



Financial
Intelligence Centre

GUIDANCE NOTE

GUIDANCE NOTE No. 6A (GN 6A)
ON TERRORIST FINANCING AND
TERRORIST PROPERTY
REPORTING OBLIGATIONS IN
TERMS OF SECTION 28A OF THE
FINANCIAL INTELLIGENCE
CENTRE ACT, 2001
(ACT 38 OF 2001)

PREFACE

- i) The Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) places obligations on financial institutions and other businesses deemed vulnerable to money laundering and terrorist financing. The Prevention of Organised Crime Act, 1998 (Act 121 of 1998), (the POC Act) introduced the crime of money laundering and provides for the confiscation and forfeiture of the proceeds of crime. The Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) (the POCDATARA Act) introduced measures to address the financing of acts of terrorism.
- ii) Compliance with the FIC Act together with the effective implementation of the POC Act and the POCDATARA Act contributes to making it more difficult for criminals to hide their illicit proceeds in the formal financial sector and thereby profiting from their criminal activities, and to cutting off the resources available to those seeking to use terror as a means to promote their cause.
- iii) The FIC Act also established the Financial Intelligence Centre (the Centre) which is South Africa's financial intelligence unit, a government agency created to collect, analyse and interpret information disclosed to it and obtained by it. The principle objective of the Centre is to assist in the identification of the proceeds of unlawful activities and the combatting of money laundering, 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.
- iv) In addition, section 4(c) of the FIC Act empowers the Centre to provide guidance in relation to a number of matters concerning compliance with the obligations of the Act. This guidance is published by the Centre in terms of section 4(c) 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 Money Laundering and Terrorist Financing Control Regulations issued under the FIC Act (the MLTFC Regulations). Guidance provided by the Centre is authoritative in nature which means that accountable institutions must take the guidance issued by the Centre into account in respect of their compliance with the relevant provisions of the FIC Act and the MLTFC Regulations.

If an accountable institution does not follow the guidance issued by the Centre, it should be able to demonstrate that it nonetheless achieves an equivalent level of compliance with the relevant provisions. It is important to note, therefore, that enforcement action may emanate as a result of non-compliance with the FIC Act and the MLTFC Regulations where it is found that an accountable institution has not followed the guidance issued by the Centre.

Disclaimer

- v) Guidance which the Centre provides does not relieve the user of the guidance from the responsibility to exercise their own skill and care in relation to the users' legal position. This guidance does not provide legal advice and is not intended to replace the FIC Act or the MLTFC Regulations issued under the FIC Act. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

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GUIDANCE TO ASSIST ACCOUNTABLE INSTITUTIONS TO IMPLEMENT TERRORIST FINANCING AND TERRORIST PROPERTY REPORTING OBLIGATIONS IN TERMS OF SECTION 28A AND SECTION 29 OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001)

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APPLICATION OF THIS GUIDANCE NOTE

1. The objective of this guidance note is to provide guidance on terrorist financing and terrorist property reporting obligations in terms of the FIC Act and the MLTFC Regulations.
2. This guidance note takes effect on upon commencement of sections 26A, 26B and 26C of the FIC Act.

GLOSSARY

“**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 38 of 2001).

“**MLTFC Regulations**” refer to the Money Laundering and Terrorist Financing Control Regulations, 2002, made in terms of section 77 of the FIC Act and published in Government Notice 1595 in Government Gazette 24176 of 20 December 2002, as amended by Government Notice R456 in Government Gazette 27580 of 20 May 2005 and Government Notice R867 in Government Gazette 33596 of 01 October 2010 and Government Notice 1107 in Government Gazette 33781 of 26 November 2010 and Government notice 1062 in Government Gazette 41154 of 29 September 2017.

“**POC Act**” refers to the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).

“**POCDATARA Act**” refers to the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004).

“**Reporter**” refers to the person or entity making the report.

“**TFS List**” means the Targeted Financial Sanctions List pursuant to section 26A of the Financial Intelligence Centre Act, 2001.

