



# ***Commercial Branch***

## ***Policy***



## **INDEX**

<b><u>SUBJECT</u></b>	<b>PAGE</b>
<b>VISION, MISSION, PURPOSE</b>	<b>1</b>
<b>HISTORICAL PERSPECTIVE</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>3</b>
<b>OBJECTIVE OF THE COMMERCIAL BRANCH POLICY</b>	<b>3 - 4</b>
<b>LEGAL AND POLICY FRAMEWORK OF THE COMPONENT: COMMERCIAL BRANCH IN THE DETECTIVE SERVICE</b>	<b>4 - 6</b>
<b>OBJECTIVE OF THE COMPONENT: COMMERCIAL BRANCH</b>	<b>6</b>
<b>POLICING OF COMMERCIAL RELATED CRIMES (TERMS OF REFERENCE)</b>	<b>6 -14</b>
<b>FUNCTIONAL AREA OF THE COMMERCIAL BRANCH</b>	<b>14</b>
<b>FUNCTIONING OF THE COMMERCIAL BRANCH</b>	<b>14 - 22</b>
<b>CRIME INFORMATION/INTELLIGENCE</b>	<b>22</b>
<b>FINANCIAL POLICY: COMMERCIAL BRANCH</b>	<b>22 - 23</b>
<b>EFFECTIVE CONTROL OF THE COMMERCIAL BRANCH</b>	<b>23 - 27</b>
<b>HUMAN RESOURCES: COMMERCIAL BRANCH</b>	<b>27 - 32</b>
<b>SUBSTITUTION</b>	<b>32</b>

## *Vision*

To promote economic growth and prosperity by stemming the commercial crime wave

## *Mission*

The Commercial Branch is committed to the combatting of commercial crime in partnership with *those we serve*

## *Purpose*

... is to investigate and prevent commercial crime as contained in the mandate

## **HISTORICAL PERSPECTIVE**

The Johannesburg Company Fraud Staff was established in 1947 and was the only one of its kind in South Africa. Difficult and substantial commercial crimes committed all over South Africa were referred to Johannesburg for investigation (Sherman in Van der Walt, 1975:359).

As a result of the general increase in commercial crime, the Commercial Branch was reorganised and expanded in 1969. The Headquarters of the branch was in Johannesburg, with branches in Cape Town, Pretoria, Durban, Bloemfontein, Port Elizabeth and later Klerksdorp (Sherman in Van der Walt 1975:359). In August 1982 the Commercial Branch, Head Office was moved from Johannesburg to the South African Police Head Office in Pretoria.

To keep up with changes in the external environment, and in view of the increasing pressure from the financial and business sector to police commercial crime more effectively, the Commercial Branch was reorganised in the period 1988 - 1997.

The Commercial Branch then comprises of nine provincial offices in the Republic of South Africa and consists of -

- twelve Commercial Crime Units;
- thirteen Syndicate Fraud Units; and
- forty three Fraud Units

During 2002, the Commercial Branch underwent a restructuring process. The aim to this restructuring was to enhance the effectiveness and efficiency.

The Commercial Branch comprises of 17 new branches

- seventeen Commercial Branches
- one Serious Economic Offences unit

## **POLICY DOCUMENT**

### **1. INTRODUCTION**

A clear policy is required in order to -

- \* meet the Detective Service's responsibilities in respect of policing commercial crimes as required by the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996); the South African Police Service Act, 1995 (Act No 68 of 1995) and the National Strategic Intelligence Act, 1994 (Act No 39 of 1994);
- \* meet the functional responsibilities, the Divisional Commissioner: Detective Service has been charged with by the National Commissioner; and
- \* tend to the priorities and to reach the objectives set from time to time by the Divisional Commissioner: Detective Service.

### **2. DEFINITIONS:**

Certain definitions contained in the policy document have the same meaning as the Detective Policy and must be read in conjunction with the Detective Service policy document.

### **3. OBJECTIVES OF THE COMMERCIAL BRANCH POLICY**

It is intended that this policy shall -

- \* effect effective command and control over the Commercial Branch;
- \* set policy, including standards and guidelines in respect of the establishment and management of commercial crime investigation and a commercial crime information function;
- \* set policy, including standards and guidelines for the recruitment, appointment and training of Commercial Branch detectives;
- \* determine obligations in terms of inspections and control in order to ensure accountability at all levels; and

- \* **create strategic direction for the Commercial Branch;**
- \* **define a workable and practical structure for the Commercial Branch;**
- \* **set policy, including standards and guidelines for the development of a business and operational plans;**
- \* **determine standards and guidelines for liaison with external role players and internal stakeholders to combat commercial related crimes.**
- \* **determine responsibilities and powers in respect of the assignment and utilization of resources, including human and financial resources, vehicles and equipment that are at the disposal of the Commercial Branch at all levels.**

#### **4. LEGAL AND POLICY FRAMEWORK OF THE COMPONENT: COMMERCIAL BRANCH IN THE DETECTIVE SERVICE**

The policy of the Commercial Branch was developed in accordance with the legal responsibilities placed on the Detective Service regarding the combating, investigation, gathering and the dissemination of information on commercial related crime. The policy guidelines affecting the Detective Service in the South African Police Service were also followed.

