

REPUBLIC OF SOUTH AFRICA

FINANCIAL INTELLIGENCE CENTRE BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Gazette No. 21513 of 29 August 2000) (The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 1—2001]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

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; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

INDEX

	<i>Section</i>	
CHAPTER 1 FINANCIAL INTELLIGENCE CENTRE	2-13	5
CHAPTER 2 MONEY-LAUNDERING ADVISORY COUNCIL	14-17	
CHAPTER 3 ACCOUNTABLE INSTITUTIONS AND SUPERVISORY BODIES	18-20	
CHAPTER 4 MONEY-LAUNDERING CONTROL MEASURES	21-42	
CHAPTER 5 ENFORCEMENT OF THIS ACT	43-51	10
CHAPTER 6 MISCELLANEOUS	52-57	
SCHEDULE 1 LIST OF ACCOUNTABLE INSTITUTIONS		
SCHEDULE 2 LIST OF SUPERVISORY BODIES		

Definitions

- 1.** (1) In this Act, unless the context indicates otherwise— 15
- “accountable institution” means a person or institution referred to in Schedule 1;
- “authorised officer” means any official of—
- (a) the South African Police Service authorised by the National Commissioner to act under this Act;
- (b) the national prosecuting authority authorised by the National Director of Public Prosecutions to act under this Act; or 20
- (c) an intelligence service authorised by the Director-General of that service to act under this Act;

“business relationship” means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis;

“cash” means—

- (a) coin and paper money of the Republic;
- (b) coin and paper money of another country; 5
- (c) travellers’ cheques; or
- (d) cheques, but only in respect of payments made by a person who carries on the business of a casino, gambling institution or totalisator betting service;

“Centre” means the Financial Intelligence Centre established by section 2;

“client” means a person who has entered into a business relationship or a single transaction with an accountable institution; 10

“Council” means the Money-Laundering Advisory Council established by section 14;

“days” means working days;

“Director” means the Director of the Centre; 15

“intelligence service” means the National Intelligence Agency or the South African Secret Service established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994);

“investigating authority” means an authority that in terms of legislation may investigate unlawful activities; 20

“Minister” means the Minister of Finance;

“money laundering” or “money-laundering activity” means an activity which constitutes an offence in terms of section 4, 5, 6 or 6A of the Prevention Act;

“National Commissioner” means the National Commissioner of the South African Police Service referred to in section 207 of the Constitution; 25

“National Director of Public Prosecutions” means the National Director of Public Prosecutions referred to in section 179 of the Constitution;

“prescribed” means prescribed by the Minister by regulation in terms of section 53;

“Prevention Act” means the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); 30

“proceeds of unlawful activities” has the meaning attributed to that expression in section 1 of the Prevention Act;

“property” has the meaning attributed to that term in section 1 of the Prevention Act; 35

“prospective client” means a person seeking to conclude a business relationship or a single transaction with an accountable institution;

“single transaction” means a transaction other than a transaction concluded in the course of a business relationship;

“supervisory body” means a functionary or institution referred to in Schedule 2; 40

“this Act” includes a regulation made in terms of section 53;

“transaction” means a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution;

“unlawful activity” has the meaning attributed to that expression in section 1 of the Prevention Act. 45

(2) This Act may not be construed as infringing upon the common law right to legal professional privilege as between an attorney and the attorney’s client.

CHAPTER 1

FINANCIAL INTELLIGENCE CENTRE

Part 1 50

Establishment, objective, functions and general powers

Establishment

2. (1) A Financial Intelligence Centre is hereby established as an institution outside the public service but within the public administration as envisaged in section 195 of the Constitution. 55

(2) The Centre is a juristic person.

Objective

3. The Centre's objective is to combat money-laundering activities.

Functions

4. (1) To achieve its objective the Centre must—
- (a) collect, process, analyse and interpret all information disclosed to it and obtained by it in terms of this Act; 5
 - (b) inform, advise and cooperate with investigating authorities and the intelligence services;
 - (c) supervise compliance with this Act by accountable institutions;
 - (d) give guidance to accountable institutions to combat money-laundering activities; and 10
 - (e) promote the appointment by accountable institutions and supervisory bodies of persons to specialise in measures to detect and counter money-laundering activities.
- (2) The Centre must consult regularly with the Council concerning the performance by the Centre of its functions. 15

General powers

5. (1) The Centre may do all that is necessary or expedient to perform its functions effectively, which includes the power to—
- (a) determine its own staff establishment and the terms and conditions of employment for its staff within a policy framework determined by the Minister; 20
 - (b) appoint employees and seconded personnel to posts on its staff establishment;
 - (c) obtain the services of any person by agreement, including any state department, functionary or institution, to perform any specific act or function; 25
 - (d) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
 - (e) open and operate its own bank accounts, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (f) insure itself against any loss, damage, risk or liability; 30
 - (g) perform legal acts, or institute or defend any legal action, in its own name;
 - (h) engage in any lawful activity, whether alone or together with any other organisation in the Republic or elsewhere, aimed at promoting its objective, including the exchange of information with—
 - (i) foreign institutions performing similar functions to those of the Centre; 35
 - and
 - (ii) foreign investigating authorities,
- and do anything that is incidental to the exercise of any of its powers.
- (2) The Centre must comply with any directives of the Minister regarding security procedures and clearances in respect of employees, seconded personnel and other persons before appointing persons or obtaining the services of any such persons in terms of subsection (1)(b) or (c). 40

Appointment of Director

6. (1) The Minister must appoint a person as the Director of the Centre.
- (2) A person appointed as the Director holds office— 45
- (a) for an agreed term not exceeding five years, but which is renewable; and
 - (b) on terms and conditions set out in a written employment contract which must include terms and conditions setting performance standards.
- (3) The Minister must consult the Council before appointing a person as the Director and determining the terms and conditions of appointment. 50

Acting Director

7. When the Director is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Director, the Minister may designate another employee of the Centre to act as Director.