“**TPR**” refers to a terrorist property report which must be submitted in terms of section 28A of the FIC Act.

“**UN**” refers to the United Nations.

“**UN resolution**” refers to a resolution as adopted by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations.

INTRODUCTION

3. Accountable institutions have terrorist financing reporting obligations which are contained in sections 28A and 29 of the FIC Act. In deciding whether to file a terrorist property report in terms of section 28A or a suspicious or unusual transaction or activity report in terms of section 29 of the FIC Act, it is necessary to understand the fundamental differences between the reporting obligations contained in both these sections.

4. This guidance consists of 5 (five) parts:
 - **Part 1** explains the reporting obligation in terms of section 28A of the FIC Act.
 - **Part 2** explains the distinction between terrorist financing and related activities reporting obligations in terms of section 29 and terrorist property reporting in terms of section 28A of the FIC Act.
 - **Part 3** provides a summary of the differences between section 28A and section 29 of the FIC Act.
 - **Part 4** explains monitoring and the risk based approach in relation to section 28A of the FIC Act.
 - **Part 5** provides recommendations to facilitate practical implementation.

PART 1 – REPORTING OBLIGATION CREATED BY SECTION 28A OF THE FIC ACT

5. Section 28A of the FIC Act requires an accountable institution, listed in Schedule 1 to the FIC Act, to file a report with the Centre if the accountable institution knows that it possesses or controls property of a person or entity which has committed or attempted to commit or facilitate the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) (POCDATARA) and/or is identified in a notice issued by the President under section 25 of POCDATARA and/or a person or an entity identified pursuant to a UN resolution as contemplated in a notice referred to in section 26A(1) of the FIC Act.
6. The knowledge about the origin and ownership of the property in question is based on fact and should be acquired with reference to an objective set of circumstances or facts (as opposed to a suspicion that is formed subjectively).
7. When a reporting obligation arises in terms of section 28A of the FIC Act regarding a client that is the client of more than one accountable institution in a complex group structure, each accountable institution that has in its possession or under its control property owned or controlled by, or on behalf of, or at the direction of a natural person or entity listed in terms of POCDATARA and/or S26A(1) of the FIC Act must submit a separate TPR to the Centre.

Section 28A(1)(a)

8. An accountable institution that files a report in terms of section 28A(1)(a) of the FIC Act knows that it is in possession of, or has under its control property of a natural person or entity linked to a specified offence as defined in the POCDATARA Act.

Specified offence as defined in POCDATARA includes:

- (a) The offence of Terrorism referred to in section 2 of POCDATARA, an offence associated or connected with terrorist activities referred to in section 3 of POCDATARA, a Convention offence, or an offence referred to in section 13 and 14 of POCDATARA.

(b) Any activity outside the republic which constitutes an offence under the law of another state and which would have constituted an offence referred to in paragraph (a), had that activity taken place in South Africa.

Section 28A(1)(b)

9. Section 25 of the POCDATARA Act states that the President must give notice, by Proclamation in the Gazette, in respect of any entity that has been designated by the United Nations Security Council (the UNSC) in order to combat or prevent terrorist and related activities.
10. The abovementioned conditions are met in respect of the sanction lists issued pursuant to the United Nations Security Council Resolution (UNSCR) 1267 (1999) and its successor resolutions. An up to date list can be accessed via the United Nations website: https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list
11. The individuals and entities whose names appear on these listings are those whom the UNSC has identified as being associated with the Taliban, Al Qaida and the so-called Islamic State of Iraq and the Levant. These UNSC Resolutions are the only sanctions lists related to terrorist activities which are legally recognised within the Republic of South Africa and can be accessed on the United Nations website.
12. Section 4 of the POCDATARA Act expressly prohibits any person from dealing with property that is associated with acts of terrorism, with persons or organisations that carry out acts of terrorism or with entities that are sanctioned pursuant to the POCDATARA Act. Consequently, any dealings with property that is identified in a report under section 28A of the FIC Act will constitute a contravention of section 4 of the POCDATARA Act. In effect, once an institution files a report in terms of section 28A of the FIC Act, this will lead to a requirement to freeze the property and cease to conduct business with the entity in question.
13. The processes for dealing with such instances, the filing of the report with the Centre and the subsequent freezing of the relevant property should be contained in the accountable institution's risk management and compliance programme.

