

PUBLIC COMPLIANCE COMMUNICATION

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No 42 (PCC 42)

ON THE DISCLOSURE OF FACTS OR
INFORMATION CONTAINED IN SECTION 29
REPORTS, OR PROVIDING A COPY OF
SUCH A REPORT TO A SUPERVISORY
BODY IN TERMS OF SECTION 29(3) AND
SECTION 45(B)(2B) OF THE FINANCIAL
INTELLIGENCE CENTRE ACT, 2001 (ACT 38
OF 2001)

PCC SUMMARY

Inspectors appointed by the Financial Intelligence Centre (Centre), the Financial Sector Conduct Authority (FSCA) or the South African Reserve Bank (SARB) including designated supervisory bodies within the SARB, who conduct inspections for the purpose of determining compliance with the FIC Act, may in terms of section 45B of the FIC Act order an accountable institution, reporting institution and/or other reporter under inspection, to produce a copy of a report, or furnish a fact(s) or information regarding a section 29 report in terms of the FIC Act that the institution submitted to the Centre. These inspectors perform the supervisory function in terms of the FIC Act and the inspected institutions should give them access to the required section 29 report information.

Inspectors appointed by any other supervisory body are allowed access to section 29 report information held by AIs, RIs and/or other reporters with the explicit, prior written consent from the Centre. The FIC will only provide consent following a written application, and if the criteria as set out in the Money Laundering Terrorist Financing Control (MLTFC) Regulations are met.

If, during an inspection, any supervisory body obtains a section 29 report, or a fact or information about such a report, the supervisory body must inform and request information from the Centre under section 40(1C) of the FIC Act relating to the same section 29 report, which may be relevant to the inspection.

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OBJECTIVE

The objective of this PCC is to provide guidance to accountable institutions, reporting institutions and/or other reporters, that the production of a copy of a report and/or the furnishing of information or facts of a report made in terms of section 29 of the FIC Act, can only be provided to specific supervisory bodies, under specified conditions.

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 1 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.

“Reporter” refers to the person or entity submitting a report in terms of Section 29 of the FIC Act to the Centre.

“Section 29 report” refers to any report submitted in terms of section 29 of the FIC Act to the Centre (refer to Guidance note 4B).

1. ACCESS TO SECTION 29 INFORMATION

1.1 Section 29(3) of the FIC Act prohibits a person who has submitted or who must submit a report in terms of section 29 of the FIC Act from disclosing facts or information regarding the content of a section 29 report to any person.

1.2 Section 45B(2A) of the FIC Act however, provides for an exception in that either an inspector of the:

1.2.1 Centre;

1.2.2 SARB and the FSCA as listed as supervisory bodies of items 1 and 2 of Schedule 2; and

1.2.3 A supervisory body that has met the prescribed criteria as set out in Regulation 27D in the MLTFC Regulations to the FIC Act.

may request such information for the purposes of conducting an inspection in terms of section 45B(2A) of the FIC Act or in executing its supervisory responsibilities in terms of section 40(1) of the FIC Act.

Section 29(3) of the FIC Act:

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 who 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 the FIC 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.

Section 45B(2A) of the FIC Act:

When acting in terms of subsection (2)(b) or (d), an inspector of—

- (a) The Centre
- (b) A supervisory body referred to in item 1 or 2 of Schedule 2;
- (c) Any other supervisory body meeting the prescribed criteria

may order from an accountable institution or reporting institution under inspection, the production of a copy of a report, or the furnishing of a fact or information related to the report, contemplated in section 29.

2. SUPERVISORY BODIES ALLOWED TO ACCESS INFORMATION RELATED TO A REPORT IN TERMS OF SECTION 29(3) FROM A REPORTER

2.1 Supervisory bodies referred to in item 1 or 2 of Schedule 2 are:

2.1.1 The SARB in respect of the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989, (Act 90 of 1989), the Registrar as defined in sections 3 and 4 of the Banks Act, 1990, (Act 94 of 1990), the Prudential Authority in terms of the Financial Sector Regulation, 2017 (Act 9 of 2017) (FSR Act) (formally constituted as the Bank Supervision Department), and the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961 issued in terms of the Currency and Exchanges Act, 1933 (Act 9 of 1933).

2.1.2 The SARB supervisory bodies are known as the:

- 2.1.2.1 Prudential Authority (PA);
- 2.1.2.2 National Payment System Department (NPSD); and
- 2.1.2.3 Financial Surveillance Department (Finsurv).

