

PUBLIC COMPLIANCE COMMUNICATION

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No. 23A

GUIDANCE ON THE INTERPRETATION OF
CREDIT PROVIDERS, ITEM 11 OF
SCHEDULE 1 TO THE FINANCIAL
INTELLIGENCE CENTRE ACT, 2001 (ACT 38
OF 2001) AND POTENTIAL RISK
INDICATORS

18 December 2024

PCC SUMMARY

A “credit provider” is listed in item 11 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) as – “(a) *A person who carries on the business of a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005).*

(b) A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1)(a) or (b) of that Act.”

This PCC provides guidance on the practical interpretation and application of the definition of credit providers and an overview of certain anti-money laundering, counter terrorist financing and counter proliferation financing vulnerabilities.

THE AUTHORITATIVE NATURE OF GUIDANCE

The Financial Intelligence Centre (the Centre) provides the guidance contained in this PCC in terms of its statutory function in terms of section 4 (c) of 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 in terms 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 in terms of the FIC Act. Accordingly, guidance provided by the Centre is authoritative in nature and must be taken into account when interpreting the provisions of the FIC Act or assessing compliance of an accountable or reporting institution with its obligations imposed on it by the FIC Act.

It is important to note that enforcement action may emanate as a result of non-compliance with the FIC Act in areas where there has been non-compliance with the guidance provided by the Centre. Where it is found that an accountable institution has not followed guidance which the Centre has issued, the institution must be able to demonstrate that it has complied with the relevant obligation under the FIC Act in an equivalent manner nonetheless.

DISCLAIMER

The publication of a PCC concerning any particular issue, as with other forms of guidance which the Centre provides, does not relieve the user of the guidance from the responsibility to exercise their own skill and care in relation to the users' legal position. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

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OBJECTIVE

This PCC provides clarity on the interpretation of a credit provider as designated in amended item 11 of Schedule 1 to the FIC Act.

Further, the PCC highlights vulnerabilities faced by credit providers and provides risk indicators that can be considered by a credit provider when determining money laundering, terrorist financing and proliferation financing (ML, TF and PF) risks presented in their client engagements.

1. INTRODUCTION

- 1.1. Schedule 1 to the FIC Act has been amended and has taken effect from 19 December 2022. Item 11 of Schedule 1 to the FIC Act has been amended, and as such public compliance communication 23 (PCC 23) is no longer applicable. This PCC 23A replaces PCC 23 to take into consideration the amended item 11 of Schedule 1.
- 1.2. The purpose of this PCC is to clarify the Centre’s interpretation of item 11 in relation to credit providers.
- 1.3. The Centre supervises and enforces compliance with the FIC Act obligations (anti-money laundering, combating of financing of terrorism and combating of proliferation financing (AML/CFT/CPF)) for certain credit providers in terms of the FIC Act.

2. INTERPRETATION OF A CREDIT PROVIDER

- 2.1. A credit provider is defined in item 11 of Schedule 1 of the FIC Act as:
 - “(a) A person who carries on the business of a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005).*
 - “(b) A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1)(a) or (b) of that Act.”*
- 2.2. The terminology mentioned in this definition is explained below.

General considerations

- 2.3. **“A person”** which includes both natural persons and legal persons.
- 2.4. **“Carries on the business”** – This term is not defined in the FIC Act. The ordinary meaning of the term, within the context of the FIC Act is applied. An entity is considered to carry on the business of credit provider, in relation to the first category, where that entity is specifically required to register with the National Credit Regulator as a credit provider.
- 2.5. **“Business”** is that of a commercial activity or institution, as opposed to a charitable undertaking or government institution. In the context of credit providers, where an

institution only extends credit in terms of a credit agreement on an *ad hoc* basis at arms-length and that provision of credit does not form part of the core business of the institution, the institution ***is nonetheless deemed*** to be a credit provider specifically for purposes of the credit agreement.

First category of credit provider considerations – Item 11(a) of Schedule 1

- 2.6. The **first category of credit providers** includes persons who carry on the business as a credit provider as defined in the NCA and are required to register as a credit provider with the NCR.
- 2.7. In terms of section 1 of the NCA, the definition of credit provider is wide and includes numerous different persons which include:
- 2.7.1. The party who supplies goods or services under a discount transaction, incidental credit agreement (subject to section 5 of the NCA) or instalment agreement
 - 2.7.2. The party who advances money or credit under a pawn transaction
 - 2.7.3. The party who extends credit under a credit facility
 - 2.7.4. The mortgagee under a mortgage agreement
 - 2.7.5. The lender under a secured loan
 - 2.7.6. The lessor under a lease
 - 2.7.7. The party to whom an assurance or promise is made under a credit guarantee
 - 2.7.8. The party who advances money or credit to another under any other credit agreement; or
 - 2.7.9. Any other person who acquires the rights of a credit provider under a credit agreement after it has been entered.

