

DRAFT PUBLIC COMPLIANCE COMMUNICATION

DRAFT PUBLIC COMPLIANCE

COMMUNICATION 111 (Draft PCC 111)

GUIDANCE ON THE MEASURES REQUIRED
FOR THE MITIGATION OF LOSS OF
INTELLIGENCE DATA DUE TO REPORTING
FAILURES

PCC SUMMARY

This draft PCC guides reporters on certain measures required for the mitigation of lost intelligence data due to the Financial Intelligence Centre (Centre), where the reporter has failed to file a regulatory report in terms of Directive 3 of 2014 and where a regulatory report has been defectively submitted to the Centre. Defective reporting would include rejection of regulatory reports owing to validation failures and/or where the data submitted in the report is inaccurate or false.

In addition, this PCC guides reporters on the mitigation measures that apply to preventing reporting failures, and where a reporter has failed to file a report within the prescribed reporting period. This PCC further offers guidance on the remediation of reports which have been filed incorrectly with the Centre.

DISCLAIMER

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OBJECTIVE

This draft PCC provides guidance to reporters on certain measures required for the mitigation of loss of intelligence data due to the Centre, where the reporter has failed to file a regulatory report with the Centre in terms of Directive 3 of 2014, or where a defective report is filed with the Centre. In addition, this PCC provides guidance to reporters on mitigation measures that apply to preventing a reporting failure, such as incomplete or incorrect information in reports. .

GLOSSARY

“**ATMS**” automated transaction monitoring system as explained in Directive 5.

“**The Centre**” means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

“**Days**” refers to all days of the week excluding Saturdays, Sundays and public holidays, as aligned with the definition as set out in the MLTFC Regulations.

“**Defectively filed regulatory reports**” refers to regulatory reports that have been filed with the incorrect or incomplete prescribed particulars with the Centre, where such a report is either approved or rejected by the FIC’s registration and reporting platform. This would include where a report contains data that fails the validation process and/or where the report contains inaccurate and/or false data.

“**Directive 3**” refers to the Directive 3 of 2014 on the notification of failure to report as required by the Financial Intelligence Centre in terms of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), issued in terms of section 43A of the FIC Act and published in Government Gazette Notice 783 of 12 September 2014. The purpose of the Directive 3 process is to mitigate loss of intelligence.

“**FIC Act**” refers to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001).

“**Prescribed particulars**” refers to the accurate information required to be captured by a reporter for the submission of regulatory reports as detailed in the Money Laundering and Terrorist Financing Control Regulations (MLTFC Regulations).

“**Reporter**” refers to the person or entity making the report, as an accountable institution and/or reporting institution.

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“Reports” refers to regulatory reports as envisaged in section 28 of the FIC Act in relation to cash transactions above the prescribed threshold (CTR); suspicious and unusual transaction reports in relation to section 29 of the FIC Act (STR) and/or terrorist property reports (TPR) in relation to section 28A of the FIC Act.

“Reporting failure” refers to instances where a reporter fails to submit a regulatory report, where such a report is required to be submitted. **“Failure to report”** has a corresponding meaning.

DRAFT

1. INTRODUCTION

- 1.1. The objective of this draft public compliance communication 111 (draft PCC 111) is to provide guidance to reporters on certain measures required for the mitigation of lost intelligence data due to the Centre, where the reporter has failed to submit a regulatory report.
- 1.2. This PCC will consider the reporting failures in instances where a regulatory report was due to the Centre and the report was:
 - 1.2.1. Not submitted, as read with Directive 3 of 2014, and/or
 - 1.2.2. Rejected by the Centre's reporting platform owing to validation failures and/or
 - 1.2.3. Submitted to the Centre and contains inaccurate, incorrect or false data.
- 1.3. A reporter will only discharge their reporting obligations in terms of the FIC Act where;
 - 1.3.1. A reportable event is identified/detected timeously
 - 1.3.2. A reportable event is reported within the prescribed time period
 - 1.3.3. All mandatory and readily available information is captured accurately
 - 1.3.4. The report is submitted according to the prescribed format
- 1.4. This draft PCC 111 must be read together with the provisions of Directive 3 ([click here to access](#)) and goAML Notice 4A ([click here to access](#)).
- 1.5. This PCC consists of two parts namely:
 - PART A: Matters relating to non-submission of regulatory reports**
 - PART B: Matters relating to the submission of defective regulatory reports**

