



Financial  
Intelligence Centre

## **GUIDANCE NOTE**

### **GUIDANCE NOTE 4B**

ON REPORTING OF SUSPICIOUS AND  
UNUSUAL TRANSACTIONS AND ACTIVITIES  
TO THE FINANCIAL INTELLIGENCE CENTRE  
IN TERMS OF SECTION 29 OF THE  
FINANCIAL INTELLIGENCE CENTRE ACT,  
2001 (ACT 38 OF 2001)

## PREFACE

- i) Money laundering has been criminalised in section 4, 5 and 6 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998, the POC Act). A money laundering offence may be described as the performing of any act in connection with property that may result in concealing or disguising the nature or source of the proceeds of crime.
  
- ii) Apart from criminalising the activities constituting money laundering, South African law also contains a number of control measures aimed at facilitating the detection and investigation of money laundering. These control measures, as contained in the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) are based on three basic principles of money laundering detection and investigation, i.e. that:
  - intermediaries in the financial system must know with whom they are doing business;
  - the audit trail of transactions through the financial system must be preserved;
  - possible money laundering transactions must be brought to the attention of the Financial Intelligence Centre (the Centre) and the investigating authorities.
  
- iii) The FIC Act also established 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 Centre is an integral part of our country's fight against the global crime of money laundering and terrorist financing.
  
- 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 (the MLTFC Regulations) issued under the FIC Act. 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 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 NOTE 4B ON REPORTING OF SUSPICIOUS AND UNUSUAL  
TRANSACTIONS AND ACTIVITIES TO THE FINANCIAL INTELLIGENCE  
CENTRE IN TERMS OF SECTION 29 OF THE FINANCIAL INTELLIGENCE  
CENTRE ACT, 2001 (ACT 38 OF 2001)**

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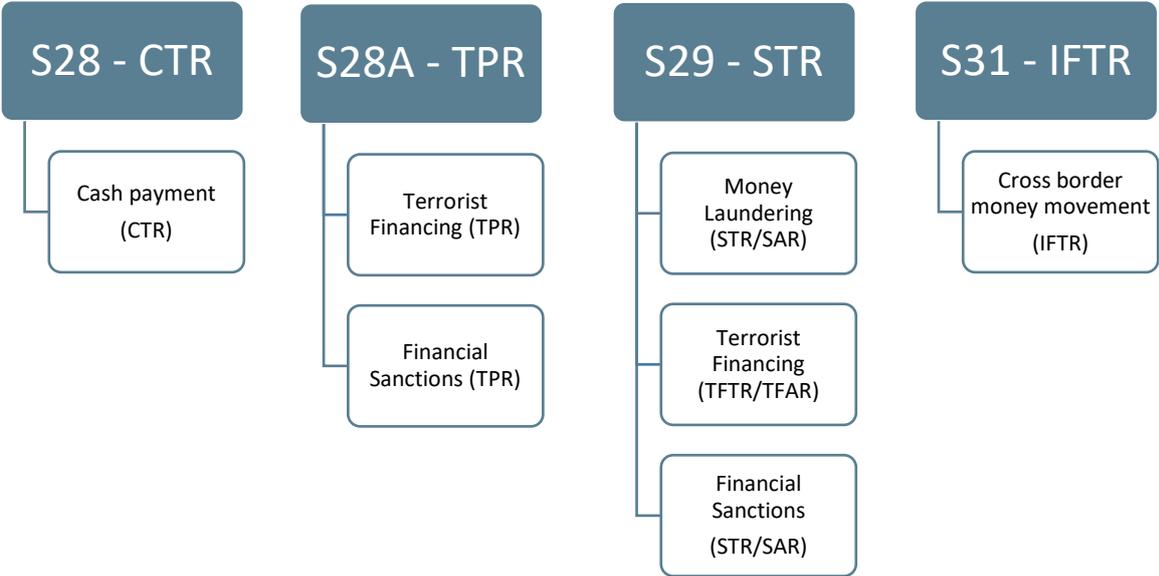
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# APPLICATION OF THIS GUIDANCE NOTE

- 1. The Centre has prepared this guidance note to assist accountable institutions, reporting institutions and any other person as described in section 29 of the FIC Act in meeting their reporting obligations in terms of the FIC Act. It provides general guidance on the nature of reporting under section 29 and explains reporting timelines, how reports have to be sent to the Centre, what information has to be included in these reports and how to use the electronic reporting mechanism.
- 2. This guidance takes effect on the commencement of sections 26 A, 26B and 26C of the FIC Act.
- 3. There are four (4) main reporting obligations in terms of the FIC Act, as listed below. The focus of Guidance Note 4B is on STR reporting in terms of section 29 of the FIC Act. Please refer to the applicable guidance issued by the FIC for clarity on other reporting obligations. Guidance Note 5B on CTR, Guidance Note 6A on TPR and Guidance Note 8 on IFTR.



## 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).

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

“**SAR**” refers to a suspicious or unusual activity report submitted in terms of section 29(1)(a), (c) or 29(2) of the FIC Act in respect of the proceeds of unlawful activities or money laundering, or suspicious or unusual activity in terms of section 29(1)(b)(vi) relating to the contravention of a prohibition under section 26B of the FIC Act, where the report relates to an activity which does not involve a transaction between two or more parties or in respect of a transaction or a series of transactions about which enquiries are made, or in respect of an incomplete, abandoned, aborted, attempted, interrupted or cancelled transaction, but which transactions has not been concluded, respectively.

“**STR**” refers to a suspicious or unusual transaction report submitted in terms of section 29(1)(b)(i) to (iv) of the FIC Act in respect of the proceeds of unlawful activities or money laundering and 29(1)(b)(vi) relating to the contravention of a prohibition under section 26B of the FIC Act where the report relates to a transaction or a series of transactions between two or more parties.

**“TFAR”** refers to a terrorist financing activity report submitted in terms of section 29(1)(a), (c) or 29(2) of the FIC Act in respect of the financing of terrorist and related activities where the report relates to an activity which does not involve a transaction between two or more parties or is in respect of a transaction or a series of transactions about which enquiries are made or in respect of an incomplete, abandoned, aborted, attempted, interrupted or cancelled transaction, but which transactions has not been concluded, respectively.

