



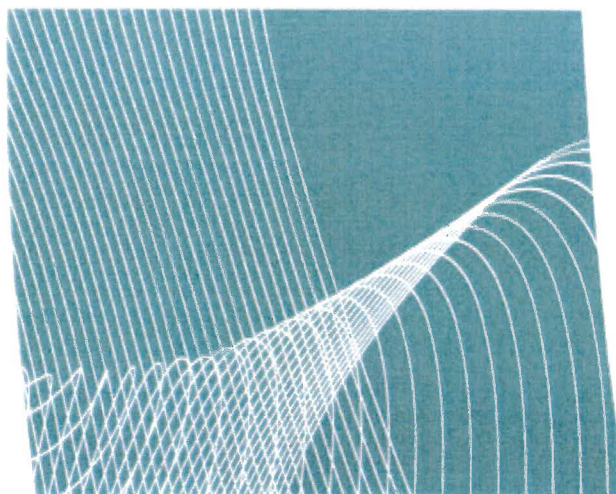
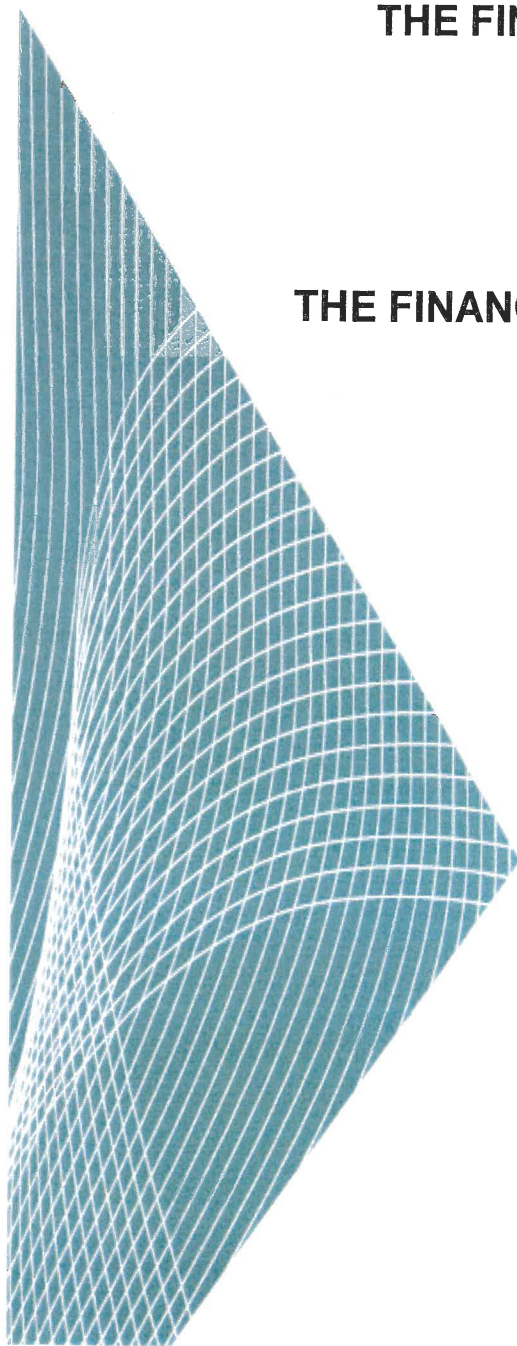
# MEMORANDUM OF UNDERSTANDING

**THE FINANCIAL INTELLIGENCE CENTRE**

**and**

**THE FINANCIAL SECTOR CONDUCT AUTHORITY**

**2018**



*Ms*

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# **MEMORANDUM OF UNDERSTANDING**

## **The Financial Intelligence Centre**

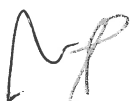
represented by Adv. X J Khanyile  
in her capacity as the Director of the Centre

and

## **The Financial Sector Conduct Authority**

represented by Mr AM Sithole  
in his capacity as Commissioner of the Financial Sector Conduct Authority

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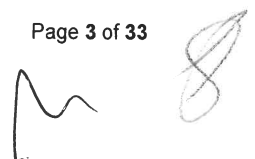


## Preamble

**Whereas** the Constitution of the Republic of South Africa, 1996, encourages the co-operation between government departments and organs of the state based on mutual trust and good faith;

**And whereas** the Financial Intelligence Centre Act 38 of 2001 directs the Financial Intelligence Centre to combat money laundering and the financing of terrorist and related activities; to make information collected by it available to facilitate the administration and enforcement of the laws of the Republic; to make reasonable procedural arrangements and safeguards regarding the furnishing of confidential information; to make provision for the roles and responsibilities of the Financial Intelligence Centre and supervisory bodies in supervising and enforcing compliance by accountable institutions with the provisions of the Financial Intelligence Centre Act 38 of 2001; to co-ordinate with supervisory bodies in the exercising of powers and performing of functions so as ensure consistent application of the provisions of the Financial Intelligence Centre Act 38 of 2001;