PART A

2. NON-SUBMISSION OF REGULATORY REPORTS

- 2.1. Where a reporter identifies that regulatory reports are;
 - 2.1.1. due to be reported to the Centre only after the prescribed reporting period has passed, and
 - 2.1.2. has failed to submit such reports when they were due is considered a non-submission of a report. This is a reporting failure.
- 2.2. A report is due when a reporter should have identified certain activities or transactions that would give rise to a reporting obligation at a particular point in time.
- 2.3. The reporter could become aware of a reporting failure either on their own accord, or as a result of a supervisory inspection.
- 2.4. Failure to identify reportable transactions or activities could be as a result of poor product mapping, errors in the application and implementation of an automated transaction monitoring system (ATMS) and missed reporting streams as noted in the accountable institution's risk management and compliance programme (RMCP).
- 2.5. The severity of the reporting failure is dependent on several factors, including but not limited to:
 - 2.5.1. Whether the reporting failure was intentional
 - 2.5.2. The period that lapsed from when the report was due to be filed with the Centre and the time that the reporting failure was identified
 - 2.5.3. The number of reports not submitted
 - 2.5.4. Any other factor related to non-submission of reports, as deemed relevant by the Centre.

Process to be followed when becoming aware of reporting failures

- 2.6. In terms of Directive 3, reporters are obliged to inform the Centre, in writing, of reporting failures immediately after becoming aware of such failures.

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- 2.7. Where a reporting failure occurs, the reporting entity has a duty in terms of Directive 3 to take measures to mitigate the loss of intelligence data to the Centre.
- 2.8. Measures to mitigate loss of intelligence data, includes the filing of all non-submitted reports to the Centre within the period as agreed upon with the Centre.

Example 1

Reporting failure identified by supervisory body, to be corrected through Directive 3 process

An inspection was done on accountable institution A by their supervisory body in 2020. During the inspection, the supervisory body found that although there were cash transactions that exceeded the threshold in 2017 and 2018. The accountable institution did not detect or was not aware of these transactions at the time owing to the associated product not being mapped for CTR flagging. As a result, accountable institution A did not report these transactions as cash threshold reports to the Centre.

Accountable institution A must disclose this non-reporting to the Centre through the Directive 3 process as soon as possible.

Example 2

Reporting failure identified by accountable institution, to be corrected through Directive 3 process

In 2020, accountable institution B conducted an internal audit of their ATMS and discovered that they had incorrectly applied an identification parameter. Their audit revealed that there were reports that should have been submitted in 2018 and 2019 that had not been reported to the Centre.

Accountable institution B must disclose this non-reporting to the Centre through the Directive 3 process as soon as possible.

3. DIRECTIVE 3 PROCESS

- 3.1. As prescribed in Directive 3, reporters must notify the Centre, in writing, of their non-submission reporting failures, as soon as they become aware of the reporting failure. This notification must be sent to the executive manager of Compliance and Prevention at the Financial Intelligence Centre. This notification must contain details including:
 - 3.1.1. The time period for these reporting failures
 - 3.1.2. Volume of reporting failures
 - 3.1.3. The root cause for failures
 - 3.1.4. Steps that the entity may have already taken to mitigate the re-occurrence of the reporting failures.
- 3.2. The Centre may request a meeting with the reporter regarding the reporting failures, and may include the relevant supervisory body in the meeting.
- 3.3. The submission of a written notification as stated in paragraph 3.1 above does not result in the condonation of the reporting failure(s) and the reporter could be sanctioned.
- 3.4. Missed and/or non-submitted reports must be submitted to the Centre within a reasonable period which must be agreed upon with the Centre. Failing this may result in an administrative sanction.
- 3.5. All missed or unsubmitted reports must be filed with the Centre e within the agreed time frame.
- 3.6. The reporter must submit progress reports on the submission of missed reports/non-submitted reports including information on systems development and process enhancements in mitigation of reporting failures as agreed with the Centre.
- 3.7. Reporting failures outside of missed or unsubmitted reports, as discussed above, will not follow the Directive 3 process. The reporter is, however, required to remediate these reports as soon as they are either notified where rejected and/or becomes aware thereof, this must be done in line with goAML Notice 4A.

