

CARA Financial Statements

The Criminal Assets Recovery Account (CARA)

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FOR THE YEAR ENDED 31 MARCH 2009

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ACCOUNTING OFFICER REPORT

FOR THE YEAR ENDED 31 MARCH 2009

Report of the Accounting Officer to the Executive Authority and Parliament of the Republic of South Africa.

1. The Criminal Assets Recovery Account (The CARA)

The Criminal Assets Recovery Account (CARA) is a separate account within the National Revenue Fund (NRF) into which monies and property are deposited following a judicial forfeiture or confiscation order. The confiscation and forfeiture processes, as well as the establishment of the CARA, are legislated in terms of the Prevention of Organised Crime Act (POC Act) of 1998.

The underlying hypothesis of asset forfeiture legislation is that, by confiscating or forfeiting the profits or proceeds of crime, the incentive for committing specific crimes is reduced.

Section 64 of the Act regulates the constitution of the CARA. In particular section 64(a) is of importance to the criminal asset recovery process as it determines that all confiscated and forfeited monies and property are to be deposited into the CARA.

64. Finances of Account.--The Account shall consist of--

- a. all moneys derived from the fulfilment of confiscation and forfeiture orders contemplated in Chapters 5 and 6; [Para. (a) substituted by section 35 (a) of Act No. 24 of 1999.]
(aA). all property derived from the fulfilment of forfeiture orders as contemplated in section 57; [Para. (aA) inserted by section 35 (b) of Act No. 24 of 1999.]
- b. the balance of all moneys derived from the execution of foreign confiscation orders as defined in the International Co-Operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), after payments have been made to requesting States in terms of that Act;
- c. any property or moneys appropriated by Parliament, or paid into, or allocated to, the Account in terms of any other Act; [Para. (c) Substituted by section 35 (c) of Act No. 24 of 1999.]
- d. domestic and foreign grants;
- e. any property or amount of money received or acquired from any source; and [Para. (e) Substituted by section 35 (d) of Act No. 24 of 1999.]
- f. all property or moneys transferred to the Account in terms of this Act. [Para. (f) substituted by section 35 (e) of Act No. 24 of 1999.]

2. Purpose of the CARA

Section 69A of the Act regulates for what purpose the monies and property in the Account may be utilised:

- 69A. Utilisation of Account and accountability.--(1) The property and money allocated to, or standing to the credit of, the Account may be utilised by Cabinet, after considering the recommendations of the Committee, for—
- a. the allocation of property and amounts of money from the Account to specific law enforcement agencies;
 - b. the allocation of property and amounts of money from the Account to any institution, organisation or fund contemplated in section 68(c); and
 - c. the administration of the Account.

3. The Criminal Assets Recovery Committee (CARC)

Section 65 of the Act establishes a Criminal Assets Recovery Committee (CARC) which is responsible for providing Cabinet with recommendations on the utilisation of the Account and providing advice on specific issues related to the criminal assets recovery process.

The Committee consists of:

Mr E Surty, Minister for Justice and Constitutional Development (Chairperson)

Mr T Manuel, Minister of Finance



Mr G Doidge, Minister of Public Works
Mr N Balfour, Minister of Correctional Services
Ms S Shabangu, Deputy Minister of Safety and Security
Adv M Mpshe, Acting National Director of Public Prosecutions

Section 69 of the POC Act provides that monies and property in the CARA may only be distributed to beneficiaries on recommendation by the CARC and after approval by National Cabinet.

As at 31 March 2009, R158, 8 million was available in the CARA at the end of 31st March 2009 (R99, 8 million in 2008). The committee did not allocate any funds or assets in the past financial year. The South African Police Service have not utilised R3, 7 million of a previous allocation of R33,7 million as at 31 March 2009. The South African Police Service has indicated to CARU that the funds will be requested in the 2009/10 financial year in terms of their revised business plans.

4. The CARA Financial Statements

The financial statements for the year ended 31 March 2009 have been prepared on a modified cash basis of accounting, except where stated otherwise. The modified cash basis constitutes the cash basis of accounting supplemented with additional disclosure items in accordance with the Office of the Accountant General's annual financial and asset management guidelines.

There are 224 cases that affects 2008/09 financial year end for CARA to the value of R66 million of which 30 (R35 million) are court ordered Confiscations and , 165 (R15 million) are for Forfeitures orders and 29 (R387 thousands) are for other type cases.

