



# **MEMORANDUM OF UNDERSTANDING**

**THE FINANCIAL INTELLIGENCE CENTRE**

**and**

**THE SOUTH AFRICAN RESERVE BANK**

**&**

**THE PRUDENTIAL AUTHORITY**

**2018**

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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 South African Reserve Bank & The Prudential Authority

represented by Mr E L Kganyago  
in his capacity as the Governor of the SARB & Chairperson of the Prudential Committee

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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 competent authorities 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 South African Reserve Bank is a mandated entity as listed in section 40(1)(aF) of the Financial Intelligence Centre Act 38 of 2001 and thus authorised to receive confidential information held by the Financial Intelligence Centre;


**And whereas** the South African Reserve Bank is a supervisory body responsible for supervising and enforcing compliance with the provisions of the Financial Intelligence Centre Act 38 of 2001;

**And whereas** the provisions of the Financial Sector Regulation Act 9 of 2017 requires the South African Reserve Bank to protect and enhance financial stability; to restore or maintain financial stability occasioned by a systemic event; monitor and review any risks to financial stability and to take steps to mitigate such risks; to provide for co-ordination, co-operation, collaboration, assistance, consultation and exchange of information between the South African Reserve Bank, the Prudential Authority and the Financial Intelligence Centre;

**And whereas** sections 40(3) and 45(1D) of the Financial Intelligence Centre Act 38 of 2001 and sections 27, 77 and 251(3)(e) of the Financial Sector Regulation Act 9 of 2017 require the South African Reserve Bank, the Prudential Authority and the Financial Intelligence Centre to conclude memorandums of understanding to facilitate the fulfilment of their concomitant legislative responsibilities and obligations;

**Now therefore** the Financial Intelligence Centre, the South African Reserve Bank and the Prudential 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 information, in the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by law.



## 1. Definitions

In this Memorandum of Understanding and in the annexures thereto, 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 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 the South African Reserve Bank and any department thereof, 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;

**“Banks Act”** means the Banks Act 94 of 1990;

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

**“CEO of the PA”** means the Chief Executive Officer of the Prudential Authority appointed in terms of section 36 of the Financial Sector Regulation Act 9 of 2017;

**“Competent Authorities”** means all authorities listed in section 3(2)(a) of the Financial Intelligence Centre Act 38 of 2001;

**“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;

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



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**“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;

**“FinStab”** means the Financial Stability Department of the South African Reserve Bank;

**“Financial Sector Legislation”** includes the financial sector law as defined by the Financial Sector Regulation Act 9 of 2017, the National Credit Act 34 of 2005, the National Payment System Act 78 of 1998, Currency and Exchanges Act 9 of 1933 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;

**“FinSurv”** means the Financial Surveillance Department of the South African Reserve Bank, authorised to regulate the Exchange Control Regulations, issued in terms of section 9 of the Currency and Exchanges Act 9 of 1933;

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

**“Governor”** means the person appointed under section 4 or 6(1)(a) of the South African Reserve Act 90 of 1989, as the Governor of the South African Reserve Bank;

**“Inspection”** means an inspection in terms of section 45B of the Financial Intelligence Centre Act 38 of 2001 and/or an onsite inspection in terms 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 section 45(1D) of the Financial Intelligence Centre Act 38 of 2001 and sections 27 and 77 of the Financial Sector Regulation Act 9 of 2017;

**“National Credit Act”** means the National Credit Act 34 of 2005;

**“NPS Act”** means the National Payment System Act 78 of 1998;

**“NPSD”** means National Payment System Department of the South African Reserve Bank, authorised to perform the functions in respect of the powers and duties contemplated in section 10(1)(c) of the South African Reserve Bank Act 90 of 1989 and the National Payment System Act 78 of 1998;

**“PA”** means the Prudential Authority, a juristic person within the administration of the South African Reserve Bank, established in terms of section 32 of the Financial Sector Regulation Act 9 of 2017;

**“Parties”** means the Financial Intelligence Centre, the South African Reserve Bank and the Prudential Authority;

**“POCA”** means the Prevention of Organised Crime Act 121 of 1998;

**“POCDATARA”** means the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004;

**“Prudential Committee”** means the committee established in terms of section 41 of the Financial Sector Regulation Act 9 of 2017;

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

**“Reserve Bank”** means the South African Reserve Bank as referred to in section 223 of the Constitution and established in terms of the South African Reserve Bank Act 90 of 1989, a mandated entity as listed in section 40(1) of the Financial Intelligence Centre Act 38 of 2001 and includes the Financial Stability Department, the National Payment System Department, the Financial Surveillance Department and any other Department thereof;

**“Requested Party”** means a party to whom a request for information is made in terms of this Memorandum of Understanding;

**“Requesting Party”** means a party making a request for information in terms of this Memorandum of Understanding;

**“SARB Act”** means the South African Reserve Bank Act 90 of 1989;

**“Standards”** means a prudential standard, a conduct standard or a joint standard;

**“Supervisory Arrangement”** means the arrangement between the Financial Intelligence Centre and the Prudential Authority, the Financial Surveillance Department and the National Payment System Department, as annexed to this Memorandum of Understanding;



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**“Supervisory Bodies”** means the Prudential Authority, the Financial Surveillance Department and the National Payment System Department, as designated in terms of the Financial Intelligence Centre Act 38 of 2001;

**“Systemic Event”** means an event or circumstance, including one that occurs or arises outside the Republic, that may reasonably be expected to have a substantial adverse effect on the financial system or on economic activity in the Republic, including an event or circumstance that leads to a loss of confidence that operators of, or participants in, payment systems, settlement systems or financial markets, or financial institutions, are able to continue to provide financial products or financial services, or services provided by a market infrastructure.

