



Financial
Intelligence Centre

DRAFT PUBLIC COMPLIANCE COMMUNICATION

[DRAFT DOCUMENT FOR CONSULTATION PURPOSES ONLY]

PUBLIC COMPLIANCE COMMUNICATION No 38A (PCC 38A)
ON THE MODE OF COMMUNICATION REGARDING
SECTIONS 27, 32, 34 AND 35
OF THE FINANCIAL INTELLIGENCE CENTRE ACT
(ACT NO. 38 OF 2001)

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

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 FIC Act. Guidance provided by the Centre is the only form of guidance formally recognised in terms of the FIC Act and the Regulations issued under the FIC Act. Accordingly, guidance provided by the Centre is authoritative in nature and must be taken into account when interpreting the provisions of the FIC Act or assessing compliance with the obligations it imposes.

It is important to note that enforcement action may follow from non-compliance with the FIC Act. Where it is found that an accountable or reporting institution has not followed guidance which the Centre has issued, the institution must be able to demonstrate that it has complied with the relevant obligations under the FIC Act in an equivalent manner nonetheless.

Disclaimer

The publication of a PCC concerning any particular issue, as with other forms of 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 user's legal position. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

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PCC Summary

Public Compliance Communication No. 38A (PCC 38A) takes effect on [DATE] and replaces PCC38 with effect from that date. PCC38A provides guidance to accountable and reporting institutions, and other persons subject to reporting obligations on the mode of communication regarding sections 27, 32, 34 and 35 of the FIC Act.

PCC38 has been revised and takes effect from the date of issue of this PCC38A. The previous version of this PCC is hereby withdrawn.

Objective

The objective of this PCC is to provide guidance in relation to receiving and responding to requests, interventions and orders from the Centre in terms of sections 27, 32, 34 and 35 of the FIC Act.

1. Application of this PCC

- 1.1. The Centre published PCC 38A to assist accountable institutions, reporting institutions and any other person who are subject to reporting obligations to receive and respond to requests for information, interventions and monitoring orders from the Centre in terms of sections 27, 32, 34 and 35 of the FIC Act and provides guidance on:
 - How the request will be sent by the Centre;
 - How responses must be submitted to the Centre;
 - The timelines for responses; and
 - Information to be included in the response.
- 1.2. Sections 27, 32, 34 and 35 of the FIC Act provides the Centre with mechanisms to request information in relation to clients, transactions, reports as well as to intervene in certain transactions or proposed transactions.
- 1.3. PCC38 has been updated to incorporate amendments to the FIC Act which came into operation in 2017. PCC38A should be noted and applied by Heads of Compliance, section 42A(2)(b) Compliance Officers, Money Laundering Reporting Officers and persons of similar compliance designations of accountable and reporting institutions,

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assigned to deal with requests, interventions and orders in terms of sections 27, 32, 34 and 35 of the FIC Act. PCC38A takes effect on **[DATE]**.

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1.4. PCC38A is divided into 5 parts:

- Part I deals with practical arrangements applicable to all section 27, 32, 34 and 35 communications
- Part II deals with section 27 communications
- Part III deals with section 32 communications
- Part IV deals with section 34 communications
- Part V deals with section 35 communications

PART I – Practical arrangements applicable to all section 27, 32, 34 and 35 communications

2. Responsible persons

2.1 Accountable and reporting institutions should as far as possible, have allocated officers to attend to requests, interventions and orders received from the Centre in terms of sections 27, 32, 34 and 35 of the FIC Act.

3. Methods of receiving and responding to communications from the Centre in terms of sections 27, 32, 34 and 35 of the FIC Act

3.1 The message board on the Centre's registration and reporting platform is the main mode of communication from and to the Centre.

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

3.3 Institutions and persons must respond to instructions in terms of the specified communications sent by the Centre by responding to the original message using the same platform through which the instruction was received. Alternatively, the Centre will inform the institution or person which method to use when responding to the Centre.

4. Attachments and Reference Numbers

- 4.1 All relevant and requested information must be attached to the response to requests, interventions and orders from the Centre using the message board, the encrypted email and/or any other secure method as determined by the Centre. Attachments must be in PDF, MS Word and/or in MS Excel format or in a format requested by or agreed to by the Centre.
- 4.2 The response must contain the relevant reference number assigned to the relevant response, request or intervention, as provided by the Centre.

