



## INTERNAL RULES IN TERMS OF FICA

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## **1. WHAT IS MONEY LAUNDERING?**

- 1.1 Money laundering is a term describing a process used by criminals to clean up dirty money obtained through criminal activities, so that it appears to law enforcement agencies that the money was obtained through legitimate means.
- 1.2 An example of the potential for money laundering in the insurance industry is the overpayment by a money launderer through the use of “dirty money” of an amount due in terms of a policy, e.g. a large premium. The simplest way to launder the overpaid portion of that amount is to request that the excess be repaid and then to represent such repayment as a payment in terms of the policy.
- 1.3 Due to the increase in criminal activities of especially criminal gangs and organised criminal syndicates, it has, on a worldwide basis become a priority for governments and law enforcement agencies to implement steps to curtail money laundering activities of criminals.

## **2. BACKGROUND TO THE RULES**

- 2.1 Money laundering today is one of the major threats to society.
- 2.2 Large amounts of cash come into the hands of criminals, which can be linked to the criminal activities of such criminals, especially the criminal activities of criminal gangs or organised syndicates.
- 2.3 In order to hide the true source of such monies, criminals devised various schemes and are continuously devising new schemes to launder monies obtained through criminal activities in order to make the money appear to have been received from legal sources.
- 2.4 In general, the term “money laundering” means laundering dirty money through some or other scheme in order to make it difficult to trace the original criminal source of such monies, therefore making it difficult to catch and effectively prosecute the criminals involved.
- 2.5 Recently there has been a huge drive, both in South Africa and internationally by Governments and law enforcement agencies, to implement measures to prevent money laundering so as to enable law enforcement agencies to identify dirty money generated from criminal activities, in order to prosecute the individuals involved.
- 2.6 In South Africa, the South African lawmaker has introduced new laws to, firstly make it a very serious offence to participate in the actual laundering of monies, but also to make provision for very strict requirements that certain business undertakings must comply with in order to identify attempts by criminals to clean their dirty money through established institutions.
- 2.7 The lawmakers have specifically, amongst others, identified insurance companies as institutions that are targeted by criminals to be used to clean their dirty money. Specific requirements are now placed on insurance companies, such as Kestrel, and the personnel and representatives of such insurance companies, to, in specified transactions –
  - 2.7.1. ensure that the insurance services provider correctly identify policyholders of the insurance services provider; and

- 2.7.2. obtain from the policyholder specific information about the policyholder, which information must then be verified against prescribed documents; and
- 2.7.3. in certain circumstances, to report particulars of policyholders or transactions in which the insurance services provider and the policyholder are involved to a centre established by the lawmakers for purposes of identifying attempts by criminals to launder money (“the Financial Intelligence Centre”).
- 2.8 The lawmakers have, in an act known to many people in Kestrel as FICA (the Financial Intelligence Centre Act no. 38 of 2001), provided that an insurance services provider, must have Rules in place to ensure that the employees, representatives and other people in the company dealing with policyholders, know what information must be obtained from policyholders; when such information is to be obtained; and what must be done with such information.
- 2.9 The Rules must further direct employees, representatives and other people dealing with policyholders as to what steps must be taken in the event that information is requested by the centre referred to above, or in the event that employees of Kestrel suspect that a policyholder is attempting to launder monies received from unlawful activities, through the business of Kestrel.

### **3. WHY IS IT IMPORTANT TO COMPLY WITH THE RULES**

- 3.1 By complying with the Rules, employees and representatives of Kestrel will assist in the fight against crime, currently affecting every person in South Africa.
- 3.2 The laws dealing with money laundering in South Africa also contain severe penalties should employees fail to collect and deal with the required information or to report suspicious transactions. These penalties include imprisonment for a period not exceeding 15 (fifteen) years, or a fine not exceeding R10,000.000 (ten million Rand).
- 3.3 There is also a law in South Africa making it a crime to assist criminals (intentionally or negligently) in laundering monies obtained from criminal activities, the law contains penalties of, in the case of a fine, a fine not exceeding R1,000,000 (one million Rand) or, in the case of imprisonment, imprisonment for a period not exceeding 5 (five) years.

In the same law it is further stipulated that a person who receives and retains property or uses or invests such properties, while knowing, or while he/she ought reasonably to have known that such property was derived from a pattern of racketeering activity, will be guilty of an offence and liable to a fine not exceeding R1,000,000,000 (one billion Rand) or life imprisonment.

### **4. INTERNAL RULES OF KESTREL**

- 4.1 The internal Rules of Kestrel are set out in a rule document under the heading “Kestrel Internal Rules in terms of FICA”.
- 4.2 Copies of the Rules have been distributed to all Kestrel employee/representatives.
- 4.3 Kestrel follows a risk-based approach to verification procedures and will take reasonable steps to verify particulars of a client. The company’s Internal Rules forms part of the Risk Management Framework.

- 4.4 To the extent that if any employee/representative is not in possession of the Rules, the human resources department of Kestrel must be contacted in order to obtain a copy of the Rules.
- 4.5 It is the duty of each employee/representative to ensure that he/she knows and understands the Rules. Any questions concerning the Rules may be addressed to the human resources department of Kestrel.
- 4.6 Training will also be provided to individual employee/representatives dealing specifically with matters set out in the Rules. All employee/representatives must however ensure that they take note of all the Rules, even if not directly applicable to them.
- 4.7 Rule 5 of the Rules is of particular importance and must be noted by all employee/representatives, which Rule deals specifically with unusual and suspicious transactions.

## **5. UNUSUAL AND SUSPICIOUS TRANSACTIONS**

- 5.1 A *Transaction* is an event that effects a change in the asset or liability. It involves a bank account and includes an exchange of goods or services between a buyer and a seller.
- 5.2 It is of importance to note that a duty to report such transactions is imposed on all employee/representatives of Kestrel, even if an employee/representative does not deal specifically with policyholders, or has any other managerial duties.
- 5.3 It is further important to note that failure to report a suspicious and unusual transaction, even negligently, constitutes a serious criminal offence upon conviction of which the employee/representative will be liable to imprisonment for a period not exceeding 15 (fifteen) years, or a fine not exceeding R10,000,000 (ten million Rand).
- 5.4 The duty to report all suspicious and unusual transactions arise, not only when the employee/representative know that a suspicious and unusual transaction is taking place, but also in circumstances where he/she suspect that such transaction is taking place.
- 5.5 It must also be noted that for purposes of the applicable laws, a person is considered to have knowledge of a fact if that person has actual knowledge of a fact, or if a court is satisfied that the person believes that there is a reasonable possibility of the existence of that fact and such a person fails to obtain information to confirm or refute the existence of that fact.
- 5.6 It is further stipulated in the laws that a person ought reasonably to have known or suspected a fact if the conclusion that he/she ought to have reached are those which would have been reached by a reasonable, intelligent and diligent person having both the general knowledge, skill, training and experience that may reasonably be expected of a person in his/her position and the general knowledge, skill, training and experience that he/she in fact has.
- 5.7 What the above means is that if a reasonable person in the position of an employee/representative would have suspected that an unusual or suspicious transaction is taking place, the employee/representative will be guilty of negligence should he/she fail to report the transaction, and may still be prosecuted in terms of the laws.
- 5.8 The question arises what is a suspicious and unusual transaction that must be reported.

