Financial
Intelligence Centre

CONSULTATION FEEDBACK NOTE

Draft public compliance communication 121A relating to guidance on beneficial ownership and the issuing of updated public compliance communication 59

August 2024

INTRODUCTION

1. The Financial Intelligence Centre (Centre) issued for consultation draft public compliance communication 121A (draft PCC 121A) for consideration and to receive comments from all accountable institutions and other persons in terms of section 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act).

2. Draft PCC 121 was published for consultation on 8 December 2023, with consultation comments being due on 16 February 2024. Draft PCC 121A was published for a second round of consultation on 14 June 2024, with consultation comments being due on 5 July 2024. Comments were received from banks, financial service providers, industry associations and consultants.

3. All comments received have been taken into account, and the updated version of draft PCC 121A is issued as a final PCC 59.

CONSULTATION FEEDBACK

4. Feedback on the consultation comments are noted below:

Comment received	**FIC response**
General Whilst B is supportive of guidance on a percentage ownership interest that would constitute a good indication of control; the particular threshold should, however, be determined on the basis of assessed risks in relation to the customer. B remains of the view that the determination of a threshold for identification of beneficial ownership (BO) should take place within an accountable institution's (AI) risk management and compliance programme. It is respectfully submitted that if the FIC seek to impose the mandatory threshold of 5% that same be done either in the FIC Act itself or through the regulations. The imposition of the threshold in the PCC may be deemed and an expansion of the obligations under the Act.	The threshold sets the best practice standard for beneficial ownership identification. Accountable institutions are still required to take enhanced measures to manage and mitigate higher risks, or to take simplified measures for lower risks when verifying beneficial ownership information. The PCC sets out guidance on which threshold should be applied. The guidance regarding the five percent threshold is therefore not an expansion of the law.
Many countries have prescribed/maximum thresholds which are set at higher (and more implementable) levels. It is our view that setting a higher "fixed threshold" in legislation/ regulation, or even a scale of thresholds depending on risk exposure and providing more detailed guidance on circumstances under which more granular	The PCC does not intend to provide guidance on scaling thresholds according to risk levels, but rather set a standard best practice threshold for accountable

information must be obtained, will be much more useful, implementable and will address the AML/CFT risk concerns in respect of corporate structures.	institutions to apply. Beneficial ownership identification is dependent on determining which natural persons either by virtue of their ownership or control, and is not dependent on the risk-level.
General It is emphasised that “beneficial interest has a different meaning from BO, the 5% BO threshold was introduced by the CIPC in a Guidance Note 2/2023 and is not law, and “affected companies” as defined do not have to keep BO registers.	The Companies Amendment Regulations 2023 prescribes requirements in relation to affected companies, that must disclose beneficial interest equal to or in excess of five percent. Further companies that do not fall within the meaning of affected companies must disclose their beneficial owners, as set out in the regulations. Any difference in the meaning between “beneficial owner” and “beneficial interest” as set out in the Companies Act and regulations to the Companies Act, does not negatively impact on the recommended threshold set out in the PCC. The concept of beneficial interest is broad and includes ownership.
General It is requested that specific guidance is provided on the application of the PCC requirements to international subsidiaries, operations, and branches in the context of the higher of home or host principle – foreign jurisdictions will each have their own approach to BO which may not be aligned to the PCC.	The accountable institution’s risk management and compliance programme must provide for the manner in which it will take into consideration the level of risk of the host country,. The institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of recommended measures provided through guidance. Accountable institutions in terms of schedule 1 to the FIC Act, are strongly urged to comply with the recommended threshold of five percent.
Paragraph 1.4. Beneficial Ownership nuisances in respect of Bodies Corporate & Homeowners Associations (corporate arrangement/association) set-up by virtue of the Sectional Titles Schemes Management Act/municipal subdivision requirements when an estate/scheme is established - to receive attention in the final guidance, please. The FATF definition of beneficial owner does not in any way refer to “benefit from”, it is therefore incorrect to apply this as a ground to determine the beneficial ownership or control.	Comments on body corporates and homeowner’s associations are noted, and further examples have been added to the table. The process of elimination must be applied.