5. Response times

- 5.1 The Centre will specify the required response time for all requests for information interventions and monitoring orders in terms of sections 27, 32, 34 and 35 of the FIC Act.
- 5.2 All days for calculation of the response times are business days, and exclude Saturdays, Sundays and public holidays.
- 5.3 Responses must reach the Centre as soon as possible and within the stipulated response time. It is the expectation of the Centre that urgent communications from the Centre be prioritised.
- 5.4 If the response time cannot be adhered to, the institution or person must contact the Centre using the message board, the encrypted email and/or any other secure method as communicated by the Centre to advise the Centre on the reason for the delay and when the requested information will be provided to the Centre.

PART II – Section 27 communications

6. Section 27 of the FIC Act – institutions and persons to advise the Centre of clients

- 6.1 Section 27 of the FIC Act is applicable to accountable institutions, reporting institutions and persons subject to reporting obligations in terms of the provisions of the FIC Act.

- 6.2 Section 27 compels institutions and persons subject to reporting obligations to advise the Centre of their clients, or persons acting on behalf of their clients, in response to a request from an authorised employee from the Centre. The purpose of such requests is to obtain information relating to specified clients and/or numbers of the institution who may be linked to money laundering or terrorist financing activities.
- 6.3 Section 27 of the FIC Act further compels institutions and persons subject to reporting obligations to advise the Centre:
- 6.3.1 on whether a number specified by the Centre was allocated by the accountable institution, reporting institution or person to a person with whom the accountable institution, reporting institution or person has or has had a business relationship; or
- 6.3.2 on the type and status of a business relationship with a client of the accountable institution, reporting institution or person.

7. Examples of practical application

- 7.1 The below examples are not exhaustive, they merely demonstrate how to practically apply the guidance given in a particular scenario:

Example 1: XYZ Bank receives a request from the Centre in terms of section 27 of the FIC Act to confirm whether Mr A holds an account with XYZ Bank. The request is sent to XYZ Bank using the message board. XYZ Bank responds directly using the message board by replying to the original message sent by the Centre and attaching a response document (in pdf / MS Word / MS Excel etc.), indicating whether Mr X is a client of the XYZ Bank, as well as including any additional information that the Bank can provide. The response contains the relevant reference number and message type assigned to the case as provided by the Centre.

Example 2: The registration and reporting platform is undergoing maintenance, or the message board is not functional. The Centre will not be able to send the section 27 request via the message board. XYZ Bank will then receive a section 27 request for information in terms of the FIC Act from the Centre using an encrypted email message

and/or any other secure method as determined by the Centre, to confirm if Mr B holds an account with XYZ Bank. XYZ Bank will respond using email and/or any other secure method as determined by the Centre, replying to the original message as sent by the Centre. This response must contain the relevant reference number assigned to the case as provided by the Centre. XYZ will then attach a document (pdf / MS word / MS excel etc.) to the response, indicating whether Mr B is a client of the institution or not.

PART III – Section 32 communications

8. Section 32 of the FIC Act – reporting procedures and furnishing of additional information

8.1 Section 32 of the FIC Act is applicable to accountable institutions, reporting institutions and any other person that has made a report in terms of section 28 and/or section 29 of the FIC Act. Requests for information in terms of section 32 of the FIC Act provides the Centre with a mechanism to obtain additional information concerning a report submitted, including the grounds for the report.

8.2 Additional information which may be requested by the Centre in terms of section 32 of the FIC Act include:

8.2.1 prescribed information relating to transactional activity;

8.2.2 supporting documentation concerning the report; and

8.2.3 the grounds for the report..

8.3 Section 32 compels the abovementioned institutions and persons to respond to the Centre's request for additional information in the prescribed manner and within the prescribed period with such additional information concerning the report and the grounds for the report as that institution or person may have available. As indicated in Regulation 24A the Centre will specify the number of days within which the additional information must be furnished to the Centre.

9. Examples of practical application

- 9.1 The below examples are not exhaustive, and are to be used merely to demonstrate how to practically apply the above guidance given in a particular scenario.

