

DRAFT PUBLIC COMPLIANCE COMMUNICATION

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No. 105 (PCC105)

ACCOUNTABLE INSTITUTIONS USE OF
RELIANCE AGREEMENTS FOR CUSTOMER
DUE DILIGENCE ON SHARED CLIENTS IN
TERMS OF PART 1, CHAPTER 3 OF THE
FINANCIAL INTELLIGENCE CENTRE ACT,
No. 38 OF 2001

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PCC SUMMARY

Accountable institutions are required to implement a Risk Management and Compliance Programme (RMCP) that will govern the manner in which the accountable institution will comply with its obligations as set out in the FIC Act. The RMCP must conform to the requirements as set out in Part 4 Section 42 of the Financial Intelligence Centre Act 2001 (Act No. 38 of 2001) (the FIC Act).

A RMCP must provide for the manner in which and processes by which the establishment and verification of the identity of persons whom the accountable institution must identify in terms of Part 1 of the Chapter 3 of the FIC Act.

An accountable institution may include in its RMCP the reliance on another accountable institution for the collection of customer due diligence information where the client is the client of both accountable institutions.

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OBJECTIVE

The objective of this PCC is to provide accountable institutions with the Centre's view on the application and use of a reliance agreement by accountable institutions in compliance with their customer due diligence obligation in terms of Part 1, Chapter 3 of the FIC Act, when entering into a business relationship or single transaction in relation to a client who is the client of both accountable institutions who are party to a reliance agreement.

GLOSSARY

“The Centre” means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

“FIC Act” refers to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

“Relying accountable institution” refers to the accountable institution that receives customer due diligence documentation on a shared client from the third party accountable institution that is party to a reliance agreement.

“Third party accountable institution” refers to the accountable institution that has collected the customer due diligence documentation directly from the shared client, and as party to a reliance agreement, makes this documentation and information available to the relying accountable institution.

“Shared client” refers to the client of both the relying accountable institution and the third party accountable institution in relation to a transaction or business relationship. This definition excludes a scenario where a client is coincidentally the client of both accountable institutions independent of any shared mandate.

1. INTRODUCTION

- 1.1 Chapter 3, Part 1 of the Financial Intelligence Centre Act, No. 38 of 2001 (FIC Act), outlines an accountable institution's customer due diligence (CDD) obligations in relation to entering into either a single transaction or business relationship with a prospective client.
- 1.2 A risk-based approach underpins compliance with this CDD obligation, and as detailed in Chapter 3, Part 4 of the FIC Act, an accountable institution is required to understand the anti-money laundering and combating the financing of terrorism (AML/CFT) risks associated with each client. ([See Guidance Note 7](#) for a detailed explanation).
- 1.3 A simplistic model of implementing CDD measures would be followed in the event that the client and the accountable institution are the only two (2) parties to any particular transaction or business relationship and would see the accountable institution performing CDD measures directly on a client.
- 1.4 In the event that an accountable institution is entering into a transaction or business relationship with a client, where another accountable institution is party to the transaction, such accountable institution could in certain instances, be permitted to rely on the CDD obtained by the other accountable institution (third party accountable institution) that is party to the transaction.
- 1.5 This reliance by the relying accountable institution on a third party accountable institution to conduct the collection of CDD information and documentation directly from the client and provide this CDD to the relying accountable institution in terms of a reliance agreement may only be applied, where the client is the shared client of both accountable institutions in relation to a transaction or business relationship. It is not sufficient that a client be the client of both accountable institutions independent of any shared mandate.
- 1.6 The relying accountable institution remains responsible for the complete CDD process, including the risk rating of their clients. Reliance agreements form part of the manner in which an accountable institution conducts CDD and does not impact the accountable institutions obligation to conduct CDD.

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1.7 This PCC will explain the Centre's position on the use of such reliance, detailed below as the "reliance agreement" by accountable institutions in fulfilling their CDD obligations in relation to shared clients.

1.8 See the FIC's Guidance Note 7 ([here](#)) for a detailed discussion on the risk based approach and other customer due diligence (CDD) considerations.

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2. FATF position regarding reliance on third parties for the completion of CDD (FATF Recommendation 17)

2.1 The Financial Action Task Force (FATF), in Recommendation 17, states that an accountable institution may rely on a third party to assist with customer identification and verification on the following conditions:

2.1.1 The relying institution should immediately obtain information to identify and verify the customers, their beneficial owners - including the ownership and control structures of legal entities, understanding the purpose and nature of the business relationship and should conduct ongoing due diligence on the business relationships and transactions to ensure it is consistent with the relying institution's understanding of the business;

2.1.2 Client information and other relevant data must be made available to the relying institution upon request without delay;

2.1.3 The relying institution must be satisfied that the third party is regulated, supervised or monitored and that it has the measures in place for compliance with customer due diligence and record keeping requirements; and

2.1.4 Country risks must be considered when relying on businesses from other jurisdictions.

2.2 It is noted that a third party in this instance refers to an accountable institution that has an existing business relationship with the prospective client, and that during the course of their business relationship with the client have completed a CDD process.

