The Financial Intelligence Centre (the Centre) provides the guidance contained in this Public Compliance Communication (PCC) in terms of its statutory function under section 4(c) of the Financial Intelligence Centre Act No. 38 of 2001, as amended (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 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. Guidance provided by the Centre is authoritative in nature. An accountable institution must comply with guidance issued by the Centre, or explain the reasons for non-compliance if prompted by the Centre. It is important to note that enforcement action may emanate as a result of non-compliance with the FIC Act in areas where there have been non-compliance with the guidance provided by the Centre.
PCC Summary
An accountable institution that forms part of a complex group structure is required to implement processes and procedures that will govern the manner in which the accountable institution will comply with its obligations as set out in the FIC Act.

Accountable institutions that form part of a complex group structure are required to comply with the FIC Act in their own right and have to adopt internal rules in terms of section 42 of the FIC Act specific to its business.

Internal rules must conform to the requirements as set out in Regulations 25, 26 and 27 of the Regulations.

This PCC must be read in conjunction with PCC05 which deals with general principles applicable to registration with the Centre.

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, non-commercial, use or non-commercial use within your organisation.

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

The objective of this PCC is to clarify the compliance obligations of accountable institutions in a complex group structure. This PCC also clarifies the governance issues relating to the formulation and implementation of internal rules in terms of the FIC Act, specifically to those accountable institutions applying the group internal rules under a centralised compliance function, within a complex group structure.

1. **Introduction**

1.1 The money laundering control measures under the FIC Act impose certain obligations on a variety of financial and non-financial institutions, such as the duty to formulate and implement internal rules. A practical challenge arises where there is more than one accountable institution making use of and operating in terms of the same internal rules under a centralised compliance function within a complex group structure.

2. **The Centre's View**

2.1 Accountable institutions are listed in Schedule 1 to the FIC Act. An accountable institution can be an individual or an institution, which becomes an accountable institution when the business that it conducts falls within the ambit of any business activity listed in Schedule 1 of the FIC Act.

2.2 In some instances, a group of companies or a legal entity may comprise of more than one accountable institution e.g. different entities in a financial conglomerate or divisions in a legal entity. This associated grouping of entities is considered to constitute a complex group structure, where they in practice share a common set of internal rules.

2.3 It is the Centre's view that each accountable institution in a complex group structure has its own obligations as an accountable institution in its own right in terms of the FIC Act. Each accountable institution within a complex group structure is different with regard to their client base, size, operations, and the risks to which each entity in the complex group is exposed. The use of branches, divisions and franchises, which
may constitute different accountable institutions, within one single legal entity can also be very different within these institutions.

2.4 Some of these accountable institutions form part of a larger group or entity and in most instances fall under a centralised compliance function. These accountable institutions can also form part of a group of companies or be divisions of a company that can also be an accountable institution in its own right.

2.5 In some instances the internal rules of these complex group structures provide for the processes to be followed by the group to comply with the requirements of the FIC Act, and do not always suit the processes as followed by the different underlying accountable institutions within the group. Further, the internal rules do not always take cognisance of the working methods and the risks in the individual accountable institutions to which it applies.

2.6 The occurrence of different accountable institutions functioning within one organisation can best be explained by way of the following examples:

**Example 1:**

An entity’s main business may be that of a bank as defined in terms of Item 6 of Schedule 1 to the FIC Act, and has a centralised compliance function responsible for ensuring and monitoring compliance with the FIC Act.

The entity may also provide other services to its clients or have underlying business units, divisions or entities, which also provide services that classify them as accountable institutions in terms of different items in Schedule 1, for example the provision of insurance and investment services as defined in Items 8 and 12 of Schedule 1.

These different underlying accountable institutions are monitored by the centralised compliance function of the group, and adopt the internal rules as prepared by the centralised compliance function. The internal rules provide for the processes to be
followed by the institution to comply with the requirements of the FIC Act, and do not always suit the processes as followed by the different underlying accountable institutions within the group. Further, it also does not take cognisance of the working methods and the risks in the individual accountable institution to which it applies.

**Example 2:**

An insurance and investment provider consists of different entities that form part of the institution. These underlying entities are classified as accountable institutions in their own right and listed in Schedule 1 to the FIC Act by virtue of the business that they conduct or services they offer to clients (e.g. long-term insurance, CIS managers and financial services providers) and are required to comply with the FIC Act.

The provider usually uses a set of internal rules that provide a high level overview of its anti-money laundering/combating of terrorist financing policy, and such group internal rules are not specific to the businesses of the different underlying entities within the institution.

These internal rules do not always suit the process as followed by the different underlying accountable institutions within the institution and does not take cognisance of the working methods and the risks in the individual accountable institution to which it applies.