- 5.9 That will firstly be any transaction where Kestrel has received or is about to receive the proceeds of unlawful activities or activities related to an offence to the financing of terrorist and/or related activities. Unlawful activities are defined broadly in the specific laws and embrace basically all monies obtained by a person from his/her criminal action, and include the failure to pay taxes due to the South African Revenue Services.
- 5.10 It also includes transactions with no apparent business or lawful purpose, or a transaction conducted purely for purposes of avoiding having to report information set out in the Rules.
- 5.11 Another type of suspicious and unusual transaction will naturally also be a transaction concluded specifically with the purpose to launder money.
- 5.12 Kestrel will, on a continuous basis, ensure that employees/representatives are made aware of money laundering schemes in specifically the financial services industry, in order to assist in identifying suspicious and unusual transactions.
- 5.13 L. de Koker in a publication<sup>1</sup> indicated that cases were reported where insurance products were used to launder money and provided the following example:
- 5.14 Rule 5 stipulates how employees/representatives are to report suspicious and unusual transactions directly to the Financial Intelligence Centre.
- 5.15 It is important that the procedure set out in Rule 5 be followed.
- 5.16 In cases where an employee/representative of Kestrel is requested by the Financial Intelligence Centre to report information as for instance contemplated in Rule 5, it is suggested that the FICA Compliance Officer of Kestrel be contacted to assist in the reporting.
- 5.17 An employee/representative becoming aware of a suspicious and unusual transaction, must immediately make a report to Kestrel's FICA Compliance Officer, who will then make a report to the Financial Intelligence Centre as soon as possible, but not later than 15 (fifteen) days, excluding Saturdays, Sundays and public holidays after becoming aware of such transaction. See Annexure "C" - Suspicious Transaction Report.
- 5.18 The report may be made directly to the Financial Intelligence Centre and only by means of an internet based reporting portal provided by the centre for such purposes at the following internet address: <http://www.fic.gov.za>.
- 5.19 In exceptional cases the report may also be send by facsimile to the Financial Intelligence Centre at the following fax number: (012) 309 9496 or delivered by hand to the Financial Intelligence Centre at: 14<sup>th</sup> floor, 240 Vermeulen Street, Pretoria by using the appropriate form obtained from the Human Resources Department.
- 5.20 In all circumstances the information set out in Annexure "C", must be provided with the report.

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<sup>1</sup> "Single Premium Policies are bought with the proceeds of crime or the proceeds are used to pay monthly premiums. In some cases the launderer would make an overpayment and then ask for repayment of the excess amount. When the company repays the excess amount, the launderer represents the money as a payment in terms of an insurance product. In other cases the launderer would buy and surrender policies. There is a substantial market in second hand policies. In South Africa this market, is also vulnerable to be used by launderers."

- 5.21 The employee/representative making the report, may not disclose to any person other than the FICA Compliance Officer of Kestrel, the fact that a report was made, or any information regarding the contents of the report.
- 5.22 Any other employees/representatives suspecting that a report has been made, may not disclose such knowledge or suspicion or any other information regarding such contents or suspected contents to any other person.

## **6. CASH TRANSACTIONS ABOVE CERTAIN LIMITS**

- 6.1 The FICA Compliance Officer of Kestrel shall ensure that employees of Kestrel are notified of threshold amounts as from time to time issued in terms of the relevant laws, above which amounts Kestrel becomes obliged to report the particular transaction.
- 6.2 Cash means coins and paper money as well as traveller's cheques.

## **7. POLICY FOR DEALING WITH SUSPICIOUS TRANSACTIONS:**

The FICA Compliance Officer of the company is responsible to implement a suspicious transaction report (STR) and record any suspicious transaction reported to the compliance officer in the report on a monthly basis. See Annexure "C".

## **8. RISK PROFILING OF CLIENTS:**

The company will, in the event of any transaction that concerns a large investment (in excess of R25 000), perform risk profiling procedures:

- a) to ensure the source of the funds of the client can be confirmed,
- b) to conduct an ITC test to confirm the identity of the client and to assist in compiling a risk profile of the client to reduce or prevent money laundering.
- c) that a manager is involved in the transaction to assist the employee or representative in performing the relevant procedures and where possible involve the Insurer for assistance as well.

## **9. IN RESPECT OF WHICH POLICIES MUST THE RULES BE APPLIED ("THE RELEVANT POLICIES")**

- 9.1 Rule 10 dealing with the collection and verification of information and the keeping of records in respect thereof, applies only in respect of policies, other than –
- a policy that provides only benefits upon the death, disability, sickness or injury of the life insured under the policy with no investment component;
  - a policy with an investment component but, in respect of which recurring premiums are paid which will amount to an annual total not exceeding R25 000,00 (twenty five Thousand Rand);
  - a policy in respect of which a single premium not exceeding R50 000,00 (fifty thousand Rand) is payable;
  - any long-term insurance policy that, within the first 3 (three) years after the commencement of the policy, does not have a surrender value exceeding 20% (twenty percent) of the value of the premiums paid in respect of that policy.
- 9.2 Please find attached hereto, as Annexure "A", a list of Kestrel policies to which these Rules apply (provided that it exceeds the limits set out in clauses 9.1).

- 9.3 Rule 10 will also apply in the event that a long-term insurance policy with an investment component, and in respect of which recurring premiums are paid and which amounts to an annual total not exceeding R25 000,00 (twenty five thousand Rand), in the event that the policyholder –
- increases the recurring premiums so that the amount of R25 000,00 (twenty five thousand Rand) is exceeded; or
  - surrenders such a policy within 3 (three) years after the commencement date of the policy; or
  - to whom Kestrel or a life insurer grants a loan or extends credit against the security of such policy within 3 (three) years after its commencement date.
- 9.4 Rule 10 will further apply in respect of a single premium policy not exceeding R50 000,00 (fifty thousand Rand), in the event that the policyholder –
- surrenders such policy within 3 (three) years after its commencement date; or
  - to whom Kestrel or a life insurer grants a loan or extends credit against the security of such a policy within 3 (three) years after its commencement date.