## **2 Interpretation**

2.1 Unless inconsistent with the context, an expression which denotes:

2.1.1 any gender includes the other genders;

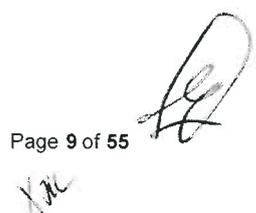
2.1.2 a person includes a legal or a natural person;

2.1.3 the singular includes the plural and vice versa.

2.2 The annexures to this MOU form an integral part hereof and words and expressions defined in this MOU shall bear, unless the context otherwise requires, the same meaning in such annexures.

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

3.1 This MOU regulates, strengthens and formalises matters of common interest, mutual co-operation, collaboration, assistance and exchange of information between the Parties, 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.

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- 3.2 This MOU establishes the MRC to monitor and oversee the efficient and effective implementation of this MOU and to serve as a secretariat to the Consultative Committee.
- 3.3 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.
- 3.4 This MOU includes separate Supervisory Arrangements, regulating the supervisory and enforcement responsibilities of the Supervisory Bodies in terms of the FIC Act and the FSR Act, as listed below:
- 3.4.1 the PA - **Annexure A**;
- 3.4.2 the FinSurv – **Annexure B**;
- and
- 3.4.3 the NPSD – **Annexure C**.

#### **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 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.

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- 4.3 The Parties agree to execute and fulfil their concomitant legislative roles and responsibilities with utmost good faith and trust.
- 4.4 The Parties further agree to endeavour to secure sufficient resources in order to meet their concomitant roles and responsibilities in terms of this MOU and the financial sector legislation and will explore other funding resources in respect of unforeseen expenditure relating to joint projects.

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

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 in protecting, maintaining, monitoring, enhancing and restoring financial stability, monitoring and reviewing any risks to financial stability occasioned by a systemic event and taking steps to mitigate such risks for the purposes of preventing or minimising the adverse effects of a systemic event on financial stability;
- 5.2 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;
- 5.3 in information gathering and sharing, compliance assessments, inspections, investigations, enforcement, licensing, recovery and resolutions, research, training programmes and other joint projects which the Parties may deem necessary from time to time;

- 5.4 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;
- 5.5 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;
- 5.6 in the event of a systemic event or imminent event, by consulting on the exercise of any legislative powers that may compromise steps taken or proposed to be taken by the Reserve Bank to manage a systemic event or the effects of such an event;
- 5.7 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 the Exchange of Information

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

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- 6.2.2 information that will be relevant in managing a systemic event or the effects thereof;
- 6.2.3 information relevant to maintaining or restoring financial stability;
- 6.2.4 information that poses or may pose a risk to financial stability;
- 6.2.5 information from or about financial institutions concerning financial stability;
- 6.2.6 information relevant to the implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations;
- 6.2.7 information relevant to the supervision and enforcement of the provisions of any financial sector legislation;
- 6.2.8 information relevant to the conducting of fit and proper assessments by the Reserve Bank and the PA on persons seeking to hold office in an accountable institution in terms of any financial sector legislation;
- 6.2.9 information relating to any legal proceedings that the Parties may deem relevant to the fulfilment of their concomitant legislative responsibilities and obligations;
- 6.2.10 statistical information and data that the Parties may deem relevant to the fulfilment of their concomitant legislative responsibilities and obligations;



6.2.11 information on research and training that the Parties may deem relevant to the fulfilment of their concomitant legislative responsibilities and obligations;

6.2.12 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 Confidentiality and Permissible Use of Information**

7.1 The Parties acknowledge that all information exchanged between the Parties constitutes confidential information.

7.2 The Parties undertake to utilise all confidential 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 information shall be securely stored and only accessed by duly 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 information to third parties, which consent shall not be unreasonably withheld.

7.5 The Parties agree that confidential information held by or received from the Requested Party will not be disclosed to any third party without appropriate limitations placed thereupon as determined by the Requested Party.



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

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

8.1 The Reserve Bank and the PA may have access to following types of confidential information as held by the Centre, subject to the confidentiality 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 to 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 Reserve Bank and the PA'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 constitutes admissible evidence in legal proceedings.



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

## 9 Exchange of Confidential Information 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 Reserve Bank and the PA, at the request of the Centre or at their 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 Reserve Bank and the PA 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 in terms of section 40 of the FIC Act

10.1 The Centre shall make confidential information available to the Reserve Bank and the PA 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 Reserve Bank or the PA.