5. 2009 CARA Project

Audit and Accounting Issues

In their last review of the CARA the auditors expressed doubt over the completeness of the Assets Forfeiture Unit's (AFU) Case registers. This finding had grave implication for the CARA because AFU cases/matters become CARA cases on conclusion.

Other matters noted by the auditors that detracted from the reliability of the CARA financials were that:

- (i) Previous Financials did not adequately disclose Monies due to The CARA from Curators;
- (ii) Assets pending realisation were not adequately valued and disclosed in the CARA Financials;
- (iii) The CARA had not distributed funds to law enforcement agencies and/or victims of crime as intended per legislation;
- (iv) Inadequate or missing documentation;
- (v) Numerous outstanding or poor quality Curator Reports for CARA cases under management by Curators;

To address the above shortcomings, a multi-disciplinary task team was appointed to a 2009 CARA Project. The 2009 initiative is engaged in activities designed to formulate and implement a legally sound operating environment supported by well documented processes and policies underpinned by a robust electronic system.

The most immediate task for the project was the definition of an accounting stream for the preparation and submission of revised Three Year Financials 2005/6 through to 2008/9.

To address the issues of doubt over accuracy of opening balances given the previous Disclaimers of opinion, the 2009 CARA Project Team has re-compiled the CARA Financial statements for the last three years up to and including the current year 2008/09.

Further related activities envisaged to comprehensively address the financial and management shortcomings of the CARA were scoped around the need to:

- (i) Finalise updated CARA Processes and Policies and ensure change management principles and extensive skills transfer are emphasised to ensure that processes and policies are implemented and utilised.
- (ii) Formulate inputs for the implementation of modules relating to financial management of the Electronic Case Management system (ECMS).
- (iii) Allocation of CARA funds as intended by the legislation (support role to the Inter-Ministerial Committee – CARC - headed by the Minister for Justice and Constitutional Development)



6. Payments made direct to Victims

In the financial year ended 31 March 2009, a total of 83 cases with court ordered gross awards amounting to R191 million were made directly to victims (in 2007/8 Financial year 69 cases with victim awards amounting to R64 million).

7. Standing Committee on Public Accounts (SCOPA)

SCOPA commented on the lack of an “electronic system” and the unavailability of documented policies for the management of the CARA, to date the following has been started to address these:

- (i) Development and implementation of an electronic case management system to monitor, amongst other priorities, the assets under the care of curators. The Criminal Asset Recovery Unit (CARU) reporting and accounting requirements are also being incorporated in the system design. CARU envisages to implement the system effectively in the new financial year 2009/10.
- (ii) Draft policies and procedures are under development and will be tabled for approval during the 2009/10 Financial Year.

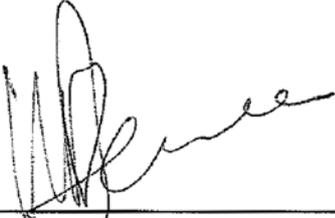
8. Conclusion

We are optimistic that all the initiatives underway in CARU will proactively address the currently identified challenges and will result in more effective management of the CARA.

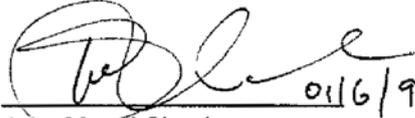
9. Acknowledgements

Our appreciation towards the loyal support and valuable contributions of the various stakeholders is hereby acknowledged.

The Financial Statements set out on pages 131 to 139 have been approved by the Accounting Officer.



Dr Khotso De Wee
Acting CEO: NPA
Date: 29/8/09.



Adv. Menzi Simelane
Director-General: DoJ&CD
Date:



REPORT OF THE AUDIT COMMITTEE FOR THE YEAR ENDED 31 MARCH 2009

We are pleased to present our report for the financial year ended 31 March 2009.

Audit Committee responsibility

The administration and accountability for CARA falls within the responsibilities of the National Prosecution Authority of South Africa. Accordingly as the duly constituted Audit Committee of the National Prosecution Authority of South Africa, we have reviewed to the extent considered necessary the financial statements of CARA.

The effectiveness of internal control

The system of controls is designed to provide cost effective assurance that assets are safeguarded and that liabilities and working capital are efficiently managed.

In line with the PFMA, internal audit provides the audit committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the internal auditors, the audit report on the annual financial statements and the management letter of the Auditor-General South Africa, we noted that no significant or material non-compliance with prescribed policies and procedures were reported. Accordingly, we can report that the system of internal controls for the year under review was efficient and effective.

