

## **CONSULTATION FEEDBACK**

Relating to the draft public compliance communication 5D that provides guidance on registration with the Financial Intelligence Centre in terms of section 43B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001)

**October 2023**

## INTRODUCTION

1. The Financial Intelligence Centre (Centre) issued for consultation the draft public compliance communication 5D (draft PCC 5D) for consideration and comments by all accountable institutions, supervisory bodies and other persons in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act).
2. The period for consultation started on Thursday, 15 December 2022 until Friday, 20 January 2023. Consultation comments were received from industry associations, the South African Reserve Bank, a credit provider and an advocate.
3. The final PCC 5D replaces the current PCC 5C.

## CONSULTATION FEEDBACK

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

<p>Page 2, PCC Summary Regulation 27A of the Money Laundering and Terrorist Financing Control Regulations (MLTFC Regulations) provide the period (of within 90 days after the amendment of the Schedule 1 is published by notice in the Gazette) within which and the manner of registration which every accountable institution referred to in Schedule 1 of the FIC Act must adhered to.</p> <p>1) For grammatical correctness, it is suggested that the:</p> <p>a) wording “Schedule 1 of the FIC Act” be amended to Schedule 1 to the FIC Act”; and</p>	<p>Grammatical amendments have been made to address the comments.</p>
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<p>b) word “adhered” be replaced with “adhere”.</p>	
<p>3. OTHER BUSINESSES WITH A REPORTING OBLIGATION UNDER THE FIC ACT</p> <p>3.1 Other businesses may come under an obligation in terms of section 29 of the FIC Act to report suspicious and unusual transactions and/or activities. When such an obligation arises, the business is required to obtain access to the Centre’s online registration and reporting platform to submit the relevant report to the Centre and thereby discharge its obligation. This is done by using the same registration and reporting platform and following the same process for registration described in this draft PCC to obtain the required login credentials.</p> <p>BASA proposes that that para 3.1 be amended as follows: “Other businesses, than those listed in Schedule 1, may <del>come</del> <del>under</del> have an obligation in terms of section 29 of the FIC Act to report suspicious and unusual transactions and/or activities. When such an obligation arises, the business is required to obtain access to the Centre’s online registration and reporting platform to submit the relevant report to the Centre and thereby discharge its obligation. This is done by using the same registration and reporting platform and following the same process for registration described in</p>	<p>Paragraph 3.1. has been amended to clarify that all businesses including those that are not included in terms of Schedule 1 to the FIC Act, have a reporting obligation in terms of section 29 of the FIC Act.</p>

<p>this draft PCC to obtain the required login credentials.”</p>	
<p>All legal practitioners including referral advocates should, as a default, register with the FIC as accountable institutions.</p> <p>You cannot discriminate and compel only trust advocates and attorneys to register and leave out arbitral institutions like AFSA, Association of Arbitrators, Mediator Associations, Ad Hoc arbitrators, adjudicators, mediators, court-annexed mediators, and so on.</p>	<p>Refer to Recommendations 22 and 23 of the Financial Action Task Force Recommendations (and Methodology), which include lawyers, that prepare for or carry out transaction for their clients. Clients in this scenario includes members of the public.</p> <p>The updated definition of legal practitioner as per Schedule 1 to the FIC Act, is aligned to the FATF definition, therefore only include those legal practitioners who engage in financial transactions with their clients, being the public. Item 1 of Schedule 1 to the FIC Act therefore includes advocates that are required to have a trust account.</p>
<p>You have not covered adequately those property owners who use special purpose vehicles such as trusts. They rent and sell property in sectional titles schemes. In some schemes, they then take control of bodies corporate and force every owner to pay high levy contributions to benefit the few even when doing illegal acts.</p> <p>You have not covered managing agents (also property practitioners, bridging finance brokers). I have yet to come across a managing agent for a community scheme including sectional titles which is registered as an accountable institution. You should</p>	<p>The Estate Agency Affairs Act was repealed and replaced with the Property Practitioners Act, 2019 (Act 22 of 2019). The term “estate agent” has been replaced with the term “property practitioner”. Refer to public compliance communication 56 that explains an estate agent’s continued status as an accountable institution.</p> <p>The FIC is yet to commence consultation with this sector following the Property Practitioner Act entering into force, and then will have to determine which activities of the property practitioner will fall under item 3 of Schedule 1 to the FIC Act.</p>

<p>also make it compulsory for them to have a logo on their website and any contract with bodies corporate or homeowners association that they are registered with FIC.</p>	
<p>Does this mean that the MLRO must also be appointed in addition to the ML compliance officer? Must these roles be independent of each other and if yes could we get some guidance on whether the MLRO should be a person in finance.</p>	<p>A money laundering reporting officer (MLRO) is a user appointed by the accountable institution to assist the compliance officer in the execution of the reporting obligation to the Centre.</p> <p>The MLRO may only view the registration information of the entity and submit reports for the entity. The compliance officer may limit the functions of the MLRO to certain reporting permissions and general functionality on the Centre’s registration and reporting platform.</p> <p>It is not mandatory for an accountable institution to appoint an MLRO from the finance department.</p> <p>Smaller institutions might only have a compliance officer, who then also performs the functions of reporting on the registration and reporting platform. Refer the goAML user guide on reporting and registration for accountable institutions.</p>
<p>In reference to a person who carries on a “life insurance business” as defined in the Insurance Act, 2017 (Act 18 of 2017) but excludes reinsurance business as defined</p>	<p>Financial service providers that provide advice and intermediary services in relation to life insurance are accountable institutions</p>

in that Act. Does this still apply to insurance brokers approved for long-term insurance categories in terms of providing advice and intermediary services to clients?

in terms of item 12 of Schedule 1 to the FIC Act.

## CONCLUSION

5. The FIC thanks the commentators and notes that all comments received have been considered and incorporated in the final PCC 5D where appropriate.
6. The final PCC 5D has been issued on 17 October 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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