
**THE FINANCIAL INTELLIGENCE CENTRE
ACT, 2010**

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SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 46 of 2010

Date of Assent: 24th November, 2010

An Act to establish the Financial Intelligence Centre and provide for its functions and powers; provide for the duties of supervisory authorities and reporting entities; and provide for matters connected with, or incidental to, the foregoing.

[29th November, 2010

ENACTED by the Parliament of Zambia.

Enactment

PART I
PRELIMINARY

1. This Act may be cited as the Financial Intelligence Centre Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title
and
commencement

2. In this Act, unless the context otherwise requires—
“account” means any facility or arrangement by which a reporting entity does any of the following:

Interpretation

- (a) accepts deposits of funds or other assets;
- (b) allows withdrawals or transfers of funds or other assets; or
- (c) pays negotiable or transferable instruments or orders drawn on, or collects negotiable or transferable instruments or payment orders on behalf of, any other person;

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“bearer negotiable instrument” includes any monetary instrument in bearer form such as a traveller’s cheque, negotiable instrument, including a cheque, promissory note and money order, that is either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;

“beneficial owner” means—

- (a) a natural person who ultimately owns or controls the rights to or benefits from property, including the person on whose behalf a transaction is conducted; or
- (b) a person who exercises ultimate effective control over a legal person or legal arrangement;

“Centre” means the Financial Intelligence Centre established under section *three*;

“customer” means any of the following:

- (a) the person for whom a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom an account or rights or obligations under a transaction have been assigned or transferred;
- (d) any person who is authorised to conduct a transaction or control an account;
- (e) any person who attempts to take any of the actions referred to in paragraphs (a) to (d); or
- (f) such other person as may be prescribed by the Minister;

“currency” means the coin and paper money of the Republic, or of a foreign country, that is designated as legal tender or is customarily used and accepted as a medium of exchange;

Act No. 24 of
2009

“data message” has the meaning assigned to it in the Electronic Communications and Transactions Act, 2009;

“Director” means the person appointed as such under section *nine*;

Cap. 387

“financial institution” has the meaning assigned to it in the Banking and Financial Services Act;

“financial instrument” means an instrument capable of representing a monetary value, and includes money, bonds, bills and notes;

“foreign designated authority” means the authority designated for the receipt, requesting, analysis and dissemination of disclosures of suspicious transaction reports in a foreign country;

“funds or other assets” means financial assets, property of every kind, whether tangible or intangible, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts or; letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets;

- “ law enforcement agency ” means—
- (a) the Zambia Police Force, established under the Constitution; Cap. 1
 - (b) the Zambia Security Intelligence Service established under the Zambia Security Intelligence Service Act; Cap. 109
 - (c) the Immigration Department established under the Immigration and Deportation Act, 2010; Act No. 18 of 2010
 - (d) the Drug Enforcement Commission, established under the Narcotic Drugs and Psychotropic Substances Act; Cap. 96
 - (e) the Anti-Money Laundering Investigations Unit established under the Prohibition and Prevention of Money Laundering Act, 2001; Act No. 14 of 2001
 - (f) the Anti-Corruption Commission established under the Anti-Corruption Act, 2010; Act No. of 2010
 - (g) the Zambia Revenue Authority established under the Zambia Revenue Authority Act; and Cap 321
 - (h) any other investigative institution that the Minister may, by statutory instrument, designate;
- “ law enforcement officer ” means an officer of a law enforcement agency;
- “ legal arrangement ” means to express trusts or other similar legal arrangements;
- “ legal practitioner ” has the meaning assigned to it in the Legal Practitioners Act; Cap. 30
- “ money laundering ” has the meaning assigned to it in the Prohibition and Prevention of Money Laundering Act, 2001; Act No. 14 of 2001
- “ officer ” means an officer of the Centre or a law enforcement officer authorised by the Centre to carry out a function under this Act; Act No. 19 of 2010
- “ private body ” means any person or organisation other than a public body, and includes a voluntary organisation, a charitable institution, company, partnership or a club;
- “ proceeds of crime ” has the meaning assigned to it in the Forfeiture of Proceeds of Crime Act, 2010, and the Prohibition and Prevention of Money Laundering Act, 2001; Act No. 14 of 2001
- “ public body ” means the Government, any Ministry or department of the Government, a local authority, commission or other body appointed by the Government, established by, or under, any written law or in which the Government has an interest;
- “ record ” means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

- “ reporting entity ” means an institution regulated by a supervisory authority and required to make a suspicious transaction report under this Act;
- “ sanction ” includes a fine, suspension, de-registration or any other penalty that may be prescribed by, or under, this Act, but does not include imprisonment;
- “ serious offence ” has the meaning assigned to it in the Forfeiture of Proceeds of Crime Act, 2010;
- “ shell bank ” means a bank that has no physical presence in the country in which it is incorporated and licensed, unless such bank is wholly owned by one or more financial institutions forming part of a regulated financial services group that is subject to effective consolidated supervision;
- “ supervisory authority ” means—
- (a) the Governor of the Bank of Zambia appointed under the Bank of Zambia Act;
 - (b) the Registrar of Co-operatives appointed under the Co-operatives Act, 1998;
 - (c) the Registrar of Pensions and Insurance appointed under the Pension Scheme Regulation Act, 1996;
 - (d) the Commissioner appointed under the Securities Act;
 - (e) the Registrar appointed under the Patents and Companies Registration Agency Act, 2010;
 - (f) the Commissioner of Lands;
 - (g) the Zambia Development Agency, established under the Zambia Development Agency Act, 2006;
 - (h) the licensing committee established under the Tourism and Hospitality Act, 2007;
 - (i) the Registrar of Estate Agents appointed under the Estate Agents Act, 2000;
 - (j) the Law Association of Zambia established under the Law Association of Zambia Act;
 - (k) the Zambia Institute of Chartered Accountants established under the Accountants Act, 2008; and
- Act No. 19 of 2010
- Cap. 360
- Act No. 24 of 1998
- Act No. 28 of 1996
- Cap. 354
- Act No. 15 of 2010
- Act No. 11 of 2006
- Act No. 23 of 2007
- Act No. 21 of 2000
- Cap. 31
- Act No. 13 of 2008

