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FINANCIAL INTELLIGENCE CENTRE ACT (FICA)

1. INTRODUCTION

South Africa's readmission to the international arena, the de-regulation of international markets and the advancement in communication technology has resulted in a dramatic escalation in organized crime and money laundering in South Africa. The Financial Intelligence Centre (FIC), fights crime by monitoring the proceeds of crime and combats money laundering and financing of terrorism. The FIC produces financial intelligence through the analysis of data on financial transactions. This financial intelligence is then shared with a range of local and foreign law enforcement agencies and authorities. Combating money laundering and the financing of terrorism is part of ensuring a sound and stable financial system characterized by integrity and expanded public access.

Prior to 1990 money laundering and related offences were only governed by the common law. SA has since the early 1990's endeavored to create a statutory framework and as part of the SA Government's fight against money laundering the FICA was promulgated. FIC was established in 2003 to administer the Financial Intelligence Centre Act (2001, as amended). Financial crime affects every South African, directly or indirectly, by robbing individual resources or draining the funds available for the country's development.

The FIC is mandated to:

1. Make information it has collected available to investigating authorities, supervisory bodies, the intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of South Africa
2. Exchange information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities.
3. Supervise and enforce compliance with the FIC Act or any directive made in terms of the FIC Act and facilitate effective supervision and enforcement by supervisory bodies

All businesses and all people are required to report to the FIC on any transaction they are aware of that appears to be suspicious or unusual. These reports are done by completing the relevant form which is available on FIC's website. In addition certain categories of businesses, known as **accountable and reporting institutions**, listed in Schedule 1 and 3 of the FIC Act respectively must register with FIC.

Registration with FIC applies if a business falls into any of the following categories:

- Attorneys
- Trust Companies
- Estate Agents
- Banks (including mutual banks)
- Financial instrument traders

- Long-term insurers
- Casinos and gambling institutions
- Foreign Exchange dealers
- Financial service providers (excluding short-term insurers)
- Dealers in travelers cheques
- Money remitters
- Motor vehicle dealers
- Krugerrand dealers

(Note: The above list is not exhaustive but reflects the main categories of business)

2. ACCOUNTABLE INSTITUTIONS

FIC imposes the following obligations on Accountable Institutions:

2.1 DUTY TO IDENTIFY CLIENTS

Section 21 creates the general obligation to establish and verify the identity of a client. The Money Laundering and Terrorist Financing Control Regulations prescribe the information which must be obtained and verified as well as the verification procedures in respect of the following categories of clients:

- South African Citizens and residents
- Foreign nationals
- Close corporations and South African Companies
- Partnerships
- Trusts
- Other legal persons

2.2 DUTY TO KEEP RECORD

Section 22 imposes an obligation on accountable institutions to keep records of all business relationships or transactions concluded with clients. Records should state the nature of the business relationship or transaction, the amount involved, as well as the parties to the transaction.

The records must be kept for at least 5 years from the date on which the business relationship was terminated and 5 years from the date on which the transaction is concluded.

2.3 REPORTING DUTIES AND ACCESS TO INFORMATION

Accountable Institutions must report to the FIC:

- Cash transactions or an aggregation thereof within a defined business day above the prescribed limit of R24 999.99 (Section 28). Cash threshold reporting in terms of section 28 provides the FIC with a mechanism to pro-actively monitor and report on cash transactions which may be linked to money laundering activities so that potential proceeds of crime are timeously identified and investigated. Cash threshold reports must be reported to the FIC within 2 business days.
- Property associated with terrorist and related activities (Section 28A). Section 28A requires accountable institutions to file a report with the FIC within 5 business days if such institutions discover that they have in their possession or control property linked to terrorism.
- Suspicious and unusual transactions (Section 29). The FIC Act requires a person who carries on a business, or is in charge of or manages a business, or who is employed by a business, and who has a suspicion of money laundering or terror financing activity or transactions, to report this to the FIC within 15 business days.

2.4 MEASURES TO PROMOTE COMPLIANCE BY ACCOUNTABLE INSTITUTIONS

All accountable institutions have to:

- Formulate and implement internal rules (section 42)
- All Accountable institutions must formulate and implement internal rules to ensure compliance of the institution and its employees with the requirements of the FIC Act. These internal rules must be available to all employees of the accountable institution that are involved in transactions to which the FIC Act applies.
- Monitor compliance with, and provide training on the FIC Act (section 43)
- The accountable institutions must also provide its employees with training on the provisions of the Act and internal rules applicable to them, to enable them to comply with the FIC Act.
- An Accountable institution has a duty to formally appoint a person responsible for ensuring that the accountable institution and its employees comply with the internal rules of the institution and the provisions of the FIC Act
- Register with FIC (section 43B)
- All accountable and reporting institutions are required to register with the FIC in the prescribed manner.