Examples of credit providers and credit agreements include, but are not limited to:

- Clothing store credit providers
- Companies that provide any loans to employees, as part of its business
- Short-term and long-term loans and credit transactions
- Microfinance loans
- Small, intermediate, and large credit agreements

- Housing loans
- Credit cards
- Credit overdrafts
- Unsecured and secured credit agreements and credit transactions
- Closed loop and open loop credit facilities
- Retail store card credit facilities
- Credit facility providers
- Revolving credit agreements
- Credit guarantees in respect of a credit facility or credit transaction
- Instalment credit agreements

Inclusions: Factoring, cession and sale of loan book

- 2.10. Where a registered credit provider cedes its right in terms of the agreement or facility to another person, that other person then steps into the role of a credit provider, and as such must register as an item 11 accountable institution with the Centre. This includes scenarios such as factoring and the creation of certain special purpose vehicles as an example.
- 2.11. When an institution purchases a loan book, they replace the existing credit provider and acquire those rights of the credit provider. As a result, buyers of loan books fall within the ambit of a credit provider and will need to register as an accountable institution.
- 2.12. There may be instances where institutions no longer provide credit, however, they are still managing a run-off loan book. These institutions are included as credit providers.
- 2.13. In scenarios where a business merely provides a third-party service to a credit provider (i.e. debt collection) and none of the rights and obligations in terms of the credit agreement pass to the third party, then that third party is not considered to carry on the business of a credit provider. Refer to [PCC 12A](#) which sets out guidance on third-party service providers. This scenario is different in comparison to factoring

where rights and obligations in terms of the credit agreement pass from one entity to another.

Consultation note:

Commentators are requested to provide their views on whether special purpose vehicles and/or ring-fenced companies registrations could be delegated to the linked company (company that created it) and the effect thereof. Consider in practice how would a special purpose vehicle or ringfenced company comply with the FIC Act obligations (including registration and reporting) where the special purpose vehicle or ringfenced company is operated by the linked company.

Currently, sharing of information can only occur between accountable institutions that are part of a group.

In which scenarios should entities be considered to form part of a group?

Consider PCC 12A which sets out guidance on the outsourcing of services to third-party service providers. Note that accountable institutions may not outsource obligations relating to appointment of a compliance officer, registration and reporting.

Exclusions: Incidental credit

- 2.14. The NCA includes, as a credit provider in respect of a credit agreement, the party who supplies goods or services under an incidental credit agreement. However, section 40 of the NCA does not require a person who only enters into incidental credit agreements to be registered as a credit provider with the NCR.
- 2.15. As a consequence, the Centre is of the view that where an entity only enters into incidental credit agreements and is not required to register with the NCR, that entity does not **carry on the business** of providing credit and is not deemed to be accountable institutions in terms of item 11 of Schedule 1 to the FIC Act.

Example 1: Incidental credit

A medical doctor sends a statement of account to client A, indicating that additional charges may apply where payment of the amount due is late. Client A makes payment late and is therefore charged additional fees, this is referred to as an incidental credit agreement.

The medical doctor is not required to register as an accountable institution with the Centre, as the medical doctor would not be considered to be carrying on the business of a credit provider, and the medical doctor is not required to register with the NCR.

Second category of credit provider considerations – Item 11(b) of Schedule 1

- 2.16. The **second category of credit providers** that are included in item 11 of Schedule 1 to the FIC Act, are all persons who carry on the business of providing credit in terms of any credit agreement that is **excluded** from the application of the NCA, by virtue of section 4(1)(a) or (b) of the NCA. Entities that have only entered into incidental credit agreements are not considered to be carrying on the business of credit provider.
- 2.17. The second category is wide, all credit agreements between legal persons falls within the ambit of item 11(b) of Schedule 1, regardless of whether the credit agreement is not specifically excluded from the application of the NCA. The onus is on the entity to evidence that they do not fall within this category, where such assertions are made. The specific terminology used in the second category of credit providers is discussed below.
- 2.18. **“Credit agreement”** includes, *inter alia*, a credit facility, credit transaction, credit guarantee, any combination of a credit facility, credit transaction and credit guarantee.
- 2.19. Read in alignment with section 4(1)(a) and (b), as well as section 9(4) of the NCA, the definition of credit agreement for purposes of the application of the second category **includes** instances where:

- 2.19.1. The agreement is at arms-length
 - 2.19.2. The credit provider's clients are juristic persons (irrespective of the monetary asset value or annual turnover)
 - 2.19.3. The credit agreements are large agreements¹, where the client is a juristic person²;
 - 2.19.4. The credit provider is registered or operational in South Africa, and
 - 2.19.5. The creditor is the state or an organ of state.
- 2.20. Read in alignment with sections 8(2) of the NCA, the definition of credit agreement **excludes** instances where:
- 2.20.1. The products include a policy of insurance, or credit extended by an insurer solely to maintain the payment of premiums on a policy of insurance;
 - 2.20.2. The agreement is a lease of immovable property; and
 - 2.20.3. The transaction is between a stokvel and a member of that stokvel in accordance with the rules of that stokvel.