**And whereas** the Financial Sector Regulation Act 9 of 2017 directs the Financial Sector Conduct Authority to enhance and support the efficiency of financial markets, to protect financial customers, to assist in maintaining financial stability, to ensure co-operation, collaboration, assistance, consultation and exchange of information between the Financial Sector Conduct Authority and the Financial Intelligence Centre;

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**And whereas** the Financial Sector Conduct Authority is a supervisory body responsible for supervising and enforcing compliance with the provisions of the Financial Intelligence Centre Act 38 of 2001 by accountable institutions regulated or supervised by it;

**And whereas** the Financial Sector Conduct Authority is a mandated entity as listed in section 40(1) of the Financial Intelligence Centre Act 38 of 2001 and thus authorised to receive confidential information held by the Financial Intelligence Centre;

**And whereas** section 45(1D) of the Financial Intelligence Centre Act 38 of 2001 and section 77 of the Financial Sector Regulation Act 9 of 2017 require the Financial Intelligence Centre and the Financial Sector Conduct Authority to conclude a memorandum of understanding to facilitate the fulfilment of their concomitant legislative responsibilities and obligations in respect of co-operation and collaboration.

**Now therefore** the Financial Intelligence Centre and the Financial Sector Conduct Authority hereby enter into this Memorandum of Understanding with the purpose of regulating matters of common interest, mutual co-operation, collaboration, assistance and exchange of confidential and/or classified information, in the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by law.

## 1. Definitions

In this Memorandum of Understanding, unless the context indicates or requires otherwise:

**“Accountable Institutions”** means an institution as referred to in Schedule 1 to the Financial Intelligence Centre Act 38 of 2001;

**“Administrative Action”** means administrative action contemplated in section 1 of the Financial Sector Regulation Act 9 of 2017;

**“Administrative Sanction”** means an administrative sanction contemplated in section 45C of the Financial Intelligence Centre Act 38 of 2001;

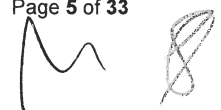
**“Authorised Officer”** means an official designated by a mandated entity to request and/or receive confidential information from the Financial Intelligence Centre in terms of section 40 of the Financial Intelligence Centre Act 38 of 2001;

**“Centre”** means the Financial Intelligence Centre established in terms of section 2 of the Financial Intelligence Centre Act 38 of 2001;

**“Commissioner”** means the Commissioner of the Financial Sector Conduct Authority appointed in terms of section 61 of the Financial Sector Regulation Act 9 of 2017;

**“Consultative Committee”** means the Committee established under this Memorandum of Understanding to facilitate consultation on relevant strategic issues pertinent to the financial services industry;

**“Director”** means the Director of the Financial Intelligence Centre appointed in terms of section 6 of the Financial Intelligence Centre Act 38 of 2001;



**“FATF”** means the Financial Action Task Force;

**“FIC Act”** means the Financial Intelligence Centre Act 38 of 2001;

**“Financial Crime”** includes an offence in terms of:

- (a) a financial sector law,
- (b) sections 2, 4, 5 and 6 of the Prevention of Organised Crime Act 121 of 1998,
- (c) the Financial Intelligence Centre Act 38 of 2001, or
- (d) section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004;

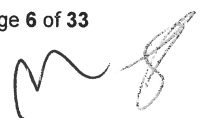
**“FSCA”** means the Financial Sector Conduct Authority as established by section 56 of the Financial Sector Regulation Act 9 of 2017;

**“Financial Sector Legislation”** includes the laws defined as a “financial sector law” by the Financial Sector Regulation Act 9 of 2017 and the Financial Intelligence Centre Act 38 of 2001;

**“Financial Sector Regulator”** means:

- (a) the Prudential Authority,
- (b) the Financial Sector Conduct Authority,
- (c) the National Credit Regulator but only in respect of Parts 2, 3 and 5 of Chapter 2 and Parts 1, 2 and 3 of Chapter 5 of the Financial Sector Regulation Act 9 of 2017, or
- (d) the Financial Intelligence Centre but only in respect of Parts 2, 3 and 5 of Chapter 2 and Parts 1, 2 and 3 of Chapter 5 the Financial Sector Regulation Act 9 of 2017;

**“FSR Act”** means the Financial Sector Regulation Act 9 of 2017;



**“Inspection”** means an inspection in terms of section 45B of the Financial Intelligence Centre Act 38 of 2001 and/or a supervisory on-site inspection in terms of Part 3 of Chapter 9 of the Financial Sector Regulation Act 9 of 2017;

**“Investigation”** means, unless the context indicates otherwise, an investigation in terms of Part 3 of Chapter 9 of the Financial Sector Regulation Act 9 of 2017;

**“Law Enforcement Authority”** means the authority, service or body contemplated in section 3(2)(a) of the Financial Intelligence Centre Act 38 of 2001;

**“MRC”** means the Monitoring Review Committee as established by this Memorandum of Understanding;

**“MOU”** means this Memorandum of Understanding entered into in compliance with sections 45(1D) of the Financial Intelligence Centre Act 38 of 2001 and section 77 of the Financial Sector Regulation Act 9 of 2017;

**“Parties”** means the Financial Intelligence Centre and the Financial Sector Conduct Authority;

**“Republic”** means the Republic of South Africa;

**“Regulatory Instrument”** means a regulatory instrument contemplated in section 1 of the Financial Sector Regulation Act 9 of 2017 and includes among others a prudential standard; a conduct standard and a joint standard.

