

(1 December 2010 – to date)

FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001

(Gazette No. 22886, Notice No. 1262, dated 3 December 2001. Commencement date: Various – refer to Act).

REGULATIONS IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001

MONEY LAUNDERING AND TERRORIST FINANCING CONTROL REGULATIONS

Government Notice R1595 in Government Gazette 24176, dated 20 December 2002, as corrected by Government Gazette 24218, dated 3 January 2003. Commencement date: 30 June 2003, unless otherwise indicated.

as amended by:

Government Notice R456 in Government Gazette 27580, dated 20 May 2005. Commencement date: 20 May 2005.

Government Notice R867 in Government Gazette 33596, dated 1 October 2010. Commencement date: 1 October 2010.

Government Notice 1107 in Government Gazette 33781, dated 26 November 2010. Commencement date: 1 December 2010.

The Minister of Finance has, in terms of section 77 of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001), made the regulations set out in the Schedule.

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Prepared by:

In partnership with:

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DEFINITIONS

1. Definitions

In these regulations "**the Act**" means the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001), and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act has that meaning, and -

"**close corporation**" means a corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No 69 of 1984);

“days”, for the purpose of regulation 24, means all days of the week excluding Saturdays, Sundays and public holidays;

(Definition of “days” inserted by regulation 2(a) of Government Notice R456 of 2005)

“foreign company” means an association of natural or legal persons incorporated outside the Republic which has legal personality or enjoys a similar status in terms of which it may enter into contractual relations and legal proceedings in its own name;

“guidance notes” means guidance notes issued by the Centre in terms of regulation 28;

“identification document”, in respect of a natural person who -

- (a) is a citizen of, or resident in the Republic, means an official identity document; or
- (b) is not a citizen of the Republic and not resident in the Republic, means a passport issued by the country of which that person is a citizen;

“manager”, in respect of a South African or foreign company, means the natural person who is the principal executive officer of the company, by whatever name he or she may be designated and whether or not he or she is a director of that company;

“property associated with terrorist and related activities” means property referred to in section 28A(1)(a) and (b) of the Act;

(Definition of “property associated with terrorist and related activities” inserted by regulation 2(b) of Government Notice R456 of 2005)

“South African company” means a company as defined in section 1 of the Companies Act, 1973, (Act No. 61 of 1973); and

“suspicious or unusual transaction or series of transactions” means any transaction or series of transactions referred to in section 29(1) or (2) of the Act;

(Definition of “suspicious or unusual transaction or series of transactions” inserted by regulation 2(c) of Government Notice R456 of 2005)

“the Amendment Act” means the Financial Intelligence Centre Amendment Act 2008 (Act 11 of 2008).

(Definition of “the Amendment Act” inserted by regulation 2 of Government Notice 1107 of 2010)

“trust” means a trust as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), other than a trust established -

- (a) by virtue of a testamentary writing;
- (b) by virtue of a court order;
- (c) in respect of persons under curatorship, or
- (d) by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund,

and includes a similar arrangement established outside the Republic.

CHAPTER 1 ESTABLISHMENT AND VERIFICATION OF IDENTITY

PART 1 INTRODUCTION

2. Introductory

- (1) No accountable institution may knowingly establish or maintain a business relationship or conduct a single transaction with a client who is entering into that business relationship or single transaction under a false name.
- (2) When an accountable institution in terms of the Act must establish and verify the identity of a natural or legal person or a trust, the institution must establish and verify identity in accordance with regulations 2 to 18.

PART 2 NATURAL PERSONS

3. Information concerning South African citizens and residents

- (1) An accountable institution must obtain from, or in respect of, a natural person who is a citizen of, or resident in, the Republic, that person's -
 - (a) full names;
 - (b) date of birth;
 - (c) identity number;
 - (d) income tax registration number, if such a number has been issued to that person; and

(e) residential address.

(2) In the case where the accountable institution is aware or ought reasonably to be aware that the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person the accountable institution must, in addition to obtaining the particulars referred to in subregulation (1), obtain from, or in respect of, of that other person -

(a) his or her full names;

(b) his or her date of birth;

(c) his or her identity number;

(d) his or her residential address; and

(e) his or her contact particulars.

4. Verification of information concerning South-African citizens and residents

(1) An accountable institution must verify the full names, date of birth and identity number of a natural person referred to in regulation 3(1)(a), (b) or (c), or 3(2)(a), (b) or (c) by comparing these particulars with -

(a)

(i) an identification document of that person; or

(ii) in the case where that person is, for a reason that is acceptable to the institution, unable to produce an identification document, another document issued to that person, which, taking into account any guidance notes concerning the verification of identities which may apply to that institution, is acceptable to the institution and bears -

(aa) a photograph of that person;

(bb) that person's full names or initials and surname;

(cc) that person's date of birth, and

(dd) that person's identity number; and

- (b) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.
- (2) An accountable institution must verify the income tax registration number referred to in regulation 3(1)(d) by comparing this number with a document issued by the South African Revenue Service bearing such a number and the name of the natural person.
- (3) An accountable institution must verify the residential address referred to in regulation 3(1)(e) or 3(2)(f) by comparing these particulars with information which can reasonably be expected to achieve such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution.