2.3 A scenario whereby the accountable institution simply acts as a third party outsource provider or an agent is explicitly excluded in so far as the above FATF requirements are concerned.

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3. The Centre's position regarding reliance on another accountable institution for the completion of CDD

3.1. The Centre aligns its understanding with that of FATF Recommendation 17 in relation to the reliance by one relying accountable institution on another third party accountable institution for the completion of CDD measures by that relying accountable institution.

3.2. The reliance on a third party accountable institution for the completion of CDD measures is not an exemption granted by the Centre, nor is it a process that the Centre either recommends or endorses to be applied by a relying accountable institution. Such reliance however, can be considered as a method employed by a relying accountable institution, in line with their accepted risk based approach, when performing their client take on processes, including the obligation of CDD.

4. Considerations in the application of reliance on another accountable institution for the completion of CDD

Formalities in implementing a reliance agreement

4.1. For purposes of this PCC, reference will be made to a "reliance agreement". This term does not constitute a formal process read with the FIC Act, but does describe the scenario of when a relying accountable institution places reliance on a third party accountable institution for purposes of obtaining CDD for a shared client.

4.2. It is the understanding of the Centre that both the relying accountable institution and the third party accountable institution be aware of such reliance agreement arrangement, and have in writing the terms of such agreement.

4.3. A reliance agreement should be unique to the accountable institutions involved and provide for such institutions' specific products, clients, distribution channels and compliance requirements.

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- 4.4. It would be considered good compliance practice to at a minimum include the following principles in such an agreement:
- 4.4.1. The accountable institution that deals with the client initially (i.e. the third party accountable institution) must complete the CDD for the client within the required and approved procedures of their RMCP;
 - 4.4.2. The relying accountable institution must obtain all CDD information and copies of documentation from the third party accountable institution;
 - 4.4.3. Information regarding the nature of the client type, products/service type, geographic areas of client and distribution channels used, to enable the relying accountable institution to understand the risk posed by the client to the third party accountable institution, and to further assist in determining the risks posed by the client to the relying accountable institution;
 - 4.4.4. The reliance agreement may not allow the relying accountable institution to adopt the risk rating applied by the third party accountable institution for the client, without any application by the relying accountable institution;
 - 4.4.5. Should the third party accountable institution consider the client to be a higher risk in line with their risk assessment, they would be required to perform additional due diligence measures where so required;
 - 4.4.6. Full access at any time to the client information held by the third party accountable institution;
 - 4.4.7. The conducting of a proper due diligence by the relying accountable institution on the third party accountable institution at acceptance stage;
 - 4.4.8. The ability by the relying accountable institution to conduct regular audits on the clients, products, distribution channels and geographical spread of business, as well as the compliance practices of the third party accountable institution. The agreement should also provide for steps to be taken to address concerns or, if necessary, to cancel the agreement;
 - 4.4.9. The steps to be taken upon ending the relationship, whether by mutual agreement or as a result of a liquidation or ceasing of business activities, or transfer of business from one institution to another, must be addressed. It is important that

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the relying accountable institution should have full access to client information in the event of a relationship being terminated for any reason;

- 4.4.10. Steps to be taken by a relying accountable institution if it needs to obtain more information on existing clients, products or procedures to enable it to do a proper assessment of the AML/CFT risks;
- 4.4.11. Full access by a relying accountable institution to any information on new products or changes to distribution channels, geographic areas for distribution of products and new products to re-assess the AML/CFT risks, if necessary;
- 4.4.12. Full access by a relying accountable institution to information regarding any changes to client behaviour and client profiles as a result of ongoing monitoring;
- 4.4.13. If the third party accountable institution is in a foreign jurisdiction, the relying institution must ensure that the compliance with AML/CFT legislation is in accordance with the South African standards and are not impacted by issues such as, for example foreign policy or secrecy requirements of the primary institution's host country.
- 4.4.14. No reliance may be placed for any reporting obligations in terms of the FIC Act, and include sections 28, 28A, 29 and 31 of the FIC Act.

5. Risk Management and Compliance Programme (RMCP)

- 5.1. In terms of Section 42(2)(d) of the FIC Act, an accountable institution is required to document the manner and the process in which they will establish and verify the identity of their client and other persons whom they must identify and verify in terms of Part 1 Chapter 3 of the FIC Act. Section 42(2)(j) of the FIC Act further states that the processes that the accountable institution will use in order to perform CDD in accordance with the FIC Act must be documented in the RMCP.
- 5.2. In the event that an accountable institution makes use of a reliance agreement for the purposes of conducting CDD, its RMCP must clearly set out the practice of relying on another accountable institution to conduct customer due diligence.

