

REPUBLIC OF SOUTH AFRICA

**FINANCIAL INTELLIGENCE CENTRE  
AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of Bill published in Government Gazette No.     of     )*  
*(The English text is the official text of the Bill)*  
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(MINISTER OF FINANCE)

[B - 2008]

GENERAL EXPLANATORY NOTE:

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

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

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**BILL**

**To amend the Financial Intelligence Centre Act, 2001, so as to define or further define certain expressions; to clarify the applications of the Act in relation to other laws; to extend the objectives and functions of the Centre; to change the name of the Money Laundering Advisory Council; to clarify certain provisions; to update references to legislation; to provide for the sharing of information by the Centre and supervisory bodies; to provide for the issuance of directives by the Centre and supervisory bodies, to provide for the registration of accountable and reporting institutions; to clarify the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to provide the Centre and supervisory bodies with powers to conduct inspections, and make applications to Court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; to make further provision for offences and to provide for matters connected therewith.**

**BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-**

**Amendment of section 1 of Act 38 of 2001**

1. Section 1 of the Financial Intelligence Centre Act, 2001 (hereinafter referred to as the principal Act) is hereby amended –

(a) by the insertion in subsection (1) after the definition of “accountable institution” of the following definitions:

**“administrative sanction” means a sanction referred to in section 45C;**

“**appeal board**” means the appeal board established in terms of section 45E;

- (b) by the insertion in subsection (1) after the definition of “authorised officer” of the following definition:

“**bearer negotiable instrument**”, for the purposes of this Act, includes any instrument that may on demand by the bearer thereof be converted to the currency of the Republic or another country;

- (c) by the substitution in subsection (1) of the definition of “Council” of the following definition:

“**Council**” means the [Money] Counter-Money Laundering Advisory Council established by section 17;

- (d) by the insertion in subsection (1) after the definition of “entity” of the following definition:

“**inspector**” means a person appointed in terms of section 45A;

- (e) by the insertion in subsection (1) after the definition of “National Director of Public Prosecutions” of the following definition:

“**non-compliance**” means any act or omission, and “comply”, “compliance”, “failure to comply” and “not complying” has the same meaning;

- (f) by the insertion in subsection (1) after the definition of “supervisory body” of the following definition:

“**terrorist and related activities**” has the meaning assigned to it in section 1 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004); and

- (g) by the substitution in subsection (1) for the definition of “this Act” of the following definition:

“**this Act**” includes any regulation, order or determination made or directive or exemption given under this Act[a regulation made in terms of section 77];

#### **Insertion of section 1A in Act 38 of 2001**

2. The following section is hereby inserted in the principal Act after section 1:

**“Application of Act when in conflict of other laws**

1A. If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail.

#### **Amendment of section 3 of Act 38 of 2001**

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) to make information collected by it available to investigating authorities, supervisory bodies, intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of the Republic;”;

(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) to exchange information with **[similar]** bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities; **[offences.]**”;  
and

(c) by the insertion after paragraph (b) of subsection (2) of the following paragraph:

“(c) to supervise and enforce compliance with this Act and to facilitate effective supervision and enforcement by supervisory bodies.”.

#### **Amendment of section 4 of Act 38 of 2001**

4. Section 4 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph:

“(c) monitor and give guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their duties and obligations in terms of **[their compliance with the provisions of the]** this Act.”; and

(b) by the addition of the following paragraphs:

“(e) annually review the implementation of this Act and submit a report thereon to the Minister;

- (f) implement a registration system in respect of all accountable institutions and reporting institutions; and
- (g) supervise and enforce compliance with this Act by accountable institutions, reporting Institutions, and other persons to whom the provisions of this Act apply that –
- (i) are not regulated or supervised by a supervisory body in terms of this Act or any other law;
- (ii) are regulated or supervised by a supervisory body in terms of this Act or any other law, if that supervisory body fails to enforce compliance despite any recommendation of the Centre made in terms of section 44((b)).”

