



CENTER FOR TRADE POLICY AND DEVELOPMENT

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Analysis of the Financial Intelligence Centre (Amendment) Act No. 16 of 2020



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Executive Summary

The financial sector plays a fundamental role in every economy. Not only does the sector ensure the payment on services, but more importantly, production which enable firms and households to cope with economic uncertainties by; hedging, sharing, and pricing risks, as well as mobilizing savings and allocating credit across space and time. An efficient financial sector reduces the cost and risk of producing and trading in goods and services and thus raising standards of living. Furthermore, a sound financial regulation is critical to the success of the entire financial sector and the economy as a whole.

The existence of a financial intelligence centre is an integral part of a financial regulatory system particularly in the context of monitoring and curbing financial related crimes such as money laundering and also proliferation of terrorist financing. According to the FIC, between 2018 and 2019, an estimated ZMW 7 Billion in revenue was lost due to corruption and money laundering.

At the 21st Cabinet meeting it was announced that the Financial Intelligence Centre (Amendment Bill) 2020 (the “FIC Bill”) was approved for publication and introduction to Parliament. The FIC Bill was passed into law in December 2020 as the Financial Intelligence Centre (Amendment) Act No. 16 of 2020. The objects of the legislation include providing a risk management framework for anti-money laundering and aligning certain definitions in the principal act with international standards.

The overall objective of this analysis was to examine the provisions of the Financial Intelligence Centre (Amendment) Act No. 16 of 2020 and assess the ramifications or impact of the amendments. The provisions which include enhanced cooperation between the FIC and law enforcement agencies and supervisory authorities as well as empowering of the FIC to impose sanctions on non-complaint entities will, if adequately implemented, go a long way towards addressing systemic loopholes. Although a creation of statute, it is recommended that the FIC be allowed to implement its mandate with minimal interference. It is also recommended that the FIC, in partnership with civil society organisations, develop an advocacy strategy to educate the public on the roles, functions and importance of the FIC.

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1. Introduction

The Financial Intelligence Centre (the “**FIC**”) was established by the Financial Intelligence Centre Act No. 46 of 2010 (as amended by Act No. 4 of 2016) (the “**FIC Act**” or “**Principal Act**”). Its main functions are to:

- (a) Receive, request for, analyse and evaluate suspicious transaction reports and information from sources authorised by law to make suspicious transaction reports (including designated foreign authorities).
- (b) providing advice and assistance to law enforcement agencies in furtherance of investigations.
- (c) Access, directly or indirectly, on a timely basis, financial, administrative and law enforcement information required for the better carrying out of its functions under the FIC Act.
- (d) Educate the public and reporting entities of their obligations and inform them of measures to detect, prevent and deter money laundering and financing of terrorism or proliferation.
- (e) Uphold the international obligations and commitments required by the country in respect of anti-money laundering and combating financing of terrorism.
- (f) Educate the public and reporting entities of their obligations and inform them of measures to detect, prevent and deter money Laundering and financing of terrorism or proliferation.
- (g) Publish reports for public consumption and to provide redacted case studies that demonstrate methods used to launder suspected proceeds of crime; and
- (h) Influence policy formulation by government to address money laundering, terrorist financing and corruption.

It is against this backdrop that the FIC publishes an annual report (the “**Trends Report**”) in relation to its functions and more specifically its analyses of suspicious financial transactions.

The Trends Reports for the 2018/2019 and the 2019/2020 reporting period reveal that a combined amount of ZMW7,048 billion in revenue was lost due to financial crimes. More than half of this amount, an estimated ZMW 4.9 billion was lost solely due to corruption, with public procurement activities being at the apex. Aside from public procurement, entities such as law firms were found to complicit in perpetuating money laundering by facilitating investments and transactions to foreign accounts and the acquisition of property, land and motor vehicles.

The FIC flagged certain pieces of legislation as having provisions that were contrary to its functions or impeded the carrying out of its functions, such as the Public Private Partnership No 14 of 2009 which accords powers of exemption to senior officials in respect of procurement.