(l) any other authority established under any written law as a supervisory authority or as the Minister may prescribe;

“suspicious transaction report” means a report submitted on suspected money laundering, financing of terrorism or other serious offence or attempted money laundering, financing of terrorism or other serious offence, whether in form of a data message or otherwise;

“terrorism” has the meaning assigned to it in the Anti-Terrorism Act, 2007;

Act No. 21
of 2007

“transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes—

- (a) opening of an account;
- (b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non-physical means;
- (c) the use of a safety deposit box or any other form of safe deposit;
- (d) entering into any fiduciary relationship;
- (e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;
- (f) any payment made in respect of a lottery, bet or other game of chance;
- (g) establishing or creating a legal person or legal arrangement;
- (h) entering into a transaction involving real property;
and
- (i) such other transaction as may be prescribed by the Minister, by statutory instrument; and

“wire transfer” means any transaction carried out on behalf of an originator through a financial institution or payment system 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.

PART II

THE FINANCIAL INTELLIGENCE CENTRE

- Establishment of Financial Intelligence Centre
3. (1) There is hereby established the Financial Intelligence Centre which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such things as a body corporate may, by law, do or perform.
- (2) The Schedule applies to the Centre.
- Seal of Centre
4. (1) The seal of the Centre shall be such device as may be determined by the Board and shall be kept by the Secretary.
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice Chairperson and any other person authorised in that behalf by a resolution of the Board.
- (3) Any document purporting to be made under the seal of the Centre or issued on behalf of the Centre shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.
- Functions of Centre
5. (1) The Centre shall be the sole designated agency responsible for the receipt, requesting, analysing and disseminating of the disclosure of suspicious transaction reports.
- (2) Notwithstanding the generality of subsection (1), the functions of the Centre are to—
- (a) receive, request and analyse suspicious transaction reports required to be made under this Act or any other written law, including information from any foreign designated authority;
 - (b) analyse and evaluate suspicious transaction reports and information so as to determine whether there is sufficient basis to transmit reports for investigation by the law enforcement agencies or a foreign designated authority;
 - (c) disseminate information to law enforcement agencies, where there are reasonable grounds to suspect money laundering or financing of terrorism;
 - (d) provide information relating to suspicious transactions in accordance with this Act to any foreign designated authority, subject to such conditions as the Director may determine;
 - (e) provide information, advice and assistance to law enforcement agencies in furtherance of an investigation;
 - (f) enter into any agreement or arrangement, in writing, with a foreign designated authority which the Board considers necessary or desirable for the discharge or performance of its functions;

- (g) conduct inquiries on behalf of foreign designated authorities and notify them of the outcome;
- (h) inform the public and reporting entities of their obligations and measures that have been or might be taken to detect, prevent and deter money laundering and financing of terrorism;
- (i) access directly or indirectly, on a timely basis financial, administrative or law enforcement information, required for the better carrying out of its functions under this Act; and
- (j) perform such other functions as are necessary to give effect to this Act.

6. (1) Subject to subsection (2), the Centre shall not, in the performance of its functions under this Act or any other law, be subject to the direction or control of any person or authority.

Extent of
Centre's
autonomy

(2) The Minister may, in writing, give to the Centre such directions as the Minister considers necessary in the public interest and the Centre shall give effect to those directions to the extent that they are not inconsistent with this Act.

7. (1) There shall be a Board of the Centre which shall consist of the following part-time members:

Board of
Centre

- (a) the Chairperson;
- (b) the Vice-Chairperson; and
- (c) three other persons.

(2) A person shall not be qualified to be appointed to the Board unless the person has not less than ten years experience in a field connected with financial analysis, law, accounting, forensic auditing, financial investigation, law enforcement or any other field as the Minister may determine.

(3) The Board members shall be appointed by the President.

(4) The Director shall be the secretary to the Board.

(5) The Schedule applies to the Board.

8. (1) Subject to the other provisions of this Act, the functions of the Board are to—

Functions of
Board

- (a) carry out the functions of the Centre;
- (b) issue policy directives to reporting entities regarding their obligations under measures that have been or might be taken to detect, prevent and deter the commission of any offences connected to proceeds of crime;
- (c) enter into and facilitate cooperation agreements with foreign designated authorities; and
- (d) perform such other functions as are necessary to give effect to this Act.

(2) Notwithstanding subsection (1), the Board may delegate to the Director or to any committee of the Board, any of its functions under this Act.

Director

9. (1) The Board shall, subject to the approval of the Minister, appoint a Director who shall be the chief executive officer of the Centre, on such terms and conditions as the Board may determine.