Example 3: XYZ Bank receives a request from the Centre for additional information in terms of section 32 of the FIC Act. The request is sent to XYZ Bank using the message board. The Centre requests information to be submitted using the reporting functionality by submitting an additional information file (AIF) or an additional information file transaction (AIFT). XYZ Bank will respond using the AIF and/or AIFT functionality and must also respond to the Centre by replying to the request in the message board. This response must contain the relevant reference number assigned to the case as provided by the Centre. XYZ Bank also attaches a document (pdf / MS word / MS excel etc.) to the response as well as the relevant reference number assigned to the case by the Centre, and the AIF/AIFT reference number/s.

Example 4: The registration and reporting platform is undergoing maintenance. XYZ Bank receives a request from the Centre for additional information in terms of section 32 of the FIC Act using encrypted email and/or any other secure method as determined by the Centre. XYZ Bank will respond using email and/or any other secure method as determined by the Centre, replying to the original message as sent by the Centre. This response must contain the relevant reference number, assigned to the case as provided by the Centre. XYZ will then attach a document (pdf / MS word / MS excel etc.) to the response, as well as the relevant reference number assigned to the case by the Centre, and the AIF/AIFT reference number/s.

PART IV – Section 34 communications

10. Section 34 of the FIC Act – intervention by the Centre

- 10.1 Section 34 of the FIC Act is applicable to accountable institutions, reporting institutions and any other person required to make a report in terms of section 28, 28A or 29 of the FIC Act.

- 10.2 Section 34 of the FIC Act provides for intervention by the Centre should the Centre, after consulting with the abovementioned institutions or person, have reasonable grounds to suspect that a transaction or a proposed transaction:
- may involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities; or
 - constitute money laundering or a transaction contemplated in section 29(1)(b) of the FIC Act.
- 10.3 Section 34 of the FIC Act does not apply to the carrying out of a transaction to which the rules of an exchange licensed in terms of the Financial Markets Act, 2012 (Act No. 19 of 2012), apply.
- 10.4 The Centre may direct the accountable institution, reporting institution or person in writing not to proceed with a specific action as detailed in the section 34 request. This can include, but is not limited to the carrying out of a specified transaction or proposed transaction for a period not longer than 10 days. For the purposes of calculating the period of 10 days, Saturdays, Sundays and proclaimed public holidays are excluded.
- 10.5 This intervention enables the Centre to make the necessary inquiries concerning the transaction and, if the Centre considers it appropriate, to inform and advise an investigating authority or the National Director of Public Prosecutions regarding the transaction.

11. Examples of practical application

- 11.1 The below examples are not exhaustive, and are to be used merely to demonstrate how to practically apply the above guidance given in a particular scenario.

Example 5: XYZ Bank receives a section 34 intervention that directs the institution not to process any transactions that are linked to an account that may be linked to the proceeds of unlawful activities, for a period of ten (10) days. The directive is sent to XYZ Bank using the message board. Upon receipt of the intervention XYZ Bank responds using the message board. The response from XYZ Bank includes the

reference number, initiation and expiry dates of the directive, and the amount secured. XYZ Bank will then attach a document (pdf / MS word / MS excel etc.) to the response.

Example 6: The registration and reporting platform is undergoing maintenance. XYZ Bank receives a section 34 intervention that directs the institution not to process any transactions that are linked to an account that may be linked to the proceeds of unlawful activities for a period of ten (10) days. The directive is sent to XYZ Bank using encrypted email and/or any other secure method as determined by the Centre. XYZ Bank will respond via email and/or any other secure method as determined by the Centre, replying to the original message as sent by the Centre. The response includes the reference number, initiation and expiry dates of the directive and the amount secured and, the account status and balance to date. XYZ Bank will then attach a document (pdf / MS word / MS excel etc.) to the response.