The FIC also noted that the amount of revenue reportedly lost through financial crimes is a conservative figure and could be considerably higher. However, one of the challenges that the FIC faces is a lack of funding to analyse more reports. As civil society organisations, the statistics from the FIC were of particular concern given the current state of the economy vis-à-vis debt obligations and general public finance management. Of equal concern were reports that emerged through the media that FIC staff were harassed and intimidated in 2019 following the publication of that year’s Trends Report. This raised questions as to the autonomy of the institution and its ability to carry out its mandate in the future without political interference. When Cabinet approved the tabling of a bill to amend the FIC Act, the Financial Intelligence Centre (Amendment Bill) (the “**FIC Amendment Bill**”), a major concern was whether the proposed provisions would weaken the functions and mandate of the FIC or seek to enhance systemic loopholes.

A review of the FIC Act revealed certain weaknesses with the legislation:

- (i) it did not adequately define the scope of politically exposed persons:
- (ii) it contained loose provisions in relation to Know Your Customer protocols and customer identification in general.
- (iii) there was no clear definition of law enforcement agencies or the coordination between law enforcement agencies and the FIC; and

- (iv) the FIC Act contained a narrow definition of reporting entities, regulators and their functions.

Against this backdrop the Centre for Trade Policy and Development (CTPD), in partnership with the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ) undertook an analysis of the proposed amendment to the legislation. The analysis was conducted with a view to assess whether the amendments addressed or attempted to address the systemic weaknesses highlighted in the Trends Reports and the existing legislation and whether the new provisions would in any way impede the FIC or water down its autonomy.

The FIC Amendment Bill was passed into law in December of 2020 and has now found form as the Financial Intelligence Centre (Amendment) Act No. 16 of 2020 (the “**Amendment Act**”).

2. The Amendment Act

The main functions of the Amendment Act are to:

- (a) re-define the functions of the Centre.
- (b) revise the definition of high-risk customers in accordance with international standards.
- (c) provide for customer due diligence on wire transfers in accordance with international standards.
- (d) provide a risk management framework for anti-money laundering requirements.
- (e) expand the scope of reporting entities; and

From the onset, it is evident the Amendment Act aims to address some of the loopholes that were identified as weaknesses. What follows below is an examination of the specific salient features of the Amendment Act.

Amendment	Implications	Comment
<p>Section 2 - Definition of “currency”</p> <p>Means the legal tender of the Republic or of a foreign country that is customarily used and accepted as a medium of exchange and may be represented in coin, paper, electronic or virtual form.</p>	<p>This definition has been amended by expanding legal tender to include crypto currency. The previous provision did not include cryptocurrency as a form of legal tender.</p>	<p>This provision enhances loopholes in the financial system by encompassing virtual currency.</p>
<p>Section 2 -Definition of “law enforcement agency” Includes the following:</p> <ul style="list-style-type: none"> (a) the Zambia Police Service; (b) the National Anti-Terrorism Centre; (c) the Immigration Department; (d) the Drug Enforcement Commission; (e) the Anti-Money Laundering Investigations; (f) the Anti-Corruption Commission; (g) the Zambia Revenue Authority 	<p>The Amendment Act now includes the National Anti-Terrorism Centre established under Anti-Terrorism and Proliferation Act of 2018. This replaces the Zambia Security Intelligence Service.</p>	<p>The inclusion allows collaboration between the National Anti-Terrorism Centre and FIC.</p>