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- 3.8. Where the Centre requests a meeting with the reporter, it is expected that the reporter will:
- 3.8.1. Inform the Centre of the extent of the identified reporting failure
 - 3.8.2. Embark on a process to identify the full extent of the reporting failure (this may include a full audit process)
 - 3.8.3. Identify the cause of the failure.
- 3.9. The reporter must communicate its findings in writing to the Centre as required in paragraph 3.8. This will enable the Centre to effectively advise on actions that the reporter must undertake.
- 3.10. The Centre will review the information provided in the formal notification and/or meeting with the reporter to determine the extent of the action the reporter must undertake. The reporter must not commence a corrective process of missed report/non-submitted reports without prior consent from the Centre.
- 3.11. Actions in relation to missed reports include but are not limited to:
- 3.11.1. Submission of all missed reports or non-submitted reports
 - 3.11.2. Review and amend existing internal systems and reporting methodology as detailed in the accountable institution's RMCP to ensure that reporting failures do not re-occur.
- 3.12. The Centre will track the submission of regulatory reports by the reporter as per the agreed action.
- 3.13. Upon completion of the Directive 3 process, the reporter must provide the Centre with a close out report, detailing the steps taken to report the missed reports and prevent a re-occurrence of the reporting failure. The close out report must include reconciliation reports submitted as part of the corrective action for the Centre to review and, confirm if all failed reports have been successfully filed.

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3.14. The Centre may require the reporter to carry out system testing on the reporting system testing environment before submitting the reports on the production environment as part of the submission of the missed reports.

Enforcement action on non-compliance with reporting obligations

3.15. Any reporter who is undergoing a Directive 3 remediation process is not exempt from the Centre, or other supervisory body, taking enforcement action during or at the conclusion of the corrective actions.

3.16. While a reporter is undergoing a Directive 3 remediation process, they must continue with their reporting obligations for new reports. The Directive 3 process does not supersede other reporting obligations that the reporter has under the FIC Act. The Directive 3 process runs in parallel to the reporter's existing reporting obligations that are not impacted by the Directive 3 process.

3.17. If all reporting obligations are impacted by the Directive 3 process, guidance must be sought from the Centre on how to proceed.

PART B

4. PROCESS FOR SUBMISSION OF REGULATORY REPORTS

- 4.1. Regulatory reports submitted on the Centre's registration and reporting platform goes through a series of validation checks to ensure that the report has met the prescribed requirements of:
 - 4.1.1. Ensuring that mandatory and readily available information is accurately captured
 - 4.1.2. Ensuring that the prescribed information is conveyed.
- 4.2. Failure to meet these prescribed requirements would result in the regulatory report being rejected by the Centre.
- 4.3. Where a report is rejected, this report is considered as not being submitted to the Centre, and therefore, the reporter has not discharged their reporting obligation.
- 4.4. Rejected reports must be remediated and re-submitted to ensure adequate submission.

Status of the confirmation notification following submission of a report

- 4.5. After submission of a regulatory report, a reporter will automatically receive an e-mail notification from the Centre's registration and reporting platform, to confirm that the Centre has received the report.
- 4.6. This e-mail notification does not constitute a confirmation that the reporter has discharged their reporting obligation. Rather, this serves as confirmation that the Centre's registration and reporting system has received a submission for consideration and further processing. The receipt of the e-mail notification would not absolve the accountable institution from the consequences of defective reports being submitted or enforcement action which could arise as a result of the defective reports.
- 4.7. When the report is received and processed by the Centre, it is reviewed against the prescribed validation criteria. Where a defective report has been submitted, the report will be rejected and a notification will be sent to the reporter's message board functionality on the

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registration and reporting platform. It is therefore essential that the reporter visits the message board after all reports are submitted.