B recommends that all references to “benefit” or “benefitting from” be made within the context of “control through other means”. The reference to beneficiaries of life policies and legal arrangements limit the application of “benefit from” to life policies and legal arrangements. That cannot be a basis for extending “benefit from” to the activities of a legal person.	The concept of ‘benefit’ may include more than ownership. The PCC has been updated to place emphasis on ownership and control. .
Paragraph 2.3. Despite the amendments to the Companies Act, 2008, there is no publicly accessible shareholder or beneficial ownership register in South Africa. This means that there is no 3rd party verifiable source of this data. Accountable institutions should be granted access to the databases of independent third-party sources for verification of information. As AI, we should be allowed to register with CIPC or Masters Office Beneficial Register to confirm the information provided to our offices during the FICA process is accurate and in line with the information which they have on their systems. We understand that sensitive information cannot be accessed by the public, hence a process for the AI to register and be granted access should be looked at.	Accountable institutions are required to liaise directly with regulators (the CIPC and Masters of the High Court) in this regard. It is important to note that accountable institutions are required to identify and take reasonable steps to verify beneficial owners. Access to beneficial ownership registers is an important element in implementing discrepancy reporting mechanisms. Accountable institutions cannot, however, rely exclusively on the data in the beneficial ownership register to fulfill their customer due diligence obligations.
Paragraph 2.3. Beneficial ownership and verification is an important CDD step during onboarding of new clients. Reliance should be placed on the information provided by the client in the first instance and then verifying that information by requesting for supporting documentation or through third-party sources.	Refer to PCC 12A which provides guidance on outsourcing of compliance activities to third party service providers.
Paragraph 2.5 In certain instances/ certain types of matter will not allow us to have access to all of the information/ documents mentioned above. A further concern is that this request fails to consider that not all staff are equipped to understand/ interpret all the documents mentioned above.	The accountable institution must obtain beneficial ownership information and take reasonable steps to verify. Accountable institutions have the flexibility to choose the type of information by means of which it will establish clients’ identities and also the means of verification of clients’ identities. Refer to section 43 of the FIC Act. An accountable institution must provide ongoing training to its employees to enable them to comply with the provisions of the FIC Act and the risk management and compliance programme which are applicable to them.
Paragraph 2.6. V is concerned that an overly administrative guideline will result in excessive administrative and compliance costs for Accountable Institutions. While the	Where accountable institutions provide products and services to clients who pose a heightened risk e.g. complex structures etc. the accountable institution is obligated to

intention of the draft PCC121A is highly supported by V, it is important to note that the wide guidance could result in significant operational challenges for Accountable Institutions.	implement controls that are proportionate to the money laundering, terrorist financing and proliferation financing risks identified. The cost of compliance increases according to heightened risk.
The FIC should look at discussions with the Government to create a data base with contactable references for details relating to government, organs of state, public benefit organizations, major public entities, other public entities and other legal persons- National, provincial, or local government departments. Details of the person exercising control and or management should also be made available to AI to ensure that we can efficiently and within reasonable times conclude our FICA process and face delays in our files.	Comment noted. Currently there is no single database that provides information on politically exposed persons and prominent influential persons information. Refer to PCC 51 which includes a list of websites which may be useful in determining which persons are politically exposed.
Paragraph 2.6 B recommends that para 2.6 be deleted. Should the FIC retain the para, it is requested that the FIC should provide clarity on the intent of this paragraph and its expectation in applying it. Although the beneficial owner definition in the FIC Act does suggest that it could apply in the context of individuals, section 21B only requires the identification of BOs in respect of legal persons, trusts and partnerships (or similar corporate structures). Is the expectation that AIs must now apply the concept of BO to its natural person clients, and what would be the rationale for this approach.	Where it is evident that a client (natural person) transacts in a manner that benefits another natural person, it is recommended that the accountable institution determines whether that other person exercises control over the natural person.
Examples table of entities Understanding that this is an illustrative guide and not conclusive, it would be useful and appreciated if the table could be updated to deal with further types of legal entities, including but not limited to pension funds, collective investment schemes, securitisation vehicles, limited liability companies and partnerships	The accountable institutions must determine what type of entity a pension fund, and collective investment scheme is, and based upon its structure, determine the ownership and control structure. There may be instances where these entities are set up as either associations, companies or trusts. Legislation that governs the type of entity also provides insight into the entity structure, e.g. the Collective Investment Schemes Act etc.
Paragraph 2.15. The obligation to identify all beneficial owners makes the process of elimination slightly unclear. While the process of elimination infers that one only advances through the steps if a UBO is not found, the obligation is clear that one must at all times follow all the steps to identify. In addition, does the 5% controlling interest proposal in practice suggest that UBO's would be identified at step 1 and therefore	The PCC provides guidance on the process of elimination. Paragraph 2.45 sets out guidance in this regard.