Responsibilities of Director

- 8.** (1) The Director—
- (a) is responsible for the performance by the Centre of its functions;
 - (b) takes all decisions of the Centre in the exercise of its powers and the performance of its duties, except those decisions taken in consequence of a delegation or instruction in terms of section 13; and 5
 - (c) is the chief executive officer and also the accounting authority of the Centre.
- (2) As the chief executive officer, the Director is responsible for the—
- (a) formation and development of an efficient and performance-driven administration; 10
 - (b) management of the administration; and
 - (c) control, and maintenance of discipline, of staff.
- (3) As accounting authority of the Centre the Director must perform the functions assigned to accounting authorities in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 15
- (4) The Director performs the functions of office subject to the policy directions of the Minister.

Staff

- 9.** (1) The staff of the Centre comprises—
- (a) the Director; and 20
 - (b) persons appointed as employees of the Centre by the Director.
- (2) An employee of an organ of state may be seconded to the Centre by agreement between the Centre and such organ of state.
- (3) Staff members referred to in subsection (1)(b) and persons seconded to the Centre perform their duties subject to the control and directions of the Director. 25

Pension rights

- 10.** The Centre is deemed to be an employer for the purposes of the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996).

Funds

- 11.** (1) The funds of the Centre consist of— 30
- (a) money appropriated annually by Parliament for the purposes of the Centre;
 - (b) any government grants made to it; and
 - (c) any other money legally acquired by it.
- (2) The Centre may accept donations but only with the approval of the Minister.

Audit 35

- 12.** The Auditor-General must audit the accounts and financial records of the Centre.

Delegation

- 13.** (1) The Director may delegate, in writing, any of the powers entrusted to the Centre in terms of this Act to a member of the staff of the Centre, or instruct a member of the staff to perform any of the functions assigned to the Centre in terms of this Act. 40
- (2) A delegation or instruction in terms of subsection (1)—
- (a) is subject to the limitations or conditions that the Director may impose; and
 - (b) does not divest the Director of the responsibility concerning the exercise of the delegated power or the performance of the assigned function.
- (3) The Director may confirm, vary or revoke any decision taken by a staff member in consequence of a delegation or instruction in terms of subsection (1), as long as no such variation or revocation of a decision detracts from any rights that may have accrued as a result of the decision. 45
- (4) A person seconded to the Centre in terms of section 9(2) is for the purposes of this section regarded as being a staff member. 50

CHAPTER 2

MONEY-LAUNDERING ADVISORY COUNCIL

Establishment

14. A Money-Laundering Advisory Council is hereby established.

Functions

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15. (1) The Council must—

- (a) on the Minister's request or at its own initiative, advise the Minister on—
 - (i) policies and measures to combat money-laundering activities; and
 - (ii) the exercise by the Minister of the powers entrusted to the Minister in terms of this Act; and

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- (b) act as a forum in which the Centre, associations representing categories of accountable institutions, organs of state and supervisory bodies can consult one another.

(2) The Director-General of the National Treasury must provide administrative support for the Council to function effectively.

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Composition

16. (1) The Council consists of the Director and a representative of each of the following, namely—

- (a) the Minister;
- (b) the Commissioner of the South African Police Service;
- (c) the Director-General: Justice and Constitutional Development;
- (d) the National Director of Public Prosecutions;
- (e) the Minister responsible for the intelligence services, who may appoint a representative for each intelligence service;
- (f) the Governor of the South African Reserve Bank;
- (g) the Commissioner of the South African Revenue Service;
- (h) an association representing a category of accountable institutions requested by the Minister to nominate a representative;
- (i) a supervisory body requested by the Minister to nominate a representative; and
- (j) any other person or body requested by the Minister to nominate a representative.

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(2) The Minister must appoint a member of the Council as the chairperson of the Council.

Meetings and procedure

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17. (1) The chairperson of the Council may call a meeting of the Council, but must call a meeting if the Minister so requests.

(2) The Council—

- (a) must meet regularly;
- (b) may determine its own procedures at meetings;
- (c) may appoint committees from its members to assist it in the performance of its functions.

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(3) When a provision of this Act requires consultation with the Council on any specific matter before a decision may be taken on that matter and it is not feasible to call a meeting of the Council, that provision is complied with if—

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- (a) a proposed decision on that matter is circulated to the members of the Council; and
- (b) an opportunity is given to them individually to comment in writing on the proposed decision within a reasonable time.

CHAPTER 3

ACCOUNTABLE INSTITUTIONS AND SUPERVISORY BODIES

Part 1

*Accountable institutions***Application of Act to accountable institutions** 5

18. (1) This Act applies to all accountable institutions.

(2) The Minister may, by notice in the *Gazette*, amend the list of accountable institutions in Schedule 1 to—

- (a) add to the list any institution or category of institutions if the Minister reasonably believes that that institution or category of institutions is likely to be used in future for money-laundering purposes; 10
- (b) delete any accountable institution or category of accountable institutions from the list if the Minister reasonably believes that that institution or category of institutions is not being used, and is not likely to be used in the future, for money-laundering purposes; or 15
- (c) make technical changes to the list.

(3) Before the Minister amends Schedule 1 in terms of subsection (2)(a) or (b) the Minister must consult the Council and the Centre, and—

- (a) if only an individual institution will be affected by the proposed amendment, give the institution at least 30 days' written notice to submit written representations to the Minister; or 20
- (b) if a category of institutions will be affected by the proposed amendment, by notice in the *Gazette* give institutions belonging to that category at least 60 days' written notice to submit written representations to the Minister.

