

GOVERNMENT OF ZAMBIA

ACT

No. 4 of 2016

Date of Assent: 5th April, 2016

An Act to amend the Financial Intelligence Centre Act, 2010.

[6th April, 2016

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Financial Intelligence Centre (Amendment) Act, 2016, and shall be read as one with the Financial Intelligence Centre Act, 2010, in this Act referred to as the principal Act.

Short title
Act No. 46
of
2010

2. Section *two* of the principal Act is amended by—

Amendment
of
section 2

(a) the insertion of the figure “(1)” between the figure 2 and the words “in this Act”;

(b) the insertion in the definition of “suspicious transaction report” immediately after the words “financing of terrorism” wherever they appear, of the words “or proliferation”;

(c) the deletion of the definitions of “bearer negotiable instrument,” “beneficial owner,” “reporting entity” and “wire transfer” and the substitution therefor of the following:

“bearer negotiable instrument” includes a monetary instrument in bearer form such as a traveller’s cheque, negotiable instrument, cheque, promissory note, money order, electronic funds transfer and digital currency, that is—

(a) in bearer form;

(b) endorsed without restriction;

(c) made out to a fictitious payee or in such form that title thereto passes upon delivery;

(d) an incomplete negotiable instrument, including a bill of exchange, cheques and money order signed, but with the payee's name omitted;

“beneficial owner” means an individual—

(a) who owns or effectively controls a client of a reporting entity, including the individual on whose behalf a transaction is conducted; or

(b) who exercises effective control over a legal person or trust;

“reporting entity” means—

(a) an institution regulated by a supervisory authority; or

(b) an institution or designated non-financial business or profession supervised by the Centre pursuant to section *five*; and

“wire transfer” means a transaction carried out on behalf of an originator who may be the beneficiary, through a financial institution, including an institution that originates the wire transfer and an intermediary institution that participates in completion of the transfer, by electronic means, with a view to making an amount of money available to a beneficiary at another financial institution;

(d) the insertion, in the appropriate places, of the following new definitions:

“business relationship” means an association entered into between a client and a reporting entity for commercial or transactional purposes;

“client” means a person who has entered into a business relationship or a single transaction with a reporting entity;

“close associate” includes an individual who—

(a) is known to have joint beneficial ownership or control of a legal entity or legal arrangement, or any other close business relation, with a politically-exposed person; and

(b) has sole beneficial ownership or control of a legal entity or legal arrangement which is known to have been set up for the benefit of a politically-exposed person;

“designated non-financial business or profession” includes—

- (a) a motor vehicle dealer;
- (b) a casino or gaming operator;
- (c) a precious stone or metal dealer;
- (d) a non-governmental organisation;
- (e) a real estate agent;
- (f) an accountant or auditor, who is a sole practitioner or partner in an accounting or auditing firm;
- (g) a legal practitioner, who is a sole practitioner or partner in a firm; or
- (h) any other business or profession in which the risk of money laundering and terrorist financing exists, as the Minister may by statutory instrument designate on the advice of the Centre;

“high-risk customer” includes—

- (a) a non-resident customer;
- (b) a private banking customer;
- (c) a legal person or legal arrangement that is a personal asset holding vehicle;
- (d) a politically-exposed person;
- (e) a company that has a nominee shareholder or shares in bearer form; or
- (f) a customer that performs a transaction on behalf of another person, whether the identity of such other person is disclosed or not;

“immediate family member” in relation to an individual includes—

- (a) a spouse;
- (b) a sibling;

(c) a child and where applicable the spouse of a child; and

(d) a parent;

“legal person” means an entity other than a natural person that can establish a permanent customer relationship with a financial institution or otherwise own property;

“negotiable instrument” means an instrument such as a cheque, bill of exchange or promissory note, that embodies a right to payment and satisfies the requirements for negotiability under a law governing negotiable instruments;

“non-governmental organisation” has the meaning assigned to it in the Non-Governmental Organisations’ Act, 2009;

“originator” means the account holder or, where there is no account, the person that places the order to perform a wire transfer with a financial institution;

“politically-exposed person” means—

(a) an individual who holds, or has held, public office, and includes—

(i) a Head of State or Government;