This policy shall be implemented within the framework of and with due regard to -

- \* **the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996) with specific reference to Chapters 2 and 11, Schedule 6 and Annexure D (in terms of Schedule 6 and Annexure D of the said Constitution, section 215, 218 and 219 of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993), remains in force in an amended form);**
- \* **the South African Police Service Act, 1995, especially Chapters 4,5 and 6 and sections 70 and 71;**
- \* **the Criminal Procedure Act, 1977 (Act No 51 of 1977);**
- \* **the Secret Service Act, 1978 (Act No 56 of 1978), with specific**

reference to section 1 pertaining to the definition of a “secret service”, section 2(1) and 3(1) and section 3B(1);

- \* the Intelligence Service Control Act, 1994 (Act No 40 of 1994, with specific reference to section 7(11)(a) and (b);
- \* the South African Qualification Authority Act, 1995 (Act No 58 of 1995);
- \* the Interception and Monitoring Prohibition Act, 1992 (Act No 127 of 1992);
- \* the Skills Development Act, 1998 (Act No 97 of 1998);
- \* the Minimum Information Security Standards as approved by Cabinet on 1996-12-04;
- \* the Public Finance Management Act, 1999 (Act No 29 of 1999);
- \* the Annual Plan setting out Priorities and Objectives of the National Commissioner of the South African Police Service, for the following financial year, as required by section 11(2)(a) of the South African Police Service Act, 1995; and policy provisions that may be issued from time to time
- \* policy provisions that may be issued from time to time;
- \* the statutes and regulations contained in the terms of reference (mandate) of the Commercial Branch;
- \* common-law offences contained in the terms of reference (mandate) of the Commercial Branch;
- \* the activities of the Detective Service in the South African Police Service

## 5. OBJECTIVES OF THE COMMERCIAL BRANCH

The main objectives of the Commercial Branch are -

- \* to ensure the effective prevention and investigation of

commercial related crimes;

- \* to ensure the effective gathering, management, use and dissemination of information on commercial crime, in order to meet the legal responsibility of the South African Police Service; and
- \* to ensure excellent service delivery through effective investigation of commercial related crimes.

## **6. POLICING OF COMMERCIAL RELATED CRIMES**

Policing includes the proactive (prevention) and reactive (investigation) measures.

### **6.1 TERMS AND REFERENCES (MANDATE): COMMERCIAL RELATED CRIMES**

The Commercial Branch shall be responsible for investigating offences in terms of the following:

#### **6.1.1 STATUTES AND REGULATIONS**

##### **Accountants and Auditors**

- (1) Public Accountants' and Auditors' Act, 1991 (Act No 80 of 1991)
- (2) Chartered Accountants Designation (Private) Act, 1993 (Act No 67 of 1993)

##### **Agriculture**

- (3) Land Bank Act, 1944 (Act No 13 of 1944). Repealed by section 53 of the Land and Agricultural Development Bank Act, 2002 (Act No. 15 of 2002)
- (4) Agricultural Credit Act, 1966 (Act No 28 of 1966)
- (5) Marketing of Agricultural Products Act, 1996 (Act No 47 of 1996)
- (6) Agriculture Produce Agents Act, 1992 (Act No 12 of 1992)

**Banking and Currency**

- (7) **Currency and Exchanges Act, 1933 (Act No 9 of 1933). (Exchange Control Regulations, 1961)**
- (8) **Bank Act, 1990 (Act No 94 of 1990)**
- (9) **Inspection of Financial Institutions Act, 1998 (Act No 80 of 1984). Repealed by Section 13(1) of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998)**
- (10) **Financial Institution (Investment of Funds) Act, 1984 (Act No 39 of 1984). Repealed by Section 11 of the Financial Institution (Protection of funds) Act, 2001 (Act no 28 of 2001)**

**Companies**

- (11) **Companies Act, 1973 (Act No 61 of 1973)**
- (12) **Close Corporations Act, 1984 (Act No 69 of 1984)**

**Co-operative Societies**

- (13) **Co-operatives Act, 1981 (Act No 91 of 1981)**

**Courts**

- (14) **Magistrates' Courts Act, 1944 (Act No 32 of 1944) - ONLY sections 74S, 74W and 79**

**Criminal Law and Procedure**

- (15) **Corruption Act, 1992 (Act No 94 of 1992), only complex cases (has been repealed with the Prevention and Combating of Corrupt Activities, 2004 (Act No. 12 of 2004).**
- (16) **Prevention of Organised Crime Act, 1998 (Act 121 of 1998) (where applicable to the Commercial Branch)**
- (17) **Financial Intelligence Centre Act, 2001 (Act No 38 of 2001), (where applicable to the Commercial Branch)**

**Debtor and Creditor**

- (18) Usury Act, 1968 (Act No 73 of 1968)
- (19) Participation Bonds Act, 1981 (Act No 55 of 1981). Repealed by Section 117 of the Collective Investment Scheme Control Act, (Act No 45 of 2002)

**Estates**

- (20) Administration of Estates Act, 1965 (Act No 66 of 1965)

**Finance**

- (21) Public Finance Management Act, 1999 (Act No 1 of 1999) as amended by (Act No 29 of 1999)

