



# **Financial intelligence centre**

## **REPUBLIC OF SOUTH AFRICA**

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**PUBLIC COMPLIANCE COMMUNICATION No.31 (PCC 31)**  
**THE ACCEPTANCE OF FUNDS BY AN ACCOUNTABLE INSTITUTION PRIOR**  
**TO THE COMPLETION OF THE PRESCRIBED CLIENT IDENTIFICATION AND**  
**VERIFICATION REQUIREMENTS**

The Financial Intelligence Centre (the Centre) provides the guidance contained in this Public Compliance Communication (PCC) in terms of its statutory function in terms of section 4(c) of the Financial Intelligence Centre Act No. 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 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 under the FIC Act. Guidance provided by the Centre is authoritative in nature. An accountable institution must comply with guidance issued by the Centre, or explain the reasons for non-compliance if prompted by the Centre. It is important to note that enforcement action may emanate as a result of non-compliance with the FIC Act where it is found that there has been non-compliance with the guidance issued by the Centre.

## **PCC Summary**

**It is a contravention of the FIC Act for an accountable institution to accept funds from a prospective client prior to completing the client identification and verification requirements in terms of section 21 of the FIC Act and the applicable Regulations.**

**An accountable institution should refrain from encouraging its prospective clients to deposit funds into the bank account of the accountable institution prior to the client identification and verification process being completed.**

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## **Objective**

The objective of this PCC is to provide the Centre's view on the acceptance of funds from a prospective client prior to conducting the client identification and verification requirements as required by the FIC Act and the Regulations.

## **1. Introduction**

- 1.1 Section 21 of the FIC Act requires that an accountable institution must establish and verify the identity of its client prior to establishing a business relationship or concluding a single transaction with the client.
- 1.2 A 'business relationship' is defined in the FIC Act as "an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis".
- 1.3 A 'transaction' is defined as "a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that accountable institution".
- 1.4 A 'single transaction' is defined as "a transaction other than a transaction concluded in the course of a business relationship".

## **2. The Centre's view**

- 2.1 An accountable institution is required in terms of section 21 of the FIC Act to complete the relevant client identification and verification requirements prior to establishing a business relationship or concluding a single transaction with the client.
- 2.2 It is a contravention of the FIC Act for an accountable institution to accept funds from a prospective client prior to completing the client identification and verification requirements in terms of section 21 of the FIC Act and the applicable Regulations.
- 2.3 The term "accept" in the context of this PCC is "to agree to receive/take" which implies a meeting of the minds between the giver and recipient. Hence, the unilateral depositing of funds by a prospective client into the account of an institution, unbeknown to the institution, will not be regarded as acceptance of the funds by the institution.

### **3. Managing of Risk**

- 3.1 Failure to complete the client identification and verification processes in accordance with the requirements of the FIC Act and the Regulations made under the FIC Act, prior to the acceptance of funds from a prospective client amounts to an accountable institution receiving funds from an unknown source. This practice exposes the accountable institution to the risk of participation in money laundering or terror financing upon re-payment of the funds, should it be established that the funds originate from criminal activities, or even lawful activities, respectively.
- 3.2 It is thus imperative and in an accountable institution's own interest that the appropriate client identification and verification requirements are concluded prior to the acceptance of funds. This will enable an accountable institution to submit a suspicious and unusual transaction report to the Centre if necessary, and the institution is protected against possible prosecution for money laundering as envisaged in section 38 of the FIC Act and section 7A(1) of the Prevention of Organised Crime Act, Act No. 121 of 1998.

#### **Examples of how risk may arise**

##### **Example 1:**

An accountable institution, ABC Asset Managers, provides services as a registered Financial Services Provider and is also an accountable institution in terms of the FIC Act. The bank account details of the accountable institution is published on its website and prospective clients are requested to deposit funds into this account and to provide the accountable institution with the proof of payment together with the completed application form and other documents required in terms of the FIC Act.

Upon requesting information from prospective client X, the accountable institution becomes suspicious of the prospective client and the source of funds for the investment. To protect itself against possible reputational risk, the institution decides not to accept the prospective client's business. However, if the funds are

then returned to prospective client X, ABC Asset Managers will appear to be the legitimate source of the funds and may be regarded as a party to the money laundering process.

