

**FINANCIAL INTELLIGENCE CENTRE
ACT 2001**

MANUAL

INTRODUCTION TO MONEY LAUNDERING

1. The Financial Intelligence Centre Act 38 of 2001 ("**FICA**"), the Prevention of Organised Crime Act 121 of 1998 ("**POCA**") and the Protection of Constitutional Democracy against Terrorism and Related Activities Act, 33 of 2004 ("**POCDATARA**") have been legislated in the past few years with the object of, *inter alia*, setting up an anti-money laundering regulatory regime.
2. FICA (and its associated Acts) essentially:
 - 2.1. provides for the establishment and operation of the Financial Intelligence Centre ("**the Centre**") and the Money Laundering Advisory Council;
 - 2.2. creates money laundering control obligations primarily for "accountable institutions" listed in schedule 1 to FICA. Accountable institutions include a broad spectrum of persons such as attorneys, estate agents, banks, long-term insurers, foreign exchange dealers, and the like;
 - 2.3. obliges accountable institutions to identify and verify their clients' identity, keep records of clients and transactions and to report certain transactions to the Centre. The duty to report applies not only to accountable institutions but to all persons who carry on a business or are in charge of or manage a business or who are employed by a business;
 - 2.4. amends POCA which targets organised crime and the recovery of the proceeds of unlawful activities;
 - 2.5. regulates the reporting of terrorist and related activities; and
 - 2.6. makes non-compliance with FICA and "money laundering" criminal offences carrying severe penalties. "Money laundering" is defined in FICA as *"an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of section 64 of FICA or section 4, 5 or 6 of POCA"*.
3. In terms of section 42 of FICA, attorneys are, *inter alia*, required to formulate and implement internal rules (the "**Rules**") and to make them available to employees involved in transactions to which FICA applies. These Rules have been formulated to comply with these provisions and prevent a firm or sole practitioner from being used as a money laundering institution.
4. While complying fully with FICA, attorneys must, in so far as is lawful, act in the best interests of their clients and protect their common law rights to legal professional privilege.

THE REGULATORY FRAMEWORK

5. Money laundering and terrorist financing is currently regulated by:-
 - 5.1. POCA;
 - 5.2. FICA;
 - 5.3. The Regulations and Exemptions promulgated in terms of FICA (GNs R1595 and R1596 of 20 December 2003); and
 - 5.4. POCDATARA.
6. The Centre issues guidance notes from time to time in order to fulfil its mandate to monitor and give guidance to accountable institutions, supervisory bodies and other persons regarding the performance by them of their duties and their compliance with the provisions of FICA. Such guidance notes are provided as general information only, are non-binding and are not intended to replace FICA and the Money Laundering Control Regulations.
7. This legislation is in keeping with worldwide trends aimed at curbing the proceeds of crime, money laundering and the funding of terrorism. POCA is an omnibus Act dealing, among other things, with money laundering, racketeering and criminal and civil forfeiture. FICA complements POCA and provides an administrative framework for combating money laundering. POCA and FICA apply to "proceeds of unlawful activities" which is much wider than proceeds of crime.
 - 7.1. **"Proceeds of unlawful activities"** is defined as **"any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of [POCA], in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived."**
 - 7.2. **"Unlawful activity"** is defined as **"conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of [POCA] and whether such conduct occurred in the Republic or elsewhere."**
8. POCA sets out the substantive money laundering offences in sections 4, 5 and 6. In broad outline, these offences are the money laundering offence itself, assisting another to launder the proceeds of unlawful activity, and the acquisition, use or possession of laundered property. In view of the import of these provisions, and for ease of reference, these provisions are set out in Annexure A.
9. In terms of FICA rigorous compliance obligations are imposed on **accountable institutions**. **"Accountable institutions"** are defined in Schedule 1 to FICA and include **"an attorney as defined**

in the Attorneys Act, 1979". Section 1 of the Attorneys Act defines an attorney as "**any person duly admitted to practice as an attorney in any part of the Republic**".

10. Accountable institutions are obliged to:-
 - 10.1. identify and verify new and existing clients;
 - 10.2. keep records of identities of clients and of transactions entered into with clients;
 - 10.3. report certain transactions to the Centre;
 - 10.4. formulate and implement internal rules;
 - 10.5. train employees; and
 - 10.6. appoint a responsible person to monitor compliance (the "**Compliance Officer**").
11. The Law Society of South Africa is listed in Schedule 2 of FICA as a supervisory body and in this capacity has issued guidance notes to its constituents.

INTERNAL RULES

SCOPE AND PURPOSE

12. The purpose of these rules is to provide clearly for the procedures which must be followed by legal practitioners in the discharge of their compliance obligations as accountable institutions in terms of FICA.
13. The rules must provide for the following:
 - 13.1. the establishment and verification of the identity of all clients (new and existing) entering or having entered into single transactions or a business relationship with the firm or sole practitioner;
 - 13.2. the information which must be recorded in terms of FICA and how and where those records must be kept;
 - 13.3. the steps to be taken to determine when a transaction is reportable to ensure that the firm or sole practitioner complies with its reporting duties under FICA; and
 - 13.4. other matters as may be prescribed by the Regulations to FICA.
14. The Regulations in summary format are attached as Annexure B.
15. Training should be provided on an ongoing basis to all employees concerned to enable them to comply with FICA and the relevant internal rules.