10.2 The Centre shall make confidential information available to the Reserve Bank or the PA if it reasonably believes such information is required:

10.2.1 to investigate suspected unlawful activities;

10.2.2 to prevent, mitigate or manage a systemic event or the effects thereof;

or

10.2.3 is relevant to the exercise by the Reserve Bank or the PA of its powers and 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 Reserve Bank or the PA 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 suspected unlawful activity or any other activity or event which underpins the request,



10.3.4 how the information requested is required to investigate suspected unlawful activity or is relevant to the exercise of the Reserve Bank and PA'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 full compliance with the request is not possible, the Centre will provide any other alternative assistance.

10.6 In deciding whether to accept or decline a request for information, the Centre may take particular account of whether:

10.6.1 the requested information will facilitate the administration and enforcement of the laws of the Republic;

10.6.2 the requested information is required to investigate suspected unlawful activity or is relevant to the exercise of the Reserve Banks' or PAs' powers or performance of its functions under the financial sector legislation or any other law;

and

10.6.3 it is in the public interest to make available the requested information to the Requesting Party.



10.7 If the Centre declines a request for information, it shall inform the Authorised Officer of the Reserve Bank or the PA, in writing, of its decision and reasons therefore.

## **11 Appointment of an Authorised Officer**

11.1 The Reserve Bank or the PA 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.

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

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

11.4 The Reserve Bank or the PA shall, in writing, verify and confirm the identity of an Authorised Officer with the Centre bi-annually.

## **12 Progress Reports**

12.1 The Parties agree that the Authorised Officer as appointed by the Reserve Bank and the PA shall provide progress reports to the Centre on matters where confidential information has been furnished by Centre in terms of section 40 of the FIC Act, to the extent that it may be appropriate and applicable.

12.2 Progress reports shall be furnished within fourteen days of receipt of the confidential information from the Centre and thereafter every 3, 6 and 12 months, if appropriate and applicable.

12.3 Progress reports shall include the following:

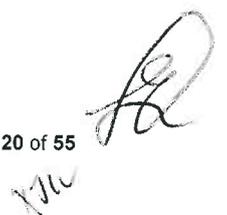
12.3.1 Progress made in relation to the confidential information furnished by the Centre, including and where applicable, whether the information resulted:

- 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 the successful prevention or management of a systemic event;
- in protecting, enhancing, restoring or maintaining financial stability.

12.3.2 If further assistance is required from the Centre, the nature and extent thereof.

12.3.3 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.

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

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

- 13.1 The Parties agree that the “Message Board” on the Centre’s *goAML* platform shall be the preferred mode of communication with the Centre in relation to the exchange of information in terms of sections 36 and 40 of the FIC Act.
- 13.2 Authorised Officers shall furnish all information or submit all requests for information to the Centre directly via the “Message Board” on the *goAML* platform.
- 13.3 The Centre shall submit all referrals and respond to requests for information to the respective Authorised Officer directly via the “Message Board” on the *goAML* platform.
- 13.4 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.
- 13.5 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.

### **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 13 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 Reserve Bank or PA, addressed to the Governor, CEO of the PA, heads of departments, divisional heads or other senior officials, as determined by the nature, purpose and ambit of the communication.

## **15 Exchange of Supervisory and Enforcement Related Information**

- 15.1 The Parties agree to exchange confidential information relevant to the fulfilment of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act, the provisions of the FSR Act and any other financial sector legislation.
- 15.2 The types of information that the Parties may exchange are detailed in the Supervisory Arrangements annexed hereto.

## **16 Monitoring and Review Committee**

- 16.1 The MRC is hereby established.
- 16.2 The MRC shall be constituted by the Parties respective nominated delegates.
- 16.3 The MRC shall be convened at least two weeks prior to the Consultative Committee meeting as contemplated in paragraph 17 hereunder.

16.4 The MRC shall monitor and oversee the implementation of this MOU and serve as a secretariat facilitating all preparatory arrangements for the Consultative Committee meeting, including the finalisation of the agenda and the compilation of a joint report on the effective and efficient implementation of this MOU.

## 17 The Consultative Committee

17.1 The Consultative Committee is hereby established.

17.2 The Consultative Committee shall be constituted by the Director of the Centre, the Governor of the Reserve Bank and the CEO of the PA or their nominated delegates.

17.3 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:

17.3.1 financial crime;

17.3.2 financial stability, resolution and recovery;

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

17.3.4 supervision and enforcement;

- 17.3.5 drafting, formulating input and comments to prudential standards, joint standards and other regulatory instruments, licensing, recovery and resolutions, strategies, processes, policies, directives and guidance;
- 17.3.6 regulatory and supervisory challenges;
- 17.3.7 the establishment of integrated information technology platforms to enable seamless and secure flows of information;
- 17.3.8 improving general co-operation and collaboration between the Parties;
- 17.3.9 the effective and efficient implementation of this MOU;
- 17.3.10 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.

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

## **18 Training and Awareness**

18.1 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.

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18.2 The Centre shall provide specific training to Authorised Officers of the Reserve Bank and the PA on the application and implementation of the provisions of the FIC Act.

## 19 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:

- 19.1 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;
- 19.2 the establishment of integrated information technology platforms to enable the seamless and secure flows of information between the Parties;
- 19.3 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.