Exemptions 25

19. (1) The Minister may, after consulting the Council and the Centre and on conditions and for a period determined by the Minister, exempt from compliance with any or all of the provisions of this Act—

- (a) an accountable institution;
- (b) a category of accountable institutions; or 30
- (c) an accountable institution or category of accountable institutions in respect of any one or more categories of transactions.

(2) Any exemption referred to in subsection (1) must be by notice in the *Gazette* and may be withdrawn or amended by the Minister, after consulting with the Council and the Centre. 35

Part 2

*Supervisory bodies***Application of Act to supervisory bodies**

20. (1) This Act applies to all supervisory bodies.

(2) The Minister may, by notice in the *Gazette*, amend the list of supervisory bodies in Schedule 2 to— 40

- (a) add to the list any entity or functionary which in terms of legislation performs regulatory functions in relation to any category of accountable institutions;
- (b) delete any supervisory body from the list if that supervisory body no longer performs regulatory functions in relation to any category of accountable institutions; or 45
- (c) make technical changes to the list.

(3) Before the Minister amends Schedule 2 in terms of subsection (2)(a) or (b) the Minister must consult the Council and the Centre, and give the entity or functionary concerned, or the supervisory body concerned, at least 60 days' written notice to submit written representations to the Minister. 50

CHAPTER 4

MONEY-LAUNDERING CONTROL MEASURES

Part 1

*Duty to identify clients***Identification when business relationships are established or single transactions concluded** 5

21. An accountable institution may not establish a business relationship or conclude a single transaction with a prospective client unless the accountable institution has taken reasonable steps to establish—

- (a) the identity of the prospective client; 10
- (b) if the prospective client is acting on behalf of another person, also—
 - (i) the identity of that other person; and
 - (ii) the prospective 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 prospective client, also— 15
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client.

Identification when transactions are concluded in the course of business relationships

22. (1) If an accountable institution had established a business relationship with a client before this Act took effect, it must, within a reasonable period after the commencement of this Act, take reasonable steps—

- (a) to establish the identity of the client;
- (b) if the client is acting on behalf of another person, to establish also— 25
 - (i) the identity of that other person; and
 - (ii) the client's authority to act on behalf of that other person;
- (c) if another person is acting on behalf of the client, to establish also—
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client; and
- (d) to trace all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship. 30

(2) If an accountable institution is unable within a reasonable period to establish the identity of any person as required by subsection (1), it may not conclude any further transaction in the course of that business relationship until it has established the identity of any such person. 35

(3) Subsection (1) does not apply in respect of a business relationship which an accountable institution knows or reasonably believes to have ended prior to the commencement of this Act.

(4) If, after this Act took effect, a business relationship referred to in subsection (3) recommences, the accountable institution may not conclude a transaction in the course of that business relationship unless the accountable institution has taken reasonable steps—

- (a) to establish the identity of the client;
- (b) to trace all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship; 45
- (c) if another person is acting on behalf of the client, to establish—
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client; and
- (d) if the client is acting on behalf of another person, to establish— 50
 - (i) the identity of that other person; and
 - (ii) the client's authority to act on behalf of that other person.

Part 2

Duty to keep record

Record to be kept of business relationships and transactions

- 23.** (1) 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 keep record of—
- (a) the identity of the client;
 - (b) if the client is acting on behalf of another person—
 - (i) the identity of the person on whose behalf the client is acting; and
 - (ii) the client's authority to establish that business relationship or to conclude that single transaction on behalf of that other person;
 - (c) if another person is acting on behalf of the client—
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client;
 - (d) the manner in which the identity of a person referred to in paragraph (a), (b) or (c) was established;
 - (e) the nature of that business relationship or transaction;
 - (f) all accounts at that accountable institution that are involved in—
 - (i) transactions concluded in the course of that business relationship; or
 - (ii) that single transaction; and
 - (g) the name of the person who obtained the information referred to in paragraphs (a) to (f) on behalf of the accountable institution.
- (2) Records kept in terms of subsection (1) may be kept in electronic form.

Period for which records must be kept

- 24.** An accountable institution must keep the records referred to in section 23 which relate to—
- (a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated; and
 - (b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded.

Centralisation of records

- 25.** The duty imposed by section 23 on an accountable institution to keep record of the matters specified in that section may, in the case of two or more accountable institutions forming part of the same business group, be centralised within the group and be performed by or on behalf of any entity within the group on behalf of those accountable institutions, as long as they have free and easy access to the records.

Admissibility of records

- 26.** A record kept in terms of section 23 or section 25, or a certified extract of any such record, or a printout of an electronic record, is on its mere production in a court admissible as evidence in a matter before the court.

Centre's access to records

- 27.** (1) An authorised representative of the Centre—
- (a) has access during ordinary working hours to any records kept by or on behalf of—
 - (i) an accountable institution in terms of section 23 or section 25;
 - (ii) a supervisory body; and
 - (b) may examine or, make extracts from or copies of any such records.
- (2) The authorised representative of the Centre may exercise the powers mentioned in subsection (1) only by virtue of a warrant issued in chambers by a judge of the area of jurisdiction within which the records are kept: Provided that such a warrant may be

issued by the judge in respect of records kept in another area of jurisdiction, if the judge deems it justified.

(3) A warrant may only be issued if it appears to the judge, from information on oath or affirmation, that there are reasonable grounds to believe that the records referred to in subsection (1) may assist the Centre to combat money-laundering activities. 5

(4) An accountable institution or supervisory body must without delay give to an authorised representative of the Centre all reasonable assistance necessary to enable that representative to exercise the powers mentioned in subsection (1).