2.1.3 The FSCA (formerly referred to as the Financial Services Board) established in terms of the FSR Act.

3. POWERS OF INSPECTORS IN TERMS OF SECTION 45B(2)

- 3.1 Inspectors are appointed in terms of section 45A(1) of the FIC Act by the Centre, the FSCA and the SARB to conduct inspections for the purposes of determining compliance with the FIC Act.
- 3.2 The request, and receipt of section 29 report information by an inspector of a supervisory body is exercised within the general inspection powers vested in an inspector in terms of section 45B of the FIC Act.
- 3.3 The inspector, with specific reference to section 45B(2) of the FIC Act, may during the inspection of an accountable or reporting institution *inter alia*:
 - 3.3.1 Request documentation relating to STRs;
 - 3.3.2 Request information relating to STRs;
 - 3.3.3 Access any physical or electric storage areas where STR document and information may be kept;
 - 3.3.4 Examine and make copies of documentation and information relating to STRs
- 3.4 Inspectors must be given access to the required section 29 report information held by the inspected reporters.

4. PROCEDURE AFTER A REPORT, A FACT OR INFORMATION RELATED TO A SECTION 29 REPORT HAS BEEN OBTAINED BY THE CENTRE, FSCA OR SARB.

- 4.1 Section 45B(2B) of the FIC Act prescribes the procedure to be followed after a copy of a report, or fact or information related to section 29 of the FIC Act has been obtained by the Centre, FSCA, or the SARB from the inspected reporter directly.

Section 45B(2B) of the FIC Act:

If the inspector of a supervisory body, referred to in subsection (2A)(b) or (c), obtained a report, or a fact or information related to the report, under subsection (2A), that

supervisory body must request information from the Centre under section 40(1C) relating to the report contemplated in section 29 which may be relevant to such inspection.

4.2 Section 45B(2B) of the FIC Act requires that when an inspector of any supervisory body obtaining a section 29 report or a fact or information about the section 29 report during an inspection, the supervisory body must inform and request information from the Centre under section 40(1C) of the FIC Act relating to the same section 29 report which may be relevant to the inspection.

4.3 The Centre requires the supervisory body to advise the Centre, in writing, of the following:

4.3.1 Confirmation that the supervisory body has requested a section 29 report and/or section 29 report information;

4.3.2 Confirmation of the specific entity and organisation identity (ORG ID) number relating to the section 29 report in question;

and must request the following information:

4.3.3 That the section 29 report information is a true reflection as compared to the Centre's records;

4.3.4 Timeous submission of the section 29 report by the reporter;

4.3.5 Quality of information captured within the section 29 report by the reporter; and

4.3.6 Completeness and accuracy of information captured in the section 29 report by the reporter.

5 REQUEST FOR INFORMATION RELATING TO A REPORT – PROCEDURE

5.1 Requests for information by the supervisory body to the Centre in relation to section 40(1C) of the FIC Act must comply with the below requirements. The request must:

5.1.1 Be in writing following the request for information process;

- 5.1.2 Be submitted by an authorised officer at the supervisory body;
- 5.1.3 Specify the accountable institution, reporting institution or reporter;
- 5.1.4 Specify the required information and the purpose for which the information is required;
- 5.1.5 Specify which inspector, and any other persons, who will be receiving and reviewing the content of the Centre's information and the section 29 report information obtained;
- 5.1.6 Provide a reasonable time period for when this information is due by the Centre, not less than 20 working days; and
- 5.1.7 Acknowledge that this request is subject to handling conditions.

6 CONFIDENTIALITY OF INFORMATION RECEIVED FROM THE CENTRE

- 6.1 To ensure confidentiality of the information submitted by the Centre, 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 in terms of section 40(3) of the FIC Act.
- 6.2 Information from the Centre is subject to handling conditions as envisaged in section 40(3) to the FIC Act. A person who obtains information from the Centre may use that information **only**:
 - 6.2.1 for the purpose and within the scope of that person's powers and duties in facilitating the inspection and enforcement of the FIC Act; and
 - 6.2.2 for the purpose specified in the request;
 - 6.2.3 with the permission of the Centre;
 - 6.2.4 for the purposes of legal proceedings, including any proceedings before a judge in chambers; or
 - 6.2.5 in terms of a court order.
- 6.3 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 sections 40 and 41 of the FIC Act.

