

# DRAFT PUBLIC COMPLIANCE COMMUNICATION

## DRAFT PUBLIC COMPLIANCE COMMUNICATION

### No 106 (PCC 106)

GUIDANCE ON THE INTERPRETATION OF  
ITEM 1 OF SCHEDULE 1 OF  
THE FINANCIAL INTELLIGENCE CENTRE  
ACT 2001 (Act No. 38 of 2001)

## FOR CONSULTATION PURPOSES ONLY

### **PCC SUMMARY**

Item 1 of Schedule 1 to the Financial Intelligence Centre Act 2001 (Act No. 38 of 2001) (the FIC Act) lists a practitioner who practises as such in terms of section 1 of the Attorneys Act, 1979 (Act 53 of 1979) (Attorneys Act) as an accountable institution.

With the repeal of the Attorneys Act, being replaced by the Legal Practice Act, 2014 (Act 28 of 2014) (Legal Practice Act), the definition of a *practitioner who practices* as set out in Item 1 of Schedule 1 of the FIC Act, must be interpreted in line with the Interpretation Act 1957 (No.33 of 1957) and the Legal Practice Act as being, *a person who is admitted by the High Court to practise and authorised to be enrolled as a legal practitioner, conveyancer or notary, **and** who conducts a trust account practice as defined in section 1 of the Legal Practice Act.*

This PCC provides guidance to the legal practitioners, (attorneys, conveyancers, notaries and advocates) on the applicability of the FIC Act and their obligations in this regard.

### **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.

### **COPYRIGHT NOTICE**

This PCC is copyright. The material in a PCC may be used and reproduced in an unaltered form only for personal and non-commercial use within your institution.

Apart from any use permitted under the Copyright Act No. 98 of 1978, all other rights are reserved.

### **OBJECTIVE**

This PCC provides guidance to the legal practitioners, including attorneys, conveyancers, notaries and advocates on the applicability of the FIC Act and their obligations in this regard.

## **GLOSSARY**

**“The Centre”** means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

**“FIC Act”** refers to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001).

**“Attorneys Act”** refers to the Attorneys Act, 1979 (Act 53 of 1979).

**“Legal Practice Act”** refers to the Legal Practice Act, 2014 (Act No. 28 of 2014).

**“Legal practitioner”** refers to an advocate or attorney admitted and enrolled as such in terms of section 24 and 30 of the Legal Practice Act respectively.

**“Practitioner”** refers to any attorney, notary or conveyancer as defined in the Attorneys Act, 1979 (Act 53 of 1979)

**“Practise”** refers to practise as an attorney or a notary or conveyancer as defined in the Attorneys Act, 1979 (Act 53 of 1979) and practice has a corresponding meaning.

**“Trust account practice”** refers to a practice as conducted by

(a) one or more attorneys who are; or

(b) an advocate referred to in section 34(2)(b) of the Legal Practice Act who is,

in terms of the Legal Practice Act required to hold a Fidelity Fund Certificate.

## FOR CONSULTATION PURPOSES ONLY

### 1. RELEVANT LEGAL FRAMEWORK REGARDING ADVOCATES IN SOUTH AFRICA

- 1.1. Item 1 of Schedule 1 of the FIC Act includes “a practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979)” as an accountable institution.
- 1.2. The Attorneys Act was repealed by the Legal Practice Act with effect from 1 November 2018. The admission of a practitioner who practiced under the Attorneys Act remains valid<sup>1</sup>.
- 1.3. Section 118 of the Legal Practice Act indicates that subject to the provisions of the Legal Practice Act, a reference in any other law to an advocate, a counsel or an attorney, must be interpreted as a reference to a legal practitioner in the Legal Practice Act.
- 1.4. Section 119(3) of the Legal Practice Act read together with section 12 of the Interpretation Act, 1957 (No.33 of 1957) effectively means that when interpreting Item 1 of Schedule 1 of the FIC Act, the reference to “*practitioner who practices*” in terms of the Attorneys Act, must be interpreted with reference to the Legal Practice Act as:

*a person who is admitted by the High Court to practise and authorised to be enrolled as a legal practitioner, conveyancer or notary, and who conducts a trust account practice as defined in section 1 of the Legal Practice Act*

- 1.5. All legal practitioners who conduct a trust account practice must be in possession of a Fidelity Fund certificate. Section 41 of the now repealed Attorneys Act stated that a practitioner shall not practise or act as a practitioner on his own account or in partnership unless he is in possession of a fidelity fund certificate. Section 84 of the Legal Practice Act states that every attorney and advocate referred to in section

---

<sup>1</sup> Refer to section 119(3) of the Legal Practice Act.

## FOR CONSULTATION PURPOSES ONLY

34(2)(b), [certain exceptions apply<sup>2</sup>] and who practices or is deemed to practise, must be in possession of a fidelity fund certificate, refer also to section 85 of the Legal Practice Act.

- 1.6. The requirement to register as Item 1 of Schedule 1 of the FIC Act, is therefore dependent on whether the legal practitioner as defined in the Legal Practice Act conducts a trust account practice and therefore must be possession of a Fidelity Fund Certificate.

## 2. OBLIGATIONS IN TERMS OF THE FIC ACT

- 2.1. All attorneys (this includes notaries and conveyances) conducting trust account practices fall within the ambit of Item 1 of Schedule 1 to the FIC Act and must register as accountable institutions.
- 2.2. All advocates in terms of section 34(2)(b) of the Legal Practice Act conducting trust account practices, now fall within the ambit of Item 1 of Schedule 1 to the FIC Act and must register as accountable institutions.
- 2.3. A new category **S111- Legal Professional – Advocate ito Legal Practitioners Act** has been included on the Centre's registration and reporting platform for advocates in terms of section 34(2)(b) to register as accountable institutions.
- 2.4. All advocates in terms of section 34(2)(b) are advised to register as accountable institutions and comply with accountable institutions obligations as set out in the FIC Act.
- 2.5. Legal practitioners conducting trust account practices are advised to refer to the guidance notes and public compliance communications as published on the Centres website for additional guidance.

---

<sup>2</sup> The exceptions include legal practitioners in the full-time employ of the South African Human Rights Commission or the State as a state attorneys or state advocates.

**3. CONCLUSION**

- 3.1. As part of its objectives, the Centre remains committed to assist legal practitioners conducting trust account practices in the fight against crime, through combating the financing of terrorism and related activity as well as money laundering.
- 3.2. The Centre has a dedicated Compliance Call Centre that may assist Advocates to understand their obligations in terms of the FIC Act.
- 3.3. Should you have any queries please contact the FIC's Compliance Call Centre on 012 641 6000, and select option 1, or submit an online compliance query by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the Centre's website and submitting an online compliance query.

**Issued By:**

**The Director Financial Intelligence Centre**

**Date 24 January 2020**