(2) A person shall not be qualified to be appointed Director unless the person has not less than ten years experience in a field connected with financial analysis, law, accounting, forensic auditing, financial investigation, law enforcement or any other field as the Board may determine.

(3) The Director shall be—

(a) responsible for the management and administration of the Centre;

(b) a full time officer; and

(c) responsible for the implementation of any matters referred to the Director by the Board.

(4) The Director shall not, while the Director holds the office of Director, discharge the duties of any other office of emolument in the Republic.

(5) The Director may, subject to any specific or general direction of the Board, make standing orders providing for—

(a) the control, direction and administration of the Centre;

(b) the discipline, training, classification and promotion of officers of the Centre;

(c) the duties of officers of the Centre; or

(d) such other matters as the Director may consider necessary or expedient for preventing the abuse of power or neglect of duty by officers or other staff.

(6) The Director shall, on appointment, take an oath or affirmation before the Chief Justice in the prescribed manner and form.

Powers of
Director

10. (1) For the performance of the Centre's functions under this Act, the Director may request for financial information from a reporting entity as is relevant to enable the Centre to fulfil its functions:

Cap. 111

Provided that if the information 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.

(2) Where the Director reasonably suspects that a transaction relates to money laundering, terrorist financing or any other serious offence or the commission of a serious offence, the Director may order a reporting entity to freeze an account or suspend a transaction, as the case may be, for a period not exceeding ten days:

Provided that a person aggrieved with the decision of the Director 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 and shall serve a notice on the Director to join the proceedings but such order shall remain in full force and effect until the judge determines otherwise.

(3) A person who contravenes subsection (2), 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.

11. (1) The Board may appoint, on such terms and conditions as it may determine, such officers and other staff as may be necessary to assist the Director in the performance of the Director's functions under this Act.

Officers and other staff

(2) The Director may, if satisfied that it is in the best interest of the Centre, terminate the appointment of any officer of the Centre and shall assign the reasons therefor, subject to any directions by the Board.

(3) The Centre may engage the services of such advisors and experts as it considers necessary.

(4) The advisors, experts and other members of staff shall on appointment, take an oath or affirmation before the Director in the prescribed manner and form.

12. An action shall not lie against the Director, officers or staff of the Centre or any person acting under the authority of the Director for anything done or omitted to be done in good faith in the discharge of any functions, duties or powers under this Act.

Immunity of officers

13. The provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed under any written law or otherwise.

Immunity
from
execution of
judgments

14. Where any judgment order is obtained against the Centre, no execution, attachment or process of any nature, shall be issued against the Centre or against any property of the Centre, but the Board shall cause to be paid out of its revenues such amount as may, by the judgment order, be awarded against the Centre to the person entitled to such amount.

PART III

PREVENTION OF MONEY LAUNDERING, TERRORIST FINANCING AND OTHER SERIOUS OFFENCES

Prohibition
of
establishment
of
anonymous
accounts

15. A reporting entity shall not establish or maintain an anonymous account or any account in a fictitious name.

Customer
identification
requirements

16. (1) A reporting entity shall identify its customers and verify its customers' identities by means of reliable and independent source documents or information, where —

(a) opening an account for, or otherwise establishing a business relationship with, a customer;

(b) the customer, who is neither an account holder nor in an established business relationship with a financial institution, wishes to carry out a transaction in an amount equal to, or above, such amount as may be prescribed, whether conducted as a single transaction or several transactions that appear to be linked:

Provided that if the amount of the transaction is unknown, the customer's identification shall be verified as soon as the amount of the transaction has reached the prescribed amount;

(c) notwithstanding paragraph (b), the customer wishes to carry out a domestic or international wire transfer of monetary amounts in the amount equal to, or above, the prescribed amount;

(d) doubts exist about the veracity or adequacy of previously obtained customer identification information; or

(e) there is a suspicion of money laundering, financing of terrorism or any other serious offence involving the customer or the customer's account.

(2) For the purposes of this Part, “ independent source document or information ” means a passport, a driver’s licence, a national identification document or a certified certificate of incorporation or such other information as the Minister may prescribe.

(3) A reporting entity shall identify and verify the identity of each customer, and obtain other information required by this section before it establishes an account or a business relationship, or before it carries on further business, if it suspects money laundering, financing of terrorism or any other serious offence or doubts the veracity or adequacy of previously obtained customer identification information.

(4) The Minister may prescribe the circumstances in which the verification of identity may be completed as soon as reasonably practicable after the commencement of the business if—

- (a) the risk of money laundering or financing of terrorism is effectively managed; and
- (b) a delay in verification is essential not to interrupt the normal conduct of business.

(5) A reporting entity shall, with respect to each customer, obtain and verify, as part of its obligation under subsection (1)—

- (a) for a natural person, the full name and address, and date and place of birth;
- (b) for a legal person, the corporate name, head office address, identities of directors, proof of incorporation or similar evidence of legal status and legal form, provisions governing the authority to bind the legal person, and such information as is necessary to understand the ownership and control of the legal person;
- (c) for legal arrangements, the name of the trustees, the settler and the beneficiary of express trusts, and any other parties with authority to manage, vary or otherwise control the arrangement;
- (d) in addition to the identity of a customer, the identity of any person acting on behalf of the customer, including evidence that such person is properly authorised to act in that capacity;

- (e) information on the intended purpose and nature of each business relationship; and
- (f) sufficient information about the nature and business of the customer to permit the reporting entity to fulfill its obligations under this Act.