5. Information concerning foreign nationals

- (1) An accountable institution must obtain from, or in respect of, a natural person who is a citizen of another country and is not resident in the Republic, that person's -
- (a) full names;
 - (b) date of birth;
 - (c) nationality;
 - (d) passport number;
 - (e) South African income tax registration number, if such a number has been issued to that person;
and
 - (f) residential address.
- (2) In the case where the accountable institution is aware or ought reasonably to be aware that the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person the accountable institution must, in addition to obtaining the particulars referred to in subregulation (1), obtain from, or in respect of, of that other person -
- (a) his or her full names;
 - (b) his or her date of birth;
 - (c) his or her nationality;

- (d) his or her passport number;
- (e) his or her residential address, and
- (f) his or her contact particulars.

6. Verification of information concerning foreign nationals

- (1) An accountable institution must verify the particulars obtained in terms of regulation 5(1)(a), (b), (c) and (d) or 5(2)(a), (b), (c) and (d) from or in respect of a natural person who is not a citizen of the Republic and not resident in the Republic, by comparing those particulars with an identification document of that person.
- (2) An accountable institution must verify the income tax registration number obtained in terms of regulation 5(1)(e) from or in respect of a natural person who is not a citizen of the Republic and not resident in the Republic, by comparing those particulars with a document issued by the South African Revenue Service bearing such a number.
- (3) An accountable institution must verify any of the particulars referred to in subregulation (1) or (2) with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 3 LEGAL PERSONS

7. Information concerning close corporations and South African companies

An accountable institution must obtain from the natural person acting or purporting to act on behalf of a close corporation or South African company with which it is establishing a business relationship or concluding a single transaction -

- (a) the registered name of the close corporation or company;
- (b) the registration number under which the close corporation or company is incorporated;
- (c) the registered address of the close corporation or company;
- (d) the name under which the close corporation or company conducts business;

- (e) the address from which the close corporation or company operates, or if it operates from multiple addresses -
 - (i) the address of the office seeking to establish a business relationship or to enter into a single transaction with the accountable institution; and
 - (ii) the address of its head office;
- (f) in the case of a company -
 - (i) the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or full names, date of birth and name of the country referred to in regulation 5(1)(a), (b) (c), as may be applicable, concerning -
 - (aa) the manager of the company; and
 - (bb) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the company; and
 - (ii) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b), and (c), name, address and legal form referred to in regulation 11(a), (b) and (c),

name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning the natural or legal person, partnership or trust holding 25% or more of the voting rights at a general meeting of the company concerned;
- (g) in the case of a close corporation the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or the full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), as may be applicable, concerning -
 - (i) each member, and
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the close corporation; and

- (h) the income tax and value added tax registration numbers of the close corporation or company, if such numbers were issued to that close corporation or company;
- (i) in the case of a company, the residential address and contact particulars of -
 - (i) the manager;
 - (ii) each natural or legal person, partnership or trust holding 25% or more of the voting rights at a general meeting of the company concerned; and
 - (iii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the company;
- (j) in the case of a close corporation, the residential address and contact particulars of -
 - (i) each member, and
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the close corporation.

8. Verification of information concerning close corporations and South African companies

An accountable institution must verify the particulars obtained in respect of a close corporation or company in terms of regulation 7(a) to 7(h) by comparing -

- (a) the registered name, registration number and registered address referred to in regulation 7(a), (b) and (c) with -
 - (i) in the case of a company, the most recent versions of the Certificate of Incorporation (form CM1) and Notice of Registered Office and Postal Address (form CM22), bearing the stamp of the Registrar of Companies and signed by the company secretary; or
 - (ii) in the case of a close corporation, the most recent versions of the Founding Statement and Certificate of Incorporation (form CK1), and Amended Founding Statement (form CK2) if applicable, bearing the stamp of the Registrar of Close Corporations and signed by an authorised member or employee of the close corporation;
- (b) the trade name and business address referred to in regulation 7(d) and (e) with information which can reasonably be expected to achieve such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution;

- (c) the particulars referred to in regulation 7(f) and (g) with information obtained in accordance with regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 14(a), 14(c), 16(a) or 16(d), as may be applicable;
- (d) the tax numbers referred to in subregulation 7(h) with documents issued by the South African Revenue Service bearing such numbers; and
- (e) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

9. Information concerning foreign companies

An accountable institution must obtain from the natural person acting or purporting to act on behalf of that foreign company with which it is establishing a business relationship or concluding a single transaction -

- (a) the name under which it is incorporated;
- (b) the number under which it is incorporated;
- (c) the address where it is situated for purposes of its incorporation;
- (d) the name under which it conducts business in the country where it is incorporated;
- (e) the name under which it conducts business in the Republic;
- (f) the address from which it operates in the country where it is incorporated, or if it operates from multiple addresses the address of its head office;
- (g) the address from which it operates in the Republic, or if it operates from multiple addresses the address of the office seeking to establish a business relationship or to enter into a single transaction with the accountable institution;
- (h) the income tax and value added tax registration numbers of the company, if such numbers were issued to that or *[sic]* company;
- (i) the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), as may be applicable, concerning -

- (i) the manager in respect of its affairs in the Republic; and
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the foreign company;
- (j) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning each natural or legal person, partnership or trust holding 25% or more of the voting rights in the foreign company;
- (k) the residential address and contact particulars of -
- (i) the manager in respect of its affairs in the Republic;
 - (ii) each natural or legal person or trust holding 25% or more of the voting rights in the company; and
 - (iii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the company.