(ii) a Minister;

(iii) a Deputy Minister;

(iv) a politician;

(v) a political party official;

(vi) a judicial official or other senior official of a quasi-judicial body;

(vii) a military official;

(viii) a member of an administrative, management or supervisory body of a State owned enterprise;

(b) an individual who is, or has been, entrusted with a public function by a State, public body or a local or international organisation;

(c) an immediate family member of a person referred to in paragraph (a); or

(d) a close associate of a person referred to in paragraph (a);

“political party” means an association or organisation whose objectives include the contesting of elections in order to form government or influence the policy of the national or local government;

“proliferation” means an act by any person who by any means, directly or indirectly, willfully or negligently provides funds or financial services with the intention that the funds or financial services should be used or knowing that they are to be used in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials, including both technologies and dual use of goods used for non-legitimate purpose;

“public function” means a function performed by a public officer in a public body in an official capacity in relation to the public body;

“public office” means an office occupied by a person in a public body; and

(e) the insertion of the following:

(2) An individual is deemed to own or effectively control a client if the individual—

(a) owns or controls, directly or indirectly, including through trusts or bearer shareholding for any legal person, twenty-five percent or more of the shares or voting rights of the entity;

(b) together with a connected person, owns or controls, directly or indirectly, including through trusts or bearer shareholding for any legal person, twenty-five percent or more of the shares or voting rights of the entity;

(c) despite a less than twenty-five percent share-holding or voting rights, receives a large percentage of the person’s declared dividends; or

(d) exercises control over the management of the person in that person's capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner;

Repeal and replacement of section 5

3. (1) The principal Act is amended by the repeal of section five and the substitution therefor of the following:

Functions of Centre

5. (1) The Centre is the sole designated national centre authorised to receive, request for, analyse and disseminate suspicious transaction reports, including information from foreign designated authorities, made to the Centre under this Act or any other written law.

(2) Despite the generality of subsection (1), the functions of the Centre are to—

- (a) receive, request, analyse and evaluate suspicious transaction reports and information from any other source authorised under any written law to make a suspicious transaction report including a foreign designated authority to determine whether there are reasonable grounds to transmit reports for investigation by law enforcement agencies or foreign designated authorities;
- (b) disseminate information to law enforcement agencies where there are reasonable grounds to suspect money laundering or financing of terrorism or proliferation;
- (c) provide information relating to suspicious transactions to any foreign designated authority, subject to such conditions as the Director-General may determine, in accordance with this Act;
- (d) provide information, advice and assistance to law enforcement agencies in furtherance of an investigation;
- (e) educate the public and reporting entities of their obligations and inform them of measures to detect, prevent and deter money laundering and financing of terrorism or proliferation;

- (f)* provide information to investigating authorities, supervisory bodies, law enforcement agencies and any other competent authority to facilitate law enforcement for prevention of money laundering and financing of terrorism or proliferation;
 - (g)* ensure compliance with this Act and regulations, directives, determinations, notices and circulars issued by the Centre or supervisory authorities, and give guidance to reporting entities to combat money laundering or financing of terrorism or proliferation activities;
 - (h)* facilitate effective supervision and enforcement of this Act by supervisory authorities; and
 - (i)* perform such other functions as are necessary to give effect to this Act.
- (3) The Centre may, in performing its functions under this Act—
- (a)* cooperate and exchange information with, or enter into an agreement or arrangement, in writing, with a foreign designated authority, supervisory authority, law enforcement agency or other relevant authority to facilitate the discharge or performance of its functions under this Act;
 - (b)* conduct inquiries related to suspicious transacting on behalf of foreign designated authorities and notify them of the outcome;
 - (c)* access, directly or indirectly, on a timely basis, financial, administrative and law enforcement information required for the better carrying out of its functions under this Act;
 - (d)* consult with any relevant person, legal person or legal arrangement for the purpose of exercising its functions and powers under this Act;
 - (e)* request information and statistics from a supervisory authority, law enforcement agency, public body, regulatory agency, person or legal arrangement for purposes of this Act or any other law, where the information is required for the discharge of its functions under this Act or for purposes of the Act;