what would be the purpose of steps 2 and 3, if the AI considers the 5% threshold is in fact 'controlling ownership interest.	
Paragraph 2.16 The legal requirement should then expand to all legal entities to include the amount of voting rights on the shareholding confirmation documents. Shareholding certificates and auditors' confirmation letter should provide for shareholders details, the share percentage and the voting right allocated to the shareholder. Some of the confirmation documents are vague and does not contain valid information which could accurately identify such as company registration number, trust IT number, beneficiary ID/ Passport number. From our understanding the beneficial owner process of elimination is ambiguous in that first step of elimination requires the test to determine "natural person who has a controlling ownership interest in the legal person". The term "controlling ownership interest" as used in section 21B(2)(a)(i) of the FIC Act is not defined in the FIC Act. The FIC interprets the meaning of "controlling ownership interests" as "the ability of a natural person by virtue of ownership interest in a legal person, to control and/or to take decisions regarding or influence the resolutions/decisions/business operations of that legal persons.	Accountable institutions have the flexibility to choose the type of information by means of which it will establish clients' identities and also the means of verification of clients' identities. Refer to Centre's Guidance Note 7, which provide additional guidance on how a natural person's and legal person's identity can be determined by reference to a number of attributes. With reference to the term "controlling ownership interest", the ordinary dictionary meaning of control – '*the power to influence or direct people's behaviour or the course of events'.* Control includes ability to Influence and/ or direct.
Paragraph 2.17 1) In order to distinguish ownership control from "control through other means", it is recommended that para 2.17 be augmented as reflected in the next column. 2) It is not clear how an AI can establish "influence" over decisions by reviewing the MOI, share register, etc. This could be established from monitoring conduct on the account. "Influence" without controlling interest by way of for example more than 50% of the shareholding where shareholder can veto ordinary resolutions or more than 25% where shareholder can veto special resolutions would be difficult to establish upfront or to identify as BO. 3) In this regard, we further note that in terms of sec 69(4) of the Companies Act, at least 50% of directors must be elected by shareholders by way of ordinary resolution to the board. Control is also defined in the Companies Act and the definition therein can be leveraged. It is unlawful for one shareholder to appoint more than 50% of directors to the board of directors. 4) B suggests the amendments as per the next column. B recommends that para 2.17 be amended as follows: "The deciding factor when determining whether a person owns a controlling ownership interest in a legal person, is whether that natural person has influence over the decisions taken by the legal person and the operations of the legal person, as a result of the person's ownership interest. This controlling ownership interest can be determined with reference to the percentage of ownership interest the natural person has in the legal person, and reference to the level ~~of influence~~ or control that the person can exercise over the legal person. Where a natural person can exercise decisive	Refer to above response on the term "controlling ownership interest". In response to the comments relating to person holding 51 percent voting right being the controlling owners. Control is broader than just 51 percent holder, because it includes the ability to direct decisions as well as influence decisions. Therefore, person holding five percent or more can be deemed beneficial owner, as they have the ability to influence decisions. The word 'influence' has not been removed, as control includes an element of influence. With reference to the term "controlling ownership interest", the ordinary dictionary meaning of control – '*the power to influence or direct people's behaviour or the course of events'.* Control includes ability to Influence and/ or direct.