Part 3

Reporting duties 10

Cash transactions above prescribed limit

28. An accountable 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—

- (a) is paid by the accountable 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 15
- (b) is received by the accountable 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.

Suspicious transactions 20

29. (1) If an accountable institution suspects or reasonably ought to have suspected that, as a result of a transaction concluded by it, it has received or is about to receive the proceeds of unlawful activities or has been used or is about to be used in any other way for money-laundering purposes, it must, within the prescribed period after the suspicion arose or reasonably ought to have arisen, report to the Centre— 25

- (a) the grounds for the suspicion; and
- (b) the prescribed particulars concerning the transaction.

(2) If an accountable institution suspects or reasonably ought to have suspected that, as a result of a transaction which it is asked to conclude or about which enquiries are made, it may receive the proceeds of unlawful activities or in any other way be used for money-laundering purposes should the transaction be concluded, it must, within the prescribed period after the suspicion arose or reasonably ought to have arisen, report to the Centre— 30

- (a) the grounds for the suspicion; and
- (b) the prescribed particulars concerning the transaction. 35

(3) No accountable institution which made or must make a report in terms of this section may disclose that 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 is to be made, otherwise than—

- (a) within the scope of the powers and duties of the accountable institution in terms of any legislation; 40
- (b) for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (d) in terms of an order of court. 45

(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—

- (a) within the scope of that person's powers and duties in terms of any legislation; 50
- (b) for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (d) in terms of an order of court.

Electronic transfers of money to or from the Republic

30. 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 that is not a bank, 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. 5

Reporting by supervisory bodies

31. If a supervisory body suspects that an accountable institution, as a result of a transaction concluded by the institution, wittingly or unwittingly has received or is about to receive the proceeds of unlawful activities or has in any other way been used for money-laundering purposes, it must— 10

- (a) within the prescribed period, report to the Centre—
 - (i) the grounds for the suspicion; and
 - (ii) the prescribed particulars concerning the transaction; and 15
- (b) retain the records held by it which relate to that report, for such period as the Centre may reasonably require.

Conveyance of cash to or from the Republic

32. (1) A person intending to convey an amount of cash in excess of a prescribed amount to or from the Republic must, before that person conveys the cash into or out of the Republic, report the prescribed particulars concerning that conveyance to a person authorised by the Minister for this purpose. 20

(2) A person authorised in terms of subsection (1) must without delay send a copy of the report to the Centre.

Reporting procedures 25

33. (1) A report in terms of section 28, 29, 30 or 31 to the Centre and a report in terms of section 32(1) to a person authorised by the Minister must be made in the prescribed manner.

(2) The Centre, or an investigating authority acting with the permission of the Centre or under the authority of an authorised officer, may request an accountable institution, supervisory body or person that has made a report in terms of section 28, 29, 30, 31 or 32(1) to furnish the Centre or that investigating authority without delay with such additional information concerning the report as the Centre or the investigating authority may reasonably require and as that accountable institution, supervisory body or person may have available. 35

Continuation of suspicious transactions

34. An accountable institution that has made a report to the Centre in terms of section 29 concerning a transaction, may continue with and carry out the transaction unless the Centre directs the accountable institution in terms of section 35 not to proceed with the transaction. 40

Intervention by Centre

35. If the Centre, after consulting an accountable institution, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or may constitute money laundering, it may direct the accountable institution in writing not to proceed with the carrying out of that transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the Centre, which may not be more than five working days, in order to allow the Centre— 45

- (a) to make the necessary inquiries concerning the transaction; and
- (b) if the Centre deems it appropriate, to inform and advise an investigating authority and the National Director of Public Prosecutions. 50

Monitoring orders

36. (1) A judge in chambers of the area of jurisdiction in which an accountable institution conducts business may, upon written application by the Centre, order the accountable institution to report to the Centre, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specific person with the accountable institution or all transactions conducted in respect of a specific account or facility at the accountable institution, if there are reasonable grounds to suspect that—

(a) that person is using the accountable institution for money-laundering purposes; or

(b) that account or other facility is being used for money-laundering purposes.

(2) An order in terms of subsection (1) lapses after three months unless extended in terms of subsection (3).

(3) A judge in chambers of the area of jurisdiction in which the accountable institution conducts business may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if—

(a) the reasonable grounds for the suspicion on which the order is based still exist; and

(b) the judge is satisfied that the interest of justice is best served by investigating the suspicion in the manner provided for in this section.

(4) An application referred to in subsection (1) must be heard and an order must be issued without notice to or hearing the person or persons involved in the suspected money-laundering activities.

Reporting duty not affected by confidentiality rules

37. (1) No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance with a provision of this Part.

(2) Subsection (1) does not apply to the common law right to legal professional privilege as between an attorney and the attorney's client.

Protection of persons making reports

38. (1) No action, whether criminal or civil, lies against an accountable institution, supervisory body or person complying in good faith with a provision of this Part, including any director, employee or other person acting on behalf of such accountable institution, supervisory body or person.

(2) A person who has made, initiated or contributed to a report in terms of a provision of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

(3) No evidence concerning the identity of a person who made a report in terms of a provision of this Part or the contents of such a report, or the grounds for such a report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

(4) No evidence concerning the identity of a person who initiated or contributed to a report in terms of a provision of this Part is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

Admissibility as evidence of reports made to the Centre

39. A certificate issued by an official of the Centre that information specified in the certificate was reported to the Centre in terms of a provision of this Part, is, subject to section 38(3) and (4), on its mere production in a court admissible as evidence in a matter before that court.