(6) A reporting entity shall, as part of its obligations under subsections (1) and (5), identify the beneficial owner and shall take such reasonable measures as are necessary to verify the identity of the beneficial owner:

Provided that the Minister may prescribe the circumstances, such as the ownership of publicly held corporations, in which such identification and verification is not necessary.

(7) A reporting entity shall apply the identification and verification requirements stipulated under subsections (1) and (5) to customers and beneficial owners with which it had a business relationship at the time of the coming into force of this Act on a risk sensitive basis depending on the type and nature of the customer, business relationship, product or transactions, or as may otherwise be prescribed by the Minister.

Reliance on
identification
by third
party

17. (1) A reporting entity may rely on an intermediary or other third party to perform the customer identification required under subsection (1) of section *sixteen*, where—

- (a) there is no suspicion of money laundering, the financing of terrorism or any other serious offence;
- (b) information on the identity of each customer and beneficial owner is provided immediately on opening of the account or commencement of the business relationship; and
- (c) the reporting entity is satisfied that the third party—
 - (i) is able to provide, without delay, copies of identification information and other documents relating to the obligation of due diligence upon request; and
 - (ii) is established in, or is subject to, the jurisdiction of a State where such person is subject to the requirements equivalent to those specified in this Act, and is supervised for compliance with those requirements in a manner equivalent to those applicable in the Republic.

(2) The third party referred to in paragraph (c) of subsection (1) shall not claim professional privilege or a similar principle or rule with respect to the customer identification and beneficial ownership information and documentation involved.

(3) The Minister may, on the recommendation of the Centre, prescribe those jurisdictions that the Minister considers fulfill the terms of subparagraph (ii) of paragraph (c) of subsection (1).

(4) Notwithstanding any other provision in this section, a reporting entity relying on a third party has the ultimate responsibility for compliance with this Act, including all of the due diligence and reporting requirements thereof.

18. A reporting entity shall, where it conducts any business relationship or executes transactions with a customer that is not physically present for purposes of identification—

Customers
not
physically
present

- (a) take adequate measures to address the specific risk of money laundering, financing of terrorism and any other serious offence;
- (b) ensure that the due diligence conducted is no less effective than where the customer appears in person; and
- (c) require additional documentary evidence or supplementary measures to verify or certify the documents supplied by the customer, or confirmatory certification from financial institutions or other documentary evidence or measures as may be prescribed.

19. A reporting entity shall have appropriate risk management systems to—

High risk
customers

- (a) identify customers whose activities may pose a high risk of money laundering and financing of terrorism and shall exercise enhanced identification, verification and ongoing due diligence procedures with respect to such customers; and
- (b) determine if a customer or a beneficial owner is a high risk customer and if so shall—
 - (i) obtain approval from senior management of the reporting entity before establishing a business relationship with the customer, or later, as soon as an existing customer is identified as a high risk customer;
 - (ii) take all reasonable measures to identify the source of wealth and funds and other assets of the customer; and
 - (iii) provide increased and ongoing monitoring of the customer and the business relationship to prevent money laundering, terrorism financing or the

commission of any other serious offences and to permit the reporting entity to fulfil its obligations under this Act, including all of its due diligence and reporting requirements.

Identification and account opening for cross border correspondent banking relationship

20. A financial institution shall, where it enters into any cross border correspondent banking relationship—

- (a) identify and verify the identification of respondent institutions with which it conducts correspondent banking relationships;
- (b) collect information on the nature of the respondent institution's activities;
- (c) based on publicly available information, evaluate the respondent institution's reputation and the nature of supervision to which it is subject;
- (d) obtain approval from senior management of the reporting entity before establishing a correspondent banking relationship;
- (e) evaluate the controls implemented by the respondent institution with respect to anti money laundering and combating the financing of terrorism;
- (f) establish an agreement on the respective responsibilities of each party under the relationship;
- (g) in the case of a payable through account, ensure that the respondent institution has verified its customer's identity, has implemented mechanisms for ongoing monitoring with respect to its clients, and is capable of providing relevant identifying information on request;
- (h) not enter into, or continue, business relations with a shell bank; and
- (i) not enter into, or continue, business relations with a respondent financial institution in a foreign country if the respondent institution permits its accounts to be used by a shell bank.

Inability to fulfill customer identification obligations

21. A reporting entity that fails or is likely to fail to fulfill the requirements of sections *sixteen to twenty* with respect to any customer shall not establish an account for, or maintain the business relationship with, that customer, and shall make a report to the Centre in accordance with this Act.

22. (1) A reporting entity shall maintain all the books and records with respect to its customers and transactions as set out in subsection (2), and shall ensure that such records and the underlying information are available, on a timely basis, to the Centre.

Record
keeping

(2) The books and records referred to in subsection (1) shall include, as a minimum—

- (a) account files, business correspondence and copies of documents evidencing the identities of customers and beneficial owners obtained in accordance with the provisions of this Act, which shall be maintained for not less than ten years after the business relationship has ended;
- (b) records on transactions sufficient to re-construct each individual transaction for both account holders and non-account holders, which shall be maintained for not less than ten years from the date of the transaction;
- (c) the findings set in writing pursuant to paragraph (c) of subsection (1) of section *twenty-five* and related transaction information, which shall be maintained for at least ten years from the date of the transaction; and
- (d) copies of all suspicious transaction reports made pursuant to section *twenty-nine*, including any accompanying documentation, which shall be maintained for at least ten years from the date the report was made.