INFORMING CLIENTS OF FICA

16. New clients must be informed of how the firm or sole practitioner intends complying with FICA. In particular, the firm or sole practitioner must ensure that the client knows and understands when any information disclosed will be protected by legal professional privilege. Clients should not be allowed to harbour the impression that **all** communications with the practitioner will be kept confidential when, by virtue of the provisions of FICA, the practitioner may be obliged to disclose certain confidential information.
17. Each practitioner should, accordingly, advise new clients, as a matter of course, of the nature and extent of the reporting duties which he or she has in terms of FICA and of the distinction between privileged and confidential information.

CONFIDENTIALITY AND PRIVILEGE

18. FICA preserves legal professional privilege. In broad terms, privilege protects from disclosure, communications between attorneys and their clients which are made in confidence for the purpose of enabling the client to obtain general legal advice and advice in respect of litigation which is either pending or contemplated or which has commenced. This latter concept of "*litigation privilege*" also extends to communications between a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced.
19. The privilege is the privilege of the client, not the attorney. If an attorney claims privilege, he or she does so on behalf of the client and the client may elect not to claim the privilege, in which event the attorney has no independent right to do so.
20. The privilege does not operate if the client obtains the legal advice in order to further a criminal end. A legal advisor who knowingly participates in the commission of a crime is not acting professionally but the authorities suggest that even if he or she had no knowledge of the purpose for which advice was sought, no privilege will attach to the communications with the client if the latter obtained the advice in order to further a criminal objective.
21. Confidentiality is a wider concept than privilege as information may be confidential even though it is not protected by legal professional privilege
22. There is an overlap between confidentiality and privilege. Confidentiality is a necessary condition for claiming privilege but is not a sufficient condition for such a claim. The fact that a communication was made in confidence will not necessarily mean that that communication is privileged. That privilege only attaches if the communication is made for the purpose of obtaining legal advice, so that a statement unconnected with the giving of legal advice will not be privileged even if it was made in confidence.
23. Confidentiality, as opposed to privilege, is overridden by the duty to report.

IDENTIFICATION AND VERIFICATION PROCEDURES – NEW CLIENTS

24. The practitioner must ascertain what information and documentation is required from the client in order to establish and verify the client's identity. The process of verification of identity entails comparing the identifying particulars provided by the client with other available information in order to establish whether the particulars provided by the client accurately and correctly reflect the client's identity.
25. In terms of a specific exemption granted to attorneys in the Regulations, attorneys are only required to establish and verify the client's identity if:
 - 25.1. a client is assisted in the planning or execution of –
 - 25.1.1. the buying or selling of immovable property;
 - 25.1.2. the buying or selling of any business undertaking;
 - 25.1.3. the opening or management of a bank, investment or securities account;
 - 25.1.4. the organisation or contributions necessary for the creation, operation or management of a company or close corporation or of a similar structure outside the Republic;
 - 25.1.5. the creation, operation or management of a company or close corporation or of similar structure outside the Republic;
 - 25.1.6. the creation, operation or management of a trust or of a similar structure outside the Republic, except for a trust established by virtue of a testamentary writing or court order,
 - 25.2. a client is assisted in disposing of, transferring, receiving, retaining, maintaining control of or in any way managing any property;
 - 25.3. a client is assisted in the management of any investment;
 - 25.4. a client is represented in any financial or real estate transaction; or
 - 25.5. a client deposits, over a period of twelve months, an amount of R100 000 or more with the institution in respect of attorney's fees (including disbursements) which may be incurred in the course of litigation. For the purposes of these rules "litigation" includes legislative bodies such as the Competition Commission or Competition Tribunal, ICASA and other like bodies and where arbitration is involved or contemplated.

26. There are different identification and verification requirements depending on whether the client or prospective client is a company (foreign or local), close corporation, partnership, trust or individual (resident or foreigner).
27. As to what information and documentation is required, the practitioner must refer to the summary of the regulations, attached as Annexure B.
28. Where the client is a public company listed on a stock exchange set out in the schedule to the exemptions (attached to Annexure B), the practitioner is exempt from obtaining certain information. (As to what information is required, see the summary of the identification and verification requirements pertaining to companies in Annexure B). The exemptions apply only to the listed entity and not to unlisted subsidiaries or operational entities within the group.
29. Government organisations must also be identified and verified. If incorporated as a company, they should be identified and verified as such, if they are constituted in any other manner, they should be identified and verified as "other legal persons".
30. Where the client lives or is situated in a country where, to the satisfaction of the Law Society, the anti-money laundering legislation and supervision of compliance with such anti-money laundering regulation is equivalent to that which applies to the accountable institution, the accountable institution is exempted from compliance with the verification obligation of FICA provided:
 - 30.1. a person or institution in that country, which is subject to the anti-money laundering regulation which is equivalent to that in force in South Africa, confirms in writing that the person or institution has verified the particulars concerning the client which the accountable institution; and
 - 30.2. the person or institution referred to in clause 30.1 above undertakes to forward all documents obtained in the course of verifying such particulars to the accountable institution.
31. **[ENS Note: The Law Society should furnish a list of these countries to attorneys]**
32. Where the client has previously been identified and the identity verified as prescribed by another practitioner in the firm, the practitioner is exempted from identifying and verifying that client again.
33. At the first consultation, the practitioner should as a minimum obtain clients details, (name, address, ID, contact numbers, e-mail address and the like) and the exact nature of the entity involved.
34. Once the practitioner has ascertained the capacity in which the client is consulting him or her, (personal, agent, trustee, director and the like) he or she must explain to the client what is required from him or her and where necessary, give the client a copy of the summary.

