



FINANCIAL INTELLIGENCE CENTRE (FIC)

REVIEW OF THE QUALITY OF REPORTS SUBMITTED TO THE FIC: THE LEGAL PRACTITIONERS SECTOR REPORTING PERIOD: MAY 2009 TO DECEMBER 2017

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1. Acronyms, Abbreviations and Glossary

AI (s)	Accountable Institution(s)
AML	Anti-Money Laundering
CFT	Combatting the Financing of Terrorism
CTR	Cash Threshold Report(s)
CPF	Combating Proliferation Financing
FIA	Financial Intelligence Act
FIC	Financial Intelligence Unit
GoAML	A standard software system used for AML/CFT reporting and communication
LED	Law Enforcement Agents
ML	Money Laundering
NAD	Namibia Dollars
NAMFISA	Namibia Financial Institutions Supervisory Authority
RI (s)	Reporting Institution(s)
SAR	Suspicious Activity Report
STR (s)	Suspicious Transaction Report(s)
TF	Terrorist Financing

2. Introduction

The Financial Intelligence Act, 2012 (Act no.13 of 2012) as amended (FIA), classifies Legal Practitioners as Accountable Institutions (AI) under Schedule 1. Consequently, the FIA requires these institutions to implement control measures (including reporting controls) aimed at preventing, detecting and mitigating Money Laundering, Terrorism Financing and Proliferation Financing (ML/TF/PF) risks. Services provided by Legal Practitioners such as conveyancing and the creation of legal persons are vulnerable to ML/TF/PF activities. Legal Practitioners, by virtue of availing such services have a role to play in contributing to prevention measures. The sector's Anti-Money Laundering, Combatting of Terrorism and Proliferation Financing (AML/CFT/CPF) activities therefore contribute to the national combatting efforts.

The Financial Intelligence Centre (FIC) is mandated to, amongst others: coordinate, supervise, monitor and regulate AIs' efforts to mitigate ML/TF/PF risks, thus enhancing FIA compliance. In furtherance of this, the FIC has embarked on a review of the quality of reports submitted by Accountable and Reporting Institutions in terms of sections 32, 33 and 34 of the FIA, across different sectors. The outcomes of such review are contained herein. It is hoped that this report highlights observations which may enhance controls geared towards detecting and reporting suspicious transactions. The ability to detect reportable transactions reflects an institution or sector's overall control effectiveness level.

The objective of the assessment was to enhance the quality of FIA reports received on the GoAML database, thereby improving compliance behaviour. The review of the quality of reports considered reporting behaviour of Suspicious Transaction Reports (STRs), Suspicious Activity Reports (SARS) and Cash Transaction Reports (CTRs) above NAD 99 999.99. Outcomes of such reviews inform the contents of this report and further guide the FIC's views relating to the design and adequacy of AML/CFT/CPF controls (herein referred to as controls).

3. Industry Overview

Legal Practitioners are required as per section 32 to report CTRs above NAD 99 999.99. On the other hand, STRs are reported based on an unusual transactional behaviour of a client, which is found to be inconsistent with the known client financial profile (section 33). A SAR is different from a STR described above in that a suspicious activity is not a transaction per se but activities that may escalate to future transactions or activities that give rise to reportable matters.

STRs and SARs are reported to enable the FIC to collect, analyse transactions and share intelligence outputs with relevant Law Enforcement Agencies such as the Namibian Police, Anti-Corruption Commission, the Receiver of Revenue and the Office of the Prosecutor General. CTRs, on the other hand are reported to a FIC database which is used for datamining purposes and analysis by ML/TF/PF combatting authorities.