**“Requested Party”** means a party to whom a request is made;

**“Requesting Party”** means a party making a request;


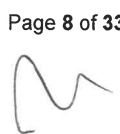
**“Supervisory Body”** means the Financial Sector Conduct Authority as designated in terms of the Financial Intelligence Centre Act 38 of 2001.

## **2. Interpretation**

- 2.1 Unless inconsistent with the context, an expression which denotes:
- 2.1.1 any gender includes the other genders;
  - 2.1.2 a natural person includes an artificial person and vice versa;
  - 2.1.3 the singular includes the plural and vice versa.
- 2.2 The Parties agree that, in order to facilitate the implementation and execution of this MoU, additional or supplementary processes and procedures between the Parties may be documented in Annexures or Protocols, which will prescribe detailed practical steps or arrangements between the Parties.

## **3. The Purpose of this MOU**

- 3.1 This MOU replaces the former Memorandum of Understanding between the Parties.
- 3.2 The purpose of this MOU is to regulate, strengthen and formalise matters of common interest, mutual co-operation, collaboration, assistance and exchange of confidential and/or classified information between the Parties, with the specific aim of minimising duplication of effort and expense, in the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by the financial sector legislation.
- 3.3 This MOU establishes the MRC to oversee the efficient and effective implementation of this MOU and to serve as a secretariat to the Consultative Committee.





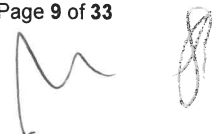
- 3.4 This MOU also establishes the Consultative Committee that will convene to address strategic issues pertinent to the financial services industry and of common interest between the Parties and their concomitant legislative responsibilities and obligations as prescribed by the financial sector legislation.

#### **4. Roles and Responsibilities**

- 4.1 The Parties acknowledge their respective roles as specified by the provisions of the financial sector legislation.
- 4.2 The Parties acknowledge their mutual responsibilities to effectively and efficiently co-operate, collaborate, assist and exchange confidential and/or classified information, with the aim of minimising duplication of effort and expense, in the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by the financial sector legislation.
- 4.3 The Parties further agree to secure sufficient resources in order to meet their concomitant roles and responsibilities in terms of this MOU and the financial sector legislation and where possible will explore other funding resources in respect of unforeseen expenditure relating to joint projects.

#### **5. Guidelines for Mutual Co-Operation and Collaboration**

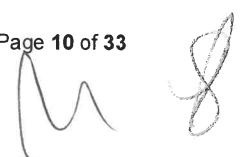
- 5.1 The Parties agree to effectively and efficiently co-operate, collaborate and assist each other, with the aim of minimising any duplication of effort and expense:
- 5.1.1 in enhancing and supporting the efficiency and integrity of financial markets;

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- 5.1.2 in protecting financial customers;
- 5.1.3 in maintaining financial stability;
- 5.1.4 to preserve and enhance financial stability through participation in the Financial Stability Oversight Committee, the Financial Sector Contingency Forum, the Financial System Council of Regulators, the Consultative Committee and any other relevant forums;
- 5.1.5 in information gathering and sharing, compliance assessments, inspections, investigations, supervision, enforcement, licensing, recovery and resolutions, research, training programmes and other joint projects which the Parties may deem necessary from time to time;
- 5.1.6 in drafting, commenting, formulating inputs and adopting consistent prudential standards, joint standards and other regulatory instruments, strategies, processes, policies, directives and guidance in terms of the financial sector legislation;
- 5.1.7 in formulating input and comments to and implementation of relevant national and international financial regulatory and supervisory standards and best practices, including the FATF Recommendations;
- 5.1.8 on any other matters of mutual interest that the Parties may deem relevant in the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by the financial sector legislation.

## **6. Guidelines for Exchange of Information**



- 6.1 In response to requests for information in pursuance of the Parties' concomitant legislative mandates, the Parties will provide the fullest



possible measure of mutual assistance, with the aim of minimising duplication of effort and expense and subject to the limitations of the financial sector legislation or any other relevant legislation.

