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***Guidance Note 05 on section 28 of the
Financial Intelligence Centre Act, Act 38 of 2001***

PREFACE

Money laundering has been criminalised in section 4 of the Prevention of Organised Crime Act, 1998. A money laundering offence may be described as the performing of any act that may result in concealing the nature of the proceeds of crime or of enabling a person to avoid prosecution or in the diminishing of the proceeds of crime.

Apart from criminalising the activities constituting money laundering, South African law also contains a number of control measures aimed at facilitating the detection and investigation of money laundering. These control measures, as contained in the Financial Intelligence Centre Act, 38 of 2001, (the FIC Act) are based on three basic principles of money laundering detection and investigation, i.e. that:

- intermediaries in the financial system must know with whom they are doing business;
- the paper trail of transactions through the financial system must be preserved;

- possible money laundering transactions must be brought to the attention of the Financial Intelligence Centre (the Centre) and the investigating authorities.

The control measures introduced by the FIC Act include requirements for institutions to establish and verify the identities of their clients, to keep certain records, to report certain information and to implement measures that will assist them in complying with the FIC Act.

The FIC Act also established the Centre which is South Africa's financial intelligence unit, a government agency created to collect, analyse and interpret information disclosed to it and obtained by it. The Centre is an integral part of our country's fight against the global crime of money laundering. In addition, section 4(c) of the FIC Act empowers the Centre to provide guidance in relation to a number of matters concerning compliance with the obligations of the Act. This guidance note is published by the Centre in terms of section 4(c) of the FIC Act.

Application of this Guidance Note

The Centre has prepared this guidance note to assist accountable institutions and reporting institutions meet their reporting obligations in terms of the FIC Act. It provides general guidance on the obligations in terms of section 28 of the FIC Act. In particular, the guidance note explains reporting timelines, how reports have to be sent to the Centre, what information has to be included in these reports and how to use the electronic reporting mechanism.

Guidance provided by the Centre is the only form of guidance formally recognised in terms of the FIC Act and the Money Laundering and Terrorist Financing Control Regulations (the Regulations) issued under the FIC Act. Guidance emanating from industry associations or other organisation, therefore, in the Centre's view, does not have a bearing on assessing compliance with the obligations imposed by the FIC Act or the interpretation of its provisions.

The guidance provided by the Centre in this guidance note, although authoritative, is provided as general information only. The guidance note does not provide legal advice and is not intended to replace the FIC Act or the Regulations issued under the FIC Act.

GLOSSARY

“**The Centre**” means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

“**FIC Act**” refers to the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001), as amended.

“**Regulations**” refer to the Money Laundering and Terror Financing Control Regulations, 2002, promulgated by Government Notice 1595 of 20 December 2002 as amended by Government Notice R456 in Government Gazette 27580 of 20 May 2005.

“**Reporter**” refers to the person or entity making the report.

“**CTR**” refers to a cash threshold report submitted in terms of Section 28 of the FIC Act.

INTRODUCTION

The FIC Act provides for the obligation to report cash transactions above a prescribed threshold in terms of section 28 of the FIC Act.

In terms of section 28 of the FIC Act accountable institutions and reporting institutions must report transactions above the prescribed threshold to the Centre in the prescribed form.

Cash threshold reporting in terms of section 28 of the FIC Act provides the Centre with a mechanism to proactively monitor and report on cash transactions which may be linked to money laundering activities so that potential proceeds of crime are timeously identified and investigated.

This guidance note is divided into 5 (five) parts:

- **Part 1** clearly explains that accountable institutions and reporting institutions have a reporting obligation in terms of section 28 of the FIC Act.
- **Part 2** explains when the reporting obligation arises.
- **Part 3** provides practical examples of when multiple reports must be sent to the Centre in terms of section 28 of the FIC Act.
- **Part 4** provides the methods for submitting cash threshold reports to the Centre.
- **Part 5** provided recommendations to facilitate practical implementation.

PART 1 - WHO MUST REPORT?

