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## **FINANCIAL INTELLIGENCE CENTRE**

Presentation to the Technical Committee of the  
Portfolio Committee on Justice and  
Constitutional Development

**10 October 2011**



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### **DISCUSSION POINTS**

- Provide background information on the Financial Intelligence Centre Act
- Discuss the provisions in the Protection of Personal information Bill that will impact on the work of the Financial Intelligence Centre



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## **OBJECTIVES OF THE CENTRE**

- Principle objective of the Centre is to identify the proceeds of unlawful activities
- Combat money laundering activities and the financing of terrorist and related activities
- Make information collected by it available to investigating authorities, intelligence agencies, supervisory bodies and the South African Revenue Services
- Exchange information with similar institutions in other countries
- Supervise and enforce compliance with the FIC Act and to facilitate effective supervision and enforcement by supervisory bodies

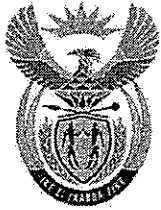


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## **HOW DOES THE CENTRE ACHIEVE ITS OBJECTIVES?**

- Process, analyse, and interpret information disclosed to it
- Inform, advise, and co-operate with investigating authorities, supervisory bodies, the SARS and the intelligence services
- Monitor and give guidance to financial and other institutions and supervisory bodies
- Retain the information disclosed to it.
- Supervise and enforce compliance with the FIC Act of institutions not regulated or supervised by a supervisory body



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## **MEASURES TO COMBAT MONEY LAUNDERING IN THE FIC ACT**

The FIC Act places certain obligations to a variety of financial and non-financial institutions referred to in the Act as accountable institutions

- Identify customers
- Keep records of customers and transactions
- Report suspicious and unusual transactions
- Report cash transactions above R25 000
- Register with the Centre
- Institute internal controls



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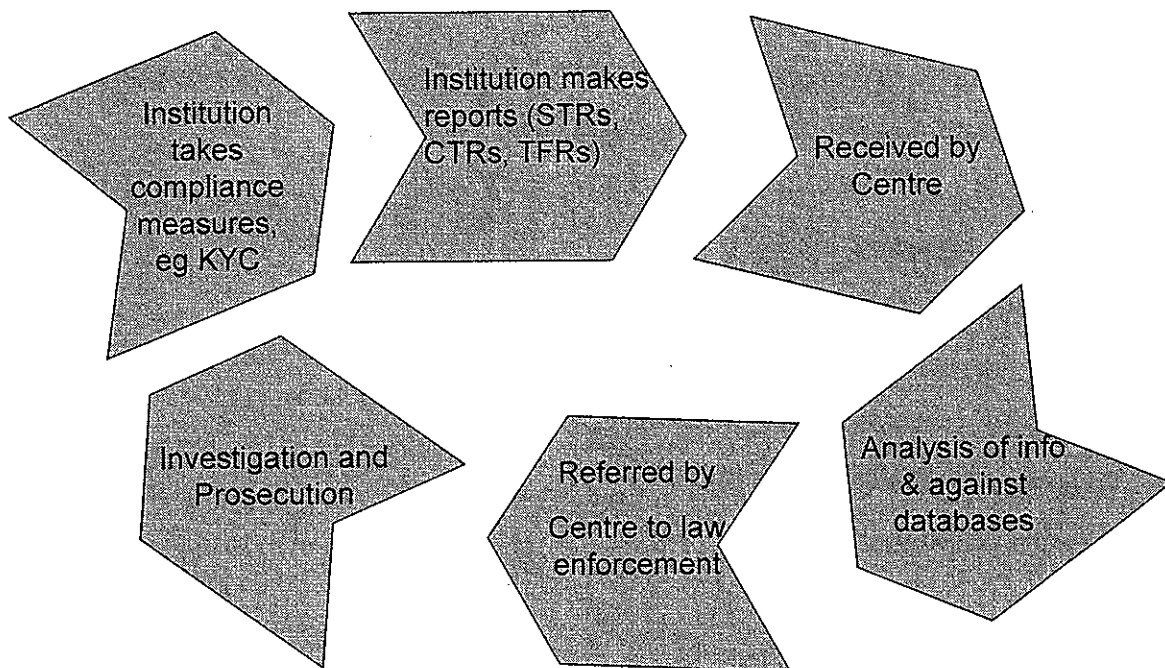
## **DUAL FUNCTION OF THE CENTRE**