**Housing**

- (22) Share Blocks Control Act, 1980 (Act No 59 of 1980)
- (23) Sectional Titles Act, 1986 (Act No 95 of 1986)
- (24) Housing Development Schemes for Retired Persons Act, 1988 (Act No 65 of 1988)
- (25) Property Time-sharing Control Act, 1983 (Act No 75 of 1983)

**Insolvency**

- (26) Insolvency Act, 1936 (Act No 24 of 1936)

**Insurance**

- (27) Insurance Act, 1943 (Act No 27 of 1943). Repealed by Section 1 of the Taxation Laws Amendment Act, 2002 (Act No 30 of 2002)
- (28) Long-term Insurance Act, 1998 (Act No 52 of 1998)

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**Land**

- (29) Subdivision of Agricultural Land Act, 1970 (Act No 70 of 1970)**
- (30) Estate Agency Affairs Act, 1976 (Act No 112 of 1976)**

**Legal Practitioners**

- (31) Attorneys Act, 1979 (Act No 53 of 1979)**
- (32) Admission of Advocates Act, 1964 (Act No 74 of 1964)**

**Patents and Designs**

- (33) Merchandise Marks Act, 1941(Act No 17 of 1941)**
- (34) Business Names Act, 1960 (Act No 27 of 1960)**
- (35) Designs Act, 1993 (Act No 195 of 1993)**
- (36) Patents Act, 1978 (Act No 57 of 1978)**
- (37) Copyright Act, 1978 (Act No 98 of 1978)**
- (38) Counterfeit Goods Act, 1997 (Act No 37 of 1997)**

**Revenue**

- (39) Income Tax Act, 1962 (Act No 58 of 1962)**
- (40) Transfer Duty Act, 1949 (Act No 40 of 1949)**
- (41) Estate Duty Act, 1955 (Act No 45 of 1955)**
- (42) Stamp Duties Act, 1968 (Act No 77 of 1968)**
- (43) Value-Added Tax Act, 1991 (Act No 89 of 1991)**
- (44) Customs and Excise Act, 1964 (Act No 91 of 1964)**

**Stock Exchange**

- (45) Unit Trusts Control Act, 1981 (Act No 54 of 1981). Repealed by Section 117 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)**
- (46) Stock Exchanges Control Act, 1985 (Act No 1 of 1985)**
- (47) Financial Markets Control Act, 1989 (Act No 55 of 1989)**
- (48) Insiders Trading Act, 1998 (Act No 135 of 1998)**

**Trade and Industry**

- (49) Import and Export Control Act, 1963 (Act No 45 of 1963). Repealed by Section 63(2) of the International Trade Administration Act, 2002 (Act No. 71 of 2002)**
- (50) Sale and Service Matters Act, 1964 (Act No 25 of 1964)**
- (51) Trade Practices Act, 1976 (Act No 76 of 1976)**
- (52) Protection of Business's Act, 1978 (Act No 99 of 1978)**
- (53) Competition Act, 1998 (Act No 89 of 1998)**
- (54) Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No 71 of 1988)**

**Trust and Trustees**

- (55) Trust Property Control Act, 1988 (Act No 57 of 1988)**

**Weights, Measures and Standards**

- (56) Standards Act, 1993 (Act No 29 of 1993)**

**Welfare Organizations**

(57) **Friendly Societies Act, 1956 (Act No 25 of 1956)**

### **6.1.2 COMMON-LAW OFFENCES**

**All common-law offences pertaining to the statutes mentioned above, including fraud and theft committed under the following circumstances:**

#### **Theft**

- (a) Theft of trust monies by any person who is legally obliged to keep a separate trust account**
- (b) Theft by trustees or liquidators of the funds or assets of insolvent estates or estates under curatorship**
- (c) Theft by executors of the funds or assets from deceased estates**
- (d) Theft by persons employed in a fiduciary capacity, committed over a period by manipulating the accounting records of banks, building societies, insurance companies and businesses.**

#### **Fraud**

- (a) Fraud only arising from intercompany or close corporation transactions**
- (b) Fraud by the double discounting of instalment sale agreements**
- (c) Fraud by “factoring”**
- (d) Fraud arising from transactions on the stock exchange**
- (e) Computer related fraud, only if the computer itself has been manipulated and expert evidence in this regard is required.**
- (f) Internet related fraud includes all transactions done via the Internet where goods are purchased, bids are made and transfers done from one account to other accounts.**

**Note:** Internet related fraud can be combined with various other crimes i.e credit card fraud, kite flying and telephone banking and must not be viewed on it's own.

- (g) Fraud committed with stolen cards (stolen debit cards, stolen petrol cards and stolen credit cards). (Only credit cards reported by the Forensic Card Division of the banks where the modus operandi requires special investigative skills) (Single cases to be referred to the Detective Service).
- (h) Fraud committed at State Institutions i.e. government cheques (complex cases).
- (i) Fraud by persons employed in a fiduciary capacity, committed over a period by manipulating the accounting records of banks, building societies, insurance companies and businesses.
- (j) Advance Fee fraud (419 letter scams)

### **6.1.3 OTHER FRAUD-RELATED CRIMES**

- (a) Investigating cases of and coordinating information on counterfeit banknotes, and the counterfeiting of legal tender, whether or not they are of a national or international nature. (Prevention of Counterfeiting of Currency Act, 1965 [Act No 16 of 1965] and the South African Reserve Bank Act, 1989 [Act No 90 of 1989]). (Single banknotes to be investigated by the Detective Service)
- (b) Investigating cases of and coordinating information on white-plastic, clone cheques, counterfeiting and uttering of credit, debit and petrol cards. Cloned cheques include:
  - (1) Duplicate cheques (where a total of new cheques were printed and the original is still available).
  - (2) Altered cheques (where the account number or cheque holders' details were altered or another cheques' details were printed on).