## 20 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.


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

- 21.1 The Parties agree to co-operate and collaborate, with the aim of minimising the duplication of effort and expense, to ensure appropriate representation at domestic, regional and international financial regulatory forums and/or training initiatives.
- 21.2 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.

## **22 Limitations**

- 22.1 This MOU supersedes and substitutes any prior MOU entered into between the Parties.
- 22.2 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.
- 22.3 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.
- 22.4 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.

22.5 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.

### **23 Dispute Resolution**

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 via the Consultative Committee, failing which through a mutually identified intermediary.

### **24 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.

### **25 Review and Amendment**

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

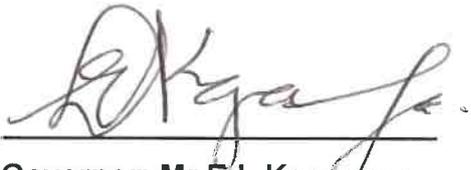
25.2 Any amendment agreed to by the Parties must be reduced to writing and shall form part of this MOU, and such amendment shall come into effect on a date as agreed upon between the Parties.

### **26 Commencement and Termination**

26.1 This MOU will come into effect on the date of signature by the last Party thereto and will remain in force until terminated by either Party on thirty days written notice to the other Party.

26.2 The termination of this MOU will not prejudice the completion of any on-going projects or activities under this MOU nor will it affect the confidentiality status of all information exchanged between the Parties.

Signed and agreed to at Pretoria on this 26<sup>TH</sup> day of SEPTEMBER 2018



Governor: Mr E L Kganyago

For and behalf of the South African Reserve Bank and the Prudential Committee

Signed and agreed to at Centurion on this 01 day of October 2018



Director: Adv. X J Khanyile

For and on behalf of the Financial Intelligence Centre

# **SUPERVISORY ARRANGEMENT**

**The Financial Intelligence Centre**

**and**

**The Prudential Authority**

**a juristic person within the South African Reserve Bank**

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## Preamble

**Whereas** the PA is mandated to fulfil its obligation to supervise and enforce compliance with the provisions of the FIC Act or any order, determination or directive made in terms thereof, by accountable institutions regulated or supervised by the PA;

**Whereas** the Centre, the Reserve Bank and the PA have entered into a MOU regulating matters of common interest, mutual co-operation, collaboration, assistance and exchange of information, in the fulfilment of their concomitant legislative responsibilities and obligations in terms of the financial sector legislation, including supervision and enforcement responsibilities in terms of the FIC Act, the FSR Act and/or the financial sector legislation;

**Now therefore** the Parties agree that this Supervisory Arrangement between the Centre and the PA is an annexure to the MOU, with the provisions thereof incorporated into this Supervisory Arrangement.

### 1. Definitions

In this Supervisory Arrangement, unless the context indicates or requires otherwise the phrase “**Parties to this arrangement**” means the Centre and the PA.

### 2. Purpose of this Supervisory Arrangement

The purpose of this arrangement is to regulate, strengthen and formalise matters of common interest, mutual co-operation, collaboration, assistance and exchange of information between the Parties to this arrangement, with the aim of minimising duplication of effort or expense, in the fulfilment of their concomitant supervision and enforcement responsibilities in terms of the FIC Act, FSR Act and/or the financial sector legislation.


### **3. Roles and Responsibilities**

- 3.1 The Parties to this arrangement acknowledge their respective supervisory and enforcement roles and responsibilities as specified by the provisions of the FIC Act, FSR Act and/or the financial sector legislation.
- 3.2 The Parties to this arrangement agree to ensure effective and efficient mutual co-operation, collaboration, assistance and exchange of information, with the aim of minimising duplication of effort or expense and in the fulfilment of their concomitant supervision and enforcement responsibilities in terms of the FIC Act, FSR Act and/or the financial sector legislation.
- 3.3 The Parties to this arrangement agree to execute and fulfil their respective legislative roles and responsibilities with utmost good faith and trust.

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

The Parties to this arrangement agree to mutual co-operation, collaboration and assistance in information gathering, inspections, enforcement, research, training programmes, joint projects and other matters of common interest, which the Parties may deem necessary from time to time, in the furtherance of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act, FSR Act and/or the financial sector legislation.

### **5. Guidelines for the Exchange of Information**

- 5.1 In response to requests for information in pursuance of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act, FSR Act and/or the financial sector legislation, the Parties agree to provide the fullest possible measure of mutual assistance, subject to the limitations of the financial sector legislation or any other relevant legislation.

- 5.2 The exchange of information may include, *inter alia*:
- 5.2.1 information relevant to the issuing of directives and guidance in terms of the provisions of the FIC Act, FSR Act and/or any other financial sector legislation;
  - 5.2.2 information relevant to the preparation and conducting of supervisory investigations and inspections in terms of the provisions of the FIC Act, FSR Act and/or any other financial sector legislation;
  - 5.2.3 information relevant to any enforcement action taken against a non-compliant accountable institution in terms of the provisions of the FIC Act, FSR Act and/or any other financial sector legislation;
  - 5.2.4 information relevant to any appeals or other legal proceedings instituted in terms of the provisions of the FIC Act, FSR Act and/or any other financial sector legislation;
  - 5.2.5 statistical information and data relating to the compliance obligations of an accountable institution in terms of the provisions of the FIC Act, FSR Act and/or any other financial sector legislation;
  - 5.2.6 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;
  - 5.2.7 information on research and training in relation to supervisory and enforcement matters relevant to the provisions of the FIC Act, FSR Act and/or any other financial sector legislation;



5.2.8 any other information that the Parties to this arrangement may deem relevant to the exercise of their supervisory and enforcement responsibilities in terms of the FIC Act, FSR Act and/or any other financial sector legislation.