10. Verification of information concerning foreign companies

An accountable institution must verify the particulars obtained in respect of a foreign company in terms of regulation 9(a) to 9(j) by comparing -

- (a) the name, number and address referred to in regulation 9(a), (b) and (c) with an official document issued by an authority for recording the incorporation of companies of the country of incorporation of the foreign company, witnessing its incorporation and bearing its name and number of incorporation and the address where it is situated for purposes of its incorporation;
- (b) the names and addresses referred to in regulation 9(d) to 9(g) with information which can reasonably be expected to such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution;
- (c) the tax numbers referred to in subregulation 9(h) with documents issued by the South African Revenue Service bearing such numbers;

- (d) the particulars referred to in regulation 9(i) with information obtained in accordance with regulation 4(1), 6(1) or 6(3), as may be applicable;
- (e) the particulars referred to in regulation 9(j) with information obtained in accordance with regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 14(a), 14(c), 16(a) or 16(d), as may be applicable, and
- (f) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

11. Information concerning other legal persons

An accountable institution must obtain from the natural person acting or purporting to act on behalf of a legal person other than a company, close corporation or foreign company with which it is establishing a business relationship or concluding a single transaction -

- (a) the name of the legal person;
- (b) the address from which it operates;
- (c) its legal form;
- (d) the income tax registration number of the legal person, if such a number was issued to that legal person;
- (e) the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), as may be applicable, concerning the identity of each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the legal person; and
- (f) the residential address and contact particulars of each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the legal person.

12. Verification of information concerning other legal persons

An accountable institution must verify the particulars obtained in respect of a legal person in terms of regulation 11(a) to 11(e) by comparing -

- (a) the name, address and legal form referred to in regulation 11(a), (b) and (c) with the constitution or other founding document in terms of which the legal person is created and information which can reasonably be expected to such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution;
- (b) the income tax registration number referred to in subregulation 11(d) with a document issued by the South African Revenue Service bearing such a number;
- (c) the particulars referred to in regulation 11(e) with information obtained in accordance with regulation 4(1), 6(1) or 6(3), as may be applicable; and
- (d) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 4 PARTNERSHIPS

13. Information concerning partnerships

An accountable institution must obtain from a natural person acting or purporting to act on behalf of a partnership, other than a partnership formed by qualified persons to carry on a profession and designated by notice in the *Gazette* by virtue of section 30(2) of the Companies Act, 1973 (Act No. 61 of 1973), with which it is establishing a business relationship or concluding a single transaction -

- (a) the name of the partnership,
- (b) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c) or name and number referred to in regulation 15(a), as may be applicable, concerning -
 - (i) every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership;
 - (ii) the person who exercises executive control over the partnership; and
 - (iii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the partnership.

14. Verification of information concerning partnerships

An accountable institution must verify the particulars obtained in respect of a partnership in terms of regulation 13 by comparing -

- (a) the name of the partnership referred to in regulation 13(a) with the partnership agreement in terms of which the partnership was formed;
- (b) the particulars referred to in regulation 13(b) with information obtained in accordance with this regulation or regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 16(a) or 16(d), as may be applicable; and
- (c) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 5 TRUSTS

15. Information concerning trusts

An accountable institution must obtain from the natural person acting or purporting to act on behalf of a trust with which it is establishing a business relationship or concluding a single transaction -

- (a) the identifying name and number of the trust;
- (b) the address of the Master of the High Court where the trust is registered, if applicable;
- (c) the income tax registration number of the trust, if such a number was issued to that trust
- (d) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning -
 - (i) each trustee of the trust; and

- (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the trust;
- (e) the -
- (i) full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning each beneficiary of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created, or
 - (ii) particulars of how the beneficiaries of the trust are determined;
- (f) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning the founder of the trust; and
- (g) residential address and contact particulars of -
- (i) each trustee of the trust;
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the trust;
 - (iii) each beneficiary of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created; and
 - (iv) the founder of the trust.

16. Verification of Information concerning trusts

- (1) An accountable institution must verify the particulars obtained in respect of a trust in terms of regulation 15 by comparing -