Internal Audit

Due to high staff turnover in the Department of Justice and Constitutional Development's internal audit unit, especially at supervisory and management level, delays occurred in the finalisation of audit reports. We are advised that audit findings were, however, communicated to management through draft reports. The draft audit reports have since been finalised and we are satisfied that the internal audit function is operating efficiently and that it has addressed the risks pertinent to CARA in its audits in accordance with its operational plan.

Evaluation of Financial Statements

We have:

- Reviewed and discussed the audited annual financial statements to be included in the annual report with the Auditor-General South Africa and the Accounting Officer;
- Reviewed the Auditor-General South Africa's management letter and management's response thereto;
- Reviewed the Fund's compliance with legal and regulatory provisions;
- Reviewed significant adjustments resulting from the audit.

We concur and accept the Auditor-General South Africa's report on the annual financial statements and are of the opinion that the audited annual financial statements should be accepted and read together with the report of the Auditor-General South Africa.



Chairperson of the Audit Committee
4 August 2009



REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE CRIMINAL ASSETS RECOVERY ACCOUNT FOR THE YEAR ENDED 31 MARCH 2009

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. I have audited the accompanying financial statements which comprise the statement of financial position as at 31 March 2009, and the statement of financial performance, the statement of changes in net assets and the cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes, as set out on pages 131 to 139.

The accounting officer's responsibility for the financial statements

2. The accounting officer is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting determined by the National Treasury as set out in note 2(i) to the financial statements and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The Auditor-General's responsibility

3. As required by section 188 of the Constitution of the Republic of South Africa, 1996 read with section 4 of the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA), my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with the International Standards on Auditing read with *General Notice 616 of 2008*, issued in *Government Gazette No. 31057 of 15 May 2008*. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
5. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
6. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

7. In my opinion the financial statements present fairly, in all material respects, the financial position of the CARA as at 31 March 2009 and its financial performance and its cash flows for the year then ended, in accordance with modified cash basis of accounting determined by the National Treasury, as set out in note 2(i) to the financial statements and in the manner required by the PFMA.

Emphasis of matters

Without qualifying my opinion, I draw attention to the following matters on which I do not express a qualified opinion:



Basis of accounting

8. The entity's policy is to prepare financial statements on modified cash basis of accounting, as set out in note 2(i) to the financial statements.

Restatement of corresponding figures

9. As disclosed in note 11 to the financial statements, the corresponding figures for 31 March 2008 have been restated as a result of certain matters having been clarified by the National Treasury during the year under review.

Other matters

Without qualifying my opinion, I draw attention to the following matters that relate to my responsibilities in the audit of the financial statements:

Governance framework

10. The governance principles that impact the auditor's opinion on the financial statements are related to the responsibilities and practices exercised by the accounting officer and executive management and are reflected in the key governance responsibilities addressed below:

Key governance responsibilities

11. The PFMA tasks the accounting officer with a number of responsibilities concerning financial and risk management and internal control. Fundamental to achieving this is the implementation of key governance responsibilities, which I have assessed as follows:

No.	Matter	Y	N
Clear trail of supporting documentation that is easily available and provided in a timely manner			
1.	No significant difficulties were experienced during the audit concerning delays or the availability of requested information.	X	
Quality of financial statements and related management information			
2.	The financial statements were not subject to any material amendments resulting from the audit.		X
3.	The annual report was submitted for consideration prior to the tabling of the auditor's report.	X	
Timeliness of financial statements and management information			
4.	The annual financial statements were submitted for auditing as per the legislated deadlines section 40 of the PFMA.		X
Availability of key officials during audit			
5.	Key officials were available throughout the audit process.	X	
Development and compliance with risk management, effective internal control and governance practices			
6.	Audit committee		
	• The entity had an audit committee in operation throughout the financial year.	X	
	• The audit committee operates in accordance with approved, written terms of reference.	X	
	• The audit committee substantially fulfilled its responsibilities for the year, as set out in section 77 of the PFMA and Treasury Regulation 3.1.10.	X	
7.	Internal audit		
	• The entity had an internal audit function in operation throughout the financial year.	X	
	• The internal audit function operates in terms of an approved internal audit plan.	X	
	• The internal audit function substantially fulfilled its responsibilities for the year, as set out in Treasury Regulation 3.2.		X
8.	There are no significant deficiencies in the design and implementation of internal control in respect of financial and risk management.	X	