control ~~influence~~ directly or indirectly over the decisions of the legal person and/or the legal person's operations, as a result of the person's ownership interest, then that natural person owns a controlling ownership interest in that legal person."	
Paragraph 2.19 Should the FIC seek to mandate the threshold, then same should be done in the FIC Act or regulations and not through guidance. B recommends that para 2.19 be deleted and a mandated threshold should be provided for in the FIC Act or its regulations	The PCC provides guidance on the threshold, that should be applied by accountable institutions when determining who the beneficial owners of an entity are.
4) We disagree that a 5% interest is indicative of control over a company on the basis that a 5% shareholder will never be able to veto ordinary resolutions (must have more than 50%) or special resolutions (must have more than 25%) unless there are minority protections in the MOI or shareholder agreement (noting that these must be contained in the MOI and not the shareholder agreement in terms of the new Companies Act to be enforceable).	Refer to above response regarding "controlling ownership interest".
5) The FIC is requested to provide a rationale for its statement that "a person who holds a significant percentage of securities in most cases exercises influence and control over a legal person, and more importantly benefits from that legal person. In this context holding five percent or more of ownership interest in a legal person is usually sufficient to exercise a controlling ownership interest in the legal person." 6) 5% does not amount to control, and will be extremely impractical to implement, and maintain.	Sentence has been updated, removed reference to securities as well as significant. Replaced with significant with 'sufficient' amount of ownership interest.
7) Considering listed companies that trade actively every day, and shareholders will change above and below 5% on an active and ongoing basis. Further, the listed company does not have a relationship with the shareholders where it can contact and source documentation from them. The shareholder is onboarded by a stockbroker and can then buy shares. If the shareholder is a complicated layered UBO, the listed company will not have access to that ownership structure. So, if an accountable institution asks the listed company for their UBO, they will have to approach all the stockbrokers through whom its shares are held and ask the stockbroker to ask their clients to provide the information.	The PCC does provide guidance on entities listed on exchanges.
Data protection regulations may entitle the UBO shareholder of the listed company to resist providing the information.	Refer to PCC 22A. The obligations as set in the FIC Act cannot be circumvented, or limited owing to data privacy laws including the Protection of Personal Information Act, 2013 (Act 4 of 2013).
Paragraph 2.19 The nature of this requirement (5%) is not risk-based in nature, but rather rule-based and much lower than what we have seen in other jurisdictions. Holding 5% of the shares in a company on its own does not enable the shareholder to exercise control over that company. Control can only be exercised by the 5% shareholder jointly with other shareholders or if the shareholder also controls other	The beneficial ownership threshold for accountable institutions does not conflict with the application of a risk-based approach. This is as the beneficial ownership threshold sets the minimum standard for identification and accountable

shares in some way eg exercises the voting rights in shares owned by other shareholders by agreement with those shareholders. The Competition Act and the Companies Act both recognise that positive control is only exercised over a company by a shareholder which holds more than 50% of its shares and shareholders can only exercise negative control if they hold more than 25% of the shares. The Companies Act distinguishes between holders of a beneficial interest in a company and beneficial owners. Section 56(7) only requires affected companies to keep registers of holders of beneficial interests of 5% or more in the company (affected companies mean regulated companies defined as such in terms of section 117(1)(i) and private companies which are controlled by or a subsidiary of such a regulated company). The definition of a beneficial owner in the Companies Act does not refer to the 5% threshold mentioned in section 56(7) in relation to beneficial interests. Section 56(12) of the Companies Act requires companies which are not affected companies to file a record with CIPC "regarding the individuals who are the beneficial owners of the company". No threshold for beneficial ownership is specified in the Act and a clear distinction is drawn between holders of beneficial interests and beneficial owners. Applying a 5% threshold to beneficial ownership is not consistent with the Companies Act. We note the alignment with the Companies Act, but consider the alignment not to be critical, and to be unusually onerous. This is especially because sections 2.22, 2.23 and 2.25 create the obligation to evaluate even those below 5% ownership. The objectives would still be covered by having a higher threshold. In relation to the percentage of total ownership interest we are of the view that the proposed 5 percent controlling ownership interest in the legal person is too low, is not consistent with a risk based approach, it's also not consistent with what's applied in the majority of other jurisdictions on a multi-national Group like ours, which strives to implement consistent AML controls and standards across the Group i.e. all countries in our group that service the client would have to adopt the 5% threshold if we were to follow a consistent approach, and will have a detrimental impact on South Africa's Financial Services Industry. Most countries globally have adopted a threshold of between 20%-25% and the proposed 5% minimum threshold is out of kilter with global standards.	institutions are still required to take enhanced measures to manage and mitigate higher risks, or to take simplified measures for lower risks. Refer to the above response regarding the meaning of "beneficial interest" and "beneficial ownership" as set out in the Companies Act and Companies Regulations. The accountable institutions risk management and compliance programme must provide for the manner in which, taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures provided through guidance.
Paragraph 2.21. In light of the above we propose that Accountable Institutions should follow a risk-based approach when establishing the controlling ownership interest; we therefore propose that Accountable Institutions should follow the below threshold: Beneficial Owners/Shareholders with a material controlling ownership interest; • 25% benchmark for Low risk clients; • 20% benchmark for Medium risk clients; • 10% benchmark for Higher risk clients.	The PCC does not intend to provide guidance on scaling thresholds according to risk levels, but rather set a standard best practice threshold for accountable institutions to apply.