**(3) Washed cheques (cheques where the account number, payee or other details were washed and new details were printed on).**

**(4) The above cheques can be used to:-**

- \* buy commodities**
- \* paid into false or existing bank accounts**
- \* cashed at a bank**

**(a) Investigating cases and coordinating information and carrying out structured police operations in respect of the black dollar cases.**

#### **6.1.4 KITE-FLYING**

**(a) Kite-flying, which is the unlawful generating of funds in bank accounts by means of depositing stolen or worthless bills of exchange (This does not include deposits of bills of exchange into the bank accounts of businesses/individuals as part of normal business practice). It includes the manifestations of fraud mentioned below:**

- \* Generating fictitious credit in bank accounts by means of stolen/worthless bills of exchange.**
- \* Transferring funds unlawfully from the account holders' accounts, which are subsequently paid out to other persons, after false identification has been presented.**
- \* Depositing stolen/worthless bills of exchange or unlawful electronic fund transfers to trust accounts or existing bank accounts by means of an ATM or otherwise.**
- \* Opening bank accounts for minors and subsequently creating funds by means of worthless or stolen bills of exchange. (These transactions take place without the required documentary proof.)**

**(b) All fraudulent actions pertaining to kite-flying committed by suspects in association with banking officials.**

**(c) Investigating cases and coordinating information which is connected**

to the matters mentioned above.

- (b) Cases shall be investigated at the place where the false account(s) was opened, irrespective of where the deposits and/or withdrawals against that account(s) were made.

In complex cases where the assistance of the Commercial Branch is required the matter should be discussed with the Provincial Commander: Commercial Branch in conjunction with the Provincial Head: Detective Service to determine which office will be responsible for the investigation.

## **7. *FUNCTIONAL AREA OF THE COMMERCIAL BRANCH***

The Commercial Branch is responsible for three distinct functional areas, namely:

- the investigation of commercial crime as defined in the terms of reference,
- the prevention of commercial crime as defined in the terms of reference, and
- the gathering, management, use and disseminating of information on commercial crime in conjunction with Crime Intelligence

## **8. *FUNCTIONING OF THE COMMERCIAL BRANCH***

The Commercial Branch shall function as follows:

### **8.1 *NATIONAL LEVEL***

#### **8.1.1 *HEAD: COMMERCIAL BRANCH:***

8.1.1.1 The Head: Commercial Branch is accountable to the Divisional Commissioner: Detective Service of the South African Police Service for the effective functioning of all branches within the Commercial Branch.

8.1.1.2 The Head: Commercial Branch acts on the behalf of the Divisional

**Commissioner of the Detective Service in respect of commercial crime-related matters, in order to meet the Divisional Commissioner of the Detective Service's responsibilities regarding commercial crime-related matters at national level.**

**8.1.1.3 The Head: Commercial Branch is responsible for managing the activities of the Commercial Branch, through proper planning, in accordance with the mission and priorities of the SAPS, and for actively implementing and exercising effective control over these activities.**

**8.1.1.4 The Head: Commercial Branch is also responsible for the following:**

- (a) Establishing national standards for the branches of the Commercial Branch regarding selection and training, performance by evaluation and all other matters relating to the functions of the Commercial Branch which require national uniformity.**
- (b) Developing and effectively utilizing the human, financial and all other resources of the Commercial Branch.**
- (c) The determination of training needs and a curriculum for members of the Commercial Branch.**
- (d) The maintenance of standards and methods for the investigation of commercial crime in accordance with the Commercial Branch's terms of reference.**
- (e) The internal monitoring and evaluation of the effectiveness of the branches of the Commercial Branch.**
- (f) The control, coordinating and monitoring all investigation/projects of the Commercial Branch across provincial and international borders.**
- (g) The conducting of special investigations assigned by the Divisional Commissioner: Detective Service.**

- (h) Regular visits to the branches of the Commercial Branch to ensure that the branches comply with the national policy, standards and procedures and give advice and assistance to ensure effective service delivery.
- (i) Manage personnel matters, labour relations, logistical matters financial management and general office administration.
- (j) The representation of the National Commissioner at forums and committees dealing with commercial crime.
- (k) To provide feedback on a regular basis to the Divisional Commissioner: Detective Service on aspects concerning commercial crime.
- (l) The Head: Commercial Branch shall exercise his functions as set out in paragraph 8.1.1.4 *supra*, in consultation with the Divisional Commissioner: Detective Service and the Provincial Hierarchy.