23. (1) A reporting entity shall develop and implement programmes for the prevention of money laundering, financing of terrorism and any other serious offence.

Internal
programmes
to combat
money
laundering
financing of
terrorism
and other
serious
offences

(2) The programmes referred to in subsection (1) shall include the following:

- (a) internal policies, procedures and controls to fulfil obligations pursuant to this Act;
- (b) adequate screening procedures to ensure high standards when hiring employees;
- (c) ongoing training for officers and employees to make them aware of the laws relating to money laundering, the financing of terrorism and any other serious offence, to assist them in recognising transactions and actions that may be linked to money laundering, financing of terrorism and any other serious offence and instruct them in the procedures to be followed in such cases;
- (d) policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value;

(e) mechanisms for preventing money laundering, financing of terrorism, financial crime and any other serious offence generally; and

(f) independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with this Act.

(3) A reporting entity shall designate a compliance officer at management level to be responsible for the implementation of, and ongoing compliance with, this Act by the reporting entity.

(4) A compliance officer designated pursuant to subsection (3) shall have ready access to all the books, records and employees of the reporting entity necessary to fulfil the responsibilities specified under this Act.

(5) The Minister may prescribe the type and extent of measures that reporting entities shall undertake with respect to each of the requirements in this section having regard to the risk of money laundering, financing of terrorism and any other serious offence and the size of the business or profession.

Ongoing due diligence

24. A reporting entity shall exercise ongoing due diligence with respect to any business relationship with a customer which shall include—

- (a) maintaining current information and records relating to the customer or beneficial owner; and
- (b) ensuring the obligations pursuant to sections *nineteen* and *twenty* relating to high risk customers and correspondent banking relationships are fulfilled.

Special monitoring of certain transactions

25. (1) A reporting entity shall—

- (a) pay special attention to business relations and transactions with persons, including legal persons and arrangements, from or in countries that do not or insufficiently apply the relevant international standards to combat money laundering, the financing of terrorism and any other serious offence; and
- (b) take such specific measures as may be prescribed to counter the risks with respect to business relations.

(2) The findings referred to in subsection (1), shall be maintained as specified in section *twenty-two* and shall be made available promptly if requested by the Centre, a supervisory authority or law enforcement agency.

Obligations regarding wire transfers

26. (1) A financial institution undertaking any wire transfers equal to, or above, such amount as may be prescribed shall—

- (a) identify and verify the identity of the originator;
- (b) obtain and maintain the account number of the originator, or in the absence of an account number, a unique reference number;

(c) obtain and maintain the originator's address or, in the absence of address, the national identity number, or date and place of birth; and

(d) include information from paragraphs (a) to (c) in the message or payment form accompanying the transfer.

(2) Notwithstanding the requirements of subsection (1), a financial institution is not required to verify the identity of a customer with which it has an existing business relationship where it is satisfied that it already knows and has verified the true identity of the customer.

(3) Where a financial institution acts as an intermediary in a chain of payments, it shall re-transmit all of the information it received with the wire transfer.

(4) The Minister may, on the recommendation of the Centre, by statutory instrument, modify the requirements set out in subsection (1) —

(a) with respect to domestic wire transfers, as long as the regulations provide for full originator information to be made available to the beneficiary financial institution and appropriate authorities by other means; and

(b) with respect to cross border transfers where individual transfers from a single originator are bundled in a batch file, as long as the regulations provide for the originator's account number or unique reference number to be included, and that the batch file contains full originator information that is fully traceable in the recipient country.

(5) Subsections (1) and (2) shall not apply to transfers executed as a result of credit card or debit card transactions or to transfers between financial institutions acting for their own account:

Provided that the credit card or debit card number accompanies the transfer resulting from the transaction.

(6) Where a financial institution referred to in subsection (1) receives wire transfers that do not contain the complete originator information required under that subsection, it shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary.

(7) A financial institution shall, where it fails to obtain any missing information, refuse acceptance of the transfer and report it to the Centre.

27. (1) A financial institution shall require its foreign branches and majority owned subsidiaries to implement the requirements of this Part to the extent that domestic applicable laws of the host country so permit.

Compliance
with
obligations
by foreign
subsidiaries
and branches

(2) A financial institution shall, where the laws of the country where its branch or majority owned subsidiary is situated prevent compliance with the obligations stipulated under this Part, advise its supervisory authority, which may take such steps as it believes to be appropriate to accomplish the purposes of this Act.

Prohibition
against shell
banks

28. A shell bank shall not be established or permitted to operate in or through the territory of Zambia.

Obligation
to report
suspicious
transactions

29. (1) Subject to the provisions of subsections (2) and (3), a reporting entity or a director, principal officer, partner, professional or employee of a financial institution, that suspects or has reasonable grounds to suspect that any property—

(a) is the proceeds of crime; or

(b) is related or linked to, or is to be used for, terrorism, terrorist acts or by terrorist organisations or persons who finance terrorism;

shall, not later than three working days after forming the suspicion, submit a report setting out the suspicions to the Centre.

(2) Subsection (1) shall apply to attempted transactions.