Section 28A(1)(c)

14. An accountable institution that files a report in terms of section 28A(1)(c) of the FIC Act, knows that it is in possession of, or has under its control property linked to a natural person or an entity as identified pursuant to a UN resolution. This reporting will be done in line with the Financial Sanctions provisions of the FIC Act.
15. The reporting obligation as set out in section 28A(1)(c) of the FIC Act refers to section 26A(1) of the FIC Act. Section 26A(1) of the FIC Act specifies that the adoption of a UN resolution must be announced by the Minister by means of notice in the Gazette and other appropriate means of publication.
16. This provision of the FIC Act, requires that the Director of the Centre must give notice by appropriate means of publication of natural persons and entities subject to targeted financial sanctions as per section 26A(1) of the FIC Act. The manner in which the Director of the Centre shall give notice is by making available the TFS List on the Centre's website. User guides will be made available to aid persons in the use of the TFS list, and can be accessed on the Centre's website.
17. The TFS List as contemplated in section 26A(1) of the FIC Act refers to natural persons or entities identified by the United Nations, that are involved in terrorist acts and/or are connected to the proliferation of weapons of mass destruction.
18. No person may enter into any transaction or establish a business relationship with persons or entities on the TFS List. Should the accountable institution identify that they have a client or a prospective client that is specifically listed on the TFS List, they would have a reporting obligation in terms of section 28A of the FIC Act.. As a consequence of reporting to the Centre, an accountable institution is required to freeze the clients' accounts and services provided.
19. Information to be reported concerning property associated with terrorist and related activities is found in Regulation 22A of the MLTFC Regulations.

PART 2 – DISTINCTION BETWEEN TERRORIST FINANCING AND RELATED ACTIVITIES REPORTING OBLIGATIONS IN TERMS OF SECTION 29 AND TERRORIST PROPERTY REPORTING IN TERMS OF SECTION 28A OF THE FIC ACT

20. The obligation to report suspicious and unusual transactions and activities in terms of section 29 of the FIC Act applies to a wide category of persons and businesses, whereas the obligation to report in terms of section 28A of the FIC Act is limited to accountable institutions.
21. A report submitted in terms of section 29 of the FIC Act refers to a suspicion, whereas a report submitted in terms of section 28A of the FIC Act is factual.
22. A report made in terms of section 29 of the FIC Act, if made in the prescribed manner, is a valid defence to charges brought in terms of section 4 of the POCDATARA Act, which deals with offences associated or connected with the financing of specified offences. This defence is contained in section 17(6)(b) of the POCDATARA Act.
23. This means that all businesses, including accountable institutions, and any person connected to any business must in terms of section 29 of the FIC Act, report suspicious or unusual activities or transactions or series of transactions related to the financing of terrorist and related activities and in relation to targeted sanctions, to the Centre.
24. Guidance Note 4B as issued by the Centre provides further information regarding reporting of suspicious and unusual transactions and activities to the Centre.

Reporting in terms of section 28A and section 29 in respect of the same client

25. In many instances accountable institutions have been known to complete multiple reports under both section 28A and section 29 of the FIC Act for the same client. A report made in terms of section 29 of the FIC Act would refer to a particular transaction or activity which is found to be suspicious or unusual in nature, while a report in terms of section 28A of the FIC Act relates to property of a natural person or entity which is under an accountable institution's control, and is known to be connected to the financing of terrorist activities.