- Performs a quasi law enforcement function in respect of receiving and disseminating information disclosed to it
- Performs a quasi supervisory function in respect of compliance with the FIC Act



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## QUASI LAW ENFORCEMENT PROCESS



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## POWERS AT THE CENTRE'S DISPOSAL

- Access to records kept by institutions relating to reports made in terms of the FIC Act
- Request confirmation that a person is a client of an institution
- Intervention in transactions
- Monitor clients' transactions

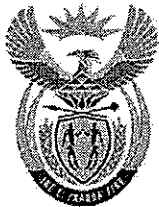


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## **WHO HAS ACCESS TO THE CENTRE'S INFORMATION?**

- Investigating authorities
- The SARS
- The Intelligence Services
- Foreign Counter-parts
- Foreign Investigating Authorities



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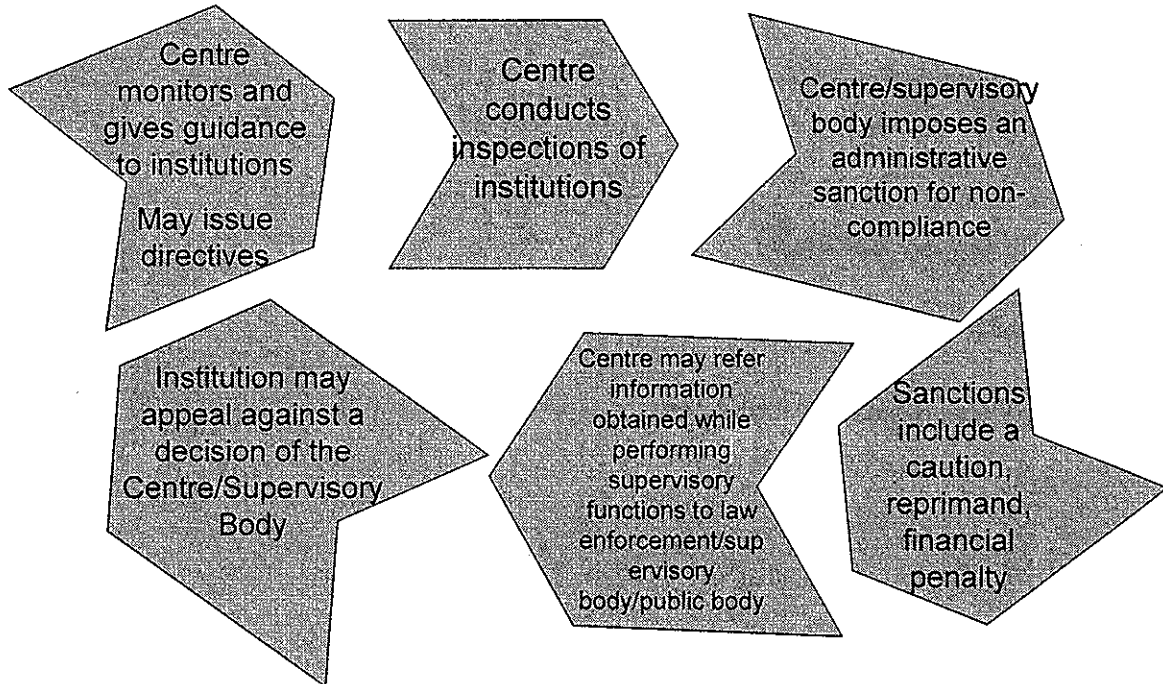
## **PROTECTION OF PERSONS MAKING REPORTS TO THE CENTRE**