**“TFTR”** refers to a terrorist financing transaction report which must be submitted in terms of section 29(1)(b)(v) of the FIC Act in relation to the financing of terrorist and related activities where the report relates to a transaction or series of transactions between two or more parties.

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

## INTRODUCTION

4. The FIC Act provides for the reporting of suspicious and unusual activities and transactions in the prescribed form. The FIC Act repealed section 7 of the POC Act and from 3 February 2003 the duty to report suspicious and unusual transactions and activities is governed by section 29 of the FIC Act.
5. All businesses, including accountable and reporting institutions, as described in section 29 of the FIC Act, have a role to play in South Africa's efforts to prevent money laundering and terrorist financing. It is imperative that all businesses, accountable and reporting institutions report suspicious and unusual activities and transactions that are potentially linked to money laundering or terrorist financing to the Centre.
6. The reporting of suspicious and unusual transactions and activities is regarded as an essential element of the anti-money laundering and combating the financing of terrorist activities regime for every country. The international standard on measures to combat money laundering and terrorist financing, in the form of the Forty Recommendations of the Financial Action Task Force ("the FATF") provides the following concerning the reporting of suspicious transactions:

### ***"Recommendation 20 - Reporting of suspicious transactions***

*"If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU)".*

### ***Recommendation 23 – DNFBPs: Other measures***

*"... (a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in paragraph (d) of recommendation 22*

*... (b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold*

*... (c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to in paragraph (e) of recommendation 22.”*

7. This guidance note consists of nine parts:

- **Part 1** provides information to help persons determine whether they fall within the category of persons for whom a reporting obligation under section 29 of the FIC Act could arise.
- **Part 2** provides information to help persons determine when the obligation to report under section 29 of the FIC Act arises.
- **Part 3** provides information to help persons understand the nature of a suspicion.
- **Part 4** explains the type of reports to be filed in terms of section 29 of the FIC Act.
- **Part 5** provides examples of indicators of suspicious transactions that may be taken into consideration to determine whether an activity should give rise to a report in terms of section 29 of the FIC Act.
- **Part 6** provides examples of indicators of suspicious activities.
- **Part 7** provides the implications of reporting in terms of section 29 of the FIC Act, the process for submitting suspicious and unusual transaction reports and suspicious and unusual activity reports to the Centre.
- **Part 8** provides information on the process of submitting reports to the Centre in terms of section 29 of the FIC Act.
- **Part 9** provides information on the prescribed particulars to be provided in a section 29 report.

## PART 1 - WHO MUST REPORT?

8. The obligation to report suspicious and unusual transactions and activities under section 29 of the FIC Act applies to a very wide category of persons and institutions. The FIC Act imposes this obligation on any person who:
  - carries on a business;
  - is in charge of a business;
  - manages a business; or
  - is employed by a business.
  
9. The term “business” is not defined in the FIC Act. The ordinary meaning of the term, within the context of the FIC Act, is that of a commercial activity or institution, as opposed to a charitable undertaking or public sector institution.
  
10. This means that any person associated with a commercial undertaking as an owner, manager or employee of that undertaking, is subject to the obligation to report suspicious or unusual transactions and activities to the Centre.
  
11. It further means that it includes accountable and reporting institutions listed in Schedule 1 and 3 to the FIC Act respectively.

## PART 2 - WHAT GIVES RISE TO THE OBLIGATION TO REPORT IN TERMS OF SECTION 29 OF THE FIC ACT?

12. The obligation to report in terms of section 29 of the FIC Act arises when a person knows of certain facts, or in circumstances in which a person ought reasonably to have known or suspected that certain facts exist. This means that a person associated with a business, as described above, must report his or her knowledge or suspicion to the Centre whenever:
  - he or she becomes aware of something; or
  - circumstances arise in which a person can reasonably be expected to be aware of something; or
  - circumstances arise in which a person can reasonably be expected to suspect something.
  
13. Section 29(1) of the FIC Act describes the “something” referred to above. This can relate to situations concerning the business itself; or concerning transactions or potential transactions to which the business is a party; or concerning an activity which may lead to the business being abused by money launderers.
  
14. The “something” also relates to:
  - the proceeds of unlawful activity;
  - unlawful activity;
  - facilitating the transfer of proceeds of unlawful activity;
  - has no apparent business or lawful purpose;
  - may be relevant to the investigation of an evasion or attempted evasion of a duty to pay tax evasion or attempted tax evasion;
  - an offence relating to the financing of terrorist and related activities;
  - the contravention of a prohibition under section 26B of the FIC Act; and / or
  - any structuring of a transaction or activity which is conducted for the purpose of avoiding giving rise to a reporting duty under the FIC Act;

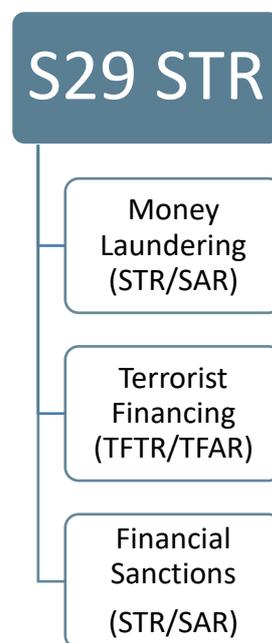
### Proceeds of unlawful activity and unlawful activity

15. The FIC Act defines “proceeds of unlawful activity” and “unlawful activity” by reference to the definitions of the same terms in the POC Act. Thus the term “proceeds of unlawful activity” for the purposes of the FIC Act means:

- any property or any service, advantage, benefit or reward;
- which was derived, received or retained;
  - directly or indirectly;
  - in South Africa or elsewhere;
  - at any time before or after the commencement of the POC Act.
- In connection with or as a result of any unlawful activity carried on by any person.

16. The term “unlawful activity” means any conduct, which constitutes a crime or which contravenes any law whether such conduct occurred in the Republic or elsewhere.