Example 1:

Client X is an existing customer of Bank A. Client X, at on boarding was not listed on the UNSC 1267 terrorist sanctions list. Sometime later, Client X has requested a transfer of R500 000,00 to a non-profit organisation in a high-risk country. This transaction was flagged by Bank A as an unusual transaction that may be linked to terrorist financing. During the screening stage, Client X was now flagged for being recently added on the UN 1267 list. The transaction request was therefore not actioned.

Bank A must file two (2) reports with the Centre, a **TPR** (section 28A of the FIC Act) to report that they have in their control property associated with a person as listed on a UNSC list as prescribed by the POCDATARA Act, and a suspicious and unusual transaction report in terms of section 29 of the FIC Act detailing the transaction request and the reason for suspicion..

26. In many instances a cash transaction in excess of the prescribed threshold amount will be reportable as a cash threshold report in terms of section 28 of the FIC Act, and when deemed to be a suspicious or unusual transaction or activity, may also be reportable in terms of section 29 of the FIC Act.

Example 2:

Client X is an existing customer of Bank A. Bank A screens its customer base on a daily basis against the TFS List. Client X, at on-boarding was not listed on the UNSC 1267 terrorist sanctions list.

On Tuesday 19 March, Client X deposits an amount of R500 000,00 cash into his bank account at Bank A. On Wednesday 20 March, Bank A identifies that Client X has been added on the UNSC 1267 terrorist sanctions list.

Bank A must file two (2) reports with the Centre, a **TPR** (section 28A of the FIC Act) to report that they have in their control property associated with a person as listed on a UNSC list as prescribed by the POCDATARA Act, and a **CTR** (section 28 of the FIC Act) detailing the cash deposit of R500 000,00.

PART 3 – SUMMARY OF THE DIFFERENCES BETWEEN SECTION 28A AND SECTION 29 OF THE FIC ACT

Actual knowledge vs subjective knowledge

27. The state of mind that is necessary to create a reporting obligation in terms of section 29 of the FIC Act is subjective and merely one of suspicion. A report filed in terms of section 28A of the FIC Act is based on the knowledge of an accountable institution and the fact that it has property in its possession or under its control that is associated to a person listed in UNSC lists.

Reporters

28. Section 29 of the FIC Act applies to "any person" whereas section 28A of the FIC Act is only applicable to accountable institutions listed in Schedule 1 to the FIC Act.

Control vs Suspicion

29. **Section 28A** of the FIC Act applies to a purely factual situation. The fact that an accountable institution has certain property in its possession or under its control is sufficient to prompt a report and no activity relating to that property is required to trigger the reporting obligation. Conversely, **section 29** of the FIC Act applies where a particular transaction, activity or behaviour appears suspicious or unusual.

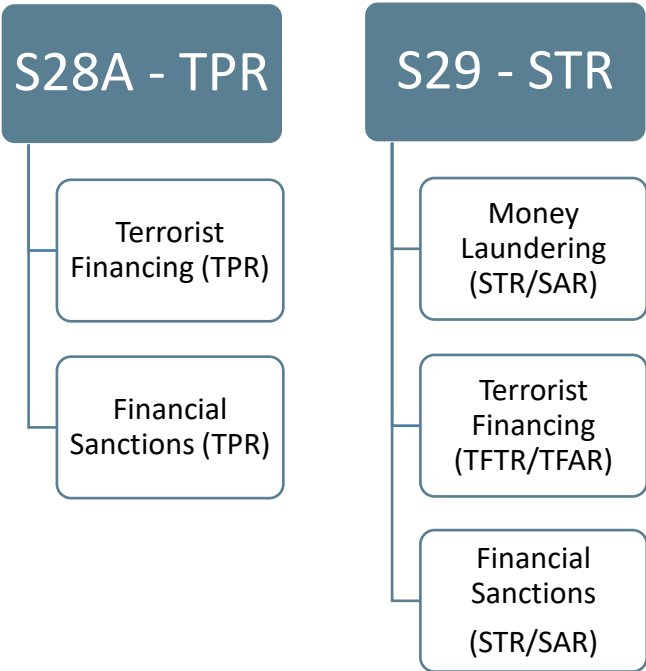
Freezing vs proceeding with a transaction