## 6. Mode of Communication

6.1 The Parties to this arrangement agree that written communication, transferred electronically, between senior management and/or heads of departments shall be the preferred mode of communication with each other in relation to the exchange of confidential information relevant to the fulfilment of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act, FSR Act and any other financial sector legislation, unless otherwise stipulated.

6.2 Written communication shall be directed to Centre addressed to the Executive Manager or senior manager within the Compliance and Prevention Department of the Centre, as determined by the nature, purpose and ambit of the communication.

6.3 Written communication shall be directed to the PA addressed to the CEO of the PA or senior management, as prescribed by the nature, purpose and ambit of the communication.

## 7. Guidance and Directives

7.1 The Parties to this arrangement agree that the Centre, as administrator of the FIC Act, is solely responsible for providing interpretation of, guidance on and issuing of directives in terms of the provisions of FIC Act.



7.2 Prior to issuing any guidance in terms of section 42B or a directive in terms of section 43A of the FIC Act, the Centre undertakes to consult the PA and to:

7.2.1 publish a draft of the guidance or directive;

and

7.2.2 invite and consider any submissions thereto.

7.3 The PA undertakes to communicate all Guidance Notes, Directives and Public Compliance Communications as issued by the Centre, via its website, to accountable institutions supervised by it.

## **8. United Nations Security Council Financial Sanctions**

8.1 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.

8.2 The PA 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.

8.3 The PA 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.

## 9. Compliance Inspections in terms of the FIC Act

- 9.1 The Parties to this arrangement agree that the PA shall conduct compliance inspections to assess the level of compliance by accountable institutions supervised by it in terms of the FIC Act.
- 9.2 In fulfilling its supervisory obligations, the PA 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.
- 9.3 The PA 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.
- 9.4 The PA will provide all duly appointed inspectors with a certificate of appointment.
- 9.5 An inspector duly appointed by the Centre, may accompany and assist an inspector appointed by the PA in an inspection, upon the receipt of a formal written invitation from the PA.
- 9.6 The PA and/or the Centre may recover all reasonable expenses incurred in relation to an inspection from the inspected accountable institution.
- 9.7 The PA 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.
- 9.8 An inspection report flowing from an inspection initiated by the Centre will be prepared by the Centre and may include input from the PA, if applicable.
- 9.9 The PA agrees to furnish the Centre with the inspection findings of all accountable institutions supervised by it.

## **10. Non-Compliance with the FIC Act**

- 10.1 The PA undertakes to take prompt and appropriate supervision and enforcement action against any accountable institution supervised by it, which has been found to be non-compliant with the provisions of the FIC Act and inform the Centre thereof.
- 10.2 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 PA, the Centre undertakes to refer the matter to the PA, with an appropriate recommendation to remedy the non-compliance.
- 10.3 The PA 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.
- 10.4 Should the PA fail to take appropriate steps to remedy the non-compliance matter, the Centre undertakes to consult the PA and then take appropriate steps to remedy the non-compliance.

## **11. Administrative Sanctions in terms of the FIC Act**

- 11.1 The PA agrees to impose appropriate administrative sanctions on accountable institutions supervised by it, which has been found to be non-compliant with the provisions of the FIC Act.
- 11.2 The Parties to this arrangement agree to consult each other before imposing an administrative sanction for non-compliance with the FIC Act on an accountable institutions supervised by the PA.

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11.3 The Parties agree to advise each other of its decision to impose administrative sanctions on accountable institutions supervised by the PA for non-compliance with the FIC Act, including details of the specific administrative sanctions as soon as possible after such sanction was imposed.

## **12. Appeals in terms of the FIC Act**

The Parties to this arrangement agree to notify and consult each other in respect of an appeal instituted against an administrative sanctions imposed on any accountable institution in terms of the provisions of the FIC Act by either Party to this arrangement, and furnish each other with all available pleadings, documents and other relevant information in respect of such an appeal, upon request.

## **13. Engagements and Reporting**

The Parties undertake to consult on a quarterly basis on strategic issues relating to the supervision and enforcement of the FIC Act, FSR Act and/or the financial sector legislation.