<p>Section 2 -Definition of “prominent influential person” Means/includes:</p> <p>(a) an individual who is or has, been entrusted with a prominent public function by a State or an international or local body or organisation but is not of middle or junior ranking and includes—</p> <p>(i) a head of State or of Government;</p> <p>(ii) a minister;</p> <p>(iii) a member of an executive organ of a political party;</p> <p>(iv) a magistrate, judge and other senior officials of quasi judicial bodies;</p> <p>(v) a senior military official;</p> <p>(vi) a senior government official; and</p> <p>(vii) a member of the board or an official in senior management of an administrative or supervisory body, or a state owned enterprise or statutory body;</p> <p>An immediate family member of a prominent influential person includes a spouse; sibling; children and their spouses; parents; known close associates and any individual who is known to have joint beneficial ownership or control of a legal entity or legal arrangement, or any other close business relationship with a politically exposed person</p>	<p>This definition was not provided for in the FIC Act. The Principal Act defines politically exposed persons, but this new definition now also extends to associates and business entities of politically exposed persons.</p> <p>The definition of prominent influential persons places senior public officers within the ambit of the FIC and also extends to family members and associates who appear to derive some form of benefit from the activities of politically exposed persons. It further enables the FIC to scrutinize corporate entities or structures created by the politically exposed persons to minimize the use of shell companies to deviate or “clean” funds derived from criminal enterprises.</p>	<p>The FIC in its reports had flagged public procurement by senior public officials as one of the means through which corruption was perpetuated. It is therefore beneficial to have this definition in the FIC Act.</p>
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<p>Section 2-Definition of “competent authority ” Includes:</p> <ul style="list-style-type: none"> (a) law enforcement agencies. (b)supervisory authorities. (c) the National Prosecution Authority (d) the Patents and Companies Registration Agency (e) the Commissioner of Lands. (f) the Zambia Development Agency. (g) the Registrar of co-operatives (i) the Registrar of Non-Governmental Organisations. (j) Registrar of Societies 	<p>The essence of this proviso is the recognition of various other regulators as competent to monitor and make suspicious transaction reports</p>	<p>This is a measure that widens the scope and reach of the FIC through the listing of other regulators. It also increases the cooperating partners of the FIC to include civil society organisations.</p>
<p>Section 2- Definition of “designated non-financial business or profession” Includes:</p> <ul style="list-style-type: none"> (a) a casino, gaming or gambling operators. (b) a trust or company service provider which, as a business provide agency services for third parties: <ul style="list-style-type: none"> (i)acting as an agent for the establishment of legal persons; (ii)acting as or arranging f or another person to act as a director or secretary of a company, a partner in a partnership or a similar position in relation to other legal persons. 	<p>The essence of this provision is to extend the scope of the FIC to non-financial business or financial service providers. It is recognized that finances are not laundered solely through financial institutions or systems. These include real estate agents, casino operators, legal practitioners or law firms and accountants.</p>	<p>This is a progressive inclusion which enhances the powers of the FIC beyond financial institutions and traditional businesses that are vulnerable or susceptible to money laundering and terrorist financing.</p>

<p>(iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement</p> <p>(c) a legal practitioner, notary, other independent legal professional and accountant when they prepare for, or carry out, a transaction for a client concerning buying and selling of real estate; and managing of client money, securities or other assets.</p> <p>(d) an estate agent dealing in real estate, involved in a transaction for a client concerning the letting, buying and selling of real estate;</p> <p>(e) dealers in precious metals and stones</p> <p>(g) any other business or profession in which the risk of money laundering and financing of terrorism or proliferation or any other serious offence exists as the Minister may, on the recommendation of the Centre, prescribes.</p>		
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<p>Section 2- Definition of “intermediary institution”</p> <p>Means an institution which participates in a transfer of funds that takes place through more than one institution but is not an ordering institution or a beneficiary institution.</p>	<p>Under the Amended Act an intermediary financial service provider shall develop and implement risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information.</p>	<p>It is not clear whether this provision will also apply to clearing and settling service providers.</p>
<p>Section 2 -Definition of “virtual asset”</p> <p>Means convertible virtual asset such as crypto currency or other digital means of exchange where the virtual asset is accepted by a person as a means payment for goods or services, a unit of account, a store of value or a commodity.</p> <ul style="list-style-type: none"> (a) exchange between virtual assets and fiat currencies. (b) exchange between one or more forms of virtual assets; (c) transfer of virtual assets; and (d) safekeeping and administration of virtual assets instruments enabling control over virtual assets. 	<p>This proviso includes virtual asset as a form of currency and serves to enhance measures against the loopholes in the financial system. It further defines virtual asset service providers as entities that the FIC and reporting entities should monitor.</p>	<p>Prior to this definition cryptocurrency and other forms of digital currency were largely unregulated. This is therefore progressive in so far as meeting international standards.</p>

Section 5 (3)- Extended powers and functions of the FIC

Section 5 is amended by the inclusion of subsection 3. The FIC may, in performing its functions:

- (a) cooperate and exchange information with, or enter into any agreement or arrangement, in writing with a supervisory authority or designated foreign authority, law enforcement agency, competent authority or designated foreign authority;
- (b) conduct inquiries related to suspicious transactions on behalf of foreign designated authorities and notify them of the outcome;
- (c) access, directly or indirectly, on a timely basis, financial, administrative and law enforcement information required for the better carrying out of its functions;
- (d) consult with any relevant person, legal person or legal arrangement for the purpose of exercising its functions;
- (e) request information and statistics from a supervisory authority, law enforcement agency, public body, regulatory agency, person or legal arrangement

These provisions if implemented, will allow greater cooperation and transparency between the FIC and law enforcement agencies. By virtue of this provision the scope of the FIC has been widened to extend to non-governmental organisations and entities that are not regulated by a supervisory or regulatory authority as well as those are regulated, where the supervisory authority or regulator fails or neglects to impose compliance.

