



Financial
Intelligence Centre

PUBLIC COMPLIANCE COMMUNICATION

**DRAFT PUBLIC COMPLIANCE
COMMUNICATION**

No. 47A (PCC 47A)

GUIDANCE ON THE INTERPRETATION OF
LEGAL PRACTITIONERS, ITEM 1 OF
SCHEDULE 1 TO THE FINANCIAL
INTELLIGENCE CENTRE ACT, 2001
(ACT 38 OF 2001) [AND POTENTIAL RISK
INDICATORS]

PCC SUMMARY

[A legal practitioner for purposes of Schedule 1 to the FIC Act includes “(a) *A person who is admitted and enrolled to practise as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) and who is– (i) an attorney (including a conveyancer or notary) practicing for his or her own account as contemplated in section 34(5)(a) of that Act; or (ii) an advocate contemplated in section 34(2)(a)(ii) of that Act. (b) A commercial juristic entity, as contemplated in section 34(7) of the Legal Practice Act, 2014”.*

This draft PCC provides guidance on the practical interpretation and application of the definition of legal practitioner for purposes of the FIC Act, and an overview of certain anti-money laundering, counter terrorist financing and counter proliferation financing vulnerabilities legal practitioners face.]

~~Item 1 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) lists a practitioner who practises as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979) (Attorneys Act) as an accountable institution.~~

~~With the repeal of the Attorneys Act, being replaced by the Legal Practice Act, 2014 (Act 28 of 2014) (Legal Practice Act), the definition of a *practitioner who practices* as set out in Item 1 of Schedule 1 of the FIC Act, must be interpreted in line with the Interpretation Act, 1957 (Act 33 of 1957) and the Legal Practice Act, and still includes attorneys, notaries and conveyancers who practise.~~

~~This PCC provides guidance to attorneys, notaries and conveyancers on the continued applicability of the FIC Act in relation to the Legal Practice Act.~~

THE AUTHORITATIVE NATURE OF GUIDANCE

The Financial Intelligence Centre (Centre) provides the guidance contained in this draft PCC in terms of its statutory function in terms of section 4(c) of 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.

FOR CONSULTATION PURPOSES ONLY

Section 4 (c) of the FIC Act empowers the Centre to provide guidance on a number of matters concerning compliance with 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 considered when interpreting the provisions of the FIC Act or assessing compliance of an accountable or reporting institution with the 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 has 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 nonetheless complied with the relevant obligation under the FIC Act in an equivalent manner.

DISCLAIMER

The publication of a PCC concerning any particular issue, as with other forms of guidance which the Centre provides, does not relieve the user of the guidance from the responsibility to exercise their own skill and care in relation to the users' legal position. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

COPYRIGHT NOTICE

This PCC is copyright. The material in a PCC may be used and reproduced in an unaltered form only for personal and non-commercial use within your institution.

Apart from any use permitted under the Copyright Act 1978, (Act 98 of 1978) all other rights are reserved.

OBJECTIVE

[This PCC provides clarity on the interpretation of legal practitioner for purposes of the application of the FIC Act.

FOR CONSULTATION PURPOSES ONLY

Further, the PCC highlights vulnerabilities faced by legal practitioners and provides risk indicators that can be considered by a legal practitioner, including a conveyancer or notary when determining ML/TF risks presented in their client engagements.]

~~This PCC provides guidance to attorneys, notaries and conveyancers on the continued applicability of the FIC Act, in relation to the Legal Practice Act.~~

CONSULTATION NOTE

This draft public compliance communication (PCC) 47A is intended to replace the existing PCC 47.

All additions will be noted in brackets [example].

All deletions will be in strike through. ~~an example of such~~

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 38 of 2001).~~

~~“Practise” refers to practise as an attorney or a notary or conveyancer as defined in the Attorneys Act, 1979 (Act 53 of 1979) and practice has a corresponding meaning.~~

[1. INTRODUCTION

- 1.1. [Schedule 1 to the FIC Act has been amended and takes effect from 19 December 2022.
- 1.2. Item 1 of Schedule 1 to the FIC Act has been amended. The changes to item 1 are a technical amendment which take into account the repeal of the Attorneys Act, 1979 (Act 53 of 1979), and which has been replaced by the Legal Practice Act, 2014 (Act 28 of 2014) (LPA).
- 1.3. Item 1 of Schedule 1 to the FIC Act continues to cover attorneys practicing for their own account; and legal firms; and now includes advocates contemplated in section 34(2)(a)(ii) of the LPA that practice with a fidelity fund certificate, that is, those advocates that are able to deal directly with clients from the public.
- 1.4. The purpose of this draft PCC is to clarify the Centre's interpretation of item 1 in relation to legal practitioners.
- 1.5. The Centre will supervise and enforce compliance with the FIC Act obligations (anti-money laundering, combating of terrorist financing and combating of proliferation financing (AML, CFT and CPF)) for legal practitioners in terms of section 4 to the FIC Act.]