**Substitution of heading to Chapter 2 of Act 38 of 2001**

5. The following heading is hereby substituted for the heading to Chapter 2:

**“[MONEY] COUNTER-MONEY LAUNDERING ADVISORY COUNCIL”.**

**Amendment of section 17 of Act 38 of 2001**

6. The following section is hereby substituted for section 17 of the principal Act:

**“Establishment**

**17. [A Money] A Counter-Money Laundering Advisory Council is hereby established.”.**

**Amendment of section 26 of Act 38 of 2001**

7. Section 26 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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 for purposes of obtaining further information in respect of a report made in terms of section 28, 28A, 29, 30(1) or 31.”.

### **Amendment of section 30 of Act 38 of 2001**

8. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person intending to convey an amount of cash or a bearer negotiable instrument in excess of the prescribed amount to or from the Republic must, on demand, before that person conveys the cash or bearer negotiable instrument [into or] out of the Republic, or after that person conveys the cash or bearer negotiable instrument into the Republic, report the prescribed particulars concerning that conveyance to a person authorised by the Minister for this purpose.”.

### **Amendment of section 34 of Act 38 of 2001**

9. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(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]** Securities Services Act, 2004 (Act No. 36 of 2004), apply.”.

### **Amendment of section 36 of Act 38 of 2001**

10. Section 36 of the principal Act is hereby amended —

(a) by the substitution for subsection (1) of the following subsection:

“(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 and any authority, service or body referred to in section 3 or any other supervisory body that, in the opinion of the supervisory body or the South African Revenue Service, may have an interest therein, of that fact and furnish them **[the Centre]** with all information and any records regarding that knowledge or suspicion which they **[the Centre]** may reasonably require **[for the achievement of its objectives of]**

to identify the proceeds of unlawful activities, or combat money laundering activities or the financing of terrorist and related activities.”.

(b) by the substitution for subsection (2) of the following subsection:

“(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 and any authority, service or body referred to in section 3 or any other supervisory body that may have an interest in that matter that the Centre may identify with all information and any records regarding that knowledge or suspicion which the Centre may reasonably require for the achievement of its objectives.

#### **Amendment of section 40 of Act 38 of 2001**

11. Section 40 of the principal Act is hereby amended by the insertion after subsection (6) of the following subsection:

“(6A) The Centre may make available any information obtained by it during an inspection to a department, organ of state, supervisory body, other regulatory authority, self-regulating association or organisation that is affected by, or has an interest in that information.”.

#### **Insertion of sections 43A and 43B in Act 38 of 2001**

12. The following sections are hereby inserted in the principal Act after section 43:

##### **“Directives**

**43A.** (1) The Centre may, by notice in the *Gazette*, issue a directive to all institutions to whom the provisions of this Act apply, regarding the application of the Act.

(2) The Centre or a supervisory body, subject to section 54(1), may, in writing, issue a directive to any category of accountable institutions or category of reporting institutions or other category of person to whom the provisions of this Act apply, regarding the application of the Act.

(3) The Centre or a supervisory body may in writing, over and above any directive contemplated in subsections (1) or (2), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom the provisions of this Act apply, within the period specified in the directive, to -

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

(4) The Centre or supervisory body may examine a document submitted to it in terms of subsection (3)(a) or make a copy thereof or part thereof.

(5) The costs incurred in complying with a directive must be borne by the accountable institution, reporting institution or person concerned.

(6) (a) The Centre, in respect of any accountable institution or category of accountable institutions regulated or supervised by a supervisory body in terms of this Act or any other law, may issue a directive in accordance with subsections (2) and (3) only, if a supervisory body failed to issue a directive despite any recommendation of the Centre made in terms of section 44((b) or failed to issue a directive within the period recommended by the Centre.

(b) A supervisory body may issue a directive in terms of this section only after consultation the Centre on that directive.



### **Registration by accountable institution and reporting institution**

**43B.** (1) Every accountable institution referred to in Schedule 1 and every reporting institution referred to in Schedule 3 must, within the prescribed period and in the prescribed manner, register with the Centre.

(2) The registration of an accountable institution and a reporting institution contemplated in subsection (1) must be accompanied by the particulars as may be required by the Centre.

(3) The Centre must keep and maintain a register of every accountable institution and reporting institution registered in terms of subsection (1).