2.5 ENFORCEMENT BY THE FIC AND SUPERVISORY BODIES

Supervisory Bodies (Law Society) is responsible for supervising and enforcing compliance by accountable institutions with the FIC Act

The FIC has recently established its enforcement capability and may assist supervisory bodies to conduct inspections of accountable institutions in terms of section 45B of the FIC Act for purposes of determining compliance with the FIC Act

The FIC or supervisory body may furthermore issue administrative sanctions for non-compliance with the FIC Act.

The FIC or the supervisory body may impose one or more of the administrative sanctions listed in section 45C of the FIC Act, which can include a financial penalty not exceeding R10 MILLION for natural persons and R50 MILLION for legal persons depending on the nature of the non-compliance.

2.6 CRIMINAL LIABILITY

Failure to comply with the provisions of the FIC Act may also result in criminal liability. Section 68 of the FIC Act lists penalties that can be imposed if a person is convicted of an offence listed in the FIC Act.

If a person is convicted of an offence in Chapter 4 of the FIC Act the penalties include imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 MILLION.

If a person is convicted of an offence in sections 55; 61; 61A; 62; 62A; 62B; 62C; or 62D of the FIC Act the penalties include imprisonment for a period not exceeding 5 years or to a fine not exceeding R10 MILLION depending on the nature of the contravention.

3. REGISTRATION REQUIREMENTS FOR ACCOUNTABLE INSTITUTIONS

There are two ways to register as an Accountable institution.

- 3.1 Web Based Registration – it is recommended that all registration are done electronically on the FIC's website (www.fic.gov.za).
- 3.2 Manual Registration – a manual registration process is available for institutions that do not have the capability to register electronically. This can be done by completing the approved form and faxing it to the FIC using the fax number specified on the form.

The deadline for registration was 1 March 2011 but Accountable and Reporting Institutions can still register with the FIC. New accountable and reporting institutions must register their business with the FIC within 90 days of commencement of business.

Failure to register with the FIC could result in a fine not exceeding R1 000 000.00 or imprisonment for a period not exceeding 5 years and an administrative sanction.

When registering a compliance officer must be appointed who will be responsible to ensure compliance with the FIC Act. The FIC Act further requires that all information submitted and any future amendments to the institution's registration information, be validated and confirmed by a validator. The validator should be a senior person within the institution.

4. ENFORCEMENT

Section 45(1) of the FIC Act prescribes that every supervisory body is responsible for the supervision and enforcement of compliance in terms of the FIC Act in respect of all accountable institutions regulated by it.

The FIC and the supervisory body must co-ordinate their approach to exercising their powers and performing their functions in terms of the FIC Act to ensure consistent application of the FIC Act and must enter into a written Memorandum of Understanding in terms of section 45(1D).

4.1 POWERS OF SUPERVISORY BODIES

They have the following powers:

- Issue directives to accountable institutions to furnish information or submit reports or statistical documents
- Issue or amend any licence, registration, approval or authorization to include compliance with the FIC Act
- Inspect accountable institutions to determine compliance with the FIC Act
- Request accountable institutions to appear for questioning
- Restrict or suspend certain specified business activities
- Address non-compliance and issue sanctions in consultation with the FIC

4.2 INSPECTIONS

The FIC Act empowers supervisory bodies to conduct FIC Act inspections on their licensed accountable institutions to determine compliance with the FIC Act and permits supported inspections where the FIC and a supervisory body collaborate.

The scope of an inspection will be to determine the state of compliance of an Accountable institution in terms of the FIC Act.

4.3 NON-COMPLIANCE AND SANCTIONS

The FIC or the supervisory body may impose one or more of the administrative sanctions listed in section 45C of the FIC Act, where it has found the institution to be in Non-compliance with the FIC Act.

The sanctions may vary and include:

- A caution
- Reprimand
- A directive to take remedial action
- Suspension of certain business activities
- A financial penalty of up to R50 million

4.4 APPEAL

An aggrieved accountable or reporting institution may appeal to the FIC Act Appeal Board within 30 days after becoming aware of the sanction. An appeal fee of R10 000.00 is payable by the Appellant to the FIC. The appeal procedure and templates can be found on the FIC's website.

Although care has been taken to ensure the accuracy of the above information, FN Inc and its members, employees, agents and representatives cannot be held liable for any loss suffered, as a result of the use of this information.

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