[2. INTERPRETATION OF A LEGAL PRACTITIONER

Definition of a legal practitioner

- 2.1. Item 1 of Schedule 1 to the FIC Act includes [as an accountable institution]:
[“(a) A *person who is admitted and enrolled to practise as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) (LPA) and who is–*
 - (i) *an attorney (including a conveyancer or notary) practising for his or her own account as contemplated in section 34(5)(a) of that Act; or*
 - (ii) *an advocate contemplated in section 34(2)(a)(ii) of that Act.*
(b) A commercial juristic entity, as contemplated in section 34(7) of the LPA”].

FOR CONSULTATION PURPOSES ONLY

2.2. [This definition of legal practitioner consists of three categories of legal practitioners. These are discussed below:

2.2.1. An attorney (including a conveyancer or notary) practising for his or her own account as contemplated in section 34(5)(a) of the LPA Act.

2.2.1.1. Includes natural persons

2.2.1.2. Practising for their own account, and not in partnership with other attorneys

2.2.1.3. Where the attorney is on the practising roll of the Legal Practice Council, and

2.2.1.4. Is required to have a fidelity fund certificate

2.2.2. An advocate contemplated in section 34(2)(a)(ii) of the LPA Act.

2.2.2.1. Includes natural persons

2.2.2.2. Receive requests directly from a member of the public or from a justice centre for services

2.2.2.3. Is required to have a fidelity fund certificate and

2.2.2.4. Is enrolled to practise as an advocate

2.2.3. A commercial juristic entity, as contemplated in section 34(7) of the LPA 2014

2.2.3.1. Includes instances where the shareholding, partnership or membership as the case may be, is comprised exclusively of attorneys;

2.2.3.2. That provide legal services to be rendered only by or under the supervision of admitted and enrolled attorneys.]

~~1 RELEVANT LEGAL FRAMEWORK REGARDING ATTORNEYS IN SOUTH AFRICA~~

~~1.1 Item 1 of Schedule 1 to the FIG Act includes “a practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979)” In terms of the Attorneys Act a practitioner includes any attorney, notary or conveyancer as defined in the Attorneys Act.~~

FOR CONSULTATION PURPOSES ONLY

~~1.2 The Attorneys Act was repealed by the Legal Practice Act with effect from 1 November 2018. The admission of a practitioner who practises under the Attorneys Act remains valid¹, in terms of the Legal Practice Act.~~

~~1.3 Section 118 of the Legal Practice Act indicates that subject to the provisions of the Legal Practice Act, a reference in any other law to an advocate, a counsel or an attorney, must be interpreted as a reference to a legal practitioner in the Legal Practice Act. In terms of the Legal Practice Act, a legal practitioner includes an advocate or attorney admitted and enrolled as such in terms of section 24 and 30 of the Legal Practice Act respectively. It is important to note that in order to practise as a conveyancer and notary, one must be a practising attorney in terms of the Legal Practice Act.~~

~~1.4 Section 119(3) of the Legal Practice Act read together with section 12 of the Interpretation Act, 1957 (Act 33 of 1957) effectively means that when interpreting Item 1 of Schedule 1 to the FIC Act, the reference to “practitioner who practices” in terms of the Attorneys Act, still includes attorneys, notaries and conveyancers who practice in terms of the Legal Practice Act.~~

3. REGISTRATION OBLIGATIONS IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT

- ~~3.1. All practising attorneys (this includes notaries and conveyancers), fall within the ambit legal practitioners as set out in of item 1 of Schedule 1 to the FIC Act must register as accountable institutions with the Centre, in the manner as set out in public compliance communication 5C (PCC5C) [(PCC5D)] as published on the Centre’s website.~~
- 3.2. [Legal practitioners that are employed by a commercial, juristic entity, as contemplated in section 34(7) of the LPA, which commercial juristic entity is registered with the FIC, are not required to register separately with the FIC].

¹ Refer to section 119(3) of the Legal Practice Act.

