

# **DRAFT PUBLIC COMPLIANCE COMMUNICATION**

## **DRAFT PUBLIC COMPLIANCE COMMUNICATION**

**No. 113**

GUIDANCE ON MEASURES RELATING TO  
FOREIGN PROMINENT PUBLIC OFFICIALS,  
DOMESTIC PROMINENT INFLUENTIAL  
PERSONS, THEIR FAMILY MEMBERS AND  
KNOWN CLOSE ASSOCIATES

## FOR CONSULTATION PURPOSES ONLY

### **PCC SUMMARY**

Accountable institutions must determine if their clients, including their beneficial owners and authorised representatives, hold a position of domestic prominent influential persons (DPIP) or foreign prominent public official (FPPO). Clients that are family members and/or known close associates of DPIPs or FPPOs, although not themselves DPIPs or FPPOs, must be onboarded as though they are.

Once determined, the money laundering (ML) risk associated with these clients must be assessed. FPPOs inherently pose a high ML risk. However, not all DPIPs pose a high ML risk.

Appropriate customer due diligence (CDD), enhanced due diligence (EDD) and measures as set out in section 21F, 21G and 21H of the Financial Intelligence Centre Act 2001 (Act 38 of 2001)(FIC Act), must be applied to high risk DPIPs and FPPOs, their family members and close known associates.

This PCC provides indicators of heightened ML risks and lists additional data bases that could be consulted in determination of DPIPs and FPPOs.

### **DISCLAIMER**

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**OBJECTIVE**

This PCC provides clarity regarding the requirement to determine whether a client, the client's beneficial owner and/or authorised representative hold a position of a DPIP or FPPO or whether they are a known close associate or family member. This PCC also provides guidance on the risk mitigating controls an accountable institution may follow for former high risk DPIPs and FPPOs, and further indicators of heightened ML risks.

**1. INTRODUCTION**

- 1.1. A politically exposed person is a natural person who holds a prominent public function. Within this position, they have a certain level of influence and control over public funds, benefits and decision-making. The abuse of such a position in office could result in corruption and bribery that may serve as a predicate offence to money laundering (ML).
- 1.2. Although there is a heightened awareness of politically exposed persons, it does not mean that all politically exposed persons are linked to and/or engage in illicit activities.
- 1.3. In the South African context, the FIC Act distinguishes between two types of politically exposed person:
  - 1.3.1. A domestic prominent influential person (DPIP) is an individual who holds, (including in an acting position) for a period exceeding six months, or has held at any time in the preceding 12 months in South Africa, a prominent public function as listed in Schedule 3A of the FIC Act
  - 1.3.2. A foreign prominent public official (FPPO) is an individual who holds, or has held at any time in the preceding 12 months, in a foreign country a prominent public function as listed in Schedule 3B of the FIC Act.
- 1.4. As part of an accountable institution's onboarding and ongoing client monitoring processes, they are required to understand the ML risk that a business relationship and/or transaction with a client will entail. Included in this process would be to:
  - 1.4.1. Determine if a client is a FPPO or a DPIP

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- 1.4.2. Identify and assess the ML risk in relation to the FPPO/DPIP
  - 1.4.3. Apply the required level of customer due diligence (CDD) and enhanced due diligence (EDD); and
  - 1.4.4. Comply with the requirements as set out in sections 21F, 21G and 21H of the FIC Act.
- 1.5. FPPOs present an inherently higher ML risk and accountable institutions must apply EDD when establishing business relationships with FPPOs. Accountable institutions would still, however, be required to scrutinise the information obtained about the FPPO so that they have an understanding of how ML risks may materialise through the business relationship with the client, the consequence of such ML risks, and to ascertain the relevant mitigating actions in respect of these risks.
- 1.6. DPIPs are not automatically considered as presenting a high ML risk and must be fully assessed to determine the ML risk that a business relationship with the DPIP poses.
- 1.7. This draft PCC will cover the following issues:
- 1.7.1. Determination of persons who hold positions of DPIPs and FPPOs
  - 1.7.2. Related parties and FPPO/DPIP considerations
  - 1.7.3. ML risk determination of DPIPs, family members and known close associates
  - 1.7.4. CDD and EDD for high-risk DPIPs and FPPOs
  - 1.7.5. Indicators of heightened ML risk when dealing with DPIPs and FPPOs
  - 1.7.6. ML risk determination of persons previously holding positions of DPIPs/FPPOs
  - 1.7.7. De-risking
  - 1.7.8. Sources to consider for client FPPO/DPIP identification.
- 1.8. [Guidance Note 7 \(GN7\)](#) sets out guidance on DPIPs and FPPOs and explains how matters relating to DPIPs and FPPOs should be included in accountable institutions' risk management and compliance programmes (RMCPs). Draft PCC 113 provides further clarity on the aspects noted in paragraph 1.7. This PCC must be read together with the GN7.