(3) Notwithstanding subsection (1), a legal practitioner, a notary public or an accountant shall submit a report under subsection (1) if—

(a) the legal practitioner, notary public or accountant engages, on behalf of or for a client, in a financial transaction associated with an activity specified in relation to such professionals under this Act; and

(b) the relevant information upon which the suspicion is based was not received from, or obtained on, a client—

(i) in the course of ascertaining the legal position of the client; or

(ii) in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(4) A financial institution shall refrain from carrying out a transaction which it suspects to be related to money laundering, financing of terrorism or any other serious offence.

(5) The Centre shall issue guidelines on the procedures for and form in which the suspicious transaction reports shall be submitted and shall publish guidance in order to assist reporting entities to fulfil their obligations under this section.

30. A reporting entity shall, promptly but not later than three working days, submit a report to the Centre on any currency transaction in an amount equal to or above the prescribed amount, whether conducted as a single transaction or several transactions that appear to be linked.

Obligation to report currency transactions

31. Where it appears to a supervisory authority that a reporting entity, or any of its directors, officers or employees, is not complying, or has not complied, with the obligations set out in this Act, it shall immediately inform the Centre accordingly.

Disclosing information regarding compliance

32. No secrecy or confidentiality provision in any other law shall prevent a reporting entity from fulfilling its obligations under this Act.

Inapplicability of confidentiality provisions

33. (1) A reporting entity or any director, partner, officer, principal or employee of the reporting entity shall not disclose to its customer or a third party that a report or any other information concerning suspected money laundering, financing of terrorism or any other serious offence shall be, is being or has been, submitted to the Centre, or that a money laundering, financing of terrorism or any other serious offence investigation is being, or has been, carried out, except in the circumstances set out in subsection (2) or where otherwise required by law to do so.

Prohibition against tipping off

(2) Subsection (1) shall not apply to a disclosure which—

(a) is made to carry out a function that a person has relating to the enforcement of any provision of this Act or of any other law; or

(b) in the case of a legal practitioner or accountant acting as an independent professional, when seeking to dissuade a client from engaging in an illegal activity;

that a suspicious transaction report shall be made, is being made or has been made to the Centre.

(3) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Protection of
identity of
persons and
information
relating to
suspicious
transaction
reports

34. (1) Except for the purposes of the administration of this Act, a person shall not disclose any information to identify or that is likely to identify the person who prepared or made a suspicious transaction report, or handled the underlying transaction.

(2) A person shall not be required to disclose a suspicious transaction report or any information contained in the report or provided in connection with it, or the identity of the person preparing or making such a report or handling the underlying transaction in any judicial proceeding unless the court is satisfied that the disclosure of the information is necessary in the interests of justice.

Exemption
from liability
for good
faith
reporting of
suspicious
transactions

35. (1) Criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract shall not lie against a reporting entity, its directors, principals, officers, partners, professionals or employees who, in good faith, submit reports or provide information in accordance with the provisions of this Act.

(2) Civil, criminal or disciplinary proceedings shall not be brought against a person who—

(a) discloses or supplies any information in any report made under this Act; or

(b) supplies any information in connection with a report, whether at the time the report is made or afterwards, in respect of—

(i) the disclosure or supply, or the manner of the disclosure or supply, by that person, of the information referred to in paragraph (a); or

(ii) any consequences that follow from the disclosure or supply of that information, unless the information was disclosed or supplied in bad faith.

Duties of
supervisory
authorities

36. (1) Where a supervisory authority has reasonable grounds to believe that a business transaction indicates that a person has or may have been engaged in money laundering, the financing of terrorism or any other serious offence, it shall disclose, or cause to be disclosed, that information to the Centre.

(2) A supervisory authority shall monitor and ensure compliance by reporting entities with their obligations under this Act.

(3) A supervisory authority may—

(a) compel the production of any information from reporting entities required for purposes of this Act; and

(b) impose sanctions for any failure by reporting entities to comply with their obligations under this Act.

(4) A supervisory authority may publish such directives as it may, in consultation with the Centre, determine which are necessary for reporting entities to comply with their reporting obligations under this Act.

37. (1) An officer of a reporting entity shall take all reasonable steps to ensure the reporting entity's compliance with its obligations under this Act.

Powers to
enforce
compliance

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

(3) Notwithstanding subsection (2), the Centre may direct or enter into an agreement with any reporting entity that has, without reasonable excuse, failed to comply, in whole or in part, with any obligations in this Part to implement any action plan to ensure compliance with its obligations under this Part.

(4) A person who contravenes the provisions of subsection (1) or subsection (2) commits an offence and is liable, upon conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a period not exceeding four years, or to both.

(5) In determining whether a reporting entity or an officer or employee of a reporting entity has complied with any of the requirements of subsection (1), a court may take account of the directives issued by a supervisory authority.

(6) A reporting entity may, in addition to the penalties set out in this section be liable to additional administrative sanctions imposed by a supervisory authority.

38. (1) Notwithstanding any other written law, a person leaving or entering Zambia with an amount in cash, negotiable bearer instruments or both, exceeding such value as the Minister may prescribe by statutory instrument, shall declare to a customs officer such amount in such form as may be prescribed.

Financial
instrument
reporting at
borders

(2) A person who contravenes subsection (1) commits an offence and 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.

(3) A declaration required to be made or given under subsection (1) shall, for the purposes of the Customs and Excise Act be deemed to be a declaration in a matter relating to customs.

