

**PUBLIC COMMUNICATION COMPLIANCE**

**PUBLIC COMPLIANCE COMMUNICATION  
No. 116**

**ON DIRECTIVE 6/2022 SCREENING OF  
EMPLOYEES FOR COMPETENCE AND  
INTEGRITY AND SCRUTINISING OF  
EMPLOYEES AGAINST TARGETED  
FINANCIAL SANCTIONS LISTS AS A  
MONEY LAUNDERING, TERRORIST  
FINANCING AND PROLIFERATION  
FINANCING CONTROL MEASURE**

## **PCC SUMMARY**

This draft Public Compliance Communication 116 (draft PCC 116) provides guidance to the accountable institutions regarding certain requirements as set out in Directive 06 of 2022 (Directive 6) which deals with the screening of employees for competence and integrity as well as scrutinising of employees against the targeted financial sanctions lists, as a money laundering, terrorist financing and proliferation financing control measure.

## **THE AUTHORITATIVE NATURE OF GUIDANCE**

The Financial Intelligence Centre (the Centre) provides the guidance contained in this draft PCC 116 in terms of its statutory function in terms of section 4 (c) of the Financial Intelligence Centre Act 38 of 2001, as amended, (the FIC Act) read together with Regulation 28 of the Money Laundering and Terrorist Financing Control Regulations (the Regulations) issued in terms of the FIC Act.

Section 4 (c) of the FIC Act empowers the Centre to provide guidance in relation to a number of matters concerning compliance with the obligations in terms of the FIC Act. Guidance provided by the Centre is the only form of guidance formally recognised in terms of the FIC Act and the Regulations issued in terms of the FIC Act. Accordingly, guidance provided by the Centre is authoritative in nature and must be taken into account when interpreting the provisions of the FIC Act or assessing compliance of an accountable or reporting institution with its obligations imposed on it by the FIC Act.

It is important to note that enforcement action may emanate as a result of non-compliance with the FIC Act in areas where there have been non-compliance with the guidance provided by the Centre. Where it is found that an accountable or reporting institution has not followed guidance which the Centre has issued, the institution must be able to demonstrate that it has complied with the relevant obligation under the FIC Act in an equivalent manner nonetheless.

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**OBJECTIVE**

The objective of this draft PCC is to provide guidance to accountable institutions on screening prospective and current employees for competence and integrity following a risk-based approach, as well as scrutinising employee information against the targeted financial sanctions lists, as detailed in draft Directive 6.

**1 INTRODUCTION**

- 1.1. Directive 6/2022 calls for accountable institutions to screen prospective and current employees for competence and integrity, and to scrutinise employee information against the targeted financial sanctions lists as an internal control measure aimed at mitigating the risk of accountable institutions being abused by criminals who are either prospective employees, current employees or by persons that may influence employees.
- 1.2. Further, the adequate screening and scrutinising of employee information allows the accountable institution to ensure high standards when hiring employees of that accountable institution. These adequate procedures should lead to an effective implementation of anti-money laundering, counter terrorist financing and counter proliferation financing (AML/CFT/CPF) principles and obligations within an accountable institution.
- 1.3. Similar to understanding ML/TF/PF risks associated with clients, it is equally important for an accountable institution to understand how these ML/TF/PF risks can arise internally through the accountable institutions relationship with its own employees.

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Sufficient risk mitigation and management measures must be put in place that are commensurate with the level of risk identified.

- 1.4. Directive 6/2022 read together with this PCC sets the minimum standard for screening of employees for competence and integrity by accountable institutions. Where an accountable institution applies a higher standard than what is required in terms of the Directive 6/2022, they are encouraged to continue applying that higher standard.

## 2 SCREENING OF EMPLOYEES FOR COMPETENCE AND INTEGRITY

- 2.1. The screening of prospective and current employees for competence and integrity must be done on a risk-based approach, taking into account the level of ML/TF/PF risk presented by an employee's role held with the accountable institution.

### *Screening for competence*

- 2.2. The Centre is of the view that screening for competence refers to determining whether the employee has the necessary skills, knowledge and expertise to perform their functions effectively. The accountable institution may determine this with reference to at a minimum:
  - 2.2.1. previous employment, including references and portfolio of evidence,
  - 2.2.2. qualifications held, and
  - 2.2.3. relevant accreditations.

### *Screening for integrity*

- 2.3. The Centre is of the view that screening for integrity includes determining, at a minimum, whether the employee:
  - 2.3.1. had conducted themselves in accordance with the fit and proper requirements as applied by the accountable institution;

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- 2.3.2. does not have a criminal record, particularly related to crimes of dishonesty, money laundering or other financial crimes,
- 2.3.3. did not hold a senior decision-making role in relation to anti-money laundering, terrorist financing or proliferation financing at an accountable institution that was found to have criminally contravened the FIC Act, the Prevention and Combatting of Corrupt Activity Act 12 of 2004, the Prevention of Organised Crime Act 121 of 1998, and the Protection of Constitutional Democracy Against Terrorist and Related Activity Act 33 of 2004 (POCDATARA Act), or any other relevant Act.

### *Risk based approach*

- 2.4. Not all employees present the same level of ML/TF/PF risk. An accountable institution must determine the level of ML/TF/PF risk an employee role poses and ensure that the screening applied is proportionate to the level of ML/TF/PF risk the employee role presents.
- 2.5. The accountable institution must screen prospective and current employees for competence and integrity in a risk-based manner, where the accountable institution identifies a higher risk of ML/TF/PF based upon the employee role, the accountable institution should apply more stringent competence and integrity checks.
- 2.6. Based upon the outcome of the screening of the prospective employee and current employee the accountable institution must take a risk-based decision to ensure the ML/TF/PF risk is mitigated and managed.
- 2.7. Where it is found that the employee has been dishonest regarding any aspects subject to screening, the accountable institution is required to take a risk-based decision and is advised to not place that person in an AML/CFT/CPF impacted role.

***Employee role considerations***

- 2.8. The Centre is of the view that the following employee roles may be considered as presenting a heightened ML/TF/PF risk:
- 2.8.1. Senior management, including employees sitting within committees that approve the establishment of a business relationship with high-risk clients such as domestic prominent influential persons or foreign prominent public officials.
  - 2.8.2. Any other category of employee, where the employee's role is relevant or contributes to the identification, assessing, monitoring, mitigating and management of money laundering, terrorist financing and proliferation financing risks.
  - 2.8.3. Any category of employee, where the employee could manipulate or circumvent anti-money laundering, terrorist financing and proliferation financing control measures.
  - 2.8.4. Any category of employee, where the employee may take decisions which alter the AML/CFT/CPF regime of the entity.

***Enhanced screening for competence and integrity***

- 2.9. In addition to the measures set out in paragraph 2.2 and 2.3 above, the accountable institution is advised to implement additional screening measures of competence and integrity for employee roles that poses a higher ML/TF/PF risk.
- 2.10. The Centre is of the view that the additional screening measures include, but is not limited, to determining whether the employee:
- 2.10.1 Is a known close associate, or immediate family member of a high-risk client (e.g., high risk domestic prominent influential persons or foreign prominent public officials);
  - 2.10.2 Has resided in a high-risk geographic area (refer to PCC 49);
  - 2.10.3 Has been subject to adverse court orders, or default judgments;
  - 2.10.4 Has been declared as a rehabilitating insolvent;

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- 2.10.5 Has been declared by court order as being a delinquent director, or a director under probation of the Companies Act 71 of 2008;
- 2.10.6 Has been struck off the attorney's roll, the advocate's bar or other professional bodies due to regulatory or professional failings.

### *Timing of screening*

- 2.11. The accountable institution is advised to screen:
  - 2.11.1. All prospective employees before appointment, and
  - 2.11.2. Current employees on an ongoing basis at periods that are proportionate to the level of ML/TF/PF risk the employee role poses. Where the role poses a high-risk the accountable institution must screen the employee more often.

## **3 SCRUTINISING EMPLOYEE INFORMATION AGAINST TARGETED FINANCIAL SANCTIONS LISTS**

- 3.1. An accountable institution must scrutinise all prospective employees against the TFS lists before appointment of the person.
- 3.2. The accountable institution must scrutinise all current employees against the TFS lists as and when updates are made to the TFS lists.
- 3.3. The scrutinising of employee information applies to all employees irrespective of the level of ML/TF/PF risk the employee role presents.
- 3.4. Accountable institutions are reminded that no person may provide economic support, financial or other services to any person who is listed on a targeted financial sanctions list, as read with section 26B of the FIC Act and section 4(1) of the POCDATARA Act.

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### 4. COMMENCEMENT AND ENFORCEMENT DATES

- 4.1. The Directive 6/2022 becomes effective and enforceable 3 months from date of publication in the *Government Gazette*.
- 4.2. The three-month period allows for a transition period during which an accountable institution can develop screening and scrutinising processes or enhance existing processes where necessary, to enable compliance with the Directive 6/2022.
- 4.3. Accountable institutions should commence with screening of its higher risk employee roles as soon as possible, and thereafter focus on lesser risk employee roles.

### 5 CONSULTATION

- 5.1 Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding their performance, duties and obligations in terms of the FIC Act, the Centre must in accordance with section 42B of the FIC Act—
  - 5.1.1 Publish a draft of the guidance by appropriate means of publication and invite submissions, and
  - 5.1.2 Consider submissions received.
- 5.2 Commentators are invited to comment on the draft guidance by submitting written comments via the online comments submission link [here](#). Any questions or requests relating to this draft PCC 116 may be sent to the Centre only at **consult@fic.gov.za**. Submissions will be received **until close of business of Friday, 19 August 2022**.

### 6

#### COMMUNICATION WITH THE CENTRE

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- 6.1 The Centre has a dedicated compliance contact centre geared to assist accountable institutions to understand their registration obligations in terms of the FIC Act. Please call the compliance contact centre on 012 641 6000 and select option 1.
- 6.2 Compliance queries may also be submitted online by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the Centre's website and submitting an online compliance query.

**Issued By:**

**The Director**

**Financial Intelligence Centre**

**29 July 2022**