

CONSULTATION FEEDBACK NOTE

Relating to the draft Public Compliance
Communication 120 on the interpretation of
crypto asset service providers item 22 of
Schedule 1 to the Financial Intelligence Centre
Act, 2001 (Act 38 of 2001)

July 2023

INTRODUCTION

1. The Financial Intelligence Centre (FIC) issued for consultation the draft public compliance communication 120 (draft PCC 120) for consideration and comments on the draft by accountable institutions, in terms of section 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act).
2. The period for consultation period started on Thursday, 15 December 2022 until Friday, 27 January 2023. Consultation comments were received from banks, financial services providers, industry associations and independent consultants.
3. The final version of the draft PCC 120 has been issued as public compliance communication 57 (PCC 57).

CONSULTATION FEEDBACK

4. Feedback on the consultation comments received are noted below:

Comment	Response
<p>1) For legal clarity, it would be appreciated if the FIC could clarify whether the definition of CASPs is broad enough to include entities offering their clients services such as staking, liquidity provision, collateralised lending, etc as these items are not included under items (a) to (d).</p> <p>2) Para 2.1 (e)- we would appreciate it if the FIC could confirm our understanding that this sub-paragraph includes financial advisory or intermediary services. Refer to our comments relating to para 3.8. For legal certainty and to assist with</p>	<p>Where any of the elements as per the definition of item 22 to Schedule 1 is met, then the entity is a CASP for purposes of the FIC Act.</p> <p>Further, where an entity, in addition to being a CASP, meets the definition of any other items as per Schedule 1 to the FIC Act, that entity is required to register as this accountable institution additionally, e.g. item 11 credit provider.</p> <p>Financial services, in this instance may include but is not limited to financial advisory or intermediary services.</p>

<p>compliance with obligations, it would be appreciated if the FIC confirm whether there is a requirement to risk rate intermediaries.</p>	<p>Accountable institutions must determine their own risk-based approach, which may include gathering information on intermediaries for the purpose of conducting a risk assessment.</p>
<p>Pseudonymous – It is recommended that there is consistency in the use of words across guidance notes and PCC’s. The use of the specific word is unnecessary and not in plain language.</p>	<p>Plain language words to be used Where a word is used that is not defined in the PCC, the dictionary meaning must be referred to: Pseudonymous – indicate bearing or using a fictitious/false name.</p>
<p>Please note that the SARB (Financial Surveillance Department) has the following definition for CASP's: "CASP means a South African Crypto Asset Service Provider who is authorised by the Financial Surveillance Department to facilitate the trading of crypto assets, and includes entities providing services, inter alia, (ii) exchange between fiat currency and crypto assets (buying/selling); (iv) exchange of crypto assets into other crypto assets; (i) transferring of crypto assets; and (v) safekeeping and/or administration of crypto assets or instruments enabling control over crypto assets"</p>	<p>Item 22 of Schedule 1 to the FIC Act sets out the activities of a CASP, that are regulated under the FIC Act.</p>
<p>2.5 (e) Confirm that entities issuing tokens under an Initial Coin Offering (ICO) arrangement do not have to register as CASPs – presumably unless they are</p>	<p>It is not the expectation that the issuer of tokens in an ICO meet the definition of an accountable institution, rather, the definition covers anybody who provides financial services in respect of an ICO</p>

<p>offering the tokens directly to potential subscribers?</p>	<p>should be considered to be the accountable institution.</p> <p>Further refer to the Financial Action Task Force Recommendations updated guidance for a risk-based approach – virtual assets and virtual asset service providers October 2021.</p> <p>Updated-Guidance-VA-VASP.pdf</p>
<p>3.3 The list of risk indicators is generic and can be attributed to most crypto assets. Many CASPs will have existing risk based approaches or models, especially if they already offer business services which fall under other schedule 1 categories.</p> <p>Processing crypto assets through the existing models/risk based approaches will no doubt trigger crypto assets as high risk by their very nature. Is there an expectation for CASPs to create new and separate models/RBAs that apply specifically and only to crypto assets? The concern is that if this is the expectation, apart from the practical and onerous impact this has on systems and procedures, then the models/risk based approaches may be seen to be manipulated to allow for the introduction of the higher risk asset class.</p>	<p>CASPs as accountable institutions, face unique risks, therefore the risk assessments would take into account different or additional factors in comparison to other accountable institutions.</p> <p>Business risk assessments are in essence unique to each different business area the accountable institution has, as the risk of products and services being abused for money laundering, terrorist financing and proliferation financing differs.</p>
<p>Consider referring to the new section 31.</p>	<p>The reporting obligation in terms of section 31 of the FIC Act applies specifically to the</p>

	<p>electronic transfer of money (fiat currency) and not crypto assets.</p> <p>Further it is only authorised dealers, authorised dealers with limited authority, certain FSPs and Postbank, that are licensed in terms of the Exchange Control provisions that are obligated to file reports in terms of section 31 of the FIC Act.</p>
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CONCLUSION

5. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the final PCC 57 where appropriate.
6. The final PCC 57 has been issued on 3 July 2023.

COMMUNICATION WITH THE CENTRE

7. 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 Centre's website and submitting an online compliance query.

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