30. When filing a report with the Centre in terms of section 28A of the FIC Act it is an offence (by virtue of section 4 of the POCDATARA Act) to continue dealing with that property in any way, whereas if a person files a report with the Centre in terms of section 29 of the FIC Act they may elect to continue with the transaction as provided for in section 33 of the FIC Act. The defence contained in section 17(6)(b) of the POCDATARA Act can be applied.

Summary of difference between S28A and S29 report types

Section 28A (TPR)	Section 29 (STR, SAR, TFTR & TFAR)
<ul style="list-style-type: none"> • Applicable only to accountable institutions • Report based on knowledge by the accountable institution of property under its control - objective test is used • May not continue with transaction - it is an offence 	<ul style="list-style-type: none"> • All businesses including accountable institutions, reporting institutions and any other persons connected to any business • Report suspicious or unusual activities or transactions or series of transactions related to the financing of terrorist and related activities - subjective test is used • May elect to continue with transaction • Valid defence to charges brought in terms of section 4 of the POCDATARA.

Summary of reporting obligations



PART 4 – MONITORING AND RISK BASED APPROACH

Section 28A failure

31. In order for an accountable institution to determine if they are dealing with a person or entity on the UN1267 list or TFS List pursuant to section 26A of the FIC Act they are required to scrutinise the information obtained concerning their clients as per Section 28A(3) of the FIC Act.
32. Accountable institutions must check whether their clients are listed on notices as and when published in terms of POCDATARA and section 26A of the FIC Act. Should a client's name match against this UN1267 list or the TFS List, then the accountable institution would be required to ensure that this is in fact an exact match. The accountable institution would need to make use of the information available to them, and conduct further research if so required, to make this determination.
33. Once the accountable institution has determined that it controls relevant property, it is required to report full particulars of the type of property concerned and a description of the property in relation to which the terrorist property report is made.
34. Measures should therefore be in place to enable the accountable institution to determine the particulars and description of the property.
35. Accountable institutions can find information about proclamations under the POCDATARA Act on the following website:
https://www.saps.gov.za/resource_centre/acts/downloads/terrorism/37758_proc39.pdf
36. Accountable institutions can find information about the TFS List on the Centre's website;
www.fic.gov.za.
37. The failure to file a report in terms of section 28A of the FIC Act constitutes an offence in terms of section 51A of the FIC Act.

38. It should further be noted that an accountable institution that does not have the abovementioned measures in place could be found guilty of an offence associated or connected with the financing of specified offences in terms of section 4 of the POCDATARA Act.

Applying a Risk Based Approach to Client On-Boarding and Databases

39. Section 28A (3) imposes a legal obligation upon accountable institutions to scrutinise its information concerning their clients or prospective clients for the presence of terrorists or property connected to the financing of terrorist acts.

40. If a person is found to have conducted business with a terrorist or dealt with property connected in any way to the financing of terrorism, they may be charged with contravention of section 4 of the POCDATARA Act.

41. As the "third party" terrorist financing offences contained in section 4 of the POCDATARA Act utilise the terminology "knows or ought reasonably to have known", a person who is charged criminally under this section will be called upon to prove that their actions were reasonable under the circumstances. From this perspective it is important that institutions apply their minds to the terrorist financing risks inherent to their business activities. The manner in which terrorist financing risks are managed should be determined with reference to an institution's business model, products, services and the nature of its client database.

42. Taking into account its terrorist financing risk profile, an institution may decide upon a permutation of the following measures to counter the financing of terrorism (or may decide that no measures are necessary at all):

- Automated screening of client databases at client take-on in real time;
- Ongoing screening of existing client databases to detect potential matches when there are changes to the UNSC sanction lists or to the status of existing client identification information;
- Screening of cross border payments by financial institutions, where applicable; and
- Holistic view of information gathered about the client across all points of engagement between the client and institution (see Guidance Note 7 for further discussion on this).