17. There are three (3) reporting obligations under section 29 of the FIC Act;



18. It is important to note that section 29 of the FIC Act refers to reports being made in connection with suspicions concerning the **proceeds** of unlawful activities and **money laundering, terrorist financing, and financial sanctions** offences as opposed to criminal activity in general. The FIC Act therefore does not require reports to be made on suspected crimes or unlawful conduct by a person (apart from money laundering, terror financing and financial sanction activities).

**Example 1:**

A stolen or fraudulent cheque is presented for payment to a bank. This action constitutes an element of a fraud, namely a misrepresentation that the person presenting the cheque is the legitimate holder of the cheque and is entitled to receive the amount reflected on the cheque. The presentation of the cheque is therefore part of an action to commit an offence, namely fraud. As a result this transaction should be reported to the appropriate investigating authorities as a fraud or attempted fraud. However, if the stolen or fraudulent cheque is honoured, the funds collected as a result would constitute the proceeds of the fraud. Any subsequent transaction involving those funds would be a transaction relating to the proceeds of unlawful activities and possibly a money laundering transaction, and there would be a reporting obligation in terms of section 29 of the FIC Act.

### Inability to conduct customer due diligence

19. Section 21E of the FIC Act states that an accountable institution must consider submitting a section 29 report to the FIC should they be unable to;
- Establish and verify the identity of the client and other relevant persons, in terms of their RMCP;
  - Obtain information about the business relationship with the client in terms of their RMCP; and
  - Conduct on going due diligence on the client in terms of their RMCP.

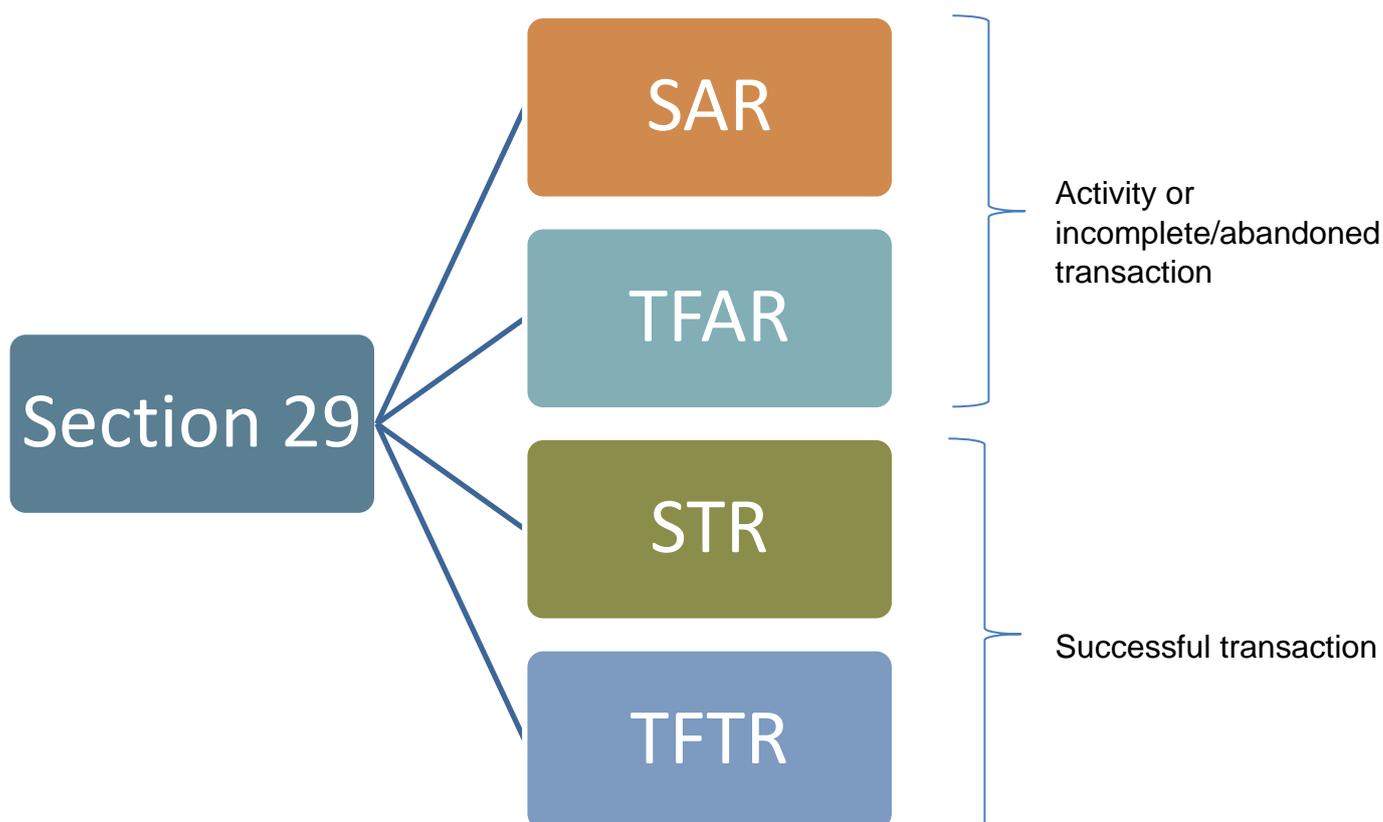
## PART 3 - WHAT IS THE NATURE OF A SUSPICION?

20. In addition to circumstances where a person has actual knowledge, the reporting obligation under section 29 of the FIC Act also applies in circumstances where a mere suspicion may exist. The FIC Act does not define what constitutes a suspicion. The ordinary meaning of this term includes a state of mind of someone who has an impression of the existence or presence of something or who believes something without adequate proof, or the notion of a feeling that something is possible or probable. This implies an absence of proof that a fact exists.
21. Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking, where there is doubt or a question about the truthfulness or source of information provided or the funds used; "I suspect but I cannot prove".
22. With this in mind the starting point to considering whether circumstances give rise to a suspicion would be when those circumstances raise questions or gives rise to discomfort, apprehension or mistrust.
23. A suspicious state of mind is subjective, which means that a court would have to draw inferences concerning a person's state of mind in relation to a particular set of circumstances from the evidence at its disposal concerning those circumstances. However, the FIC Act adds an element of objectivity to this with the phrase "ought reasonably to have known or suspected" in section 29(1). The application of this phrase is explained in section 1(3) of the POC Act.
24. Section 1(3) of the POC Act provides that a person ought reasonably to have known or suspected a fact if a reasonably diligent and vigilant person with the same knowledge, skill, training and experience, as well as the knowledge, skill, training and experience that may reasonably be expected of a person in the same position, would have known or suspected that fact. This expands the scope of the obligation to identify circumstances which may indicate that a set of circumstances concerning a business, or the transactions involving the business, is of a suspicious or unusual nature.

