

GOVERNMENT OF ZAMBIA

ACT

No. 4 of 2016

Date of Assent: 5th April, 2016

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

[6th April, 2016

ENACTED by the Parliament of Zambia.

Enactment

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

Short title
Act No. 46
of
2010

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

Amendment
of
section 2

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

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

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

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

(a) in bearer form;

(b) endorsed without restriction;

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

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

“beneficial owner” means an individual—

- (a) who owns or effectively controls a client of a reporting entity, including the individual on whose behalf a transaction is conducted; or
- (b) who exercises effective control over a legal person or trust;

“reporting entity” means—

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

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

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

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

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

“close associate” includes an individual who—

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

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

“designated non-financial business or profession” includes—

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

“high-risk customer” includes—

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

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

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

Act No 9 of
2009

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

(d) a parent;

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

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

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

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

“politically-exposed person” means—

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

(i) a Head of State or Government;

(ii) a Minister;

(iii) a Deputy Minister;

(iv) a politician;

(v) a political party official;

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

(vii) a military official;

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

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

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

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

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

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

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

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

(e) the insertion of the following:

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

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

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

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