(4) A registered accountable institution or reporting institution must notify the Centre, in writing, of any changes to the particulars furnished in terms of this section within 90 days after such a change.”.

### **Amendment of section 45 of Act 38 of 2001**

**13.** Section 45 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) **[Each]** Every supervisory body is responsible for supervising and enforcing compliance with **[the provisions of this Chapter]** this Act by all accountable institutions **[each accountable institution]** regulated or supervised by it.”; and

(b) by the insertion after subsection (1) of the following subsections:

“(1A) (a) The obligation referred to in subsection (1) forms part of the legislative mandate of any supervisory body and constitutes a core function of that supervisory body.

(b) Any Act that regulates a supervisory body or authorises that supervisory body to supervise or regulate any accountable institution must be read as including subsection (1), and a supervisory body may utilise any levies or charges it is authorised to impose or collect to defray expenditure incurred in performing its obligations under this Act.

(1B) A supervisory body, in meeting its obligation referred to in subsection (1), may –

(a) exercise any powers it has in terms of another Act;

- (b) in addition to or despite any powers it has in terms of another Act, exercise any power afforded to it in this Act;
- (c) delegate the exercise of any power referred to in paragraph (b) to any of its members, employees or any other suitable person;
- (d) take any measures it considers necessary or expedient to meet its obligations imposed by this Act or to achieve the objectives of the Centre or this Act;
- (e) require an accountable institution supervised or regulated by it to report on that institution's compliance with this Act in the form, manner and timeframes determined by the supervisory body;
- (f) issue or amend any licence, registration, approval or authorisation that the supervisory body may issue or grant in accordance with any Act, to include the following conditions -
  - (i) compliance with this Act; and
  - (ii) the continued availability of human, financial, technological and other resources to ensure compliance with this Act; or
- (g) in making a determination in accordance with any Act as to whether a person who is to hold office in an accountable institution is fit and proper, take into account whether that person, directly or indirectly, has been involved in any non-compliance with this Act or prior to the commencement of this Act or at any time thereafter, has been involved in—
  - (i) any money laundering activity; or
  - (ii) any terrorist or related activity.

(1C) A supervisory body must submit to the Centre, within the prescribed period and in the prescribed manner, a written report on any action taken against any accountable institution in terms of this Act .

(1D) The Centre and a supervisory body must co-ordinate their approach to exercising their powers and functions in terms of this Act to ensure the consistent application of the Act, and must enter into a written memorandum of understanding in respect thereof.”.

#### **Amendment of Chapter 4 of Act 38 of 2001**

**14.** Chapter 4 of the principal Act is hereby amended by—

(a) the substitution for the heading to Chapter 4 of the following heading:  
“**[OFFENCES AND PENALTIES] COMPLIANCE AND ENFORCEMENT**”

(b) the insertion after section 45 of the following sections:

**“Appointment of inspectors**

**45A.** (1) The Director or the head of a supervisory body may appoint any person in the service of the Centre or supervisory body, or any other suitable person as an inspector.

(2) The Director or the head of a supervisory body may determine the remuneration to be paid to a person who is appointed in terms of subsection (1) that is not in the full-time service of the Centre or supervisory body.

(3) (a) The director or head of a supervisory body must issue an inspector with a certificate of appointment signed by the Director or the head of that supervisory body.

(b) A certificate of appointment must specify –

(i) the full name of the person so appointed;

(ii) his or her identity number;

(iii) his or her signature;

(iv) his or her photograph;

(v) a description of the capacity in which he or she is appointed;  
and

(vi) the extent of his or her powers to inspect.

(4) (a) Where the head of a supervisory body is authorised by any other Act to appoint inspectors, the head may extend the appointment and functions of inspectors under that Act to include the undertaking of inspections under this Act.

(b) An inspector whose appointment or functions have been extended under paragraph (a) may, in undertaking inspections under this Act, in addition to or despite the powers and functions afforded to him, her or it under the Act referred to in paragraph (a), exercise the powers and functions afforded in this Act.

(c) Any extension referred to in paragraph (a) must be reflected in any certificate or appointment document issued by the head of the supervisory body to an inspector under the Act referred to in paragraph (a).

