

DRAFT PUBLIC COMPLIANCE COMMUNICATION

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No. 108 (PCC108)

ON CERTAIN LIFE INSURANCE BUSINESS
ISSUES INCLUDING CUSTOMER DUE
DILIGENCE AND UNDERSTANDING OF
RISK IN RELATION TO THEIR CLIENT IN
TERMS OF THE FINANCIAL INTELLIGENCE
CENTRE ACT 38 OF 2001

PCC SUMMARY

Accountable institutions who offer life insurance products and accountable institutions who provide advice and/or intermediary services in relation to life insurance products must understand the money laundering and terrorist financing (ML/TF) risks posed by their clients, and must perform customer due diligence (CDD) accordingly, when entering into a business relationship and or single transaction.

In understanding the ML/TF risks that the client may pose to the accountable institution, the accountable institution must take into account the ML/TF risk considerations relating to the nominated beneficiary.

When the beneficiary claims on the life insurance, payment of policy proceeds would be regarded as entering into a single transaction. At this stage, the beneficiary is the accountable institutions client.

Accountable intuitions are obliged to provide information relating to section 29 reports as submitted to the Financial Intelligence Centre (Centre) on the request of their supervisory body during an inspection determining compliance with the Financial Intelligence Centre Act, No 38. of 2001 (FIC Act)

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OBJECTIVE

The objective of this PCC is to provide clarity on certain practical application issues relating to the onboarding of a client in terms of Chapter 3 of the FIC Act.

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1. INTRODUCTION

- 1.1 The purpose of this PCC is to clarify certain practical application issues relating to FIC Act compliance in the context of accountable institutions that offer life insurance products and accountable institutions who provide advice and/or intermediary services in relation to life insurance products only.
- 1.2 This PCC contains 3 Parts will cover the following issues:

Part A- Risk assessment of an accountable institutions client

- The risk identification of a client; and
- The timing of assigning a risk rating and customer due diligence (CDD) to a client;

Part B- The FIC Act obligations relating to the beneficiaries of a life insurance product

- The ML/TF obligations relating to the beneficiaries of a life insurance product; and
- When should the beneficiary be considered as a client of the life insurer?

Part C- Accountable institutions obligations' in respect of providing information relating to section 29 reports.

PART A - RISK ASSESMENT OF ACCOUNTABLE INSTITUTIONS CLIENTS

2. *The risk identification of a client*

- 2.1. Accountable institutions are cautioned to not limit the understanding of risk of the accountable institution's client to a single factor such as a product offering that is perceived to be low risk by the accountable institution. It is not the intention of the risk-based approach to routinely assign the same level of risk to all clients based on a single indicator.
- 2.2. Guidance Note 7 provides a detailed list of several indicators and questions that accountable institutions can use to determine the risk associated to the client.

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- 2.3. Should the accountable institution, based on the consideration of all relevant facts, consider a life insurance policy to be a low risk product, the accountable institution must still take into consideration all other factors of the client (i.e. such as geographic location, distribution channels, if the client is a foreign prominent public official (FPPO) and if there is adverse media found on the client amongst others). Once all these unique factors have been considered, only then can the ML/TF risk be assigned to the relationship with the client.
- 2.4. Each risk indicator may carry a different weighting in relation to the level of ML/TF risk that the accountable institution may be exposed to. An accountable institution may consider such weighting in determining the overall ML/TF risk associated to the client. However, the weightings should not be of such a nature that any one indicator (such as product) would have a substantial overriding weighting that would in effect minimise the effect of other risk factors. The accountable institution must clearly demonstrate how the risk weighting is used to determine the overall risk.