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- 1.9. This PCC is limited in application to the discussion of ML risk. Accountable institutions are reminded that their obligation to identify and assess terrorist financing (TF) risk remains and should consult Guidance Note 6A and PCC 44 in this regard.

## **2. ML RISK AND CDD CONSIDERATIONS**

### ***Determination of persons holding a position of DPIIP or FPPO***

- 2.1. In order for an accountable institution to determine whether their clients fall within the category of DPIIP or FPPO, they would need to first scrutinise their client information against applicable, relevant sources.
- 2.2. Where an accountable institution does not take steps to identify if their client is a DPIIP or FPPO, that accountable institution is wilfully blind to the obligations in terms of sections 21F, 21G, 21H of the FIC Act.
- 2.3. Accountable institutions should be aware that information provided by the client indicating their DPIIP or FPPO status may be misrepresented, especially where a person holding such a title does not want to be identified as such. Accountable institutions should consider means of validation of this information during their risk determination and ongoing due diligence processes and could further consider reviewing independent third-party sources to assist them.
- 2.4. Where a client has acknowledged to the accountable institution that they are a DPIIP or FPPO, and this cannot be validated via a third-party source, the accountable institution should consider the client to be a DPIIP or FPPO and apply the appropriate level of CDD, and comply with the requirements as set out in sections 21F, 21G and 21H of the FIC Act as well as apply EDD. for high risk DPIIPs and FPPO

### ***Related parties and FPPO/DPIIP considerations***

- 2.5. The determination of DPIIP and FPPO applies to the client that is onboarded, the authorised representatives and beneficial owners of the client.

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**Example 1: Determining if a beneficial owner is a DPIIP or FPPO**

Accountable institution A onboards client X who is a legal person. The beneficial owners of client X are identified as Mr P, Mr Q and Mr R.

Accountable institution A must scrutinise the information obtained to ascertain if Mr P, Mr Q or Mr R are holding positions of DPIIP or FPPO.

- 2.6. A family member or a close known associate of a DPIIP or FPPO is to be handled as if they are a DPIIP or FPPO, per section 21H of the FIC Act. Although they may not be a politically exposed person themselves, their relationship with a DPIIP/FPPO impacts on their ML risk.
- 2.7. Family members and known close associates of DPIIPs and/or FPPOs are therefore included in the definitions of both 1.3.1 (DPIIP) and 1.3.2 (FPPO), as defined in section 21H of the FIC Act.

**Example 2: Client is family member of a high-risk DPIIP**

Accountable institution A onboards a client, Mr X. Mr X is the husband (family member) of Mrs X, a DPIIP.

Accountable institution A must scrutinise the information regarding Mr X and determine that he is a family member of Mrs X. Accountable institution A must then assess whether Mrs X poses a high ML risk. Where Mrs X poses a higher ML risk the accountable institution must comply with the requirements as set out in section 21H and 21G of the FIC Act and apply EDD in respect of the business relationship with Mr X.

- 2.8. Where the beneficial owner of a legal person/trust/partnership is a high-risk DPIIP or FPPO, or their family members and/or known close associates, the requirements as set out in section 21F, 21G and 21H of the FIC Act applies. The business relationship with the legal person/trust/partnership would be regarded as high risk.

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### **Example 3: Beneficial owner is a FPPO**

Accountable institution A onboards client B. Client B is a legal person, and their beneficial owner is identified as person X. Person X is a FPPO.

Accountable institution A must comply with section 21F of the FIC Act and apply EDD in respect of the business relationship with client B.

### *ML risk determination of DPIPs*

- 2.9. After an accountable institution has determined that it has a client (including their authorised representative and/or beneficial owners) that is a DPIP, the accountable institution must assess the ML risk that the DPIP poses.
- 2.10. The accountable institution must scrutinise all its client's information at onboarding and thereafter at periodic intervals (as determined in terms of the accountable institutions RMCP).