The FIC can now specifically follow up with law enforcement agencies on the progress of investigations, whereas previously the role of the FIC would primarily cease once the reports are submitted to law enforcement agencies. The FIC can now play the role of a quasi-law enforcer by having access to information on investigations and the National Prosecution Authority.

<p>(f) request a law enforcement agency or competent authority to report progress and outcomes on a matter referred to it by the FIC.</p> <p>(h) provide a law enforcement agency or supervisory authority with information derived from an inspection carried out.</p> <p>(i) collaborate and coordinate with relevant competent authorities on risk based supervision or monitoring of non-governmental organisations for compliance with the requirements relating to countering financing of terrorism or proliferation or any other serious offence; and</p> <p>(j) supervise and enforce compliance with this Act by reporting entities that are— (i) not regulated or supervised by a supervisory authority in terms of this Act or any other written law; or (ii) regulated or supervised by a supervisory authority in terms of this Act or any other written law, if that supervisory authority fails or neglects to enforce compliance.</p>		
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<p>Section 16- Enhanced Know Your Customer Requirements</p> <p>A reporting entity shall identify its customers and verify its customers' identities by means of reliable and independent source documents, data or information, when— (a) opening an account for, or otherwise establishing a business relationship with a customer; (b) a customer, who is neither an account holder nor in an established business relationship with a financial service provider, wishes to carry out a transaction.</p>	<p>The Amendment Act imposes stricter and broader Know Your Customer (KYC) requirements in comparison with the FIC Act.</p> <p>The amendment repeals and replaces Section 16 in the FIC Act. A key amendment is the addition of subsections 8 to 9 and the inclusion of subsection 3.</p>	<p>Prior to this amendment, the responsibility of monitoring compliance of Know Your Customer protocols was the jurisdiction of the Bank of Zambia. This inclusion empowers the FIC to follow up and sanction reporting entities that are non-compliant with this crucial aspect of financial intelligence gathering.</p>
<p>Section 16(3) Powers of the Minister to determine the timelines for verification</p> <p>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, financing of terrorism or proliferation or any other serious offence relating to money laundering, financing of terrorism or proliferation is effectively managed; and (b) a delay in verification is essential not to interrupt the normal conduct of business.</p>	<p>The Minister is empowered to determine timelines for verification of customers after the commencement of business. This is an exemption of sorts in that customer due diligence is typically concluded prior to engaging in financial business with a reporting entity.</p>	<p>This provision could potentially create an overlap of powers and functions as it empowers the Minister to intervene in the process of verifying the identity of customers. It essentially enables the Minister to override procedures related to verification of customers who may want to conduct business in Zambia.</p>

<p>Section 16 (7) Requirement to extend KYC protocols to insurance companies</p> <p>In addition to previous subsections, an insurance company shall take measures to obtain sufficient information concerning the identity of beneficiaries of life insurance and other investment related insurance policies.</p>	<p>The Amendment Act departs from the FIC Act with the inclusion of this provision.</p> <p>This section extends the KYC requirements to insurance companies offering life insurance policies and other investment related insurance policies (which was not in the FIC Act).</p>	<p>This provision further enhances the reach of the FIC in relation to regulated entities- in this case insurance companies.</p> <p>The Pensions and Insurance Authority is not specifically listed among the reporting entities</p>
<p>Section 16(9) Termination of business relationship where KYC verification or due diligence is not complied with</p> <p>Where a reporting entity is unable to comply with the customer due diligence requirements under this section, it shall not open the account, commence business relations or perform the transaction, and where appropriate, it shall terminate the business relationship, and shall make a suspicious transactions report in relation to the customer.</p>	<p>Reporting entities are required to terminate business relations or engagements with customers whose identity cannot be verified.</p>	<p>None</p>

