or an investigating authority acting under the authority of an authorised officer in terms of section 32 (2), is guilty of an offence.

[Date of commencement of s. 57: 3 February 2003.]

#### **58 Failure to comply with direction by Centre**

An accountable institution that fails to comply with a direction by the Centre in terms of section 34 (1), is guilty of an offence.

[Date of commencement of s. 58: 3 February 2003.]

## **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.

[Date of commencement of s. 59: 3 February 2003.]

## **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;
- (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.

[Date of commencement of s. 60: 3 February 2003.]

## **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.

[Date of commencement of s. 61: 30 June 2003.]

## **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.

[Date of commencement of s. 62: 30 June 2003.]

## **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.

[Date of commencement of s. 63: 3 February 2003.]

## **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.

[Date of commencement of s. 64: 3 February 2003.]

## **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.

[Date of commencement of s. 65: 3 February 2003.]

## **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.

[Date of commencement of s. 66: 3 February 2003.]

## **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.

[Date of commencement of s. 67: 3 February 2003.]

## **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 R10 000 000.

[Date of commencement of sub-s. (1): 3 February 2003.]

(2) A person convicted of an offence mentioned in section 55, 61 or 62 is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R1 000 000.

[Date of commencement of sub-s. (2): 30 June 2003.]

## **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.

[Date of commencement of s. 69: 3 February 2003.]

## **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 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 contemplated in section 30 (1).

(3) Any cash 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 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 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.

(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 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 property concerned if that person

proves-

- (a) that he or she acquired the interest in that cash or property in good faith; and
- (b) that he or she did not know that the cash or property in question was-
  - (i) conveyed as contemplated in section 30 (1) or that he or she could not prevent the cash 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 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 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 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 the value of the property forfeited; or
- (b) the applicant had an interest in the cash 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 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.

[Date of commencement of s. 70: to be proclaimed.]

## **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.

[Date of commencement of s. 71: 3 February 2003.]

## **CHAPTER 5 MISCELLANEOUS (ss 72-82)**

### **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.

[Date of commencement of s. 79: 3 February 2003.]

## **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**

[Date of commencement of Schedule 1: 1 March 2002.]

1. An attorney as defined in the Attorneys Act, 1979 (Act 53 of 1979).

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 Agents Act, 1976 (Act 112 of 1976).
4. A financial instrument trader as defined in the Financial Markets Control Act, 1989 (Act 55 of 1989).
5. A management company registered in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981).
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), including an insurance broker and an agent of an insurer.
9. A person who carries on a business in respect of which a gambling licence is required to be issued by a provincial licensing authority.
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 rendering investment advice or investment broking services, including a public accountant as defined in the Public Accountants and Auditors Act, 1991 (Act 80 of 1991), who carries on such a business.
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. A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act 1 of 1985).
16. The Ithala Development Finance Corporation Limited.
17. A person who has been approved or who falls within a category of persons approved

by the Registrar of Stock Exchanges in terms of section 4 (1) (a) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985).

18. A person who has been approved or who falls within a category of persons approved by the Registrar of Financial Markets in terms of section 5 (1) (a) of the Financial Markets Control Act, 1989 (Act 55 of 1989).
19. A person who carries on the business of a money remitter.

## **Schedule 2**

### **LIST OF SUPERVISORY BODIES**

[Date of commencement of Schedule 2: 1 March 2002.]

1. The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990).
2. The South African Reserve Bank as defined in the South African Reserve Bank Act, 1989 (Act 90 of 1989).
3. The Registrar of Companies as defined in the Companies Act, 1973 (Act 61 of 1973).
4. The Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act 112 of 1976).
5. The Public Accountants and Auditors Board established in terms of the Public Accountants and Auditors Act, 1991 (Act 80 of 1991).
6. The National Gambling Board established in terms of the National Gambling Act, 1996 (Act 33 of 1996).
7. The JSE Securities Exchange South Africa.
8. The Law Society of South Africa.

## **Schedule 3**

### **LIST OF REPORTING INSTITUTIONS**

[Date of commencement of Schedule 3: 1 March 2002.]

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, 1998 (ACT 121 OF 1998)**

[Date of commencement of Schedule 4: 3 February 2003.]

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'

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**<sup>1</sup>Money laundering**

4. 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.

**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.'\*

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<sup>2</sup>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'.

<sup>3</sup>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'.\*

<sup>4</sup>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'.

<sup>5</sup>In terms of section 1 of the Prevention Act, this term means 'conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere'.