FOR CONSULTATION PURPOSES ONLY

- 4. [POTENTIAL RISK INDICATORS OF MONEY LAUNDERING, TERRORIST FINANCING AND PROLIFERATION FINANCING]**
- 4.1. [Legal practitioners offer a wide range of legal services to a diverse range of clients. Property conveyancing services, advising and creating of legal entities, including shell companies and trusts, and the holding of client funds in trust, makes legal practitioners potentially vulnerable to abuse by criminals. These services may be of interest to criminals as it may enable them to transfer illicit proceeds obtained from criminal activities between parties and to obscure ownership.
- 4.2. Legal practitioners may be used to add the perception of respectability to their client's activities, e.g. financial institutions may ask fewer questions of the transaction or accounts due to the perceived respectability and legitimacy added by the involvement of a legal practitioner acting on behalf of a client.
- 4.3. Below are examples of risk indicators that may be helpful when evaluating risk in the ordinary course of business for a legal practitioner. The list is not exhaustive.
- 4.3.1. The legal practitioner is located far away from the client and there is no logical or economic reason for this
- 4.3.2. The legal practitioner does not have the necessary experience or specialist knowledge that the client requires
- 4.3.3. The client is prepared to pay excessive amounts in fees and charges to the legal practitioner
- 4.3.4. The client has changed legal practitioners numerous times within a short period of time
- 4.3.5. Another legal practitioner has refused to provide the services sought by the client
- 4.3.6. The instructions from the client to the legal practitioner are inconsistent with the size, experiences or services offered by the legal practitioner
- 4.3.7. There are significant differences between the declared price and the approximate actual values for immovable or movable property
- 4.3.8. The transaction involves large amounts of cash, that is inconsistent with the client profile

FOR CONSULTATION PURPOSES ONLY

- 4.3.9. The client is represented by a third party without logical or economic explanation
- 4.3.10. The client makes cash payments into the legal practitioner's trust account
- 4.3.11. A third party pays for the client transaction with no apparent logical or economic reason
- 4.3.12. The transaction includes the transfer of funds to or from a foreign geographic area with no valid economical or logical reason
- 4.3.13. The transaction includes the transfer of funds to or from a foreign high-risk geographic area
- 4.3.14. The transaction involves crypto assets
- 4.3.15. The legal practitioner's expenditure is funded by a third-party entity or government
- 4.3.16. Payment has been deferred to a later date, with no guarantee to pay later, and no logical or economic reason
- 4.3.17. The client requests to pay for the transaction over an excessive period (either an unusually short or unusually long repayment period) which does not make logical or economic sense
- 4.3.18. The transaction involves the purchase of property with cash and soon thereafter the property is used as security for a loan.
- 4.3.19. The client requests a change to the payment method/type with no logical or economic reason
- 4.3.20. The client is a recently incorporated company or established entity with large capital amounts which does not match the client's source of funds
- 4.3.21. The legal practitioner's client receives excessive capital donations with no logical explanation.
- 4.3.22. There is an excessively high or low price attached to the securities transferred with regard to any circumstance indicating such an excess (e.g. volume of revenue, trade or business, premises, size, knowledge of declaration of systematic losses or gains) or with regard to the sum declared in another operation.
- 4.3.23. The transaction involves foreign prominent public officials (FPPOs) and domestic prominent influential persons (DPIPs) as beneficial owner of the client.]

5. [ADDITIONAL RESOURCES]

- 5.1. [To assist legal practitioners, the Centre published in March 2022: *Assessment of the inherent money laundering and terrorist financing risks: Legal Practitioners*, which is available on the FIC website,
- 5.2. The following can be consulted for additional reading: FATF Guidance for a risk-based approach: Legal professionals (2019).]

6. CONSULTATION

- 6.1 Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding their performance, 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—
 - 6.1.1 Publish a draft of the guidance by appropriate means of publication and invite submissions.
 - 6.1.2 Consider submissions received.
- 6.2 Commentators are invited to comment on the draft guidance by submitting written comments via the [online comments submission link only](#). Any questions or requests relating to this draft PCC 47A may be sent to the Centre only at **consult@fic.gov.za**. Submissions will be received until **Friday, 20 January 2023**, by close of business.

7. COMMUNICATION WITH THE CENTRE

- 7.1 The Centre has a dedicated contact call centre geared to assist legal practitioners, (attorneys, notaries, conveyancers and advocates contemplated in section 34(2)(a)(ii) of the LPA), to understand their registration obligations in terms of the FIC Act. Should you have any queries please contact the Centre's compliance call centre on 012 641 6000 and select option 1.

FOR CONSULTATION PURPOSES ONLY

7.2. In addition, you can submit an online compliance query 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

15 December 2022

DRAFT