### *Section 21F, 21G, 21H and EDD for high-risk DPIPs; as well as FPPOs*

- 2.11. Where the accountable institution determines that the DPIP and/or their family members, or known close associates pose a high ML risk the accountable institution would be required to apply EDD in addition, to complying with the requirements as set out in sections 21F, 21G, and 21H of the FIC Act.. The obligations as set out in sections 21F, 21G, 21H of the FIC Act, should be distinguished from EDD.
- 2.12. In terms of sections 21F, 21G and 21H of the FIC Act, the accountable institution must:
  - 2.12.1. Obtain senior management approval
  - 2.12.2. Establish the source of wealth and funds of the client
  - 2.12.3. Conduct enhanced ongoing monitoring.

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*Indicators of heightened ML risk when dealing with DPIPs and FPPOs*

2.13. Various indicators can point toward a heightened risk of ML, these include but are not limited to:

- The nature and seniority of the DPIP or FPPO position
- The DPIP or FPPO declares that he/she is not a DPIP or FPPO, however, subsequent searches through independent third-party sources indicates that the client is in fact a DPIP/FPPO
- The DPIP or FPPO avoids providing information that would reveal he/she is a DPIP or FPPO
- The DPIP or FPPO is the beneficial owner, part of management, and/or exercises control through other means of a legal person, trust and/or partnership for commercial purposes
- Where a legal person, trust and/or partnership avoids providing beneficial ownership information, and it is found that the beneficial owner is a DPIP or FPPO
- The DPIP or FPPO avoids providing source of wealth and source of funds information
- There are negative media and/or investigative reports on the DPIP or FPPO, family member and/or known close associates
- There are negative commission reports, statutory reports and/or judicial findings on the DPIP or FPPO, family members and/or known close associates
- The DPIP or FPPO has a reputation of unethical conduct
- The DPIP or FPPO controls access to government funds, public funds and/ or controls major public benefits, i.e. decisions on whether to award tenders, grants, procurement, and licenses etc.
- Allegations of ML, TF, proliferation financing (PF), bribery, corruption or any other predicate offense involving the DPIP or FPPO
- Previous convictions of the DPIP or FPPO for ML, TF, PF, bribery, corruption, or any other predicate offence
- The DPIP or FPPO is associated with persons who have been convicted of ML, TF, PF, bribery, corruption, or any other predicate offence
- The DPIP or FPPO has been previously charged with ML, TF, PF, bribery, corruption, or any other predicate offence



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- The DPIP or FPPO, their family member or known close associates' transactions and client activity do not align with their stated source of wealth and source of funds
- The DPIP FPPO, their family member or known close associates' assets do not align to the source of wealth and source of funds
- The DPIP or FPPO, their family members or known close associates hold foreign accounts
- Large amounts of cash transactions and/or cross-border transactions take place in the DPIP or FPPO, their family members or known close associates' accounts
- Deposits are made into the DPIP or FPPO, their family members or known close associates' accounts followed by immediate transfers outward
- The DPIP or FPPO, their family members or known close associates have numerous accounts with different banks
- The DPIP or FPPO's family members, and/or known close associates avoid providing information that would reveal they are linked to a DPIP or FPPO
- The DPIP or FPPO's family members and known close associates control legal persons, trusts and/or partnerships which have been awarded public funds and/or benefits;
- The client is a family member/known close associate of a former high-risk DPIP or FPPO
- The DPIP or FPPO's family member and known close associate is allegedly involved in and/or was previously convicted of ML, TF, PF or any other predicate offence.

2.14. The above list of indicators is not a comprehensive list. The Financial Action Task Force Guidance on prominent influence persons sets out red-flag indicators when dealing with DPIPs and FPPOs (<http://www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pep-rec12-22.pdf>).

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**Consultation note:**

Commentators are requested to provide further examples of indicators of a heightened ML risk when dealing with DPIIP or FPPO, their family members and known close associates.

Commentators can also comment on which of the above examples they deem irrelevant.

- 2.15. Accountable institutions are reminded that when determining the ML risk profile of a DPIIP, a risk assessment cannot be based on one sole factor without having considered all other factors holistically, as explained in GN7.

***ML risk determination of persons who previously held positions of DPIIP or FPPO***

- 2.16. Where the time periods as set out in Schedule 3A and 3B lapse, the person would no longer be deemed a DPIIP or FPPO.
- 2.17. A person's high risk DPIIP and/or FPPO status can change should they no longer hold the position that qualifies them as such. When a person no longer fills such a position, they could still be considered as presenting a high ML risk by the accountable institution.
- 2.18. A prior high-risk DPIIP and/or FPPO status is a strong indicator that the client could still present a high risk from a ML perspective. The fact that a client ceases to hold a position of either a high-risk DPIIP or FPPO, does not eliminate the possibility that the client remains a high risk from a ML perspective.
- 2.19. As such, accountable institutions, in adopting their own risk-based approach, can consider the fact that a client was previously a DPIIP or FPPO as part of their client indicators for ML risk determination.
- 2.20. There may be scenarios where a former high-risk DPIIP or FPPO still exercises undue influence over a current DPIIP or FPPO, in order to gain undue benefits for the former DPIIP or FPPO's family members or known close associates. Accountable institutions should remain aware of the ML risks and adopt controls to determine such scenarios.