6.2 The exchange of information may include, *inter alia*:

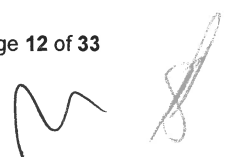
- 6.2.1 information regarding the investigation, detection, prevention and/or reporting of financial crime or any other offences under the financial sector legislation;
- 6.2.2 information relevant to maintaining financial stability;
- 6.2.3 information relevant to the implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations;
- 6.2.4 information relevant to inspections and investigations;
- 6.2.5 information relevant to the supervision and enforcement of the provisions of any financial sector legislation;
- 6.2.6 information relevant to the issuing of directives and guidance in terms of the provisions of the financial sector legislation;
- 6.2.7 information relevant to any enforcement action taken against a non-compliant accountable institution in terms of the provisions of the financial sector legislation;



- 6.2.8 information relevant to any legal proceedings instituted in terms of the provisions of the financial sector legislation;
- 6.2.9 information relevant to the conducting of fit and proper assessments on persons seeking to hold office in an accountable institution in terms of any financial sector legislation;
- 6.2.10 information on research and training in relation to supervisory and enforcement matters relevant to the provisions of the financial sector legislation;
- 6.2.11 statistical information and data that the Parties may deem relevant to the compliance obligations of an accountable institution or to the fulfilment of their concomitant legislative responsibilities and obligations in terms of the financial sector legislation;
- 6.2.12 information on research and training that the Parties may deem relevant to the fulfilment of their concomitant legislative responsibilities and obligations;
- 6.2.13 any other information of common interest that the Parties may deem relevant to the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by the financial sector legislation.

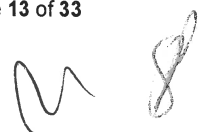
## **7. Classification and Permissible Use of Information**

- 7.1 The Parties acknowledge that all information exchanged between the Parties constitutes at least a minimum security classification of confidential



and/or classified and as such the integrity and classification thereof must be retained.

- 7.2 The Parties undertake to utilise all confidential and/or classified information within the scope of the powers and duties of the Requesting Party, for the purpose specified in the request for such information and within the prescripts of the financial sector legislation.
- 7.3 All confidential and/or classified information shall be securely stored and only accessed by authorised officials.
- 7.4 The Parties agree that prior notification and written consent of the Requested Party shall be sought prior to disclosure of confidential and/or classified information to third parties, which consent shall not be unreasonably withheld.
- 7.5 The Parties agree that confidential and/or classified information held by or received from the Requested Party will not be disclosed to any third party and any attempt to gain access to such confidential and/or classified information will be suitably defended.
- 7.6 The Parties agree that confidential and/or classified information will only be disclosed to a third party if such disclosure is required by law and after the Requested Party is notified of the intended disclosure and suitably agreed limitations are placed upon the ambit and extent of the disclosed confidential and/or classified information.
- 7.7 Unless lawfully compelled by law to disclose confidential and/or classified information, the requesting party shall utilise all lawful means to resist the disclosure of confidential and/or classified information and shall inform the



requested party of the attempt to seek access to such confidential and/or classified information;

- 7.8 The Parties acknowledge that any person who utilises confidential and/or classified information otherwise than in accordance with any arrangements or safeguards imposed by this MOU or within the prescripts of the financial sector legislation, may be guilty of an offence and may be criminally prosecuted.

## **8. Types of Confidential Information held by the Centre**

- 8.1 The FSCA may have access to following types of confidential information held by the Centre, subject to the restrictions imposed by the FIC Act:

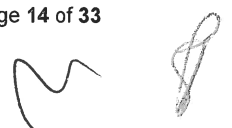
8.1.1 information from reports received by the Centre in terms of the FIC Act; and

8.1.2 information obtained by the Centre other than by means of reports by the Centre or request made by the Centre.

- 8.2 The Centre shall process, analyse and interpret confidential information held by it, to develop the appropriate response aligned to the FSCA's request for information, in two formats:

8.2.1 an intelligence report, which does not constitute admissible evidence in legal proceedings; or

8.2.2 an affidavit, which does constitute admissible evidence in legal proceedings.

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8.3 In submitting a request for information, the Authorised Officer of the FSCA shall specify which format it would prefer the requested information be provided.

**9. Exchange of Classified Information held by the FSCA in terms of section 36 of the FIC Act**

9.1 In compliance with its obligations in terms of section 36 of the FIC Act, the FSCA, at the request of the Centre or at its own initiative, shall advise and furnish all information and records in respect of a matter where it knows or suspects that an accountable institution:

9.1.1 has received or is about to receive the proceeds of unlawful activities;

9.1.2 has been used or may be used in future for money laundering purposes; or

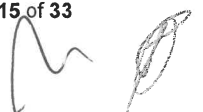
9.1.3 is party to a suspicious and unusual transaction or series of transactions as contemplated in section 29(1)(b) of the FIC Act.

9.2 The FSCA shall advise and furnish all such information and records to:

9.2.1 the Centre;

9.2.2 any law enforcement authority as defined by this MOU; and

9.2.3 any other supervisory body having an interest in the matter.



**10. Exchange of Confidential Information held by the Centre in terms of section 40 of the FIC Act**

10.1 The Centre shall make confidential information available to the FSCA in terms of section 40 of the FIC Act, at the initiative of the Centre or at the request of an Authorised Officer of the FSCA.

10.2 The Centre shall make confidential information available to the FSCA if it reasonably believes that such information is relevant to the exercise of the FSCA's powers or performance of its functions under the financial sector legislation or any other law.