- 4.8. Should the report meet the validation criteria, confirmation of this will be displayed on the message board functionality on the registration and reporting platform.
- 4.9. Similarly, with reference to the discussion in paragraph 4.6, this confirmation in the message board does not constitute a confirmation that the reporter has fully discharged their reporting obligation. Should the Centre or the reporter identify that the information contained in the submitted report to be incorrect, even though it has passed the validation requirements, the reporter has not discharged their reporting obligation.
- 4.10. In either scenario, the incorrect submission of reports results in a loss of information to the Centre

5. INCORRECT SUBMISSION OF REGULATORY REPORT – SYSTEMS RULE FAILURE AND REJECTED REPORT

- 5.1. Loss of intelligence data due to the Centre occurs when a report is submitted and then **rejected** by the reporting system because it fails the validation requirements that apply to the specific report.
- 5.2. Reasons for report systems rule failure may include where the submitted report does **not**:
 - 5.2.1. Contain the mandatory information as set out in the MLTFC regulations
 - 5.2.2. Have the mandatory information captured in the correct format.
- 5.3. The reporter has not met their obligation to file a report in terms of the FIC Act and must remediate this report.

Example 4

Incorrectly filed report owing to system rule failure

Accountable institution C submits a suspicious and unusual transaction report (FIC Act section 29) on Mr X, a South African citizen. Mr X's identification number is not captured in the regulatory report submission.

The report would not meet the validation requirements and will be rejected. Accountable institution C would be required to amend the incorrect information and submit the corrected report to the Centre.

- 5.4. The reporter is obliged to take measures to correct and remediate the rejected report in terms of the FIC Act. These measures include to:
 - 5.4.1. Correcting the information in the report
 - 5.4.2. Using the correct format as prescribed
 - 5.4.3. Submitting the remediated report on the reporting platform.
- 5.5. The reporting entity must resubmit the corrected report within the initial prescribed period as set out in the MLTFC regulations, that apply to that report type. There is no additional time provided to a reporter in their final submission of a report. Refer to goAML notice 4A on the resubmission of incorrectly submitted reports.

6. SUBMISSION OF DEFECTIVE REGULATORY REPORT – REPORT CONTENT RULE FAILURE

- 6.1. Loss of intelligence data due to the Centre occurs when a regulatory report is submitted and **accepted** by the reporting system by passing the reporting system validation rules but does not contain accurate information.
- 6.2. The reason for report content failure may include where the submitted report does **not**:
 - 6.2.1. Contain accurate information.

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- 6.3. The reporter has not met their obligation to file a report in terms of the FIC Act and must remediate this report.
- 6.4. In this scenario a further distinction can be drawn between instances where a reporter submitted incorrect data in good faith versus instances where a reporter intentionally inserted incorrect data in an attempt to bypass the system rules for the report to be processed on the reporting system.

Example 5

Remediation where the accountable institution incorrectly captured information in good faith

Accountable institution D received a cash deposit of R50 000, however, mistakenly submitted a report to the Centre reflecting a cash deposit of R500 000 instead of R50 000.

This would be considered an error in good faith and the accountable institution is required to submit a corrective report as detailed in goAML Notice 4A.

Example 6

Remediation where the accountable institution intentionally captured incorrect data to bypass validation rules

Accountable institution E captures the date of registration regarding their corporate client as '10000000000' when submitting a regulatory report to the Centre to bypass the mandatory information field. The Centre further identifies that all regulatory reports from this accountable institution for corporate clients is defaulted to '1000000000'.

The accountable institution is intentionally inserting incorrect data to manipulate the reporting system. Such reports are not correctly submitted with the Centre, and the accountable institution have therefore not fulfilled their reporting obligation with the Centre.

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- 6.5. Upon becoming aware of an error made in good faith, the reporter is obligated to take measures to correct and remediate the report. These measures include to:
- 6.5.1. Correct the information in the report
 - 6.5.2. Use the correct prescribed format
 - 6.5.3. Submit the remediated report on the reporting platform.
- 6.6. Where a report is processed against the systems rules, but it is found not to have met the requirements as set out in the MLTFC Regulations, then the reporter has not met the reporting obligation to the Centre as required in terms of the FIC Act.
- 6.7. The Centre does not tolerate the behaviour of reporters intentionally inserting incorrect data when filing a report. This behaviour is against the spirit and the intention of the FIC Act and is not conducive to the fight against financial crime. Where intentionally incorrect data is evident in accepted submitted reports, the reporter has not met the reporting obligation to the Centre as required in terms of the FIC Act.