- Legal liability
- Competent but not compellable witness
- Anonymity
- Certificate concerning content of reports to Centre



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## QUASI SUPERVISORY PROCESS



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## POWERS AT THE CENTRE'S DISPOSAL IN RESPECT OF SUPERVISORY FUNCTIONS

- Appointment of inspectors to conduct inspections on institutions not regulated by a supervisory body
- Administering administrative sanctions in the absence of a supervisory body
- Issuing of directives regarding the application of the FIC Act
- Sharing of information obtained while performing supervisory/monitoring function



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## **PROVISIONS IN PPIB THAT ARE OF CONCERN**

### **EXCLUSION PROVISION:**

- Initial list of exclusions did not include information received and disseminated by the Centre based on reporting obligations under the FIC Act
- Committee has addressed this issue by amending the clause to exclude activities aimed at assisting in identifying money laundering and terrorist related activities (Option 1)



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## **PROVISIONS IN PPIB THAT ARE OF CONCERN**

### **EXCLUSION PROVISION (ctd)**

- FIC Act has been amended to grant the Centre supervisory and enforcement powers
- Exclusion provision may hamper the processing of information during inspections and imposing of administrative penalties for non-compliance. Enforcement is confined to administrative remedies as apposed to criminal prosecution



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## **PROVISIONS IN PPIB THAT ARE OF CONCERN**

### **CONSENT, JUSTIFICATION AND OBJECTION(CLAUSE 10)**

- Initial wording of the Bill did not take into account the processing of information by institutions in terms of their reporting obligations under FIC Act, ie the FIC Act specifically prohibits tipping-off when reporting a suspicious or unusual transaction
- Centre's core function includes processing of information. Implications of this provision are far reaching in terms of the Centre being able to carry out its mandate
- Propose that the clause should allow for processing of information by regulators in the performance of their supervisory functions eg inspecting of client records of institutions without the data subject's consent



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## **PROVISIONS IN PPIB THAT ARE OF CONCERN**

### **COLLECTION DIRECTLY FROM DATA SUBJECT(CLAUSE 11)**

- Centre does not receive information directly from data sources - relies on information reported by institutions
- From supervisory perspective, a restrictive clause will hamper the functioning of regulators when performing their supervisory function



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## **PROVISIONS IN PPIB THAT ARE OF CONCERN**

### **FURTHER PROCESSING TO BE COMPATIBLE WITH PURPOSE OF COLLECTION (CLAUSE 15)**

- Centre's core function includes the further processing of information in the form of analysis of reported information
- Reporting obligations placed on institutions under the FIC Act would also constitute the further processing of information
- From supervisory perspective, a restrictive clause will hamper the sharing of information with other regulators as well as equivalent entities outside the Republic



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## **PROVISIONS IN PPIB THAT ARE OF CONCERN**

### **NOTIFICATION TO REGULATOR AND DATA SUBJECT (CLAUSE 17 AND 17A)**

- Conflict that may arise with these provisions and the reporting obligations under the FIC Act, eg person making a suspicious transaction report expressly prohibited from disclosing this to anyone, even the person being reported on
- Centre's core function includes receiving reports from institutions and disseminating information to law enforcement agencies. Obligation to notify the Regulator and the data subject would undermine the implementation of the FIC Act as well as the functioning of the Centre
- From supervisory perspective, if the regulatory functions are not specifically excluded it will hamper the regulator in carrying out its mandate



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## **PROVISIONS IN PPIB THAT ARE OF CONCERN**

### **TRANSFER OF PERSONAL INFORMATION OUTSIDE REPUBLIC (CLAUSE 69)**

- The Centre may share information it has on its database with Financial Intelligence Units in other countries or investigating authorities outside the country and is under international obligation to provide assistance to foreign counter-parts in this regard
- The clause should not prevent regulators from meeting international obligations relating to the sharing of information



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**THANK YOU FOR YOUR ATTENTION!**