- (f) request a law enforcement agency or competent authority to report progress and outcomes on matters referred to it by the Centre;
- (g) in consultation with a supervisory authority, where applicable, cause an inspection to be made by an officer authorised by the Director-General in writing;
- (h) provide a law enforcement agency or supervisory authority with information derived from an inspection carried out pursuant to paragraph (g), if there are reasonable grounds to suspect that a transaction involves money laundering, financing of terrorism or proliferation or any other serious offence; and
- (i) supervise and enforce compliance with this Act or any directive made in terms of this Act by reporting entities that—
 - (i) are not regulated or supervised by a supervisory authority in terms of this Act or any other law; or
 - (ii) are regulated or supervised by a supervisory authority in terms of this Act or any other law, if that supervisory authority fails or neglects to enforce compliance.

(4) An officer authorised to conduct an inspection under paragraph (g) of subsection (3) may exercise the powers of an inspector provided for under section *eleven* B.

Amendment
of
section 8

4. Section *eight* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following:

- (1) Subject to the other provisions of this Act, the functions of the Board are to—
- (a) monitor and review the administrative performance of the Centre in the carrying out of its functions under this Act;
 - (b) approve policies for the proper administration and management of the Centre;
 - (c) review the implementation of cooperation agreements between the Centre and domestic or foreign designated authorities;

(d) consider and approve the proposed budget of the Centre; and

(e) perform such other functions as are necessary to give effect to this Act.

5. Section *nine* of the principal Act is amended by the deletion of subsection (3) and the substitution therefor of the following: Amendment of section 9

(3) The Director-General is responsible for—

(a) the administration and management of the Centre;

(b) appointing of the staff of the Centre;

(c) the performance of the functions of the Centre; and

(d) the implementation of the decisions of the Board.

6. The principal Act is amended by the repeal of section *ten* and the substitution therefor of the following: Repeal and replacement of section 10

10. (1) The Director-General or an officer authorised by the Director-General may, for the performance of the Centre's functions under this Act request— Powers of Director-General

(a) financial information from a reporting entity to be provided within such time as the Director-General or an officer authorised by the Director-General may specify, which is relevant to enable the Centre to fulfill its functions;

(b) a reporting entity to disclose whether—

(i) a person is or has been a client of the reporting entity;

(ii) a person is acting or has acted on behalf of a client of the reporting entity; or

(iii) a client of the reporting entity is acting or has acted on behalf of another person;

(c) such further information as the centre may require for the performance of the centre's functions under this Act;

(d) an employee or agent or former employee or former agent of a reporting entity being inspected to—

(i) give to the inspector reasonable assistance in connection with the inspection;

(ii) appear before the inspector for examination concerning matters relevant to the inspection; or

(iii) produce a book or document relating to the affairs of the reporting entity.

Cap. 111

(2) Where the information requested under subsection (1) is classified under the State Security Act, the Centre may apply to a judge in chambers to determine whether the information is likely to—

(a) prejudice the security, defence or international relations of the Republic; or

(b) involve the disclosure of any matter or deliberations of a secret or confidential nature of the Government.

(3) Where the Director-General reasonably suspects that a transaction relates to money laundering, financing of terrorism or proliferation or any other serious offence or the commission of a serious offence, the Director-General may order a reporting entity to freeze an account or suspend a transaction, as the case may be, for a period not exceeding fifteen days.

(4) A person aggrieved with the decision of the Director-General to freeze an account or suspend a transaction may after seventy-two hours apply to a judge in chambers to discharge the order of the Director-General and shall serve a notice on the Director-General to join the proceedings but such order shall remain in full force and effect until the judge determines otherwise.

(5) A person who contravenes subsection (3) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

(6) A person who contravenes the provisions of this section commits an offence and is liable, upon conviction, to—

(a) in case of a natural person, a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both; or

(b) in the case of a body corporate, a fine not exceeding two hundred and fifty thousand penalty units.

Amendment
of
section 11

7. Section *eleven* of the principal Act is amended by the deletion of the word “Board” and the substitution therefor of the word “Director-General”.