## **10. INFORMATION TO BE OBTAINED AND VERIFIED**

### **10.1 General:**

- 10.1.1 The basic idea of the lawmakers was to compel insurance companies to obtain enough information regarding policyholders in order to ensure that the person taking out the policy is indeed who he purports to be and that the personal particulars provided by the policyholders are indeed correct.
- 10.1.2 The law go further however, and also stipulates that an insurance services provider must also obtain information regarding the identity of any person or entity acting on behalf of a policyholder.
- 10.1.3 As far as representatives are concerned, representatives act on behalf of Kestrel, in terms of Agency Agreements concluded with Kestrel and in accordance with very strict accreditation requirements. It is therefore not necessary to verify the information regarding representatives.
- 10.1.4 The following specific Rules set out herein must be followed by the relevant employees/representatives of Kestrel.

### **10.2 Policyholder Information - Proposals from Representatives:**

The specific manager or sales consultant shall at all times ensure that representatives collect the documentation necessary to verify the particulars of policyholders as stipulated in Annexure B in respect of proposal forms canvassed by representatives.

### **10.3 Policyholder Information – Proposals from Employees:**

To the extent that internal marketers appointed as employees of Kestrel canvass proposal forms in respect of Relevant Policies, it will be the responsibility of such employees to ensure that the information stipulated in Annexure “B” in respect of policyholders is obtained and

that the documentation stipulated in Annexure “B” necessary to verify the information be forwarded to the New Business department of Kestrel or the Insurance services provider.

#### **10.4 Information to be Obtained as directed by Kestrel**

- 10.4.1 The FICA Compliance Officer of Kestrel will, from time to time, issue directives relating to –
- types of transactions; or
  - types of policyholders; or
  - in respect of whom further information must be obtained by the various heads of departments to assist the compliance officer in identifying suspicious transactions or assist in the creation of a client profile regarding transactions posing a particularly high risk of facilitating money laundering activities, or to assist in the identification of proceeds of unlawful activities.
- 10.4.2 The various managers and heads of departments shall ensure that all such information is not only scanned for purposes of electronic record keeping, but is also provided to the compliance officer in accordance with the directives issued by Kestrel from time to time.

### **11. SPECIFIC DUTIES**

#### **11.1 Collecting of information:**

- 11.1.1 Due to the specific nature of the policies issued by Kestrel, it is not necessary to obtain information as stipulated in the Rules in respect of all policyholders of Kestrel.
- 11.1.2 Rule 8 stipulates the policies in respect of which information will need to be collected regarding the identity of the policyholder of such policies.
- 11.1.3 Rule 10 sets out in detail what information must be obtained and how such information must be verified regarding policyholders of relevant policies.
- 11.1.4 The purpose of these Rules is to ensure that the policyholder taking out the policy is indeed who he claims to be and that his personal particulars are indeed correct.
- 11.1.5 Rule 9.3 deals with the information that must be obtained in circumstances where a loan is effected against a policy, or a policy is cancelled in circumstances where such policy would not have been a Relevant Policy, had it not been cancelled, or a loan effected against such policy, or had premiums not been increased in respect of such a policy making it a Relevant Policy for purposes of collecting information.
- 11.1.6 Kestrel will, from time to time, identify high risk transactions that are frequently used by criminals in their money laundering endeavours.
- 11.1.7 Particulars of such high risk transactions will be provided to employee/representatives of Kestrel. Should such transactions be identified, the compliance officer must immediately be informed thereof.
- 11.1.8 In order to assist the Financial Intelligence Centre to compare records from various accountable institutions, accountable institutions, including insurance companies, are obliged to keep records in respect of relevant policies for a period of at least 5 (five) years

from the date upon which the last policy of a particular policyholder of Kestrel terminates.

11.1.9 Rule 14 specify how such records must be stored.

## **11.2. Dealing with cash:**

No employee or representative of Kestrel is allowed to receive cash payments. In the very unlikely event that cash is received for any reason such amount must be received by the Financial Department of the company and should always be accompanied by the appropriate forms which help to allocate the income into the correct accounts.

If the amount of cash is more than the cash threshold in terms of FICA, an additional report must be attached to explain why the cash payment was done, from whom it was received with all the appropriate forms attached as prescribed in the FICA manual.

This is very important and the Finance Office and applicable staff would be fully conversant with these procedures and should apply them at all times when handling receipts of funds which are the property of the Company.

## **12. POLICY ON POLITICALLY EXPOSED PERSONS (PEPS):**

### **12.1. Background:**

PEPS are defined as individuals who are or have been entrusted with prominent public functions such as heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials. There is not guidance from the FIC as how to deal with this requirement so it can be incorporated in our procedures.

### **12.2. Policy:**

It is the policy of the company that any employee or representative who markets any product to a PEP and the PEP has accepted the product, to immediately inform the FICA Compliance Officer of the company. The compliance officer will ensure the product is identified as that of a PEP, ensure the person qualifies as a PEP, provide approval for the company/employee/marketer to establish a business relationship with such PEP, establish their source of wealth and source of funds and implement monitoring procedures to enhance ongoing business relationships with such PEPS. The company must manage their relationship with PEPS including their family members and other close associates to ensure that those relationships are not abused to launder proceeds of crime.

## **13. POLICY ON WHISTLE BLOWING:**

### **13.1. Background:**

The company supports any effort to report any suspicious transactions, fraud, and dishonesty and support any effort by any person to report such acts.

### **13.2. Policy:**

In any event where a person reported any act of dishonesty, fraud or suspicious transactions, the company will keep the information of the person that provided the information as confidential. The information must be reported to the FICA Compliance Officer of the company who will be responsible to take the appropriate steps to investigate the information and act accordingly.

### **13.3. Reporting Duties:**

- 13.3.1. Rule 7 of the Rules stipulates firstly how employee/representatives must go about should the Financial Intelligence Centre request records from an employee/representative and basically stipulates that the employee/representative must contact the FICA Compliance Officer of Kestrel to ensure that the necessary records are provided to the Financial Intelligence Centre unless the Financial Intelligence Centre directs the employee/representative specifically to provide it directly with the necessary information.
- 13.3.2. Due to the fact that it is cash that is involved in money laundering activities, a general reporting duty is placed on all employee/representatives to report to the Financial Intelligence Centre cash received or cash paid out above certain limits.
- 13.3.3. The FICA Compliance Officer of Kestrel shall, from time to time, issue employee/representatives with information regarding the limits above which a reporting duty becomes applicable.
- 13.3.4. Rule 9 prescribes the procedure to be followed in such circumstances.
- 13.3.5. Rule 5 is a very important Rule dealing with suspicious and unusual transactions and the reporting duties in respect thereof as discussed more fully in clause 5.

In the event that any employee of Kestrel receives a formal request from the Financial Intelligence Centre for the supply of information relating to policyholders and clients of Kestrel, the employee shall, unless otherwise directed by the Financial Intelligence Centre, immediately inform the FICA Compliance Officer of Kestrel of the request.

