



DRAFT PUBLIC COMPLIANCE COMMUNICATION

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COMMUNICATION**

No 109 (PCC 109)

GUIDANCE ON THE COMMENCEMENT
AND ENFORCEMENT OF THE
FINANCIAL INTELLIGENCE CENTRE ACT
2001 (ACT 38 of 2001) AS AMENDED BY
THE FINANCIAL INTELLIGENCE CENTRE
AMENDMENT ACT, 2017
(ACT 1 of 2017)

PCC SUMMARY

This Public Compliance Communication (PCC) clarifies the fact that all the obligations as brought about by the Financial Intelligence Centre Amendment Act, 2017 (Act 1 of 2017) (FIC Amendment Act) which commenced on 02 October 2017, applies in respect of the accountable institution's entire client population.

Accountable institutions must comply with all the obligations as set out in the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act), in respect of its entire client base.

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OBJECTIVE

This PCC provides clarity on the Financial Intelligence Centre (the Centre) position regarding the commencement and enforceability of the obligations pursuant to the FIC Amendment Act, which commenced on 02 October 2017.

1. COMMENCEMENT AND ENFORCEMENT DATES

- 1.1. The FIC Act was amended by the FIC Amendment Act, of which certain provisions became effective and enforceable on 02 October 2017, deferment of the enforcement of the provisions by the supervisory bodies ended on 1 April 2019 [refer to the annexed South African Reserve Bank Prudential Authority (SARB PA) Public Notice dated 29 March 2019 and both Financial Sector Conduct Authority (FSCA) general communications dated 25 April 2019].

2. APPLICATION OF THE FIC AMENDMENT ACT

- 2.1. It is the Centre's view as supported by the SARB PA and FSCA that accountable institutions must demonstrate full compliance with their obligations as set out in the FIC Act as amended by the FIC Amendment Act, in respect of its entire client population, including all existing high risk clients as at 02 October 2017 and all new clients onboarded from 02 October 2017.

Risk-Based Approach and Risk Management and Compliance Programme

- 2.2. The accountable institution must have:
- 2.2.1. Fully implemented a risk-based approach to ML/TF risks within their organisations, (which includes inter alia understanding and having determined the risk that each of the accountable institution's clients present);
 - 2.2.2. Documented and implemented the accountable institutions Risk Management and Compliance Programme (RMCP);
 - 2.2.3. Conducted customer due diligence (CDD), including enhanced due diligence on high risk clients in terms of the FIC Act as amended by the FIC Amendment Act, and in terms of the accountable institution's RMCP in respect of their entire client population; and

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2.2.4. Determined the manner in which the requirements of the FIC Amendment Act relating to customer due diligence which were not in force prior to 2 October 2017, will be met by the accountable institution for the remaining of its clients who are deemed not to be high risk, through the ongoing due diligence processes as set out in the accountable institutions RMCP.

Financial Sanctions

2.3. Part 2A of the FIC Act which sets out the financial sanctions obligations and prohibitions relating to persons and entities identified by the Security Council of the United Nations commenced on 01 April 2019, enforcement of the financial sanctions provisions by the supervisory bodies have not been deferred. Therefore, enforcement of these provisions commenced on 01 April 2019.

Non-compliance

2.4. It is the Centre's view supported by the SARB PA and FSCA that, accountable institutions that cannot demonstrate compliance with the new obligations which commenced on 02 October 2017 and the financial sanctions obligations which commenced on 01 April 2019 and all other obligations which remained in force in terms of the FIC Act, are non-compliant with the FIC Act, and may be subject to administrative sanctions.

3. CONSULTATION

3.2. Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their 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.

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

3.4. Consider submissions received.

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3.5. Commentators are invited to comment on the draft guidance by submitting only written comments, representations or requests at consult@fic.gov.za. Submissions will be received until **Friday, 20 March 2020**, by close of business.

4. GENERAL

4.2. The Centre has a dedicated Compliance Call Centre that may assist accountable institutions to understand their obligations in terms of the FIC Act.

4.3. Should you have any queries please contact the FIC's Compliance Call Centre on 012 641 6000 and select option 1. Alternatively log 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

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