10.3 To facilitate an appropriate and timely response, the Authorised Officer of the FSCA shall direct a request for information to the Centre in writing, utilising the designated mode of communication, specifying:

10.3.1 the nature of the information required;


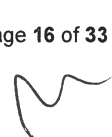
10.3.2 the purpose for which the information is sought;

10.3.3 the particularities of the matter which underpins the request,

10.3.4 how the information requested is relevant to the exercise of the FSCA's powers or performance of its functions under the financial sector legislation or any other law;

10.3.5 the urgency of the request for information.

10.4 The request for information shall be assessed on its merits by the Centre to determine whether assistance can be provided in the terms of the provisions of the financial sector legislation and this MOU.





10.5 If the Centre declines a request for information, it shall inform the Authorised Officer of the FSCA, in writing, of its decision and reasons thereof.

10.6 Should the Centre decline a request for information, the FSCA may request the Director to reconsider the decision.

## **11. Procedural arrangements regarding the sharing of confidential information held by the Centre**

### **11.1 Appointment of an Authorised Officer:**

11.1.1 The FSCA shall identify and appoint, in writing, one or more officials to serve as an Authorised Officer mandated to liaise with the Centre and to request and receive confidential information in terms of section 40 of the FIC Act.

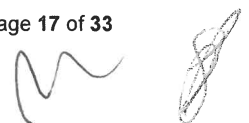
11.1.2 The Authorised Officer shall register with the Centre in the manner and form as prescribed by the Centre.

11.1.3 The Centre shall be responsible for the registering, updating and deregistering of an Authorised Officer.

11.1.4 The FSCA shall, in writing, inform the Centre of any change in the identity of an Authorised Officer.

### **11.2 Mode of Communication with the Centre in terms of sections 36 & 40 of the FIC Act:**

11.2.1 The Parties agree that the “Message Board” on the Centre’s *goAML* platform shall be the preferred mode of communication with the

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Centre in relation to the exchange of information in terms of sections 36 and 40 of the FIC Act.

11.2.2 Authorised Officers shall submit all requests for information to the Centre directly via the “Message Board” on the *goAML* platform.

11.2.3 The Centre shall submit all referrals and respond to requests for information to Authorised Officers directly via the “Message Board” on the *goAML* platform.

11.2.4 Authorised Officers shall submit any attachments to the Centre in PDF, MS Word and/or in MS Excel format, alternatively in a format requested by or agreed to by the Centre.

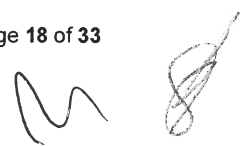
11.2.5 In the event that the *goAML* platform is not operational, the Parties shall utilise encrypted email messages for purposes of communication and/or any other secure method as determined by the Centre.

### 11.3 Progress Reports:

11.3.1 The Parties agree that the Authorised Officer as appointed by the FSCA shall provide progress reports to the Centre on matters where confidential information has been furnished by the Centre in terms of section 40 of the FIC Act.

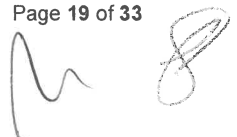
11.3.2 The Authorised Officer of the FSCA shall within 14 days acknowledge receipt of the confidential information received from the Centre.

11.3.3 Progress reports shall thereafter be furnished within 3, 6 and 12 months, if appropriate and applicable.

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11.3.4 Progress reports shall include the following:

- i. Progress made in relation to the confidential information furnished by the Centre, including and where applicable, whether the information resulted:
  - in enhancing and supporting the efficiency and integrity of financial markets;
  - in protecting financial customers;
  - in maintaining financial stability;
  - in a successful investigation, inspection or enforcement action;
  - in criminal charges being instituted, including details of such charges;
  - in a successful prosecution, including details of conviction and sentencing;
  - in an asset forfeiture order, including type and value of the order;
  - in facilitating the administration and enforcement of the laws of the Republic.
- ii. If further assistance is required from the Centre, the nature and extent thereof.



iii. An evaluation of the value of the confidential information furnished by the Centre via an electronic solution to be forwarded by the Centre to the Authorised Officer.

11.3.5 The Parties agree that an Authorised Officer that fails to provide the compulsory progress reports may be deregistered as an Authorised Officer.

## **12. Exchange of Classified Information held by the FSCA**

12.1 The FSCA shall make classified information available to the Centre in compliance with its obligations in terms of section 251 of the FSR Act.

12.2 The types of classified information available to the Centre are detailed in the FSCA's "Manual to Access Information i.t.o the Promotion of Access to Information Act 2 of 2000", available at [www.fsca.co.za](http://www.fsca.co.za).

## **13. Procedural arrangements regarding the sharing of classified information held by the FSCA**

13.1 Classified information held by the FSCA shall only be shared with the Centre by an official of the FSCA, duly authorised to do so in terms of section 251(6) of the FSR Act.

13.2 The FSCA shall ensure that such authorised officials will constitute the list of Authorised Officers as referred to in clause 11.1 above.

13.3 The Centre shall direct all requests for classified information to the Authorised Officer of the FSCA.

13.4 Requests for classified information from FSCA must be in writing and originate from by the Director, Executive Manager or other senior manager of the Centre.