9.	There are no significant deficiencies in the design and implementation of internal control in respect of compliance with applicable laws and regulations.	X	
10.	The information systems were appropriate to facilitate the preparation of the financial statements.	X	
11.	A risk assessment was conducted on a regular basis and a risk management strategy, which includes a fraud prevention plan, is documented and used as set out in [Treasury Regulation 3.2/27.2]/[section 62(c)(i)/95(c)(i) of the MFMA].	X	
12.	Powers and duties have been assigned, as set out in section 44 of the PFMA.	X	
Follow-up of audit findings			
13.	The prior year audit findings have been substantially addressed.	X	
14.	SCOPA/Oversight resolutions have been substantially implemented.		X

APPRECIATION

12. The assistance rendered by the staff of the CARU and CARA task team during the audit is sincerely appreciated.

Pretoria

31 July 2009

Auditor-General



AUDITOR - GENERAL
SOUTH AFRICA

Auditing to build public confidence



STATEMENT OF FINANCIAL PERFORMANCE (SPR) FOR THE YEAR ENDED 31 MARCH 2009

		2009	2008
		R'000	R'000
Revenue			
Net proceeds from forfeited assets	4	65,862	44,427
Less: expenditure			
CARC allocations		0	0
		65,862	44,427
Other operating expenses/(income)		0	0
Surplus/(deficit) for the year		65,862	44,427



STATEMENT OF FINANCIAL POSITION (SPO) AS AT 31 MARCH 2009

	Notes	2009 R'000	2008 R'000
ASSETS			
Current assets			
Cash and cash equivalents	6	158,760	99,805
Total assets		158,760	99,805
LIABILITIES			
Current liabilities			
Trade and other payables	5	3,758	10,665
CAPITAL AND RESERVES			
Total net assets			
Accumulated surplus	7	155,002	89,140
Total net assets and liabilities		158,760	99,805



STATEMENT OF CHANGES IN NET ASSETS AS AT 31 MARCH 2009

	Notes	2009 R'000	2008 R'000
Accumulated Surplus			
Balance as at 1 April		89,140	44,713
Plus: Surplus/ (deficit) for the year		65,862	44,427
Balance as at 31 March	7	155,002	89,140



CASH FLOW STATEMENT AS AT 31 MARCH 2009

	Notes	2009 R'000	2008 R'000
CASH FLOWS FROM OPERATING ACTIVITIES			
Cash receipts on behalf of beneficiaries		65,862	44,427
Cash paid to beneficiaries and creditors		-6,907	-23,097
Cash generated from/(utilised in) operations	8	58,955	21,330
Investment income received		0	0
Net cash inflows/ (outflows) from operating activities		58,955	21,330
CASH FLOWS FROM INVESTING ACTIVITIES			
Net cash flows from investing activities		0	0
CASH FLOWS FROM FINANCING ACTIVITIES			
Net cash flow financing activities		0	0
Net increase/(decrease) in cash and cash equivalents		58,955	21,330
Cash and cash equivalents at the beginning of the year		99,805	78,475
Cash and cash equivalents at end of the year		158,760	99,805



NOTES TO THE FINANCIAL STATEMENTS

31 MARCH 2009

1. General information

The Criminal Assets Recovery Account (The CARA) receives proceeds in cash or property from the enforcement of the Prevention of Organized Crime Act 121 of 1998 by the Asset Forfeiture Unit (AFU).

The Annual Financial Statements have been prepared in accordance with the following policies, which have been applied consistently in all material aspects, unless otherwise indicated. However, where appropriate and meaningful, additional information has been disclosed to enhance the usefulness of the Annual Financial Statements and to comply with the statutory requirements of the Public Finance Management Act, Act 1 of 1999 (as amended by Act 29 of 1999), and the Treasury Regulations issued in terms of the Act and the Division of Revenue Act, Act 2 of 2006.

2. Principal accounting policies

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

(i) Basis of preparation

The Financial Statements have been prepared on a modified cash basis of accounting. The modified cash basis constitutes the cash basis of accounting supplemented with additional disclosure items. Under the cash basis of accounting transactions and other events are recognised when cash is received or paid.

(ii) Presentation currency

The Financial statement are presented in South African Rand.

(iii) Rounding

Unless otherwise stated all financial figures have been rounded off to the nearest one thousand rand (R'000).