35. Where the documentation has not been sighted by the practitioner, the practitioner must inform the client that the requisite documentation must be sent to him or her or some other person within the practice charged with FICA administration (the "**FICA Officer**") designated by him or her to receive such documents as a certified hard copy marked for the attention of the practitioner or the FICA Officer.
36. Where the documentation has been sighted by the practitioner as part of the verification process, copies may be made at that time or may be faxed or provided electronically to the FICA Officer and, in such instances, it should be recorded that the originals or certified copies were sighted as part of the verification process.
37. Before any file is opened, the practitioner in whose name the file is to be opened must return to the FICA Officer a duly completed FICA Verification Form (attached as Annexure C) stating, in particular, the reason why a matter is to be exempted. The FICA Verification Form must be completed irrespective of whether or not the client is an existing client. Where there is no designated FICA Officer, the practitioner himself or herself should complete and file the FICA Verification Form.
38. When the required or outstanding client information or documentation is received by the FICA Officer or the practitioner, as the case may be, and the relevant person is satisfied that the client has complied with all FICA requirements the client will have been properly identified and verified in accordance with FICA.
39. Failure to identify and verify clients as prescribed is an offence, which on conviction, carries a penalty of a fine not exceeding R10 000 000 (ten million Rand) or 15 (fifteen) years imprisonment.
40. The practitioner should not be able to debit a fee or disbursement or accept money in the form of a deposit, before the client has been identified and verified. To do so would be a contravention of FICA.
41. The FICA officer or the practitioner, as the case may be, must, in addition to the establishment and verification procedures outlined above, take reasonable steps to maintain the correctness of particulars of a client which are susceptible to change.
42. Exemptions do **not** apply in the case of suspicious and unusual transactions.

KEEPING OF RECORDS

43. In terms of FICA, the firm or sole practitioner is required to keep detailed records of its clients and transactions entered into with them.
44. The duty to keep records arises whenever the firm or sole practitioner establishes a business relationship or concludes a single transaction with a client.

45. FICA obliges the firm or sole practitioner to keep records of the following:
 - 45.1. the identity of a client and, if applicable, the identity of the client's agent or principal;
 - 45.2. the manner in which the identity of the client and the client's agent or principal was established;
 - 45.3. the nature of the business relationship or transaction;
 - 45.4. in the case of a transaction, the amount involved and the parties to that transaction;
 - 45.5. all accounts that are involved in transactions concluded by the accountable institution in the course of a business relationship or a single transaction, as the case may be;
 - 45.6. the name of the person who obtained the information referred to above; and
 - 45.7. any document or copy of a document obtained by the accountable institution in order to verify the person's identity.
46. The records must be kept for a period of at least five years from the date on which the business relationship is terminated and in respect of a transaction at least five years from the date on which the transaction was concluded.
47. No person may delete or destroy any record pertaining to a client in respect of identity or verification of identity or in respect of any transaction recorded.
48. An authorised representative of the Centre has access (only by virtue of a warrant where the documents are not public documents) to any records kept by the firm or sole practitioner in terms of FICA and may examine, make extracts from or copies of any such records.
49. The firm or sole practitioner must, except of course where such documents are protected by legal professional privilege, give to an authorised representative of the Centre all reasonable assistance in this regard.
50. Any request for access to records, including by way of warrant, should be forwarded to the Compliance Officer where the firm has a Compliance Officer.
51. **Request for Access Procedure**
 - 51.1. In terms of section 26 of FICA the Centre can have access to the records during ordinary working hours. If the records are not public documents access may only be obtained by virtue of a duly issued warrant.
 - 51.2. If any practitioner or employee is approached by a person purporting to act on behalf of the Centre requesting access to any FICA records, they must immediately inform the

Compliance Officer or such other person as may be designated within the practice to deal with requests from the Centre.

51.3. The practitioner responsible for any matter after consultation with the Compliance Officer or where there is no Compliance Officer, the practitioner himself or herself, shall determine whether the information requested relating to the matter:

51.3.1. requires a warrant;

51.3.2. if a warrant is required whether :

51.3.2.1. the warrant has been duly issued and covers the requested information; and/or

51.3.2.2. should be opposed for any justifiable reason; and/or

51.3.3. is subject to the attorney client privilege.

51.4. If it is determined that there is no apparent reason for withholding any information, then the Compliance Officer, or the practitioner where there is no Compliance Officer, shall procure that the relevant records are made available to the representative of the Centre without delay and provide him/her with all reasonable assistance necessary to enable that representative to exercise his/her powers in terms of section 26(1).

ADVICE TO CENTRE OF CLIENTS

52. The Centre may request the firm or sole practitioner to advise whether a specified person is or has been a client of the firm or sole practitioner; a specified person is acting or has acted on behalf of any client of the firm or sole practitioner; or a client is acting or has acted for a specified person. To the extent that some of this information may be protected by privilege and to keep the reporting process streamlined, such request must be carefully considered by the practitioner. The Centre does not need a warrant to make such request.

REPORTING SUSPICIOUS AND UNUSUAL TRANSACTIONS

53. Introduction

Accountable institutions are required to furnish reports on certain transactions to the Centre. These reporting duties are set out in sections 27 to 41 of FICA and in sections 22 and 24 of the Regulations.