8. The principal Act is amended by the insertion, immediately after section *eleven*, of the following new sections:

Insertion of
sections 11A
and 11B

11A. (1) The Centre shall for the purposes of ensuring compliance with the provisions of this Act, establish an inspectorate with the necessary technical staff and facilities required to administer, monitor and enforce measures to detect, prevent and deter money laundering and financing of terrorism or proliferation. Inspectors

(2) The Director-General may, on such terms and conditions as the Board may determine, appoint suitably qualified persons as inspectors for the purposes of this Act.

(3) The Director-General shall provide an inspector with a certificate of appointment and an identity card, in the prescribed form, which shall be *prima facie* evidence of the inspector's appointment as such.

(4) An inspector shall, in performing any function under this Act—

- (a) be in possession of the certificate of appointment referred to in subsection (3); and
- (b) show the certificate of appointment to a person who requests to see it or is subject to an inspection under this Act.

(5) Where the head of a supervisory authority is permitted by another law to appoint inspectors under that law, the head of the supervisory authority may extend the appointment and functions of the inspectors under that law to include the undertaking of inspections in accordance with this Act.

(6) An inspector whose appointment or functions are extended under subsection (5) may, in undertaking inspections under this Act, in addition to the functions conferred upon the inspector under the other law, perform the functions of an inspector under this Act.

(7) An extension of appointment made pursuant to subsection (5) shall be indicated in the certificate of appointment issued by the head of the supervisory authority to the inspector.

(8) An inspector shall, on appointment, take an oath or affirmation before the Director-General in the prescribed manner and form.

Powers of
inspector

11B. (1) An inspector may, during the operating hours of the reporting entity or designated non-financial business or profession—

- (a) enter and search any facility, plant, undertaking, business or other premises of a reporting entity or designated non-financial business or profession where the inspector has reasonable grounds to believe information or documents which are relevant to an inspection are kept or an activity of money laundering or financing of terrorism or proliferation is being carried out or is likely to be carried out;
- (b) examine a document, record, material, matter, substance or article found in a reporting entity or an undertaking, business or other premises of a designated non-financial business or profession that has a bearing on an inspection;
- (c) require information to be given about a document, record, article, reporting entity, under-taking, business or other premises by—
 - (i) the owner of the reporting entity, undertaking, business or premises of a designated non-financial business or profession;
 - (ii) the person in control of the reporting entity, undertaking, business or premises of a designated non-financial business or profession;
 - (iii) the person who has control of the document, article, record, reporting entity, undertaking, business or premises of a designated non-financial business or profession; or
 - (iv) any other person who may have the information;
- (d) take extracts from, or make copies of, a book, record, licence, permit or document found in a reporting entity or undertaking, business or premises of a designated non-financial business or profession that has a bearing on an inspection;

(e) use a computer system in a reporting entity or undertaking, business or premises of a designated non-financial business or profession or require the assistance of a person in a reporting entity, undertaking, business or premises to use that computer system to—

(i) search any data contained in, or available to, the computer system;

(ii) reproduce any record from the data; or

(iii) seize any output from the computer for examination and copying; and

(f) attach and, if necessary, remove from a reporting entity or undertaking, business or premises of a designated non-financial business or profession for examination and safeguarding any document, matter, material, substance or article that has a bearing on an inspection;

(2) The books and records required to be produced shall not, in the course of inspection, be removed from the premises of the reporting entity or other premises at which they are produced.

(3) An inspector who removes a document, matter, material, substance or article from a reporting entity, undertaking, business or premises under paragraph (g) of subsection (1) shall—

(a) issue a receipt for the document, matter, material, substance or article to the owner of, or person in control of, the facility, plant, undertaking, business or premises; and

(b) return the document, matter, material, substance or article as soon as practicable if—

(i) the purpose for which it was removed is achieved; or

(ii) the Director of Public Prosecutions advises the Centre, in writing, that no prosecution shall be instituted in relation to the matter, material, substance or article.