(iv) Comparative figures

Prior year comparative financial information has been presented in the current year's financial statements. Where necessary, comparative figures have been reclassified to ensure that the format in which the information is presented is consistent with the format of the current year's financial statements.



3. Summary of significant accounting policies

3.1. Revenue

(i) Definition of Revenue

All monies deposited into the South African Reserve Bank for the CARA represent the net proceeds of the Court Orders after the deduction of curator fees and other related expenses from the proceeds.

(ii) Revenue recognition

Revenue is recognised on the cash basis when the forfeited assets have been disposed of for cash, and actual deposits have been received into the CARA account.

(iii) Unidentified deposits

Deposits received in the CARA account at the South African Reserve Bank that are not related to cases under management, are classified as unidentified deposits, and are not recognised as revenue until identified.

3.2. Expenditure

Section 69 of the Prevention of Organised Crime (POC) Act provides that monies and property in the CARA may only be distributed to beneficiaries on recommendation by the Criminal Asset Recovery Committee (CARC) and after approval by National Cabinet.

Actual curator, investigation and other relevant expenses and fees are not recognised as CARA expenditure, but are disclosed in the notes to the financial statements.

The expenditure therefore, represents the property and monies allocated to specific law enforcement agencies, any institution, organisation or fund established with the objective of rendering assistance in any manner to victims of crime and for the administration of the Account in terms thereof.

3.3. Cash and cash equivalents

Cash and cash equivalents consist of cash deposited in the CARA account at the South African Reserve Bank.

3.4. Contingent assets and liabilities

All assets (including cash) forfeited to the state in pursuance of court orders, for cases finalised but not yet fulfilled, are not recognised as "Revenue" but disclosed as "Contingent Assets", pending their realisation and deposit into the CARA account.

Contingent assets are disclosed at the latest available curators valuation less estimated curator expenditure. A notional value of R1 will be allocated to each of those assets where a curators valuation is not available and a reasonable estimate cannot be determined.

3.5. Payables

Payables comprise amounts approved by the National Cabinet for distribution to identified beneficiaries as defined in the POC Act, and any amounts incorrectly deposited into the CARA account.



DISCLOSURE NOTES TO THE FINANCIAL STATEMENTS 31 MARCH 2009

	2009	2008
	R'000	R'000
4. Revenue		
Confiscation orders	34,549	24,536
Forfeitures orders	14,887	19,233
Interest received	16,049	563
Other	377	95
	65,862	44,427



	2009 R'000	2008 R'000
5 Trade and other payables		
South African Police Service	3,700	10,600
Unidentified deposits	58	38
Victims payments incorrectly deposited into CARA	0	2
	3,758	10,665

	2009 R	2008 R
6 Cash and cash equivalents		
South African Reserve Bank		
Opening balance as at 1 April	99,805	78,475
Plus: Funds received during financial year	65,914	45,561
	165,719	124,036
Less: Funds repaid during financial year	6,959	24,231
	158,760	99,805

7 Accumulated surplus/(deficit)		
Opening balance as at 1 April	89,140	44,713
Plus: Surplus/(Deficit) for the year	65,862	44,427
Balance at the end of the year	155,002	89,140

8 Cash generated from/ (utilised in) operations		
Surplus/(deficit) for the year	65,862	44,427
Plus: Unidentified monies received	52	1,134
Less: Fund repaid during financial year	6,959	24,231
Net cash flows from operating activities	58,955	21,330

9 Related Parties

Name of related parties

Relationship

Department of Justice and Constitutional Development
National Prosecuting Authority
Legal Aid Board
Special Investigating Unit

Department under common ministry
Department under common ministry
Entity under common ministry
Entity under common ministry

Related Parties Transactions

All compensation and administration costs for the CARA are paid for by the National Prosecuting Authority. There were no related parties balance at year end



10 Contingent assets and liabilities

Total assets (including cash) forfeited to the state in pursuance of court orders, pending realisation and deposit into the CARA account are valued at R59 million as at 31 March 2009 (*R56 million in 2007/8*). The cumulative value of curator fees and related expenses of these assets, as determined by the latest available curator reports are valued at R1.7 million (*R2.5 million in 2007/8*). The estimated net proceeds expected are R57 million (*R53,5 million in 2007/8*).

11 Restatement of Financial Statements

After application to and approval by the Accountant General on an appropriate basis of accounting, the CARA Financial Statements have been prepared on modified cash basis with appropriate disclosures. The inclusion of Contingent Assets constitutes a significant restatement of Financials Statements as previously disclosed.

