



Financial
Intelligence Centre

PUBLIC COMPLIANCE COMMUNICATION

PUBLIC COMPLIANCE COMMUNICATION No 39 (PCC 39)
TO MANDATED ENTITIES IN RELATION TO ACCESS BY AUTHORISED
OFFICERS TO INFORMATION HELD BY
THE FINANCIAL INTELLIGENCE CENTRE

The Financial Intelligence Centre (the Centre) provides the guidance contained in this Public Compliance Communication (PCC) in terms of its statutory function in terms of section 4(c) of the Financial Intelligence Centre Act, Act No. 38 of 2001, as amended (the FIC Act) read together with Regulation 28 of the Money Laundering and Terrorist Financing Control Regulations (the MLTFC Regulations) issued in terms of the FIC Act.

Section 4(c) of the FIC Act empowers the Centre to provide guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their duties and obligations in terms of the FIC Act. Guidance provided by the Centre is the only form of guidance formally recognised in terms of the FIC Act and the Regulations issued under the FIC Act. Accordingly, guidance provided by the Centre is authoritative in nature.

Disclaimer

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PCC Summary

In meeting its objectives in terms of section 3 and 4 of the FIC Act and in an attempt to combine efforts to combat unlawful activities, the Centre requires mandated entities to deal with information provided by the Centre in a responsible manner, according to handling conditions stipulated and according to any procedural arrangements required by Director of the Centre to maintain confidentiality. The Centre requires mandated entities to provide feedback to the Centre immediately, and thereafter every 3 months, 6 months and 12 months or in line with a Memorandum of Understanding the Centre concluded with the mandated entity in relation to referrals and reporting information or other information provided to the mandated entity by the Centre.

PCC39 takes effect on 03 August 2018.

Objective

The objective of this PCC is to provide guidance to mandated entities in relation to access to information held by the Centre and procedural arrangements regarding information provided to them by the Centre.

GLOSSARY

“authorised officer” for purposes of this PCC refers to any official of—

- (a) an investigating authority authorised by the head of that investigating authority to act under this Act;
- (b) the National Prosecuting Authority authorised by the National Director of Public Prosecutions to act under this Act;
- (c) an intelligence service authorised by the Director-General of that service to act under this Act;
- (d) the South African Revenue Service authorised by the Commissioner for that Service to act under this Act;
- (e) the Independent Police Investigative Directorate authorised by the Executive Director of that Directorate to act under this Act;
- (f) the intelligence division of the National Defence Force authorised by the Inspector-General of the National Defence Force to act under this Act;
- (g) a Special Investigating Unit authorised by the head of that Special Investigating Unit or Special Tribunal to act under this Act;
- (h) the office of the Public Protector authorised by the Public Protector to act under this Act;
- (i) an investigative division in an organ of state authorised by the head of the organ of state to act under this Act;
- (j) a supervisory body to whom the Centre may make information collected by it available to facilitate the administration and enforcement of the laws of the Republic in terms of section 3(2)(a) of the FIC Act.

“The Centre” means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

“FIC Act” refers to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) as amended by the Financial Intelligence Amendment Act, (Act No. 1 of 2017).

“Intelligence Division of the National Defence Force” means the Intelligence Division of the National Defence Force referred to in section 33 of the Defence Act, 2002 (Act No. 42 of 2002);

“intelligence service” means State Security Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);

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

“investigative division in an organ of state” means an investigative division in an organ of state in the Republic having a function by law to investigate unlawful activity within the organ of state;

“mandated entity” for the purposes of this PCC, refers to an investigating authority in the Republic, an intelligence service, an investigative division in an organ of state, and any other entity or authority stipulated in section 40(1)(a) to (aH), and section 40(1)(d) of the FIC Act.

“POCDATARA” refers to the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 74 of 1996).

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

“unlawful activity” has the meaning attributed to that term in section 1 of the Prevention Act and means “conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere”.

1. Introduction

- 1.1 The principal objectives of the Centre is to assist in the
- identification of the proceeds of unlawful activities;
 - the combating of money laundering activities and the financing of terrorist and related activities; and
 - implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations, under Chapter VII of the Charter of the United Nations.
- 1.2 Another objective of the Centre is to make information collected by it available to investigating authorities and supervisory bodies to facilitate the administration and enforcement of the laws of the Republic. [Section 3(1) and (2) of the FIC Act]

2. Access to information held by the Centre

- 2.1 Section 40 of the Financial Intelligence Centre Act has been amended by the Financial Intelligence Centre Amendment Act No. 1 of 2017 in relation to access to information held by the Centre.