25. When considering whether there is reason to be suspicious of a particular situation one should assess all the known circumstances relating to that situation. This includes the normal business practices and systems within the industry where the situation arises.
26. A suspicious situation may involve several factors that may on their own seem insignificant, but, taken together, may raise suspicion concerning that situation. The context in which a situation arises, therefore, is a significant factor in assessing suspicion. This will vary from business to business and from one customer to another.
27. A person who files a report in terms of section 29 of the FIC Act, should evaluate matters concerning both the reporter's internal business and the business of the client, or potential client in question and the transactions involving the business, in relation to what seems appropriate and is within normal practices in the particular line of business of that person or entity type, and bring to bear on these factors such as the knowledge the reporter may have of the client. This should involve an application of the person's knowledge of the customer's business, financial history, background and behaviour.
28. A particular category of transactions that are reportable under section 29(1) of the FIC Act are transactions which a person knows or suspects to have no apparent business or lawful purpose. This refers to situations where customers enter into transactions that appear unusual in a business context or where it is not clear that the purpose of the transaction(s) is lawful. In order to identify situations where customers wish to engage in these unusual transactions a person would have to have some background information as to the purpose of a transaction and evaluate this against several factors such as the size and complexity of the transaction as well as the person's knowledge of the customer's business, financial history, background and behaviour.
29. More information is given in Parts 5 and 6 of this guidance as to factors that may indicate that a transaction or an activity is suspicious or unusual in a money laundering and terrorist financing context, respectively. These are indicators as to circumstances that may give rise to a suspicious state of mind or may be indicative of the fact that a reasonably diligent and vigilant person may have become suspicious of a particular transaction or series of transactions.

## PART 4 – TYPES OF REPORTS

30. Section 29 of the FIC Act requires reporting of both suspicious or unusual transactions, on the one hand, and suspicious or unusual activities, on the other. This allows the nature of reporting to be transaction-specific or activity-specific. The report to the Centre must be submitted on the correct reporting form which will either be an activity report or a transaction report.
31. Activity reports include:
- Suspicious activity report (SAR); and
  - Terrorist financing activity report (TFAR).
32. Transaction reports include:
- Suspicious and unusual transaction report (STR); and
  - Terrorist financing transaction report (TFTR).



### Instances which give rise to an activity report in terms of section 29(1) of the FIC Act

33. A **SAR** must be submitted in respect of when a suspicion relates to the proceeds of unlawful activity, or money laundering activity or a contravention of prohibitions under S26B of the FIC Act:
- where the report relates to an activity which does not involve a transaction between two or more parties; or
  - in respect of a transaction or a series of transactions about which enquiries are made but which has not been concluded.
  - In respect of a transaction which has been incomplete, interrupted, aborted, abandoned and ultimately not concluded
34. A **TFAR** must be submitted when a suspicion relates to the financing of terrorist and related activities:
- where the report relates to an activity which does not involve a transaction between two or more parties; or
  - in respect of a transaction or a series of transactions about which enquiries are made but which has not been concluded.
35. The abovementioned activity reports can include aborted, incomplete, attempted, interrupted or cancelled transactions.

### Instances which give rise to an activity report in terms of section 29(2) of the FIC Act

36. Section 29(2) deals with the reporting of transactions or series of transactions about which enquiries are made but which has not been concluded.
37. Where it is known or suspected that a transaction or a series of transactions about which enquiries are made may have caused any of the consequences referred to in section 29(1)(a) or (c) if the transaction(s) had been concluded, an activity report must be submitted to the Centre.

**Example 2:**

Certain behaviour displayed by a client or potential client may also lead to an obligation to submit a SAR to the Centre. Accountable institutions may not conclude a single transaction or establish a business relationship without establishing and verifying the identity of a client. The refusal of a potential client to provide the required client identification and verification documentation in terms of section 21 of the FIC Act may be seen as suspicious behaviour and a **SAR** may be submitted.

**Example 3:**

An employee suspects that the funds received from a drug syndicate is co-mingled with the income of the legitimate business that they work for. Because this business is used in itself as a front to launder the proceeds of unlawful activities, the employee would need to submit a **SAR** to the Centre in terms of section 29(2) of the FIC Act.

**Example 4:**

A client, Mr X requests that R50 000,00 be transferred to Mr C. The payment is blocked by Bank R in South Africa, due to the fact that Mr C is designated on the TFS list. Bank R's client Mr X is not designated on the TFS list. Bank R must therefore report a **TFAR** to the Centre, as the transaction was not concluded and aborted.

**Example 5:**

A client, Mr M requests that R80 000,00 be transferred to Mr N. The payment is blocked by Bank G in South Africa, due to the fact that Mr N is designated on a non TFS list. Bank R's client Mr M is not designated on the TFS list. Bank G must therefore report a **SAR** to the Centre, as the transaction was not concluded and aborted.

**Example 6:**

A client, Mr O requests that R30 000,00 be transferred to Mr P, the payment is processed by Bank H in South Africa. Thereafter Bank H becomes aware of information that indicates Mr P might be designated on a TFS list. ("Mr P" seems to be an alias name for a designated person). Bank H's client Mr O is not listed on the TFS list.

Bank G must report a **TFTR** to the Centre, as the transaction was processed.

