



# financial intelligence centre

REPUBLIC OF SOUTH AFRICA

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**PUBLIC COMPLIANCE COMMUNICATION No.35 (PCC 35)**  
**FAILURE OF THE CONTROLS, PROCESSES AND WORKING METHODS OF**  
**AN ACCOUNTABLE INSTITUTION IN RELATION TO FORMULATION AND**  
**IMPLEMENTATION OF INTERNAL RULES IN TERMS OF SECTION 42 OF THE**  
**FINANCIAL INTELLIGENCE CENTRE ACT(ACT NO. 38 OF 2001)**

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, 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**

**Accountable institutions are required to implement processes and procedures that will govern the manner in which the accountable institution will comply with its obligations as set out in the FIC Act. Internal rules must conform to the requirements as set out in Regulations 25, 26 and 27 of the Regulations.**

**The absence of, and or the failure of certain controls/processes and working methods contained in the internal rules of an accountable institution can imply that there is a failure by the institution to formulate and implement internal rules in terms of section 42 of the FIC Act and may lead to administrative sanctions being issued against the accountable institution.**

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## **Objective**

**The objective of this PCC is to provide the Centre's view on the failure of controls, processes and working methods of an accountable institution in relation to the formulation and implementation of internal rules as required by section 42 of the FIC Act.**

## **1. Introduction**

1.1 Section 42 of the FIC Act requires that an accountable institution must formulate and implement internal rules. The internal rules provide for the processes to be followed by an accountable institution to comply with the requirements of the FIC Act.

1.2 Regulation 25, 26 and 27 of the Regulations provides details that must be contained in the internal rules which should at a minimum set out the following:

- processes, procedures and control measures relating to client acceptance processes and procedures;
- client and transaction monitoring;
- the record keeping function;
- the reporting requirements; and
- the responsibility of the management of the institution in respect of compliance with the FIC Act, the Regulations, and the internal rules.

## **2. Failure of processes, working methods and controls**

2.1 The Regulations 25,26 and 27 provide for certain processes and working methods to comply with the compliance obligations in the FIC Act.

2.2 Examples include:

- Provide for the necessary processes and working methods which will cause the required particulars concerning the identities of the parties to a business relationship or single transaction to be obtained on each occasion when a business relationship is established or a single transaction is concluded with the institution (regulation 25(a));
- Provide for steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or single transaction (regulation 25(b));

- Provide for the necessary processes and working methods to ensure that the relevant staff members of the institution obtain the information of which record must be kept on each occasion when a business relationship is established or a transaction is concluded with the institution (Regulation 26(a));
- Provide for the necessary processes and working methods to ensure that the accuracy and the integrity of records are maintained for the entire period for which they must be kept (Regulation 26(e));
- Provide for the necessary processes and working methods to ensure that the access as may be required or authorised under the FIC Act by the relevant staff members to those records can be obtained without undue hindrance (Regulation 26(f));
- Provide for the necessary processes and working methods which will cause suspicious and unusual transactions to be reported without undue delay (Regulation 27(a));
- Provide for the necessary processes and working methods to enable staff to recognise potentially suspicious and unusual transactions or series of transactions (Regulation 27(b)).

2.3 In terms of section 45(1A) of the FIC Act, every supervisory body is responsible for supervising and enforcing compliance with the FIC Act by accountable institutions. In meeting this obligation, section 45B details that a supervisory body may undertake inspections at the premises of the accountable institution to this end.

2.4 Inspections conducted by the supervisory bodies may include the testing of the controls/processes and working methods as contained in the accountable institution's internal rules against the implementation thereof by the accountable institution.

- 2.5 The absence of, or the failure of certain controls/processes and working methods contained in the internal rules of an accountable institution can imply that there is a failure by the accountable institution to formulate and/or implement internal rules in terms of section 42 of the FIC Act.
- 2.6 Failure in terms of section 42 of the FIC Act may lead to administrative sanctions as defined in section 45C of the FIC Act.

### **3. Conclusion**

The absence of, and or the failure of certain controls/processes and working methods contained in the internal rules of an institution can imply that there is a failure by the accountable institution to formulate and implement internal rules in terms of section 42 of the FIC Act and may lead to administrative sanctions being issued against the accountable institution.

Queries on this and other compliance matters can be logged via the web portal on the FIC's website at <http://www.fic.gov.za/Secure/Queries.aspx> or directed to [fic\\_feedback@fic.gov.za](mailto:fic_feedback@fic.gov.za) or call 0860 222 200.