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This scenario is a strong indicator that the family members and/or known close associates of that former high-risk DPIIP or FPPO may also pose a high risk from a ML perspective.

- 2.21. This approach does not result in the client being classified as a DPIIP or FPPO, nor their family members or known close associates per definition, rather, it would serve as a high-risk client indicator. Should the client present a high risk, in addition to CDD the accountable institution must then apply EDD, and it is recommended that the accountable institution adopt the measures as set out in sections 21F, 21G and 21H of the FIC Act. Accountable institutions should put more weight on the detailed ML risk assessment as opposed to limiting the compliance to DPIIP and FPPO definitions.

### **Example 4: ML risk consideration for former DPIIP**

Schedule 3A does not list a former mayor as a DPIIP, however, based upon the ML risk associated with that former mayor, accountable institution G in terms of its risk-based approach, determines that the ML risk is high and applies enhanced due diligence as well as the measures as set out in section 21G of the FIC Act.

### *De-risking*

- 2.22. In addition to the principles as set out in guidance note 7, 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 DPIIP 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 DPIIP or FPPO, without regard to any other risk ML/TF factors, then that accountable institution has not complied with its obligation to follow a risk-based approach.
- 2.23. Where an accountable institution takes the decision to not onboard a certain class of clients, the accountable institution must be able to demonstrate the application of a risk-based approach, in terms of which several factors have been considered and not just one (the fact that clients or prospective clients are DPIIPs or FPPOs). It is the Centre's view that the accountable institution should be able to demonstrate which of its clients present a high ML risk (including which are high-risk DPIIPs or FPPOs),

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### **3. SOURCES TO CONSIDER FOR FPPO/DPIP DETERMINATION**

- 3.1. Annexure A and B provides a list of sources where some DPIP and/or FPPO information may be obtained. The lists provided are not exhaustive, nor meant to be authoritative in nature.
- 3.2. Annexure A and B merely serves as an additional tool meant to assist accountable institutions in identifying relevant sources and it is not mandatory for the accountable institution to use the sources as listed. The accountable institution remains liable to determine all relevant sources upon which it depends, in order to determine whether or not a client is a DPIP or FPPO as per Schedules 3A and 3B of the FIC Act, and further whether a client is their family member and or known close associate.
- 3.3. In addition to government published lists reflecting DPIP information, there are various other commercial databases that provide DPIP and FPPO information as well as some of their family members and close associates information. The Centre does not endorse any listing, or service offerings by third-party providers. The Centre does, however, encourage accountable institutions to keep up to date with the available sources.
- 3.4. The combination of sources relied upon by the accountable institutions must jointly provide for all persons who fall within the ambit of Schedules 3A and 3B to the FIC Act. The sources must be reliable and current.
- 3.5. If accountable institutions download internet-based lists, they should revisit the websites frequently as the source data is subject to constant change.

### **4. CONSULTATION**

- 4.1. 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—

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- 4.1.1. Publish a draft of the guidance by appropriate means of publication and invite submissions
- 4.1.2. Consider submissions received.

4.2. 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 113 may be sent to the Centre only at **consult@fic.gov.za**. Submissions will be received until **Friday, 26 March 2021**, by close of business.

## **5. COMMUNICATION WITH THE CENTRE**

- 5.1. 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.
- 5.2. 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**

**4 March 2021**

## **ANNEXURE A**

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**Sources of domestic prominent influential persons**

Consultation note:

Commentators are requested to provide examples of open source data bases that may be included in this annexure.