**Example 7:**

A client, Mr X, attempts to deposit cash at a businesses. After the business has enquired about the source of funds, Mr X refuses to provide the information and does not deposit the cash. This behaviour is suspicious in that the client would rather not deposit cash as he is reluctant to advise the business where the money has come from. Given that this transaction was not completed, the business would be required to submit a **SAR** to the Centre in terms of section 29(2) of the FIC Act.

**Example 8:**

Financial Advisor B's client company X makes an enquiry to structure prospective payments in an attempt to conceal the underlying client and ultimate beneficiary. Should these transactions have been concluded, the business may have been used to facilitate money laundering. Given the suspicion, and that no transaction was completed, the business would be required to submit a **SAR** to the Centre in terms of section 29(2) of the FIC Act.

**Example 9:**

Mr Q makes enquiries with Estate Agent X to purchase a property and register it in a relative's name in order to hide his assets from the revenue service. Should this transaction have been concluded, the business may have been used to facilitate money laundering. Given the suspicion, and that no transaction was completed, the business may submit a **SAR** to the Centre in terms of section 29(2) of the FIC Act.

**Example 10:**

An employee of a business has a suspicion that a company that they work closely with is doing business with someone that is listed on the Targeted Financial Sanctions List pursuant to section 26A of the FIC Act, 2001 (TFS list). The employee would be required to submit a **SAR** to the Centre in terms of section 29 of the FIC Act.

**Example 11:**

The business is about to receive property which is connected to an offence relating to the financing of terrorist and related activities. The transaction has not been completed and therefore a **TFAR** must be submitted to the Centre in terms of section 29 of the FIC Act.

**Example 12:**

The business is about to be used to facilitate the commission of an offence relating to the financing of terrorist and related activities. The transaction has not been completed and therefore a **TFAR** must be submitted to the Centre in terms of section 29 of the FIC Act.

**Example 13:**

A person is aware or suspects that the business is likely to facilitate the transfer of property which is connected to an offence relating to the financing of terrorist activities. In such an instance a **TFAR** must be submitted to the Centre.

Instances which give rise to a transaction report in terms of section 29 of the FIC Act

38. A **STR** must be submitted when the suspicion is in respect of a complete transaction or series of transactions relating to the suspicion or knowledge of the proceeds of unlawful activity or money laundering and regarding a transaction or series of transactions relating to a contravention of prohibitions under section 26B of the FIC Act.
39. A **TFTR** must be submitted when the suspicion is in respect of a transaction, or series of transactions relating to terrorist financing and related activities.

**Example 14:**

A person is aware or suspects that a transaction or series of transactions with the business is suspicious and facilitated the transfer of the proceeds of unlawful activity. In such an instance a **STR** must be submitted to the Centre.

**Example 15:**

A person has a suspicion that a transaction or series of transactions with the business facilitated the transfer of property which is connected to an offence relating to the financing of terrorist activities. In such an instance a **TFTR** must be submitted to the Centre.

**Example 16:**

A person is aware that a transaction or series of transactions with the business has no apparent business or lawful purpose. In such an instance a **STR** must be submitted to the Centre by the business.

**Example 17:**

A person is aware that a transaction or series of transactions with the business may be relevant to the investigation of the evasion of any tax administered by the South African Revenue Service. In such an instance a **STR** must be submitted to the Centre by the business.

**Example 18:**

A client deposits cash in small increments of R5000,00 at several branches during the course of one day, adding up to over the reporting threshold of R24 999.99. It is possible that in doing so, the client is trying to avoid the business from becoming aware of a large cash transaction that the client is wanting to make. By breaking down the large cash amount into smaller amounts can amount to an attempt to avoid triggering a cash threshold report. In such an instance a **STR** must be submitted to the Centre by the business.

**Example 19:**

A person has a suspicion that a completed transaction or series of transactions with the business somehow relates to an offence relating to the financing of terrorist activities. In such an instance a **TFTR** must be submitted to the Centre by the business.

**Example 20:**

An existing client has noted their source of income for the last 5 years as salary income, and has reflected an average income of R30 000 per month. There is a once off deposit of R150 000,00 and is noted as "import/export". The business notes this as unusual for the client profile. The business would be required to submit a **STR** to the Centre.

## PART 5 - INDICATORS OF SUSPICIOUS AND UNUSUAL TRANSACTIONS

40. The indicators of suspicious and unusual activity discussed in Part 5 apply specifically to those situations where a suspicion may relate to a transaction between a business and its customer. These indicators are offered in order to assist persons involved in business to identify those situations where transactions should raise questions or give rise to the sense of discomfort, apprehension or mistrust which was referred to in the previous Part.
41. All accountable and reporting institutions are reminded that their obligation to monitor, detect and report suspicious or unusual transactions extends to all products and services that are rendered by the institution. All products and services that are rendered by the institution must be monitored for the detection and possible reporting of suspicious or unusual activity. The Centre therefore recommends that institutions map and document all of their products and services accordingly, to cater for the detection of both suspicious or unusual transactions and activity. This will assist institutions to identify and monitor the potential money laundering and terrorist financing risks that may be associated with the products and / or services.
42. These indicators are therefore merely **examples** of factors that may be helpful when evaluating transactions. The list is not exhaustive and does not intend to cover every possible situation. The indicators suggested here should not be viewed in isolation and should always be taken into consideration in conjunction with all other circumstances pertaining to a particular transaction.

### Unusual business

- Deposits of funds with a request for their immediate transfer elsewhere;
- Unwarranted and unexplained international transfers;
- The payment of commissions or fees that appear excessive in relation to those normally payable;
- Transactions do not appear to be in keeping with normal industry practices;
- Purchase of commodities at prices significantly above or below market prices;
- Unnecessarily complex transactions;
- Unwarranted involvement of structures such as trusts and corporate vehicles in transactions;

- A transaction seems to be unusually large or otherwise inconsistent with the customer's financial standing or usual pattern of activities;
- Buying or selling securities with no apparent concern for making a profit or avoiding a loss;
- Performing similar transactions (i.e. cash deposits) at multiple branches of the same institution on the same business day;
- Multiple electronic fund transfers and or deposits of cash over a period of time, where each transaction is below the reporting threshold for either IFTR or CTR, which create the impression of structuring to avoid triggering a reporting obligation.
- Performing transactions in a manner to attempt to conceal the underlying client and/ or ultimate beneficiary of the transaction; or
- Unwarranted desire to involve entities in foreign jurisdictions in transactions.

