

## **CONSULTATION FEEDBACK**

Relating to the draft public compliance communication No. 113 and the issuance thereof in public compliance communication 51 on measures relating to foreign prominent public officials and domestic prominent influential persons, their immediate family members and known close associates

**3 December 2021**

## INTRODUCTION

1. The Financial Intelligence Centre (FIC) issued draft public compliance communication 113 (draft PCC 113) for consideration by all accountable institutions, supervisory bodies and all other persons in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) on 4 March 2021, with the consultation period ending on 26 March 2021.
2. The Centre received consultation comments from 12 commentators from different sectors including banking, compliance consultancy and insurance.
3. This document highlights the feedback received, and the Centre's response thereto, from a high-level thematic perspective. The detailed feedback and responses can be [here](#).

## THEMATIC FEEDBACK

### *Definitions*

4. Where no definition or elaboration is given in the draft PCC 113 of a specific word or phrase, these words or phrases must be read with the ordinary dictionary meanings thereof.

### *Establishment of centralised database*

5. There have been calls for a central database to be established detailing specific names of persons that hold a position of foreign prominent public official (FPPO) and domestic prominent influential person (DPIP). The establishment of such a list will not be considered by the Centre.
6. Although the Centre does not dictate the manner in which an accountable institution must determine whether individuals hold a DPIP or FPPO position, the controls implemented by an accountable institution must be adequate to accurately make such a determination, as stated in its risk management and compliance programme (RMCP).

7. Accountable institutions are reminded that screening a client against a set list (data source) is not regarded as effective risk management for DPIP and FPPO identification. The accountable institution must ensure that their understanding of the client is comprehensive enough, that sufficient available information was considered, and an application of mind made to demonstrate accurately whether or not an individual is a DPIP or FPPO as per Schedules 3A and 3B of the FIC Act, and further whether individuals are immediate family members or known close associates of FPPOs or DPIPs.

*Requirement to determine whether a client holds a FPPO or DPIP position is not dependent on the client's risk level*

8. The determination of whether a prospective client, client, person acting on behalf of a client and the beneficial owner of a client, hold a position of FPPO or DPIP, or is an immediate family member or known close associate, must be done before establishing a business relationship in all scenarios.
9. The fact that a client holds a position of FPPO or DPIP, or their immediate family member or known close associate does, is in itself a risk consideration that must be taken into account when the accountable institution assesses the overall risk presented by a business relationship with the client.
10. This determination must take place regardless of whether the product or services offering, or any other risk factor is inherently low risk. Only once the money laundering (ML) risk is determined, can the accountable institution continue with its associated customer due diligence obligations.

*Obligations in terms of Chapter 3 of the FIC Act*

11. Where an accountable institution fulfils the obligations as set out in section 21F and 21G of the FIC Act, that does not equate to having conducted enhanced due diligence. This has been elaborated on in length in the final PCC 51.

### *Potential heightened risk indicators and sole factor*

12. The potential ML indicators provided does not serve as confirmation of money laundering but are intended to aid the accountable institution when determining whether a DPIP poses a high ML risk.
13. Each accountable institution must adopt its own risk-based approach; however, a robust risk-based approach would entail more than just rating a client high risk by virtue of being a DPIP.

### *Persons acting on behalf of the client*

14. Persons acting on behalf of the client are considered within the ambit of part 1 to Chapter 3 of the FIC Act and cannot be separated from the CDD obligations that apply to the client. Therefore, it is the Centre's view that "prospective client" includes the client and the persons acting on behalf of the client.
15. The application of sections 21F, 21G and 21H in relation to persons acting on behalf of the client has been elaborated on in length in the final PCC 51.

### *Annual transactional value*

16. Schedule 3A(b) to the FIC Act refers to an annual transactional value, in this regard it should be noted that no threshold has been set by the Minister. Accountable institutions will be advised when the threshold is set.

### *PCC limited to deal with money laundering risks*

17. The PCC 51 focuses on understanding ML risks associated with DPIPs and FPPOs given the potential links to bribery and corruption as predicate offences for money laundering. PCC 44 and Guidance Note 6A provides guidance on terrorist financing and proliferation financing.

## *De-risking*

18. It is not considered effective nor adequate risk management if an accountable institution decides to de-risk a client for the mere fact that the client is a DPIP or FPPO. It is the Centre's view that where an accountable institution de-risks solely based upon the fact that a client is a DPIP or FPPO, without regard to any other ML risk factors, then that accountable institution has not complied with its obligation to follow a risk-based approach.

## **CONCLUSION**

19. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the PCC 51 where appropriate.
20. The final PCC 51 has been issued on 3 December 2021.

## **COMMUNICATION WITH THE FIC**

21. Queries can be directed to the compliance contact centre on 012 641 6000 and select option 1. Queries can also be submitted online by clicking on <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the FIC's website and submitting an online compliance query

### **Issued By:**

The Director Financial Intelligence Centre

Private Bag X177

CENTURION

0046

**3 December 2021**