**Issued By:**

**The Director  
Financial Intelligence Centre  
23 March 2016**

## **Section 42 - Formulation and implementation of internal rules**

(1) An accountable institution must formulate and implement internal rules concerning—

- (a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of this Chapter;
- (b) the information of which record must be kept in terms of Part 2 of this Chapter;
- (c) the manner in which and place at which such records must be kept;
- (d) the steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties under this Act; and
- (e) such other matters as may be prescribed.

(2) Internal rules must comply with the prescribed requirements.

(3) An accountable institution must make its internal rules available to each of its employees involved in transactions to which this Act applies.

(4) An accountable institution must, on request, make a copy of its internal rules available to—

- (a) the Centre;
- (b) a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution.

## **Regulation 25 Internal rules concerning establishment and verification of identities**

The internal rules of an accountable institution concerning the establishment and verification of identities must—

- (a) provide for the necessary processes and working methods which will cause the required particulars concerning the identities of the parties to a business relationship or single transaction to be obtained on each occasion when a business relationship is established or a single transaction is concluded with the institution;
- (b) provide for steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or single transaction;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act, these Regulations and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the establishment and verification of identities are complied with;
- (e) provide for disciplinary steps against the relevant staff members for noncompliance with the Act, these Regulations and the internal rules; and
- (f) take into account any guidance notes concerning the verification of identities which may apply to that institution.

## **Regulation 26 Internal rules concerning the keeping of records**

The internal rules of an accountable institution concerning the keeping of records in terms of section 22 of the Act must—

- (a) provide for the necessary processes and working methods to ensure that the relevant staff members of the institution obtain the information of which record must be kept on each occasion when a business relationship is established or a transaction is concluded with the institution;
- (b) provide for the responsibility of the management of the institution in respect of compliance with the Act, these Regulations and the internal rules;

- (c) allocate responsibilities and accountability to ensure that staff duties FICA Regulations concerning the establishment and verification of identities are complied with;
- (d) provide for disciplinary steps against the relevant staff members for noncompliance with the Act, these Regulations and the internal rules;
- (e) provide for the necessary processes and working methods to ensure that the accuracy and that the integrity of those records are maintained for the entire period for which they must be kept;
- (f) provide for the necessary processes and working methods to ensure that access as may be required or authorised under the Act by the relevant staff members to those records can be obtained without undue hindrance; and
- (g) take into account any guidance notes concerning the verification of identities which may apply to that institution.

#### **Regulation 27 Internal rules concerning reporting of information**

The internal rules of an accountable institution concerning reporting of suspicious and unusual transactions must—

- (a) provide for the necessary processes and working methods which will cause suspicious and unusual transactions to be reported without undue delay;
- (b) provide for the necessary processes and working methods to enable staff to recognise potentially suspicious and unusual transactions or series of transactions;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act, these Regulations and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious and unusual transactions are complied with;
- (e) provide for disciplinary steps against the relevant staff members for noncompliance with the Act, these Regulations and the internal rules; and
- (f) take into account any guidance notes concerning the reporting of suspicious or unusual transactions which may apply to that institution.



## **Section 45B - Inspections**

(1) For the purposes of determining compliance with this Act or any order, determination or directive made in terms of this Act, an inspector may at any reasonable time and on reasonable notice, where appropriate, enter and inspect any premises at which the Centre or, when acting in terms of section 45(1), the supervisory body reasonably believes that the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted.

(2) An inspector, in conducting an inspection, may—

- (a) in writing direct a person to appear for questioning before the inspector at a time and place determined by the inspector;
- (b) order any person who has or had any document in his, her or its possession or under his, her or its control relating to the affairs of the accountable institution, reporting institution or person—
  - (i) to produce that document; or
  - (ii) to furnish the inspector at the place and in the manner determined by the inspector with information in respect of that document;
- (c) open any strongroom, safe or other container, or order any person to open any strong room, safe or other container, in which the inspector suspects any document relevant to the inspection is kept;
- (d) use any computer system or equipment on the premises or require reasonable assistance from any person on the premises to use that computer system to—
  - (i) access any data contained in or available to that computer system; and
  - (ii) reproduce any document from that data;
- (e) examine or make extracts from or copy any document in the possession of an accountable institution, reporting institution or person or, against the issue of a receipt, remove that document temporarily for that purpose; and