- 6.4 This information may not be compromised in any way through any disclosure to any person who is not required to use the information in accordance with section 40 of the FIC Act.
- 6.5 The information may not be disclosed directly or indirectly to individuals or entities that form the subject matter of the information.
- 6.6 Confidentiality of the information is maintained before and after the information is provided.
- 6.7 The recipient of this information must immediately notify and forewarn the Centre of any demand or any legal proceedings (including any notice of intended legal proceedings) to seek access to or the disclosure of this information received from the Centre.
- 6.8 Any person who discloses a fact or information of a section 29 report or such a report, obtained during an inspection or 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 or 41 of the FIC Act is guilty of an offence in terms of section 60 of the FIC Act.

7. CONFIDENTIALITY OF INFORMATION RECEIVED FROM AN ACCOUNTABLE INSTITUTION

- 7.1 An inspector may only obtain information for purposes of determining compliance with the FIC Act as envisaged by section 45B(1)(b) of the FIC Act.
- 7.2 An inspector is not permitted to disclose any information obtained during an inspection, including section 29 report and related information to any person other than for the purposes of enforcing compliance with the FIC Act, legal proceedings and when required to do so by a court of law. This includes providing information to the subject of

the section 29 report, or providing a fact that a section 29 report was submitted. Failure to do so is considered an offence in terms of section 60 of the FIC Act.

- 7.3 Failure to keep this information confidential by the inspector is deemed unauthorised disclosure, which is a criminal offence in terms of section 53 of the FIC Act.
- 7.4 The Centre advises that supervisory bodies should not make copies of, nor remove any physical copies relating to the content of any section 29 report or information relating to such report. The supervisory body should note the details of the section 29 report, excluding the content related to the suspicion being reported. This will reduce the potential of any information being abused by third parties and would further secure the confidentiality of sensitive information.
- 7.5 Supervisory bodies are only allowed access to section 29 reports, facts and information to the extent required in terms of its supervisory powers relating to the conduct of the accountable institutions under inspection.

8. ACCESS TO SECTION 29 REPORT INFORMATION BY SUPERVISORY BODIES OTHER THAN ITEMS 1 AND 2 TO SCHEDULE 2 OF THE FIC ACT

- 8.1 Section 29 report information requests from supervisory bodies, other than the Centre, FSCA and SARB, must meet certain criteria that may be determined by the Director in terms of sections 40 and 41 of the FIC Act, before they may access any section 29 report, facts, information or reports, from either the reporting entity or the Centre.

Process to be followed by a supervisory body, other than the SARB and FSCA when a section 29 report information is required

- 8.2 The supervisory body is to be in the process of conducting an inspection for the purposes of determining FIC Act compliance by the reporting entity.
- 8.3 The supervisory body is to first seek and obtain permission from the Centre before they may proceed requesting section 29 report information from either the Centre or the

reporting entity. This permission will be provided for in writing and must be given to the reporting entity covering the request for section 29 report information.

- 8.4 The Centre will provide permission only if the supervisory body can demonstrate that it has met the minimum prescribed criteria.

Prescribed criteria to be met for other supervisory bodies

- 8.5 The MLTFC Regulation 27D sets out the criteria for supervisory bodies to request information relating to a report made in terms of section 29 of the FIC Act. Such supervisory bodies must, to the satisfaction of the Centre have:

- 8.5.1 appropriate measures to ensure that the information obtained from the section 29 report is processed only for the purposes of determining compliance with the FIC Act;
- 8.5.2 appropriate measures to prevent unlawful access to the information contained in the section 29 report; and
- 8.5.3 appropriate security safeguards for the protection of information contained in the section 29 report.

- 8.6 The Centre must advise the accountable institution, reporting institution or other persons concerned in writing of its decision on whether a supervisory body meets the prescribed criteria.

Process if the prescribed criteria is not met by a supervisory body

- 8.7 Should the Centre decline a request for information on a section 29 report from a supervisory body in terms of section 45B(2A)(c) of the FIC Act, the supervisory body's inspectors shall not be allowed to request and acquire access to a section 29 report or related information held by the accountable, reporting institution or other reporters.
- 8.8 Such supervisory bodies may only gain access to information relating to a section 29 report submitted to the Centre in terms of section 40(d) and 40(1C) of the FIC Act, from the Centre directly. This is provided that such information is relevant to the exercise of its powers as a supervisory body or its functions under any law.

Section 40(1)(C) of the FIC Act:

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
- 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.

9. ENQUIRIES

For any further enquiries regarding this PCC 42, please contact the Compliance Contact Centre on **(012) 641 6000**, or a query can be logged at <http://www.fic.gov.za/Secure/Queries.aspx>

Issued By:

The Director

Financial Intelligence Centre

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