(5) When an inspector undertakes an inspection in terms of this Act, the inspector must –

- (a) be in possession of a certificate of appointment issued in terms of subsection (3) or referred to in subsection 4(c); and
- (b) on request, show that certificate to any person who is –
  - (i) affected by the exercise of the functions of the inspector; or
  - (ii) is in charge of any premises to be inspected.

### **Inspections**

**45B.** (1) For the purposes of determining compliance with this Act, an inspector may at any reasonable time and on reasonable notice, where appropriate, enter and inspect any premises at which the Centre or supervisory body, subject to section 45(1), reasonably believes that the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted.

(2) An inspector, in conducting an inspection, may -

- (a) direct a person, in writing, to appear for questioning before the inspector at a time and place determined by the inspector;
- (b) order any person who has or had any document in his, her or its possession or under his, her or its control relating to the affairs of the accountable institution, reporting institution or person —
  - (i) to produce that document; or
  - (ii) to furnish the inspector at the place and in the manner determined by the inspector with information in respect of that document;
- (c) open any strong room, safe or other container, or order any person to open any strong room, safe or other container, in which the inspector suspects any document relevant to the inspection is kept;
- (d) use any computer system or equipment on the premises or require reasonable assistance from any person on the premises to use that computer system to—
  - (i) access any data contained in or available to that computer system; and
  - (ii) reproduce any document from that data;

(e) examine or make extracts from or copy any document in the possession of an accountable institution, reporting institution or person or, against the issue of a receipt, remove that document temporarily for that purpose; and

(f) against the issue of a receipt, seize any document obtained in terms of paragraphs (c) to (e) above, which in the opinion of the inspector, may constitute evidence of non-compliance with a provision of this Act.

(3) An accountable institution, reporting institution or any person must without delay provide reasonable assistance to an inspector acting in terms of subsection (2).

(4) The Centre or a supervisory body may recover all expenses necessarily incurred in conducting an inspection from an accountable institution, reporting institution or person inspected.

(5) (a) An inspector may not, subject to section 36 and paragraph (b), disclose to any person not in the service of the Centre or supervisory body any information obtained in the performance of functions under this Act.

(b) An inspector may disclose information -

(i) for the purpose of enforcing compliance with this Act;

(ii) for the purpose of legal proceedings;

(iii) when required to do so by a court; or

(iv) if the Director or supervisory body is satisfied that it is in the public interest.

(6) (a) An inspector appointed by the Director, in respect of any accountable institution regulated or supervised by a supervisory body in terms of this Act or any other law, may conduct an inspection only if a supervisory body failed to conduct an inspection despite any recommendation of the Centre made in terms of section 44(b) or failed to conduct an inspection within the period recommended by the Centre.

(b) An inspector of a supervisory body may conduct an inspection, other than a planned routine inspection in terms of this section, only after consultation with the Centre on that inspection.

(c) An inspector appointed by the Director may on the request of a supervisory body accompany and assist an inspector appointed by the head of a supervisory body in conducting an inspection in terms of this section.

(7) No warrant is required for purposes of an inspection conducted in terms of this section.

### **Administrative sanctions**

**45C.** (1) The Centre or a supervisory body, despite the provisions of sections 46 to 66 and irrespective of whether criminal proceedings in terms of this Act have been or may be instituted, may impose an administrative sanction on any accountable institution, reporting institution or other person to whom this Act applies pursuant to an inspection or when satisfied on available facts and information that the institution or person –

(a) has failed to comply with a provision of the Act;

(b) has failed to comply with a condition of a licence, registration, approval or authority imposed in accordance with section 45(1A)(f);

(c) has failed to comply with a directive issued in terms of this Act; or

(d) has failed to comply with a non-financial administrative sanction imposed in terms of this section.

(2) When determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors—

(a) the nature, duration, seriousness and extent of the relevant non-compliance;

(b) whether the institution or person has previously failed to comply with any law;

(c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;

(d) any steps taken or to be taken against the institution or person by—

(i) another supervisory body; or

(ii) a voluntary association of which the institution or person is a member; and

(e) any other factor, including mitigating factors, that the Centre or supervisory body considers relevant.