3. The timing of assigning a risk rating and CDD of a client

- 3.1. The person who the accountable institution establishes a business relationship and/or enters into a single transaction with, is deemed to be the accountable institutions client.
- 3.2. When entering into a business relationship or single transaction with a client, the accountable institution is required to have an understanding of the risk associated to the client in order to determine the required customer due diligence (CDD) that must be applied in accordance with the accountable institutions obligation in terms of the FIC Act and in accordance with its Risk Management Compliance Programme (RMCP).
- 3.3. Such a risk determination (or risk rating of a client) must be completed as part of the onboarding process and prior to the client acceptance. Thereafter, the risk must be reassessed as and when clients details change in accordance with the ongoing due diligence processes in terms of the FIC Act and the accountable institutions RMCP. The rating of the client cannot be deferred to a later time.

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- 3.4. The accountable institution may not receive any funds (such as premium payments) or make any pay-outs (such as the pay out of the policy premium), until such time as the client's risk has been identified and the relevant CDD obtained for the client.

PART B - THE FIC ACT OBLIGATIONS RELATING TO THE BENEFICIARIES OF A LIFE INSURANCE PRODUCT

4. *ML/TF risk considerations relating to beneficiaries to a life insurance policy*

- 4.1 An accountable institution must understand the ML/TF risk associated to all of its clients. Doing so will allow the accountable institution to manage the risk accordingly, by means of applying the relevant level of CDD and client monitoring in terms of their RMCP.
- 4.2 Accountable institutions are to have an understanding and manage ML/TF risks that may foreseeably occur during their business engagements. As such, accountable institutions must understand the risk that the beneficiary themselves may pose to the accountable institution.
- 4.3 The risk factors relating to the beneficiary listed on the client's policy may be indicative of the risk relating of a client (policy holder/s). Therefore, an accountable institution should have enough knowledge of the beneficiary at the time of nomination (at onboarding and throughout the business relationship with the life insurance provider) so as to inform the understanding of risk that is posed by the client.
- 4.4 Following from paragraph 3.3, the accountable institution must re-assess the risk relating to its clients at various points during the business relationship, one such trigger event is the change of a beneficiary on the client's policy.
- 4.5 The ML/TF risk considerations regarding the beneficiary that impacts the overall risk of the client include that:

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- 4.5.1 The beneficiary may be a sanctioned person according to the South African Sanctions Regime (See Guidance Note 6A and Draft PCC 104);
- 4.5.2 The beneficiary may be a FPPO as envisaged in section 21F or a domestic prominent influential person (DPIP) in terms of section 21G of the FIC Act;
- 4.5.3 The beneficiary may be a known criminal; or
- 4.5.4 The beneficiary arrangements may be used for purposes of fronting in order to facilitate the movement of funds through a life insurance policy.

Beneficiary listed as a sanctioned person or entity

- 4.6 Section 4 of the POCDATARA Act and section 26B(2) of the FIC Act expressly prohibits any person from dealing with property that is associated with or making property available to any persons listed according to the South African Sanctions regime. (see Guidance Note 6A and Draft PCC 104 regarding the freezing of funds in such a scenario).
- 4.7 Should the accountable institution identify that a beneficiary is a sanctioned person as listed according to the South African Sanctions Regime they would be cautioned not to continue with such an arrangement, as at the pay-out stage they would not be in a position to lawfully honour such a payment.

Example

Person X holds a life insurance product with Company A. Person X nominates person Y as the beneficiary. Person X passes away, and the claim for policy proceeds to be paid to person Y is initiated. Company A screens person Y and identifies Person Y as a person listed on a sanctions list (per section 25 of POCDATARA and section 26 of the FIC Act). Company A would be required to freeze such funds and may not lawfully proceed with this payout as it would be a contravention of section 4 of POCDATARA.

Beneficiary is a foreign prominent public official or a domestic prominent influential person

- 4.8 As discussed in Guidance Note 7, the status of a person in relation to their political influence may have an impact on their risk associated to the accountable institution.