13.5 Requests for information must include the following:

13.5.1 The facts of the matter;

13.5.2 The purpose for which the information is sought;

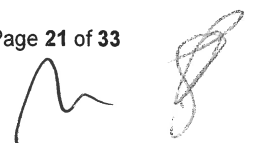
13.5.3 The type of information sought.

#### **14. General Mode of Communication between the Parties**

14.1 The Parties agree that written communication, transferred electronically, shall be the preferred mode of communication between the Parties, except as stipulated in clause 11.2 hereinabove.

14.2 Written communication shall be directed to the Centre, addressed to the Director, Executive Manager or other senior manager of the Centre, as determined by the nature, purpose and ambit of the communication.

14.3 Written communication shall be directed to the FSCA, addressed to the Commissioner, heads of departments or other senior officials, as determined by the nature, purpose and ambit of the communication. The Office of General Counsel of the FSCA must be copied in all communication.

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## **15. Guidance in terms of the FIC Act**


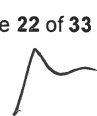
- 15.1 The Parties agree that the Centre, as administrator of the FIC Act, is solely responsible for providing interpretation of the FIC Act and guidance as contemplated in terms of section 4(c) of the FIC Act.
- 15.2 In terms of section 42B, the Centre shall publish a draft of the intended guidance and invite and consider any submissions thereto by the FSCA.
- 15.3 Where the Centre does not agree with a material submission made by the FSCA, the parties will meet to try and resolve the issue.
- 15.4 The FSCA undertakes to communicate all Guidance Notes and Public Compliance Communications as issued by the Centre, on its website.

## **16. Directives in terms of the FIC Act**

- 16.1 In terms of section 43A of the FIC Act, both Parties are authorised to issue directives regarding the application of the FIC Act.
- 16.1 Both Parties undertake to comply with the consultation and publication requirements as stipulated in section 43A of the FIC Act.
- 16.2 Both Parties undertake to communicate all Directives as issued, on their respective websites.

## **17 Standards and Regulatory Instruments in terms of the FSR Act**

- 17.1 In terms of section 76(1)(d)(i) of the FSR Act, both Parties undertake to co-ordinate, to the extent appropriate, their actions in the issuing of standards

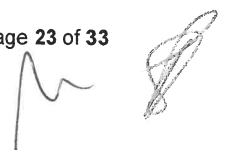


and other regulatory instruments, in pursuit of their respective legislative mandate.

- 17.2 The Parties undertake to avoid making incompatible or inconsistent regulatory instruments.
- 17.3 To this end, the Party making the regulatory instrument must consider the potential impact of the planned instrument on the other Party's legislative objectives and should begin consultations on the planned instrument at the earliest reasonable opportunity and where applicable, constitute a working group, comprising of representatives of both Parties, to deliberate on the proposed instrument.
- 17.4 Either Party may, with the agreement of the other Party, invite other interested authorities or key stakeholders to participate in any consultation process.
- 17.5 The Centre will inform and invite the FSCA to all meetings held with accountable institutions supervised by the FSCA or industry bodies representing such accountable institutions or self-regulatory organisations of accountable institutions supervised by the FSCA.

## **18 United Nations Security Council Financial Sanctions**

- 18.1 The Centre undertakes to publish on its website all advisories and notices on all targeted United Nations Security Council financial sanctions against designated persons or entities.
- 18.2 The FSCA undertakes to communicate on its website all such advisories and notices on all targeted United Nations Security Council financial

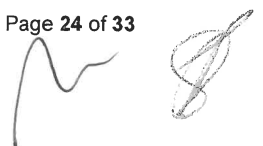


sanctions against designated persons or entities, to accountable institutions as supervised by it.

- 18.3 The FSCA acknowledges its legislative responsibility to supervise and ensure implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations, by accountable institutions supervised by it.

## **19 Compliance Inspections in terms of section 45B the FIC Act**

- 19.1 The Parties agree that the FSCA shall conduct inspections to assess the level of compliance by accountable institutions supervised by it in terms of the FIC Act.
- 19.2 In fulfilling its supervisory obligations, the FSCA shall appoint its own inspectors to conduct inspections with the purpose of assessing the level of compliance with provisions of the FIC Act by accountable institutions supervised by it.
- 19.3 The FSCA may extend the appointment and functions of inspectors appointed in terms of any other financial sector legislation, to include the conducting of inspections in terms of the FIC Act.
- 19.4 The FSCA will provide all duly appointed inspectors with a certificate of appointment.