- (a) the name, number and other particulars referred to in regulation 15(a) and 15(e)(ii) with the trust deed or other founding document in terms of which the trust is created and -
 - (i) in the case of a trust created in the Republic, the authorisation given by the Master of the High Court in terms of section 7 of the Trust Property Control Act, 1988, (Act No. 57 of 1988) to each trustee of the trust to act in that capacity; or
 - (ii) in the case of a trust created outside the Republic, an official document which reflects these particulars, issued by an authority in the country where the trust is created which administers or oversees laws relating to trusts in that country;
 - (b) the address referred to in regulation 15(b) with the authorisation given by the Master of the High Court in terms of section 7 of the Trust Property Control Act, 1988, (Act No. 57 of 1988) to each trustee of the trust to act in that capacity;
 - (c) the income tax registration number of the trust referred to in regulation 15(c) with a document issued by the South African Revenue Service bearing such a number;
 - (d) the particulars referred to in regulation 15(d), (e) (i) or (f) with information obtained in accordance with this regulation or regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 14(a), 14(c), 16(a) or 16(e), as may be applicable and -
 - (i) in the case of a trust created in the Republic, the authorisation given by the Master of the High Court in terms of section 7 of the Trust Property Control Act, 1988, (Act No. 57 of 1988) to each trustee of the trust to act in that capacity; or
 - (ii) in the case of a trust created outside the Republic, an official document which reflects these particulars, issued by an authority in the country where the trust is created which administers or oversees laws relating to trusts in that country; and
 - (e) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.
- (2) In the case where the natural or legal person, partnership or trust referred to in regulation 15(f) has died or no longer exists an accountable institution must verify the particulars referred to in that regulation by comparing those particulars with information which can reasonably be expected to achieve such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 6 GENERAL

17. Additional requirements when person acts on authority of another

- (1) When a natural person seeking to establish a business relationship or to conclude a single transaction with an accountable institution on behalf of another natural person, a legal person or a trust, the institution must, in addition to the other steps as may be applicable in terms of regulations 3 to 16, obtain from that person information which provides proof of that person's authority to act on behalf of that other natural person, legal person or trust, taking into account any guidance notes concerning the verification of identities which may apply to that institution.
- (2) An accountable institution must verify the information obtained in terms of subregulation (1) by -
 - (a) comparing the particulars of the natural or legal person, partnership or trust referred to in subregulation (1) with information obtained by the institution in accordance with regulation 4, 6, 8, 10, 12, 14 or 16, as may be applicable, from or in respect of those persons or that trust; and
 - (b) establishing whether that information, on the face of it, provides proof of the necessary authorisation.

18. Verification in absence of contact person

If an accountable institution obtained information in terms of these regulations about a natural or legal person, partnership or trust without contact in person with that natural person, or with a representative of that legal person or trust, the institution must take reasonable steps to establish the existence or to establish or verify the identity of that natural or legal person, partnership or trust, taking into account any guidance notes concerning the verification of identities which may apply to that institution.

19. Accountable institution maintain *[sic]* correctness of particulars

An accountable institution must take reasonable steps, taking into account any guidance notes concerning the verification of identities which may apply to that institution, in respect of an existing business relationship, to maintain the correctness of particulars which are susceptible to change and are provided to it under this Chapter.

**CHAPTER 2
RECORD-KEEPING**

20. Particulars of third parties keeping records

If an accountable institution appoints a third party to keep on its behalf any records which that institution must retain in terms of the Act, that institution must without delay provide the Centre with -

- (a) the third party's -
 - (i) full name, if the third party is a natural person; or
 - (ii) registered name, if the third party is a close corporation or company;
- (b) the name under which the third party conducts business;
- (c) the full name and contact particulars of the individual who exercises control over access to those records;
- (d) the address where the records are kept;
- (e) the address from where the third party exercises control over the records; and
- (f) the full name and contact particulars of the individual who liaises with the third party on behalf of the accountable institution concerning the retention of the records.

CHAPTER 3 CLIENT PROFILE

21. Information to identify proceeds of unlawful activities or money laundering activities

- (1) An accountable institution must, in the circumstances referred to in subregulation (2), obtain the information referred to in subregulation (3) from or in respect of -
 - (a) a client who has established a business relationship or concludes a single transaction; or
 - (b) a prospective client seeking to establish a business relationship or conclude a single transaction.
- (2) An accountable institution must obtain the information referred to in subregulation (3) whenever it is reasonably necessary, taking into account any guidance notes concerning the verification of identities or the reporting of suspicious and unusual transactions which may apply to that institution, with a view to obtain additional information -
 - (a) concerning a business relationship or single transaction which poses a particularly high risk of facilitating money laundering activities; or
 - (b) to enable the accountable institution to identify the proceeds of unlawful activity or money laundering activities.

- (3) The information which an accountable institution must obtain in the circumstances referred to in subregulation (2) must be adequate to reasonably enable the institution to determine whether transactions involving a client referred in subregulation (1) are consistent with the institution's knowledge of that client and that client's business activities and must include particulars concerning -
- (a) the source of that client's income; and
 - (b) the source of the funds which that client expects to use in concluding the single transaction or transactions in the course of the business relationship.

CHAPTER 4

REPORTING OF SUSPICIOUS AND UNUSUAL TRANSACTIONS

22. Manner of reporting

- (1) Subject to subregulation (2), a report made under Part 3 of Chapter 3 of the Act must be made in accordance with the format specified by the Centre, and sent to the Centre electronically by means of-
- (a) the internet-based reporting portal provided by the Centre for this purpose at the following internet address: <http://www.fic.gov.za>, or
 - (b) a method developed by the Centre for this purpose and made available to a person wishing to make such reports.
- (2) If a person wishing to make a report under Part 3 of Chapter 3 of the Act-
- (a) does not have the technical capability to make a report in accordance with subregulation (1), or
 - (b) is for another reason indefinitely unable to make a report in accordance with subregulation (1),

that person shall make the report on a form specified by the Centre from time to time for this purpose and provide it to the Centre at the contact particulars specified by the Centre from time to time for this purpose.