3. Information available to a mandated entity

- 3.1 Section 40(1) of the FIC Act determines that the Centre must make reporting information or information obtained by it and information generated by its analysis of reported information or obtained information to the following mandated entities in South Africa:
- an investigating authority in the Republic;
 - the National Prosecuting Authority;
 - the Independent Police Investigative Directorate;
 - an intelligence service;
 - the Intelligence Division of the National Defence Force;
 - a Special Investigating Unit;
 - an investigative division in an organ of state;
 - the Public Protector; or
 - the South African Revenue Service;
 - Supervisory Bodies as listed in Schedule 2 to the FIC Act.

- 3.2 This does not mean that mandated entities can request unfettered access to information nor that they have immediate access to such information, at any time.
- 3.3 The abovementioned information may only be made available to mandated entities at the initiative of the Centre or at the request of an authorised officer of a mandated entity and **only** if the Centre reasonably believes such information is required to investigate suspected unlawful activity. [Section 40(1A) of the FIC Act]
- 3.4 A request for information by investigating authorities must comply with the following requirements:
- the request must be in writing; and
 - the request must specify the required information, the alleged offence and the purpose for which the information is required.
- 3.5 It is important that the confidentiality of the information is maintained before and after the information is provided at all times.
- 3.6 To ensure confidentiality of the information, the Director has a discretion to, as a condition, make reasonable procedural arrangements and impose reasonable safeguards regarding the furnishing of such information before the information is provided. [Section 40(3) of the FIC Act]

4. Confidentiality of information received from the Centre

- 4.1 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 the request.
- 4.2 Information obtained by persons in terms of section 40 of the FIC Act is sensitive and classified. No person is entitled to be in possession of such information unless such possession is justified in terms of section 40 of the FIC Act.
- 4.3 The information may only be used for the purpose which were specified in the request and subsequently approved by the Centre. A person who obtains this information may only use the information within the scope of that person's legislative powers and duties.

4.4 The information may not be disclosed directly or indirectly to individuals or entities that form the subject matter of the information.

5. Authorised officers regime/mechanism

5.1 Authorised officers are individuals authorised by the authorities and entities in paragraphs (a) to (i) of the definition of authorised officer, and includes individuals authorised by a supervisory body to act in terms of the FIC Act.

5.2 Investigating authorities must verify and confirm their respective authorised officers biannually with the Centre. This includes authorised officers in all provinces in the Republic of South Africa.

5.3 The Centre recommends that mandated entities designate a nodal point or person who will facilitate the registering, updating and deregistering of authorised officers, in order to streamline the process.

6. Mode of communication with the Centre in relation to requests and referrals

6.1 The message board on the Centre's registration and reporting platform is the main mode of communication from and to the Centre in relation to referrals from/requests to the Centre.

6.2 In the event that the message board is not functional e.g. due to system maintenance, or if so determined by the Centre, the Centre will utilise encrypted email messages for this purpose, and/or any other secure method as determined by the Centre.

6.3 Mandated entities and their authorised officers must submit all requests to the Centre directly on this platform. Alternatively, the Centre will inform the mandated entities and their authorised officers which method to use when communicating to the Centre.

6.4 Attachments must be in PDF, MS Word and/or in MS Excel format or in a format requested by or agreed to by the Centre.

6.5 The Centre will respond to all such requests by means of return mail on the Centre's message board.

7. Coordination of effort – monitoring of matters requested and disseminated (tracking and feedback mechanism)

7.1 In an attempt to combine efforts to combat unlawful activities, to measure flow of matters and to comply with section 4(e) of the FIC Act, mandated entities (including authorised officers of mandated entities) are requested to provide progress reports to the Centre in relation to referrals and reporting information or other information provided to them by the Centre.