### General

- A customer provides insufficient, vague or suspicious information concerning a transaction;
- Accounts that show unexpectedly large cash deposits and immediate withdrawals;
- A frequent exchange of small denomination notes for larger denomination notes; or
- Involvement of significant amounts of cash in circumstances that are difficult to explain.

### Is there a threshold applicable to suspicious and unusual transactions?

43. It is important to make it clear that there is no monetary threshold which applies to the reporting of suspicious or unusual transactions. Once the conclusion is reached that a situation exists which gives rise to a suspicion that a transaction or activity relates to proceeds of unlawful activities, money laundering or terror financing, as explained above, the transaction or activity must be reported irrespective of the amount involved.
44. This must not be confused with a situation where the amount involved in a transaction or series of transactions, is the basis of a suspicion or forms part of the circumstances which gives rise to a suspicion pertaining to the transaction or series of transactions.

**Example 21:**

A review of a client's transacting pattern over a period of time indicates that their overall transacting pattern does not correspond with the expected profile the institution would have for the client. Note that a **STR** would be reportable as the suspicion would be based on a comparative review of the client's previous transacting pattern.

### Should the closing of an account be regarded as suspicious?

45. The closing of an account with an institution is a transaction which forms part of the business relationship which will be terminated by the account closure. In these circumstances institutions should consider factors such as the history of the account, the circumstances that led to the customer's decision to close the account and the reasons given by the customer for the closure of the account. For example, where a customer's instruction to close an account was preceded by a request by the institution for additional or updated information pertaining to the customer, the decision to rather close the account than to provide the requested information may be regarded as suspicious and / or unusual.

## PART 6 - INDICATORS OF SUSPICIOUS AND UNUSUAL ACTIVITY

46. The indicators discussed in this Part apply specifically to those situations where a suspicion may relate to a particular activity portrayed by the customer in their engagement with the business. These indicators are offered in order to assist persons involved in business to identify those situations where a particular activity should raise questions or give rise to the sense of discomfort, apprehension or mistrust which was referred to in the previous Part. These indicators are therefore merely **examples** of factors that may be helpful when evaluating client activity. The list is not exhaustive and does not intend to cover every possible situation. The indicators suggested here should not be viewed in isolation and should always be taken into consideration in conjunction with all other circumstances pertaining to a particular transaction.

### Unusual business

- Lack of concern about high commissions, fees, penalties etc. incurred as a result of a particular type of transaction or particular method of transacting; or
- Attempt to conceal the underlying client performing the transaction and / or the ultimate beneficiary thereof; or
- Customer attempts to perform a transaction, which is interrupted, cancelled and / or reversed, and does not have any apparent business purpose.

### Knowledge of Reporting or Record Keeping Requirements

- A customer attempts to convince the employee not to complete any documentation required for the transaction;
- A customer makes inquiries that would indicate a desire to avoid reporting;
- A customer has unusual knowledge of the law in relation to suspicious transaction reporting;
- A customer seems very conversant with money laundering or terrorist financing activity issues; or
- A customer is quick to volunteer that funds are clean or not being laundered.

## Identification

- The use of a seemingly false identity in connection with any transaction, including the use of aliases and a variety of similar but different addresses and, in particular, the opening or operating of a false name account;
- Opening accounts using false or fictitious documents;
- A customer provides doubtful or vague identification information;
- A customer refuses to produce personal identification documents;
- A customer changes a transaction after learning that he/she must provide a form of identification;
- A customer only submits unsatisfactory copies of personal identification documents;
- A customer wants to establish their identity using something other than his or her personal identification documents;
- A customer's supporting documentation lacks important details such as contact particulars;
- A customer inordinately delays presenting corporate documents;
- All identification presented is foreign or cannot be checked for some reason.

## Potential match of a client name on the TFS list

- A name, similar to the accountable institution's clients name, is found on the TFS list. After comparing all relevant information, the accountable institution cannot exclude the possibility that their client is not the same person.

## Potential match of a client name on a non TFS list

- Where a name, similar to the accountable institution's clients name, is found on a sanctions list other than the TFS list, the fact that the clients name is found on that sanctions list does not automatically warrant the filing of a STR. After considering all relevant information, the accountable institution must decide whether or not the accountable institution must file a report to the Centre.

## PART 7 - WHAT ARE THE IMPLICATIONS OF REPORTING IN TERMS OF SECTION 29 OF THE FIC ACT?

Can an institution continue transacting with a customer after a report in terms of section 29 of the FIC Act is submitted to the Centre?

47. Section 33 of the FIC Act provides that a reporter may continue with and carry out a transaction in respect of which a report is required to be made unless the Centre directs the reporter not to proceed with the transaction in terms of section 34 of the FIC Act.
48. The Centre may issue an instruction in terms of section 34 of the FIC Act (“an intervention order”), in writing not to proceed with a transaction, or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a prescribed period, after consultation with the institution or person concerned. The Centre must have reasonable grounds to suspect that a transaction may involve the proceeds of unlawful activities or property which is connected to an offence relating to terrorist financing, or may in some other way constitute money laundering or terrorist financing. It is recommended that institutions should indicate in the report where expedited action is required from the Centre.
49. The intervention order may require the institution or person not to proceed with the transaction which gave rise to the Centre’s belief or any other transaction in respect of funds that are affected by the particular transaction. The intervention order is valid for a period as specified in the intervention order, which excludes weekends and public holidays.

### Request for Information

50. The Centre may request for information in terms of section 32 of the FIC Act to a reporter that has previously submitted a report in terms of section 29 of the FIC Act.
51. The reporter would have to furnish the Centre with all additional information concerning the report and the grounds for the report as the Centre may reasonably require within the specified period and method indicated in the request for information.