1.1 The obligation to report cash transactions above the prescribed threshold in terms of section 28 of the FIC Act applies to:

- accountable institutions (as listed in Schedule 1 to the FIC Act); and
- reporting institutions (as listed in Schedule 3 to the FIC Act).

PART 2 - WHEN DOES THE REPORTING OBLIGATION ARISE?

The obligation to report in terms of section 28 of the FIC Act

2.1 The obligation to report in terms of section 28 of the FIC Act arises when a transaction is concluded with a client by means of which cash in excess of the prescribed amount:

- is paid by the accountable 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 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.

2.2 The obligation therefore extends to cash in excess of the prescribed amount being **paid or received** by the accountable or reporting institution.

2.3 Payment or receipt of cash includes paying or receiving cash in person as well as paying or receiving it via a third party. This is discussed further in PART 3 below.

The reporting of “cash” as defined in the FIC Act

2.4 Cash is defined in section 1 of the FIC Act as:

- a) coin and paper money of the Republic or of another country that is designated as legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue; and
- b) travellers' cheques.

2.5 Cash does not include negotiable instruments as defined in the FIC Act. It also does not include a transfer of funds by means of bank cheque, bank draft, electronic funds transfer, wire transfer or other written order that does not involve the physical transfer of cash, and these methods of transferring funds will not be covered by the cash threshold reporting obligation under section 28 of the FIC Act.

2.6 Physical cash payments presented to and received by, or on behalf of, the accountable or reporting institution will be covered. Where an accountable or reporting institution makes a payout to a client consisting of physical cash this will also be covered by the cash threshold reporting obligation.

Prescribed threshold and aggregation of amounts

2.7 Regulation 22B of the Regulations sets the prescribed amount for cash threshold reporting. The prescribed limit in terms of section 28 of the FIC Act is R24 999.99 (twenty four thousand nine hundred and ninety nine rands and ninety nine cents) or the equivalent foreign denomination value calculated at the time that the transaction is concluded. This means that all cash transactions exceeding R24 999.99 (being R25 000 or more) must be reported to the Centre in terms of section 28 of the FIC Act.

2.8 Accountable and reporting institutions must report aggregates of smaller amounts which when combined add up to the prescribed amount, in cases where it appears to the accountable or reporting institution concerned that the

transactions involving those smaller amounts are linked in such a way that they should be considered fractions of one transaction. Accordingly, the threshold amount can be a single cash transaction to the value of R25 000 or more, or an aggregation of smaller amounts with a combined value of R25 000 or more. While the aggregation period is not specified, the Centre requests that a period of at least 24 hours be applied when considering aggregation.

2.9 Indications of when a series of smaller amounts combine to form a “composite” transaction that exceed the prescribed threshold are the following:

2.9.1 the period within which such a series of smaller transactions take place;

2.9.2 the fact that the series of transactions consists of a repetition of the same type of transaction e.g. cash payments or cash deposits;

2.9.3 the smaller amount transactions involve the same person or account holder ,or relates to the same account.

Example:

Where the threshold amount is reached by a repetition of cash deposits into the single account over a period of 24 hours this may be considered to be an aggregate transaction exceeding the prescribed threshold.

2.10 Accountable and reporting institutions should bear in mind that section 29(1)(iii) of the FIC Act, requires the reporting of a suspicion that a transaction or series of transactions is conducted to avoid giving rise to another reporting duty in terms of the FIC Act. It is therefore possible that an aggregate transaction would simultaneously give rise to an obligation to report a CTR in terms of section 28 of the FIC Act and a suspicious or unusual transaction in terms of section 29 of the FIC Act.

Example:

A criminal enters a casino with R100 000 in cash, which is the proceeds of crime. He has a bad run of luck, and ends up buying in 5 (five) times for R20 000 each over a period of 8 hours. It is the view of the Centre that all the buy-ins relates to the same person and should be considered as one “composite” transaction. It is the further view of the Centre that the casino should then file a CTR in terms of section 28 and a suspicious and unusual transaction report in terms of section 29 of the FIC Act.

