



Analysis of the Financial Intelligence Centre (Amendment)

Act No. 16 of 2020

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Background

- Financial Action Task Force recommends the establishment of financial intelligence centers (FICs) in all jurisdictions - has established international guidelines
- FICs have a uniform mandate to identify the proceeds of crime, combat money laundering and terror financing; supervise and enforce financial intelligence laws; share information with law enforcement authorities, supervisory bodies, intelligence services.
- Play pivotal role in identifying and combating corruption and preserving integrity of financial systems

Background

- In Zambia the FIC is established and governed by the Financial Intelligence Centre Act No. 46 of 2010 (as amended by Act No. 4 of 2016) (the “**FIC Act**”).
- In 2020 Cabinet approved the Financial Intelligence Centre (Amendment) Bill 2020 which was subsequently passed into law in December of 2020 as the Financial Intelligence Centre (Amendment) Act No. 16 of 2020 (the “**FIC Amendment Act**”)

Background

The main objectives of the FIC 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.

Background

- From a CSO perspective, the FIC Amendment Act was timely on account of FIC Trends Reports which consistently highlighted revenue losses in the financial system due to corruption, tax evasion, fraud and money laundering activities
- Aside from the FIC Trends Reports, another concern was the supposed interference with the FIC through suspected intimidation of FIC staff and drying up of funding to the FIC making it onerous for the institution to carry out its functions

Summary of recent FIC Reports

2018/2019 Reporting period

- The FIC received seven hundred and ninety-nine (799) reports in 2018 of which seven hundred and twenty-four (724) were in relation to suspicious transactions.
- Seventy-five thousand, five hundred and ninety-two (75,592) currency transaction reports.
- One hundred and seventy-six (176) in 2018. In 2018 the FIC revealed that Zambia incurred losses estimated at ZMW 6.1 billion due to financial crimes such as tax evasion, fraud, corruption and money laundering activities.
- Of the ZMW 6.1 billion lost in 2018, an estimated ZMW 4.9 billion was lost solely due to corruption, with public procurement activities being significantly vulnerable to corruption.
- Law firms engaged in money laundering scams amounting to K365 million - investments and transactions to foreign accounts, acquisition of property, land and motor vehicles.

2019/2020 Reporting Period

- The FIC received a total of seven hundred and ninety (790) reports comprising of seven hundred and forty (740) suspicious transaction reports.
- One hundred and forty-nine thousand, six hundred and twenty-five (149,625) currency transaction reports
- Loss of revenue from financial crimes amounted to ZMW 948 million.
- The Zambia Revenue Authority assessed a total loss in revenue of ZMW 27 million.
- The value of disseminations in relation to money laundering (typically money from the proceeds of crime) for 2019 is ZMW 450 million, an increase from ZMW 195 million in 2018
- The major offenses that contributed to the proceeds of crime and therefore laundering of money, being corruption and tax evasion.

Analysis of the FIC Act

- This exercise was viewed in the context of the extent to which the FIC Amendment Act strengthens FIC and closes loopholes
- Did not adequately address the role of politically exposed persons - especially in the context of public procurement
- Loose provisions in relation to KYC and customer identification
- The role of and coordination with law enforcement agencies was not clearly defined or articulated.
- Narrow scope of reporting entities is defined in the current legislation
- The role of the fic ended once transactions were reported

Key provisions from the FIC Amendment Act

Section 2- Definition Section

Enhanced definition of a Prominent Influential Person- previously politically exposed person

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):

- (i) a head of State or of Government;
- (ii) a minister;
- (iii) a member of an executive organ of a political party;
- (iv) a magistrate, judge and other senior officials of quasi judicial

Politically exposed persons

(ix) 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

(x) 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

(xi) any individual who is closely connected either socially or professionally to a PEP

This provision appears to be more aligned with beneficial ownership requirements- not just the politicians are exposed, but also associates

Enhanced functions of the FIC

Section 5 is amended by the inclusion of subsection 3.

The FIC may, in performing its functions:

- cooperate and exchange information with, or enter into any agreement or arrangement, in writing with a supervisory authority or designated foreign authority, law enforcement or competent agency
- request information and statistics from a supervisory authority, law enforcement agency, public body, regulatory agency, person or legal arrangement
- request a law enforcement agency or competent authority to report progress and outcomes on a matter referred to it by the FIC

Enhanced functions of the FIC

- 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
- 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

Enhanced functions of the FIC

- 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

Enhanced duties of supervisory authorities

- **Section 36- Duties of supervisory authorities**
- Section 36 of the FIC Act is amended by the insertion of the following new subsection immediately after subsection (6):
- (7) A supervisory authority shall make available a report of its findings and recommendations to the Centre following an inspection conducted under this Act.
- 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.

Powers of FIC to enforce sanctions (S.49B)

- 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.



Powers of FIC to enforce sanctions

- 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.
- Without prejudice to Section 49B, the FIC is empowered to impose administrative sanctions on non-compliant entities which include:
 - a caution not to repeat the conduct which led to the non-compliance of any of the provisions of this Act;
 - (b) a reprimand;



Powers of FIC to enforce sanctions

- a directive to take remedial action or to make specific arrangements;
- the restriction or suspension of certain specified business activities;
- a financial penalty not exceeding one million penalty units (ZMW 300,000)
- 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.

Amendment to Schedule to enhance the scope of funding sources for the FIC

- Part II of the Schedule is amended to read as follows:
- The funds of the Centre consists of moneys that may:
 - (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.

Conclusion/Summary

- Wider definition of a Prominent Influential Person or (Politically Exposed Person) to include companies, associates such as spouses, children and friends.
- Enhanced Know Your Customer requirements which extend to requirements and compliance within group company structures and robust risk management protocols.
- 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.
- Administrative fines also enable FIC to accumulate funds to carry out its functions
- Enhanced responsibility of supervisory authorities- increased collaboration between LAZ and ZICA- "circumventing" attorney-client privileges. Jurisdiction also extending to insurance companies.

Conclusion/Summary

- Extension of FIC jurisdiction to non-financial businesses or professionals- motor vehicle dealers, real estate agents
- Enhanced collaboration with foreign supervisory authorities - remains to be seen how this will play out in jurisdictions that have robust secrecy laws.
- Obligations on financial institutions and other reporting entities more onerous
- Primary funding/financing of the FIC is still through Parliament - raises questions about capacity
- Non-Governmental Organisations need to be aware of the obligations to be compliant with the FIC requirements - sensitization needed
- Implementation! Implementation! Implementation!



Thank you

Questions