Paragraph 2.21. By adding this element to determining "controlling ownership interest" it defeats the purpose of Step 2: Control through other means, and it complicates the approach to determining of controlling ownership interest. 3) It is recommended that this paragraph is either deleted or at least repositioned in the right context.	The paragraph has been re-positioned.
Paragraph 2.23 In terms of this proposed section, as well as the example that follows in the PCC, it seems that any person (whether they fall below or above the 5% threshold), who poses a significant risk should be regarded as a beneficial owner. Paragraph 2.26 In our view, the risk factors set out under this section cannot determine a client's beneficial ownership status. Beneficial owner is specifically defined under the FIC Act and doesn't include risk factors to be taken into account. In our view, the risk factors should form part of the overall risk rating for the specific client or beneficial owner, but should not be used to determine beneficial ownership status.	Agreed, determination and identification of the beneficial owner is not risk based. Paragraph 2.23 and the example has been updated and repositioned. Agreed, determination and identification of the beneficial owner is not risk based. Over and above the identification of beneficial owner as set out in step one of the process of elimination, there should be a holistic assessment of client risk, upon which accountable institutions can opt to further identify any other persons the accountable institution seeks to conduct additional due diligence on.
Paragraph 2.25 We do not agree that these persons are regarded as BOs as they are not referred to in the definition of BOs in the FIC Act. This approach is not recognising or keeping in mind the 3 step-approach and tries to group all possible manners of control under "ownership control". B proposes that para 2.25 be deleted. If the FIC elects to retain para 2.25, AIs can identify the controlling interest for persons named within the ownership structure, however it is difficult to identify persons external to that structure who may be benefitting. Can the FIC provide an example of where this scenario may exist and practically how it can be detected/identified apart from negative media screening?	The paragraph has been deleted. The principle is covered in the PCC where undue influence is dealt with.
Paragraph 2.26 It suggests that FICA requires that AIs must screen all natural persons holding any shares, no matter how low the shareholding. Where a shareholder has a very small shareholding, then without more information indicating that those shareholders pose a risk or exercise control by means other than their shareholding (e.g., voting pool agreement or cession of voting rights), persons D and E's shareholding is too low to enable them to control the company. In the circumstances, unless D and E are directors, it is unlikely that they would be screened for PEP, sanctions and adverse media because their shareholding is too low to give them effective control over the company. In these circumstances, it is unreasonably onerous to require AIs to screen such shareholders. This example suggests that even the FIC's proposed shareholding threshold of 5% for beneficial owners does not apply.	The paragraph and example wording has been updated. Accountable institutions may according to their risk-based approach opt to identify persons who hold less that the recommended five percent beneficial ownership interest.