Access to information held by Centre

40. (1) No person is entitled to information held by the Centre, except—

(a) an investigating authority inside the Republic and the intelligence services which may be provided with such information—

- (i) on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or
 - (ii) at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity; 5
 - (b) an investigating authority outside the Republic which may at the initiative of the Centre, or on request, obtain such information which the Centre reasonably believes is required to investigate suspected unlawful activity;
 - (c) an authority outside the Republic performing similar functions to those of the Centre, which may, on request, obtain information which the Centre reasonably believes is required to investigate suspected unlawful activity; 10
 - (d) an accountable institution or supervisory body, which may on request be provided with information regarding the steps taken by the Centre in connection with transactions reported by such accountable institution or supervisory body, unless the Centre reasonably believes that disclosure to such accountable institution or supervisory body of the information requested— 15
 - (i) could inhibit the achievement of the Centre’s objectives or the performance of its functions, or the achievement of the objectives or the performance of the functions of another organ of state; or 20
 - (ii) could prejudice the rights of any person;
 - (e) in terms of an order of a court; and
 - (f) in terms of other national legislation.
- (2) A request for information in terms of subsection (1)(b) to (f) must be in writing and must specify the desired information and the purpose for which the information is required. 25
- (3) A person who obtains information from the Centre may use that information only within the scope of that person’s powers and duties and for the purpose specified in terms of subsection (2).

Protection of confidential information 30

- 41.** No person may disclose confidential information held by or obtained from the Centre except—
- (a) within the scope of that person’s powers and duties in terms of any legislation;
 - (b) for the purpose of carrying out the provisions of this Act;
 - (c) with the permission of the Centre; 35
 - (d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
 - (e) in terms of an order of court.

Part 4

Self-regulation to ensure compliance with this Act 40

Formulation and implementation of internal rules

- 42.** (1) An accountable institution must formulate and implement internal rules concerning—
- (a) the establishment and verification of the identity of persons which the institution must identify in terms of Part 1 of this Chapter; 45
 - (b) the information of which record must be kept in terms of Part 2 of this Chapter;
 - (c) the identification of reportable transactions; and
 - (d) the training of employees of the institution to recognise and handle suspected money-laundering activities. 50
- (2) Internal rules must comply with the prescribed requirements.
- (3) An accountable institution must provide a copy of the internal rules to each of its employees involved in transactions to which this Act applies.

CHAPTER 5

ENFORCEMENT OF THIS ACT

Part 1

*Administrative proceedings***Administrative inquiries** 5

43. (1) If the Centre has reasonable grounds to suspect that an accountable institution has committed an act (including an act of omission) which may constitute an offence in terms of this Act, it must institute an inquiry to establish whether an offence has been committed if—

- (a) the institution agrees to submit itself to the inquiry and to abide by any findings made in terms of section 46; and 10
- (b) the institution—
 - (i) deposits with the Centre an amount determined by the Centre, not exceeding the maximum fine which may be imposed by a court for the alleged offence; or 15
 - (ii) makes such other arrangements or complies with such conditions with regard to securing payment of an appropriate penalty as the Centre may determine.

(2) An accountable institution which submits itself to an inquiry, and which subsequently complies with subsection (1)(b) and abides by any finding and order made in terms of section 46, is exempted from criminal prosecution in respect of the act or acts for which the inquiry is established. 20

(3) The Director or any other official of the Centre or other person designated by the Director may conduct the inquiry on behalf of the Centre.

(4) If an accountable institution admits that it has committed an offence of which it is charged and the Centre and the accountable institution agree on the terms of an appropriate penalty against the institution, the person conducting an inquiry against that institution in terms of subsection (1) may, without hearing any evidence or any further evidence— 25

- (a) make a finding in terms of section 46 that the institution has committed an offence as charged; and 30
- (b) sanction the agreed penalty and make it an order in terms of section 46.

(5) The Centre must refer its suspicion and the evidence in its possession on which such suspicion is based to the National Director of Public Prosecutions if an accountable institution— 35

- (a) refuses to submit itself to an inquiry or to abide by any findings and order made in terms of section 46;
- (b) having been given a reasonable opportunity to do so—
 - (i) fails to respond to a request to submit itself to an inquiry and to abide by any findings made in terms of section 46; or 40
 - (ii) fails to comply with the provisions of subsection (1)(b).

(6) Before instituting an inquiry contemplated in this section, the Centre must consult the National Director of Public Prosecutions who may, within 30 days of the commencement of such consultation, direct that the interests of justice merit a criminal prosecution. 45

(7) If the National Director of Public Prosecutions directs that the interests of justice merit a criminal prosecution, the Centre—

- (a) may not institute an inquiry contemplated in this section; and
- (b) must refer the evidence in its possession which relates to the prosecution to the National Director of Public Prosecutions. 50

Inquiry procedures

44. (1) The person conducting an inquiry in terms of section 43 determines the inquiry procedure, subject to the other provisions of this Act.

(2) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court applies to the questioning of a person in the course of an inquiry. 55

Powers of person conducting inquiry

45. (1) The person conducting an inquiry in terms of section 43 may—
- (a) by written notice summon a person to appear at the inquiry to—
 - (i) give evidence; or
 - (ii) produce a document available to that person and specified in the summons; 5
 - (b) call a person present at the inquiry, whether summoned or not, to—
 - (i) give evidence;
 - (ii) produce a document in that person's custody; 10
 - (c) administer an oath or solemn affirmation to that person; 10
 - (d) question that person, or have that person questioned; and
 - (e) retain for a reasonable period a document produced in terms of paragraph (a)(ii) or (b)(ii).
- (2) A person appearing at an inquiry—
- (a) may at his or her own expense be assisted by a legal representative; and 15
 - (b) is entitled to witness fees as applicable to state witnesses in criminal proceedings in a court.

