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REVISED GUIDANCE NOTE NO 4 OF 2017

GUIDANCE NOTE ON THE TIMELY REPORTING OF SUSPICIOUS TRANSACTIONS AND ACTIVITIES

First issued: 22 August 2017

First Revision and Update: 16 April 2024

1. Background

This Guidance Note is issued in terms of Section 9(1)(h) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA) and contains guidelines on the requirement to promptly report suspicious transactions and activities to the Financial Intelligence Centre (FIC) in line with the 2023 FIA amendments of section 33.

2. Objective of this Guidance

The guidelines contained herein:

- a. reflect on the purpose of the prescribed reporting period; and
- b. highlight the urgent reporting requirements contained in section 42 read with regulation 22(2) of the FIA, to avoid placement of proceeds of crime beyond the reach of Namibian Authorities.

This April 2024 update is necessitated by the 2023 FIA amendments which call for prompt reporting of suspicions and reporting sanctions screening name matches without delay.

2.1 Summary of the April 2024 Guidance Note update

2.1.1 STRs¹ and SARs²: Prompt Reporting

The FIA was amended in mid-2023. Amongst others, the amendments include a substantial change in the period within which suspicious transactions and activities must be reported to the FIC. The amendment was necessary to advance timely reporting within the framework of international standards. In essence, while the FIA previously called for institutions to ensure such suspicions are reported within the fifteen days that the

¹ Suspicious Transaction Reports

² Suspicious Activity Reports

suspicion arose, the 2023 FIA amendments call on such suspicions to be reported *Promptly*.

“*Promptly*”, as per the 2023 FIA amendments means as soon as practically possible (without delay) upon having reasonable grounds or a reasonable basis to suspect or believe that a transaction or an activity involves an unlawful activity, Money Laundering or Financing of Terrorism or Proliferation activity. Note that the said amendments provides that where there are delays in reporting, such should not exceed three days after the suspicion or belief was formed. The three days should not be used as a waiting period because the object and spirit of the provision speaks to reporting as soon as practicable³ to enhance effectiveness of the combatting value chain. Institutions are thus cautioned against undertaking activities that may lead to delays or any other activities that prolong eventual reporting to the third day or later.

2.1.2 Sanctions Name Matches: Reporting Without Delay

Sanction screening is a critical component of our AML/CFT/CPF efforts. Therefore, when there is a sanctions name match or potential match, such should be reported to the FIC *Without Delay*⁴. Without Delay as provided for under the FATF Glossary and means *within a matter of hours*. In line with Directive 01 of 2023, institutions are directed to cease reporting sanctions screening matches, Terrorist Financing (TF) or Proliferation Financing (PF) suspicions via conventional Suspicious Transaction Reports (STRs) or Suspicious Activity Reports (SARs) on goAML. Only Money Laundering (ML) related suspicious activities or transactions should be reported via such STR and SAR report types.

³ *Benchmarking with the Canadian FIU, FINTRAC. What is as soon as practicable? As soon as practicable is interpreted to mean that you have completed the measures that have allowed you to determine that you reached the threshold of what amounts to a suspicion and as such the development and submission of that STR must be treated as a priority. FINTRAC expects that you are not giving unreasonable priority to other transaction monitoring tasks and may question delayed reports. The greater the delay, the greater the need for a suitable explanation. STRs can be complex, yet you must treat them as a priority and ensure they are timely; you must also complete the measures that enabled you to conclude that you have reasonable grounds to suspect the transaction is related to the commission of an ML/TF offence before you submit the report to FINTRAC.*

⁴ *FATF Glossary on definition of “Without Delay”: The phrase without delay means, ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee). For the purposes of S/RES/1373(2001), the phrase without delay means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. In both cases, the phrase without delay should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organisations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly.*

Sanctions screening name matches as well as TF and PF suspicious activities and transactions should be reported as per the new report types listed below:

Reportable Activity or Transaction	Type of Report
Detection of a possible sanctions screening match .	SNMA - Sanction Name Match Activity report
Reporting any other Activity (or attempted transaction which was not completed) which may point to, or be linked to potential terrorism, TF or PF.	TPFA - Terrorist & Proliferation Financing <i>Activity</i> report
Reporting any other Transaction (actual transacting) which may point to, or be linked to potential terrorism, TF or PF.	TPFT- Terrorist & Proliferation Financing <i>Transaction</i> report

These new reporting formats are essential to align to international requirements on information that should be mandatorily disclosed along with TF and PF reports, amongst others.

3. Objective of Timely Reporting

Timely reporting of suspicious transactions and activities is a response measure to mitigate the risks of Money Laundering, Terrorist Financing and the Financing of Proliferation of weapons of mass destruction. Timeliness within which suspicions are reported places competent authorities in a better position to:

- a. prevent proceeds of unlawful activities being further moved or channeled through the financial system;
- b. isolate identified transactions and/or assets and/or wealth for asset preservation and forfeiture purposes;
- c. enable interventions to cease planned terrorism financing and/or actual terrorist activities; and
- d. prevent entities and countries involved in proliferation activities from soliciting, collecting, or amassing resources that advance such interests.