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- 5.3. Section 42(2)(a) of the FIC Act requires that the RMCP clearly demonstrate how the accountable institution will determine the risks associated with a client and the extent to which the AML/CFT risks will be mitigated and managed.
- 5.4. An accountable institution must apply its own processes and procedures to assess and mitigate AML/CFT risks where a reliance agreement is in place. The relying accountable institution may not, in any instance, adopt the risk rating applied by the third party accountable institution for the client, without any application by the relying accountable institution.
- 5.5. In the event that an accountable institution makes use of a reliance agreement for the purposes of conducting CDD, its RMCP must clearly demonstrate what information will be requested from the third party accountable institution, at a minimum, to allow for the relying accountable institution to make a determination on the client's ML/TF risk with the relying accountable institution. Should the information provided by the third party accountable institution not be sufficient for the purposes of risk identification, it is the duty of the relying accountable institution to source this information independently from the reliance agreement.
- 5.6. The record keeping requirements as detailed in section 22 of the FIC Act must be addressed in the RMCP. The relying accountable institution needs to determine the record keeping requirements when CDD is completed through a reliance agreement. Considerations are to include if copies of the identification and verification information and documentation are to be provided to the third party accountable institution, and what the record keeping processes would be.
- 5.7. A relying accountable institution must also include in its RMCP, an explanation of how it will satisfy itself that the processes and procedures followed by the third party accountable institution are in compliance with the FIC Act. If it is regarded as requiring improvement, it must indicate what steps it will take to rectify any perceived non-compliance by the third party accountable institution with the FIC Act before any reliance is placed on the third party accountable institution. Such processes and procedures may include conducting a proper due diligence on the third party accountable institution upon

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accepting it as party to a CDD reliance agreement and thereafter conducting ongoing due diligence on such third party accountable institution. Alternatively, there must be a clearly noted exit strategy stipulated.

6. Risk Based Approach

- 6.1. An accountable institution must determine the ML/TF risks for their client in relation to their business relationship, or transaction. It cannot rely on the ML/TF risk identification, and subsequent ratings provided by the third party accountable institution.
- 6.2. If the third party accountable institution has assessed their client's ML/TF risk and has rated their client as low risk, the relying accountable institution cannot take this risk at face value and apply it equally to their risk profile of the client. The relying accountable institution would be required to review the prospective client in light of their engagement with the client.

Example

FSP A has a Client X that deposits money into FSP A's client account. FSP A approaches Asset Manager B to invest client X's money. Client X is a shared client.

FSP A has rated client X as low risk following their risk rating methodology as per their RMCP.

Asset Manager B would need to risk rate Client X according to Asset Manager B's RMCP. Where Asset Manager B risk rates Client X as high risk, then Asset Manager B must obtain all the required Enhanced Due Diligence information.

7. Accountability

- 7.1. Each accountable institution is at all times fully responsible for all aspects of AML/CFT compliance and, although some reliance can be placed on other institutions to ease the

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compliance burden, an accountable institution may never delegate its compliance responsibility to any other accountable institution and/or other entity.

7.2. In the event that the relying accountable institution is inspected by their supervisory body, and the CDD compliance measures and controls is found to be inadequate, the relying accountable institution will remain liable for this non-compliance and will not be able to transfer this to the third party accountable institution that provided the CDD information in the reliance agreement.

8. Scope and limitation of application of reliance agreements

8.1. In summary, an accountable institution can place reliance on;

- 8.1.1. Identification of client and other required persons particulars;
- 8.1.2. Verification of client and other required persons particulars;
- 8.1.3. Information such as source of funds, source of wealth, geographic location.

8.2. An accountable institution cannot place reliance on;

- 8.2.1. The AML/CFT risk, and associated rating assigned to the client by the third party accountable institution;
- 8.2.2. The screening performed on the client by the third party accountable institution.

9. CONSULTATION

9.1 Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their duties and obligations in terms of the FIC Act or any directive made in terms of the FIC Act, the Centre must in accordance with section 42B of the FIC Act—

- 9.1.1 Publish a draft of the guidance by appropriate means of publication and invite submissions; and
- 9.1.2 Consider submissions received.

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9.2 Commentators are invited to comment on the draft guidance by submitting only written comments, representations or requests at **consult@fic.gov.za**. Submissions will be received until, **Tuesday 19 November 2019**, by close of business.

10. ENQUIRIES

For any further enquiries regarding this PCCX, please contact the Compliance Contact Centre on **(012) 641 6000**, or a query can be logged at <http://www.fic.gov.za/Secure/Queries.aspx>

Issued By:

The Director

Financial Intelligence Centre

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