financial intelligence centre
REPUBLIC OF SOUTH AFRICA

PUBLIC COMPLIANCE COMMUNICATION NO. 09 (PCC09)
IDENTIFICATION AND VERIFICATION OF LOYALTY PROGRAMME MEMBERS IN THE CASINO INDUSTRY IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT NO 38 OF 2001, AS AMENDED

The Financial Intelligence Centre (the Centre) provides the guidance contained in this Public Compliance Communication (PCC) in terms of its statutory function under 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 under 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 authoritive 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 in areas where there have been non-compliance with the guidance provided by the Centre.

PCC Summary

Casinos are accountable institutions in terms of item 9 of Schedule 1 to the FIC Act and must comply with the relevant provisions of the FIC Act and the Regulations to the FIC Act.

The Centre views the membership subscription of clients to loyalty programmes offered by casinos as the establishment of a business relationship with such clients. Accordingly, these clients must be identified and verified, and record must be kept of any documents obtained to carry out this function, in accordance with the relevant provisions of the FIC Act and the Regulations.

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Objective

The objective of this PCC to provide guidance and clarity on the duties of casinos in terms of the FIC Act and the Regulations with specific reference to loyalty programmes offered by casinos.

1. Introduction

1.1 Casinos are included as accountable institutions under item 9 of Schedule 1 to the FIC Act, and are defined as a person who carries on the business of making available a gambling activity as contemplated in section 3 of the National Gambling Act, Act 7 of 2004, in respect of which a license is required to be issued by the National Gambling Board or a provincial licensing authority.

1.2 The money laundering control measures prescribed by the FIC Act impose certain obligations on accountable institutions, in this instance on casinos. These obligations are listed in Chapter 3 of the FIC Act and are inter alia:

- The duty to identify clients (Part 1);
- The duty to keep record (Part 2);
- Reporting duties and access to information (Part 3); and
- Measures to promote compliance by accountable institutions (Part 4).

2. Casino Loyalty programme

2.1 A loyalty programme offered by a casino is an arrangement or scheme in the ordinary course of the casino's business, in terms of which a casino provides incentives and rewards to its clients for membership and partaking in repeat business done in respect of gambling activities offered by the casino.

2.2 A client subscribes to a loyalty programme with the objective of enjoying the benefits associated with the program, based on the rewards obtained by using the gambling activities and facilities provided by the casino.

2.3 The intention of the client with regard to the use of the loyalty programme is not relevant, as the loyalty programme is conducted by the casino with the objective to encourage gambling and to reward clients with loyalty credit or other special offers in order to encourage future patronage and repeat transactions with the client.

3. Casino Loyalty programme is a Business Relationship

3.1 Section 1 of the FIC Act defines a business relationship as an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis.

3.2 Section 1 of the FIC Act furthermore defines a transaction as a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution.

3.3 Casinos are establishing a business relationship as defined in section 1 of the FIC Act by enrolling a client in the loyalty programme. These loyalty programmes consist of gambling transactions with the client on a regular basis as opposed to occasional or infrequent gambling transactions which would be considered single transactions with such client.

3.4 This would be the case even if the rewards offered by the casino in terms of the loyalty programme might be enjoyed in other incidental businesses related to the casino, as the rewards and incentives are based on the primary business of a casino, which is the provision of a gambling activity. As a result the levels of rewards are determined by the frequency of the client's participation in the primary business of the casino, compared to the casino's incidental business.

3.5 Hence, the identity of all clients subscribing to a casino's loyalty programme must be established and verified, and all other relevant sections of the FIC Act must accordingly be complied with by the casino.

4. Part 1 of Chapter 3 the FIC Act - The duty to identify clients

4.1 Part 1 of Chapter 3 of the FIC Act, and specifically section 21 of the FIC Act deals with the identification of clients and other persons. Section 21 prohibits accountable institutions from establishing business relationships or entering into single transactions with their clients unless they have established and verified

the identities of their clients, or established and verified the identities of persons representing their clients.

4.2 Chapter 1 of the Regulations, and specifically Regulations 2 to 16, deals with the establishment and verification of the identity of the different types of clients and should be read in conjunction with section 21 of the FIC Act.