43. It is important for institutions to note that the effectiveness of screening processes is highly dependent upon an efficient client identification and verification program. The counter financing of terrorism measures implemented to counter the perceived risk of the business being abused to promote the activities of terrorist organisations should always be detailed in the accountable institution's Risk Management and Compliance Programme.

44. It is recommended that those sectors that have been identified by competent authorities as being widely used for the financing of terrorist activities should utilise sophisticated detection tools and enhanced monitoring techniques to safeguard their institutions against abuse. This may include the limiting of business activities to those persons and countries on the basis of identified ML/TF risks, where appropriate controls to sufficiently mitigate any terrorism financing risk are not possible, feasible or effective.

PART 5 – REPORTING

Prescribed particulars contained in the MLTFC Regulations – full particulars and readily available information

45. Terrorist property and terrorist financing reports submitted to the Centre in terms of sections 28A and 29 of the FIC Act respectively, must be submitted within the prescribed time and must include the prescribed particulars contained in the MLTFC Regulations.
46. Where the MLTFC Regulations prescribe the particulars that should be included in reports to the Centre, they refer to two categories of information namely:
 - “full particulars of ...”; or
 - as much of the relevant “information as is readily available”.
47. The prescribed particulars in respect of which the MLTFC Regulations require full particulars to be provided are those which the institution is expected to have. These particulars are compulsory and must be provided in the relevant part of a report to the Centre.
48. Where the MLTFC Regulations refer to as much information as is readily available the relevant prescribed particulars may include information which an institution may not have obtained in the course of establishing a particular person’s identity or conducting a particular transaction. In such cases the MLTFC Regulations require that an institution provide all the information in question that the institution has, in other words that is under the control of the institution and available within the structures of the institution.
49. In instances where it is commercial practice to obtain certain information in relation to clients, products, services and transactions, the information is considered to be readily available to the institution and must be provided, where applicable, when submitting a report to the Centre. Information of this nature may not have been verified, or otherwise confirmed at the time when it was obtained, but should be provided nonetheless when submitting a report to the Centre.

Submitting full particulars and readily available information on the reporting platform of the Centre

50. The reporting platform of the Centre contains several mandatory fields that must be completed. The completed report cannot pass a validation check in the Centre's reporting system if these fields have no content in them and the reporter will not be able to submit the form. These fields may therefore not be left blank.
51. Where a mandatory field must be completed with prescribed particulars that are readily available and the reporter does not have the information in question, the reporter must indicate that the information was not obtained by completing the field with "not obtained".
52. Where a field that may be left blank must be completed with full particulars in terms of the MLTFC Regulations the reporter must provide the full particulars as prescribed.
53. Reporters should note that when submitting a report in terms of section 28A of the FIC Act, the field requiring the "Reason /Reason for Reporting" is compulsory in terms of the MLTFC Regulations. This means that the "Reason / Reason for Reporting" field must be completed when submitting a report under section 28A of the FIC Act, or the report will be rejected. When submitting a report in terms of section 29 of the FIC Act both the fields requiring the "Reason / Reason for Reporting" and "Action / Action Taken" are compulsory in terms of the MLTFC Regulations. Both these fields must be completed therefore when submitting a report under section 29 of the FIC Act, or the report will be rejected.

Methods for submitting a TPR to the Centre

54. Regulation 22 of the MLTFC Regulations requires that a report in terms of sections 28A of the FIC Act be filed with the Centre electronically by making use of the internet-based reporting portal provided for this purpose at <http://www.fic.gov.za>, and then selecting the Registration and Reporting portal link.
55. All accountable and reporting institutions are legally obliged to register with the Centre in terms of section 43B of the FIC Act. Registration with the Centre will provide the accountable and reporting institution, or other business, with user credentials which must be used to

submit a report in terms of section 28A of the FIC Act electronically to the Centre in accordance with the requirements of Regulations 22 and 22A, of the MLTFC Regulations.