54. Reporting of property associated with terrorist and related activities

- 54.1. An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of any entity which has committed, or attempted to commit, or facilitated the commission of a specified offence as defined in POCDATARA; or a specific entity identified in a notice issued by the President, under POCDATARA must report that fact and the prescribed particulars to the Centre within the prescribed period.
- 54.2. The Director may direct an accountable institution which has made such a report to report at such intervals as may be determined in the direction, that it is still in possession or control of the property in respect of which the report had been made; and any change in the circumstances concerning the accountable institution's possession or control of that property.

55. Reporting of suspicious and unusual transactions

- 55.1. Subject to the attorney client privilege, sections 29(1) and (2) of FICA provide that 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 knows or suspects that:
- 55.1.1. the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
 - 55.1.2. a transaction or series of transactions to which the business is a party:
 - 55.1.2.1. facilitated or is likely to facilitate the transfer of proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
 - 55.1.2.2. has no apparent business or lawful purpose;
 - 55.1.2.3. is conducted for the purpose of avoiding giving rise to a reporting duty under FICA; or
 - 55.1.2.4. may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Services; or
 - 55.1.2.5. relates to an offence relating to the financing of terrorist activities; or

- 55.1.3. the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities; or
- 55.1.4. a transaction or a series of transactions about which enquiries are made, may, if that transaction or those transactions had been concluded, have caused any of the consequences referred to in paragraphs 55.1.2.1, 55.1.2.2 and 55.1.2.3 ,

must report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.
- 55.2. In terms of section 1(2) of FICA, a person has knowledge of a fact if:
 - 55.2.1. the person has actual knowledge of that fact; or
 - 55.2.2. the court is satisfied that the person believes that there is a reasonable possibility of the existence of that fact; and the person fails to obtain information to confirm or refute the existence of that fact.
- 55.3. Where the firm has a Compliance Officer, the practitioner or employee must report his or her suspicion to the Compliance Officer. The Compliance Officer will then make enquiries as to whether the matter is subject to attorney client privilege and reportable and, if appropriate, make a report to the Centre.
- 55.4. Where there is no appointed Compliance Officer, the practitioner himself or herself must report the matter to the Centre.
- 55.5. A report under section 29 of FICA must be sent to the Centre as soon as possible but not later than 15 days (excluding Saturdays, Sundays and Public Holidays), after becoming aware of the facts on the basis of which the knowledge was acquired or suspicion arose concerning the transaction that must be reported, unless the Centre has approved a report being sent after the expiry of the period. An internet based reporting portal is provided by the Centre at www.fic.gov.za.
- 55.6. Any person who reports a suspicious or unusual transaction in terms of section 29 of FICA may not disclose that fact or any information regarding the contents of such report to any other person, including the person in respect of whom the report is made, otherwise than:
 - 55.6.1. within the scope of that person's powers and duties in terms of any legislation;
 - 55.6.2. for the purpose of carrying out the provisions of FICA;
 - 55.6.3. for the purpose of legal proceedings, including any proceedings before a judge in chambers; or

55.6.4. in terms of an order of court.

55.7. In terms of section 29(4) of FICA, any practitioner or employee who knows or suspects that a report has been or is to be made in terms of section 29 of FICA may not disclose that fact or any information regarding the contents or suspected contents of such report to any other person, including the person in respect of whom the report is made, otherwise than for the exceptions set out in paragraphs 55.6.1 and 55.6.4.

55.8. Once a report has been made, the accountable institution may (in terms of section 33 of FICA), continue with and carry out the transaction in respect of which the report is required to be made unless the Centre directs the accountable institution not to proceed with the transaction. The Centre may direct the accountable institution not to proceed with the carrying out of the transaction for a maximum period of five days to allow the Centre to investigate the matter.

56. **Furnishing of additional information**

In terms of section 32 of FICA, the Centre or an investigating authority acting with the permission of the Centre or under the authority of an authorised officer, may request an accountable institution, a reporting institution or any other person that has made a report in terms of section 28, 29 or 31 to furnish additional information concerning the report and the grounds for the report. If any person requests information on the basis of this section any such request must be immediately reported to the Compliance Officer where there is a Compliance Officer and the rules applicable to requests for access to information set out in paragraph 51 shall apply, adapted accordingly. The Centre does not need a warrant to make such request.

ADVISING CLIENTS

57. When a client discusses with a practitioner a proposed course of conduct that may, if proceeded with, give rise to a reporting duty in terms of FICA, and the communication is not privileged, a practitioner will not be precluded from advising the client that the proposed course of conduct is unlawful and should not be persisted with.

THE RIGHT TO WITHDRAW

58. The provisions of FICA do not impact on an attorney's ethical right and duty not to accept an unlawful mandate from a client or to withdraw from a matter.

59. The client is entitled to expect that information which would otherwise be reportable that is disclosed to the attorney and is privileged (as part of the process of providing instructions to the attorney for the purpose of obtaining advice or within the litigation privilege), will not be reported to the Centre. Unrelated and incidental disclosure not germane to the privileged situation will not be protected. Dinner table or change room gossip imposes no reporting obligation.

THE ATTORNEY AND MONEY LAUNDERING

60. Money laundering methodology is limited only by the imagination of the launderer and it is impossible to give a closed list of circumstances giving rise to a suspicion. Whilst it is not the client, but the transaction, that should give rise to a suspicion, we have for ease of reference included a list of suspicious clients and transactions which is attached as Annexure D.