Findings and orders

46. (1) If the person conducting an inquiry in terms of section 43 finds that the accountable institution has committed an offence as charged, that person may order the forfeiture by way of penalty of the whole or a part of the amount deposited or secured by the institution. 20
- (2) Before the person conducting the inquiry orders forfeiture, that person must take all relevant matters into account, including—
- (a) the seriousness of the offence; 25
 - (b) any remedial steps taken by the relevant accountable institution to prevent a recurrence of the offence;
 - (c) any steps taken or to be taken against the accountable institution by—
 - (i) a supervisory body to which the accountable institution is subject; or
 - (ii) a voluntary association of which the accountable institution is a member; 30
 and
 - (d) any written representations made by the accountable institution.
- (3) A finding made and the amount of any forfeiture ordered in terms of this section must be made public.
- (4) Money forfeited in terms of subsection (1) must be deposited into the National Revenue Fund. 35

Record of proceedings not admissible in criminal proceedings

47. The record of the proceedings of an inquiry is not admissible in criminal proceedings, except where a person is charged with having committed an offence mentioned in section 48(h), (i) or (j). 40

Part 2*Offences and penalties***Offences: All persons including accountable institutions**

48. A person is guilty of an offence if that person—
- (a) contravenes the provisions of section 29(4); 45
 - (b) contravenes or fails to comply with a provision of section 32 or 41;
 - (c) fails to comply with a request made by the Centre or an investigating authority in terms of section 33(2);
 - (d) destroys or tampers with any records kept in terms of section 23 or 25 read with section 24; 50
 - (e) destroys or in any other way tampers with information kept by the Centre for the purposes of this Act;
 - (f) uses information obtained from the Centre otherwise than in accordance with section 40(3);

- (g) knowing or suspecting that information has been disclosed to the Centre, directly or indirectly brings information which is likely to prejudice an investigation resulting from such disclosure to the attention of another;
- (h) obstructs, hinders or threatens an official or representative of the Centre in the performance of their duties or the exercise of their powers in terms of this Act; 5
- (i) willfully disrupts proceedings conducted in terms of section 43;
- (j) after having been summoned in terms of section 45 fails—
 - (i) to be present at the inquiry at the time and place specified in the summons;
 - (ii) to remain present until excused; or 10
 - (iii) to produce a document specified in the summons;
- (k) after having been called in terms of section 45 refuses—
 - (i) to appear;
 - (ii) subject to section 37(2) and 44(2), to answer any question; or
 - (iii) to produce a document in that person's custody. 15

Offences: Accountable institutions

- 49.** An accountable institution is guilty of an offence if that institution—
- (a) contravenes or fails to comply with a provision of section 21, 22(1), (2) or (4), 23(1), 24, 27(4), 28, 29(1), (2) or (3), 30, 33(1) or 42(1), (2) or (3); or
 - (b) fails to comply with a request made by the Centre or an investigating authority in terms of section 33(2), a direction issued by the Centre in terms of section 35 or an order by a judge in terms of section 36. 20

Offences: Supervisory bodies

- 50.** Any official or employee of a supervisory body is guilty of an offence if that official or employee was knowingly a party to— 25
- (a) a contravention of or failure to comply with a provision of section 27(4), 31(a) or (b) or 33(1); or
 - (b) a failure to comply with a request made by the Centre in terms of section 33(2).

Penalties 30

- 51.** (1) A person convicted of an offence mentioned in section 48 or 49 is liable to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.
- (2) A person convicted of an offence mentioned in section 50 is liable to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 35

CHAPTER 6

MISCELLANEOUS

Act not to limit powers of investigating authorities

- 52.** This Act does not affect an investigating authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations. 40

Regulations

- 53.** (1) The Minister, after consulting the Council and the Centre, may make regulations concerning—
- (a) any matter that may be prescribed in terms of this Act; 45
 - (b) measures to ensure the security of information disclosed to and obtained by the Centre;
 - (c) the recognition and handling by accountable institutions of suspected money-laundering transactions;
 - (d) internal rules to be formulated and implemented in terms of section 42; 50

- (e) the manner and form in which accountable institutions are to keep records required by this Act;
 - (f) the steps to be taken by an accountable institution to establish the identity of a client or prospective client;
 - (g) the determination of the date on which a business relationship is considered to be terminated as contemplated in section 24; 5
 - (h) the manner in which inquiries in terms of section 43 must be conducted;
 - (i) the form and particulars of a summons in terms of section 45 and the manner in which a summons must be served; and
 - (j) any other matter which may facilitate the application of this Act. 10
- (2) Regulations in terms of subsection (1) may—
- (a) differ for different accountable institutions, categories of accountable institutions and different categories of transactions;
 - (b) be limited to a particular accountable institution or category of accountable institutions or a particular category of transactions; and 15
 - (c) for a contravention of or failure to comply with any specific regulation prescribe a fine or imprisonment for a period not exceeding six months.

Indemnity

54. The Minister, the Centre or an employee or representative of the Centre, or any other person performing a function or exercising a power in terms of this Act, is not liable for anything done in good faith in terms of or in furthering the objects of this Act. 20

Insertion of section 6A in Prevention Act

55. The Prevention Act is hereby amended by the insertion after section 6 of the following section:

“Conducting transactions to avoid reporting duties 25

6A. (1) Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activity and who conducts, or causes to be conducted, two or more transactions involving the property with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act or under the Financial Intelligence Centre Act, 2001, is guilty of an offence. 30

(2) Any person convicted of an offence referred to in subsection (1) is liable to a fine not exceeding R500 000 or three times the value of the property involved in the transactions, whichever is greater, or to imprisonment for a period of up to five years, or both.”. 35