(Regulation 22 amended by Gazette No. 24218 of 2003)

(Regulation 22 substituted by regulation 3 of Government Notice R456 of 2005)

(Commencement date of regulation 22: 3 February 2003)

22A. Information to be reported concerning property associated with terrorist and related activities

- (1) When an accountable institution makes a report concerning property associated with terrorist and related activities under section 28A of the Act, the report must contain full particulars in respect of the accountable institution making the report, of-

- (a) the name of the accountable institution;
 - (b) the identifying particulars of the accountable institution for example an identity number, registration number or practise number;
 - (c) the address of the accountable institution;
 - (d) the type of business or economic sector of the accountable institution;
 - (e) the surname and initials of a contact person, and
 - (f) the contact particulars of a contact person.
- (2) In respect of the property concerning which a report under section 28A is made, the report must contain as much information as is readily available of-
- (a) a description of the type of property;
 - (b) any identifying particulars concerning the property for example registration particulars, unique numbers or other particulars;
 - (d) the estimated value of the property, and
 - (e) the physical address where the property is located.
- (3) In respect of a person or entity exercising control over the property on behalf of the accountable institution making the report, the report must contain full particulars of-
- (a) the name of the person or entity;
 - (b) the identifying particulars of the person or entity for example an identity number or registration number;
 - (c) the physical address of the person or entity;
 - (d) in the case of a natural person, the person's contact particulars, and
 - (e) in the case of a legal person or an entity, the surname, initials and contact particulars of a contact person.

(4) In respect of every person who, according to the knowledge of the accountable institution making the report, may have an interest in the property, the report must contain as much information as is readily available of-

(a) in the case of a natural person, full particulars of-

- (i) the person's names and surname, or initials and surname, if the person's full names are not available;
- (ii) the person's identifying number;
- (iii) the type of identifying document from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
- (iv) the person's address in the Republic;
- (v) the person's country of residence;
- (vi) if the person's country of residence is other than the Republic, the person's address in the country of residence;
- (vii) the person's contact telephone number;
- (viii) the person's occupation, and
- (ix) the source of the funds with which the person acquired the interest in the property; and

(b) in the case of an *[sic]* legal person or other entity, full particulars of-

- (i) the person's or entity's name;
- (ii) the person's or entity's identifying number, if it has such a number;
- (iii) the person's or entity's address in the Republic;
- (iv) the type of business conducted by the person or entity;
- (v) the person's or entity's country of origin;
- (vi) if the country of origin is other than the Republic, the person or entity's address in the country of origin, and

(vii) the source of the funds with which the person acquired the interest in the property.

- (5) A report under section 28A of the Act must contain a description of the grounds on which the accountable institution making the report has reached the conclusion that the entity which owns or controls the property in question, or on whose behalf, or at whose direction, the property in question is owned or controlled, is an entity referred to in subsection (1)(a) or (b) of section 28A of the Act.

(Regulation 22A inserted by regulation 4 of Government Notice R456 of 2005)

22B. Prescribed amount for cash transaction reporting

The prescribed amount of cash above which a transaction must be reported to the Centre under section 28 of the Act is R24 999,99 or an aggregate of smaller amounts which combine to come to this amount if it appears to the accountable institution or reporting institution concerned that the transactions involving those smaller amounts are linked to be considered fractions of one transaction.

(Regulation 22B inserted by regulation 2 of Government Notice R867 of 2010)

22C. Information to be reported when a cash transaction is above the prescribed limit.

- (1) When a report concerning a cash transaction that is above the prescribed limit is made under section 28 of the Act, the report must contain full particulars in respect of the natural or legal person making the report or other entity on whose behalf the report is made, of -

- (a) the name of the person or entity;
- (b) the identifying particulars of the person or entity such as identity number, registration number or practice number for example;
- (c) the address of the person or entity;
- (d) the type of business or economic sector of the accountable institution and reporting institution;
- (e) in the case of a natural person, the person's contact particulars, and
- (f) in the case of a legal person or entity, the surname, initials and contact particulars of a contact person.

- (2) In respect of the transaction or aggregated transactions for which a report under section 28 is made, the report must contain as much of the following information as is readily available-

- (a) the date and time of the transaction, or in the case of a series of transactions, the time of the transactions in the 24 hour period;

- (b) the description of the transaction or series of transactions;
 - (c) the amount of the funds per transaction or series of transactions;
 - (d) the currency in which the funds were disposed of; and
 - (e) the purpose of the transaction or series of transactions;
- (3) In respect of each natural person conducting the transaction or series of transactions or legal persons or other entity on whose behalf the transaction or series of transactions is conducted, for which a report under section 28 is made, the report must contain as much of the following information as is readily available-
- (a) in the case of a natural person, full particulars of-
 - (i) the person's name and surname, or initials and surname if the name is not available;
 - (ii) the date of birth of the person or identification number; and
 - (iii) the type of identifying document from which the particulars referred to subparagraphs (i) and (ii) were obtained;
 - (b) in the case of a legal person, full particulars of-
 - (i) the person's or entity's name;
 - (ii) the person's or entity's identifying number; and
 - (iii) the names of the natural person with authority to conduct the transaction on behalf of the person or entity; and (c) in the case of other entity any information which is readily available.
- (4) A report under section 28 must -
- (a) contain a full description of the amount of cash in excess of the prescribed limit which is paid out by the accountable institution and reporting institution, and
 - (b) contain a full description of the amount of cash in excess of the prescribed limit which is received by the accountable institution and reporting institution.