PROTECTION OF PERSON MAKING REPORT

61. No action, whether criminal or civil, lies against any person complying in good faith with the reporting obligations under FICA.
62. A person who has made, initiated or contributed to a report in terms of FICA or who has furnished additional information concerning such a report is competent, but not compellable, to give evidence in criminal proceedings arising from the report.
63. No evidence concerning the identity of a person who has made, initiated or contributed to such a report or who has furnished additional information concerning such a report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

OFFENCES AND PENALTIES IN TERMS OF CHAPTER 4 OF FICA

64. Generally a breach of the provisions of FICA by accountable institutions or persons constitutes an offence attracting severe penalties. It is important to note that in certain circumstances the offences extend to negligence. Some examples are set out below :
- 64.1. should an accountable institution fail to identify persons (section 46), fail to keep records (section 47) or destroy or tamper with records (section 48) they will be guilty of an offence.
- 64.2. in terms of section 53:
- 64.2.1. *"Any person who fails, within the prescribed period, to report to the Centre the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry in accordance with section 29(1) or (2), is guilty of an offence.*
- 64.2.2. *Any person referred to in section 29(1) or (2) who reasonably ought to have known or suspected that any of the facts referred to in section 29(1)(a), (b) or (c) or section 29(2) exists, and who **negligently** fails to report the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry, is guilty of an offence."*

(Our emphasis)

- 64.3. Any person convicted of a Chapter 4 offence such as failure to identify persons, failure to keep records, destroying or tampering with records, failure to give assistance, failure to advise Centre of client, failure to report cash transactions, failure to report suspicious or unusual transactions, unauthorised disclosure, failure to report conveyance of cash into or out of Republic, failure to report electronic transfers, failure to comply with request, failure to comply with direction by Centre, failure to comply with monitoring order, misuse of information, obstructing of official in performance of functions, conducting transactions to avoid reporting duties, unauthorised access to computer system or application or data and unauthorised modification of contents of computer system but excluding the offences of failure to send report to centre, failure to formulate and implement internal rules and failure to provide training or appoint Compliance Officer is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R10 000 000 (ten million rand).
- 64.4. Any person convicted of the offences of failure to send report to centre, or failure to formulate and implement internal rules or failure to provide training or appoint Compliance Officer is liable to imprisonment for a period not exceeding 5 years or to a fine not exceeding R1 000 000 (one million rand).

OFFENCES RELATING TO PROCEEDS OF UNLAWFUL ACTIVITIES – POCA 1998

Section 4 – Money laundering

Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and –

- (a) enters into any agreement or engages in any agreement or transactions with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or
- (b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

which has or is likely to have the effect –

- (i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or
- (ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere –
 - (aa) to avoid prosecution; or
 - (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence.

Section 5 – Assisting another to benefit from proceeds of unlawful activities

Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any agreement or transaction whereby :-

- (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- (b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way,

shall be guilty of an offence.

Section 6 – Acquisition, possession or use of proceeds of unlawful activities

Any person who

- (a) acquires;
- (b) uses; or
- (c) has possession of,

property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence.

INFORMATION REQUIRED FROM CLIENT		DOCUMENT TO VERIFY INFORMATION
NATURAL PERSONS (RESIDENTS OR CITIZENS OF RSA)		
<ul style="list-style-type: none"> • Full names 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence)
<ul style="list-style-type: none"> • Date of birth 		
<ul style="list-style-type: none"> • Identity number 		
<ul style="list-style-type: none"> • South African income tax number (not yet required) 		Document issued by the South African Revenue Service bearing such number.
<ul style="list-style-type: none"> • Residential address 		Information which can reasonably be expected to achieve verification e.g. Utility bill (rates & taxes account, Telkom, front page of tax return)
Where natural person is represented by a guardian or curator, the above particulars of that person, as well as contact particulars of that person.		

INFORMATION		DOCUMENT TO VERIFY INFORMATION
FOREIGN NATURAL PERSONS		
<ul style="list-style-type: none"> • Full names 		A certified copy of a passport/ ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence)
<ul style="list-style-type: none"> • Date of birth 		
<ul style="list-style-type: none"> • Passport number 		
<ul style="list-style-type: none"> • Nationality 		
<ul style="list-style-type: none"> • South African income tax number (if issued) (not yet required) 		Document issued by the South African Revenue Service bearing such number.
<ul style="list-style-type: none"> • Residential address 		Not necessary to verify.
Where foreign natural person is represented by a guardian or curator, the above particulars of that person, as well as contact particulars of that person.		

INFORMATION		DOCUMENT TO VERIFY INFORMATION
SOUTH AFRICAN COMPANY*		
<p>*Where the company is a Public Company listed on an Exchange set out in the schedule to the exemptions, attached to this Annexure, the practitioner need obtain only the registered name and number under which the entity is incorporated, and the address of the entity. These particulars need not be verified. This exemption applies only to the listed company and not to subsidiaries or other operational entities.</p>		
<ul style="list-style-type: none"> Registered name of company 		Copy of Certificate of Incorporation (CM1) and Notice of Registered Office and Postal Address (CM22), both bearing stamp of Registrar of Companies and signed by the company secretary.
<ul style="list-style-type: none"> Registration number 		
<ul style="list-style-type: none"> Registered address 		
<ul style="list-style-type: none"> Name under which it conducts business 		Information which can reasonably be expected to achieve verification and can be obtained by practical means.
<ul style="list-style-type: none"> Address from which it operates, or if multiple addresses:- <ul style="list-style-type: none"> ✓ Address of office seeking to establish business relationship or enter into single transaction; <u>and</u> ✓ Address of head office. 		
<ul style="list-style-type: none"> Income tax and value-added tax registration numbers of the company (if issued) 		
<ul style="list-style-type: none"> Full names, date of birth and ID number of manager of company and representative of company (nationality if not RSA citizen). 		