Application of section 7 of Prevention Act to accountable institutions

56. (1) Section 7 of the Prevention Act does not apply to any person contemplated in section 7(1) of that Act, in respect of any act (including an act of omission) which is reportable in terms of section 29(1) or (2) of this Act, if the business which such person carries on, is in charge of, manages or is employed by is an accountable institution and the act or omission in question was committed or omitted pursuant to such person’s duties in relation to that business. 40

(2) Evidence that an accountable institution has made a report to the Centre in terms of section 29(1) or (2) of this Act with regard to a transaction concluded by it, constitutes a defence for the accountable institution on a charge of having contravened section 2(1) (a), (b) or (c), 4, 5 or 6 of the Prevention Act in relation to that specific transaction. 45

(3) Evidence that a person contemplated in subsection (1) has complied with all obligations in terms of the internal rules of an accountable institution constitutes a defence for that person on a charge of having contravened section 2(1)(a), (b) or (c), 4, 5, or 6 of the Prevention Act in relation to that specific transaction. 50

Short title and commencement

57. This Act is called the Financial Intelligence Centre Act, 2001, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1**LIST OF ACCOUNTABLE INSTITUTIONS**

1. An attorney as defined in the Attorneys Act, 1979 (Act No. 53 of 1979).
2. A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act No. 57 of 1988).
3. An estate agent as defined in the Estate Agents Act, 1976 (Act No. 112 of 1976).
4. A financial instrument trader as defined in the Financial Markets Control Act, 1989 (Act No. 55 of 1989).
5. A management company registered in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981).
6. A person who carries on the “business of a bank” as defined in the Banks Act, 1990 (Act No. 94 of 1990).
7. A mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993).
8. A person, other than a bank, who carries on the business of—
 - (a) collecting money from other persons into an account or a fund; and
 - (b) depositing the money in such an account or fund into a bank account on behalf of the persons from whom that person had collected the money.
9. A person who carries on a “long-term insurance business” as defined in the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), including an insurance broker and an agent of an insurer.
10. A person who carries on a “short-term insurance business” as defined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), including an insurance broker and an agent of an insurer.
11. A person who carries on the business of a casino or gambling institution.
12. A person who carries on the business of dealing in foreign exchange.
13. A person who carries on the business of lending money against the security of securities.
14. A person who carries on the business of rendering investment advice or investment broking services.
15. A person who issues, sells or redeems travellers’ cheques, money orders or similar instruments.
16. The Post Office Savings Bank established by section 52 of the Post Office Act, 1958 (Act No. 44 of 1958).
17. A public accountant as defined in the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), in respect of investment advice or an investment service rendered by such an accountant.
18. A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
19. A totalisator agency board or a person operating a totalisator betting service.
20. An institution or body designated by the Minister in terms of section 2(b) (vii) of the Banks Act, 1990 (Act No. 94 of 1990).
21. A person who has been approved or who falls within a category of persons approved by the Registrar of Stock Exchanges in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
22. A person who has been approved or who falls within a category of persons approved by the Registrar of Financial Markets in terms of section 5(1)(a) of the Financial Markets Control Act, 1989 (Act No. 55 of 1989).

SCHEDULE 2**LIST OF SUPERVISORY BODIES**

1. The Financial Services Board established by the Financial Services Board Act, 1990 (Act No. 97 of 1990).
2. The Registrar of Banks as defined in the Banks Act, 1990 (Act No. 94 of 1990).
3. The Registrar of Companies as defined in the Companies Act, 1973 (Act No. 61 of 1973).
4. Any law society established in terms of the Law Societies Act, 1975 (Act No. 43 of 1975).
5. The Estate Agents Board established in terms of the Estates Agents Act, 1976 (Act No. 112 of 1976).
6. The Public Accountants' and Auditors' Board established in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
7. The South African Revenue Service established in terms of section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL INTELLIGENCE CENTRE BILL, 2001

1. INTRODUCTION

1.1 Money laundering has been declared a criminal offence in terms of section 4 of the Prevention of Organised Crime Act, 1998. In terms of that section a person commits an offence if that person performs an act mentioned in the section to conceal or disguise the nature, source, location or movement of the proceeds of crime.

1.2 The Bill is the product of the Task Team on Money Laundering appointed by the Minister of Finance. The mandate of the Task Team was to—

- (a) review the appropriateness of the draft Bill prepared by the South African Law Commission in August 1996 pursuant to an investigation by the Law Commission on administrative measures to combat money laundering;
- (b) consult with representatives of institutions which will need to implement the legislation;
- (c) ensure that the legislation is appropriate to South African circumstances;
- (d) make recommendations on an appropriate institutional framework for the effective implementation of the legislation.

1.3 The Bill reflects the main proposals of the Task Team, which were accepted by the Minister of Finance, subject to certain amendments requested by the South African Police Service, the South African Reserve Bank, the South African Revenue Service, the Ministry for Intelligence Services, the Department of Justice and Constitutional Development and the National Prosecuting Authority.

2. OBJECTS

2.1 The object of the Financial Intelligence Centre Bill is to complement the Prevention of Organised Crime Act, 1998, by introducing mechanisms and measures aimed at preventing and combating money-laundering activities. It sets up an anti-money laundering regulatory regime which encourages voluntary compliance and self-regulation by institutions which may be exploited for money-laundering purposes.

2.2 The Bill establishes a Financial Intelligence Centre (the "Centre"). The Centre will not be an investigative body, but will coordinate policy and efforts to counter money-laundering activities. It will act as a centralised repository of information relevant for investigating authorities. The Centre's functions are to—

- (a) collect, process, analyse and interpret information obtained by it;
- (b) inform, advise and cooperate with investigating authorities;
- (c) supervise compliance with the Act; and
- (d) give guidance to institutions to combat money-laundering activities.