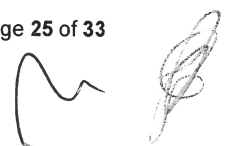
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- 19.5 An inspector duly appointed by the Centre, may accompany and assist an inspector appointed by the FSCA in an inspection, upon the receipt of a formal written invitation from the FSCA.
- 19.6 The FSCA and/or the Centre may recover all reasonable expenses incurred in relation to an inspection from the inspected accountable institution.
- 19.7 The FSCA shall prepare an inspection report detailing the findings of the inspection and may include input from the Centre, where the Centre is involved in the inspection.
- 19.8 An inspection report flowing from an inspection initiated by the Centre will be prepared by the Centre and may include input from the FSCA, if applicable.
- 19.9 The FSCA agrees to furnish the Centre with the inspection findings of all accountable institutions supervised by it.
- 19.10 The Parties agree that in respect of supported inspections, the FSCA will lead the inspection, which will be conducted in a cooperative fashion with due regard to the legislative mandates of the Parties.
- 19.11 The Parties agree that in respect of inspections conducted under circumstances envisaged in sections 45(3) of the FIC Act, the Centre will timeously consult with, share its inspection plan and not exclude the FSCA from participation in the inspection.

## **20 Non-Compliance with the FIC Act**

- 20.1 The FSCA undertakes to take immediate and appropriate supervisory and enforcement action against any accountable institution supervised by it,

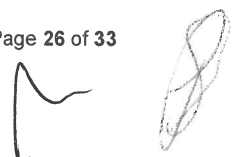
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which has been found to be non-compliant with the provisions of the FIC Act and inform the Centre thereof.

- 20.2 In terms of section 44 of the FIC Act, should the Centre become aware of any non-compliance with the FIC Act by accountable institutions supervised by the FSCA, the Centre undertakes to refer the matter to the FSCA, with an appropriate recommendation to remedy the non-compliance.
- 20.3 The FSCA undertakes to investigate the matter referred to it by the Centre in terms of section 44 of the FIC Act and may take appropriate steps to remedy the non-compliance.
- 20.4 Should the FSCA fail to take appropriate steps to remedy the non-compliance matter, the Centre undertakes to consult the FSCA and then take appropriate steps to remedy the non-compliance.

## **21 Administrative Sanctions in terms of the FIC Act**

- 21.1 The FSCA agrees that it may impose an appropriate administrative sanctions on accountable institutions supervised by it, which has been found to be non-compliant with the provisions of the FIC Act, and after taking into account factors as listed in section 45C (2) of the FIC Act.
- 21.2 The Parties to this arrangement agree to consult each other before imposing a financial penalty for non-compliance with the FIC Act on an accountable institutions supervised by the FSCA.
- 21.3 The Parties agree to advise each other of its decision to impose administrative sanctions on accountable institutions supervised by the FSCA for non-compliance with the FIC Act, including details of the specific administrative sanctions as soon as possible after such sanction was imposed.

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## **22 Appeals in terms of the FIC Act**

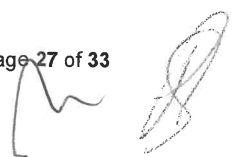
- 22.1 The Parties agree to inform each other of an appeal instituted against an administrative sanctions imposed in terms of the provisions of the FIC Act on an accountable institution supervised by the FSCA.
- 22.2 The Parties shall furnish each other with all available pleadings in an appeal, including Heads of Argument and inform each other of the date of hearing of the appeal.
- 22.3 The Parties may consult each other on the merits of an appeal and consider the other Party's comments therein.

## **23 Regulatory Strategy, Engagements and Reporting**

- 23.1 The Parties undertake to consult and report on a quarterly basis on strategic issues relating to the supervision and enforcement of the financial sector legislation.
- 23.2 The Parties will discuss and strive to adopt and implement consistent regulatory strategies to address regulatory challenges based upon, but not limited to, developments at international standard setting bodies.

## **24 Attendance at Domestic, Regional and International Financial Regulatory Forums**

- 24.1 The Parties agree to co-operate and collaborate, with the aim of minimising the duplication of effort and expense, to ensure appropriate representation

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at domestic, regional and international financial regulatory forums and/or training initiatives.



- 24.2 The Parties agree to co-operate and collaborate, to the extent appropriate and with the aim of minimising the duplication of effort and expense, to develop consistent policy positions for the purposes of presentation and negotiation at domestic, regional and international financial regulatory forums and/or training initiatives.

## **25 The Monitoring and Review Committee**

- 25.1 The MRC is hereby established.
- 25.2 The MRC shall be constituted by the Parties respective nominated delegates.
- 25.3 The MRC shall be convened at least two weeks prior to the Consultative Committee meeting as contemplated hereunder.
- 25.4 The MRC shall serve as a secretariat facilitating all preparatory arrangements for the Consultative Committee meeting, including the finalisation of an agenda and the compilation of a joint report on the effective and efficient implementation of this MOU.

## **26 The Consultative Committee**

- 26.1 The Consultative Committee is hereby established.
- 26.2 The Consultative Committee shall be constituted by the Director of the Centre, the Commissioner of the FSCA or their nominated delegates.



