

CONSULTATION NOTE

Relating to the draft Guidance Note 104A on
international funds transfer reporting to the
Financial Intelligence Centre in terms of
section 31 of the Financial Intelligence Centre
Act, 2001 (Act 38 of 2001)

January 2023

INTRODUCTION

1. The Financial Intelligence Centre (Centre) issues for consultation draft Guidance Note 104A for consideration by all accountable institutions, supervisory bodies and other persons in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act).
2. The draft Guidance Note 104, was initially made available on the Centre's website for the period from Friday, 1 March 2019 to Monday, 1 April 2019. Consultation comments were received from banks and industry associations, which comments have been addressed where necessary in the updated draft Guidance Note 104A (draft GN104A).
3. The updated [draft GN104A](#) provides guidance on the implementation of section 31 of the FIC Act, read together with the regulations 23D, 23E and 24 of the Money Laundering and Terrorist Financing Control Regulations.
4. Draft GN104A will be made available on the Centre's website for period of at least two weeks for consultation, ending on Wednesday, 1 February 2023. [Comments](#) are requested from accountable institutions, supervisory bodies and all other relevant persons.

FEEDBACK ON MATERIAL COMMENTS

High level feedback on the consultation comments received on draft Guidance Note 104 are noted below:

Comment	Response comments
Will Directive 3 and goAML Web notice 04 be extended to include Section 31 of the FIC Act?	Directive 3 will be updated to cover all reporting obligations in terms of the FIC Act, therefore for the failure to report in terms of section 31 of the FIC Act, accountable institutions must follow a Directive 3 process, read together with the updated goAML notice

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	04A, as well as public compliance communication 50.
<p>Due to the current structure of South Africa's payment systems and the usage of PCH System Operators (e.g. Visa & MasterCard) certain of the underlying sender/originator and receiver/beneficiary information will not be known to Bank A. It will be beneficial if guidance can be issued in this regards as this may lead the industry not to be able to provide all information sets outlined in the regulations and guidance note</p>	<p>Paragraph 38 to 41 in draft Guidance Note 104A is relevant in this regard.</p> <p>Where information is not mandatory but the accountable institution has the information readily available, then the accountable institution must provide that information in the IFTR.</p> <p>Underlying originator and underlying beneficiary do not form part of the mandatory information fields on the report goAML form.</p>
<p>In certain scenarios through correspondent banking Bank A will only get confirmation of the transactions well beyond the 72-hour reporting period. There may therefore be a discrepancy between the transaction value date and the date that it is posted. Practically, the posting date of a transaction must be used to determine the awareness of the transactions, as this is the date that it is processed/posted on our systems.</p>	<p>The draft Guidance Note 104A seeks to address this comment noting it is the understanding of the Centre that an accountable institution will become aware of the fact that a transaction has occurred and has become reportable on the date that the value of the funds is given to the beneficiary (receiver), where the beneficiary is in a position to take unfettered receipt of such funds. Reporting of an IFTR is to be done as soon as possible, but no later than three days from the date that value is given.</p>
<p>It is apposite to highlight that cross border foreign exchange transactions executed by authorised dealers on behalf of their customers are reported via an online same source system with sufficient detail of a specific transaction, which entails the transfer of funds from overseas to enable the South African Reserve bank to trace the transaction. There is no minimum threshold and all cross-border transactions, irrespective of the</p>	<p>The Centre, in collaboration with the relevant supervisory bodies, have considered this recommendation in great detail. It was, however, concluded that reporting under section 31 remain a separate reporting obligation.</p> <p>In summary, the data reportable to the SARB FinSurv differs in certain respects to that</p>

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<p>value, are captured and reported to the Financial Surveillance Department.</p> <p>Whilst Bank B recognise that a purpose of FICA is to obtain intelligence on possible money laundering and terrorist financing thus contributing to the combating of money laundering and terrorist financing. Bank B respectfully submits that creating duplicated reporting requirements does not contribute to the effective risk identification and mitigation of possible money laundering or terrorist financing.</p>	<p>which is required in terms of section 31 of the FIC Act.</p> <p>Additionally, the reporting to the SARB and separately to the Centre serve different purposes. There is no manner in which the Centre can rely on reports filed with the SARB FinSurv to effectively perform the required analysis.</p>
<p>The Centre has issued a draft Guidance Note 104 on international funds transfers to be reported to the Centre in terms of section 31 of FICA. In it, the Centre has indicated that in instances where, for example, a financial services provider, furnishes instructions to an authorised dealer on behalf of an underlying client, the authorised dealer must, in addition to reporting on its own client's details, also report the details of the underlying client who gave the original instruction where readily available.</p> <p>a) does section 31 of FICA contemplate that an authorised dealer report the details of the underlying person who gave the original instruction to the authorised dealer's client to affect the electronic funds transfer;</p> <p>b) what do the words "on behalf, or on the instruction, of another person" in section 31 of FICA mean;</p> <p>c) can the draft regulations impose greater obligations than section 31 of FICA and</p>	<p>Paragraph 17 of the draft Guidance Note 104A provides guidance on the scenario where complementary reporting is required. There will be instances where an authorised dealer (AD) is acting on behalf of an authorised dealer with limited authority (ADLA), in this scenario, the AD as well as the ADLA will be required to submit separate reports in terms of section 31 of the FIC Act to the Centre.</p> <p>In line with section 21 of the FIC Act, accountable institutions must identify and verify their clients and persons acting on behalf of the client. Therefore, accountable institutions must have information on the persons acting on behalf of the client, which information they must provide in the IFTR.</p>

Comment	Response comments
d) what do the words “as much of the following information as is readily available ” as employed in regulation 22E and in particular regulation 22E(8) mean.	

CONCLUSION

5. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the updated draft GN 104A where appropriate.
6. The Centre plans on issuing a final version of GN 104A by 28 February 2023.

COMMUNICATION WITH THE CENTRE

7. Queries can be directed to the compliance contact centre on 012 641 6000 and select option 1. Queries can also be submitted online by clicking on <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the Centre’s website and submitting an online compliance query.

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