7.2 Once the Centre disseminated the product containing the information, the Centre would require feedback immediately, and thereafter every 3 months, 6 months and 12 months or in line with Memorandum of Understanding concluded with the mandated entity. The feedback should include the following information:

- Who received the information/referral;
- Who is working on the information/referral;
- Progress made in relation to the information/referral including whether:
 - the referral resulted in a successful investigation;
 - the referral resulted into an asset forfeiture order, including the value of the order if applicable;
 - there was a successful trial including the applicable offence and subsequent sentence; and
- Further assistance required from the Centre in relation to the information/referral.

8. Feedback monitoring mechanism

8.1 The Centre takes pride in delivering a secure service and providing products of high quality.

8.2 In pursuance of continuous improvement, the Centre has implemented an electronic solution that can be used for the following purposes:

- for authorised officers to evaluate the value of financial intelligence disseminated; and
- for monitoring of matters requested and disseminated (tracking and feedback mechanism).

- 8.3 The Centre will forward the abovementioned evaluation/monitoring document via a link to authorised officers including information to be completed within a certain timeframe.
- 8.4 The failure to provide this compulsory feedback on the utilisation of financial intelligence may lead to the withdrawal of an authorised officer's access to information from the Centre.

9. Referral of suspected offences to investigating authorities and other public bodies in terms of the FIC Act

- 9.1 Section 44 of the FIC Act determines that if the Centre in the performance of its functions has reasonable grounds to suspect that an accountable institution, or any other person other than a supervisory body who is subject to the provisions of the FIC Act, has contravened or failed to comply with any provision of the FIC Act or any rule or guideline applicable to that accountable institution or person which facilitates compliance with the FIC Act, it may, refer the matter to a relevant investigating authority or supervisory body.
- 9.2 Section 45(2) and (3) determines that when the Centre refers a matter to a supervisory body or other public body or authority in terms of section 44, that supervisory body or other public body or authority must investigate the matter and may, after consultation with the Centre, take such steps within the scope of its powers as it considers appropriate to remedy the matter.
- 9.3 Section 45(3) determines that where a supervisory body or other public body or authority to which a suspected contravention or failure is referred in terms of section 44 fail to take adequate steps to ensure that the suspected contravention ceases or the suspected failure is rectified, the Centre may, after consultation with the supervisory body or other public body or authority concerned, take such steps within the scope of its powers as the Centre considers appropriate to remedy the matter.

10. Misuse of information – section 60 of the FIC Act

- 10.1 Any person who uses information obtained from the Centre other than in accordance with any arrangements or safeguards made or imposed by the Director in terms of section 40(3) or section 40(6) of the FIC Act, is guilty of an offence and may be liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million.

11. Commencement and effect of PCC39

11.1 This PCC39 takes effect on **03 August 2018**.

12. Enquiries

For any further enquiries regarding this PCC100, please contact the Compliance Contact Centre on **(012) 641 6000**, or a query can be logged at

<http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx>

Issued By :

Financial Intelligence Centre

03 August 2018

Annexure A

Section 3(1) and section 3(2)(a) of the FIC Act

3. Objectives

- (1) The principal objective of the Centre is to assist in the—
 - (a) identification of the proceeds of unlawful activities;
 - (b) combating of money laundering activities and the financing of terrorist and related activities; and
 - (c) implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations, under Chapter VII of the Charter of the United Nations.

- (2) The other objectives of the Centre are—
 - (a) to make information collected by it available to—
 - (i) an investigating authority;
 - (ii) the National Prosecuting Authority;
 - (iii) an intelligence service;
 - (iv) the South African Revenue Service;
 - (v) the Independent Police Investigative Directorate;
 - (iv) the Intelligence Division of the National Defence Force;
 - (vii) a Special Investigating Unit;
 - (viii) the office of the Public Protector;
 - (ix) an investigative division in an organ of state; or
 - (x) a supervisory body, to facilitate the administration and enforcement of the laws of the Republic;

Section 40 of the FIC Act:

- (1) Subject to this section, the Centre must make information reported to it, or obtained by it under this Part and information generated by its analysis of information so reported or obtained, available to—
 - (a) an investigating authority in the Republic;
 - (aA) the National Prosecuting Authority;
 - (aB) the Independent Police Investigative Directorate;
 - (aC) an intelligence service;
 - (aD) the Intelligence Division of the National Defence Force;
 - (aE) a Special Investigating Unit;
 - (aF) an investigative division in an organ of state;
 - (aG) the Public Protector; or
 - (aH) the South African Revenue Service;
 - (b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic;
 - (c)
 - (d) a supervisory body;