Legal Practitioners that provide conveyancing services are generally vulnerable to potential ML abuse. The World Economic Forum identified the use of professional facilitators as one of two key enablers of money laundering, alongside the related activity of concealing beneficial ownership through complex corporate and trust structures for the purpose of illicit financial transactions. In this context, there is increasing concern that organised crime groups may be misusing and exploiting the services provided by legal practitioners and conveyancers to undertake transactions to conceal proceeds of crime; obscure ultimate ownership through complex layers and legal entity structures; evade tax and exploit known tax shelters; evade regulatory controls; avoid detection and confiscation of assets, and hinder law enforcement investigations. Equally, the general lack of controls observed in the sector as per the FIC's compliance assessment observations over the last five years enhances risk exposure. It is thus an unfortunate

reality that the industry is exposed to a variety of clients who may want to launder proceeds through such services.

At the time of issuing this report, the FIC had registered a total of 196 Legal Practitioners for FIA supervision and monitoring purposes. The scope of this review covered the period from 01 January 2009 to 31 December 2017.

4. Suspicious Transaction Reports (STRs)

STRs are reported for the purpose of enabling the FIC to collect, analyse and disseminate case reports to the relevant law enforcement agencies. When a Legal Practitioner has knowledge of any suspicious transactions concluded with them, or suspects that it has received or is about to receive the proceeds of unlawful activities, it should report such to the FIC. Equally, if a Legal Practitioner has been used or is about to be used in any other way for ML/TF/PF purposes, it must within 15 working days of detecting such suspicion report to the FIC.

For the period under review, only 49 STRs were received from the sector. From such the 49 STRs, 29 of them were escalated for further analysis and resulted in actionable intelligence. The rest were categorized as “low priority”. Low priority categorization refers to such reports that are not immediately attended to by the FIC.

The FIC applies a risk-based approach in assigning priority levels to STRs/SARs received. The same applies to the actual investigation of such reports. Reports regarded as ‘high priority’ are normally attended to at the earliest opportunity, depending on various considerations. Some of the factors taken into consideration when assigning priority levels include:

- a) the significance of monetary values involved in suspicious transaction(s);
- b) the possibility of movement of perpetrators from local jurisdiction;

- c) the risk of funds being withdrawn, used or placed beyond the reach of law enforcement (at times, this guides decisions on intervention by the FIC in terms of section 42 of FIA);
- d) the likelihood that the transaction relates to the most prevalent predicate offences such as tax evasion, etc.;
- e) whether dissemination to Law Enforcement will likely add value to the administration of justice;
- f) prospects of recovery, seizure, preservation of funds and/or property;
- g) whether subjects/entities related to other reports are known to the FIC or on the FIC database, can be traced to reports in FIC database etc;
- h) feedback received on similar reports issued to Law Enforcement Agencies in the past;
- i) whether related to known typologies and trends considered to be high risk;
- j) clear links to criminal organizations/activities;
- k) priorities of Law Enforcement Agencies;
- l) whether there are any pending investigations led by investigating authorities;
- m) knowledge of subjects involved in high risk transactions;
- n) whether geographic location of transactions is regarded as high risk; and
- o) whether the transaction has already been executed, is in the process or has not yet commenced.

Table 1: Number of STRs received from Legal Practitioners.

Year	Number of Reports	Total Amount	Case File Opened
2009	1	76 000.00	1
2010	7	14,049,277.39	6
2011	5	2,711,646.20	5
2012	8	5,127,070.00	8
2013	6	25,568,357.82	7
2014	4	2,716,738.21	1
2015	7	35,426,386.25	1
2016	3	12,693,500.00	0
2017	8	5,829,745.00	0
Total Amount Involved	49	108,458,719.67	29

Table 2: Grounds for suspicion as per reports filed (STRs).

Number of STRs	Ground of reporting STRs
28	Huge amounts of cash deposited into a trust account
10	Client reluctant to provide all requested documents/information
7	Client flagged by their risk assessment and monitoring system
3	An overpayment to a trust account
1	Client transacts in huge amounts and later changes their minds

The FIC is of the view that more reports could have been received from the Sector. Regardless of the FIC's significant supervision and monitoring activities on the sector since 2009, there is still no significant change in the reporting behaviour of this sector.