(Regulation 22C inserted by regulation 2 of Government Notice R867 of 2010)

23. Information to be reported concerning a suspicious or unusual transaction report

Prepared by:

In partnership with:

- (1) When a report concerning a suspicious or unusual transaction or series of transactions is made under section 29 of the Act, the report must contain full particulars in respect of the natural or legal person making the report or other entity on whose behalf the report is made, of-
 - (a) the name of the person or entity;
 - (b) the identifying particulars of the person or entity such as an identity number, registration number or practise number for example;
 - (c) the address of the person or entity;
 - (d) the type of business or economic sector of the accountable institution;
 - (e) in the case of a natural person, the person's contact particulars, and
 - (f) in the case of a legal person or an entity, the surname, initials and contact particulars of a contact person.

- (2) In respect of the transaction or series of transactions concerning which a report under section 29 is made, the report must contain as much of the following information as is readily available-
 - (a) the date and time of the transaction, or, in the case of a series of transactions, the period over which the transactions were conducted;
 - (b) a description of the type of transaction or series of transactions;
 - (c) the manner in which the transaction or series of transactions was conducted;
 - (d) if the transaction or series of transactions involved funds, a description of the type of funds involved;
 - (e) if the transaction or series of transactions involved property, a description of the type of property and all identifying characteristics of the property;
 - (f) the amount of the funds, or the estimated value of the property, involved in the transaction or series of transactions;
 - (g) the currency in which the transaction or series of transactions was conducted;
 - (h) if the funds or property involved in the transaction or series of transactions were disposed of-

- (i) the manner in which the funds or property were disposed of;
 - (ii) the amount of the disposition of the funds, or, in the case of property the value for which the property was disposed of, and
 - (iii) the currency in which the funds were disposed of, or, in the case of property the currency used in the disposition of the property;
- (i) if another institution or person was involved in the transaction or series of transactions-
- (i) the name of the other institution or person, and
 - (ii) the number of any account at the other institution involved in the transaction or series of transactions;
- (j) the name and identifying particulars such as the address and a unique number or code, for example, of the branch or office where the transaction or series of transactions was conducted, and
- (k) the purpose of the transaction or series of transactions;
- (l) any remarks, comments or explanations which the person conducting the transaction or series of transactions may have made or given.
- (3) If any account was involved in the transaction or series of transactions concerning which a report under section 29 is made, the report must contain as much of the particulars as are readily available in respect of each such account, of-
- (a) the account number;
 - (b) the name and identifying particulars such as the address and a unique number or code, for example, of the branch or office where the account is held;
 - (c) the type of account;
 - (d) the name of each account holder;
 - (e) the date on which the account was opened;
 - (f) if the account was closed-
 - (i) the date on which the account was closed, and

- (ii) the name of the person who gave the instruction to close it;
 - (g) the highest amount paid into the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (h) the highest amount paid out of the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (i) the number of payments made into the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (j) the number of payments made out of the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (k) the balance in the account immediately before the transaction or series of transactions was carried out;
 - (l) the balance in the account on the date on which the report is made.
 - (m) the status of the account immediately before the reported transaction or series of transactions was carried out;
 - (n) any previous activity in the preceding 180 days which had been considered for reporting in connection with the account, whether the activity was reported or not, and
 - (o) the reference numbers allocated by the Centre and the person or entity making the report to any previous reports made in connection with the account.
- (4) In respect of each natural person conducting the transaction or series of transactions, or legal person or other entity on whose behalf the transaction or series of transactions is conducted, concerning which a report under section 29 is made, the report must contain as much of the following information as is readily available-
- (a) in the case of a natural person, full particulars of-
 - (i) the person's names and surname, or initials and surname, if the person's names are not available;
 - (ii) the person's identifying number;

- (iii) the type of identifying document from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
 - (iv) the person's address in the Republic;
 - (v) the person's country of residence;
 - (vi) if the person's country of residence is other than *[sic]* the Republic, the person's address in the country of residence;
 - (vii) the person's contact telephone number, and
 - (viii) the person's occupation; and
- (b) in the case of an *[sic]* legal person or other entity, full particulars of-
- (i) the person's or entity's name;
 - (ii) the person's or entity's identifying number, if it has such a number;
 - (iii) the person's or entity's physical address in the Republic;
 - (iv) the type of business conducted by the person or entity;
 - (v) the names of the natural person's with authority to conduct the transaction on behalf of the person or entity;
 - (vi) the person's or entity's country of origin, and
 - (vii) if the country of origin is other than the Republic, the person or entity's address in the country of origin.
- (5) In respect of a natural person conducting the transaction or series of transactions concerning which a report under section 29 is made, on behalf of another natural person or a legal person or other entity, the report must contain as much of the particulars as is readily available, of-
- (a) the person's names and surname, or initials and surname, if the person's names are not available;
 - (b) the person's identifying number;