<p>Section 16(10) Prohibition on Tipping Off during Customer Identification</p> <p>Where a reporting entity forms a suspicion of money laundering or financing of terrorism or proliferation or any other serious offence and it reasonably believes that conducting customer identification and verification requirements shall tip off the customer, it shall not conduct customer identification and verification, and instead shall file a suspicious transaction report.</p>	<p>This provision widens the prohibition on “tipping off” requirements. Where a customer mayor might be tipped off during the course of verification, the reporting entity is required to file a suspicious transaction report instead</p>	<p>None</p>
<p>Section 17(5)- Requirements for entities that are in the same financial group</p> <p>Where a third party is part of the same financial group, the home and host competent authorities shall satisfy themselves that the group applies same or stricter customer due diligence and record keeping, internal control requirements against money laundering and financing of terrorism or proliferation.</p>	<p>This subsection has been inserted into section 17 and creates uniformity of standards in financial groups, specifically where the group entities are resident in different jurisdictions.</p>	<p>Significant revenue losses or capital flight occurs through complex corporate structures that are able to take advantage of tax loopholes and secrecy laws in other jurisdictions within a group. This provision calls for greater cooperation between the FIC and supervisory authorities in other jurisdictions.</p>

<p>(ii) applying enhanced due diligence, proportionate to the risks, to business relationships and customer transactions with natural or legal persons, including financial service providers, from countries which have been designated as high risk by the FIC or any competent authority, as communicated from time to time.</p>		
<p>Section 19- Risk Management Protocols Reporting entities are required to implement and follow risk management protocols which include:</p> <ul style="list-style-type: none"> (i) identifying, assessing, and understanding the money laundering and financing of terrorism or proliferation or any other serious offence relating to money laundering, financing of terrorism or proliferation risks with regard to its products, services, delivery channels and its customers, geographical locations and country risk (ii) applying risk-based counter-measures against any country or any duly delegated competent authority; and (ii) applying enhanced due diligence, proportionate to the risks, to business relationships and customer transactions with 	<p>Section 19 under the FIC has been repealed and replaced pursuant to the Amendment Act. The essence of this section is to outline and enhance risk management protocols for reporting entities.</p>	<p>The risk management protocols may be more onerous for reporting entities; however this appears to be in the spirit of strengthening the financial systems.</p>

<p>natural or legal persons, including financial service providers, from countries which have been designated as high risk by the FIC or any competent authority, as communicated from time to time.</p>		
<p>Section 23- Implementation of internal programmes to combat money laundering, financing of terrorism or proliferation and other serious offence</p> <p>Reporting entities must implement internal policies, procedures and controls to fulfil obligations under the FIC Act. These include:</p> <ul style="list-style-type: none"> (a) adequate screening procedures to ensure high standards when hiring employees. (b) ongoing training for officers and employees to make them aware of the laws relating to money laundering, the financing of terrorism or proliferation or any other serious offence relating to money laundering, financing of terrorism or proliferation, to assist them in recognising transactions and actions that may be linked to money laundering, financing of terrorism or proliferation (c) policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value. 	<p>The Amendment Act repeals and replaces Section 23 in the FIC Act. It enhances the requirements in relation to the implementation of internal policies for combatting money laundering, proliferation, and financing of terrorism.</p>	<p>Similar to Section 17, this section imposes stricter obligations on reporting entities in so far as strengthening internal systems and controls.</p>

<p>Section 24- requirement for reporting entities to conduct ongoing due diligence</p> <p>A reporting entity shall exercise ongoing due diligence using a risk-based approach with respect to a business relationship with a customer which includes:</p> <p>(a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the financial service provider’s knowledge of the customer, their business and risk profile, including where necessary, the source of funds.</p> <p>(b) maintaining current and accurate information and records relating to the customer or beneficial owner.</p>	<p>The Amendment Act repeals and replaces section 24 in the FIC Act. Reporting entities are required to conduct ongoing due diligence on all customers or clients. The implication of which is that record keeping needs to be amplified by reporting institutions.</p>	<p>These requirements generally make the obligations for reporting entities more onerous. However, given the funding limitations of the FIC this also makes analysing suspicious transactions less lengthy and more comprehensive.</p>
<p>Section 26- Additional requirements in relation to wire transactions</p> <p>A financial service provider undertaking a wire transfer equal to, or above, a prescribed threshold shall– (a) identify and verify the identity of the originator; (b) obtain and maintain information on the identity of the beneficiary; (c) obtain and maintain the account number of the originator and beneficiary, or in the absence of an account number, a unique reference number.</p>	<p>Section 26 in the FIC Act is repealed and replaced by the Amendment Act. These mechanisms are meant to improve the tracking and tracing of parties involved engaged in wire transfers for example Moneygram, Western Union and even transactions via mobile money operators (Airtel, MTN).</p>	

