

CONSULTATION FEEDBACK

Relating to draft public compliance communication 112 (PCC 112) and the issuance thereof in public compliance communication 52 on identification of money laundering and terrorist financing risks and associated customer due diligence for clients of authorised users of an exchange in terms of the Financial Intelligence Centre Act

March 2022

INTRODUCTION

1. The Financial Intelligence Centre (the Centre) issued Draft Public Compliance Communication 112 (Draft PCC 112) for consideration by all accountable institutions in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) on 19 February 2021, with the initial consultation period ending on 10 March 2021.
2. Following a review of the consultation comments received, the Centre further engaged with industry representatives and the Financial Sector Conduct Authority (FSCA) in a virtual consultation engagement and offered a further opportunity to provide additional examples and case studies.
3. Consultation comments were received from banks, financial service providers, industry associations, consultants and security exchanges. FSCA was extensively consulted in the issuance of this PCC.

THEMATIC FEEDBACK

High level feedback on the consultation comments received are noted thematically below:

Descriptive terms

4. Where no definition is given in PCC 52 of a specific word or phrase, the word or phrase must be read in the ordinary dictionary meaning thereof.
5. Certain terms including “client of the counterparty”, “counterparty” and “client of a client” have been re-considered as these terms have specific industry interpretation, which caused ambiguity and misinterpretation. Definitions have been either removed or amended where appropriate.
6. The terms “primary client” and “underlying clients” are specifically not used in this PCC. The intention of PCC 52 is not to re-introduce previous exemptions to the FIC Act, and the use of ‘primary client’ may infer such re-introduction. Further, the use of the term “underlying client” may introduce unintended ambiguity in the interpretation of sections 21(1)(a) and 21(1)(b) and (c) of the FIC Act.

Risk focus

7. PCC 52 is aimed at creating an understanding of the requirement to assess the holistic money laundering and terrorist financing (ML/TF) risks when dealing with various clients, taking into account certain client risk factors.
8. With the adoption of a risk-based approach, there has been a fundamental shift in the application of customer due diligence (CDD) and it is imperative that CDD be effectively performed within the context and understanding of the ML/TF risks presented by a client.

Extra-territorial application of FIC Act and PCC 52

9. The FIC Act, and all related guidance materials including this PCC, does not have extra-territorial application.
10. Authorised users who enter into a business relationship or single transaction with a client that is a foreign intermediary, who in turn has their own clients that are not party to the business relationship or single transaction, must at a minimum comply with all FIC Act related obligations. The fact that the foreign intermediary is not an accountable institution does not absolve an authorised user from complying with their FIC Act obligations.

Diagrams

11. The diagrams in the PCC are aimed at visually depicting principles discussed in the PCC. It is not the intention to introduce, or assume any new or existing client engagement types and should be considered for illustrative purposes only.

Previously withdrawn exemptions

12. PCC 52 does not re-introduce the previously withdrawn exemptions to the FIC Act, including exemption 4 and exemption 2.
13. The principles contained in the withdrawn exemption 4 to the FIC Act cannot be applied in the context of PCC 52 as the basis of application is the risk-based

assessment by an accountable institution of its client. The principles of exemption 4 to the FIC Act are covered in [Public Compliance Communication 43](#) regarding shared clients of accountable institutions.

14. The principles contained in the withdrawn exemption 2 to the FIC Act may be considered in the accountable institution's risk management and compliance programme (RMCP). Refer to the Centre's [Guidance Note 7](#) which sets out guidance on the delayed completion of CDD before a transaction is concluded.

Determination of who is the client

15. PCC 52 does not indicate who is the client of an accountable institution. Paragraph 78 of the Centre's Guidance Note 7 indicates

“The manner and the point in time at which an accountable institution determines that a person is a prospective client or a client for the purposes of determining when the obligations of the FIC Act commences should be spelled out in an accountable institution's RMCP, both in respect of a business relationship and a single transaction”.

16. The PCC 52 intentionally does not include definitions of client categories as this is a determination that can only be made by an authorised user, taking into account industry operational considerations and supervisory body direction.

CONCLUSION

17. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the PCC 52 where appropriate.
18. The final PCC 52 will be issued on 25 March 2022.

COMMUNICATION WITH THE FIC

19. Queries can be directed to the compliance contact centre on 012 641 6000 and select option 1. Queries can also 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

Issued By:

The Director Financial Intelligence Centre

Private Bag X177

CENTURION

0046

25 March 2022