- (c) the type of identifying document from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
 - (d) the person's physical address;
 - (e) the person's contact telephone number, and
 - (f) the person's occupation.
- (6) A report under section 29 must-
- (a) contain a full description of the suspicious or unusual transaction or series of transactions, including the reason why it is deemed to be suspicious or unusual as contemplated in that section;
 - (b) indicate what action the natural or legal person making the report, or other entity on whose behalf the report is made, has taken in connection with the transaction or series of transactions concerning which the report is made, and
 - (c) indicate what documentary proof is available in respect of the transaction or series of transactions concerning which the report is made and the reasons referred to in paragraph (a).

(Regulation 23 substituted by regulation 4 of Government Notice R456 of 2005)

(Commencement date of regulation 23: 3 February 2003)

24. Period for reporting

- (1) A report under section 28A of the Act must be sent to the Centre as soon as possible but not later than 5 days after a natural person who is an accountable institution or is in charge of, manages or is employed by an accountable institution, had established that the accountable institution has property associated with terrorist and related activities in its possession or under its control, unless the Centre has approved of the report being sent after the expiry of this period.
- (2) A request for a report referred to in subregulation (1) to be sent to the Centre after the period referred to in that subregulation must reach the Centre before the expiry of that period.
- (3) A report under section 29 of the Act must be sent to the Centre as soon as possible but not later than fifteen days after a natural person or any of his or her employees, or any of the employees or officers of a legal person or other entity, has become aware of a fact concerning a transaction on the basis of which knowledge or a suspicion concerning the transaction must be reported, unless the Centre has approved of the report being sent after the expiry of this period.

- (4) A report under section 28 of the Act must be sent to the Centre as soon as possible but not later than 2 days after a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of a cash transaction or series of cash transactions that has exceeded the prescribed limit.

(Regulation 24(4) added by regulation 3 of Government Notice R867 of 2010)

(Regulation 24 substituted by regulation 5 of Government Notice R456 of 2005)

(Commencement date of regulation 24: 3 February 2003)

CHAPTER 5 INTERNAL RULES

25. Internal rules concerning establishment and verification of identities

The internal rules of an accountable institution concerning the establishment and verification of identities must -

- (a) provide for the necessary processes and working methods which will cause the required particulars concerning the identities of the parties to a business relationship or single transaction to be obtained on each occasion when a business relationship is established or a single transaction is concluded with the institution;
- (b) provide for steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or single transaction;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act, these regulations and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the establishment and verification of identities are complied with;
- (e) provide for disciplinary steps against the relevant staff members for non-compliance with the Act, these regulations and the internal rules; and
- (f) take into account any guidance notes concerning the verification of identities which may apply to that institution.

26. Internal rules concerning the keeping of records

The internal rules of an accountable institution concerning the keeping of records in terms of section 22 of the Act must -

- (a) provide for the necessary processes and working methods to ensure that the relevant staff members of the institution obtain the information of which record must be kept on each occasion when a business relationship is established or a transaction is concluded with the institution;
- (b) provide for the responsibility of the management of the institution in respect of compliance with the Act, these regulations and the internal rules;
- (c) allocate responsibilities and accountability to ensure that staff duties concerning the establishment and verification of identities are complied with;
- (d) provide for disciplinary steps against the relevant staff members for non-compliance with the Act, these regulations and the internal rules;
- (e) provide for the necessary processes and working methods to ensure that the accuracy and that the integrity of those records are maintained for the entire period for which they must be kept;
- (f) provide for the necessary processes and working methods to ensure that access as may be required or authorised under the Act by the relevant staff members to those records can be obtained without undue hindrance; and
- (g) take into account any guidance notes concerning the verification of identities which may apply to that institution.

27. Internal rules concerning reporting of information

The internal rules of an accountable institution concerning reporting of suspicious and unusual transactions must -

- (a) provide for the necessary processes and working methods which will cause suspicious and unusual transaction to be reported without undue delay;
- (b) provide for the necessary processes and working methods to enable staff to recognise potentially suspicious and unusual transactions or series of transactions;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act, these regulations and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious and unusual transactions are complied with;

- (e) provide for disciplinary steps against the relevant staff members for non-compliance with the Act, these regulations and the internal rules; and
- (f) take into account any guidance notes concerning the reporting of suspicious or unusual transactions which may apply to that institution.