56. Accountable or reporting institutions need to consider the registration requirements as outlined in guidance issued by the Centre and discharge their reporting obligations in terms of the FIC Act accordingly:

- Certain institutions would have to register multiple accountable or reporting institutions in terms of Schedule 1 and 3 of the FIC Act. Institutions should register accordingly and ensure that the products and services offered are mapped to the applicable schedule items, monitored and reported accordingly;
- Certain institutions would have an obligation to register their head office and branch network as separate accountable and reporting institutions and ensure that the products and services offered are mapped, monitored and reported accordingly.

57. There are three methods of filing reports in terms of the FIC Act with the Centre:

- **Individual reporting:** Reports can be submitted to the Centre by completing an online web form.
- **Batch reporting:** This will be used in instances where high volumes of reports are submitted to the Centre on a regular basis. To be able to access this facility, reporters can contact the Centre at the contact details listed below for further information.
- **System-to-System reporting:** This form of reporting accommodates both the individual and batch reporting mechanism. It is the configuration of systems linked to each other via web services to send reports. Only high to very high volume reporters should consider this option.

58. Reports in terms of section 28A of the FIC Act must be submitted by way of one of the abovementioned methods (i.e. individual reporting, batch reporting or system-to-system reporting).

59. An accountable institution may only file a report in terms of section 28A or section 29 of the FIC Act by other means in exceptional circumstances where the reporter does not have the technical capability to report electronically to the Centre. In such cases reporters should contact the Centre on (012) 641 6000 to obtain the manual reporting form for completion and

to make arrangements for its delivery to the Centre. Under no circumstances may reports made under sections 28A and 29 of the FIC Act be posted to the Centre.

60. The Centre has issued user guides for registration and reporting which can be found on the Centre's website.
61. The online reporting portal for submitting TPR's, TFTR's and TFAR's to the Centre is available on the Centre's website at www.fic.gov.za. Reporters must select the correct report type in accordance with FIC Act.
62. The following general principles must be considered when utilising the Centre's registration and reporting platform:
 - All users must be registered on the Centre's registration and reporting platform as per the guidance provided in Public Compliance Communication 05C.
 - Reporters are reminded to always save their web reports whilst moving between various sections of the report form and before the report is submitted. In the unlikely event of a time-out error the saved reports can then be retrieved from the drafted reports menu on the Centre's registration and reporting platform;
 - Reporters are reminded that available attachments (e.g. copies of the client identification document, client proof of residence, transaction receipt, application form etc.) may be uploaded and submitted with the initial report submitted to the Centre;
 - Reporters are reminded to complete the Goods and Services section of the report when a property or other assets are linked to the reporting obligation in terms of section 28A of the FIC Act;
 - Reporters are reminded to monitor the status of their submitted reports to ensure that the reports are successfully processed and that any failures / rejections are remediated accordingly;
 - Reporters are reminded to download and save copies of all submitted reports for their internal record keeping purposes;
 - Reporters should ensure that any ICT related queries / incidents are logged with the Centre by means of the communicated channels and that they keep records thereof.

Time period for submitting a reports in terms of section 28A of the FIC Act

63. In terms of regulation 24(1) of the MLTFC Regulations, a report under section 28A of the FIC Act must be sent to the Centre as soon as possible but no later than five (5) days after a natural person who is an accountable institution or is in charge of, manages or is employed by an accountable institution, had established that the accountable institution has property associated with terrorist and related activities in its possession or under its control, unless the Centre has approved the report being sent after the expiry of this period.
64. An accountable institution is considered to have established knowledge when a name of a person or entity that is their client has been added to either the TFS List or the UN 1267 list.
65. Reporters must note that this reporting period is effective from the institution becoming aware of such report, and it may not add additional timeframes for its internal sanction /watch list screening tools and processes, internal transactional monitoring alert system processes, and / or internal investigation and review processes to the prescribed reporting period.
66. Accountable institutions and other businesses would therefore need to consider and document their TPR reporting processes to ensure that the time periods for reporting are adhered to strictly.
67. Failure to report in terms of section 28A of the FIC Act should be brought to the Centre's attention without undue delay as per to formal process outlined in Directive 3 which is available on www.fic.gov.za