#### **8.2.1 SECTION HEAD: COMMERCIAL BRANCH**

**8.2.2 The Section Head: Commercial Branch is directly accountable to the Head: Commercial Branch**

#### ***FUNCTIONS AND RESPONSIBILITIES***

**The functions and responsibilities of the Section Head: Commercial Branch are:**

- (a) The coordinating of all Commercial Branch investigations at national level
- (b) The management and dissemination of all relevant crime information
- (c) The assessment of national standards for the Commercial Branch regarding selection, training and performance by evaluating all other matters relating to the functions of the Commercial Branch which require national uniformity
- (d) The determination of training needs and curriculum for members of the Commercial Branch

- (e) The maintenance of standards and methods for the investigation of commercial crime in accordance with the Commercial Branch terms of reference
- (f) The monitoring and evaluation of the effectiveness of the Commercial Branch
- (g) The control, coordinating and monitoring of all investigations/projects of the Commercial Branch across provincial and international borders
- (h) The conducting of special investigations assigned by the Head: Commercial Branch
- (i) Regular visits to Commercial Branches to ensure that they comply with the national policy, standards and procedures and give advice and assistance to ensure effective service delivery.
- (j) Manage personnel matters, labour relations, logistical matters, financial management and general office administration
- (k) Representing the Head: Commercial Branch at forums and committees with regard to commercial crime.
- (l) Manage the monthly crime returns.

### **8.2.3. COMMANDER: SERIOUS ECONOMIC OFFENCES UNIT**

The Commander: Serious Economic Offences Unit is directly responsible to the Head: Commercial Branch

#### ***FUNCTIONS AND RESPONSIBILITIES:-***

The functions and responsibilities of the commander are:

- (a) Maintain standards and methods for the investigations of cases by the Serious Economic Offences Unit.
- (b) Management and dissemination of all relevant crime information.
- (c) Conducting special investigations assigned by the Head: Commercial

**Branch.**

- (d) **Conducting investigations in respect of serious economic offences.**
- (a) **Determining training needs and to provide training for investigators for the Serious Economic Offences Unit.**
- (b) **Conduct two inspections per year to ensure effective service delivery.**
- (c) **Manage personnel matters, labour relations, logistical matters, financial matters and general office administration.**
- (d) **To provide feedback on a regular basis to the Head: Commercial Branch**
- (e) **The attendance of crime scenes**
- (f) **Continuously improving working relations between Serious Economic Offences Unit, Commercial Branch-members, and members involved in other areas of policing and other relevant role-players.**
- (g) **Visit to provinces, if requested, in order to do an evaluation of a case for proposal to the Head: Commercial Branch, regarding a request received from the Provincial Commander for an investigation to be taken over by Serious Economic Offences Unit.**
- (h) **Managing of investigations undertaken by members of Commercial Branches in the Provinces when instructed to do so by the Head: Commercial Branch.**

### **8.3 PROVINCIAL LEVEL**

#### **8.3.1 PROVINCIAL COMMANDER: COMMERCIAL BRANCH**

**The Provincial Commander: Commercial Branch is directly accountable to the Provincial Head: Detective Service who in turn is responsible to the Provincial Commissioner. The Provincial Commander: Commercial Branch is also responsible to the Head: Commercial Branch for the effective investigation of Commercial Branch cases and the gathering, management, uses and dissemination of commercial crime information.**

The Provincial Commander is also responsible for meaningful influence and consultation with the Area Commissioners as set out in this document.

***FUNCTIONS AND RESPONSIBILITIES:-***

The functions and responsibilities of the Provincial Commander: Commercial Branch as far as the Commercial Branch is concerned are:

- (a) The effective command and control over the branches of the Commercial Branch
- (b) The maintaining of standards and methods for investigating commercial crime.
- (c) The internal monitoring and evaluation of the effectiveness of the Commercial Branch(s) under their command.
- (d) Controlling, coordinating and monitoring of all commercial crime investigations/projects across area borders allocated to the province.
- (e) The management and dissemination of all relevant crime information.
- (f) Conducting special investigations assigned by the Head: Commercial Branch/ Provincial Hierarchy.
- (g) Conducting investigations in respect of commercial crime.
- (h) Determining training needs and to provide training for investigators of the Commercial Branch.
- (i) Regular visits to Commercial Branches to ensure that they comply with the national policy, standards and procedures and give advice and assistance to ensure effective service delivery.
- (j) Conduct two inspections per year to ensure effective service delivery.
- (k) Manage personnel matters, labour relations, logistical matters, financial matters and general office administration.

- (l) **The representation of the Provincial Hierarchy at forums and committees regarding commercial crime.**
- (m) **To provide feedback on a regular basis to the Head: Commercial Branch and the Provincial Head: Detective Service on aspects concerning commercial crime.**
- (n) **Manage the monthly crime returns**

#### **8.4 BRANCH LEVEL : COMMERCIAL BRANCH**

**The Commander: Commercial Branch is directly accountable to the Provincial Commander: Commercial Branch.**

##### ***FUNCTIONS AND RESPONSIBILITIES***

**The functions and responsibilities of the Commander: Commercial Branch as far as the branch is concerned are:**

- (a) **The effective command and control over the branch.**
- (b) **The effective prevention of commercial related crimes.**
- (c) **The effective investigation of commercial related crimes.**
- (d) **The receipt and administration of case dockets.**
- (e) **The inspection of case dockets in accordance with standing instructions.**
- (f) **The certification of case dockets to and from court.**
- (g) **The attendance of crime scenes.**
- (h) **The conducting of special investigations assigned by the Provincial Commander: Commercial Branch.**
- (j) **The management and dissemination of all relevant commercial crime information.**