INFORMATION		DOCUMENT TO VERIFY INFORMATION
<p>SOUTH AFRICAN COMPANY*</p> <p>*Where the company is a Public Company listed on an Exchange set out in the schedule to the exemptions, attached to this Annexure, the practitioner need obtain only the registered name and number under which the entity is incorporated, and the address of the entity. These particulars need not be verified. This exemption applies only to the listed company and not to subsidiaries or other operational entities.</p>		
<ul style="list-style-type: none"> Residential address 		Documents issued by the South African Revenue Service bearing such numbers.
<ul style="list-style-type: none"> Contact particulars 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence)
<ul style="list-style-type: none"> Full names, date of birth and ID number of each person who holds 25% or more voting rights of a general meeting of the company (nationality if not RSA citizen). 		Not necessary to verify.
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		Same as for natural person (or foreign natural person). If not a natural person, the information as for SA company, CC's, foreign company, corporate entity, partnership, trust, whichever is applicable.
<ul style="list-style-type: none"> If person/entity holding such shares is a company or close corporation, details of company or close corporation itself as set out above and below. 		

INFORMATION	DOCUMENT TO VERIFY INFORMATION	
SOUTH AFRICAN COMPANY* *Where the company is a Public Company listed on an Exchange set out in the schedule to the exemptions, attached to this Annexure, the practitioner need obtain only the registered name and number under which the entity is incorporated, and the address of the entity. These particulars need not be verified. This exemption applies only to the listed company and not to subsidiaries or other operational entities.		
<ul style="list-style-type: none"> If person/entity holding such shares is a partnership, name of partnership 		
<ul style="list-style-type: none"> Residential address 		
<ul style="list-style-type: none"> Contact particulars 		
<ul style="list-style-type: none"> If person/entity holding such shares is a trust, name and number of trust. 		Not necessary to verify.
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		
<ul style="list-style-type: none"> If a legal person, other than the entities referred to above, holds such shares, the name of the legal person, its address and its legal form. 		Not necessary to verify.
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		

INFORMATION		DOCUMENT TO VERIFY INFORMATION
SOUTH AFRICAN COMPANY* *Where the company is a Public Company listed on an Exchange set out in the schedule to the exemptions, attached to this Annexure, the practitioner need obtain only the registered name and number under which the entity is incorporated, and the address of the entity. These particulars need not be verified. This exemption applies only to the listed company and not to subsidiaries or other operational entities.		
•		Not necessary to verify.
•		Not necessary to verify.

INFORMATION		DOCUMENT TO VERIFY INFORMATION
CLOSE CORPORATION		
<ul style="list-style-type: none"> Registered name of close corporation 		Founding Statement and Certificate of Incorporation (CK1) and Amended Founding Statement (CK2), both bearing stamp of Registrar of Companies and signed by company secretary.
<ul style="list-style-type: none"> Registration number 		
<ul style="list-style-type: none"> Registered address 		
<ul style="list-style-type: none"> Name under which it conducts business 		Documents issued by the South African Revenue Service bearing such numbers.
<ul style="list-style-type: none"> Address from which it operates, or if multiple addresses:- ✓ Address of office seeking to establish business relationship or enter into single transaction; <u>and</u> ✓ Address of head office. 		
<ul style="list-style-type: none"> Income tax and value-added tax registration numbers of the close corporation (if issued) 		
<ul style="list-style-type: none"> Full names, date of birth and ID number of each member and representative of the close corporation (nationality if not RSA citizen). 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence)

INFORMATION		DOCUMENT TO VERIFY INFORMATION
CLOSE CORPORATION		
<ul style="list-style-type: none">Residential address		
<ul style="list-style-type: none">Contact particulars		
<ul style="list-style-type: none">		Not necessary to verify.
<ul style="list-style-type: none">		Not necessary to verify.

INFORMATION		DOCUMENT TO VERIFY INFORMATION
FOREIGN COMPANY *		
<p>* Where the company is a Public Company listed on an Exchange set out in the schedule to the exemptions, attached to this Annexure, the practitioner need obtain only the registered name and number under which the entity is incorporated, and the address where it is situated for purposes of its incorporation. These particulars need not be verified. This exemption applies only to the listed company and not to subsidiaries or other operational entities.</p>		
<ul style="list-style-type: none"> Name under which company is incorporated 		Official document issued by an authority for recording incorporation of companies and the address for incorporation purposes.
<ul style="list-style-type: none"> Registration number under which it is incorporated 		
<ul style="list-style-type: none"> Address where situated for purposes of incorporation 		
<ul style="list-style-type: none"> Name under which it conducts business in country where incorporated 		
<ul style="list-style-type: none"> Name under which it conducts business in RSA 		
<ul style="list-style-type: none"> Address from which it operates in country where incorporated or if multiple addresses, address of head office 		Information which can reasonably be expected to achieve verification and can be obtained by practical means.
<ul style="list-style-type: none"> Address from which it operates in RSA, or if it operates from multiple addresses, the address of the office seeking to establish business relationship or to enter into single transaction. 		

INFORMATION		DOCUMENT TO VERIFY INFORMATION
FOREIGN COMPANY * * Where the company is a Public Company listed on an Exchange set out in the schedule to the exemptions, attached to this Annexure, the practitioner need obtain only the registered name and number under which the entity is incorporated, and the address where it is situated for purposes of its incorporation. These particulars need not be verified. This exemption applies only to the listed company and not to subsidiaries or other operational entities.		
<ul style="list-style-type: none"> Income tax and value-added tax registration numbers of the company (if issued) 		Documents issued by the South African Revenue Service bearing such numbers.
<ul style="list-style-type: none"> Full names, date of birth and ID number of manager of affairs and representative of foreign company (nationality if not RSA citizen). 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence)
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		Not necessary to verify.
<ul style="list-style-type: none"> Full names, date of birth and ID number of each person who holds 25% or more voting rights of a general meeting of the foreign company (nationality if not RSA citizen). 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence). If not a natural or foreign person, the information as for SA company, CC's, foreign company, corporate entity, partnership, trust.
<ul style="list-style-type: none"> If person/entity holding such shares is a company or close corporation, details of company or close corporation itself as set out above and below. 		

INFORMATION		DOCUMENT TO VERIFY INFORMATION
FOREIGN COMPANY * * Where the company is a Public Company listed on an Exchange set out in the schedule to the exemptions, attached to this Annexure, the practitioner need obtain only the registered name and number under which the entity is incorporated, and the address where it is situated for purposes of its incorporation. These particulars need not be verified. This exemption applies only to the listed company and not to subsidiaries or other operational entities.		
<ul style="list-style-type: none"> If person/entity holding such shares is a partnership, name of partnership. 		
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		Not necessary to verify.
<ul style="list-style-type: none"> If person/entity holding such shares is a trust, name and number of trust. 		
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		Not necessary to verify.
<ul style="list-style-type: none"> If a legal person, other than the entities referred to above, holds such shares, the name of the legal person, its address and its legal form. 		
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		Not necessary to verify.

INFORMATION		DOCUMENT TO VERIFY INFORMATION
LEGAL PERSONS (OTHER THAN A COMPANY, CLOSE CORPORATION OR FOREIGN COMPANY)		
<ul style="list-style-type: none"> Name of legal person 		Constitution or other founding documents.
<ul style="list-style-type: none"> Address from which it operates 		
<ul style="list-style-type: none"> Legal form 		
<ul style="list-style-type: none"> Income tax and value-added tax registration numbers of the entity (if issued) 		Documents issued by the South African Revenue Service bearing such numbers.
<ul style="list-style-type: none"> Full names, date of birth and ID number of each representative of the corporate entity (nationality if not RSA citizen). 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence)
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		Not necessary to verify.

INFORMATION		DOCUMENT TO VERIFY INFORMATION
PARTNERSHIPS		
<ul style="list-style-type: none"> Name of partnership 		Partnership agreement in terms of which partnership was formed.
<ul style="list-style-type: none"> Business address 		
<ul style="list-style-type: none"> Full names, date of birth and ID document of each partner, including every member of a partnership <i>en commandite</i>, anonymous partnership or any similar partnership 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence) If not a natural or foreign person, information as for SA companies, CC's, foreign companies, other legal entities, or trusts.
<ul style="list-style-type: none"> Full names, date of birth and ID document of person who exercised executive control over partnership and representative of such partnership 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence). If not a natural or foreign person, information as for SA companies, CC's, foreign companies, other legal entities, or trusts.
<ul style="list-style-type: none"> Where the partner or the person who exercises control or who acts as a representative is a company or close corporation, details of company itself or close corporation itself as set out above 		
<ul style="list-style-type: none"> Where such person is a partnership, name of partnership. 		

INFORMATION		DOCUMENT TO VERIFY INFORMATION
PARTNERSHIPS		
<ul style="list-style-type: none"> • Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> • Contact particulars 		Not necessary to verify.
<ul style="list-style-type: none"> • Where such person is a trust, name and number of trust. 		
<ul style="list-style-type: none"> • Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> • Contact particulars 		Not necessary to verify.
<ul style="list-style-type: none"> • Where such person is a legal person, other than the entities referred to above, the name of the legal person, its address and its legal form. 		
<ul style="list-style-type: none"> • Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> • Contact particulars 		Not necessary to verify.

INFORMATION		DOCUMENT TO VERIFY INFORMATION
TRUSTS		
<ul style="list-style-type: none"> Identifying name of trust 		Trust deed or other founding documents. Where trust is created <u>in</u> RSA, authorisation given by Master of the High Court to each trustee to act in that capacity. Where trust is created <u>outside</u> RSA, an official document reflecting the particulars of trust.
<ul style="list-style-type: none"> Registration number 		Information which can reasonably be expected to achieve verification and can be obtained by practical means.
<ul style="list-style-type: none"> Business address 		Information which can reasonably be expected to achieve verification and can be obtained by practical means.
<ul style="list-style-type: none"> Address of Master of High Court where trust is registered (if applicable) 		Authorisation given by Master of the High Court in terms of section 7 of the Trust Property Control Act, 1988 to each trustee of the trust to act in that capacity.
<ul style="list-style-type: none"> Income tax registration number of trust (if issued) 		Documents issued by the South African Revenue Service bearing such numbers.
<ul style="list-style-type: none"> Full names, date of birth and ID number in respect of each trustee, each representative of the trust and each founder of the trust 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence). If not a natural person or foreign natural person, information as for SA companies, CC's, foreign companies, other legal entities, or trusts.
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.