(3) The Centre or supervisory body may impose any one or more of the following administrative sanctions –

(a) a caution not to repeat the conduct which led to the non-compliance referred to in subsection (1);

(b) a reprimand;

(c) a directive to take remedial action or to make specific arrangements;

(d) the restriction or suspension of certain specified business activities; or

(e) a financial penalty not exceeding R 10 000 000 in respect of natural persons and R 50 000 000 in respect of any other legal person.

(4) The Centre or supervisory body may –

(a) in addition to the imposition of an administrative sanction make recommendations to the institution or person in respect of compliance with this Act;

(b) direct that a financial penalty must be paid by a natural person or persons for whose actions the relevant institution is accountable in law, if that person or persons was or were personally responsible for the non-compliance;

(c) suspend any part of an administrative sanction on any condition the Centre or the supervisory body deems appropriate for a period not exceeding five years.

(5) The Centre or supervisory body, prior to imposing an administrative sanction, must notify the institution or person in writing -

(a) of the nature of the alleged non-compliance;

(b) of the intention to impose an administrative sanction;

(c) of the amount or particulars of the intended administrative sanction;  
and

(d) that the institution or person is called upon, in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.

(6) (a) After considering any representations received within the specified period and the factors referred to subsection (5), the Centre, subject to paragraph (b), or supervisory body may impose an administrative sanction the Centre or supervisory body considers appropriate and the Centre or supervisory body must, in writing, notify the institution or person –

(i) of the decision and the reasons for the decision in terms of this subsection; and

(ii) the right to appeal against the decision in accordance with section 45D.

(b) The Centre, prior to taking a decision referred to in paragraph (a), must consult the relevant supervisory body, where appropriate.

(7) (a) Any financial penalty imposed must be paid into the Criminal Assets Recovery Account referred to in section 64(c) of the Prevention Act within the period and in the manner as may be specified in the relevant notice.

(b) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the Centre or supervisory body may forthwith file with the clerk or registrar of a competent court a certified copy of the notice referred to in subsection (6), and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of the Centre or supervisory body.

(8) An administrative sanction imposed in terms of this Act does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(9) If an Institution or person does not appeal against a decision of the Centre or supervisory body within specified period or if the appeal board confirmed the decision of the Centre or supervisory body, the Director or supervisory body must make public the decision and the nature of any sanction imposed, unless the Director or supervisory body is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of the decision.

## **Appeal**

**45D.** (1) (a) Any institution or person may appeal against a decision of the Centre or supervisory body referred to in section 45C(6) to the appeal board.

(b) An appeal must be lodged within 30 days of the institution or person, becoming aware thereof, in the manner and on payment of the fees prescribed by the Minister.



(2) An appeal under subsection (1) shall take place on the date and at the place and time determined by the appeal board.

(3) An appeal is decided on the affidavits and supporting documents presented to the appeal board by the parties to the appeal.

(4) Despite the provisions of subsection (3) the appeal board may -

(a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his, her or its possession, custody or control any document which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and retain for examination any document so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and

(c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control, and such a person shall be entitled to legal representation at his, her or its own expense.

(5) The chairperson of the appeal board shall determine any other procedural matters relating to an appeal.

(6) Any party to an appeal is entitled to be represented at an appeal by a legal representative.

(7) The appeal board may –

(a) confirm, set aside or vary the relevant decision of the Centre or supervisory body; or

(b) refer a matter back for consideration or reconsideration by the Centre or the supervisory body concerned in accordance with the directions of the appeal board.

(8) The decision of a majority of the members of the appeal board shall be the decision of that board.

(9) The decision of the appeal board must be in writing, and a copy thereof must be made available to the appellant and the Centre or supervisory body.

(10) If the appeal board sets aside any decision of the Centre or supervisory body, the fees referred to in subsection (1)(b) paid by the appellant in respect of the appeal in question shall be refunded to the appellant, and if the appeal board varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

(11) (a) Subject to paragraph (b), a decision of the appeal board may be taken on appeal to the High Court as if the determination were a decision of a magistrate in a civil matter.