27A. Period for and manner of registration by accountable institutions and reporting institutions

- (1) Every accountable institution referred to in Schedule 1 of the Act and every reporting institution referred to in Schedule 3 of the Act must within the period commencing 1 December 2010 until 1 March 2011, register with the Centre in terms of section 43B of the Act.
- (2) Any person or category of persons added to the list in Schedule 1 or Schedule 3 of the Act after the commencement of this regulation must register with the Centre within 90 days after the amended Schedule 1 or Schedule 3 is published by notice in the *Gazette*.
- (3) Any person or category of persons who, on commencing a new business, fall within the list of accountable institutions or reporting institutions in Schedule 1 and Schedule 3 respectively must, within 90 days of the day the business opened, register with the Centre.
- (4) The registration of an accountable institution and a reporting institution contemplated in subregulation (1), (2) and (3) must be in accordance with the format specified by the Centre and must be submitted to the Centre electronically by means of the internet-based reporting portal provided by the Centre for this purpose at the following internet address: <http://www.fic.gov.za>.
- (5) If a person does not have the technical capability to register in accordance with subregulation (4) that person must submit the registration on a form specified by the Centre at the contact particulars specified by the Centre from time to time for this purpose.
- (6) The registration of an accountable institution or a reporting institution is not a licensing process and no license will be issued on the completion of a registration contemplated in subregulation (1), (2) and (3).
- (7) No fee is payable for a registration contemplated in subregulation (1), (2) or (3).

(Regulation 27A inserted by regulation 3 of Government Notice 1107 of 2010)

27B. Period within and manner in which supervisory body must submit written report to Centre

- (1) A supervisory body must, as contemplated in section 45(1C) of the Act, within 30 days after taking a decision to institute an action against an accountable institution in terms of the Act or any order, determination or directive made in terms of the Act submit a written report to the Centre on any action taken or intended to be taken against that accountable institution.

- (2) A supervisory body must submit the written report contemplated in subregulation (1) in accordance with the format specified by the Centre at the contact particulars specified by the Centre for this purpose.

(Regulation 27B inserted by regulation 3 of Government Notice 1107 of 2010)

27C. Manner in which appeal is to be lodged and payment of fee

With regard to an appeal contemplated in section 45D(1) of the Act,

- (a) the appellant must lodge an appeal against a decision of the Centre or supervisory body with the chairperson of the appeal board within 30 days from the date when notice of such decision was received in writing by the appellant;
- (b) the notice of appeal, contemplated in paragraph (a), must be accompanied by an affidavit containing in full the particulars of the appellant, the decision appealed against, the grounds for the appeal and must also state the physical address where the appellant will accept delivery of all documents relevant to the appeal;
- (c) the appellant must deliver the notice of appeal to the address specified on the notice to impose the administrative sanction;
- (d) the appellant must, with the appeal, pay a fee of R10 000-00 to the Centre.

(Regulation 27A inserted by regulation 3 of Government Notice 1107 of 2010)

CHAPTER 6 MISCELLANEOUS

28. Guidance notes

- (1) The Centre may issue guidance notes concerning -
- (a) the verification of identities;
 - (b) reporting of suspicious and unusual transactions; and
 - (c) any other obligations imposed on accountable institutions under the Act.
- (2) Guidance notes referred to in subregulation (1) may differ for different accountable institutions or persons, or categories of accountable institutions or persons and different categories of transactions.

29. Offences and penalties

- (1) Any accountable institution which contravenes regulation 2 (1) is guilty of an offence.
- (2) Any accountable institution which fails to obtain the particulars referred to in regulation 3, 5, 7, 9, 11, 13, 15 or 17(1) is guilty of an offence.
- (3) Any accountable institution which fails to verify any particulars referred to in regulation 3, 5, 7, 9, 11, 13, 15 or 17(1) in accordance with regulation 4, 6, 8, 10, 12, 14, 16 or 17(2) is guilty of an offence.
- (4) Any accountable institution which fails to take reasonable steps to verify information obtained without contact with a natural person or a representative of a legal person, partnership or trust in accordance with regulation 18 is guilty of an offence.
- (5) Any accountable institution which fails to take reasonable steps to maintain the correctness of particulars in accordance with regulation 19 is guilty of an offence.
- (6) Any accountable institution which fails to inform the Centre of particulars concerning third parties keeping records in accordance with regulation 20 is guilty of an offence.
- (7) Any person or institution which fails to send a report under section 29 of the Act to the Centre within the period referred to in regulation 24 is guilty of an offence.
(Commencement date of regulation 29(7): 3 February 2003)
- (8) Any accountable institution which fails to develop internal rules in accordance with regulation 25, 26 or 27 is guilty of an offence.
- (9) Any person or institution convicted of an offence under this section is liable to imprisonment for a period not exceeding six months or a fine not exceeding R100 000.

(Commencement date of regulation 29(9): 3 February 2003)

30. Title and commencement

- (1) These regulations are called the Money Laundering and Terrorist Financing Control Regulations.
(Regulation 30(1) substituted by regulation 6 of Government Notice R456 of 2005)
- (2) Chapter 4 and regulations 29(7) and (9) shall come into operation on 3 February 2003.
- (3) Regulation 1, Chapters 1, 2, 3, and 5 and regulations 28 and 29(1), (2), (3), (4), (5), (6) and (8) shall come into operation on 30 June 2003.

ANNEXURE

FORM 1

SUSPICIOUS OR UNUSUAL TRANSACTION REPORT

(Form 1 deleted by regulation 7 of Government Notice R456 of 2005)

Prepared by:



In partnership with:

