BRUVOS WEALTH

FSP 46088

FICA MANUAL

Definitions

Accountable Institution

Institution which have been identified as being vulnerable to money laundering, as such they have specific obligations regarding money laundering. (See Schedule 1 of FICA for a list of accountable institutions)

Business Relationship

An arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis

FIC

Financial Intelligence Centre – The entity created in terms of FICA to receive and analyse suspicious transactions

FICA

The Financial Intelligence Centre Act, 38 of 2001 – The South African legislation which imposes money laundering control obligations on all major financial institutions

Money Laundering

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 activity 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].

POCA

The Prevention of Organised Crime Act 121 of 1998 – South Africa legislation which creates the main money laundering offences and provides for the forfeiture of the proceeds of crime

Proceeds of Crime

Any financial benefit that a criminal derives from any criminal activity

Proceeds of unlawful activities

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".

Smurfing, Splitting, Structuring

Money Laundering methods which involve the splitting of proceeds of crime into smaller amounts in order to avoid detection

STR

Suspicious and Unusual transaction Report

Transaction

A transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution (and is not limited to transactions involving the flow of money.

Unlawful activity

conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of the Proceeds of Crime Act [POCA] and whether such conduct occurred in the Republic or elsewhere.

Verification

Verification is the process whereby an accountable institution is required to collect documented proof of the information requested from a client and where the accountable institution will compare the information with documentation that confirms such information

The Financial Intelligence Centre Act

Objective in terms of the FIC Act

"To establish a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.'

It is the Financial Intelligence Centre Act which is divided into 5 chapters, dealing respectively with

(1) The Financial Intelligence Centre

(2) The Money Laundering Advisory Council

(3) Money Laundering Control Measures

(4) Offences and Penalties

(5) Miscellaneous matters

The Financial Intelligence Centre

Objectives of the FIC:

To identify proceeds of unlawful activities

To combat Money Laundering activities

To collect / forwarding information to authorities

Function of FIC:

The FIC is not an investigative body The FIC is responsible for collecting, processing, analysing and interpreting reports received from Accountable Institutions.

The FIC must inform, advise and co-operate with investigating authorities such as the South African Police, National Directorate of Public Prosecutions and the South African Receiver of Revenue

The FIC must supervise compliance and give guidance to accountable institutions to combat money laundering

Money Laundering Advisory Council

Advisory Body to the Minister of Finance

Forum in which the Government and the Private sector can consult on policies and measures to combat money laundering activities.

Money Laundering Control Measures

Who must comply with FICA?

The FICA obligations of a person, business or an institution (altogether referred to as a "person" herein) are determined by its classification:

A person who is carrying on a business or is managing, in charge of or employed by a business has a duty under section 29 of FICA to report specified unusual and suspicious transactions to the FIC. This duty took effect on 3 February 2003.

Furthermore, any such person is also obliged to report on any such transaction or transactions, whether proceeded with or not, even where they are merely the subject of enquiry. There is also, subject to certain stipulated exceptions, a prohibition against disclosure by the reporting person of the fact of the report or of any information concerning the report to any other persons.

All Financial Services Providers are required to comply with the above.

A person who is listed in Schedule 1 of FICA as an **accountable institution** has, in addition to the section 29 reporting obligation, a full set of compliance obligations. These duties took effect on 30 June 2003.

Schedule 1 of *FICA* comprises a list of 19 categories of individuals and institutions designated as "*Accountable Institutions*".

Some accountable institutions include:

A person who carries on a "long-term insurance business" as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998), including an insurance broker and an agent of an insurer.

A person who carries on the business of dealing in foreign exchange.

A person who carries on the business of rendering investment advice or investment broking services.

It is important to consider not only the general business of the particular institution, but also the scope of business of any business units and the qualifications and business activities of each of its employees. It is possible that an institution may not be an accountable institution, but that a number of its employees may be accountable institutions on account of their qualifications or specific duties within that institution.

Persons who are accountable institutions may also be working for other accountable institutions.

Financial Services Providers who are licensed only for short-term insurance products or health service benefits are not accountable institutions but must comply with the provisions of section 29 of the principal Act by reporting suspicious and unusual transactions.

The onerous duty placed on Accountable Institutions is to implement and maintain Money Laundering control measures. These include *inter alia* the establishment and verification of the identity of clients and of their authority; the keeping of detailed records of clients, business relationships, and of transactions for a specified period; the obligation to make such records available to the Centre on the strength of a warrant; the obligation to inform the Centre on request of the existence of a current or past mandate; the obligation to report cash transactions above a prescribed amount to the Centre; the obligation to report to the Centre the conveyance in terms of a transaction with a client of cash above a prescribed amount to or from the country, formulate and implement internal rules, train employees and appoint a compliance officer.

An Accountable Institution may also be ordered by a judge on application of the Centre to report confidentially to the Centre on an ongoing basis in regard to specified transactions, or in regard to the transactions conducted by a specified person, or through a specified account or institution.

What is Money Laundering:

United Nations Definition:
"...any act or attempted act to disguise the source of money or assets derived from criminal activity..."

FICA (section 1) defines '*money laundering*' or '*money laundering activity*' to mean 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 this Act (*FICA*) or section 4, 5, or 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

The 3 Stages of Money Laundering

Stage 1: Entry or Placing Stage

Initial stage whereby cash is introduced into the retail economy or financial system
This is the physical disposal of proceeds of crime

This might take the form of:

Single Premium Investment

Large Multiple Premium Investments

Second Hand Policies

Stage 2: Concealment/Layering Stage

Involves separating the illicit proceeds from their source

Complex layers of financial transactions are created to disguise the audit trail

This might take the form of

Switching of funds between banks and/or jurisdiction

Switching of cash through a network of businesses and shell companies across several jurisdictions

The use of cash deposits as collateral security in support of legitimate transactions

Single premium investments shortly followed by a surrender or loan

Stage 3: Withdrawal and Re-entry (Integration Stage)

The final stage through which laundered proceeds are placed back into the economy in such a way as to make it appear as legitimate income.

The repossession of property or that which seems to legitimately represent the original property and placing it back into the economy

This process can take form of obtaining payment by way of cheque or electronic payment from the insurer or reinvestments in other investments

Occurrence of Stages

The three stages may occur separately or at the same time

Money Laundering can be detected at the first stage – when tainted proceeds first enter the financial system or

Where trusts or companies are formed and there are transfers within and from the financial system

Intermediaries must be most vigilant at these points where the criminal is actively seeking to launder the proceeds of crime

Money Laundering control measures

There are 6 specific duties placed on Financial Services Providers who are accountable institutions:

Duty to Identify and Verify new and existing Clients (know your client)

Duty to Keep Records

Duty to Report Suspicious and Unusual Transactions (03/02/2003)

Duty to Formulate and Implement Internal Rules

Duty to Monitor Compliance

Duty to Train Staff

<u>Duty 1: Duty to Identify and Verify new and existing Clients (know your client)</u>

Obligation to Identify and Verify

Section 21 of the Act provides as follows -

(1) An Accountable Institution may not establish a business relationship or conclude a single transaction with a client unless the Accountable Institution has taken the prescribed steps—

(a) *to establish and verify the identity of the client;*

(b) *if the client is acting on behalf of another person, to establish and verify—*

(i) *the identity of that other person; and*

(ii) *the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and*

(c) *if another person is acting on behalf of the client, to establish and verify -*

(i) *the identity of that other person; and*

(ii) *that other person's authority to act on behalf of the client.*

At each meeting with a client both new and existing clients should be informed of the obligations in terms of FICA.

Obliged to identify and verify client's details for new clients (effective 30 June 2003)
If an accountable institution had established a business relationship with a client before FICA took effect, the accountable institution may not conclude a transaction in the course of that business relationship unless the accountable institution has taken the prescribed steps to establish and verify the identity of the client and the client's agent or principal.

No new business or transaction can be conducted unless the Accountable Institution identifies and verifies the identity of the client.

If the client is acting on behalf of another person, the Accountable Institution must verify the identity of that other person together with the client's authority in order to establish the business relationship or to conclude a single transaction

If another person is acting on behalf of the client, the identity of that other person and that person's authority must be verified

Any natural person or natural person acting on behalf of another natural or juristic person should be treated as a verification subject. For example, a company invests funds into an endowment policy, the company's and the directors' identities will need to be established and verified.

In terms of a general exemption granted under FICA, you may obtain a mandate from a prospective client to conclude a single transaction or establish a business relationship without first verifying the identity of the client. However, before the transaction or business relationship is finalized, the client's Identity must be established and verified

Verification is the process whereby you are required to collect documented proof of the information requested from the client and where you will compare the information obtained from the client with documentation that confirms the information

Verification of a client's identity must be done in the following instances, if:-

A client is assisted in the planning or execution of:-

The buying or selling of immovable property;

The buying or selling of any business undertaking;

The opening or management of a bank, investment or securities account;

The organisation of contributions necessary for the creation, operation or management of a company or close corporation or of a similar structure outside the Republic;

The creation, operation or management of a company or close corporation or of a similar structure outside the Republic;

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.

A client is assisted in disposing of, transferring, receiving, retaining, maintaining control of or In any way managing any property;

A client is assisted in the management of any Investment;

A client is represented in any financial or real estate transaction; or

A client deposits, over a period of 12 months, an amount of R100 000 or more into our account in respect of fees (including disbursements) [the Exemptions to FICA (Section 10) makes reference only to fees, not fees and disbursements] which may be incurred in the course of litigation.

Identification Procedures

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).

The different categories of clients are to be identified and verified as follows :

Natural Persons Regulations 3 - 6

Legal Persons	**Regulations 7 - 12**
Partnerships	**Regulations 13 - 14**
Trusts	**Regulations 15 - 16**

In certain instances there may be exemption from compliance as set forth in Exemptions 2, 3, 4, 5, 6, 10, 18 and 19.

If information or documentation has been obtained about a client without contact in person with the client or a representative of the client, reasonable steps must be taken to establish the existence of or to establish and verify the identity of the client.

Reasonable steps must be taken to maintain the correctness of particulars of clients which are susceptible to change.

Product Suppliers may have different requirements for identification of clients. Clients may be required to provide additional or different evidence of identification. In terms of an accountable institutions contractual relationship with Product Suppliers, the accountable institution must adhere to the specific requirements in the contract.

Client Profile

In certain circumstances it may be necessary to obtain additional information from a client in order to identify the proceeds of unlawful activities or money laundering activities.

In addition to the source of income and source of funds that must be obtained, the following information and documentation may be obtained, from natural persons, legal persons, partnerships or trusts.

Natural persons (South African citizens and residents)

The nature and extent of the business activity that such a person may be involved in; and

The nature and extent of possible transactions that such a person may be involved in with the accountable institution.

Natural persons (Foreign nationals)

The nature and extent of the business activity that such a person may be involved in; and

The nature and extent of possible transaction that such a person may be involved in with the accountable institution; and

The purpose of such a person being in the Republic; and

The time duration for such a person stay in the Republic; and

A copy of the passport of such a person reflecting his/her entrance into the Republic and applicable visa (if relevant); and

If applicable, a copy of the work permit in the Republic, of such a person.

Legal persons (South Africa), other legal entities, partnerships or trusts

The nature and extent of the business activity that the entity may be involved in; and

The nature and extent of possible transactions that the entity may be involved in with the accountable institution; and

If the entity operates out of various branches and in various jurisdictions, the details in this regard must be obtained and noted.

Legal persons (Foreign)

The nature and extent of the business activity that the entity may be involved in; and

The nature and extent of possible transactions that the entity may be involved in with the accountable institution; and

If the entity operates out of various branches and in various jurisdictions, the detail in this regard must be obtained and noted.

Duty 2: Duty to Keep Records

Section 22 of the Act provides that whenever an Accountable Institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that Accountable Institution has with the client, the Accountable Institution must maintain certain records.

Regulation 20 deals with cases where a third party is appointed to keep records on behalf of an Accountable Institution.

FICA requires an accountable Institution to keep records of the following:-

the identity of a client and, if applicable, the identity of the client's agent or principal;

the manner in which the Identity of the client and the client's agent or principal was established;

the nature of the business relationship or transaction;

in the case of a transaction, the amount involved and the parties to that transaction;

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;

the name of the person who obtained the information referred to in 5.1; and

any document or copy of a document obtained by the accountable institution in order to verify a person's identity.

Records must also be kept of the details of transactions and parties to transactions.

Such records may be kept in an electronic format and may be outsourced to a third party for keeping.

Records must be kept in such a format to allow easy access and retrieval by staff as required. The economical, efficient and secure management of records contained within each department is a responsibility shared by every employee.

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.

A third party may keep such records on behalf of an accountable institution but the accountable institution will remain liable for any failure to keep records in accordance with this part of the Act.

Records must be kept for at least 5 years from the date on which the business relationship is terminated; or 5 years from the date of conclusion of the contract if a single transaction was concluded.

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 an accountable institution in terms of FICA and may examine, make extracts from or copies of any such records.

Any request for access to records, including by way of warrant, must be forwarded the

FICA compliance officer or other responsible person(s).

Duty 3 :Duty to Report Suspicious and Unusual Transactions

Transactions that an employee knows or suspects (or should have known or suspected) of involving proceeds of crime or tax evasion must be reported

What is a Suspicious Transaction?

A transaction or a series of transactions which:

- Facilitated or are likely to facilitate the transfer of the proceeds of an unlawful activity; or
- There is no apparent business or lawful reason for the transaction; or
- The purpose of the transaction is to avoid the "reporting duty" under FICA
- The transaction may be relevant to the investigation of an act of tax evasion and/or payment of a duty or levy.

Examples

- A large investment given the client's profile
- Multiple-policies all cancelled within the 30-day cooling-off period
- Third party payments during the 30-day cooling-off period or of early surrenders on large investments
- Unemployed person using a third party's bank account for large investments
- Incorrect debit order details necessitating a refund
- Refund on un-issued policies for outstanding requirements, etc

Test of suspicion – "reasonable man test"

For the purposes of this Act a person has knowledge of a fact if-

(a) the person has actual knowledge of that fact; or

(b) the court is satisfied that: -

(i) the person believes that there is a reasonable possibility of the existence of that fact; and

(ii)the person fails to obtain information to confirm or refute the existence of that fact

Recognizing a Suspicious and Unusual transaction

As the types of transactions that may be used by a money launderer are almost unlimited, it is often difficult to recognise a suspicious transaction. Suspicion is a subjective matter and falls far short of proof based on firm evidence. However, the suspicion must at least have some foundation and not just be based on mere speculation.

General Signs and Signals

A suspicious transaction could involve several factors that may on their own seem insignificant but together raise suspicion. You should always assess whether the transaction seems appropriate and normal within the company's normal range of business. When evaluating whether a transaction or certain behaviour is suspicious, all relevant factors should be taken into account. The following points may indicate a suspicious and unusual transaction:

The client does not appear to display honest behaviour; or

The client is reluctant to furnish standard personal or business information; or

You do not have a satisfactory picture of the clients affairs; or

The conduct of the client changes for no apparent reason; or

The transaction or business dealings of the client do not make business sense; or

The transaction or series of transactions appear to have a money laundering purpose (splitting, smurfing or structuring); or

The client engages in transactions that are out of the ordinary or do not fit the client profile.

In each case, it is the person who deals directly with the client who has to make use of these key signs and make a judgement regarding the nature of the transaction, and if it is suspicious or not. Remember it is behaviour that is suspicious and not the person.

FICA identifies two broad types of transactions that must be reported:

Threshold transactions:

Electronic Fund Transfers of money to and from the Republic – Section 31

If an Accountable Institution through electronic transfer sends money in excess of a prescribed amount out of the Republic or receives money in excess of a prescribed amount from outside the Republic on behalf or on the instruction of another person, it must, within the prescribed period after the money was transferred, report the transfer, together with the prescribed particulars concerning the transfer, to the Centre.

In terms of Section 32, a report in terms of Section 31 must be made to the Centre in the '*prescribed manner*'.

Cash Transactions- Section 28

An Accountable Institution and a reporting institution must, within the prescribed period, report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount -

is paid by the Accountable Institution or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or

is received by the Accountable Institution or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

Certain acts and transactions involving cash in amounts greater than the set limit as well as certain transfers of money into and out of the Republic must be reported. Cash for these purposes, means:

South African notes and coins; and

Similar currency of other countries; and

Traveller's cheques.

Cash Reporting

The reporting of cash transactions relates to two main areas:

When cash, in excess of a set amount, is paid out to a client or his legal representative by the Accountable Institution; or

Is received by the Accountable Institution from a client or from his legal representative.

Transactions that must be reported to the Financial Intelligence Centre:

Conveyance of cash into or out of South Africa's borders by all persons:

Any person who travels in or out of South Africa's borders and who intends to bring an amount of cash greater than the set limit into South Africa will have to report that to a designated person. The report must be submitted before the person conveys the cash into or out of South Africa's borders.

International Electronic Transfers:

An international electronic transfer by an accountable institution must be reported if: The transfer involves money in excess of a prescribed amount; and the transfer is made on behalf of or on the instructions of another person, for example: a client.

The reporting process

Every person has a duty to report suspicious and unusual transactions. This includes those people who are not directly involved in the transaction, but who may hear about it through normal reporting processes.

The Suspicious Transaction Report form which Accountable Institutions are required to complete, requires a considerable amount of information relating to the transaction and the person conducting the transaction.

A report may need to be made to the Centre where an employee of the firm knows or suspects that the firm:-

Has or is about to receive the proceeds of unlawful activities;

Is party to a transaction that;-

resulted or is likely to result in the transfer of the proceeds or lawful activities;

appears to have no business or lawful purpose;

is constructed to avoid any reporting duty; or

may be related to any attempt to evade tax or any other duty or levy imposed by legislation administered by SARS;

Information to be reported –to the FIC

A report must:

Contain a full description of the suspicious or unusual transaction, including the reason why it is deemed to be suspicious or unusual as contemplated in that section;

Indicate what action has been taken in connection with the transaction

Indicate what documentary proof is available in respect of the transaction concerning which the report is made and the reasons referred to in paragraph (a).

Details in respect of the natural or legal person making a report

Details in respect of the transaction

Details in respect of any account which may have been involved in the transaction

Details in respect of the natural or legal person conducting the transaction, or other entity on whose behalf the transaction is conducted

Details in respect of a natural person conducting the transaction concerning which a report under section 29 is made, on behalf of another natural person or a legal person or other entity

Reporting period – Regulation 24

Fifteen (15) days, excluding Saturdays, Sundays and public holidays, after becoming aware, unless exemption by FIC

Confidentiality and Privilege

FICA preserves legal professional privilege and privileged communications

need not be reported. Confidentiality is a wider concept than privilege as information may be confidential even though it is not protected by legal professional privilege. An obligation of confidentiality may arise from contract, either as an express term or as an implied term in a fiduciary relationship, or it may arise from a delictual duty to refrain from disclosing confidential information.

There is an overlap between the concepts of confidentiality and legal professional privilege. Confidentiality is a necessary condition for claiming

privilege but is not a sufficient condition for such a claim. The mere fact that a communication was made in confidence will not necessarily mean that that

communication is privileged. 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.

Confidentiality, as opposed to privilege, is overridden by the duty to report.

Tipping Off

It is an offence to inform the suspect or any other person other than in terms of legislation, that a report is to be submitted to the FIC

Required transaction must be carried out as per client's instructions

Prohibitions against any disclosures relating to reports made or to be made :

Section 29(3)

No person who made or must make a report in terms of this section may disclose the fact or any information regarding the contents of any such report to any other person, including the person in respect of whom the report is or must be made, otherwise than--"(certain limited exceptions *follow)*; and

Section 29(4)

> *No person who knows or suspects that a report has been or is to be made in terms of this section may disclose that knowledge or suspicion or any information regarding the contents or suspected contents of any such report to any other person, including the person in respect of whom the report is or is to be made, otherwise than--"(the same limited exceptions follow).*

It is important to emphasise the prohibitions against disclosure contained in sections 29(3) and 29(4). *FICA* itself does not stipulate that the person reporting need withdraw from or halt the transaction or transactions in question unless so directed by the Centre (See particularly section 33).

The regulations also provide for the manner and form of reporting in which a transaction is to be reported under Section 29. See Regulations 22 - 24.

Protection in light of Disclosures to the Centre

No action, whether criminal or civil, lies against any person complying in good faith with the reporting obligations under FICA.

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.

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.

Duty 4: Duty to Formulate and Implement Internal Rules

Formulation and Implementation of Internal Rules – Section 42

An Accountable Institution must formulate and implement internal rules concerning:

The establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of Chapter 3 of *FICA*;

The information of which record must be kept in terms of Part 2 of the same Chapter of *FICA*;

The manner in which and place at which such records must be kept;

The steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties under *FICA* ; and

Such other matter as may be prescribed.

Brokers must formulate and implement internal rules concerning:
Identification and verification of client's details
Record retention (manner and place).
Make rules available to all employees involved in transactions
Internal rules must comply with regulations 25 – 27.

Members must, on request, make a copy of its internal rules available to -

the Centre; and

to the Financial Services Board

Failure to comply with Internal Rules

An accountable institution that fails to:

Formulate and implement internal rules;

Make them available to its employees or to the Centre or to the FSB;

Provide training to its employees to ensure compliance with the rules,

commits an offence that carries a penalty of imprisonment for a period not

exceeding 5 years or a fine not exceeding R1 million.

Duty 5: Duty to Monitor Compliance

Financial Services Providers <u>must</u> provide training to their employees and appoint a Compliance Officer to ensure compliance with the provisions of *FICA* (see section 43). Failure to comply is an offence the maximum penalty in respect of which is 5 years imprisonment or a fine of R100 000,00.

The appointed Compliance Officer must sign letter of appointment to such capacity.

An example of a letter of appointment is as follows.

APPOINTMENT OF COMPLIANCE OFFICER

The person responsible for monitoring compliance at

____

(name of the firm)

is ____

(name of appointed officer)

I, the undersigned accepts herewith my appointment as Compliance Officer and certify that I am familiar with the contents of this manual. Furthermore I will ensure compliance as set out herein.

All enquiries pertaining to the establishment and/or verification of a client's identity, as well as reports on suspicious and/or unusual transactions will be received by me.

SIGNED AT __________ON THIS__ DAY OF ____________________20__

____________________ ____________________

Compliance Officer *Witness*

Financial Service Provider obligation to register with the FIC

Section 43B of the Act determines that every accountable institution referred to in Schedule 1 –

must register with the Centre;

such registration must be accompanied by such particulars as the Centre may require;

a registered accountable institution must notify the Centre, in writing, of any changes to the particulars furnished within 90 days after such change.

Section 61A determines that any accountable institution that –

fails to register with the Centre in terms of section 43B, or

fails to provide information in terms of section 43B

is guilty of an offence.

Section 68 determines that a person convicted of an offence mentioned in section 61A is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R10 million.

Registration Procedure:

Go to www.fic.gov.za

Click on "Registration Form" then "Register".

Scroll to the end of the page where you will find "To Register click here".

When choosing an option type, choose number 12.

Duty 6 : Duty to Train Staff

Brokers must ensure that they together with their staff members are trained on provisions of FICA and the brokerage's internal rules

It is the responsibility of the appropriate manager to ensure that each employee has attended a training program and that all new and existing staff members receive appropriate anti-money laundering training.

4. Offences and Penalties

The Prevention of Organised Crime Act (POCA) identifies the main money laundering offences, which apply to every person in South Africa. Regardless of whether an individual is a member of an accountable institution or not, if he/she commit a money laundering offence, he/she could be found guilty under POCA and would thus face the associated penalties.

While POCA creates the main money laundering control offences, FICA creates the detailed compliance obligations designed to combat money-laundering activities and to impose certain duties on institutions and other persons who may be used for money laundering purposes

The offences and penalties created in the Financial Intelligence Centre Act, 38 of 2001 are set out below:

Offences	**Penalties**
Failure to identify persons (Sec. 46)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to keep records (Sec 47)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Destroying or tampering with records (Sec 48)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to give assistance (Sec 49)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to advise the Centre (Sec 50)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to report cash transactions (Sec 51)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to report suspicious or unusual transactions (Sec 52)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Unauthorised disclosure (Sec 53)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to report conveyance of cash into or out of the Republic (Sec 54)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.

Failure to send a report to the Centre (Sec 55)	Maximum period of 5 years or a fine not exceeding R10 000 000.
Failure to report electronic transfers (Sec 56)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to comply with requests (Sec 57)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to comply with a direction by the Centre (Sec 58)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to comply with monitoring order (Sec 59)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Misuse of information (Sec 60)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Failure to formulate and implement internal rules (Sec 61)	Maximum period of 5 years or a fine not exceeding R10 000 000.
Failure to provide training or appoint compliance officer (Sec 62)	Maximum period of 5 years or a fine not exceeding R10 000 000.
Obstructing Centre officials in the performance of functions (Sec 63)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Conducting transactions to avoid reporting duties (Sec 64)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.
Unauthorised access to computer system or application or data (Sec 65)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.

Unauthorised modification of contents of computer system (Sec 66)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000.

Miscellaneous Matters

Exemptions

FICA permits accountable institutions discretion with regard to compliance with specific obligations and these are termed exemptions. It must always be kept in mind that it is your responsibility to remain up to date regarding any changes that are made to the relevant requirements. The following are Exemptions allowable under the regulations of the Financial Intelligence Centre Act.

Exemption from Parts 1, 2 and 4 of Chapter 3 of Act 38 of 2001

Every natural person who performs the functions of an accountable institution referred to in Schedule 1 to the Act in a partnership with another natural person, or in a company or close corporation is exempted from the provisions of Parts 1, 2 and 4 of Chapter 3 of the Act subject to the condition that those provisions are complied with by another person employed by the partnership, company or close corporation in which he or she practises.

Essentially this exemption allows the accountable institution who practices in partnership or in a company to delegate the compliance aspects of FICA to another person employed by the partnership or company.

Exemption from section 21 and 22 of the Act 38 of 2001

Every accountable institution is exempted from compliance with the provisions of section 21 and 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act, in respect of a business relationship or single transaction which is established or concluded with that institution (the second accountable institution) by another accountable institution (the primary accountable institution) acting on behalf of a client of that primary accountable institution, subject to the condition that the primary accountable institution confirms in writing to the satisfaction of the second accountable institution that:

it has established and verified the identity of the client in accordance with section 21 of the Act, or

in terms of its internal rules and the procedures ordinarily applied in the course of establishing business relationships or concluding single transactions the primary accountable institution will have established and verified, in accordance with section 21 of the Act, the identity of every client on whose behalf it will be establishing business relationships or conducting concluding single transactions with the second accountable institution.

Exemption from verification obligations under section 21 of the Act

Every accountable institution is exempted from compliance with the provisions of section 21 of the Act which require the verification of the identity of a client of that institution if:

That client is situated in a country where, to the satisfaction of the relevant supervisory body, anti-money laundering regulation and supervision of compliance with such anti-money laundering regulation, which is equivalent to that which applies to the accountable institution is in force; or

A person or institution in that country, which is subject to the anti-money laundering regulation referred to in paragraph (a) confirms in writing to the satisfaction of the accountable institution that the person or institution has verified the particulars concerning that client which the accountable institution had obtained in accordance with section 21 of the Act, and

the person or institution referred to in paragraph (b) undertakes to forward all documents obtained in the course of verifying such particulars to the accountable institution.

Exemption from regulations made under Act 38 of 2001

Every accountable institution is exempted from compliance with regulation 7 (c), 7 (d), 7 (f), 7 (g), 7 (h), 7 (i), 7(j), 8, 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k) and 10 of the Regulations, and of section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the particulars referred to in those regulations, in respect of a business relationship established or single transaction concluded with a public company the securities of which are listed on a stock exchange recognised for this purpose and listed in the Schedule to these exemptions.

Every accountable institution is exempted from compliance with regulation 3 (1) (d), 4 (2), 5 (1) (e), 6 (2), 7 (h), 8 (d), 9 (h), 10 (c), 11 (d), 12 (b), 15 (c) and 16 (b) of the Regulations, and of section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the particulars referred to in those regulations.

Exemptions for insurance and investment providers

Exemption from Parts 1 and 2 of Chapter 3 of Act 38 of 2001

Every accountable institution which performs the functions of an accountable institution referred to in items 5, 8, 12, 17 and 18 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of Chapter 3 of the Act in respect of every business relationship or single transaction concerning:

Any long term insurance policy which is a fund policy or a fund member policy as defined in the Long-term Insurance Act, 1998 and the regulations thereto and in respect of which the policyholder is a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962;

Any unit trust or linked product investment effected by a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962, including an investment made to fund in whole or in part the liability of the fund to provide benefits to members or surviving spouses, children, dependants or nominees of members of the fund in terms of its rules;

Any annuity purchased as a compulsory annuity in terms of the rules of a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962;

Any reinsurance policy issued to another accountable institution;

Any long-term insurance policy classified in terms of the Long-term Insurance Act, 1998 as an assistance policy;

Any long term insurance policy which provides benefits only upon the death, disability, sickness or injury of the life insured under the policy;

Any long-term insurance policy in respect of which recurring premiums are paid which will amount to an annual total not exceeding R25 000,00, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client:

Who increases the recurring premiums so that the amount of R25 000,00 is exceeded;

Who surrenders such a policy within three years after its commencement; or

To whom that accountable institution grants a loan or extends credit against the security of such a policy within three years after its commencement;

Any long term insurance policy in respect of which a single premium not exceeding R 50 000,00 is payable, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client;

Who surrenders such a policy within three years after its commencement; or

To whom that accountable institution grants a loan or extends credit against the security of such a policy within three years after its commencement;

Any contractual agreement to invest in unit trust or linked product investments in respect of which recurring payments are payable amounting to an annual total not exceeding R 25 000,00, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client who liquidates the whole or part of such an investment within one year after the making of the first payment;

Any unit trust or linked product investment in respect of which a once off consideration not exceeding R 50 000,00 is payable, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client who liquidates the whole or part of such an investment within one year after the making of the first payment;

Any other long term insurance policy on condition that within the first three years after the commencement of the policy the surrender value of the policy does not exceed twenty per cent of the value of the premiums paid in respect of that policy.

Every accountable institution which performs the functions of an accountable institution referred to in items 4, 15, 17 and 18 is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of Chapter 3 of the Act in respect of transactions in securities listed on a stock exchange (as defined in the Stock Exchanges Control Act, 1985) or a financial market (as defined in the Financial Markets Control Act, 1989) for a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962, including investments in such securities made to fund in whole or in part the ability of the fund to provide benefits for members, surviving spouses, children, dependants or nominees of members of the fund in terms of its rules.

Application of Exemptions

If is not possible to apply the standard steps to identify and verify the client, an Accountable Institution may apply one of the above listed exemptions.