The FICA Compliance Officer of Kestrel may be informed of the request either by e-mail or by way of a written internal memorandum, provided that should the compliance officer be notified orally by the employee, a written or e-mail confirmation must be provided. In the event that the request for information by the Financial Intelligence Centre was made in writing to the employee, such written document must be forwarded to the FICA Compliance Officer.

The compliance officer of Kestrel shall ensure that the requested information is provided to the Financial Intelligence Centre, subject to the provisions stipulated in the relevant laws.

## **14. KEEPING OF RECORDS**

- 14.1. The various managers and heads of departments specified in these Rules, whose responsibility it is to ensure that the verification documentation as directed, are scanned for purposes of electronic record keeping, must ensure that such process is done effectively and in accordance with the directives of Kestrel.

- 14.2. It will be the responsibility of the Client Servicing Department of Kestrel to ensure that the records are properly stored in electronic format and that the information is secured by a proper backup procedure.
- 14.3. It will further be the duties of the Manager of the Client Servicing Department to ensure that all such electronic records are kept for a period of at least 5 (five) years from the date upon which the last policy of a policyholder lapses or is terminated.

## **15. TRAINING:**

15.1. The company will implement the following training criteria:

- a) All newly appointed representatives and employees will receive the appropriate training in all aspects of legislation within 30-days of the appointment.
- b) The Support Services Manager will ensure that he/she provides all departments with a formal training letter on legislation and FICA issues on a quarterly basis. All departments will be required to successfully complete an annual FICA assessment.
- c) All General Managers and Sales Managers will ensure that FICA issues are discussed on a formal basis, quarterly, with all their employees and representatives and a copy of the minutes and attendance register as well as what was discussed is attached to their FAIS report that must be submitted to the Chief Operations Officer on a bi-monthly basis. Employees and representatives will be required to successfully complete a test on the information provided.
- d) A training manual is available on Kestrel's Intranet with full procedures on the completion of an electronic/manual test and the relevant FICA information.

15.2. **Training guideline:**

If the manager is uncertain as what needs to be discussed guidance should be obtained from the Compliance Officer of the company as what aspects should employees and representatives be trained on.

15.3. **Record keeping of training attended:**

All managers must ensure they have an attendance list of formal meetings attended as well as formal minutes when conducting the meeting. The Support Service Manager is responsible to ensure proper record keeping procedures are in place as to what the employees and representatives were trained on with regards to FICA and other legislation. The Support Service Manager is responsible to indicate the training given in the training register of the company and report cases of non-compliance to the compliance officer. The Support Service Manager will also ensure all training manuals are available in a separate filing system for record keeping purposes.

## **16. FAILURE TO COMPLY WITH THESE RULES**

Failure to comply with these Rules by any employee of Kestrel, will constitute misconduct on behalf of the employee, and may, depending on the severity of the misconduct, lead to disciplinary steps being instituted by Kestrel against the relevant employee.

## **ANNEXURE A**

### **LIST OF POLICIES**

#### **POLICIES TO WHICH THE “FINANCIAL INTELLIGENCE CENTRE ACT (“FICA”) APPLY**

1. Any life insurance policy which includes a saving portion.
2. Any investment
3. Any retirement annuity policy.

## ANNEXURE B

### NATURAL PERSONS

1. Information to be obtained in respect of a natural person:
  - 1.1 Full names;
  - 1.2 Date of birth;
  - 1.3 Identity number;
  - 1.4 A residential address.
  
2. In the event that the policyholder cannot conclude a policy, and needs the assistance of a guardian or curator, for instance where the natural person is a person under the age of 18 (eighteen) years, or has been declared by a competent court to be insane or unable to look after his own affairs, the following information must be obtained in respect of such a person's curator or guardian, namely:
  - 2.1 Full names;
  - 2.2 Date of birth;
  - 2.3 Identity number;
  - 2.4 Residential address;
  - 2.5 Contact particulars.

### VERIFICATION OF INFORMATION CONCERNING NATURAL PERSONS

1. In order to verify the full names, date of birth and identity number of a natural person, the following documentation must be obtained:
  - 1.1 A copy of the identification document of that person; or
  - 1.2 A valid passport.
  
2. To the extent that none of the abovementioned documentation is available, the FICA Compliance Officer of Kestrel must be contacted for guidance.
  
3. Copies of anyone or more of the following documents must be obtained in order to verify the residential address of the natural person, namely:
  - 3.1 An utility bill less than 3 (three) months old reflecting the name and residential address of the person; or
  - 3.2 A bank statement less than 3 (three) months old reflecting the name and residential address of the person, if he/she previously transacted with a registered bank; or
  - 3.3 Municipal rates and tax invoice less than 3 (three) months old reflecting the name and residential address of the person; or
  - 3.4 Mortgage statement less than 3 (three) months old reflecting the name and residential address of the person; or
  - 3.5 A recent SARS tax return IRP5 reflecting the name and residential address of the person.
  
4. In the event that none of the documentation listed above is available, or based on directives issued by the FICA Compliance Officer of Kestrel, the documentation available is insufficient, The FICA Compliance Officer of Kestrel must be contacted for guidance.

## ANNEXURE C

### REPORTING OF SUSPICIOUS AND UNUSUAL TRANSACTIONS

#### INFORMATION TO BE REPORTED

1. In respect of the natural or legal person making a report under Section 29 of the Act, or other entity on whose behalf such a report is made, the report must contain full particulars of –
  - 1.1 the name of the person or entity;
  - 1.2 the identifying number of the person or entity;
  - 1.3 the full address of the person or entity;
  - 1.4 the surname and initials of a contact person.
  
2. In respect of the transaction concerning which a report under Section 29 is made, the report must contain as much of the following information as is readily available –
  - 2.1 the date and time of the transaction, or, in the case of a series of transactions the period over which the transactions were conducted;
  - 2.2 the type of funds or property involved;
  - 2.3 the amount or the value of the property involved;
  - 2.4 the currency in which the transaction was conducted;
  - 2.5 the method in which the transaction was conducted;
  - 2.6 the method in which the funds or property were disposed of;
  - 2.7 the amount of the disposition of the funds, and
  - 2.8 the currency in which the funds were disposed of;
  - 2.9 the purpose of the transaction;
  - 2.10 the name of any other institution or person involved in the transaction;
  - 2.11 the number of any account at another institution involved in the transaction;
  - 2.12 the name and identifying number of the branch or office where the transaction was conducted, and
  - 2.13 any remarks, comments or explanations which the person conducting the transaction may have made or given.
  