Should the FIC not accept B's proposal for deletion, there appears to be a mixed concept between ownership vs risk. In the example given after 2.26.4 it concludes that natural persons who neither hold 5% nor have any evidence of control, are nonetheless to be considered as UBO as they "pose significant risk". This is incorrect; BO ownership must be rooted in ownership and control, not merely because a person with 1% is higher risk. The criteria for listing persons D and E as beneficial owners is not aligned to the three step process. Persons D and E do not have controlling ownership interest or effective control through other means nor are in management. Posing a significant risk is not a criterion for defining a person as a BO. B suggests that the example be deleted, or the FIC reconsider the example used and amend to align with the FIC Act.	Agreed, determination and identification of the beneficial owner is not risk based. The paragraph relates to risk, accountable institutions in terms of their own risk-based approach may opt to identify further persons. The paragraph does not deem further persons to be beneficial owners.
Paragraph 2.28 – example that follows This is not how company law operates. Shareholders of ordinary/ A shares usually have voting rights on in respect of all matters to be voted on at AGMs, whereas shareholders of other classes of shares (example preference shares/ B shares, etc.) have voting rights only on those matters that impact their rights and obligations. Thus, holders of ordinary shares collectively control 100% of all matters of a company and its voting rights cannot be proportionately compared with the rights of holders of other classes of shares. Proposal - It is suggested that the FIC either reconsider the example or delete it.	Example has been removed.
Paragraph 2.29 While this scenario is probable, there may not be any official record of such agreement; if the client's mandated persons are not aware of such agreements because of its private nature they will not be able to advise or resist sharing sensitive/ confidential documents. For our understanding, it is requested that the FIC provide additional guidance on how AIs should go about to determine (and evidence) these coalitions? It is suggested that the FIC consider including an example related to voting pool arrangements. The AI role in such transaction may not be privy to such information such as a coalition agreement, unless it is specified in entity governing documents and affects the beneficial ownership or controlling mechanism of the legal entity. For example, we as a law firm can attend to represent a client in a dispute, for the FICA process, the financial loan structure of the entity may not be provided to us during the FICA process. Requesting such information should have valid requirements, if the entity has provided us with documents and information validating their directors, authorised representative, shareholders and UBO, there is no basis for the AI to request the legal entities financial agreements. It is unclear how the FIC intends for Accountable Institutions to reasonably verify the existence of coalition or group agreements. While one can ask the client whether such agreements are in place, this obligation should rather be noted as a	The accountable institutions must determine ownership and control structure. The accountable institutions must take reasonable steps to verify information provided by the client. The accountable institution must according to its risk management and compliance programme, keep up to date information obtained for the purpose of establishing and verifying the identities of clients pursuant to sections 21, 21A and 21B of the FIC Act. Where a new beneficial owner takes control over the legal entity by virtue of a financial loan structure, the accountable institution would then have to update the beneficial ownership information. Agreed. The text has been amended to communicate the requirement to take

point of consideration for Accountable Institutions and not create an obligation as it is overly onerous. There is no third-party source with which to verify the existence of such agreements.	reasonable steps to verify information on coalitions, which result in beneficial ownership.
Paragraph 2.33 It seems from the wording as if an Accountable Institution will always need to identify the natural person who exercises control through his or her ownership or control of other legal persons, trusts or partnerships in addition to Step 1. In terms of section 21B(2)(a)(ii) of the FIC Act, this step should only be performed if in doubt whether a natural person is a beneficial owner or no natural person has a controlling ownership interest in the legal person. We would suggest that this section be amended to align to the FIC Act to avoid any confusion.	Removed paragraph, as principle is covered in previous paragraph.
Paragraph 2.34 In South African companies, directors have to be elected not nominated. Is the reference to nominee shareholders intended to refer to shareholder representatives? Please clarify. Please note that debt and financing instruments only give rise to control when they are exercised, and the lender actually acquires voting rights. For understanding, BASA requests that the FIC indicate how an AI is expected to establish this type of control, i.e. control via debt instruments or agreements? Is an AI expected to review agreements entered into with the legal person/ company? In the absence of clarification being provided, BASA proposes that para 2.34.3 be deleted.	The accountable institution must according to its risk management and compliance programme, keep up to date information obtained for the purpose of establishing and verifying the identities of clients pursuant to sections 21, 21A and 21B of the FIC Act. Where a new beneficial owner takes control over the legal entity by virtue of a debt or financing instrument, the accountable institution would then have to update the beneficial ownership information. Accountable institutions have the flexibility to choose the type of information by means of which it will establish clients' identities and also the means of verification of clients' identities.
Paragraph 2.26 We find clients who are reluctant to provide information other than their basic FICA information and to have access to some of the information mentioned can be impossible, thereby placing the AI in a difficult position.	Refer to section 21E of the FIC Act – If an accountable institution is unable to– (a) establish and verify the identity of a client or other relevant person in accordance with section 21 or 21B of the FIC Act, the institution– (i) may not establish a business relationship or conclude a single transaction with a client; (ii) may not conclude a transaction in the course of a business relationship, or perform any act to give effect to a single transaction; or (iii) must terminate, in accordance with its risk management and compliance programme, an existing business relationship with a client, as the case may be, and consider