In practice, the above suggests that the process of timely filing a report or reporting suspicions to the FIC should take priority over other tasks and activities when alerts or red flags⁵ are noted.

4. When Does The Suspicion Arise (period)?

A sizeable number of Accountable and Reporting Institutions (Institutions) deployed or may deploy advanced technologies to assist them in the effective detection of suspicious transactions and activities. The systems at most times enable electronic flagging of alerts or red flags. Such alerts or red flags are usually reviewed and analysed by staff/personnel or some other mechanism to determine grounds for suspicion or if such alerts are indeed suspicious for ML, TF or PF. It is only after determining that such transaction or activity is suspicious that the count down towards reporting timeliness commence. This principle is the same for manually detected alerts or red flags. This must however not be mistaken for risk management ineffectiveness in as far as causing timely detection is concerned for the advancement of the spirit of the law.

In determining the overall reporting timelines, the primary point of departure is therefore to look at the reporting hour and date; compare same to the date the transaction or activity was flagged by the institution as well as the period when suspicion was formed and eventually reported. Institutions must therefore design and implement monitoring and reporting systems with this entire value chain or picture in mind. Over the years, the FIC has many a times observed that some institutions' overall monitoring and detection systems may not be effective and thus fail to detect alerts timely, resulting in late reporting. The failure to timely detect alerts undermines the entire AML/CFT/CPF framework. If the FIC makes this determination, considerations will be made related to corrective and dissuasive actions to advance the spirit of the FIA.

⁵ Institutions must prioritise efforts to clear alerts or to determine if a red flag or alert contains a suspicion. When or if such suspicion is confirmed, report immediately or at the earliest opportunity. From the FIC's observations, delays in clearing or examining red flags/alerts are the primary cause of late reporting as institutions rely on the basis that there is no urgency and need to report until and unless a suspicion has been determined. This technical interpretation can be argued but falls short of advancing the object of the law. It is what has resulted in many reports being filed way after the funds or assets have been placed beyond the reach of law enforcement, thus defeating the primary objective of timely reporting.

5. Assessing Promptness of Reporting Suspicions

Given the nature of the subject, there are several means to assess what constitutes a practicable timeframe within which a report should have been submitted to the FIC. Naturally, looking at the date and time that the actual transactions or activities occurred is a key starting point. Some of the following factors, amongst others, are worth noting:

- a. whether effective controls⁶ as per FIA existed for the timely or earlier detection of a red flags or alerts. This is perhaps the most important consideration as it highly impacts the ability to detect alerts/red flags timely and cause timely reporting;
- b. the institution's previously submitted reports, including their quality, timing and volumes;
- c. where possible, similar reports across the sector or nationally by other institutions;
- d. the nature of the original transaction or suspicion in question;
- e. the size of the reporting institution's business and its business model;
- f. the internal processes and procedures;
- g. the complexity of the transactions involved;
- h. the volume of relevant transactions identified in the submitted report;
- i. the nature of the indicators and grounds for suspicion; and
- j. the facts of the case, etc.

6. Reporting in Terms of Section 42, read with Regulation 22(2) of the FIA

This section mandates the FIC to direct the Accountable or Reporting Institution in writing not to proceed with the carrying out of a transaction or proposed transaction for a period not exceeding eighteen working days, if the FIC has reasonable grounds to suspect that a transaction or a proposed transaction, may involve the proceeds of unlawful activities or may constitute money laundering or the financing of terrorism or proliferation activities.

⁶ or should have existed within an institution to ensure effective compliance with the FIA.

It is within the scope of the above provision that the Institution must, **as soon as reasonably possible, contact the Director of the FIC or his or her authorized representative**, especially if the carrying out of that transaction, activity or other related transactions or activities, will jeopardize any significant law enforcement or regulatory interest under Namibian law, more particularly when such proceeds will be put beyond the reach of Namibian Authorities. This implies that engagements in this regard must be done as soon as possible and Institutions must not wait for the third day or last hour of the reporting period.

7. Commencement

This Guidance Note shall come into force on the date of issue.

8. Penalties for Non-Compliance

The Institution which contravenes or fails to comply with the FIA sections highlighted herein, commits an offence and can be liable on conviction to a fine not exceeding NAD 100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment. The Institution can additionally be subjected to administrative sanctions as envisaged in the FIA.

9. General

This Guidance Note:

- a. uses plain language to explain the obligations under the Act, as well as related Regulations;
- b. is intended to explain, but not replace, the language of the Act and Regulations;
- c. is issued without prejudice to other existing guidance or work in the identified area; and
- d. shall be reviewed from time to time as and when the need arises.

10. How to Contact the FIC

All Correspondence and enquiries must be addressed to:

The Director

Financial Intelligence Centre

P.O. Box 2882, Windhoek

No. 71 Robert Mugabe Avenue