- (f) against the issue of a receipt, seize any document obtained in terms of paragraphs (c) to (e). which in the opinion of the inspector may constitute evidence of non-compliance with a provision of this Act or any order, determination or directive made in terms of this Act.
- (3) An accountable institution, reporting institution or other person to whom this Act applies, must without delay provide reasonable assistance to an inspector acting in terms of subsection (2).
- (4) The Centre or a supervisory body may recover all expenses necessarily incurred in conducting an inspection from an accountable institution, reporting institution or person inspected.
- (5)(a) Subject to section 36 and paragraph (b), an inspector may not disclose to any person not in the service of the Centre or supervisory body any information obtained in the performance of functions under this Act.
- (b) An inspector may disclose information—
- (i) for the purpose of enforcing compliance with this Act or any order, determination or directive made in terms of this Act;
  - (ii) for the purpose of legal proceedings;
  - (iii) when required to do so by a court; or
  - (iv) if the Director or supervisory body is satisfied that it is in the public interest.
- (6)(a) An inspector appointed by the Director may, in respect of any accountable institution regulated or supervised by a supervisory body in terms of this Act or any other law, conduct an inspection only if a supervisory body failed to conduct an inspection despite any recommendation of the Centre made in terms of section 44(b) or failed to conduct an inspection within the period recommended by the Centre.

- (b) An inspector of a supervisory body may conduct an inspection, other than a routine inspection in terms of this section, only after consultation with the Centre on that inspection.
- (c) An inspector appointed by the Director may on the request of a supervisory body accompany and assist an inspector appointed by the head of a supervisory body in conducting an inspection in terms of this section.
- (7) No warrant is required for the purposes of an inspection in terms of this section.

## **45C Administrative sanctions**

- (1) The Centre or a supervisory body may impose an administrative sanction on any accountable institution, reporting institution or other person to whom this Act applies when satisfied on available facts and information that the institution or person—
- (a) has failed to comply with a provision of this Act or any order, determination or directive made in terms of this Act;
  - (b) has failed to comply with a condition of a licence, registration, approval or authorisation issued or amended in accordance with section 45(1B)(V);
  - (c) has failed to comply with a directive issued in terms section 34(1) or 43A(3); or
  - (d) has failed to comply with a non-financial administrative sanction imposed in terms of this section.
- (2) When determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors:
- (a) The nature, duration, seriousness and extent of the relevant noncompliance;
  - (b) whether the institution or person has previously failed to comply with any law;
  - (c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;
  - (d) any steps taken or to be taken against the institution or person by—
    - (i) another supervisory body; or
    - (ii) a voluntary association of which the institution or person is a member; and
  - (e) any other relevant factor, including mitigating factors.
- (3) The Centre or supervisory body may impose any one or more of the following administrative sanctions:
- (a) A caution not to repeat the conduct which led to the noncompliance referred to in subsection (1);
  - (b) a reprimand;
  - (c) a directive to take remedial action or to make specific arrangements;

- (d) the restriction or suspension of certain specified business activities; or
  - (e) a financial penalty not exceeding R10 million in respect of natural persons and R50 million in respect of any legal person.
- (4) The Centre or supervisory body may—
- (a) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any order, determination or directive made in terms of this Act;
  - (b) direct that a financial penalty must be paid by a natural person or persons for whose actions the relevant institution is accountable in law, if that person or persons was or were personally responsible for the non-compliance;
  - (c) suspend any part of an administrative sanction on any condition the Centre or the supervisory body deems appropriate for a period not exceeding five years.
- (5) Before imposing an administrative sanction, the Centre or supervisory body must give the institution or person reasonable notice in writing—
- (a) of the nature of the alleged non-compliance;
  - (b) of the intention to impose an administrative sanction;
  - (c) of the amount or particulars of the intended administrative sanction; and
  - (d) that the institution or person may, in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.
- (6)(a) After considering any representations and the factors referred to in subsection (2), the Centre, subject to paragraph (c). or supervisory body may impose an administrative sanction the Centre or supervisory body considers appropriate.
- (b) Upon imposing the administrative sanction the Centre or supervisory body must, in writing, notify the institution or person—
- (i) of the decision and the reasons therefore; and
  - (ii) of the right to appeal against the decision in accordance with section 45D.

- (c) The Centre must, prior to taking a decision contemplated in paragraph (a), consult the relevant supervisory body, if applicable.
- (7)(a) Any financial penalty imposed must be paid into the Criminal Assets Recovery Account established by section 63 of the Prevention Act within the period and in the manner as may be specified in the relevant notice.
- (b) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the Centre or supervisory body may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in subsection (6)(b), and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of the Centre or supervisory body.
- (8) An administrative sanction contemplated in this section may not be imposed if the respondent has been charged with a criminal offence in respect of the same set of facts.
- (9) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of this Act, the court must take into account any administrative sanction imposed under this section in respect of the same set of facts.
- (10) An administrative sanction imposed in terms of this Act does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (11) Unless the Director or supervisory body is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of a decision the Director or supervisory body must make public the decision and the nature of any sanction imposed if—
- (a) an institution or person does not appeal against a decision of the Centre or supervisory body within the required period; or

(b) the appeal board confirms the decision of the Centre or supervisory body.