## Confidentiality and Privilege

52. Section 37(1) of the FIC Act overrides secrecy and confidentiality obligations in South African law. No duty of secrecy or confidentiality prevents any institution or person from complying with an obligation to file a report under the FIC Act.
53. Section 37(2) of the FIC Act protects the common law right to legal professional privilege as between an attorney and an attorney's client in respect of communications made in confidence between:
- the attorney and the attorney's client for the purposes of legal advice or litigation which is pending or contemplated or which has commenced or;
  - a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced.

## The reporter enjoys legal protection concerning a report submitted to the Centre

54. Section 38 of the FIC Act protects persons who participate in submitting reports to the Centre. No legal action, whether criminal or civil, can be instituted against any natural or legal person who complies in good faith with the reporting obligations of the FIC Act.
55. In addition to protection against legal liability, the FIC Act also protects the identities of those involved in making a report to the Centre. A person involved in the making of a report cannot be forced to give evidence in criminal proceedings concerning such a report. However, such a person may choose to do so voluntarily. If a person elects not to testify, no evidence regarding that person's identity is admissible as evidence in criminal proceedings.

## Tipping off

56. A person involved in the making of a report may not inform anyone, including the customer or any other person associated with a reported transaction, of the contents of a suspicious transaction or activity report or even the fact that such a report has been made.
57. Section 29 of the FIC Act prohibits any reporter as well as any other person who knows or suspects that a report has been made from disclosing any information regarding that report except for information disclosed:
- within the scope of the powers and duties of that person in terms of any legislation;
  - for the purpose of carrying out the provisions of the FIC Act;

- for the purpose of legal proceedings, including any proceedings before a judge in chambers;
- in terms of an order of court.

58. Contravening these prohibitions constitutes offences in terms of the FIC Act that carry maximum penalties of imprisonment for a period up to 15 years or a fine up to R100 million.

#### Are there any defences associated with the reporting obligation?

59. In terms of section 69 of the FIC Act if a person who is an employee, director or trustee of, or a partner in, an accountable institution, is charged with failure to report suspicious or unusual transactions, that person may raise as a defence that he complied with the Risk Management and Compliance Programme (RMCP) relating to the reporting of information or reported the matter internally to the person responsible for ensuring compliance by the accountable institution with its duties in respect of the FIC Act.
60. In certain cases, an employee may simply report the matter to a superior and, if that can be proved, the person will have a valid defence if he or she is charged with not reporting the transaction to the Centre directly.
61. In many situations the fact that a suspicion is formed and a report made to the Centre implies that a business could possibly be dealing with the proceeds of unlawful activities in a way that would fall within the scope of the money laundering offences of sections 4, 5 and 6 of the POC Act. In order to allow persons to report their suspicions freely while carrying on their business without exposing them to criminal liability for their involvement in the reported transaction a defence is provided in section 7A of the POC Act against racketeering charges under subsections 2(1)(a) or (b) of the POC Act and money laundering charges under sections 4, 5 and 6 of that Act.
62. This defence applies both where a person has made a report to the Centre and has made a report in terms of the entity's RMCP or arrangements of the institutions by which the person is employed.

## Reactive reporting

63. Reactive reporting refers to the submitting of a STR, SAR, TFAR and/or TFTR to the Centre following an external prompt without a prior suspicion having been formed on the basis of the circumstances in which a particular transaction/activity or series of transactions/activities have been conducted. Examples of the prompts that may give rise to reactive reporting are:
- receiving a subpoena in terms of section 205 of the Criminal Procedure Act, 1997 (Act No 51 of 1997) or a similar process to provide evidence concerning matters relating to its business dealings with a particular customer;
  - receiving a request to confirm whether a person is a customer of an institution in terms of section 27 of the FIC Act in respect of a particular customer;
  - receiving an intervention order in terms of section 34 of the FIC Act in connection with a transaction involving a particular customer;
  - receiving a monitoring order in terms of section 35 of the FIC Act concerning the transactions of a particular customer;
  - receiving other types of enquiries from government agencies such as investigating authorities or the South African Revenue Service about a particular customer;
  - the discovery of any adverse information whilst conducting on-going due diligence of a customer;
  - seeing information in the media that may adversely affect a particular customer.
64. With regard to these external factors it is important to bear in mind that the obligation to file a report in terms of section 29 of the FIC Act with the Centre arises where a person becomes aware of certain facts or in situations which should give rise to a suspicion, as discussed in Part 2, above. External factors such as those referred to here, may contribute to the forming of a suspicion, but in all cases these factors should be considered in conjunction with all other factors pertaining to a particular transaction or series of transactions. These factors should not, in and of themselves, form the reason for submitting a report to the Centre in the absence of any suspicion formed.

## PART 8 - PROCESS FOR SUBMITTING REPORTS TO THE CENTRE IN TERMS OF SECTION 29 OF THE FIC ACT

### Method of filing a report in terms of section 29 of the FIC Act

65. In terms of regulation 22 of the MLTFC Regulations a report in terms of section 29 of the FIC Act must 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.
66. 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 29 of the FIC Act electronically to the Centre in accordance with the requirements of regulations 23, 23A, 23B or 23C of the MLTFC Regulations.
67. Accountable or reporting institutions need to consider the registration requirements as outlined in Public Compliance Communication 05C and discharge their reporting obligation in terms of section 29 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.

## How should a report in terms of section 29 of the FIC Act be submitted?

68. 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.
  - **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.
69. 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 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 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; and
  - 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.
70. An accountable or reporting institution or any other person required to file an STR may only file a report in terms of 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 a report made under section 29 of the FIC Act be posted to the Centre.