(4) A person who—

(a) delays or obstructs an inspector in the performance of the inspector's functions under this Act;

- (b) refuses to give an inspector such reasonable assistance as the inspector requires for the purposes of exercising the inspector's powers;
- (c) fails to give an inspector the information, document or record required or gives an inspector false or misleading information in answer to an inquiry made by the inspector; or
- (d) impersonates or falsely represents oneself to be an inspector;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(5) An inspector shall furnish the Director-General with a written report and any other information relating to an inspection as the Director-General may require.

(6) All information obtained in the course of the inspection shall be treated as confidential and used solely for the purpose of this Act.

(7) Nothing in this section requires a person to disclose or produce information or a document that is classified or which falls under the State Security Act.

Cap. 111

Amendment
of
Heading

9. The principal Act is amended in the heading of Part III by the deletion of the words "Terrorist Financing" and the substitution therefor of the words "Financing of Terrorism or Proliferation".

Amendment
of
section 16

10. Section *sixteen* of the principal Act is amended—

- (a) in paragraph (e) of subsection (1) by the insertion immediately after the word "terrorism" of the words "or proliferation";
- (b) in subsection (3) by the insertion immediately after the word "terrorism" of the words "or proliferation";
- (c) in paragraph (a) of subsection (4), by the insertion immediately after the word "terrorism" of the words "or proliferation".

Amendment
of
section 17

11. Section *seventeen* of the principal Act is amended in paragraph (a) of subsection (1) by the insertion immediately after the word "terrorism" of the words "or proliferation".

12. Section *eighteen* of the principal Act is amended in paragraph (a) by the insertion immediately after the word “terrorism” of the words “or proliferation”. Amendment of section 18
13. Section *nineteen* of the principal Act is amended— Amendment of section 19
- (a) in the marginal note, by the insertion immediately after the word “customers” of the words “and politically-exposed persons”;
 - (b) in paragraph (a) by the insertion immediately after the word “terrorism” of the words “or proliferation”;
 - (c) in subparagraph (iii) of paragraph (b) by the deletion of the words “terrorism financing” and the substitution therefor of the words “financing of terrorism or proliferation” and
 - (d) by the insertion of the words “and politically-exposed person” immediately after the words “high risk customer”, wherever the words appear.
14. Section *twenty* of the principal Act is amended in paragraph (e) by insertion immediately after the word “terrorism” of the words “or proliferation”. Amendment of section 20
15. (1) Section *twenty-two* of the principal Act is amended— Amendment of section 22
- (a) in subsection (1), by the insertion immediately after the word “Centre” of the words “a supervisory authority and a law enforcement agency”;
 - (b) by the insertion, immediately after subsection (2), of the following:
 - (3) A reporting entity shall keep the records referred to in subsection (1) by way of original documents in the form of hard copies or in an electronic form in an electronic storage device.
16. Section *twenty-three* of the principal Act is amended by— Amendment of section 23
- (a) the insertion immediately after the word “terrorism” of the words “or proliferation”;
 - (b) the insertion, immediately after subsection (3), of the following:
 - (4) A person shall not be appointed as a compliance officer unless that person has—
 - (i) two years experience in the field of regulatory compliance;

- (ii) not been convicted of an offence under this Act or any other law; and
- (iii) been approved by the Centre;
- (c) the renumbering of subsections (4) and (5) as subsections (5) and (6) respectively.
- Amendment of section 25 **17.** Section *twenty-five* of the principal Act is amended in subsection (1) by—
- (a) the deletion of the word “and” at the end of paragraph (a); and
- (b) the insertion after paragraph (b) of the following:
- (c) examine all complex, unusual and large transactions and patterns of transactions that have no apparent economic or lawful purpose; and
- (d) examine the background and purpose of transactions under paragraphs (a) and (b) and make its findings in writing.
- Amendment of section 29 **18.** Section *twenty-nine* of the principal Act is amended in subsection (1) by the deletion of the words “financial institution” and the substitution therefor of the words “reporting entity”.
- Amendment of section 36 **19.** (1) Section *thirty-six* of the principal Act is amended by the insertion, immediately after subsection (4), of the following:
- (5) A supervisory authority may appoint a suitably qualified employee of the supervisory authority as an inspector for purposes of monitoring compliance with this Act.
- (6) An inspector appointed pursuant to subsection (5) shall have the same powers as an inspector appointed under section *eleven A*.
- Insertion of section 36A **20.** The principal Act is amended by the insertion, immediately after section *thirty-six*, of the following:
- 36A.** The Centre shall maintain a register of all reporting entities, which shall contain such particulars as are prescribed.
- Register of reporting entities
- Amendment of section 37 **21.** (1) Section *thirty-seven* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:

(2) The Centre shall, upon application to the High Court and satisfying the High Court that a reporting entity has failed, without reasonable excuse, to comply in whole or in part with any obligation under this Act, obtain an order against the reporting entity, an officer or employee of the reporting entity on such terms as the High Court considers necessary to enforce compliance with such obligation.

22. The principal Act is amended by the insertion, immediately after section *thirty-seven*, of the following:

Insertion of
sections
37A, 37B
and 37C

37A. (1) A court may, on *ex parte* application made by the Centre, make a monitoring order requesting a reporting entity to make a transaction report to the Centre.

Monitoring
order

(2) A monitoring order may state that a reporting entity shall report transactions conducted by the specified reporting entity and transactions conducted in respect of a specified account or facility at the reporting entity if there are reasonable grounds to suspect that—

(a) a person has transferred or may transfer the proceeds of an unlawful activity through the reporting entity or is using or may use the reporting entity for money laundering or financing of terrorism or proliferation; and

(b) the account or facility has received or may receive the proceeds of an unlawful activity or is being or may be used for money laundering or financing of terrorism or proliferation.

(3) A monitoring order lapses after ninety days from the date it is made, except that before the expiry of the period, the Centre may apply to the court to extend the order for a further period not exceeding ninety days at a time if—

(a) the grounds on which the order is based still exist; and

(b) the court is satisfied that the interest of justice may best be served by monitoring the person, account or facility referred to in subsection (1) and in the manner provided for in this section.

37B. The Director-General may, by notice in writing, and after giving the reporting entity a reasonable opportunity to be heard, require the reporting entity to comply by the date or within the period specified therein, with any directive contained in the notice in connection with any matter arising out of a report issued following an inspection.

Notice to
comply

Compliance
Order

37C. (1) The Director-General may, where the Director-General reasonably determines that any condition of a directive issued under this Act has been breached, serve a compliance order on the reporting entity requiring the reporting entity to remedy the breach within the period stipulated in the order.

(2) A compliance order issued under subsection (1) may—

(a) suspend a business activity of a reporting entity or person with immediate effect if the Director-General considers that the suspension is necessary to prevent or mitigate an imminent risk of significant adverse effects of money laundering and financing of terrorism or proliferation occurring; or

(b) require the reporting entity or person to take specified measures to prevent or abate any adverse effect.

(3) The Centre may, where a reporting entity fails to comply with a compliance order take the necessary steps to remedy the breach and recover the cost from the reporting entity.

(4) A reporting entity or person in respect of which a compliance order is served shall comply with the requirements of the order by the date specified in the order and if no date is specified, the person shall comply with the order immediately.

(5) A person who contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

(6) If the reporting entity or person fails to comply with a requirement specified in the compliance order within the specified time, the reporting entity or person is liable to a further fine not exceeding two thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

Amendment
of
section 45

23. Section *forty-five* of the principal Act is amended by the insertion, immediately after the words “twenty-nine”, of the words “or thirty”.

24. The principal Act is amended by the insertion, immediately after section *forty-five*, of the following:

Insertion of new section 45A

45A. A person who intentionally or negligently conducts multiple transactions separately with one or more reporting entities in order to avoid the duty to report a transaction or in breach of the duty to disclose information under this Act, commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

Conducting transaction to avoid reporting duty

25. The principal Act is amended by the insertion immediately after section *forty-nine*, of the following:

Insertion of new sections 49A and 49B

49A. A person who unduly influences, obstructs, hinders, interferes with or threatens or attempts to unduly influence, obstruct, hinder, interfere with or threaten an official or representative of the Centre, while in the performance of their duties or the exercise of their powers in terms of this Act, commits an offence is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Undue influence, obstruction, hindrance, interference of officers and other staff