2.3 It is proposed that the Centre should be a juristic person outside the public service but within the public administration as envisaged by section 195 of the Constitution, and that it should be accountable to the Minister of Finance. It will derive its funds mainly through the national budget.

2.4 A Director appointed by the Minister of Finance will head the Centre. The Director may appoint staff and will, subject to the policy and security directions of the Minister, take all decisions on behalf of the Centre, although the Director may delegate powers to staff of the Centre. Staff may also be seconded to the Centre from other government departments, such as the South African Police Service and the National Prosecuting Authority. The Director will also be the accounting authority of the Centre for purposes of complying with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

2.5 The Bill also establishes a Money-Laundering Advisory Council. This will be an advisory body for the Minister of Finance on policies and measures to combat money laundering. In addition it will act as a forum in which the Centre, accountable institutions and supervisory bodies can consult on anti-money-laundering policies and measures. The Council therefore gives practical expression to the notion of a partnership between government and the private sector in the fight against organised crime with special reference to money laundering.

2.6 The Council will be composed of representatives of all roleplayers concerned in combating money-laundering activities. It will not have any executive or regulatory powers.

2.7 The Bill contains a list of accountable institutions, i.e. those institutions that may, in the ordinary course of organised crime, be exploited for money-laundering purposes. It is proposed that the Minister is given the power to add further institutions or categories of institutions to the list and to remove institutions from the list as circumstances may require. The Bill also gives the Minister the power to exempt accountable institutions, or certain kinds of transactions conducted by accountable institutions, from the obligations imposed by the Bill.

2.8 Listed accountable institutions are required by the Bill to implement internal administrative systems to ensure that they know their customers, report suspicious and certain cash transactions to the Centre, and keep record of their customers. They are also required to train their employees to recognise and deal with suspected money-laundering transactions.

2.9 Certain statutory bodies and functionaries established by legislation to regulate specific categories of institutions are also listed in the Bill as “supervisory bodies” and are required to perform certain reporting functions, e.g. to report any suspicious transactions concluded by any of the institutions they supervise.

2.10 Enforcement of the provisions of the Bill is backed by penal and administrative sanctions. The administrative sanctions apply only to accountable institutions, and provide for non-judicial procedures that may be utilised by the Centre against offending accountable institutions provided certain conditions are met, e.g. that the National Director of Public Prosecutions does not direct that the offence merits a criminal prosecution and that the institution concerned submits to the administrative procedure and consents to a proposed penalty against it. Submission by an accountable institution to the administrative procedures indemnifies the offending institution against any subsequent criminal prosecution, but any finding and order made, and any amount forfeited by the institution pursuant to the administrative procedures, must be made public.

2.11 The Bill, together with the Prevention of Organised Crime Act, 1998, will produce an anti-money-laundering regime substantially in compliance with the recommendations of the Financial Action Task Force on Money Laundering, a multi-lateral body which coordinates international anti-money-laundering policy. The Bill aims to achieve this compliance without making unnecessary or inappropriate demands on the country’s resources.

3 CONSULTATION PROCESS

3.1 Prior to the appointment of the Task Team wide consultation on the principles contained in the Bill was conducted by the South African Law Commission in the process of preparing its Report on Money Laundering and Related Matters of August 1996.

3.2 The Task Team identified the parties listed below for further consultations regarding changes to the Law Commission’s proposals and the preparation of its report to the Minister and this Bill. All consultations regarding the Bill were conducted in person by members of the Task Team and, in some cases, by officials of the Department of Finance.

3.3 Each of the parties mentioned below was given an opportunity to meet with the Task Team or the Department of Finance at least once and was also given the opportunity to make written submissions to the Task Team and/or the Department of Finance. Several of the parties who are likely to be most affected by the provisions of the Bill, or who represent institutions which are likely to be most affected, such as the banks, the South African Police Service, the Department of Justice and the National Prosecuting Authority were also given the opportunity of further meetings with the Task Team and the opportunity to comment on the first draft report of the Task Team and various earlier drafts of the Bill.

3.4 The following are the parties who were consulted by the Task Team and the Department of Finance in the course of the Task Team’s preparation of its final report to the Minister dated June 1999 and of the Financial Intelligence Centre Bill, 2001—

- Life Offices Association;
- Johannesburg Stock Exchange;
- Gauteng Gambling Board;
- SA Insurance Association;
- SA Police Service;
- Ministry for Safety and Security;

Ministry for Intelligence Services;
 Ministry of Justice and Constitutional Development;
 National Association of Stokvels of SA;
 Association of Law Societies;
 Association of Unit Trusts;
 Council of South African Banks;
 Internal Audit Department, Standard Bank;
 Financial Services Board;
 South African Reserve Bank;
 Prevention of Organised Crime Act Project;
 South African Law Commission;
 Money-Laundering Forum of SA;
 Estate Agents Board;
 South African Revenue Service;
 Institute of Realtors;
 Mines Pension Fund;
 Institute of Chartered Accountants;
 Commonwealth Secretariate, London;
 South African High Commission, London;
 SA Bond Exchange;
 Freight Forwarders Association;
 People's Bank (now defunct);
 National Crime Prevention Strategy;
 Office for Serious Economic Offences;
 National Directorate of Prosecutions;
 Asset Forfeiture Unit;
 Embassy of France;
 Ministry of the Interior (Money-Laundering Section), France;
 HM Treasury, London;
 Professor Angela Itzikowitz, University of the Witwatersrand;
 Peter Cromhout and Dr Richard Harms — PriceWaterhouse Coopers South Africa
 and USA.

4. LEGISLATIVE PROCEDURE

As the Bill deals with the administration of justice, the State Law Advisers and the National Treasury are of the opinion that the procedure set out in section 75 of the Constitution should apply to the Bill in the parliamentary process.

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