<p>Section 27- Requirements for foreign branches and subsidiaries to comply with the obligations for reporting entities.</p> <p>The obligations include:</p> <p>(a) developing policies and procedures for sharing information within the group for money laundering, financing of terrorism or proliferation or any other serious offence relating to money laundering, financing of terrorism or proliferation purposes.</p> <p>(b) ensuring group level compliance for audits, or money laundering, financing of terrorism or proliferation and transaction information from branches and subsidiaries; and</p> <p>(c) adequate safeguards on the confidentiality and use of information exchanged.</p>	<p>The principal Act is amended by the repeal of section 27 and the substitution thereof of the aforementioned provision.</p> <p>This provision allows for exchange of information with foreign entities and improving group compliance across jurisdictions.</p>	<p>None</p>
<p>Section 36- Duties of supervisory authorities</p> <p>Section 36 of the FIC Act is amended by the insertion of the following new subsection immediately after subsection (6):</p> <p>(7) A supervisory authority shall make available a report of its findings and recommendations to the Centre following an inspection conducted under this Act.</p>	<p>This proviso requires supervisory authorities such as the Bank of Zambia, ZICTA, LAZ and other regulatory authorities to submit reports to the FIC on their findings or investigations in relation to reporting entities</p>	<p>None</p>

<p>Section 49 B</p> <p>Subject to the written consent of the Director of Public Prosecutions and where a reporting entity or a person admits that the person has committed an offence, the Director-General may compound the offence by collection from that person of a sum of money that the Director General considers appropriate, but not exceeding fifty percent of the maximum amount of the fine to which that person would have been liable on conviction, and a person having made that payment shall not thereafter be prosecuted in relation to the offence so compounded.</p>	<p>The import of this provision is that empowers the FIC to collect an administrative fine from a non-compliant entity that admits its guilt or non-compliance.</p>	<p>This is a progressive inclusion which firstly, enhances corporation between the FIC and law enforcement agencies- in particular the National Prosecutions Authority. Secondly, this provision provides a means for the FIC to generate income for its operations through the collection of administrative fines.</p>
<p>Section 49 C- Powers of the FIC to impose administrative sanctions</p> <p>Without prejudice to Section 49B, the FIC is empowered to impose administrative sanctions on non-compliant entities which include:</p> <p>(a) a caution not to repeat the conduct which led to the non-compliance of any of the provisions of this Act; (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;</p>	<p>This is a newly inserted section/provision which is empowers the FIC to impose various administrative sanctions as aforementioned. This includes a fine not exceeding one million penalty units which is ZMW300,000.</p>	

<p>(e) publication of a public notice of any prohibition or requirement imposed by it under this Part and of any rescission or variation thereof, and any such notice may, if the Centre considers necessary, include a statement of the reasons for the prohibition, requirement, variation or rescission; and (f) a financial penalty not exceeding one million penalty units.</p> <p>(2) A reporting entity or person may, within thirty days of receipt of an administrative sanction, appeal to the High Court against an administrative sanction imposed by the FIC or a supervisory authority.</p>		<p>This further establishes the autonomy of the FIC to some extent.</p> <p>It further provides room for recourse through the courts of law in relation to reporting entities aggrieved with the decisions of the FIC.</p>
<p>Amendment to Schedule to enhance the scope of sources of funding for the FIC</p> <p>Part II of the Schedule is amended to read as follows: The funds of the Centre consists of moneys that may:</p> <p>(a) be appropriated to the Centre by Parliament for the purposes of the Centre; (b) subject to the approval of the Minister, be paid to the Centre by way of grants or donations; (c) be payable to, or levied by, the Centre under this Act or any other written law; and (d) accrue to, or vest in, the Centre, in whichever form, whether in the course of the exercise of its functions or otherwise.</p>	<p>The scope of the sources of funds of the FIC has been enhanced to empower the FIC to “accrue funds, or use funds vested in, the FIC, in whichever form, whether in the course of the exercise of its functions or otherwise”.</p> <p>This includes administrative fines and funds from donor or international agencies, although the former is subject to approval by the Minister of Finance.</p>	<p>None</p>

3. General Analysis

The objectives of the amendments to the FIC Act are, primarily to enhance the functions of the FIC and also ensure that the FIC meets the established international standards in relation to anti-money laundering and counter-financing of terrorism. To this end these objectives have largely been addressed through the amendments included. The FIC Act in its current form emphasizes financial system monitoring procedures and efforts to enhance compliance. There is also greater obligation on service providers and businesses in general, as well as regulatory authorities to comply with requirements under the FIC Act. In the context of dealing with the specific issues and weaknesses that the FIC flagged in its Trends Reports, it is encouraging to note that certain provisions have been included. These are listed below, though not exhaustive.