3. In respect of any account which may have been involved in the transaction concerning which a report under Section 29 is made, the report must contain as much of the particulars as are readily available, of –
  - 3.1 the account number;
  - 3.2 the name and identifying number of the branch or office where the account is held;
  - 3.3 the type of account;
  - 3.4 the name of each account holder;
  - 3.5 the date on which the account was opened;
  - 3.6 the date on which the account was closed;
  - 3.7 if the account was closed, the name of the person who gave the instruction to close it;
  - 3.8 the status of the account;
  - 3.9 any previous activity in the preceding 180 (one hundred and eighty) days which had been considered for reporting in connection with the account, whether the activity was reported or not; and
  - 3.10 the report number of any previous reports made in connection with the account.

4. In respect of the natural or legal person conducting the transaction, or other entity on whose behalf the transaction is conducted, concerning which a report under Section 29 is made, the report must contain as much of the following information as is readily available –
  - 4.1 in the case of a natural person, full particulars of –
    - 4.1.1 the person’s surname;
    - 4.1.2 the person’s first name;
    - 4.1.3 the person’s other initials;
    - 4.1.4 the person’s identifying number;
    - 4.1.5 the type of identifying document from which the particulars referred to in sub-paragraphs 4.1.3 to 4.1.4 were obtained;
    - 4.1.6 the person’s country of residence; and
    - 4.1.7 the person’s address;
  - 4.2 in the case of a natural person, as much of the particulars as are readily available, of the person’s –
    - 4.2.1 contact telephone number; and
    - 4.2.2 occupation; and
  - 4.3 in the case of a legal person or other entity, full particulars of –
    - 4.3.1 the person’s or entity’s name;
    - 4.3.2 the person’s or entity’s identifying number, if it has such a number;
    - 4.3.3 the type of business conducted by the person or entity;
    - 4.3.4 the person’s or entity’s country of origin;
    - 4.3.5 the names of the natural person’s with authority to conduct the transaction on behalf of the person or entity; and
    - 4.3.6 the person’s or entity’s address.
5. 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, the report must contain as much of the particulars as is readily available, of –
  - 5.1 the person’s surname;
  - 5.2 the person’s first name;
  - 5.3 the person’s other initials;
  - 5.4 the person’s identifying number;
  - 5.5 the type of identifying document from which the particulars referred to in clauses 0 to 5.4 were obtained;
  - 5.6 the person’s address;
  - 5.7 the person’s country of residence;
  - 5.8 the person’s contact telephone number; and
  - 5.9 the person’s occupation.
6. A report under Section 29 must –
  - 6.1 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;
  - 6.2 indicate what action the natural or legal person making the report, or other entity on whose behalf the report is made, has taken in connection with the transaction concerning which the report is made; and
  - 6.3 indicate what documentary proof is available in respect of the transaction concerning which the report is made and the reasons referred to in clause 0.

## SUSPICIOUS OR UNUSUAL TRANSACTION REPORT FORM

The following form must be completed by any employee of sales representative that identified a suspicious or unusual transaction as mentioned in this manual

**Please email the completed report to the FICA Compliance Officer (Cris Laidlaw) to [crisl@kestrel.co.za](mailto:crisl@kestrel.co.za)**

Report number: (to be supplied by Kestrel) \_\_\_\_\_ Date of report: \_\_\_\_\_

### **A: Particulars of Person Reporting Suspicious or Unusual Transactions:**

1. Title: \_\_\_\_\_ 2. Full name/Entity: \_\_\_\_\_ 3. Surname: \_\_\_\_\_

4. ID Number: \_\_\_\_\_ 5. Country of Residence: \_\_\_\_\_

6. Country of origin ( if other than South Africa): \_\_\_\_\_

7. Occupation: \_\_\_\_\_ 8. Type of business: \_\_\_\_\_

9. Physical Address:

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10. Postal Address:

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11. Contact detail:

Work: \_\_\_\_\_

Home: \_\_\_\_\_

Cellular number: \_\_\_\_\_

Fax number: \_\_\_\_\_

Email: \_\_\_\_\_

### **B: Particulars of person/entity being reported:**

Person's involvement:

Individual \_\_\_\_\_ On behalf of another person \_\_\_\_\_ On behalf of a legal entity \_\_\_\_\_

1. Title: \_\_\_\_\_ 2. Full name/Entity: \_\_\_\_\_ 3. Surname: \_\_\_\_\_

4. ID Number: \_\_\_\_\_ 5. Country of Residence: \_\_\_\_\_

6. Country of origin ( if other than South Africa): \_\_\_\_\_

7. Occupation: \_\_\_\_\_ 8. Type of business: \_\_\_\_\_

9. Physical Address:

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10. Postal Address:

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11. Contact detail:

Work: \_\_\_\_\_  
 Home: \_\_\_\_\_  
 Cellular number: \_\_\_\_\_  
 Fax number: \_\_\_\_\_  
 Email: \_\_\_\_\_

**C: Particulars of the transaction involved:**

1. Date: \_\_\_\_\_ 2. Time: \_\_\_\_\_  
 3. Transaction Type: \_\_\_\_\_ 4. Transaction manner: \_\_\_\_\_  
 5. Transaction currency: \_\_\_\_\_

**D: Funds involved in the transaction:**

1. Amount of funds (Rand value): \_\_\_\_\_ Estimated Value? Yes/No \_\_\_\_\_  
 2. Funds disposed of? Yes \_\_\_\_\_ No \_\_\_\_\_ Unknown \_\_\_\_\_ Unavailable \_\_\_\_\_

If yes, complete questions 3, 4 and 5

3. Manner in which Funds disposed of: \_\_\_\_\_  
 4. Amount of funds disposed: \_\_\_\_\_  
 Estimated Value? Yes/No \_\_\_\_\_  
 5. Currency of funds disposed: \_\_\_\_\_  
 6. Where is the transaction taking place:

Physical Address:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Postal Address:

\_\_\_\_\_  
 \_\_\_\_\_

7. Purpose of transaction: \_\_\_\_\_

**E: Particulars of the account:**

Specify if this account holder is the payer or the beneficiary account:

Payer's Account: \_\_\_\_\_ Beneficiary Account: \_\_\_\_\_

1. Name of Bank: \_\_\_\_\_  
 2. Name of Branch: \_\_\_\_\_  
 3. Account number: \_\_\_\_\_  
 4. Type of account: \_\_\_\_\_  
 5. Date opened: \_\_\_\_\_  
 6. Account Balance immediately before the transaction was carried out: \_\_\_\_\_  
 7. Account Balance on date of report: \_\_\_\_\_

8. Account unit status before transaction:

Active \_\_\_\_\_ Inactive \_\_\_\_\_ Suspended \_\_\_\_\_ Closed \_\_\_\_\_ Unknown \_\_\_\_\_ Other \_\_\_\_\_

9. When suspended account:

By client \_\_\_\_\_ By institution \_\_\_\_\_ Through legal process \_\_\_\_\_ Other \_\_\_\_\_