49B. (1) The Centre or a supervisory authority may, where a reporting entity is in breach of a provision of this Act which is not a criminal offence impose one or more of the following administrative sanctions:

Administrative sanctions

- (a) a caution not to repeat the conduct which led to the non-compliance with a provision of this Act;
- (b) a reprimand;
- (c) a directive to take remedial action or to make specific arrangements to redress identified non-compliance;
- (d) the restriction or suspension of certain specified business activities;
- (e) publication of a public notice of any prohibition or requirement imposed by the Centre or a supervisory authority under this Part and of any rescission or variation thereof, and the notice may, if the Centre or supervisory authority considers necessary, include a statement of the reason for the prohibition, requirement, variation or rescission; and
- (f) a financial penalty not exceeding one million penalty units.

(g) a reporting entity or person may within thirty days of receipt of administrative sanction, appeal to the High Court against an administrative sanction imposed by the Centre or a supervisory authority.

(2) The factors to be considered by the Centre or a supervisory authority when determining an appropriate administrative sanction includes—

- (a) the nature, duration, seriousness and extent of the relevant non-compliance;
- (b) whether the reporting entity or person has previously failed to comply with any law;
- (c) any remedial steps taken by the reporting entity or person to prevent a recurrence of the non-compliance;
- (d) any steps taken or to be taken against the reporting entity or person by—
 - (i) another supervisory authority; or
 - (ii) a professional association which the reporting entity or person is a member;
 - (iii) any other relevant factors, including mitigating factors.

(3) Before imposing an administrative sanction, the Centre or supervisory authority shall give the reporting entity or person fourteen days notice in writing specifying—

- (a) the nature of the alleged non-compliance;
- (b) the intention to impose an administrative sanction;
- (c) amount or particulars of the intended administrative sanction; and
- (d) that the reporting entity or person may, in writing, within a period specified in the notice, make representations as to the reasons the administrative sanction should not be imposed.

Repeal and replacement of section 56

Centre to issue directives, guidelines, rules, instructions, etc.

26. The principal Act is amended by deletion of section *fifty-six* and the substitution therefor of the following:

56. (1) The Centre may, in the exercise of its functions under this Act issue, in such manner as the Centre determines, such instructions, directives, guidelines or rules to reporting entities as it considers necessary for the better carrying out of its functions under this Act or regarding the application of this Act.

(2) An instruction, directive, guideline or rule issued by the Centre under this section may—

- (a) be either general or specific;
- (b) be varied or revoked by subsequent instructions, directions, guidelines or rules; and
- (c) be given to such persons and in such manner as the Centre considers appropriate.

(3) The Centre may, where it considers appropriate, require a supervisory authority to issue an instruction, direction, guideline or rule regarding the application of this Act to a reporting entity regulated or supervised by the supervisory authority.

(4) A supervisory authority that intends to issue an instruction, direction, guideline or rule under subsection (3) shall consult the Centre prior to issuing any instructions, directions, guidelines or rules under this section.

(5) Despite paragraph (e) of subsection (3) of section *five* of the Act the Centre or a supervisory authority may in writing direct a reporting entity to—

- (a) provide the Centre or the supervisory authority, as the case may be—
 - (i) with information, reports or statistical returns specified in the notice, at the time or at the intervals specified in the notice; and
 - (ii) within the period specified in the notice, with any document in possession, custody or under the control of a reporting entity;
- (b) cease or refrain from engaging in an act, omission or conduct in contravention of this Act;
- (c) perform such act as may be necessary to remedy alleged non-compliance with this Act; or
- (d) take such other action necessary to meet any obligation imposed by this Act.

(6) The Centre or a supervisory authority may examine a document submitted to it in terms of section *five* of the Act and may make a copy thereof or of part thereof.

Amendment
of Part I of
Schedule

27. Paragraph 3(2) of Part I of the Schedule is amended by deletion of the word “Minister” and the substitution therefor of the word “President” wherever it appears.

General
amendment

28. The principal Act is amended by the deletion of the word “Director” in all references to the Director of the Centre and the substitution therefor of the word “Director-General”.