4.1 Areas that need improvements: STRs

- a) Legal Practitioners should provide adequate reasons for reporting suspicious transactions. It has been highlighted that reasons for suspicion are too vague and not specific enough to add value in terms of directing investigations. For this reason, many reports have been set as 'low priority' and would mostly likely not be

attended to timely. Creating an adequate client financial profile and using same for monitoring purposes can go a long way towards helping to determine behaviour which is not in line with a client's financial profile. This in turn is useful as a guide for demonstrating grounds for suspicion in an STR/SAR;

- b) Most of the STRs reported do not have supporting documents attached. Institutions should always attach transactional identification or any related evidence that supports the suspicion;
- c) All entities are encouraged to comply with the provisions of the FIA and ensure that controls are implemented to enable effective monitoring of suspicious transactions or activities. This is the most prudent manner to detect reportable activities/transactions;
- d) Institutions should avail their staff with relevant AML/CFT/CPF training to ensure that they are knowledgeable with their respective FIA obligations, especially on identification of suspicious client behaviour and on reporting same.

5. Suspicious Activity Reports

Only three (3) SARs were received from the legal practitioners' sector since the FIA came into effect. From such total of 3,, only 1 of the reports was escalated for further analysis and resulted in actionable intelligence. The rest were categorized as "low priority".

Table 3: SARs reported per year

Year	Number of SARs	Total Amount	Case File Opened
2015	1		1
2016	1		0
2017	1	593,077.75	0
Total Amount Involved	3	593,077.75	1

6. Cash Threshold Reports (CTRs)

Legal Practitioners have an obligation to report within five (5) working days, any transaction concluded by or on behalf of a client which involves cash payments presented to and received by it, or cash pay outs made by the Accountable Institution in excess of the threshold amount of NAD 99,999.99, with effect from 28 January 2015.

Table 4: CTRs Reported per year

Year	No of Reports	Total Amount
2015	64	74,389,068.00
2016	61	63,809,801.00
2017	63	25,361,490.00
Total Amount Involved	188	163,560,359.00

Only 188 CTRs were received from the Legal Practitioners since the reporting obligation came into effect. There is no improvement in the number of CTRs reported from the years 2015 to 2017, as reflected in the annual averages received in Table 4. However, having regard to the number of potential CTR transactions (reportable), as per findings in FIA compliance assessment reports, the FIC is concerned that the sector of 196 registered institutions is severely under reporting.

Further, only 27 entities from this sector reported CTRs. The review noted that one Legal Practitioner reported transactions below the NAD 99,999.99 threshold as CTRs. This, together with the underreporting could suggest that Legal Practitioners do not fully understand the characteristics of transactions that are reportable as CTRs. Equally, by reporting transactions which should not have been reported, it is safe to conclude that the limited number of CTRs as documented herein could have been lesser.

6.1 Areas that need improvements: CTRs

- a) Reporting of cash transactions in general across the sector is very low as demonstrated in section 6 above. All Legal Practitioners should file cash transaction reports for cash paid and received when such exceeds NAD 99 999.99, within the prescribed period of such transactions occurring. Firms should ensure that they have implemented mechanisms for the purposes of timely detecting CTRs in order to ensure compliance with the obligation, in line with Circular No. 3 of 2015;
- b) Legal Practitioners should ensure that all required fields are completed when CTRs are submitted on the GoAML Portal;
- c) The FIC recommends that Legal Practitioners ensure the AML/CFT/CPF control framework, such as controls designed to effect the reporting obligations, are periodically subjected to independent reviews or audits. These reviews are aimed at giving management such reasonable assurance on the level of control effectiveness. Importantly, findings from such assessments should guide management's corrective measures.

7. Conclusion

The most notable observation as far as reporting STRs, SARs and CTRs are concerned is under-reporting sectorally. The sector's reporting behaviour requires significant improvement.

Legal Practitioners should ensure that staff pay particular attention to a client's financial behaviour/transactions and if such is not in line with their financial profile, report same to the FIC (STRs/CTR).

The reporting trends documented herein should be used by Legal Practitioners as a benchmark and guideline in detecting and reporting STRs, SARs and CTRs.

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