**//end**

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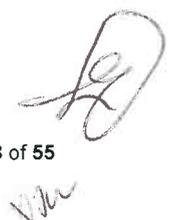
# **SUPERVISORY ARRANGEMENT**

**The Financial Intelligence Centre**

**and**

**The Financial Surveillance Department  
of the South African Reserve Bank**

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**Whereas** the FinSurv is mandated to fulfil its obligation to supervise and enforce compliance with the provisions of the FIC Act or any order, determination or directive made in terms thereof, by accountable institutions regulated or supervised by the FinSurv;

**Whereas** the Centre and the Reserve Bank have entered into a MOU regulating matters of common interest, mutual co-operation, collaboration, assistance and exchange of information, in the fulfilment of their concomitant legislative responsibilities and obligations in terms of the financial sector legislation, including supervision and enforcement responsibilities in terms of the FIC Act;

**Now therefore** the Parties agree that this Supervisory Arrangement between the Centre and the FinSurv is an annexure to the MOU, with the provisions thereof incorporated into this Supervisory Arrangement.

## **1. Definitions**

In this Supervisory Arrangement, unless the context indicates or requires otherwise the phrase “**Parties to this arrangement**” means the Centre and the FinSurv.

## **2. Purpose of this Supervisory Arrangement**

The purpose of this arrangement is to regulate, strengthen and formalise matters of common interest, mutual co-operation, collaboration, assistance and exchange of information between the Parties to this arrangement, with the aim of minimising duplication of effort or expense, in the fulfilment of their concomitant supervision and enforcement responsibilities in terms of the FIC Act.

## **3. Roles and Responsibilities**

3.1 The Parties to this arrangement acknowledge their respective supervisory and enforcement roles and responsibilities as specified by the provisions of the FIC Act.

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3.2 The Parties to this arrangement agree to ensure effective and efficient mutual co-operation, collaboration, assistance and exchange of information, with the aim of minimising duplication of effort or expense, in the fulfilment of their concomitant supervision and enforcement responsibilities in terms of the FIC Act and/or the financial sector legislation.

3.3 The Parties to this arrangement agree to execute and fulfil their respective legislative roles and responsibilities with utmost good faith and trust.

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

The Parties to this arrangement agree to mutual co-operation, collaboration and assistance in information gathering, compliance inspections and assessments, enforcement, research, training programmes and other joint projects which the Parties to this arrangement may deem necessary from time to time, in the furtherance of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act and/or the financial sector legislation.

#### **5. Guidelines for the Exchange of Information**

5.1 In response to requests for information in pursuance of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act, the Parties to this arrangement will provide the fullest possible measure of mutual assistance, subject to the limitations of the financial sector legislation or any other relevant legislation.

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

5.2.1 information relevant to the issuing of directives and guidance in terms of the provisions of the FIC Act and/or any other financial sector legislation;



- 5.2.2 information relevant to the preparation and conducting of supervisory investigations and inspections in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.3 information relevant to any enforcement action taken against a non-compliant accountable institution in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.4 information relevant to any appeals or other legal proceedings instituted in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.5 statistical information and data relating to the compliance obligations of an accountable institution in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.6 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;
- 5.2.7 information on research and training in relation to supervisory and enforcement matters relevant to the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.8 any other information that the Parties to this arrangement may deem relevant to the exercise of their supervisory and enforcement responsibilities in terms of the FIC Act and/or any other financial sector legislation.



## 6. Mode of Communication

- 6.1 The Parties to this arrangement agree that written communication, transferred electronically, between senior management and/or heads of department shall be the preferred mode of communication with each other in relation to the exchange of confidential information relevant to the fulfilment of their concomitant supervisory and enforcement responsibilities in terms of section 45 of the FIC Act and any other financial sector legislation, unless otherwise stipulated.
- 6.2 Written communication shall be directed to Centre addressed to the Executive Manager, Compliance and Prevention.
- 6.3 Written communication shall be directed to the FinSurv addressed to the Head of the Department or senior management, as prescribed by the nature, purpose and ambit of the communication.

## 7. Guidance and Directives

- 7.1 The Parties to this arrangement agree that the Centre, as administrator of the FIC Act, is solely responsible for providing interpretation of, guidance on and issuing of directives in terms of the provisions of FIC Act.
- 7.2 Prior to issuing any guidance in terms of section 42B or a directive in terms of section 43A of the FIC Act, the Centre undertakes to consult the FinSurv and to:
- 7.2.1 publish a draft of the guidance or directive;
- and
- 7.2.2 invite and consider any submissions thereto.

7.3 The FinSurv undertakes to communicate all Guidance Notes, Directives and Public Compliance Communications as issued by the Centre, via its website, to accountable institutions supervised by it.

## **8. United Nations Security Council Financial Sanctions**

8.1 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.

8.2 The FinSurv 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.

8.3 The FinSurv 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.

## **9. Compliance Inspections in terms of the FIC Act**

9.1 The Parties to this arrangement agree that the FinSurv shall conduct compliance inspections to assess the level of compliance by accountable institutions supervised by it with the provisions of the FIC Act.

9.2 In fulfilling its supervisory obligations, the FinSurv 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.



- 9.3 The FinSurv 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.
- 9.4 The FinSurv will provide all duly appointed inspectors with a certificate of appointment.
- 9.5 An inspector duly appointed by the Centre, may accompany and assist an inspector appointed by the FinSurv, upon the receipt of a formal written invitation from the FinSurv.
- 9.6 The FinSurv and/or the Centre may recover all reasonable expenses incurred in relation to an inspection from the inspected accountable institution.
- 9.7 The FinSurv 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.
- 9.8 An inspection report flowing from an inspection initiated by the Centre will be prepared by the Centre and may include input from the FinSurv, where the FinSurv is involved in the inspection.
- 9.9 The Parties to this arrangement agree to furnish each other with copies of all final inspection reports once issued.