Threshold

- 2.21. Credit providers that do not fall under the first category of item 11 of Schedule 1 to the FIC Act, would fall under the second category. There is no maximum monetary threshold applicable when determining if an entity is a credit provider and an accountable institution in terms of item 11(b) of Schedule 1.

Single transaction or business relationship

- 2.22. A business relationship is an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis. A single transaction is either (a) a transaction other than a transaction concluded in the course of a business relationship and (b) where the value of the transaction is not less than the amount of R5 000.
- 2.23. From the definition of a single transaction the emphasis is placed on **one transaction**. The Centre considers the payout of a loan and the repayment of the loan as multiple

¹ Threshold as determined in terms of section 7(1) of the NCA.

² Refer to the NCA for the definition of juristic person

transactions. Given that there is an element of time duration to this engagement, there is an expectation on the part of accountable institutions that the engagement with the client would recur over a period of time.

2.24. In light of the above, it is the Centre's interpretation that credit agreements are considered to be business relationships. As such, the customer due diligence and targeted financial sanctions obligations set in sections 21F, 21G, 21H, and 28A of the FIC Act and other relevant sections, must be applied.

3. **POTENTIAL ANTI-MONEY LAUNDERING, COUNTER TERRORIST FINANCING AND COUNTER PROLIFERATION FINANCING RISK INDICATORS**

3.1. Credit providers must conduct money laundering, terrorist financing and proliferation financing (ML, TF and PF) risk assessments on a business and at a client level. Due to operating in the industry, credit providers would be in the best position to determine where the potential ML, TF and PF vulnerabilities are.

3.2. Credit providers should refer to the Centre's sector risk assessment on item 11 which sets out certain inherent risks that are particular to the credit provider industry.

3.3. Possible indicators of ML in the provision of credit facilities to businesses and individuals include but are not limited to, the following:

3.3.1 The use of credit funds for illicit activities.

3.3.2 Reversing of transactions before repayments of a loan have started, resulting in the borrowed funds being repaid within a short space of time.

3.3.3 Repayment amounts for loans are higher or within a shorter time frame than originally agreed upon with no reasonable explanation for this or the source of funds used.

3.3.4 Multiple cash repayments without plausible explanation for source of funds.

3.3.5 Clients are hesitant to provide personal information and information on their proposed business.

- 3.3.6 The business being established does not make economic sense and does not fit into the profile of the borrower.
 - 3.3.7 A change in the business or the business strategy of the borrower that does not make economic sense.
 - 3.3.8 The client is part of a complex structure or group or is a trust established in a foreign jurisdiction.
 - 3.3.9 The loan is serviced by a third party that was not part of the original transaction.
 - 3.3.10 Multiple loans are taken out which do not make sense or do not fit the economic profile of the client.
 - 3.3.11 Credit facilities have been found to be high risk for TF
 - 3.3.12 As compared to ML, only small amounts are needed to raise funds for terrorist causes.
- 3.4 Possible indicators of TF in the provision of credit facilities to businesses and individuals, include the following:
- 3.4.1 A mortgage credit facility is paid up multiple times before the end of the agreement and money withdrawn continuously without a reasonable explanation.
 - 3.4.2 After several months of small regular payments there is a significant payment that has been deposited into the mortgage account without a reasonable explanation.
 - 3.4.3 Where large purchases of crypto assets are made on credit, and the customer has not shown any patterns of purchasing crypto assets previously.
 - 3.4.4 Where multiple credit cards are requested, and the credit card is used by third parties to withdraw cash in foreign jurisdictions.
 - 3.4.5 Where there is a settlement payment on the account for a significant amount more than the balance due, and the overpayment of the balance is later requested by the client with no reasonable justification.
 - 3.4.6 Where multiple purchases of similar or the same amounts are made on credit in multiple cities within a short time frame, or on the same day, and the customer does not have any branches or businesses in those cities.

3.4.7 Where the credit card holder makes multiple purchases at institutions that are outside of the country, but their economic activity does not justify doing so.

4. CONSULTATION

4.1. Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding their performance, duties and obligations in terms of the FIC Act or any directive made in terms of the FIC Act, the Centre must in accordance with section 42B of the FIC Act—

4.1.1. Publish a draft of the guidance by appropriate means of publication and invite submissions.

4.1.2. Consider submissions received.

4.2. Commentators are invited to comment on the draft guidance by submitting written comments via [the online comments submission link only](#). Any questions or requests relating to this draft PCC 23A may be sent to the Centre only at consult@fic.gov.za. Submissions will be received until Friday, 7 February 2025, by close of business.

5. COMMUNICATION WITH THE CENTRE

5.1. The Centre has a dedicated compliance contact centre geared to assist accountable institutions to understand their registration obligations in terms of the FIC Act. Please call the compliance contact centre on 012 641 6000 and select option 1.

5.2. Compliance queries may also be submitted online by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> <https://www.fic.gov.za/compliance-queries/> or visiting the Centre's website and submitting an online compliance query.

Issued By:

The Acting Director

Financial Intelligence Centre

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