- (k) Undertaking the in-service training of members involved in investigating commercial related crimes.
- (l) Manage the monthly crime return
- (m) Manage the filing of case dockets which were closed
- (n) Provide monthly management feedback to the Provincial Commander
- (o) Continuously improving working relations between Commercial Branch members, and members involved in other areas of policing and other relevant role-players.
- (p) Represent the Provincial Commander at forums and committees in his absence
- (q) Manage personnel matters, labour relations, logistical matters, financial matters and general office administration.
- (r) Promoting the image of the South African Police Service and the Commercial Branch in the province and area, and actively participating in operations aimed at developing community policing.
- (s) Ensuring that members meet the expectations regarding quality and productivity and that they implement the Commercial Branch policy, the regulations of the South African Police Service Act, 1995, other regulations, instructions, standing orders and other instructions issued by a higher authority.

## **9. CRIME INFORMATION/INTELLIGENCE**

- 9.1 Every Commercial Branch official shall during the exercise of his/her duties report all crime information for inclusion in the relevant crime information database.
- 9.2 Crime information has to be obtained in order to -
  - Prevent, combat and investigate crime; and

- **Formulate and implement strategic decisions pertaining to the safety and security of, e.g. the Detective Service, Crime Prevention and Operational Response Service and the National Commissioner**

#### **10. *FINANCIAL POLICY: COMMERCIAL BRANCH***

**The financial policy of the Commercial Branch falls within the framework of the financial policy of the Detective Service.**

**Each and every official in the Commercial Branch will have to take precautions in order to assure compliance with the provisions of the Public Finance Management Act, 1999 (Act no 1 of 1999) and regard should also be taken of the National Treasury Regulations promulgated by the National Treasury on 9 April 2001. Emphasis must be placed on cost effectiveness, accountable use and management of resources.**

**All relevant financial consideration when policy proposals are considered must be taken into account.**

**The compiling of a budget in accordance with the guidelines contained in the annual budget circular issued by the National Treasury in terms of Treasury Regulation 6.1., for the Commercial Branch, is the responsibility of the Head: Commercial Branch, the Section Commander: Commercial Branch, Head Office, every Provincial Commander: Commercial Branch and the Commanders: Commercial Branch. They must submit their draft budget-input to their respective financial managers of the Financial Services component.**

**It is the responsibility of the Provincial Commanders: Commercial Branch to consult with their Provincial Heads: Detective Service to determine their needs for the Commercial Branch with regard to information technology and human, financial and other resources, to be rendered from national level.**

**The approved budget for the Commercial Branch at national, provincial and branch level shall be made available to the Divisional Commissioner: Detective Service, the Head: Commercial Branch and the Provincial Commanders: Commercial Branch.**

**Any portion of the budget of the Commercial Branch may not, without the authorization of the Head: Financial Services in conjunction with the Divisional**

**Commissioner: Detective Service, be shifted to any other programme of the national budget vote.**

**The Provincial Commander: Commercial Branch, is responsible to the Provincial Head: Detective Service for managing the budget of the Commercial Branch at provincial level**

**The management, safeguarding and maintenance of assets allocated to the Commercial Branch and the management of liabilities are the responsibility of the Head: Commercial Branch, the Section Commander: Commercial Branch, Head Office, the Provincial Commanders, and Commanders of the Commercial Branches.**

**Any resources issued to the Commercial Branch shall only be withdrawn or transferred after consultation with the Head: Commercial Branch, the Provincial Head: Detective Service and the Provincial Commander: Commercial Branch.**

**When an investigation is undertaken by the Serious Economic Offences Unit by order of the Divisional Commissioner: Detective Service, Head Office or the Head: Commercial Branch the Divisional Commissioner: Detective Service will be responsible for the cost of the investigation. The respective Provinces will be responsible for the cost of the investigation when they request the assistance of the Serious Economic Offences Unit.**

#### **11. EFFECTIVE CONTROL OF THE COMMERCIAL BRANCH**

**Members attached to the Commercial Branch shall not be used to perform duties other than the classic duties demanded by their specific function. Such members may be used for non-classic duties only in emergency situations and after consultation with the Provincial Heads: Detective Service and Provincial Commanders: Commercial Branch.**

**A Commercial Branch shall not be closed down or relocated except with the consent of the Head: Commercial Branch.**

**The procedure for the reporting and transfer of cases to the Serious Economic Offence Unit will be:**

- The investigating officer together with his Commander will evaluate the case docket and complete column on (1) of the evaluation report. The case docket together with the evaluation report will be forwarded to the Provincial Commander. The Provincial Commander will evaluate the case docket and complete column two (2) of the evacuation report.
- The Provincial Commander will forward a request together with the completed evaluation report to the Commander: Serious Economic Offences Unit. The Commander: Serious Economic Offences Unit will evaluate the case docket and complete column three (3) of the evaluation report. The Commander: Serious Economic Offences Unit will forward the evaluation report together with a recommendation to the Head: Commercial Branch.
- The Head: Commercial Branch has the discretion to declare the case as a Serious Economic Offence after which the investigation will be taken over for investigation or managed by the Serious Economic Offences Unit.