- (A) Defining a Prominent Influential Person and in so doing enhancing the scope of Politically Exposed Person (PEP) to include an individual who is or has, been entrusted with a prominent public function by a State or an international or local body or organization (not middle or junior ranking) and also the following:
 - (i) any individual who is known to have joint beneficial ownership or control of a legal entity or legal arrangement, or any other close business relationship.
 - (ii) any individual who 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 PEP; and
 - (iii) any individual who is closely connected either socially or professionally to a PEP

Corruption through public procurement by politically exposed persons was cited by the FIC as one of the main conduits for capital flight. By defining prominent influential persons, the reach of the FIC has been lengthened to target even those members of society who are perceived to be untouchable. This is of particular importance given the intimidation that the FIC faced in recent years following publication of its reports that cited gross corruption.

- (B) Extending the functions of supervisory authorities such as the Law Association of Zambia and the Zambia Institute of Chartered Accountants. Law firms and accounting firms are generally protected from divulging information about clients. Law firms in particular are legally covered under attorney-client privilege and this can only be

circumvented pursuant to legal provisions or court subpoenas. Furthermore, law firms were cited by the FIC as a conduit for laundering of money obtained through the proceeds of crimes. The typically modus operandi is the purchase of real estate and other assets acquired through the law firms.

- (C) The enhanced Know Your Customer requirements which extend to “beneficial ownership” requirements and compliance within group company structures. The beneficial ownership requirements essentially allow the FIC to circumvent the corporate veil and place obligations on reporting entities and financial service providers to identify the ultimate beneficiaries of funds. The enhanced obligations on reporting entities will also ultimately ensure greater compliance.
- (D) A criticism of the FIC prior to the Amendment Act is that it was perceived as something like the proverbial “toothless dog” with powers only to generate reports and “whistle blow”. The provisions under the Amendment Act which empower the FIC to impose administrative sanctions as well as increase collaboration with law enforcement agencies has the effect of rendering the FIC as a quasi-law enforcement agency as opposed to just an administrative body.
- (E) Another feature of the Amendment Act is that it places an onus on reporting entities to enhance internal systems and controls through the implementation of robust risk management systems and monitoring and evaluation policies and has enhanced the scope of the FIC to include the combating of proliferation in addition to the prevention of money laundering and terrorist financing.

4. Recommendations

The FIC is an autonomous institution which for the larger part is perceived to have carried out its work independently and with integrity. This is evidenced by the Trends Reports which have not shied away from flagging government institutions and even persons who are found wanting or from highlighting irregularities. This has led to alleged intimidation of FIC staff and the FIC being allocated minimal funding to carry out its functions (the bulk of the FIC funding is through Parliament appropriations). The amended legislation, although encouraging and generally progressive, will only have efficacy if implemented accordingly.

To this end, it is recommended that the FIC proactively engage and work with civil society organisations in order to draft an appropriate plan. This is possible

through the recognition of non-governmental organizations in the Amendment Act, as “competent” authorities to carry out monitoring of transactions and report suspicious transactions. This collaboration may also yield opportunities for fundraising to further enhance the FIC efforts and functions.

It is further recommended that an advocacy strategy developed to raise public awareness on the importance of the FIC as a crucial institution for not only tracking revenue and curbing corruption, but also to provide checks and balances in relation to public finance management. This is particularly important given the country’s debt crisis and need for transparency. An advocacy strategy can be developed in partnership with civil society organisations and wider stakeholders (including identified supervisory authorities and regulators).

Schedule

1. Disclaimer

We express no opinion on, and have taken no account of, the laws of any jurisdiction other than Zambia.

2. Statutes referred to

- (a) The Financial Intelligence Centre Act, No. 46 of 2010
- (b) The Financial Intelligence Centre (Amendment) Act, No. 16 of 2020
- (c) The Private Partnership Act, No 14 of 2009
- (d) The Public Procurement Act No. 8 of 2020.

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