5. Part 2 of Chapter 3 of the FIC Act - The duty to keep record

5.1 Part 2 of Chapter 3 of the FIC Act deals with the duty of accountable institutions to keep record of business relationships and transactions with clients (section 22). It furthermore sets out the period for which records must be kept (section 23) and the keeping of records by third parties (section 24).

5.2 Regulation 20 deals with record keeping, specifically the particulars of third parties keeping records for the accountable institution and should be read in conjunction with section 24 of the FIC Act.

6. Part 3 of Chapter 3 of the FIC Act - Reporting duties and access to information

6.1 Part 3 of Chapter 3 of the FIC Act deals with reporting duties and access to information. Accountable institutions must report to the Centre cash transactions above the prescribed limit (section 28), property associated with terrorist and related activities (section 28A) and suspicious and unusual transactions (section 29).

6.2 Chapter 4 of the Regulations, specifically Regulations 22 to 24 deals with the reporting of suspicious and unusual transactions and should be read in conjunction with section 29. It should be noted that Regulation 22A, which forms part of Chapter 4 of the Regulations, lists the information to be reported concerning property associated with terrorist and related activities reported in terms of section 28A of the FIC Act.

7. Part 4 of Chapter 3 of the FIC Act - Measures to promote compliance by accountable institutions

7.1 Part 4 of Chapter 3 of the FIC Act deals with measures to promote compliance by accountable institutions. Accountable institutions must formulate and implement internal rules (section 42) and must furthermore monitor compliance with, and provide training on the FIC Act (section 43).

7.2 Chapter 5 of the Regulations deals with the formulation of internal rules, and specifically internal rules concerning the establishment and verification of identities (Regulation 25), internal rules concerning the keeping of records (Regulation 26) and internal rules concerning the reporting of information (Regulation 27). These regulations should be read in conjunction with section 42 of the FIC Act.

8. Exemption 13 and Loyalty programmes

8.1 Exemption 13 of the Exemptions to the FIC Act is applicable to gambling institutions. In terms of this exemption, all gambling institutions are exempted from Part 1 of the FIC Act (the duty to identify clients) and Part 2 of Chapter 3 of the FIC Act (the duty to keep record) with regard to certain single transactions, as set out in the exemption.

8.2 The Centre reaffirms that the membership subscription of a client to a casino's loyalty programme does not constitute a single transaction, but rather constitutes the establishment of a business relationship with such a client.

9. Internal Rules of Casinos to be updated

9.1 Casinos are reminded to adopt a risk sensitive approach when formulating their internal rules. Internal rules should be based on the specific casino's known risks. Even though casinos may belong to one group, the risks of each operating casino in that group are different as these casinos operate in different geographical locations and their clients are different.

9.2 All casinos must update their internal rules to provide for the establishment of the identity and subsequent verification of the identity as well as the establishment and verification of other required information in terms of the FIC Act, of clients who subscribe to its loyalty programmes, in a manner consistent with and in compliance with this PCC.

10. Implementation and correction of client records

10.1 From the date of this PCC, all casinos establishing a business relationship with a client in terms of a loyalty programme must identify, verify identity of and keep record of such client as set out in Part 1 and Part 2 of Chapter 3 of the FIC Act.

10.2 Where a client loyalty programme membership has not been established in accordance with the requirements of a business relationship in terms of the FIC Act, and taking into account the guidance provided in this PCC, casinos must undertake remedial steps to rectify such non-compliant client records to be in line with the FIC Act **on or before 01 May 2012**.

10.3 Casinos may in the interim continue to transact with their loyalty programme clients until such time that the remedial period ends.

11. Conclusion

11.1 Membership subscription of clients to loyalty programmes that are offered by casinos are considered to be business relationships with such clients. The identity of such clients must be established and verified by the casino, and record must be kept of any documents obtained to carry out this function in accordance with the relevant provisions of the FIC Act and the Regulations.

For any further enquiries regarding this PCC 09, please contact the Centre on **0860 342 342**, or by sending an email to: fic_feedback@fic.gov.za.

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