Foreign exchange rate conversion

- 2.11 Where foreign currency forms part of a cash transaction that requires the completion of a CTR, an accountable institution would have to refer to the exchange rate in effect for the business day of the transaction to calculate the amount in ZAR. The source of the exchange rate that is used may be determined at the discretion of the accountable or reporting institution in question.

PART 3 – MULTIPLE REPORTING WHERE CASH IS RECEIVED

Clarity on section 28(b) of the FIC Act

- 3.1 Section 28(b) of the FIC Act deals with instances where cash in excess of the prescribed amount is received by the accountable or reporting institution:
- from the client;
 - from a person acting on behalf of the client; or
 - from a person on whose behalf the client is acting.

Multiple cash transaction reporting obligations arising from the same transaction:

- 3.2 The following are examples of instances where more than one accountable institution and/or reporting institution will be required to report information relating to the same transaction in terms of section 28 of the FIC Act.

Example 1: Motor Vehicle Dealers

The client of a motor vehicle dealer (MVD), XYZ Motors, elects to pay in cash after purchasing a motor vehicle from XYZ Motors for the amount of R28 500. The MVD has a strict no cash policy and requests the client to pay the cash into XYZ Motors' bank account at ABC Bank.

ABC Bank receives the cash amount of R28 500. ABC Bank is an accountable institution as listed in Schedule 1 to the FIC Act and has a reporting obligation in terms of section 28 of the FIC Act to report this transaction.

XYZ Motors receives and peruses its bank statement or receives a bank deposit slip from the client which reflects the transaction that exceeded the prescribed threshold. XYZ Motors is a reporting institution as listed in Schedule 3 to the FIC Act. XYZ Motors "acquired knowledge" of the cash that went into its bank account and now has an obligation to report in terms of section 28 of the FIC Act. As a result this transaction will have to be reported to the Centre in terms of section 28 by both the motor vehicle dealer and the bank.

Example 2: Attorneys

The client of XYZ Attorneys, Z, elects to pay a cash amount as part of a transaction in the amount of R25 000 to XYZ Attorneys. XYZ Attorneys request the client to pay the cash into XYZ Attorneys' trust account at ABC Bank.

ABC Bank receives the cash amount of R25 000. ABC Bank is an accountable institution as listed in Schedule 1 to the FIC Act and has a reporting obligation in terms of section 28 of the FIC Act.

XYZ Attorneys receives and peruses its bank statement or receives a bank deposit slip from the client which reflects the transaction that exceeded the prescribed threshold.

XYZ Attorneys is an accountable institution as listed in Schedule 1 to the FIC Act. XYZ Attorneys "acquired knowledge" of the cash that went into its trust account and now has an obligation to report in terms of section 28 of the FIC Act. As a result this transaction will have to be reported to the Centre in terms of section 28 by both the attorneys firm and the bank.

PART 4 - METHODS FOR SUBMITTING CASH THRESHOLD REPORTS TO THE CENTRE

Method of filing a CTR

- 4.1 There are 3 methods of filing CTRs with the Centre:
- **Individual reporting.** Reports can be submitted to the Centre by completing an online web form. This reporting mechanism is aimed at low volume reporters.
 - **Batch reporting.** This will be used in instances where high volumes of CTRs are submitted to the Centre on a regular basis. To be able to access this facility, reporters can contact the Centre at the contact details listed below for further information.
 - **System-to-System reporting.** This form of reporting accommodates both the individual and batch reporting mechanism. It is the configuration of systems linked to each other via web services to send reports. Only high to very high volume reporters should consider this option.
- 4.2 In terms of regulation 22(1) of the Regulations a CTR must be filed with the Centre electronically by making use of the internet-based reporting portal provided for this purpose at <http://www.fic.gov.za>.
- 4.3 An accountable or reporting institution may only file CTRs by other means in exceptional circumstances where the reporter does not have the technical capability to report electronically to the Centre. In such cases a CTR may be sent by to the Centre by facsimile at the number provided below.
- 4.4 The Centre can be contacted at the telephone number below to make the necessary arrangements in cases where an accountable or reporting institution wishes to hand deliver a CTR to the Centre.
- 4.5 A CTR may not be posted to the Centre. The reporting form can be requested from the Centre at the following contact details:

The Centre's contact details are:

Telephone: +27 12 641 6292

Facsimile: +27 860 7000 70

Necessity to acquire login credentials for electronic reporting to the Centre

- 4.6 The Centre has developed an electronic process, making use of an internet portal on the Centre's website, for the filing of CTRs. It is the expectation of the Centre that all accountable and reporting institutions shall acquire login credentials so that they will be able to file CTRs electronically with the Centre in accordance with the requirements of regulation 22(1) of the Regulations. Secure login credentials can be obtained via the Centre's website at www.fic.gov.za.

What is the time period for reporting a transaction that has exceeded the prescribed threshold?

- 4.7 In terms of regulation 24(4) of the Regulations a report under section 28 of the FIC Act must be sent to the Centre **as soon as possible** but no later than 2 (two) days after a natural person or any of his or her employees, or any employees of or officers of a legal person or other entity, has become aware of a fact of a cash transaction or series of cash transactions that has exceeded the prescribed threshold.

Knowledge of the Transaction

- 4.8 The accountable or reporting institution will be required to file a cash threshold report with the Centre when the accountable or reporting institution has knowledge of the transaction that exceeds the prescribed threshold. This knowledge will normally be acquired when the accountable or reporting institution:

- physically receives or pays out cash exceeding R24 999.99; or
- peruses its bank statement or a bank deposit slip from the client reflecting a transaction that exceeds R24 999.99.

- 4.9 Where cash is received or paid by an institution into or from an account held in the name of the accountable or reporting institution, there is a duty on the institution as well as the other accountable or reporting institution to report such transaction to the Centre under section 28 of the FIC Act.
- 4.10 This means that there will be instances where two or more accountable and reporting institutions will be required in terms of section 28 of the FIC Act to submit reports in terms of section 28 of the FIC Act to the Centre with regards to one transaction that exceeds the prescribed threshold.

PART 5 - RECOMMENDATIONS TO FACILITATE PRACTICAL IMPLEMENTATION

4.11 All accountable and reporting institutions

The Centre requests that where an accountable institution uses the services of another accountable institution, for example a bank, when transacting with a client, that the accountable institution assigns an identifying alpha or numeric reference to a client when transacting with such client.

4.12 Banks

The Centre requests that banks ensure that the bank statements issued to clients clearly make reference to cash as defined in the FIC Act to enable their clients to easily and readily identify and distinguish cash reportable under section 28 of the FIC Act, in the bank statement.

4.13 Attorneys

The Centre requests that attorneys assign an alpha numeric reference to each client, particularly those making deposits into the attorneys accounts and banks that their clients be advised to use such references when making deposits into attorneys accounts. This will ensure that banks and attorneys can identify cash paid and received and will minimise reportable cash being unduly held in suspense accounts.

- 4.14 It is further suggested that the accountable and reporting institutions should inform the client to use the identifying alpha or numeric when cash is paid to the accountable or reporting institution.
- 4.15 Once the accountable or reporting institution is notified of a cash payment received by a banking institution, or receives and peruses its bank statement or receives a bank deposit slip from the client which reflects the transaction that exceeded the prescribed threshold, the accountable institution can link the alpha or numeric number with the client involved.
- 4.16 The identifying alpha or numeric assigned to a client should also be included in the CTR to the Centre.

Guidelines

- 4.17 The Centre has issued guidelines for the electronic reporting of cash threshold transactions. These guidelines are practical aids to assist accountable and reporting institutions in completing the CTR electronic form which is available on the Centre's website. These guidelines are:
- Guidelines for the electronic reporting of cash threshold transactions for casinos;
 - Guidelines for the electronic reporting of cash threshold transactions for motor vehicle dealers;
 - Guidelines for the electronic reporting of cash threshold transactions for attorneys.

Ends