- 3.3 An accountable institution should refrain from encouraging its prospective clients to deposit funds into the bank account of the accountable institution prior to the client identification and verification process being completed. An accountable institution should not solicit funds from a person before it has completed the process of establishing and verifying that person's identity and have made a decision to enter into and maintain a business relationship with that person.
- 3.4 The Centre strongly recommends that accountable institutions not make their bank account details public, e.g. by including the bank details on application forms or by placing them on websites or in advertising material, so as to minimise the possibility that prospective clients may take the initiative to deposit funds into their respective accounts prior to the identification and verification process being completed. Instead it is recommended that the institution's bank account details be communicated to the client in the acceptance letter sent to the client.
- 3.5 Should it happen that a person takes the initiative to deposit unsolicited funds into the bank account of the accountable institution prior to the client identification and verification process being completed, the Centre strongly advises that the accountable institution consider reporting this behaviour to the Centre in terms of section 29 of the FIC Act. The practice of depositing unsolicited funds into a person or entity's bank account can easily be manipulated to perpetrate money laundering or terror financing, as illustrated below.

**Example 2:**

An accountable institution, ABC Insurance Company, provides services as a registered Financial Services Provider and is also an accountable institution in terms of the FIC Act. Person X deposits funds into the accountable institution's bank account providing Person (Prospective Client) Y's identity number as a reference for the deposit. Person Y, purporting to be the owner of the funds of Person X, then contacts the institution for a refund of the funds deposited. The accountable institution then transfers the funds, not knowing that the depositor was Person X, into Person Y's bank account as it appears to the institution from the reference provided for the deposit that Person Y is legitimately entitled to receive the funds. If the funds in question are criminal proceeds or connected to support for a terrorist group, the insurer inadvertently would have assisted in the laundering of proceeds of crime or the funding of a terrorist organisation by facilitating the transfer of the funds from one person to another while providing the appearance of a legitimate source for the funds.

- 3.6 The transfer of the business of a client from one institution to another is not included for the purposes of this PCC. This, however, is based on the principle that no funds of a client will flow directly from one accountable institution to another, without first being paid into the account of the client concerned. A payment of client funds from one institution directly to another institution constitutes a payment to a third party, other than the client, and this is contrary to the existence of sound anti-money laundering control measures being in place.

**4. Relevance of Exemption 2 and Exemption 4**

- 4.1 Exemption 2 of the exemptions to the FIC Act made in terms of section 74 of the FIC Act, relaxes the prohibition by section 21 of FIC Act, by allowing accountable institutions to accept a mandate from a client to establish a business relationship or to conclude a single transaction, or take any similar preparatory steps with a view to transacting with the client, before completing the verification of the identity of that prospective client.

- 4.2 Exemption 2 is, however, subject to the condition that the accountable institution will have completed all steps which are necessary in order to establish and verify the identity of that client in accordance with section 21 of the FIC Act before the institution:
- concludes a transaction in the course of the resultant business relationship, or
  - performs any act to give effect to the resultant single transaction, (including the acceptance of funds).
- 4.3 Exemption 2 cannot be relied upon by an accountable institution to justify solicitation or acceptance of funds into its bank account before the identity of the client has been established and verified as required in terms of the FIC Act, as the acceptance of the funds is regarded as concluding a transaction between the institution and the client.
- 4.4 Exemption 4 of the exemptions to the FIC Act provides an accountable institution (the secondary accountable institution) with an exemption from the requirements to establish and verify the identity of clients and keeping records of such information in respect of a business relationship or single transaction concluded with the secondary accountable institution by another accountable institution (the primary accountable institution), acting on behalf of a client of the primary accountable institution.
- 4.5 In a scenario where exemption 4 is used by secondary accountable institutions, the onus is on both the primary and the secondary accountable institution to ensure that funds are not directly or indirectly accepted or solicited prior to the identity of the clients having been established and verified in accordance with section 21 of the FIC Act.
- 4.6 Kindly refer to Public Compliance Communication 29 which deals with the scope and application of exemption 4 in detail.

## **5. Conclusion**

- 5.1 The acceptance of funds by an accountable institution from a prospective client prior to completing the client identification and verification requirements is in contravention of section 21 of the FIC Act.

For any further enquiries regarding this PCC 31, please contact the Centre on **0860 222 200**, or by sending an email to: [fic\\_feedback@fic.gov.za](mailto:fic_feedback@fic.gov.za).

**Issued By:**

**The Director  
Financial Intelligence Centre  
25 March 2015**