Cap. 322

- Cap. 322
- (4) A customers officer may seize any cash, negotiable bearer instruments or both, which are liable to seizure, in terms of Part XII of the Customs and Excise Act.
- Prohibition of publication of, or disclosure of, information to unauthorised persons
39. (1) A person shall not, without the consent in writing given by, or on behalf of, the Board, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.
- (2) A person who contravenes subsection (1) 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.
- (3) A person who, having any information which to the knowledge of that person, has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, 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.
- Communication with foreign competent authorities
40. Notwithstanding any other written law, the Centre may communicate anything disclosed to it under this Act to a foreign designated authority if—
- (a) the Director considers the disclosure necessary to enable the foreign designated authority to discharge its functions of receipt, requesting, analysis and dissemination of suspicious transaction reports;
 - (b) there exists an arrangement between Zambia and the foreign State under which the foreign designated authority has agreed to communicate to Zambia, upon Zambia's request, information received by the foreign designated authority that corresponds to anything required to be disclosed to the Centre under this Act; or
 - (c) the Centre is satisfied that the foreign designated authority has given appropriate undertakings—
 - (i) for protecting the confidentiality of anything communicated to it; and
 - (ii) for controlling the use that will be made of the thing disclosed, including an undertaking that it will not be used as evidence in any proceedings.
- No order for production of information
41. Notwithstanding the provisions of any other written law, no order for the production of information, document or evidence shall be issued in respect of the Centre or against the Minister, Director, officers or other staff of the Centre or any person engaged pursuant to this Act.

PART IV

OFFENCES AND PENALTIES

42. A person who intentionally or negligently—

- (a) fails to undertake the identification of customers or otherwise to fulfil the customer identification and risk management requirements in accordance with section *sixteen*;
- (b) opens an anonymous account or an account in a fictitious name for a customer in violation of section *fifteen*; or
- (c) fails to fulfill the obligations relating to the obtaining of information for and processing of a wire transfer as required under section *twenty-six*;

Failure to comply with identification requirements

commits an offence and is liable, upon conviction, to a fine not exceeding one million penalty units or to imprisonment for a period not exceeding ten years, or to both.

43. A person who intentionally or negligently—

- (a) fails to maintain books and records as required by section *twenty-two*;
- (b) destroys or removes any records or books; or
- (c) fails to make information available in a timely manner in response to a lawful request for any books or records;

Failure to maintain or provide access to records

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.

44. A person who intentionally or negligently—

- (a) fails to conduct due diligence with respect to customers, accounts and transactions in compliance with section *twenty-four*;
- (b) fails to comply with the obligations for special monitoring set out in section *twenty-five*; or
- (c) fails to maintain internal control programmes in compliance with section *twenty-three*;

Failure to fulfill due diligence obligations or maintain internal controls

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

45. A person who intentionally or negligently fails to submit a report to the Centre as required by section *twenty-nine* 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.

Failure with regard to suspicious transaction or other reporting

False or misleading statement

46. A person who intentionally makes a false or misleading statement, provides false or misleading information, or otherwise fails to state a material fact in connection with such person's obligations under this Part, including the obligation to make a suspicious transaction report, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Confidentiality violation

47. A person who intentionally or negligently discloses to a customer or a third party information contrary to this Act, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Setting up shell bank

48. A person who intentionally or negligently—

(a) sets up a shell bank in the Republic; or

(b) enters into or continues business relations with a shell bank or a respondent financial institution in a foreign country that permits its accounts to be used by a shell bank;

commits an offence and is liable, upon conviction, to a fine not exceeding one million penalty units or to imprisonment for a period not exceeding ten years, or to both.

General penalty

49. A person convicted of an offence under this Act—

(a) is subject, in addition, to the sanctions and measures available to the supervisory authority for administrative violations; and

(b) may be banned permanently, or for such period as the Minister may prescribe, from pursuing the business or profession which provided the opportunity for the offence to be committed.

PART V

GENERAL PROVISIONS

Mutual legal assistance
Cap. 98

50. The Mutual Legal Assistance in Criminal Matters Act applies to offences under this Act, except where the provisions of that Act are inconsistent with this Act.

51. An offence under this Act shall be deemed to be an extraditable offence under the provisions of the Extradition Act.

Extradition
Cap. 94

52. Where an offence under this Act is committed by a body corporate or unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Offences by
body
corporate or
unincorporate
body

53. (1) This Act shall have effect within as well as outside Zambia and notwithstanding where the offence is committed by any person, that person may be dealt with in respect of such offence as if it has been committed within Zambia.

Offences
committed
outside
jurisdiction

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in Zambia, shall be a bar to further proceedings against that person under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Zambia.

54. (1) The Centre shall implement a system for monitoring the effectiveness of anti-money laundering and counter-financing of terrorism policies by maintaining comprehensive statistics on—

Monitoring
effectiveness
of
system

- (a) suspicious transaction or suspicious activity reports received and transmitted to law enforcement agencies;
- (b) money laundering, terrorism financing and any other serious offence investigations and convictions;
- (c) property frozen, seized and confiscated; and
- (d) international requests for mutual legal assistance or other co-operation.

(2) The Centre shall, as far as is practicable, provide information to a reporting entity on the action taken by the Centre with regard to a suspicious transaction report.