- (e) a person who is entitled to receive such information in terms of an order of a court; or
 - (f) a person who is entitled to receive such information in terms of other national legislation.
- (1A) Information contemplated in subsection (1) may only be made available to an entity referred to in subsection (1)(a), (aA), (aB), (aC), (aD), (aE), (aF), (aG) or (aH)—
- (a) at the initiative of the Centre or at the request of an authorised officer of the entity; and
 - (b) if the Centre reasonably believes such information is required to investigate suspected unlawful activity.
- (1B) Information contemplated in subsection (1) may only be made available to an entity or authority referred to in subsection (1)(b)—
- (a) at the initiative of the Centre or at the request of the entity or authority; and
 - (b) if the Centre reasonably believes such information is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which the entity or authority is established.
- (1C) Information contemplated in subsection (1) may only be made available to a supervisory body referred to in subsection (1)(d)—
- (a) at the initiative of the Centre or at the request of the supervisory body; and
 - (b) if the Centre reasonably believes such information is relevant to the exercise by the supervisory body of its powers or performance by it of its functions under any law.
- (2) A request for information contemplated in subsection (1A) or (1C) must be in writing and must specify the required information and the purpose for which the information is required.
- (3) The Director may, as a condition to the provision of any information contemplated in subsection (1), make the reasonable procedural arrangements and impose the reasonable safeguards regarding the furnishing of such information that the Director considers appropriate to maintain the confidentiality of that information before the information is provided.
- (4) Information contemplated in subsection (1) may only be provided to an entity or authority referred to in subsection (1)(b) pursuant to a written agreement between the Centre and the entity, or the authority which is responsible for that entity or authority, regulating the exchange of information between the Centre and the entity or authority.
- (5) An agreement referred to in subsection (4) does not—
- (a) take effect until it has been approved in writing by the Minister;

- (b) permit the Centre to provide any category of information to the entity or authority in respect of which the agreement is concluded which the entity or authority is not permitted to provide to the Centre.
- (6) A person who obtains information from the Centre may use that information only—
 - (a) within the scope of that person's powers and duties; and
 - (b) in the case of a request contemplated in subsection (2), for the purpose specified in that request.
- (7) The Centre may make available any information obtained by it during an inspection to an organ of state, a supervisory body, other regulatory authority, selfregulating association or organisation which the Centre reasonably believes is affected by or has an interest in that information.
- (8) The Centre must make information it holds available to the appropriate National Intelligence Structure, as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), if it reasonably believes that the information relates to any potential threat or threat to the national security, as defined in section 1 of that Act.
- (9) The Centre may, at the initiative of the Centre or on written request, disclose information it holds, other than information contemplated in subsections (1), (7) and (8), to an accountable institution or class of accountable institutions or any other person unless the Centre reasonably believes that the disclosure may—
 - (a) 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
 - (b) prejudice the rights of any person.

Section 44 of the FIC Act

Referral of suspected offences to investigating authorities and other public bodies

If the Centre in the performance of its functions has reasonable grounds to suspect that an accountable institution, or any other person other than a supervisory body who is subject to the provisions of this Act, has contravened or failed to comply with any provision of this Act or any rule or guideline applicable to that accountable institution or person which facilitates compliance with this Act, it may, if it considers it appropriate to do so, refer the matter to—

- (a) a relevant investigating authority; or
- (b) an appropriate supervisory body or other public body or authority affected by it, together with any recommendation the Centre considers appropriate.

Section 45 of the FIC Act

Responsibility for supervision of accountable institutions

(1) When the Centre refers a matter to a supervisory body or other public body or authority in terms of section 44, that supervisory body or other public body or authority must investigate the matter and may, after consultation with the Centre, take such steps within the scope of its powers as it considers appropriate to remedy the matter.

(2) Should a supervisory body or other public body or authority to which a suspected contravention or failure is referred in terms of section 44 fail to take adequate steps to ensure that the suspected contravention ceases or the suspected failure is rectified, the Centre may, after consultation with the supervisory body or other public body or authority concerned, take such steps within the scope of its powers as the Centre considers appropriate to remedy the matter.