Whilst compliance departments and officers are attempting to the best of their ability to instill knowledge and education in personnel to request information and documents, it is rather difficult to expect employees to keep changing their practices and understanding documents which are not part of their daily duty. It is also difficult to customize FICA requests per client on large number of clients. FIC should also consider the cost implication and time implications such request have on AI.	making a report under section 29 of the FIC Act. Where accountable institutions provides products and services to clients who pose a heightened risk e.g. complex structures etc. the accountable institution is obligated to implement controls that are proportionate to the money laundering, terrorist financing and proliferation financing risks identified. The cost of compliance increases according to heightened risk. Refer to section 43 of the FIC Act. An accountable institution must provide ongoing training to its employees to enable them to comply with the provisions of the FIC Act and the risk management and compliance programme which are applicable to them.
Par 2.34.17 The approach further suggests that undue influence applied through criminal activities, e.g. bribery, corruption, blackmail, etc. should be considered as grounds for "beneficial ownership". AIs do not have the investigative capacity or mandate to investigate such scenarios. Response to Consultation Note: • Interlocking Directorates: Individuals who serve on the boards of multiple companies, enabling coordinated decision-making across entities. • Cross-Shareholding: When two or more companies hold significant shares in each other, allowing them to exert mutual influence. The concept of "benefit from" in the context of Beneficial ownership is mentioned in the FATF GUIDANCE ON BENEFICIAL OWNERSHIP OF LEGAL PERSONS – March 2023 in a very restricted and specific sense. Further, when an individual is using, enjoying or benefiting from the assets owned by the legal person, it could be grounds for further investigation if such individual is in the condition to exercise control over the legal person.	Paragraph updated to remove reference to criminal actors.
Example after 2.34.18 External persons exercising undue influence over legal person Although it is true that from a client transaction and activity monitoring perspective, accountable institutions should monitor and understand the nature of their clients transactions as being conducted with the AI in terms of the business relationship, it cannot mean that the AI will be able to or even should consider monitoring the client's normal business activities – there is simply no basis or mandate for this	The example has been updated.

suggestion (see also FICA section 21C that limits monitoring to "monitoring of transactions undertaken throughout the course of the relationship"	
Paragraph 2.36 Section 21B(2)(iii) is a measure to identify BO. The PCC implies that in the 3-step process to identify the BO, the 3rd step is not a real/legitimate step. This contradicts section 21B2(iii) and guidance provided regarding state owned entities. Emphasis that this step should only be referred to in exceptional cases is sufficient. B proposes that para 2.36 be deleted.	Paragraph updated, part of it deleted.
Paragraph 2.39 Could AIs simply rely on the fact that BO information was disclosed during listing with the CIPC, whilst evidencing that fact, or could they use these sources to obtain BO information, or only to verify BO information obtained from clients? The FIC is requested to indicate why the AI must run through the whole process of elimination in respect of listed companies and be able to show evidence thereof if based on the principles of corporate governance within the context of listed companies, the most appropriate Bos for listed companies should be the CEO, CFO and other directors?	Accountable institution has the flexibility to determine what information sources and means of verification to rely on. No exemption applies to the application of section 21B of the FIC Act.
Paragraph 2.40 We would usually liaise directly with the client and not the entity responsible for the creation of the foreign legal person. This is onerous on an AI as the entity responsible is not directly our client.	No exemption applies to the application of section 21B of the FIC Act.
Paragraph 2.42 State owned companies are wholly owned by the state and this is usually reflected in statutes. Paragraph 42 is problematic because it suggests that in addition to the incorporating statute, it is necessary to obtain, for example, a copy of Transnet SOC Limited's share register. Please clarify this issue. Once again, we suggest that compliance must be reasonably practically achievable and should not have an unnecessary chilling effect.	Accountable institutions can follow a process of elimination where, if they are in doubt as to which natural persons hold controlling ownership or interest in the entity, they may proceed to the second step.
Paragraph 3.1. The Masters Office portal does not contain information for trusts which was registered a long time ago. Whilst we may request and receive information from the client on a trust there should be an accessible database available to AI to verify the information they have received from the clients.	Accountable institutions are required to liaise directly with regulators (the CIPC and Masters of the High Court) in this regard. Access to beneficial ownership registers is an important element in implementing discrepancy reporting mechanisms. Accountable institutions cannot, however, rely exclusively on the data in the beneficial