10. Previous activity in past 180 days concerning this account considered for reporting:

11. Account transaction summary for the 3 calendar months preceding this report:

Month	Highest amount paid into account	Highest amount paid out of account	Number of payments made into account	Number of payments made out of account

12. Account holder: \_\_\_\_\_

**F: Particulars of account holder - Person/Entity:**

Associate account with this account holder:

Account number: \_\_\_\_\_

Person's involvement: \_\_\_\_\_

Individual \_\_\_\_\_ on behalf of another person \_\_\_\_\_ on behalf of a legal entity \_\_\_\_\_

1. Title: \_\_\_\_\_ 2. Full name/Entity: \_\_\_\_\_ 3. Surname: \_\_\_\_\_

4. ID Number: \_\_\_\_\_ 5. Country of Residence: \_\_\_\_\_

6. Country of origin (if other than South Africa): \_\_\_\_\_

7. Occupation: \_\_\_\_\_ 8. Type of business: \_\_\_\_\_

9. Physical Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Postal Address:

\_\_\_\_\_  
\_\_\_\_\_

11. Contact detail:

Work: \_\_\_\_\_ Home: \_\_\_\_\_

Cellular number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Email: \_\_\_\_\_

**G: Particulars of suspicious or unusual activity:**

1. Provide clearly and completely the events that led to the formation of the conclusion that the relevant activity is suspicious or unusual and state the reasons for the conclusion being formed and, what crime do you suspect has been committed.

\_\_\_\_\_  
\_\_\_\_\_

**H: Particulars of actions taken:**

1. Internal actions – provide clearly and completely the action taken:

\_\_\_\_\_  
\_\_\_\_\_

2. Which external agency has this been reported to:

\_\_\_\_\_

3. External actions – provide clearly and completely the actions taken:

\_\_\_\_\_  
\_\_\_\_\_

**I: List of available documents and reference numbers:**

1. Provide a list of all available documents related to this report:

\_\_\_\_\_  
\_\_\_\_\_

2. Specify any reference numbers previously allocated by Kestrel with regards to this incident, transaction or report:

\_\_\_\_\_  
\_\_\_\_\_

## ANNEXURE D

### FICA - FREQUENTLY ASKED QUESTIONS:

#### Q1: What is the Financial Intelligence Center?

The Financial Intelligence Centre ("the Centre") is an organ of state established in terms of Section 2 of the Financial Intelligence Centre Act, Act 38 of 2001. The FIC is an institution outside the public service but within the public administration. The core functions of the FIC are:

- To process, analyse and interpret information disclosed to it and obtained by it in terms of FICA
- Inform, advise and cooperate with investigating authorities, supervisory bodies, the South African Revenue Services and intelligence services
- 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
- Retain the information referred to in paragraph (a) in the manner required by FICA

#### Q2: What is an accountable institution? Does my business have to fall under the control of a supervisory body for it to be an accountable institution?

The term "accountable institution" is defined as a person referred to in Schedule 1 of Financial Intelligence Centre Act 38, 2001 ("FICA"). If a person or organisation carries on the business of any entity listed in Schedule 1 of the FICA it would be considered to be an accountable institution. This is the only determining factor indicating whether an organisation is an accountable institution or not. An organisation's status as an accountable institution is not influenced by whether or not it is supervised by a supervisory body listed in Schedule 2 of the FICA, but this may be indicative of whether the organisation carries on the business of any of the types:

##### List of accountable institutions

1. Attorney
2. Executor or investors
3. Estate agent
4. Financial instrument trader
5. Management company
6. Business of a bank person
7. Mutual bank
8. Long-term insurance business person(Long-Term Insurance Act, 1998 (Act 52 of 1998) including insurance broker and agent of an insurer
9. Person who carries on business in respect of which a gambling licence is required to be issued by a provincial licensing authority.
10. Business of foreign exchange
11. Business of lending money against the security of securities
12. Investment broking services
13. Person who issues, sells or redeems travellers cheques, money orders or similar instruments
14. Postbank
15. Stock Exchanges
16. Ithala Development Finance Corporation Limited
17. Registrar of Stock Exchanges
18. Registrar of financial Markets

19. Business of a money remitter

**Q3: What sections of the FICA are not yet operational?**

The following sections are not yet operational:

- Section 30, Conveyance of cash to or from the Republic
- Section 31, Electronic transfers of money to or from the Republic
- Section 51, Failure to report cash transactions
- Section 54, Failure to report conveyance of cash into or out of the Republic
- Section 55, Failure to send a report to Centre
- Section, 56 Failure to report Electronic transfers

**Q4: In terms of the FICA, what is the cash transaction threshold, i.e. what is the prescribed amount when reporting becomes obligatory, is it R100 000, R 35 000, R 10 000 etc?**

The threshold amount for reporting has not yet been established as the relevant sections of the FICA have not been put in operation yet. A person is however obligated to report any suspicious transactions that pertain to your business to the Financial Intelligence Centre ("FIC"). Suspicion is a subjective element therefore one must determine what constitutes a suspicious transaction with respect to the business that you operate. Any activity, which falls outside the standard daily practice, would, for example be considered to be suspicious.

**Q5: When does one need to report a suspicious transaction?**

There is an obligation imposed in terms of section 29 (Suspicious or unusual transactions) of the FICA, on any person who carries on a business or is in charge of or manages a business or who is employed by a business. Section 29 provides for a number of instances when suspicious or unusual transactions must be reported. These are where you suspect that:

- the business in which you are involved has received or is about to receive the proceeds of any unlawful activity,
- a transaction or series of transactions in which your business is involved has facilitated or is likely to facilitate the transfer of proceeds of unlawful activities from one person to another or from one location to another,
- a transaction or series of transactions in which your business is involved has no apparent business or lawful purpose,
- a transaction or series of transactions in which your business is involved is conducted to avoid giving rise to a reporting duty under FICA,
- a transaction or series of transactions in which your business is involved may be of interest to the South African Revenue Service in a possible investigation of tax evasion, or
- the business in which you are involved has been used or is about to be used in any way to hide or disguise the proceeds of unlawful activities.

Suspicion is subjective. Therefore you must determine what constitutes a suspicious transaction with respect to the business in which you involved.

**Q6: How does one report a suspicious transaction to the FIC?**

Suspicious transactions must be reported immediately to Kestrel's FICA Compliance Officer, who will then report it to FIC using the prescribed form.

Regulation 22 of the Money Laundering Control Regulations made under the FICA stipulates the manner in which a report should be made to the FIC. In terms of the Regulation a report must be made by means of the internet-based reporting available on the FIC's website at [www.fic.gov.za](http://www.fic.gov.za). In exceptional cases where a person does not have the technical capability to make a report electronically that person may send it by facsimile to the FIC on (012) 315 5828 or deliver it to the FIC at 240 Vermeulen Street, Pretoria, 0001.