55. (1) The Centre shall, as soon as practicable, but not later than ninety days after the end of its financial year, submit to the Minister a report concerning its activities during the financial year.
(2) The report referred to in subsection (1) shall include information on—

Annual
report

(a) the statistics on money laundering, financing of terrorism and any other serious offence including typologies, trends and other observable statistical patterns; and

(b) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

Centre to
issue
guidelines

56. (1) The Centre may, in the exercise of its functions under this Act, issue guidelines as are necessary for the better carrying out of the provisions of this Act.

(2) The guidelines referred to in subsection (1) shall be issued in such manner as the Centre may determine.

(3) Without limiting subsection (1), any guidelines issued under this section may make different provisions for different kinds of supervisory authorities and reporting entities and different kinds of transactions.

Retention of
records

57. The Centre shall retain a record of all suspicious transaction reports and related information that it receives, for a minimum of fifteen years after the information is received.

Regulations

58. (1) The Minister may, by statutory instrument, in consultation with the Centre, make regulations that are necessary to give effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations made thereunder may—

(a) require reporting entities to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of reports and training;

(b) prescribe offences and penalties for contravention of or failure to comply with the regulations made pursuant to this Act;

(c) provide that contraventions of the regulations may be determined summarily by a court of competent jurisdiction;

(d) provide that in determining whether a person has complied with the regulations the trial court shall take account of any relevant guidelines issued by the Centre; and

(e) prescribe all matters required to be prescribed under this Act.

SCHEDULE
(Section 3(3))
ADMINISTRATION OF CENTRE
PART I
THE BOARD OF THE CENTRE

1. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure. Proceedings
of Board

(2) The Board shall meet for the transaction of business, at least once in every, three months at such places and times as the Board may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairperson and shall be called by the Chairperson if not less than one-third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.

(4) The quorum at a meeting of the Board shall be three.

(5) There shall preside at any meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson;
and

(c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of votes of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(7) The Board may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(8) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

	<p>(9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of any committee established by the Board.</p>
Committees of Board	<p>2. (1) The Board may, for the purpose of performing its functions under this Act, constitute any committee and delegate to any such committee such of its functions as it thinks fit.</p>
	<p>(2) The Board may appoint as members of a committee constituted under sub paragraph (1), persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.</p>
Tenure of office and vacancy	<p>(3) A committee of the Board may regulate its own procedure.</p> <p>3. (1) Subject to the other provisions of this Act, a member shall hold office for a period of three years from the date of appointment and may be re-appointed for a further period of three years.</p>
	<p>(2) A member may resign upon giving one month's notice in writing to the Minister.</p>
	<p>(3) The office of a member shall become vacant—</p> <p>(a) upon the death of the member;</p> <p>(b) if the member is absent, without reasonable excuse, from three consecutive meetings of the Board, of which that member has had notice;</p> <p>(c) if the member is declared bankrupt;</p> <p>(d) if the member has a mental disability which makes the member unable to exercise the functions as member; or</p> <p>(e) if the member is removed by the minister.</p>
	<p>(4) The Minister shall, where the office of a member becomes vacant before the expiry of the term of office of the member, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.</p>
	<p>(5) Subject to the other provisions of this Act, a member shall, on the expiration of the period for which the member is appointed, continue to hold office until another member is appointed to succeed that member.</p>
Allowances of members	<p>4. There shall be paid to members of the Board or any committee of the Board such allowances as the Board may, with the approval of the Minister, determine.</p>
Disclosure of interest	<p>5. (1) If a member or person is present at a meeting of the Board or a committee of the Board at which any matter, in which that person or that person's spouse, is directly or indirectly interested in a private capacity, is the subject of consideration, that person or member shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not take part in any consideration or discussion of, or vote on, any question relating to, that matter.</p>

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

PART II
FINANCIAL PROVISIONS

6. (1) The funds of the Centre shall consist of such moneys as may—
(a) be appropriated to the Centre by Parliament for the purposes of the Centre;
(b) be paid to the Centre by way of grants or donations; and
(c) otherwise vest in or accrue to the Centre.
- (2) The Centre may—
(a) subject to the approval of the Minister, accept moneys by way of grants or donations from any source within or outside Zambia; and
(b) subject to the approval of the Minister, raise such moneys as it may require for the discharge of its functions.
- (3) There shall be paid from the funds of the Centre—
(a) the salaries, allowances, loans, gratuities and pensions of the staff of the Centre and other payments for the recruitment and retention of the staff;
(b) such reasonable travelling, subsistence and other allowances for members of the Board or any committee of the Board when engaged in the business of the Centre at such rates as the Board may, with the approval of the Minister, determine; and
(c) any other expenses incurred by the Board in the performance of the Board's functions under this Act.
- (4) The Board may, with the approval of the Minister, invest in such manner as it considers appropriate such funds of the Centre as it does not immediately require for the discharge of its functions.
7. The financial year of the Centre shall be the period of twelve months ending on 31st December of each year.
8. (1) The Centre shall cause to be kept proper books of account and other records relating to its accounts.
(2) The accounts of the Centre shall be audited annually by the Auditor General or an auditor appointed by the Auditor-General.
(3) The Auditor-General's fees shall be paid by the Centre.
9. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Centre shall submit to the Minister a report concerning its activities during the financial year.
(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Centre and there shall be appended to the report—
(a) an audited balance sheet;
(b) an audited statement of income and expenditure; and
(c) such other information as the Minister may require.
(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.