7. RECOMMENDATIONS TO LIMIT REPORTING ERRORS

Client and transaction information

- 7.1. Reporting entities must adhere to the FIC Act together with the MLTFC Regulations when submitting reports to the Centre, as well as the applicable prescribed reporting system and business rules.
- 7.2. Chapter 4 of the MLTFC Regulations sets out the requirements that apply to reporting. Reporters must obtain the mandatory information as required in data fields necessary to comply with the MLTFC Regulations as adopted in the reporting system's reporting forms. Reporters are to further consider additional information that could be captured should the information be readily available.

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- 7.3. The Centre recommends that reporters obtain sufficient information from their clients that could be obtained through customer due diligence processes or any other information obtained in order to facilitate a transaction to make it commercially viable.
- 7.4. The Centre recommends that reporters develop client file system validation rules, to ensure that only quality data is captured at client onboarding and ongoing due diligence stages.
- 7.5. The Centre recommends that reporters develop transaction information validation rules to ensure that only quality data is captured when processing transactions.
- 7.6. An accountable institution should consider the following system rules that could be built into their systems:
 - 7.6.1. The entity must ensure that a valid name, surname and an identification number is captured for all its clients.
 - 7.6.2. For clients who are South African citizens, the entity must ensure that a valid ID number is captured i.e. the number must contain 13 digits and must adhere to all the requirements defined by the Department of Home Affairs.
 - 7.6.3. For clients who are foreigners, the entity must ensure that a valid identification number is captured e.g. a passport number or a permit number.
 - 7.6.4. The entity must ensure that a valid and accurate date of birth is captured for all their clients.
 - 7.6.5. The entity must file or cash threshold reports to the Centre, only for cash transactions above the threshold.

Pre-validation of report information

- 7.7. The Centre recommends that reporters conduct pre-validation of all reports before filing reports with the Centre. This is to help prevent report failures and/or rejections. This will also ensure that prescribed and accurate information is reported to the Centre within the prescribed format and time period.

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- 7.8. Pre-validation includes the reporter checking whether the report includes all mandatory information and that which is readily available as prescribed for the report type in terms of the MLTFC Regulations.
- 7.9. Pre-validation may be an automated and/or manual process.

Quality reviews and assurance processes

- 7.10. Reporting entities should follow a multi-disciplinary approach that will enable them to apply adequate quality control measures and implement assurance processes in order to identify potential issues relating to submission of reports to the Centre.
- 7.11. Prior to the reporter being able to submit batch regulatory reports, the Centre will require that the reporter test this functionality in the user acceptance testing environment. This is to ensure that the reports submitted meet the minimum standards. Reporters who want to submit batch regulatory reports must contact the Centre to facilitate such arrangements.

Reporting time periods

- 7.12. Where regulatory reports have been submitted and a reporting failure or reporting error occurs, the time period attached to the report is not suspended while the reporter attempts to correct and remediate the report. The reporter runs the risk of exceeding the prescribed reporting times as set out in the MLTFC Regulations, which would then result in a missed report/non-submission of a report.

8. CONSULTATION

- 8.1 Before issuing any guidance to accountable institutions, supervisory bodies and other persons regarding their requirements, performance, duties and compliance obligations in terms of the FIC Act, the Centre must in accordance with section 42B of the FIC Act:

- 8.1.1 Publish a draft of the guidance by appropriate means of publication and invite comments
- 8.1.2 Consider submissions received.

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8.2 Comments are invited on the draft PCC111. Comments must be submitted in writing via the online comments submission link only ([here](#)). Any questions or requests relating to this draft PCC111 may be sent to the Centre only at **consult@fic.gov.za**. Submissions will be received until close of business on **Friday, 18 December 2020**.

9. COMMUNICATION WITH THE CENTRE

9.1 General compliance 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 by visiting the Centre's website and submitting an online compliance query.

Issued By:

The Director Financial Intelligence Centre

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