	ownership register to fulfill their customer due diligence obligations.
Paragraph 3.6 The above doesn't differentiate between regulated trust company services providers and unregulated legal persons. We are of the view that regulated companies do not require the same BO requirements as unregulated legal persons. Paragraph 3.6 should be amended to allow AIs to identify the nominated representative in this scenario as the BO of the trustee company will have no bearing on the trust other that the contractual services agreed to. The type of legal person holding the position as trustee will determine who to identify as the beneficial owner. In the case of professional trust and company service providers, being regulated entities under the FIC Act, it will be sufficient to identify the nominal trustee, as the beneficial owners of the entity will have no bearing on the trust and the management thereof.	No distinction to be drawn between regulated and unregulated, in so far as the requirement as set out in section 21B of the FIC Act applies. No exemption applies No exemption applies
Paragraph 4.1. It is recommended that the FIC provide specific guidance on the treatment of en comandante partnerships, limited liability partnerships and the anonymous or silent partnership giving due consideration to the legal formation of these partnerships.	Paragraph 4.1. confirms the position, no amendments to be made.
Paragraph 4.4.1 "To appoint or remove any partner". A partnership in law dissolves when a partner leaves and a new partnership is formed by the remaining partners. We suggest that specific guidance on the treatment of limited liability partnerships, being similar to en commandite partnerships, is provided where the nature of the arrangements with silent partners/investors does not involve any control/decision making.	Reference to appointment and removal of partnership have been removed from the sentence. By virtue of partnership interest all partners are beneficial owners.
Paragraph 6.3 The AI can request, receive and scrutinise information supplied by a client but to fulfill the requirement of verification as outlined in this clause would mean verifying the information received against a third-party database where it is registered. As mentioned above, it will be difficult to place these obligations onto AI without ensuring that the third-party databases are adequate, accurate and has up to date beneficial ownership information and that the AI have access to these data bases. If the third parties cannot provide access then FIC should look at creating the system taking the beneficial ownership, as they have the AI's who are registered and verified, which will allow AI to verify the beneficial ownership information.	Amend paragraph to ensure "take reasonable steps".

For certainty of understanding, it is requested that the FIC provide clarity on the meaning of "and status" and if this refers to the fact of BO. Is the requirement that not only the identity of the BO as established must be verified, but also the fact of or basis for the determination as a BO? See the extract from the FATF Guidance paper below – is this the extent of the FIC's expectation? If so, it is recommended that this be set out in more detail.	
Paragraph 6.7. Whether a client does business with public entities is merely 1 factor to be applied in a client risk assessment and in line with that risk based approach, paragraph 6.9 should require AIs to assess whether clients are high risk if they conduct business public entities and not prescribe that EDD must always be done	Accountable institutions must scrutinise information concerning their clients against the targeted financial sanctions list, there is no exemption to this.
Paragraph 6.9 Whether a client does business with public entities is merely 1 factor to be applied in a client risk assessment and in line with that risk-based approach, paragraph 6.9 should require AIs to assess whether clients are high risk if they conduct business public entities and not prescribe that EDD must always be done.	Agreed, it is a recommendation to apply enhanced due diligence.
Annexure C B proposes that the heading of the table be amended to include STRATE as a licensed South African central securities depository.	Reference to Strate included.

CONCLUSION

5. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in final PCC where appropriate.

6. The updated final PCC 59 has been issued on Thursday, 8 August 2024, and replaces draft PCC 121 and draft PCC 121A.

7. The guidance takes effect immediately on date of issue. The provisions of the FIC Act relating to beneficial ownership have been in force since 13 June 2017 and accountable institutions are required to comply with these requirements of the Act. Accountable institutions immediately should commence the adjustments in their compliance efforts, to the extent necessary, to meet the requirements of the FIC Act, as amplified /read with the Centre's formal position on its expectations of compliance with the FIC Act as detailed in PCC 59.

8. During supervisory engagements (monitoring and inspections), the accountable institutions will be assessed on the status and extent of compliance by the accountable institution of its adherence to Chapter 3 of the FIC Act, associated sections and directives as amplified by all formal guidance issued, including PCC 59.

COMMUNICATION WITH THE FIC

9. Queries can be directed to the compliance contact centre on +2712 641 6000 and select option 1. Queries can also be submitted online by clicking on https://www.fic.gov.za/compliance-queries/ or visiting the FIC's website and submitting an online compliance query.

Issued by:
PIETER SMIT
ACTING DIRECTOR
FINANCIAL INTELLIGENCE CENTRE
8 August 2024