## **10. Non-Compliance with the FIC Act**

- 10.1 The FinSurv undertakes to take prompt and appropriate supervision and enforcement action against any accountable institution supervised by it, found to be non-compliant with the provisions of the FIC Act and inform the Centre thereof.

- 10.2 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 FinSurv, the Centre undertakes to refer the matter to the FinSurv, with an appropriate recommendation to remedy the non-compliance.
- 10.3 The FinSurv undertakes to investigate the matter referred by the Centre in terms of section 44 of the FIC Act, by conducting a compliance inspection and after consulting the Centre, take the appropriate steps to remedy the non-compliance.
- 10.4 Should the FinSurv fail to take appropriate steps to remedy the non-compliance, the Centre undertakes to consult the FinSurv and then take appropriate steps to remedy the non-compliance.

## **11. Administrative Sanctions in terms of the FIC Act**

- 11.1 The FinSurv agrees to impose appropriate administrative sanctions on accountable institutions supervised by it, which has been found to be non-compliant with the provisions of the FIC Act.
- 11.2 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 FinSurv.
- 11.3 The Parties agree to advise each other of its decision to impose administrative sanctions on accountable institutions supervised by the FinSurv for non-compliance with the FIC Act, including details of the specific administrative sanctions as soon as possible after such sanction was imposed.

## **12. Appeals in terms of the FIC Act**

The Parties to this arrangement agree to notify and consult each other in respect of an appeal instituted against an administrative sanctions imposed on any accountable institution in terms of the provisions of the FIC Act by either Party to this arrangement, and furnish each other with all available pleadings, documents and other relevant information in respect of such an appeal, upon request.

## **13. Engagements and Reporting**

The Parties undertake to consult on a quarterly basis on strategic and/or operational issues relating to the supervision and enforcement of the FIC Act and/or financial regulatory legislation.

## **14. Reporting of cross border foreign exchange transactions**

14.1 The FinSurv shall furnish the Centre with all relevant information received by it via the Cross Border Foreign Exchange Transaction Reporting System for purposes of assessing compliance with section 31 of the FIC Act.

14.2 The FinSurv shall inform the Centre of any changes to the technical and/or operational specifications relating to the Cross Border Electronic Reporting systems to enable the Centre to update its reporting systems.

//end

  
R/M

# **SUPERVISORY ARRANGEMENT**

**The Financial Intelligence Centre**

**and**

**The National Payment System Department  
of the South African Reserve Bank**

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**Whereas** the NPSD is mandated to fulfil its obligation to supervise and enforce compliance with the provisions of the FIC Act or any order, determination or directive made in terms thereof, by accountable institutions regulated or supervised by the NPSD;

**Whereas** the Centre and the Reserve Bank have entered into a MOU regulating matters of common interest, mutual co-operation, collaboration, assistance and exchange of information, in the fulfilment of their concomitant legislative responsibilities and obligations in terms of the financial sector legislation, including supervision and enforcement responsibilities in terms of the FIC Act and/or the financial sector legislation;

**Now therefore** the Parties agree that this Supervisory Arrangement between the Centre and the NPSD is an annexure to the MOU, with the provisions thereof incorporated into this Supervisory Arrangement.

## **1. Definitions**

In this Supervisory Arrangement, unless the context indicates or requires otherwise the phrase “**Parties to this arrangement**” means the Centre and the NPSD.

## **2. Purpose of this Supervisory Arrangement**

The purpose of this arrangement is to regulate, strengthen and formalise matters of common interest, mutual co-operation, collaboration, assistance and exchange of information between the Parties to this arrangement, with the aim of minimising duplication of effort or expense, in the fulfilment of their concomitant supervision and enforcement responsibilities in terms of the FIC Act.

## **3. Roles and Responsibilities**

3.1 The Parties to this arrangement acknowledge their respective supervisory and enforcement roles and responsibilities as specified by the provisions of the FIC Act and/or the financial sector legislation.

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3.2 The Parties to this arrangement agree to ensure effective and efficient mutual co-operation, collaboration, assistance and exchange of information, with the aim of minimising duplication of effort or expense and in the fulfilment of their concomitant supervision and enforcement responsibilities in terms of the FIC Act.

3.3 The Parties to this arrangement agree to execute and fulfil their respective legislative roles and responsibilities with utmost good faith and trust.

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

The Parties to this arrangement agree to mutual co-operation, collaboration and assistance in information gathering, compliance inspections and assessments, enforcement, research, training programmes and other joint projects which the Parties to this arrangement may deem necessary from time to time, in the furtherance of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act and/or the financial sector legislation.

#### **5. Guidelines for the Exchange of Information**

5.1 In response to requests for information in pursuance of their concomitant supervisory and enforcement responsibilities in terms of the FIC Act, the Parties to this arrangement will provide the fullest possible measure of mutual assistance, subject to the limitations of the financial sector legislation or any other relevant legislation.