### 11.1 EXAMPLE OF EVALUATION REPORT

A point of 1, 2 or 3 must be allocated to each question.

Allocation of points:

Investigating Officer and Branch Commander 1 <sup>st</sup> Column	Provincial Commander 2 <sup>nd</sup> Column	Commander: Serious Economic Offences Unit 3 <sup>rd</sup> Column
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Monetary value involved

5 - 20 Million = 1		20 - 50 Million = 2		Over 50 Million = 3	
Investigating officer and Branch Commander		Provincial Commander		Commander: Serious Economic Offences Unit	

**Extent of investigation**

<b>Low = 1</b>		<b>Average = 2</b>		<b>High = 3</b>	
<b>Investigating officer and Branch Commander</b>		<b>Provincial Commander</b>		<b>Commander: Serious Economic Offences Unit</b>	

**Complexity of investigation**

<b>Normal investigation</b>		<b>Advanced investigation</b>		<b>Complex investigation</b>	
<b>Investigating officer and Branch Commander</b>		<b>Provincial Commander</b>		<b>Commander: Serious Economic Offences Unit</b>	

**Public interest**

<b>Single interested party</b>		<b>Several interested parties</b>		<b>National interest</b>	
<b>Investigating officer and Branch Commander</b>		<b>Provincial Commander</b>		<b>Commander: Serious Economic Offences Unit</b>	

**Urgency of the investigation**

<b>Normal = 1</b>		<b>Extraordinary = 2</b>		<b>Extremely = 3</b>	
<b>Investigating officer and Branch Commander</b>		<b>Provincial Commander</b>		<b>Commander: Serious Economic Offences Unit</b>	

**Total members necessary to complete the investigation**

<b>One = 1</b>		<b>Two or four = 2</b>		<b>Five &amp; experts = 3</b>	
<b>Investigating officer and Branch Commander</b>		<b>Provincial Commander</b>		<b>Commander: Serious Economic Offences Unit</b>	

**Trail Court**

<b>Magistrate Court = 1</b>		<b>Regional Court = 2</b>		<b>High Court = 3</b>	
<b>Investigating officer and Branch Commander</b>		<b>Provincial Commander</b>		<b>Commander: Serious Economic Offences Unit</b>	

**TOTAL POINTS ALLOCATED**

<b>Investigating officer and Branch Commander</b>		<b>Provincial Commander</b>		<b>Commander: Serious Economic Offences Unit</b>	
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**Cases to be investigated by the Serious Economic Offences Unit:**

The criteria to be applied to determine whether a case will be investigated by the Serious Economic Offences Unit is:

<b>Criteria</b>	<b>Points allocated X</b>	<b>Weight =</b>	<b>Contribution ÷3</b>	<b>Value</b>	<b>Percentage</b>
<b>Amount</b>	<b>3x</b>	<b>10 % =</b>	<b>.30</b>	<b>0.10</b>	<b>10 %</b>
<b>Extent</b>	<b>3x</b>	<b>15 % =</b>	<b>.45</b>	<b>0.15</b>	<b>15 %</b>
<b>Complexity</b>	<b>3x</b>	<b>35 % =</b>	<b>1.05</b>	<b>0.35</b>	<b>35 %</b>
<b>Public Interest</b>	<b>3x</b>	<b>15 % =</b>	<b>.45</b>	<b>0.15</b>	<b>15 %</b>
<b>Urgency</b>	<b>3x</b>	<b>12 % =</b>	<b>.36</b>	<b>0.12</b>	<b>12 %</b>

Investigation	3x	8 % =	.24	0.08	8 %
Court	3x	5 % =	.15	0.05	5 %
TOTAL					100%

- For a case to be considered for investigation by the Serious Economic Offences Unit it has to achieve a minimum of 85 %.

## **12. HUMAN RESOURCES - COMMERCIAL BRANCH**

### **12.1 PERSONNEL**

#### **12.1.1 APPOINTMENT OF PERSONNEL AT THE COMMERCIAL BRANCH**

A member can be appointed as a Commercial Branch detective after:

- (a) he/she has been appointed as a detective
- (b) he/she has successfully completed a probation period of 12 months in which he/she:
  - (1) must complete the level 1 forensic course of the Commercial Branch
  - (2) has been declared competent by the Assessment Committee

Every Commander shall ensure that personnel under his/her command who deal with sensitive or classified information is properly vetted to the prescribed level and that the minimum information security standards are brought to the attention of all personnel and strictly adhered to.

Any member applying for a transfer to the Serious Economic Offences Unit has to have a minimum of five years practical experience at the Commercial Branch. A member transferred to Serious Economic Offences Unit will be placed at the Unit under probation for a period of one year during which his/her performance will be evaluated. If the member is declared competent by the Assessment Committee the member will be appointed at the Serious Economic Offences Unit on a

permanent basis.

The Divisional Commissioner: Detective Service may make exceptions regarding the Commercial Branch

### **13. APPOINTMENT OF COMMANDERS**

- The following minimum criteria shall apply to the appointment of a commander at the Commercial Branch:
  - \* Two years experience as a Commercial Branch investigator.
  - \* The Provincial Commander: Commercial Branch shall be part of the selection process.