### 3. Formulation and implementation of internal rules

In terms of section 42 of the FIC Act

3.1 The internal rules provide for the processes to be followed by an accountable institution to comply with the requirements of the FIC Act. The internal rules should at a minimum set out the following:

- processes, procedures and control measures relating to client acceptance processes and procedures;
- client and transaction monitoring;
- the record keeping function;
• the reporting requirements;
• compliance oversight; and
• training requirements for the entity.

3.2 Where there is a centralised compliance function within a complex group structure, it is the view of the Centre that one set of internal rules may be adopted and implemented within the group.

3.3 The internal rules must clearly stipulate which accountable institutions are subjected to and governed by the group internal rules and should include a list of these accountable institutions.

3.4 A generic set of internal rules will not always suit the processes as followed by the different underlying accountable institutions within a complex group structure. Hence, in as far as the core business processes and functions are different between the different accountable institutions within the group, these processes and functions will have to be provided for.

3.5 The internal rules should also clearly set out which accountable institutions are not subjected to the general principles of the internal rules. The group internal rules would therefore have to be supplemented with annexures that are applicable to the specific accountable institutions within the group. These annexures would have to stipulate the FIC Act compliance processes within the specific accountable institutions and must take cognisance of the working methods and the risks in the individual accountable institutions to which it applies.

4. Contents of internal rules as prescribed by the Regulations
4.1 The internal rules of an accountable institution must conform to the requirements as set out in regulations 25, 26 and 27 of the Regulations to the FIC Act.

4.2 Regulation 25 of the Regulations deals with the content of the internal rules concerning the establishment and verification of identities of clients.
4.3 Regulation 26 of the Regulations deals with the content of internal rules concerning the keeping of records.

4.4 Regulation 27 of the Regulations deals with the content of internal rules for the reporting of information concerning reporting of suspicious and unusual transactions.

4.5 It is the view of the Centre that the internal rules that are applicable to all the entities in the group must be formally approved by the Board of Directors (in the case of a company) or another body that is responsible for compliance in each individual accountable institution. The Board or other responsible body in each individual accountable institution should also be furnished with regular feedback on compliance with the FIC Act.

5. **Appointment of a compliance officer in terms of section 43 of the FIC Act**

5.1 It is Centre’s view that where the compliance function is centralised within a complex group structure, it is not necessary to appoint a separate compliance officer for every accountable institution within the group. A centralised compliance function will suffice within the complex group structure provided this is catered for within the internal rules.

6. **Record keeping requirements in terms of the FIC Act**

6.1 The Centre recommends that the group should have a single view of its clients and hence the record keeping function should be centralised and not compartmentalised within the different accountable institutions of the complex group structure.

6.2 A single client view will provide a complex group structure with the ability to source client records more efficiently. These procedures should however be recorded in the annexures to the group internal rules that are applicable to each accountable institution.

7. **Reporting requirements in terms of the FIC Act**

7.1 The Centre recommends that the reporting requirements in terms of the FIC Act should be centralised within a complex group structure. However, it is important to
note that in the case of filing a suspicious transaction report, the report should emanate from the accountable institution where the suspicion arose.

7.2 The entity must also ensure that for purposes of cash threshold reporting (CTR) that each accountable institution within the entity is able to report CTR’s to the Centre. In the event that the reporting is centralised the entity must ensure that the CTR is submitted under the registration credentials for the accountable institution where the transaction took place.

8. Conclusion

8.1 An accountable institution that forms part of a complex group structure is required to implement processes and procedures that will govern the manner in which the accountable institution will comply with its obligations as set out in the FIC Act.

8.2 Accountable institutions that form part of a complex group structure are required to comply with the FIC Act in their own right and have to adopt internal rules in terms of section 42 of the FIC Act specific to its business.

For any further enquiries regarding this PCC19, please contact the Centre on 0860 222 200 or by sending an email to: fic_feedback@fic.gov.za.

Issued By:

The Director
Financial Intelligence Centre
28 March 2013
Addendum

Extracts from the FIC Act and the Money Laundering and Terror Financing Regulations

42. Formulation and implementation of internal rules —

(1) An accountable institution must formulate and implement internal rules concerning—
   (a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of this Chapter;
   (b) the information of which record must be kept in terms of Part 2 of this Chapter;
   (c) the manner in which and place at which such records must be kept;
   (d) the steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties under this Act; and
   (e) such other matters as may be prescribed.

(2) Internal rules must comply with the prescribed requirements.

(3) An accountable institution must make its internal rules available to each of its employees involved in transactions to which this Act applies.

(4) An accountable institution must, on request, make a copy of its internal rules available to —
   (a) the Centre;
   (b) a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution.

(Date of commencement of s. 42: 30 June, 2003)