**Q7: What is the time period for reporting a suspicious transaction?**

In terms of Regulation 24 a report made under section 29 of FICA must be sent to the Financial Intelligence Centre as soon as possible but not later than fifteen days, excluding Saturdays, Sundays and public holidays, after a natural person or any of his or her employees, or any of the employees or officers of a legal person or other entity, has become aware of a fact concerning a transaction on the basis of which knowledge or a suspicion concerning the transaction must be reported. In exceptional cases the FIC may approve of the report being sent after the expiry of this period.

**Q8: Alternative methods to access the reporting forms, except electronically.**

The forms are available in the Money Laundering Control Regulations. In the event of difficulties arising in accessing the forms the form can be faxed to you.

**Q9: Can an institution continue transacting with a client after a suspicious transaction report has been made?**

Yes, the general rule is that a person may continue with a transaction from which a report emanates. However, the Financial Intelligence Centre ("the Centre") does have the power, in terms of section 34 of the FICA, to intervene in certain transactions after consulting with an accountable institution, reporting institution or person required to make a report. In such instances the accountable institution, reporting institution or person in question may not proceed with the carrying out of the transaction. The Centre's intervention is valid for a maximum period of 5 days and is aimed at creating an opportunity for the Centre to make the necessary enquiries and to inform and advise an investigating authority.

**Q10: When a report is submitted to the FIC, is the reporter's identity protected?**

Yes, section 38 of the FICA provides for a broad range of measures to protect persons who participate in making reports to the FIC. No action, whether criminal or civil, can be instituted against any natural or legal person who complies in good faith with the reporting obligations of the FICA. No person who participated in making a report to the FIC can be forced to give evidence concerning such a report in criminal proceedings arising from the report. However such a person may choose to do so voluntarily. If a person who participated in a making a report to the FIC elects not to testify, no evidence regarding that person's identity is admissible as evidence in criminal proceedings.

**Q11: How long should records be kept by an accountable institution?**

In terms of section 23 of FICA an accountable institution must keep the records referred to in section 22 of FICA which relate to—

- the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;
- a transaction which is concluded, for at least five years from the date on which that transaction is concluded.

**Q12: What is the status of temporary workers in respect of reporting suspicious transaction reports?**

The temporary worker must report within the normal reporting channels of the institution where he or she is filling in at the time that suspicion is triggered just as any employee of that institution would have done. This effectively means that, in order to fulfil its duties, an institution should make sure that temporary workers have had the necessary training to detect and report suspicious or unusual transactions.

**Q13: Are the guidance notes issued by the FIC in terms of FICA enforceable in terms of law?**

The guidelines, which the FIC provides under the FICA, cannot impose new obligations nor detract from existing obligations. These guidelines can only provide guidance to institutions on how they can perform their duties and comply with their obligations. Thus the guidelines will set a standard to indicate the acceptable level of effort expected of an institution in order to comply with an obligation. The guidelines will not be something which can in themselves be enforced in law, but will provide those who have to apply the law with an indication of how to measure an institution's compliance with an obligation.

**Q14: Who can request information under section 27 of the Financial Intelligence Centre Act?**

Section 27 of the FICA allows the FIC, through an authorized representative, to request an accountable institution to confirm whether a person is, or has been, a client of that institution. Only staff members of the FIC have been authorized to make requests of this nature from accountable institutions.

**Q15: Has the FIC endorsed or adopted any specific software?**

No. The Financial Intelligence Centre has not endorsed any software and does not intend to do so at any time in future. The mere fact that the FIC may have taken note of a product for whatever reason does not amount to an endorsement.

**Q16: Has the FIC endorsed any training product?**

No. Although the FIC remains committed to assisting the various sectors in meeting their obligations and may have been consulted from time to time to view material compiled by individuals and consultancies, the FIC has not endorsed any training product.

**Q17: Which Government notices have been published in terms of the FICA?**

- Proclamation 6/2002, Gazette No. 23078 of 31/01/2002 (Commencement of certain sections of the Financial Intelligence Centre Act)
- Proclamation 17/2002, Gazette No. 23160 of 28/02/2002 (Commencement of Schedules 1 to 3 of the FICA)
- GN 1596/2002, Gazette No. 24176 of 20/12/2002 (Money Laundering Control Regulations)

under FICA)

- GN 1596/ 2002, Gazette No. 24176 of 20/12/2002 (Exemption under the FICA)
- Correction Notice Gazette No. 24218 of 03/01/2003
- Proclamation 5/2003, Gazette No. 24349 of 31/ 01/ 2003 (Commencement of certain sections of the FICA)
- GN 704 /2003, Gazette No. 24906 of 26 May 2003 (Exemption under the FICA)
- Proclamation 51/2003, Gazette No. 25151 of 27 June 2003 (Commencement of certain sections of the FICA)
- GN 534/2004, Gazette No. 26278 of 30 April 2004 (Guidance Note 1)
- GN 735/2004, Gazette No. 26469 of 18 June 2004 (Guidance Note 2)
- GN 749/2004, Gazette No. 26487 of 21 June 2004 (Exemption under the FICA)
- GN 788/2004, Gazette No. 26521 of 30 June 2004 (Exemption under the FICA)
- Proclamation 36/2004, Gazette No. 26522 of 30 June 2004 (Commencement of certain sections of the FICA)
- GN 1353/2004, Gazette No. 27011 of 19 November 2004 (Exemption under the FICA)
- GN 1354/2004, Gazette No. 27011 of 19 November 2004 (Exemption under the FICA)

**Q18: Which sections of the FICA took effect on 3 February 2003?**

- Chapter 3, Part 3: Sections 27 to 41, except sections 28, 30 and 31
- Chapter 3, Part 5: Sections 44 and 45
- Chapter 4: Sections 50, 52, 53, 57, 58,59,60,63,64,65,66,67,68 (1), 69 and 71;
- Chapter 5: section 79
- Schedule 4

**Q19: In respect of conveyance transactions, who is responsible to acquire the FICA documentation?**

The attorney must comply with section 21 of FICA (“KYC” – know your customer) in respect of his/her client. The question as to who the client is must be answered by determining who is instructing the attorney to act on their behalf. If the attorney receives instructions from a seller to attend to a property transfer then the seller is the attorney's client. Money paid by the purchaser into the attorney's account is received by the attorney on behalf of their client. This does not result in the purchaser becoming the client of the attorney. In this scenario the attorney therefore only needs to KYC in respect of the seller.

**Q20: Is it an estate agent’s responsibility to acquire FICA documentation from a purchaser or an attorney’s responsibility?**

If an estate agent received a mandate from a prospective seller to market a property, the seller would be the agent's client. If the agent received a mandate from a prospective purchaser to find a property, the purchaser would be the agent's client. The attorney can therefore not assume that the agent will in all cases have done the KYC in respect of the purchaser, especially since estate agents receive their mandates from prospective sellers in the majority of cases.