Status of user guides on electronic reporting of section 28A of the FIC Act

68. The Centre has issued a user guide for the electronic reporting of TPR, and is available on the Centre's website, www.fic.gov.za.
69. This user guide does not form part of this guidance and is a mere practical aids to assist accountable institutions and other businesses in completing the electronic reporting form and are attached to this guidance for ease of reference.

CONCLUSION

70. Accountable institutions have terrorist financing reporting obligations which are contained in section 28A and section 29 of the FIC Act. There are fundamental differences between the two as described above.

71. Sections 26A, 28A and section 29(1) and (2) of the FIC Act are attached as an Annexure for ease of reference.

Issued by:

THE DIRECTOR

FINANCIAL INTELLIGENCE CENTRE

DATE: 27 March 2019

ANNEXURE

26A. Notification of persons and entities identified by Security Council of the United Nations

- (1) Upon the adoption of a resolution by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution, the Minister must announce the adoption of the resolution by notice in the *Gazette* and other appropriate means of publication.
- (2) This section does not apply to resolutions of the Security Council of the United Nations contemplated in section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).
- (3) Following a notice contemplated in subsection (1) the Director must, from time to time and by appropriate means of publication, give notice of—
 - (a) persons and entities being identified by the Security Council of the United Nations pursuant to a resolution contemplated in subsection (1); and
 - (b) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1) to previously identified persons or entities.
- (4) The Minister may revoke a notice contemplated in subsection (1) if the Minister is satisfied that the notice is no longer necessary to give effect to financial sanctions in terms of a resolution contemplated in subsection (1).

28A. Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council

- (1) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of—
 - (a) any entity which has committed, or attempted to commit, or facilitated the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;
 - (b) a specific entity identified in a notice issued by the President, under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or
 - (c) a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1), must within the prescribed period report that fact and the prescribed particulars to the Centre.

- (2) The Director may direct an accountable institution which has made a report under subsection (1) to report —
 - (a) at such intervals as may be determined in the direction, that it is still in possession or control of the property in respect of which the report under subsection (1) had been made; and
 - (b) any change in the circumstances concerning the accountable institution's possession or control of that property.

- (3) An accountable institution must upon—
 - (a) publication of a proclamation by the President under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or
 - (b) notice being given by the Director under section 26A(3), scrutinise its information concerning clients with whom the accountable institution has business relationships in order to determine whether any such client is a person or entity mentioned in the proclamation by the President or the notice by the Director.

29. Suspicious and unusual transactions

(1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that —

(a) the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;

(b) a transaction or series of transactions to which the business is a party —

(i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;

(ii) has no apparent business or lawful purpose;

(iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act;

(iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service;

(v) relates to an offence relating to the financing of terrorist and related activities; or

(vi) relates to the contravention of a prohibition under section 26B; or

(c) the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

(2) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that a transaction or a series of transactions about which enquiries are made, may, if that transaction or those transactions had been concluded, have caused any of the consequences referred to in subsection

(1)(a), (b) or (c), must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

(3) No person who made or must make a report in terms of this section may, subject to subsection 45B(2A), disclose that fact or any information regarding the contents of any such report to any other person, including the person in respect of whom the report is or must be made, otherwise than—

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

(4) No person who knows or suspects that a report has been or is to be made in terms of this section may disclose that knowledge or suspicion or any information regarding the contents or suspected contents of any such report to any other person, including the person in respect of whom the report is or is to be made, otherwise than—

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