#### What is the time period for submitting a report in terms of section 29 of the FIC Act?

71. In terms of regulation 24 of the MLTFC Regulations a report under section 29 of the FIC Act must be sent to the Centre **as soon as possible** after a person became aware of the facts which give rise to a suspicion. In terms of regulation 24(3) of the MLTFC Regulations this period must not be longer than 15 (fifteen) days, excluding Saturdays, Sundays and Public Holidays.
80. The filing of a report in terms of section 29 of the FIC Act starts from the point where a person forms a suspicion. The 15 day period starts when a person becomes aware of the facts which will eventually give rise to a report in terms of section 29 of the FIC Act. This may be, and in the majority of cases will be, before a suspicion is formed.
81. The reporting period is effective from the institution becoming aware of such reporting obligation, and it may not add additional timeframes for its internal transactional monitoring alert system processes, and / or internal investigation and review processes to the prescribed reporting period.
82. It is only in exceptional cases that the Centre may consider condoning a report submitted in terms of section 29 of the FIC Act being sent after the expiry of the 15 day period. If a reporter believes that they will not be able to report within the 15 day period, the reporter may apply for condonation for the late filing of the SAR, STR, TFAR and / or TFTR from the Centre. Application for an extension must be made before the expiry of the 15 day period and must be in writing. In the application for an extension the reporter must provide reasons as to why the period will not be met. Furthermore, details as to when the report will be submitted must be provided. The request must be submitted in writing to the Executive Manager: Compliance and Prevention department of the Centre and submitted by means of formal signed correspondence to the Centre.

84. Failure to report in terms of section 29 of the FIC Act should be brought to the Centre's attention without undue delay according to the formal process outlined in Directive 3 which is available on [www.fic.gov.za](http://www.fic.gov.za).

What are the record keeping requirements for reports submitted in terms of section 29 of the FIC Act?

85. Section 23(c) of the FIC Act requires accountable institutions to keep records of reports submitted to the Centre in terms of section 29 of the FIC Act. Records are to be kept for at least 5 years from the date on which the report was submitted to the Centre.

Process to be followed when a transaction or series of transactions gives rise to multiple reporting obligations in terms of the FIC Act.

86. There may be instances when a client's transaction or series of transactions will give rise to more than one reporting obligation. This would mean that the accountable or reporting institution would be required to submit more than one type of report, for the same transaction, to the Centre.

#### **Example 22**

An accountable institution receives a cash payment of R50 000,00 from their client as part of a business transaction. This amount exceeds the cash threshold amount for submitting a report in terms of section 28 of the FIC Act. This entity would need to report this as a **CTR** to the Centre. Further, the entity is of the opinion that this transaction is also suspicious. The entity would also be required to submit a **STR** to the Centre.

## PART 9 - INFORMATION TO BE PROVIDED IN A SECTION 29 REPORT

Type of report	Applicable Regulations
STR	Regulation 23
SAR	Regulation 23A
TFTR	Regulation 23B
TFAR	Regulation 23C

87. Reporters should take note of the following information when submitting a report to the Centre:
- Ensure that client information sets are comprehensively completed;
  - Provide valid ID/Passport information and other client information (as required by the MLTFC Regulations, registration and reporting system schema and business rules);
  - Transactions whereby the client's account is debited and / or credited should be mapped and reported accordingly (i.e. a person must not be reported on both the "From" and "To" side of the transaction);
  - Ensure that an appropriate descriptive narrative for both the "Reason / Reason for Reporting" and "Action / Action Taken" fields on the reporting form for reports in terms of Section 29 of the FIC Act is completed.

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

88. Reports submitted to the Centre in terms of section 29 of the FIC Act must be reported to the Centre within the prescribed time and include the prescribed particulars contained in the MLTFC Regulations.
89. 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".

90. 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.
91. 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 its possession. In other words, all the information that is under the control of the institution and available within the various operating systems of the institution.
92. 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 reporting to the Centre in terms of the FIC Act.

**Example 23:**

The customer acceptance policy of a bank must follow accepted banking practice and certain minimum information is required for certain banking products and accounts. This information is considered to be readily available to the institution and must be provided when submitting a report to the Centre, where applicable.

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

93. 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.

94. 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”.
95. 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.

**Note:** Reporters should note that whilst the “Reason / Reason for Reporting” and “Action / Action Taken” fields are not marked as mandatory information fields on the reporting system, although the MLTFC Regulations require that these particulars be provided in a report to the Centre. The reporter must complete these fields when completing the STR, SAR, TFTR and TFAR reports. The Centre will reject a report when these fields in the reporting form are not completed.

#### Status of user guides issued by the Centre

96. The Centre has issued user guides and reporting scenarios regarding the electronic submission of reports in terms of section 29 of the FIC Act which can be accessed on our website [www.fic.gov.za](http://www.fic.gov.za).
97. These user guides do not form part of this guidance and are mere practical aids to assist accountable institutions, reporting institutions and other businesses in completing the electronic reporting form and are attached to this guidance for ease of reference.
98. The Centre advises that all institutions conduct continuous training with their staff. Institutions should furthermore use reporting user guides and scenarios published by the Centre to ensure that reports are submitted accordingly.

#### Accessibility of TFS lists

99. The provisions of the FIC Act requires that the Centre give notice of an adoption of a resolution as issued by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations.
100. The Centre, in order to assist reporters in accessing these resolutions, have made a list available, specifically under the category as mentioned in section 26A(1). This list is referred

to as the Consolidated South African Targeted Financial Sanctions List and will be made available on the Centre's website.

### What happens to a section 29 report in terms of the FIC Act after being submitted to the Centre?

101. Once the Centre receives the report, further analytical work will be conducted on the information provided in the report. If the information provided in the report, together with the additional analysis, indicates a reasonable belief that the information may be required to investigate suspected unlawful activity, the information will be referred to the appropriate authority to carry out further investigation. In accordance with section 38(3) of the FIC Act, the Centre is required to ensure that personal information of those involved in the making of a STR is protected from unauthorised disclosure.
  
102. Section 29 of the FIC Act together with the relevant MLTFC Regulations are attached as part of the Appendix for ease of reference.

## CONCLUSION

103. All businesses must in terms of section 29 of the FIC Act, report suspicious or unusual activities or transactions or series of transactions related to money laundering, the financing of terrorist and related activities and contraventions of prohibitions to financial sanctions to the Centre. This may be done by submitting a STR, SAR, TFTR or TFAR to the Centre as prescribed in the MLTFC Regulations.

**Issued By:**

**THE DIRECTOR**

**FINANCIAL INTELLIGENCE CENTRE**

**DATE: 26 March 2019**