**Q21: With regards to bond cancellations where funds are not forwarded to any entity, are clients required to be KYC’ed?**

An attorney must comply with section 21 of FICA, amongst others, whenever he/she assists a client in the planning or execution of the buying or selling of immovable property or represents a client in

a financial or real estate transaction. (See the exceptions to exemption 10.) A general answer would not be possible, as the circumstances of each case will determine whether a bond cancellation is done within this scope or not.

**Q22: Clarification on what documents are required when selling and purchasing a house.**

Clarification on what documents are required when selling and purchasing a house, as the following institutions require the same information:

- The Bank;
- The Estate Agent;
- The transferring attorney - charging a fee-;
- The bond attorney - charging a fee-;
- The other parties' attorney – charging a fee.

The reason that Banks, estate agents and attorneys request information is because they are all regarded as “accountable institutions” in terms of the FICA. As a result, they are all obligated by law to perform the obligations under the Act, which entail establishing and verifying the identities of their clients. This is to ensure that they know who their clients are when they transact with them, so as to avoid anonymous transactions being carried out with intermediaries to the financial system. This also assists when institutions have to report suspicious transactions to the FIC. The issue of attorneys asking for fees is determined by an attorney and not the FIC.

**Q23: Is an estate agency allowed NOT to apply the KYC standards to buyers and sellers of property and instruct the transferring attorney to obtain the information from the clients?**

No. An estate agent is required to establish and verify the identity of its clients. This legal responsibility cannot be transferred to another person or institution. An accountable institution may perform the function of establishing and verifying clients' identities through an appointed agent, but will remain legally liable for any failure to perform this function properly.

**Q24: Clarification on Exemption 4 in respect of agency relationships example between an estate agent and transferring attorney.**

Exemption 4 of the exemptions, made to the FICA in December 2002, provides for reliance by one accountable institution on verification done by another accountable institution. If an accountable institution represents a client in a single transaction or business relationship with a second accountable institution, the second accountable institution may rely on the fact that the first accountable institution has confirmed in writing that:

- it has established and verified the identity of that particular client, or
- the identity of every client represented by it in transactions with the second accountable institution will have been established and verified in terms of its internal rules and procedures ordinarily applied in the course of establishing business relationships or single transactions.

This exemption therefore allows an accountable institution that receives clients from another accountable institution, where the clients' identities have already been established and verified, the option to do its own verification or to rely on the verification done by the first institution.

**Q25: Does the FIC have a risk assessment template for the real estate industry?**

The FIC has issued a guidance note in terms of Identification and Verification of Clients; the issue of risk assessment has been touched upon in this guidance note. However, ultimately it is up to the accountable institution to determine its own risk framework.

**Q26: What steps can accountable institutions follow if they are aware that other accountable institutions are not applying the KYC standards in terms of the FICA?**

There is an obligation on all accountable institutions to comply with the identification and verification process in terms of section 21 of the FICA. Accountable institutions which are not complying with these requirements are in breach of their statutory obligations and could be liable to criminal sanctions in terms of section 46 of the FICA. Such instances should be reported to the FIC and the relevant supervisory body responsible for the industry in question.

**Q27: Does the address slip found in ID books issued by the Department of Home Affairs provide adequate proof of verification of residential address?**

Regulation 4 (3) of the Money Laundering Control Regulations, requires that an institution use "information which can reasonably be expected to achieve" verification of an address. The address slips issued by Home Affairs does not constitute, in the view of the FIC, information which can reasonably be expected to achieve verification of a person's current address, as it is not an independent source document and may be dated and therefore not reflect current information.

**Q28: In terms of the identification process will a photocopy or faxed copy of a document suffice?**

Regulation 4 of the Money Laundering Control Regulations concerning the verification of a person's identity is based on a view that the customer is met face-to-face when his or her particulars are obtained. This implies that the original identity document and originals or certified copies of other documents will be sighted as part of the verification process. Copies can be made then for record keeping purposes. Regulation 18 of the Money Laundering Control Regulations provides for instances where client information is obtained in a non-face-to-face situation. In such cases institutions "must take reasonable steps" to confirm the existence of the client and verify the identities of the natural persons involved. This implies that documents which are certified as true copies of originals may be accepted, but an institution would have to take additional steps to confirm that documents are in fact those of the client in question.

**Q29: What constitutes an official Identity book for purposes of identification in terms of FICA? Is the old ID book an acceptable document?**

The Money Laundering Control Regulations defines "identification document" in respect of a natural person who is a citizen of, or resident in the republic, as an "official identity document". The Department of Home Affairs describes an "official identity document" as a green bar-coded identity document. Therefore old identity documents cannot be construed as official identity documents. However, regulation 4 of the Money Laundering Control Regulations provides for exceptional cases where a person is unable to produce an official identity document. In such instances, the institution must be satisfied that the client has an acceptable reason for being unable to produce an official identity document and may then accept an alternative valid document, which contains the person's:

- photograph,
- full names or initials and surname,
- date of birth, and
- identity number.

**Q30: Clarification on exemption 16 of the Regulations identifying a bank or a client of a foreign country or institution.**

In terms of Exemption 16, a bank in South Africa is exempted from having to identify a bank in another country where the anti-money laundering regulation and supervision which applies to that foreign bank is to the satisfaction of the supervisory body for banks in South Africa, in other words the South African Reserve Bank. This exemption applies in the case of transactions between the two banks and not to transactions of the underlying clients of the foreign bank.

Exemption 5 relates to the underlying clients of a foreign institution such as a bank. This exemption exempts an institution in South Africa from the verification of a foreign client's identity in cases where a regulated institution in the relevant country can verify that client's identity. The South African institution still has to establish the client's identity, but can rely on the verification carried out by the foreign institution. The conditions to this exemption are that the institution providing the verification of the client's identity must be subject to anti-money laundering regulation and supervision, the standard of regulation and supervision must be to the satisfaction of the relevant supervisory body and the foreign institution should forward all documents relative to the verification of the client's identity to the South African institution in due course. Both of these exemptions require an indication from the appropriate supervisory body (such as the SA Reserve Bank in the case of banks) as to which countries it considers to be applying satisfactory anti-money laundering regulations and supervision to the relevant institutions. In the absence of such an indication, as is presently the case, these exemptions cannot be given effect to.

**Q31. What is the Financial Action Task Force (FATF) and is South Africa a member of the FATF?**

The Paris-based FATF is an inter-governmental body that focuses exclusively on combating money laundering and funding of terrorism. The FATF is a policy-making and standard setting body that promotes policies to combat money laundering and terrorist financing. The FATF membership currently consists of 33 governments and two regional organizations. South Africa became a member of FATF in June 2003.