INFORMATION		DOCUMENT TO VERIFY INFORMATION
TRUSTS		
<ul style="list-style-type: none"> Contact particulars 		Not necessary to verify.
<ul style="list-style-type: none"> Where such persons are natural persons, full names, date of birth and ID number of each such natural person (nationality if not RSA citizen). 		
<ul style="list-style-type: none"> Where such persons are persons/entities other than natural persons, identification requirements as per those set out above. 		
<ul style="list-style-type: none"> Full names, date of birth and ID number of the beneficiaries of the trust or other founding instrument creating trust, where such beneficiaries are natural persons (nationality if not RSA citizen). 		Copy of ID document or any other document bearing photograph, name and surname, date of birth and ID number (e.g. Driver's licence). If not a natural person or foreign natural person, information as for SA companies, CC's, foreign companies, other legal entities, or trusts.
<ul style="list-style-type: none"> Residential address 		Not necessary to verify.
<ul style="list-style-type: none"> Contact particulars 		Not necessary to verify.
<ul style="list-style-type: none"> Where such beneficiaries are not natural persons, identification requirements as per those set out on page 3 above. 		

SCHEDULE

Exchanges recognised for purposes of the exemption in respect of public companies the securities of which are listed on a stock exchange (Exemption 6)

American Stock Exchange
Amsterdam Exchanges N.V.
Athens Stock Exchange
Australian Stock Exchange Ltd
Barcelona Stock Exchange
Bolsa de Comercio de Buenos Aires
Bolsa de Madrid
Bolsa de comercio de Santiago
Bolsa de Valores de Bilbao
Bolsa de Valores de Lima
Bolsa de Valores de Lisboa
Bolsa de Valores do Rio de Janeiro
Bolsa de Valores do Sao Paulo
Bolsa Mexicana de Valores
Bourse de Montreal
Brussels Exchanges Ltd
Canadian Venture Exchange
Chicago Board Options Exchange, Inc.
Colombo Stock Exchange
Copenhagen Stock Exchange
Deutsche Börse AG
Helsinki Exchanges Group Ltd
Oy Irish Stock Exchange
Istanbul Stock Exchange
Italian Exchange
Jakarta Stock Exchange
Johannesburg Stock Exchange
Korea Stock Exchange
Kuala Lumpur Stock Exchange
Ljubljana Stock Exchange, Inc.
London Stock Exchange
Malta Stock Exchange
National Association of Securities Dealers, Inc.
New York Stock Exchange, Inc
New Zealand Stock Exchange

OM Stock Exchange

Osaka Securities Exchange

Oslo Bors

Paris Bourse SBF SA

Philippine Stock Exchange Inc.

Singapore Exchange

Société de la Bourse de Luxembourg SA

Swiss Exchange

Taiwan Stock Exchange

Tehran Stock Exchange

The Bermuda Stock Exchange Ltd

The Chicago Stock Exchange, Inc.

The Stock Exchange of Hong Kong Ltd

The Stock Exchange of Thailand

The Tel Aviv Stock Exchange Ltd

The Toronto Stock Exchange

Tokyo Stock Exchange

Warsaw Stock Exchange

Wiener Börse AG

ATTORNEYS GENERAL EXEMPTION AND CLIENT INFORMATION

VERIFICATION FORM

The terms defined in the sole practitioner 's Anti Money Laundering Policy and Rules (the "Rules") shall have the same defined meaning when used in this form.

Please circle the appropriate "Yes"/ "No" boxes.

65. File Reference Number: _____

66. Name of Client: _____

Matter Description: _____

67. What kind of advice are you providing client (e.g. Tax, labour, environmental, corporate commercial)

68. Client contact details

Is the client an existing client [Yes / No]

Would you like your client to be contacted for marketing purposes? [Yes / No]

69. I determined that the general exemption for attorneys applies to this matter. [Yes / No]

On what basis does exemption apply? _____

 (signature)

Date: _____

Name: _____
RESPONSIBLE PERSON

SUSPICIOUS CLIENTS

- A client who provides vague or contradictory information or references.
- A client who has no record of past or present employment or involvement in a business but who frequently seeks advice.
- A client whose business or sources of funds are ill-defined, or who is reluctant to provide details about his or her business or source of funds.
- A client who uses a financial institution which is located far from his or her home or work.
- A client who is reluctant to disclose other bank or business relationships.
- A client who operates different accounts at different branches of the same financial institution.
- A client who enters into transactions that do not appear to have a legitimate business purpose or that are out of the ordinary given the client's profile.
- A client who makes deposits or withdrawals into the trust account mainly inc ash.
- A client who is a known economic criminal or gangster.

SUSPICIOUS TRANSACTIONS

- Any transaction involving an unusually large cash amount given the profile of the client.
- Trust accounts into which substantial deposits are made in respect of fictitious transactions and then immediately withdrawn.
- Business payments by attorneys against the promise of reimbursement can be used to acquire assets which are then disposed of. The funds paid to settle the attorney's disbursement have effectively been laundered.
- A deposit in respect of fees for a transaction or series of transactions which by preconceived plan, will never eventuate. The requested refund of the deposit produces a trust cheque.
- An attorney can also be used to launder money indirectly. He or she may be requested to establish companies, close corporations and trusts, all of which will be used as a vehicle for laundering funds.
- The attorney's services can be used in the preparation and implementation of contracts involving international trade where over and under invoicing represents a common method of laundering funds.