

CONSULTATION FEEDBACK NOTE

Relating to the draft Public Compliance
Communication 117 on the interpretation of
Item 3 of Schedule 1 to the Financial
Intelligence Centre Act, 2001 (Act 38 of 2001),
and the issuance thereof in
Public Compliance Communication 56

November 2022

INTRODUCTION

1. The Financial Intelligence Centre (FIC) issued for consultation draft public compliance communication 117 (draft PCC 117) for consideration and the provision of comments by all interested persons on the draft to the FIC in terms of section 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) on 29 July 2022, with the consultation period ending on 19 August 2022.
2. Comments were received from banks, financial service providers, industry associations, and consultants. The Property Practitioners Regulatory Authority (PPRA) was extensively consulted in this consultation process.
3. The final version of the draft PCC 117 has been issued as [public compliance communication 56 \(PCC 56\)](#).

Detailed feedback

Detailed feedback on the consultation comments received are noted below:

Clarity on whether the guidance is sector specific

Comment	FIC response
<p>1. What is the purpose of the PCC? Is it to advocate that pending changes to the Sched 1 Item 3, the broader grouping of 'Property Practitioners' should be read in as replacing "estate agents? Or to advocate that irrespective of the terminology change and description only those involved in 'old' estate agent functions should be included? The purpose of the PCC must be stated much clearer and up front.</p> <p>2. "The FIC is of the view that the broader category of persons...." On what is this view</p>	<p>Item 3 of Schedule 1 to the FIC Act is not included in the proposed amendments of the Schedule 1 to the FIC Act. The proposed schedule changes commenced prior to the promulgation of the Property Practitioners Act, and as such, did not fall within scope.</p> <p>The PCC is aimed at the property practitioners sector, and seeks to provide clarity on which property practitioners should register as accountable institutions.</p>

<p>based? See view on the interpretation of Interpretation Act sect 12 below</p>	<p>The FIC will consider an additional consideration of schedule updates in the near future, noting that the property practitioner sector must first be consulted.</p>
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Relevance for other accountable institutions

Comment	FIC response
<p>Is there relevance for banks and other AIs, other than property practitioners?</p> <p>What is the message of the PCC? Does it want to convey that 'property practitioners' for the purpose of FICA sched 1 item 3 are limited to those covered by the previous definition of 'estate agent', or is it advocating for a broad application?</p>	<p>This PCC is aimed at the property practitioners sector.</p> <p>The PCC provides sector-specific guidance on which property practitioners should register as accountable institutions. The new broad category of property practitioners do not automatically fall within the ambit of the FIC Act.</p>

The application of the Interpretation Act

Comment	FIC response
<p>1.3 Is there a problem with the position as set out in par 1.3? Why do we not want to include all 'property practitioners'?</p> <p>Sect 12 Interpretation Act:</p> <p>(1) Where a law repeals and re-enacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted. (see also comments on item 9 (par 3.2) below)</p> <p>"However, this is limited to the persons who perform ..." What is the basis for this</p>	<p>The application of the Interpretation Act does not automatically broaden the ambit of the FIC Act, to include all the new types of property practitioners which have not previously been included in the definition of estate agent as provided for in the now repealed Estate Agents Act.</p> <p>Future updates to item 3 of Schedule 1 to the FIC Act, aimed at broadening the item 3 by including all property practitioners will require consultation with the impacted property practitioner sectors.</p>

statement, given the provision of Interpretation Act sect 12?	No changes required to the paragraph.
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The pending amendments to Schedule 1 of the FIC Act

Comment	FIC response
<p>Given the potential effect of Interpretation Act sect 12, is the PCC of such a nature/authority as to limit the application Sched 1 Item 3? The Item 3's scope was determined by means of a legislative reference, and not by a description of functions – now that the legislative description has changed, does that not automatically change the scope of Item 3? Can this be limited by regulatory guidance? If regard is to be had to the FATF MER and its recommendations, eg “f) The authorities should ensure the level of oversight of, estate agents, are commensurate with their ML/TF risk profiles, including by substantially increasing the supervisory resources and capacity of the” and “Estate agents are not receiving AML/CFT supervision commensurate with their risks.” Is it then not preferred that the scope of “estate agents” should be widened?</p> <p>If regard is had to the additional components of the description of “property practitioner” and the additional activities covered, it mainly relates back to the primary functions of the erstwhile estate agents. In executing these fringe functions/providing these</p>	<p>Estate agents as per the now repealed Estate Agents Act, have been included in the FIC Act, by application of the Intepretation Act, which is a legislative application. The ambit of Item 3 to Schedule 1 to the FIC Act cannot be broadened to include all categories of property practitioners without full consultation through a legislative amendment process.</p> <p>The PCC seeks to communicate this. The PCC does not change the legislative requirements but merely clarifies the application thereof.</p>

<p>associated services, these practitioners still provide access to the real estate market (in its various forms and shapes) and are therefore exposed to the same risks as the previous 'estate agent', and should therefore be subjected to the same risk management controls, including registration with FIC and all the associated responsibilities.</p>	
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Comment	FIC response
<p>3.2 The accuracy of this general statement is questioned – is this not the effect of the Interpretation Act – Sect 12? (1) Where a law repeals and re-enacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.</p> <p>Is the effect of this not that the reference to Estate Agents – “An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976)”, should now be read “A property practitioner as defined in the Property Practitioners Act, 2019 (Act 22 of 2019)”? If this reading is correct then the wider grouping will already be included, even without FICA amendment.</p> <p>3.3 What is the purpose/value of this statement?</p>	<p>The definition of a property practitioner includes more categories of persons than in the repealed definition of estate agents. The FIC Act cannot be amended materially without consultation with the relevant sectors.</p> <p>Future updates to item 3 of Schedule 1 to the FIC Act to broaden the item to include all property practitioners will require consultation with the sector.</p> <p>Simpler language was used in the final PCC 56 to clarify the FIC’s position, to provide a practical application.</p>

CONCLUSION

4. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the PCC 56 where appropriate.
5. The final PCC 56 has been issued on 14 November 2022.

COMMUNICATION WITH THE FIC

6. Queries can be directed to the compliance contact centre on 012 641 6000 and select option 1, or 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.

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