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- 4.9 In an instance where the nominated beneficiary to a life insurance policy is a FPPO or a DPIIP, the accountable institution should consider whether the client would be deemed a family member or a known close associate of the beneficiary in so far as determined in section 21H of the FIC Act.
- 4.10 If it is determined that the client is a family member or a known close associate of the beneficiary who is either a FPPO or a DPIIP, the accountable institution's understanding of the ML/TF risk and the associated CDD of the client would need to be aligned in relation to sections 21F and 21G of the FIC Act.
- 4.11 Where the client is a family member or known close associate to a nominated beneficiary who is a FPPO or a DPIIP that is considered a high risk, the accountable institution would be required to obtain enhanced due diligence for the client, establish the source of wealth and funds of the client and obtain senior management approval to establish the business relationship.
- 4.12 Where the beneficiary who is a FPPO or a DPIIP is not deemed to be a family member or known close associate with the client, the accountable institution should consider and understand the risk associated with such an arrangement.

Reporting of a suspicious and unusual transaction to the Centre

- 4.13 It may be a consideration of the accountable institution to determine if the nominating of such a beneficiary could amount to the business being used in any way for money laundering, or the commission of an offence in either scenario described in paragraph 4.5 above. Such suspicion would be required to be reported to the Centre in terms of section 29 of the FIC Act.

5. When should the beneficiary be considered as a client of the life insurer?

Clients are given an option to nominate beneficiaries to a life insurance policy. Such beneficiary would therefore be the recipient of the policy proceeds once the insured event occurs, and the proceeds/benefits are claimed.

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- 5.2 It is the Centre's view that when a client nominates a beneficiary, this beneficiary does not, at the stage of nomination, become the client of the accountable institution.
- 5.3 Further, when the accountable institution makes a payout of a life insurance policy's proceeds, they are entering into a single transaction with the receiver of the funds. Such receiver of the funds (beneficiary) at this point becomes the client of the accountable institution, and the resulting FIC Act obligations (see Part A above) come into effect.
- 5.4 The accountable institutions clients would therefore be both the life insurance policy holder/s, and the beneficiary where an insured event has occurred and the proceeds/ benefits are claimed in terms of the life insurance policy.

PART C – SECTION 29 OF THE FIC ACT

6. ACCOUNTABLE INSTITUTIONS OBLIGATIONS IN RESPECT OF PROVIDING INFORMATION RELATING TO SECTION 29 REPORTS

- 6.1. The accountable institution has an obligation to provide their supervisory body with a copy of a report, related facts or information regarding the content of a report as submitted to the Centre in terms of section 29 of the FIC Act when formally requested to do so in preparation for or during an inspection in terms of section 45B(2A) of the FIC Act for the purposes of determining FIC Act compliance.
- 6.2. Reference is made to PCC 42 relating to the disclosure of information regarding the contents of section 29 reports to a supervisory body.

7. CONSULTATION

- 7.1. 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—

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- 7.1.1. Publish a draft of the guidance by appropriate means of publication and invite submissions;
and
- 7.1.2. Consider submissions received.
- 7.2. 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, **Friday 27 March 2020**, by close of business.

8. ENQUIRIES

For any further enquiries regarding this Draft PCC108, 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

6 March 2020

Annexure A - 10.12 and 10.13 of the FATF Methodology

<http://www.fatfgafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

CDD for Beneficiaries of Life Insurance Policies

10.12 In addition to the CDD measures required for the customer and the beneficial owner, financial institutions should be required to conduct the following CDD measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated:

- (a) for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements – taking the name of the person;
- (b) for a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the pay-out;
- (c) for both the above cases – the verification of the identity of the beneficiary should occur at the time of the pay-out.

10.13 Financial institutions should be required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the financial institution determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it should be required to take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out.

Annexure B - 12.4 of the FATF Methodology

<http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%202013.pdf>

12.4 In relation to life insurance policies, financial institutions should be required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the pay-out. Where higher risks are identified, financial institutions should be required to inform senior management before the pay-out of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.