5.2 The exchange of information may include, inter alia:

5.2.1 information relevant to the issuing of directives and guidance in terms of the provisions of the FIC Act and/or any other financial sector legislation;

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- 5.2.2 information relevant to the preparation and conducting of supervisory investigations and inspections in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.3 information relevant to any enforcement action taken against a non-compliant accountable institution in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.4 information relevant to any appeals or other legal proceedings instituted in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.5 statistical information and data relating to the compliance obligations of an accountable institution in terms of the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.6 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;
- 5.2.7 information on research and training in relation to supervisory and enforcement matters relevant to the provisions of the FIC Act and/or any other financial sector legislation;
- 5.2.8 any other information that the Parties to this arrangement may deem relevant to the exercise of their supervisory and enforcement responsibilities in terms of the FIC Act and/or any other financial sector legislation.

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## 6. Mode of Communication

- 6.1 The Parties to this arrangement agree that written communication, transferred electronically, between senior management and/or heads of department shall be the preferred mode of communication with each other in relation to the exchange of confidential information relevant to the fulfilment of their concomitant supervisory and enforcement responsibilities in terms of section 45 of the FIC Act and any other financial sector legislation, unless otherwise stipulated.
- 6.2 Written communication shall be directed to Centre addressed to the Executive Manager, Compliance and Prevention.
- 6.3 Written communication shall be directed to the NPSD addressed to the Head of Department or senior management, as prescribed by the nature, purpose and ambit of the communication.

## 7. Guidance and Directives

- 7.1 The Parties to this arrangement agree that the Centre, as administrator of the FIC Act, is solely responsible for providing interpretation of, guidance on and issuing of directives in terms of the provisions of FIC Act.
- 7.2 Prior to issuing any guidance in terms of section 42B or a directive in terms of section 43A of the FIC Act, the Centre undertakes to consult the NPSD and to:
- 7.2.1 publish a draft of the guidance or directive;
- and
- 7.2.2 invite and consider any submissions thereto.

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7.3 The NPSD undertakes to communicate all Guidance Notes, Directives and Public Compliance Communications as issued by the Centre, via its website, to accountable institutions supervised by it.

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

8.1 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.

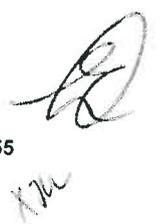
8.2 The NPSD undertakes to communicate on its website all such advisories and notices on all targeted United Nations Security Council financial sanctions against designated persons or entities, to accountable institutions as supervised by it.

8.3 The NPSD 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.

## **9 Compliance Inspections in terms of the FIC Act**

9.1 The Parties to this arrangement agree that the NPSD shall conduct compliance inspections to assess the level of compliance by accountable institutions supervised by it with the provisions of the FIC Act.

9.2 In fulfilling its supervisory obligations, the NPSD 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.

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- 9.3 The NPSD 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.
- 9.4 The NPSD will provide all duly appointed inspectors with a certificate of appointment.
- 9.5 An inspector duly appointed by the Centre, may accompany and assist an inspector appointed by the NPSD, upon the receipt of a formal written invitation from the NPSD.
- 9.6 The NPSD and/or the Centre may recover all reasonable expenses incurred in relation to an inspection from the inspected accountable institution.
- 9.7 The NPSD 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.
- 9.8 An inspection report flowing from an inspection initiated by the Centre will be prepared by the Centre and may include input from the NPSD, where the NPSD is involved in the inspection.
- 9.9 The Parties to this arrangement agree to furnish each other with copies of all final inspection reports once issued.

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

- 10.1 The NPSD undertakes to take prompt and appropriate supervision and enforcement action against any accountable institution supervised by it, which has been found to be non-compliant with the provisions of the FIC Act and inform the Centre thereof.

- 10.2 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 NPSD, the Centre undertakes to refer the matter to the NPSD, with an appropriate recommendation to remedy the non-compliance.
- 10.3 The NPSD undertakes to investigate the matter referred by the Centre in terms of section 44 of the FIC Act, by conducting a compliance inspection and after consulting the Centre, take the appropriate steps to remedy the non-compliance.
- 10.4 Should the NPSD fail to take appropriate steps to remedy the non-compliance, the Centre undertakes to consult the NPSD and then take appropriate steps to remedy the non-compliance.

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

- 11.1 The NPSD agrees to impose appropriate administrative sanctions on accountable institutions supervised by it, which has been found to be non-compliant with the provisions of the FIC Act.
- 11.2 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 NPSD.
- 11.3 The Parties agree to advise each other of its decision to impose administrative sanctions on accountable institutions supervised by the NPSD for non-compliance with the FIC Act, including details of the specific administrative sanctions as soon as possible after such sanction was imposed.



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

The Parties to this arrangement agree to notify and consult each other in respect of an appeal instituted against an administrative sanctions imposed on any accountable institution in terms of the provisions of the FIC Act by either Party to this arrangement, and furnish each other with all available pleadings, documents and other relevant information in respect of such an appeal, upon request.

## **13 Engagements and Reporting**

The Parties undertake to consult on a quarterly basis on strategic and/or operational issues relating to the supervision and enforcement of the FIC Act and/or financial regulatory legislation.

**//end**