26.3 The Consultative Committee shall meet at least bi-annually, to discuss strategic issues relevant to the financial services industry and of common interest between the Parties and their concomitant legislative responsibilities and obligations in terms of the financial sector legislation, with the aim of minimising duplication of effort and expense, including issues relating to:

26.3.1 efficiency and integrity of financial markets;

26.3.2 the protection of financial customers;

26.3.3 maintaining financial stability;

26.3.4 financial crime;

26.3.5 the implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations;

26.3.6 supervision and enforcement of the FIC Act;

26.3.7 drafting, formulating input and comments to prudential standards, joint standards and other regulatory instruments, licensing, recovery and resolutions, strategies, processes, policies, directives and guidance;

26.3.8 regulatory and supervisory challenges;

26.3.9 the establishment of integrated information technology platforms to enable seamless and secure flows of information;

26.3.10 improving general co-operation and collaboration between the Parties;

26.3.11 the effective and efficient implementation of this MOU;

26.3.12 any other strategic issues that the Parties may deem relevant in the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by the financial sector legislation.

26.4 The Centre shall convene the first inaugural meeting of the Consultative Committee.

## **27 Training and Awareness**

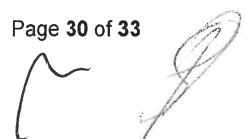
27.1 The Parties agree to co-operate, collaborate in addressing mutually beneficial training and awareness programmes, with the aim of minimising the duplication of effort and expense, in relation to matters of common interest between the Parties and their concomitant legislative responsibilities and obligations in terms of the financial sector legislation.

27.2 The Centre shall provide specific training to Authorised Officers of the FSCA on the application and implementation of the provisions of the FIC Act.

27.3 The FSCA shall provide specific training to the Centre on nature and extent of classified information held by the FSCA.

## **28 Technological, Analytics and Research Co-Operation**

The Parties agree to co-operate and collaborate, with the aim of minimising duplication of effort or expense, on matters relating to:



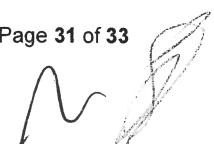
- 28.1 advancing and intensifying technological innovation within the financial sector regulatory environment to enable the Parties to effectively and efficiently fulfil their concomitant legislative obligations in terms of the financial sector legislation;
- 28.2 the establishment of integrated information technology platforms to enable the seamless and secure flows of information between the Parties;
- 28.3 analytical and statistical data and research to enable the Parties to effectively and efficiently improve understanding of financial trends and allow for the identification and allocation of appropriate resources required to effectively and efficiently combat financial crime and financial instability.

## **29 Mutual Risk Assessment**

The Parties agree to co-operate and collaborate, with the aim of minimising duplication of effort or expense, in the development of the “National Risk Assessment” for the Republic, with particular emphasis on risks affecting the financial services industry, including but not limited to the FATF Recommendations.

## **30 Limitations**

- 30.1 The Parties agree that this MOU does not impose any more onerous or additional obligations on the Parties than those provided for in the financial sector legislation.
- 30.2 The Parties agree that there is no obligation to exchange information if it is determined that the furnishing of the requested information may unduly prejudice an investigation or imminent or pending legal proceedings, or if provision of such information would likely prejudice the autonomy, security or other essential interests of either Party.



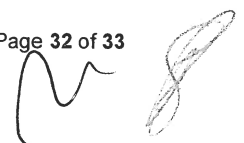
- 30.3 The above limitation will not be applicable if a systemic event has occurred or is imminent as envisaged by the provisions of the FSR Act.
- 30.4 No provision of this MOU shall give rise to the right on the part of any person, entity or governmental authority other than the Parties, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MOU.

### **31 Dispute Resolution**

- 31.1 The parties will maintain open communication between one another in accordance with the purpose of this MOU and strive to ensure early resolution of any points of disagreement arising out of the interpretation, operation and implementation of this MoU.
- 31.2 The parties understand and acknowledge that they have a mutual interest in resolving disagreements in a timely and efficient manner.
- 31.3 In the event of disputes arising from the interpretation, operation or implementation of this MOU, the Parties agree to make every reasonable effort to settle the dispute amicably through the Consultative Committee, failing which through a mutually identified intermediary.

### **32 Publication of the Memorandum of Understanding**

The Parties agree that this MOU and the annexures thereto, shall be published on their respective websites as required by section 77(6) of the FSR Act.

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### 33 Review and Amendment

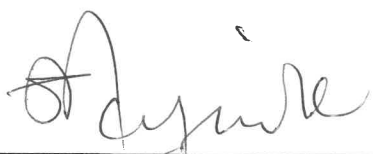
33.1 The operation and implementation of this MOU will be subject to regular reviews by the Parties, with a compulsory review every 3 years.

33.2 Any amendment agreed to by the Parties must be reduced to writing and shall form part of this MOU, and such amendment shall come into effect on a date as agreed upon between the Parties.

### 34 Commencement of this MOU

This MOU will come into effect on the date of signature by the last Party thereto.

Signed and agreed to at Pretoria on this 28<sup>th</sup> day of September 2018



Commissioner: Mr AM Sithole

For and behalf of the Financial Sector Conduct Authority

Signed and agreed to at Pretoria on this 28<sup>th</sup> day of September 2018



Director: Adv. X J Khanyile

For and on behalf of the Financial Intelligence Centre