PART V – Section 35 communications

12. Section 35 of the FIC Act – Monitoring Orders

- 12.1 Section 35 of the FIC Act is only applicable to accountable institutions and relates to monitoring orders granted by a judge designated by the Minister of Justice for the purposes of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992).
- 12.2 The Centre's function in relation to a monitoring order granted in terms of section 35 of the FIC Act is to make the accountable institution aware of the judicial order issued, to ensure that the accountable institution implements the order and to receive the information to be reported in terms of the order.
- 12.3 Monitoring orders provide the Centre with a mechanism to request the monitoring of all client accounts, including, but not limited to, transactions concluded by a specified person with the accountable institution, or all transactions conducted in respect of a specified account or facility at the accountable institution, if there are reasonable grounds to suspect that:
- That person has transferred or may transfer to the accountable institution the proceeds of unlawful activities;

- That person has transferred or may transfer to the accountable institution property connected to an offence relating to the financing of terrorist and related activities;
- The account or other facility has or may receive the proceeds of unlawful activities;
- The account or other facility has or may receive property which is connected to an offence relating to the financing of terrorist and related activities;
- That person is using or may use the accountable institution for money laundering purposes or for the financing of terrorist acts or for the purpose of any transaction contemplated in section 29(1)(b); or
- That account or other facility is being or may be used for money laundering purposes or for the financing of terrorist or related activities or for the purpose of any transaction contemplated in section 29(1)(b).

12.4 Type of information that may be required in terms of the order include but are not limited to the following:

- Details of the transactions relating to specified accounts;
- Branch location and time of cash deposits conducted;
- Contra-account details of debits and credits into and from the accounts;
- Street location and time of cash deposits or withdrawals from Automatic Teller Machines (ATMs);
- Copies of account statements;
- Copies of any transactional notifications to and from the client by electronic means including SMS and e-mail messages for online banking purposes; and
- Relevant telephone numbers, e-mail and internet protocol (IP) addresses used to communicate with the client.

13. Examples of practical application

13.1 The below examples are not exhaustive, and are to be used merely to demonstrate how to practically apply the above guidance given in a particular scenario.

Example 7: XYZ Bank receives a section 35 monitoring order that directs the institution to report transactional information that is linked to an account that may be associated with the proceeds of unlawful activities and or offences related to money laundering.

The relevant information must be reported to the Centre on a weekly basis and for an uninterrupted period of three months. An order lapses after 3 months unless extended by a judge for further periods not exceeding 3 months at a time. The order is sent to XYZ Bank using the message board. The XYZ Bank will respond using the message board by replying to the original message as sent by the Centre with a reference number relevant to the case the Centre has initiated. XYZ Bank furthermore attaches all documents (pdf / MS word/ MS excel etc.) that are linked to the transactional information of the monitored account.

Example 8: XYZ Bank receives a section 35 monitoring order that directs the institution to report transactional information linked to an account that may be associated with the proceeds of unlawful activities and/or offences related to money laundering. The relevant information must be reported to the Centre on a weekly basis and for three months which will be stipulated in the monitoring order. The order is sent to XYZ Bank using encrypted email and/or any other secure method as determined by the Centre. The XYZ Bank will respond via email and/or any other secure method as determined by the Centre, replying to the original message as sent by the Centre.

14. Conclusion

- 14.1 Sections 27, 32, 34 and 35 of the FIC Act provides the Centre with mechanisms to request information in relation to clients, transactions, reports as well as to intervene in certain transactions or proposed transactions.
- 14.2 Accountable and reporting institutions should as far as possible, have allocated officers to attend to requests, interventions and orders received from the Centre in terms of sections 27, 32, 34 and 35 of the FIC Act.
- 14.3 Institutions and persons must respond to communications from the Centre in terms of sections 27, 32, 34 and 35 of the FIC Act, by responding to the original message from the Centre, using the same platform through which the instruction was received. Alternatively, the Centre will inform the institution or person which method to use when responding to the Centre.

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- 14.4 The Centre will specify the required response time for all requests for information, interventions and monitoring orders in terms of sections 27, 32, 34 and 35 of the FIC Act.
- 14.5 All relevant and requested information must be attached and responses must contain the relevant reference numbers.

Queries on this and other compliance matters can be logged using the web portal on the Centre's website (click here) or visit www.fic.gov.za for alternative contact details.