<ul style="list-style-type: none"><li>• The President or Deputy President;</li></ul>
<a href="https://www.gov.za/about-government/leaders">https://www.gov.za/about-government/leaders</a>
<ul style="list-style-type: none"><li>• A government minister or deputy minister;</li></ul>
<a href="https://www.gov.za/about-government/leaders">https://www.gov.za/about-government/leaders</a>
<a href="https://www.parliament.gov.za/ministers">https://www.parliament.gov.za/ministers</a>
<a href="https://www.parliament.gov.za/deputy-ministers">https://www.parliament.gov.za/deputy-ministers</a>
<ul style="list-style-type: none"><li>• The Premier of a province;</li></ul>
<a href="https://ecprov.gov.za/Pages/default.aspx">https://ecprov.gov.za/Pages/default.aspx</a>
<a href="https://www.gov.za/links/provincial-government">https://www.gov.za/links/provincial-government</a>
<a href="https://provincialgovernment.co.za/units/type/5/premiers">https://provincialgovernment.co.za/units/type/5/premiers</a>
<ul style="list-style-type: none"><li>• A member of the Executive Council of a province;</li></ul>
<a href="https://www.gov.za/links/provincial-government">https://www.gov.za/links/provincial-government</a>
<ul style="list-style-type: none"><li>• An executive mayor of a municipality elected in terms of the Local Government Municipal Structures Act, 1998;</li></ul>
<a href="https://www.salga.org.za/Municipalities%20MCD.html">https://www.salga.org.za/Municipalities%20MCD.html</a>
<ul style="list-style-type: none"><li>• A leader of a political party registered in terms of the Electoral Commission Act, 1996; (<a href="http://www.elections.org.za/content/Parties/Political-party-list/">http://www.elections.org.za/content/Parties/Political-party-list/</a>). Note: The leader of a political party is the person identified by the party to occupy the position of the highest level of authority in the party.</li></ul>
<a href="https://www.parliament.gov.za/">https://www.parliament.gov.za/</a> and each political party's website
<a href="https://www.parliament.gov.za/political-party-list">https://www.parliament.gov.za/political-party-list</a>
<ul style="list-style-type: none"><li>• A member of the royal family or senior traditional leader as defined in the Traditional Leadership and Governance Framework Act, 2003; Note: The description of a "senior" traditional leader, therefore, applies to such traditional leaders who exercise authority over</li></ul>

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a number of headmen or headwomen in accordance with customary law, or within whose area of jurisdiction a number of headmen or headwomen exercise authority.

<https://www.cogta.gov.za/index.php/2016/08/29/understanding-traditional-leadership-structures/>

<https://www.cogta.gov.za/>

<https://nationalgovernment.co.za/units/view/135/national-house-of-traditional-leaders>

- The head, accounting officer or chief financial officer of a national or provincial department or government component as defined in section 1 of the Public Service Act, 1994;

<https://www.gcis.gov.za/>

<https://www.gov.za/about-government/contact-directory>

- The municipal manager of a municipality appointed in terms of section 54A of the Local Government: Municipal systems Act, 2000 or a chief financial officer designated in terms of section 80(2) of the Municipal Finance Management Act, 1999;

<https://www.salga.org.za/Municipalities%20MCD.html>

- The chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999; (<http://www.gcis.gov.za/content/resourcecentre/contactdirectory/government-structures-and-parastatals>);

<https://www.gov.za/about-government/contact-directory/soe-s>

<https://www.gov.za/about-government/government-system>

<https://www.gov.za/about-government/contact-directory>

- The chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

<https://www.gov.za/about-government/government-system/local-government>

- A Constitutional Court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001; (<http://www.judiciary.org.za/index.html>);

<https://www.judiciary.org.za/>

- An ambassador or high commissioner or other senior representative of a foreign government based in the Republic of South Africa;

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<a href="http://www.dirco.gov.za/foreign/forrep/index.htm">http://www.dirco.gov.za/foreign/forrep/index.htm</a>
An officer of the South African National Defence Force above the rank of major-general; Note: This will include persons holding the position of General and Lieutenant General in the South African National Defence Force.
<a href="https://www.gov.za/about-government/contact-directory/departments/departments/defence-department">https://www.gov.za/about-government/contact-directory/departments/departments/defence-department</a>
• The position of head, or other executive directly accountable to that head, of an international organisation based in the Republic of South Africa. <a href="http://www.dirco.gov.za/foreign/forrep/intorg.htm">http://www.dirco.gov.za/foreign/forrep/intorg.htm</a>
<a href="http://www.dirco.gov.za/foreign/forrep/intorg.htm">http://www.dirco.gov.za/foreign/forrep/intorg.htm</a>

\*website addresses are correct as at date of issuance and are subject to change.

**ANNEXURE B**

Consultation note:  
Commentators are requested to provide examples of open source data bases that may be included in this annexure.

**Sources of foreign prominent public officials**

List name	Link
Centre Intelligence Agency publishes a List of world leaders and cabinet members of foreign governments	<a href="https://www.cia.gov/resources/world-leaders/">https://www.cia.gov/resources/world-leaders/</a>