(b) The launching of appeal proceedings in terms of paragraph (a), does not suspend the operation or execution of a decision, unless the chairperson of the appeal board directs otherwise.

#### **Establishment of appeal board**

45E. (1) An appeal board is hereby established.

(2) The Minister must appoint as members of the appeal board so many persons as the Minister may consider necessary with an alternate for each of them, of whom—

(a) one must be an advocate or attorney with at least ten years experience, who will be the chairperson; and

(b) at least two must be persons with experience and expert knowledge of financial institutions and financial services.

(3) A member of the appeal board holds office for a period of three years and is eligible for re-appointment on the expiration of his or her term of office.

(4) An alternate acts as a member when—

(a) a member is absent, has recused himself or herself or is suspended; or

(b) the filling of a vacancy on the appeal board is pending.

(5) Any vacancy that occurs on the appeal board must be filled by the appointment of another person by the Minister, subject to the provisions of subsection (2), and any person so appointed holds office for the unexpired portion of the period of office of his or her predecessor.

(6) The appeal board may co-opt any person having expert knowledge of a particular matter to assist the board in considering an appeal.

(7) A person co-opted under subsection (6) may not participate in any decision of the appeal board.

(8) If before or during the consideration of any appeal it transpires that any member of the appeal board has any direct or indirect personal interest in the outcome of that appeal, that member must recuse himself or herself and must be replaced by the alternate member.

(9) The Minister may terminate the period of office of a member of the appeal board -

(a) if the performance of the member is unsatisfactory; or

(b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively.

(10) (a) The Minister may, if the performance of the appeal board is unsatisfactory, terminate the period of office of all the members of the appeal board.

(b) In the event of the dismissal of all the members of the appeal board, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of subsection (2).

(11) A member of the appeal board may be paid the remuneration and allowances as the Minister may from time to time determine.

(12) Administrative support for the appeal board must be provided by the Centre.

(13) The Centre is responsible for the expenditure of the appeal board.

### **Application to Court**

45F. (1) The Centre, subject to subsection (3), or any supervisory body may institute proceedings in the High Court having jurisdiction against any accountable institution, reporting institution or person to whom this Act applies to —

(a) discharge any obligation imposed on the Centre or supervisory body in terms of this Act;

- (b) compel that institution or person to comply with any provision of this Act or to cease contravening a provision of this Act;
- (c) compel that institution or person to comply with a directive issued by the Centre or supervisory body under this Act; or
- (d) obtain a declaratory order against that institution or person on any point of law relating to any provision of this Act.

(2) If the Centre or a supervisory body has reason to believe that an institution or person it is not complying with this Act, it may, if it appears that prejudice has occurred or might occur as a result of such non-compliance, apply to a court having jurisdiction for an order restraining that institution or person from continuing business pending an application to court by the Centre or supervisory body as contemplated in subsection (1), or the exercising of any other legal remedy available to the Centre or supervisory body.

(3) (a) The Centre, in respect of any accountable institution regulated or supervised by a supervisory body in terms of this Act or any other law, may institute proceedings in accordance with this section only if a supervisory body failed to institute proceedings despite any recommendation of the Centre made in terms of section 44(b) or failed to institute proceedings within the period recommended by the Centre.

(b) A supervisory body may institute proceedings in accordance with this section, only after consultation with the Centre on that application to court.”

### **Insertion of section 51A in Act 38 of 2001**

15. The following section is hereby inserted in the principal Act after section 51:

#### **“Failure to report property associated with terrorist and related activities**

**51A.** (1) An accountable institution that has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of an entity contemplated in section 28A (1) and that fails, within the prescribed period, to report that fact and the prescribed information in respect of such property to the Centre in accordance with that section, is guilty of an offence.

(2) An accountable institution that fails to comply with a direction by the Director in accordance with section 28A (2), is guilty of an offence.”.

