



financial intelligence centre

REPUBLIC OF SOUTH AFRICA

PUBLIC COMPLIANCE COMMUNICATION No.02 (PCC 02) - PERIOD FOR RECORD KEEPING OF MATTERS REPORTED TO THE FINANCIAL INTELLIGENCE CENTRE

PCC Summary

The Centre recommends that records relating to matters reported to the Centre should be kept for at least five years from the date of filing the suspicious transaction report, where possible.

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Objective

The objective of this PCC is to provide the Centre's view on a reasonable time period that records must be kept of matters reported to the Centre under section 29 of the FIC Act.

The Centre's Response

Section 22 of the Financial Intelligence Centre Act No 38 of 2001 (FIC Act) refers to records kept by accountable institutions in respect of the identification and verification process undertaken by that accountable institution whenever it establishes a business relationship or concludes a transaction with a client, whether that transaction is a single transaction or a transaction concluded in the course of the business relationship.

Section 23 of the FIC Act is clear on the point that these records should be kept. The records must be kept **for at least five years** from the date on which the business relationship was terminated or at least five years from the date that a transaction was concluded. There is no distinction in the FIC Act between transactions reported to the Centre under section 29 of the FIC Act and other transactions. In other words, the requirement that the accountable institution must keep a record of a transaction which is concluded would include keeping a record of the transaction that led to a suspicious transaction report.

Since there is no distinction between transactions reported to the Centre under section 29 of the FIC Act and other transactions, section 23 of the FIC Act would apply and these records must be kept **for at least five years** from the date on which the business relationship was terminated or at least five years from the date that a transaction was concluded.

In addition to the above requirement, please note that section 26 of the FIC Act authorises the Centre to access the records kept by the accountable institution in terms of section 22 for the purposes of, among others, obtaining further information in respect of reports made in terms of section 29 or the other reporting provisions.

Further, section 32 of the FIC Act authorises the Centre to request the accountable institution to furnish additional information (which may include documentary records) concerning a report made to the Centre. The need to maintain adequate records **for at least five years** to give effect to provisions of the FIC Act and to assist the ultimate investigation and prosecution of crime is essential.

Although the FIC Act provides for the period that the records relating to the suspicious transaction should be kept by an accountable institution, it does not, however, specify the period that the record of the suspicious transaction report or the documents relating to the report should be kept. Given that the investigation and prosecution of a crime could take longer than five years, **the Centre recommends that records relating to matters reported to the Centre should be kept for at least five years from the date of filing the suspicious transaction report, where possible.**

It is imperative for an accountable institution to ensure uniformity in the application of its record-keeping processes across its different business units by way of its internal rules. The Centre advises that accountable institutions formulate and implement internal rules in respect of the period that documents relating to a report made in terms of section 29 should be kept. The internal rules can also provide for longer periods in respect of the maintaining of records concerning reported transactions, should the accountable institution wish to do so.

For any further enquiries regarding this Public Compliance Communication No.2, please contact the Centre on 0860342342, or by sending an email to: fic-feedback@fic.gov.za.

Issued By:

**The Director
Financial Intelligence Centre
February 2010**

Glossary

Extracts from the FIC Act

22. Record to be kept of business relationships and transactions

(1) Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, the accountable institution must keep record of—

- (a) the identity of the client;
- (b) if the client is acting on behalf of another person—
 - (i) the identity of the person on whose behalf the client is acting; and
 - (ii) the client's authority to act on behalf of that other person;
- (c) if another person is acting on behalf of the client—
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client;
- (d) the manner in which the identity of the persons referred to in paragraphs (a), (b) and (c) was established;
- (e) the nature of that business relationship or transaction;
- (f) in the case of a transaction—
 - (i) the amount involved; and
 - (ii) the parties to that transaction;
- (g) all accounts that are involved in—
 - (i) transactions concluded by that accountable institution in the course of that business relationship; and
 - (ii) that single transaction;
- (h) the name of the person who obtained the information referred to in paragraphs (a), (b) and (c) on behalf of the accountable institution; and
- (i) any document or copy of a document obtained by the accountable institution in order to verify a person's identity in terms of section 21(1) or (2).

(2) Records kept in terms of subsection (1) may be kept in electronic form.

23. Period for which records must be kept

An accountable institution must keep the records referred to in section 22 which relate to—

- (a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;
- (b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded.

29. Suspicious and unusual transactions

(1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that-

- (a) the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
- (b) a transaction or series of transactions to which the business is a party—
 - (i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
 - (ii) has no apparent business or lawful purpose;
 - (iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; or
 - (iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or
 - (v) relates to an offence relating to the financing of terrorist and related activities; or
- (c) the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities,

must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

(2) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that a transaction or a series of transactions about which enquiries are made, may, if that transaction or those transactions had been concluded, have caused any of the consequences referred to in subsection (1)(a), (b) or (c), must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

(3) No person who made or must make a report in terms of this section may disclose that fact or any information regarding the contents of any such report to any other person, including the person in respect of whom the report is or must be made, otherwise than—

- (a) within the scope of the powers and duties of that person in terms of any legislation;
- (b) for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (d) in terms of an order of court.

(4) No person who knows or suspects that a report has been or is to be made in terms of this section may disclose that knowledge or suspicion or any information regarding the contents or suspected contents of any such report to any other person, including the person in respect of whom the report is or is to be made, otherwise than—

- (a) within the scope of that person's powers and duties in terms of any legislation;
- (b) for the purpose of carrying out the provisions of this Act;

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

32. 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, or an investigating authority acting with the permission of the Centre or under the authority of an authorised officer, 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 or that investigating authority with such additional information concerning the report and the grounds for the report as the Centre or the investigating authority 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 without delay with such additional information concerning the report and the grounds for the report as that institution or person may have available.