



financial intelligence centre

REPUBLIC OF SOUTH AFRICA

PUBLIC COMPLIANCE COMMUNICATION No. 14 (PCC 14) – CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS WHEN A PERSON ACTS ON THE AUTHORITY OF ANOTHER

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 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 the FIC Act and Regulations read with guidance issued by the Centre, and where there is a departure explain the reasons for not adhering to the guidance provided 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

An accountable institution is required to identify and verify the identity of each natural person who purports to be authorised to establish a business relationship or to enter into a single transaction with that accountable institution on behalf of a client or where a client of the accountable institution acts on behalf of another person. It is important to note that the client or another person referred to can also be a legal person.

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Objective

The objective of this PCC is to clarify the obligations of accountable institutions relating to the establishment and verification of the identity of each natural person who purports to be authorised to establish a business relationship or to transact with the accountable institution on behalf of the legal entity to comply with the requirements of the FIC Act.

1. Introduction

The money laundering control measures under the FIC Act impose certain obligations on a variety of financial and non-financial institutions, such as the duty to establish and verify the identities of persons acting on behalf of clients of an accountable institution, or where clients of the accountable institution acts on behalf of another person. The question arises in the context of legal persons and whether this applies to each person within a legal person with the authority to bind that legal person in contractual relations.

2. The Centre's View

2.1 Part 1 of Chapter 3 of the FIC Act, and specifically section 21 of the 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:

2.1.1 the identities of their client,

2.1.2 the identities of clients acting on behalf of another person in terms of section 21(1)(b); or

2.1.3 established and verified the identities of persons representing their clients in terms of section 21(1)(c) of the FIC Act.

2.2 Section 21(1) (b) stipulates that where the client of an accountable institution acts on behalf of another that the accountable institution must establish and verify the identity of the other person and the client's authority to act on behalf of that other person.

2.3 Section 21(1)(c) stipulates that where another person acts on behalf of the client, the accountable institution must establish and verify the identity of that other person, and also establish and verify that other person's authority to act on behalf of the client.

- 2.4 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.
- 2.5 Regulation 17 of the Regulations requires an accountable institution to obtain from the person acting on behalf of another person information that provides proof of that person's authority to act on behalf of that other natural person, legal person or trust.
- 2.6 An accountable institution must verify the information obtained by:
- 2.6.1 comparing the particulars of the natural or legal person, partnership or trust with information obtained by the accountable institution from, or in respect of, the natural or legal person, partnership or trust in accordance with Regulation 4 (Verification of information concerning South African citizens and residents), Regulation 6 (Verification of information concerning foreign nationals), Regulation 8 (Verification of information concerning close corporations and South African companies), Regulation 10 (Verification of information concerning foreign companies), Regulation 12 (Verification of information concerning other legal persons), Regulation 14 (Verification of information concerning partnerships) or Regulation 16 (Verification of information concerning trusts) of the Regulations, as may be applicable; and
 - 2.6.2 establishing whether that information, on the face of it, provides proof of the necessary authorisation.
- 2.7 The following are examples of documents that may be accepted to confirm the authority of a person to act on behalf of another person and to confirm the particulars of the person authorising the third party to establish the relationship:
- 2.7.1 power of attorney;
 - 2.7.2 written mandate;
 - 2.7.3 resolution duly executed by authorised signatories; or
 - 2.7.4 a court order authorising the third party to conduct business on behalf of another person.

- 2.8 An accountable institution is required to establish and verify the identity of each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of a legal person. This authorisation is based on the fact that a natural person may be authorised or mandated to transact on behalf of the legal entity and bind the legal entity in a contractual relationship.
- 2.9 A legal person may have any number of natural persons who have the authority to transact on its behalf and to bind the legal person in contractual relations. However, not every person who is so authorised within a legal person will necessarily engage with an accountable institution in relation to the establishment of a particular business relationship or conducting transactions with the accountable institution, either in the course of a business relationship or as single transactions.
- 2.10 It is the Centre's view that an accountable institution must determine from a legal person, which of the respective natural persons who are authorised to bind the legal person in contractual relations, is responsible for entering into a business relationship or for conducting transactions with that accountable institution on behalf of the legal person.
- 2.11 The accountable institution must then verify the identities of each of those particular persons as well as their authority to establish a business relationship or conduct transactions with the accountable institution.
- 2.12 An accountable institution should have appropriate controls and measures in place as contained in its internal rules to ensure that the correct information with regard to the authorised person is obtained and verified.

3. Conclusion

- 3.1 Where a client of the accountable institution acts on behalf of another the accountable institution must not only establish and verify the identity of the client, must also establish and verify the identity of that other person as well as the client's authority to act on behalf of that other person.
- 3.2 Where another person, which is a legal person, acts on behalf of the client the accountable institution must establish and verify the identity of that other person's authority to act on behalf of the client.
- 3.3 An accountable institution must determine from a legal person the specific natural persons who are authorised to bind the legal person in contractual relations, and which natural person is responsible for entering into a business relationship or conducting transactions with that accountable institution on behalf of the legal person.
- 3.4 The accountable institution must verify the identity of that person as well as the person's authority to establish a business relationship or conduct transactions with the accountable institution.

For any further enquiries regarding this Public Compliance Communication No. 14, please contact the Centre on 0860 342 342, or by sending an email to: fic_feedback@fic.gov.za.

Issued By:

**The Director
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25 January 2012**