#### **Substitution for section 54 of Act 38 of 2001**

16. The following section is hereby substituted for section 54 of the principal Act:

#### **“Failure to report conveyance of cash or bearer negotiable instrument into or out of Republic**

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

#### **Substitution for section 55 of Act 38 of 2001**

17. The following section is hereby substituted for section 55 of the principal Act:

“55. A person referred to in section 30(2) who fails to send a report regarding the conveyance of cash or a bearer negotiable instrument to the Centre in accordance with that section, is guilty of an offence.”.

#### **Substitution for section 57 of Act 38 of 2001**

18. The following section is hereby substituted for section 57 of the principal Act:

“57. An accountable institution, reporting institution or any other person that fails to comply with a request made—  
(a) by the Centre or an investigating authority acting under the authority of an authorised officer in terms of section 32(2)[,]; or  
(b) by a supervisory body in terms of section 45(1B)(e),  
is guilty of an offence.”.

#### **Substitution for section 58 of Act 38 of 2001**

19. The following section is hereby substituted for section 58 of the principal Act:

**“Failure to comply with [direction by Centre] directives**

58. An accountable institution that fails to comply with a **[direction by]** directive of the Centre or a supervisory body in terms of section 34(1) or 43A is guilty of an offence.”.

#### **Amendment of section 60 of Act 38 of 2001**

20. Section 60 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) discloses confidential information held by or obtained from the Centre otherwise than in accordance with section 40 or 41.”.

#### **Insertion of section 61A in Act 38 of 2001**

21. The following section is hereby inserted in the principal Act after section 61:

##### **“Failure to register with Centre**

**61A.** Any accountable institution or reporting institution that—

(a) fails to register with the Centre in terms of section 43B; or

(b) fails to provide information in terms of section 43B,

is guilty of an offence.”.

#### **Insertion of sections 62A, 62B and 62C in Act 38 of 2001**

22. The following sections are hereby inserted in the principal Act after section 62:

##### **“Offences relating to inspection**

**62A.** A person who—

(a) fails to appear at any proceedings contemplated in section 45B if summoned;

(b) wilfully gives false information to an inspector;

(c) fails to comply with any reasonable request by an inspector in the exercise of his, her or its functions;

(d) wilfully hinders an inspector in the exercise of his, her or its functions;  
or

(e) contravenes section 45B(6),

is guilty of an offence.

### **Hindering or obstructing appeal board**

**62B.** Any person who wilfully interrupts the proceedings of the appeal board or who wilfully hinders or obstructs the appeal board in the performance of its functions is guilty of an offence.

### **Offences by witnesses**

**62C.** (1) Any person summoned to attend and give evidence or to produce any book, document or object before the Centre or a supervisory body or the appeal board, who fails to attend at the time and place specified in the notice, or to remain in attendance until the conclusion of the enquiry or until he or she is excused by the Centre or supervisory body or the appeal board from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he or she has been required to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her, or fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce, is guilty of an offence.

(2) Any person who after having been sworn or having made affirmation, gives false evidence before the Centre or supervisory body or the appeal board on any matter, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence.”.

### **Amendment of section 68 of Act 38 of 2001**

**23.** The following section is hereby substituted for section 68 of the principal Act:

“(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 **[R 10 000 000]** R100 000 000.

(2) A person convicted of an offence mentioned in section 55, 61, **[or] 61A, 62, 62A, 62B or 62C** is liable to imprisonment for a period not exceeding five years or to a fine not exceeding **[R 1 000 000]** R10 000 000.”.

### **Amendment of section 70 of Act 38 of 2001**

24. Section 70 of the principal Act is hereby amended by the substitution of the word “cash” with the phrase “cash or bearer negotiable instrument” wherever it occurs in the section.

### **Substitution of long title of Act 38 of 2001**

25. The following long title is hereby substituted for the long title to the principal Act):

“To establish a Financial Intelligence Centre and [a Money] a Counter-Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to clarify the applications of the Act in relation to other laws; to provide for the sharing of information by the Centre and supervisory bodies; to provide for the issuance of directives by the Centre and supervisory bodies, to provide for the registration of accountable and reporting institutions; to provide for the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to provide the Centre and supervisory bodies with powers to conduct inspections, and make applications to Court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; 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.”.

### **Short title and commencement**

26. This Act is called the Financial Intelligence Centre Amendment Act, 2007, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.