**ISSUED BY:
THE DIRECTOR
FINANCIAL INTELLIGENCE CENTRE
[DATE]**

SECTION 27 OF THE FIC ACT

Accountable institutions, reporting institutions and persons subject to reporting obligations to advise Centre of clients

If an authorised representative of the Centre requests an accountable institution, a reporting institution or a person that is required to make a report in terms of section 29 of this Act to advise —

- (a) whether a specified person is or has been a client of the accountable institution, reporting institution or person;
- (b) whether a specified person is acting or has acted on behalf of any client of the accountable institution, reporting institution or person;
- (c) whether a client of the accountable institution, reporting institution or person is acting or has acted for a specified person;
- (d) whether a number specified by the Centre was allocated by the accountable institution, reporting institution or person to a person with whom the accountable institution, reporting institution or person has or has had a business relationship;
- or
- (e) on the type and status of a business relationship with a client of the accountable institution, reporting institution or person,

the accountable institution, reporting institution or person must inform the Centre accordingly.

SECTION 32 OF THE FIC ACT

Reporting procedures and furnishing of additional information

- (1) A report in terms of section 28, 29 or 31 to the Centre and a report in terms of section 30(1) to a person authorised by the Minister must be made in the prescribed manner.
- (2) The Centre may request an accountable institution, a reporting institution or any other person that has made a report in terms of section 28, 29 or 31 to furnish the Centre with such additional information, including prescribed information relating to transactional activity and supporting documentation, concerning the report and the grounds for the report as the Centre may reasonably require for the performance by it of its functions.

- (3) When an institution or a person referred to in subsection (2) receives a request under that subsection, that institution or person must furnish the Centre in the prescribed manner and within the prescribed period with such additional information concerning the report and the grounds for the report as that institution or person may have available.

SECTION 34 OF THE FIC ACT

Intervention by Centre

- (1) If the Centre, after consulting an accountable institution, a reporting institution or a person required to make a report in terms of section 28, 28A or 29, has reasonable grounds to suspect that a transaction or a proposed transaction may—
- (a) involve—
- (i) the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities; or
 - (ii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1);
or
- (b) constitute—
- (i) money laundering; or
 - (ii) a transaction contemplated in section 29(1)(b),

it may direct the accountable institution, reporting institution or person in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period not longer than 10 days as determined by the Centre, in order to allow the Centre to make the necessary inquiries concerning the transaction and, if the Centre considers it appropriate, to inform and advise an investigating authority or the National Director of Public Prosecutions.

- (2) For the purposes of calculating the period of 10 days in subsection (1), Saturdays, Sundays and proclaimed public holidays must not be taken into account.

- (3) Subsection (1) does not apply to the carrying out of a transaction to which the rules of an exchange licensed in terms of the Financial Markets Act, 2012 (Act No. 19 of 2012), apply.

SECTION 35 OF THE FIC ACT

Monitoring orders

- (1) A judge designated by the Minister of Justice for the purposes of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002), may, upon written application by the Centre, order an accountable institution to report to the Centre, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specified person with the accountable institution or all transactions conducted in respect of a specified account or facility at the accountable institution, if there are reasonable grounds to suspect that—
- (a) that person has transferred or may transfer to the accountable institution—
- (i) the proceeds of unlawful activities;
 - (ii) property which is connected to an offence relating to the financing of terrorist and related activities; or
 - (iii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1);
- (b) that account or other facility has received or may receive—
- (i) the proceeds of unlawful activities;
 - (ii) property which is connected to an offence relating to the financing of terrorist and related activities; or
 - (iii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in a notice referred to in section 26A(1);
- (c) that person is using or may use the accountable institution for money laundering purposes or for the financing of terrorist acts or for the purpose of any transaction contemplated in section 29(1)(b); or

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- (d) that account or other facility is being or may be used for money laundering purposes or for the financing of terrorist or related activities or for the purpose of any transaction contemplated in section 29(1)(b).
- (2) An order in terms of subsection (1) lapses after three months unless extended in terms of subsection (3).
- (3) A judge referred to in subsection (1) may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if—
 - a. the reasonable grounds for the suspicion on which the order is based still exist; and
 - b. the judge is satisfied that the interest of justice is best served by monitoring the person, account or facility referred to in subsection (1) in the manner provided for in this section.
- (4) An application referred to in subsection (1) must be heard and an order must be issued without notice to or hearing the person or persons involved in the suspected money laundering activities.