### **14. TRAINING**

Commercial Crime courses shall be subjected to the recommendation of the Head: Commercial Branch and approved by Training, Head Office.

Specific modular training and outcomes-based modular training shall be presented as the need arises.

The following courses relating to commercial crime will be presented:

- Generic Commercial Crime level I, II, III course
- Further training, eg conferences, workshops and seminars

After completing a Commercial Crime course (Level I,II,III) a Commercial Branch detective shall as far as possible be issued with the necessary equipment required, according to his or her occupational need.

#### **14.1 Assessment and Certification**

An assessment process was decided on with the aim of putting a process in place whereby Provincial Commanders: Commercial Branch can assess their members before certificates are issued. The following process was agreed upon:

- **A member must successfully complete all tests and assignments on a specific course. The member, in consultation with the commander, must within a period of 3 months after successful completion of the course, identify 5 new case dockets for Level I, after a Level II course identify 3 new case dockets and after a Level III course identify 1 new case docket to be investigated for the purpose of evaluation. These dockets must be of a diverse nature and relate to the work covered in the various modules. Between month 4 and month 12 after completion of the course the member shall apply, via his/her Commander, to be assessed by the Provincial Commander.**
- **The Provincial Commander shall apply, together with a recommendation, to the Commercial Branch, Head Office for the issue of a certificate for a member declared competent. In the case of a member being declared not yet competent, remedial steps, not exceeding a period of 6 months, shall be implemented. (The remedial steps could for example include in-service training). The member must then be re-assessed. In the case of a member being declared not yet competent for a second time, the matter must be referred to the Provincial Head: Detective Service for a decision.**
- **Where a member does apply to be assessed, a compulsory assessment of the member will be done by the Provincial Commander: Commercial Branch in the eleventh month after completion of the course. Branch Commanders are to keep record of all members' training development.**

#### **15. *PLACEMENTS/TRANSFERS***

\_\_\_\_\_The Divisional Commissioner or his delegate has the power to consider the transfer of any member and to make a decision in this regard .

The Divisional Commissioner: Detective Service, after consultation with the Head: Commercial Branch, shall be empowered to affect the transfer of operational members between provinces and between Head Office and the provinces, in consultation with the provincial commissioner concerned.

In considering a transfer, irrespective of the origin of the request, there are certain considerations that must be taken into account before a final decision is reached.

- **There must be a valid and sufficient reason to transfer or not to grant a transfer to a member**

- **The interest of the Service**
- **The interest of the individual employee whose transfer is being considered**
- **The employee's career development**
- **The availability of a suitable, vacant post to which the member may be transferred**
- **The availability of funds**

**Transfers must be conducted through the official channels of command. Any final decision on or notice of transfer must be in writing.**

**No member may be transferred to or from the Serious Economic Offences Unit without the permission of the Head: Commercial Branch**

## **16. PROMOTIONS**

**The Provincial Commander: Commercial Branch must be part of the Evaluation Committee: Promotions to ensure that the candidate meets the criteria as set out in the policy of the Commercial Branch.**

## **17. INTERNATIONAL MATTERS**

**The arrests and intelligence/information in respect of all foreigners involved in criminal matters relating to commercial crime to and from South Africa must be reported to Interpol NCB, Pretoria. Interpol shall do criminal checks, regional analysis and global analysis on such suspects/intelligence on its various databases to determine whether the suspect is adversely known to the authorities in his/her country of origin and whether the person is wanted on outstanding international warrants for arrest. The report must contain the full names, addresses, reason for arrest, date of first appearance before court, date of next appearance in court and foreign passport numbers and fingerprints if available.**

### **18.1 The following must also be reported to Interpol:**

#### **18.1.1 The seizure of any contraband that might have originated outside the**

**borders of the Republic.**

**18.1.2 The seizure of any foreign counterfeit currency.**

**18.2 Members of the Commercial Branch must inform Interpol NCB Pretoria of their intended visits to any foreign country in respect of any investigation or the attendance of any workshop, conference, or training session. In respect of training, members of the various training components must inform Interpol of their intention to host any training program to which members of foreign policing agencies will be invited to attend as trainees. Interpol will assist in obtaining a list of nominees and in coordinating the planning thereof with foreign policing agencies.**

**18.3. Interaction with foreign law enforcement agencies on criminal matters must be reported to Interpol NCB, Pretoria.**

## **19. SKILLS DEVELOPMENT**

**19.1. A training committee, appointed by the Head: Commercial Branch shall perform functions in respect of training, as well as any other function related to training, laid down from time to time by the Head: Commercial Branch and the Divisional Commissioner: Detective Service.**

## **20. REPORTING**

**The Provincial Commanders: Commercial Branch shall keep the Head: Commercial Branch informed of all serious cases reported and investigated by them, or important matters relating to the management and image of the Commercial Branch.**

## **21. SUBSTITUTION**

**Any other policy or instruction which is inconsistent with this policy, is hereby withdrawn.**

**The above functions are always performed in terms of a broader Detective Service National Head Office policy and guidelines, which ensures uniformity of functions and activities at station, area, provincial, national and international level.**

**Approved/not approved**

**Comment**

**DIVISIONAL COMMISSIONER: DETECTIVE SERVICE**

Date:

Reviewed on 27 July 2004

