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, 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 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 under the FIC Act. Guidance provided by the Centre is authoritative in nature. An accountable institution must comply with the FIC Act and Regulations read with guidance issued by the Centre, and where there is a departure explain the reasons for not adhering to the guidance provided 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
Exemption 4 of the FIC Act provides for the reliance by one accountable institution (the secondary accountable institution) on the identification, verification and certain record keeping requirements required by the FIC Act by another accountable institution (the primary accountable institution).

PCC29 should be read with PCC12 which deals with outsourcing of the performance of compliance activities to third parties.

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Objective
The objective of this PCC is to clarify the application and use of Exemption 4 by accountable institutions when establishing and verifying the identity of clients with whom the accountable institution establishes a business relationship or concludes a single transaction with based on an introduction from another accountable institution.
1. Introduction

1.1 Section 21 of the FIC Act prohibits accountable institutions from establishing business relationships or entering into single transactions with their clients unless they have taken the prescribed steps to establish and verify the identities of their clients, or establish and verify the identities of persons representing their clients.

1.2 Exemption 4 of the exemptions made under the FIC Act provides for the reliance by one accountable institution (the secondary accountable institution) on the identification, verification and certain record keeping requirements of the identification and verification information required by the FIC Act by another accountable institution (the primary accountable institution).

1.3 Exemption 4 requires the primary accountable institution to confirm in writing, and to the satisfaction of the second accountable institution, that it has established and verified the identity of the client and kept record of the identification process. This verification must be in accordance with the specified subsections of sections 21 and 22 of the FIC Act.

2. The Centre’s View

2.1 Exemption 4 can only be applied when one accountable institution introduces business to another accountable institution. This means that there has to be an introduction of the business where the primary accountable institution provides the secondary accountable institution with the required assurance as to the identification and verification requirement as prescribed by the FIC Act.

2.2 The client of the primary accountable institution also becomes a client of the secondary accountable institution.

2.3 The secondary accountable institution must be satisfied that the confirmation provided by the primary accountable institution is in order.
2.4 It is important to note that both primary and secondary accountable institutions can be held liable for compliance failures associated with and/or caused by incorrect application of exemption 4.

2.5 Examples of application of Exemption 4:

**Example 1:**
A client approaches a broker (who is an accountable institution in terms of item 12 of schedule 1 to the FIC Act) and would like to invest with a long term insurer (an accountable institution in terms of item 8 of schedule 1 to the FIC Act). The broker in this instance is the primary accountable institution who is acting on behalf of the client. The insurer is the secondary accountable institution who will be engaging in a new business relationship with the same client, based on the broker’s introduction. Both the broker and insurance company have to comply with obligations in terms of the FIC Act with regards to that client.

**Example 2:**
Client opens a cheque account with Bank ABC and then decides to also purchase unit trusts. Bank ABC refers the client to Financial Services Provider XYZ within the same group. Bank ABC is the primary accountable institution in this scenario. Financial Services Provider XYZ is the secondary accountable institution who will be engaging in a new business relationship with the client based on the Bank’s referral. The Bank introduces the client to the FSP and the FSP relies on the assurance from the bank.

2.6 From the above examples it is clear that for Exemption 4 to apply there must be a three-way relationship i.e. the client of the primary accountable institution at all times will become the client of the secondary accountable institution. In both examples the secondary accountable institution has the option to rely on Exemption 4 for purposes of the transaction, or alternatively to carry out the client identification and verification requirements on its own. However, it remains the responsibility of the secondary
accountable institution to be satisfied that reliance can be placed on the client identification and verification conducted by the primary accountable institution.

3. **Specific record keeping exclusions under Exemption 4**

3.1 Exemption 4 exempts the secondary accountable institution from having to comply with specific identification, verification and specific record-keeping requirements listed in section 22(a) – (e); (h) and (i) of the FIC Act. The specific exclusions under exemption 4 relate to the identification and verification of the client and certain records kept in the identification process. The specific record keeping exclusions are:

- the identity of the client as well as the identity of the person acting on behalf of the client or on whose behalf the client is acting;
- the manner in which the identity of the client was established;
- the nature of that business relationship or transaction;
- the name of the person who obtained the information on behalf of the accountable institution; and
- any document or copy of a document obtained by the accountable institution in order to verify a person's identity in terms of section 21 (1) or (2).

3.2 The secondary accountable institution is however not exempt from keeping record of all transactional information and account details. The secondary accountable institution must keep record of:

- the amount involved;
- the parties to that transaction; and
- all accounts that are involved in transactions concluded by that accountable institution in the course of that business relationship or single transaction.

4. **Exemption 4 and reporting obligations in terms of the FIC Act**

4.1 Exemption 4 does not exempt the primary or secondary accountable institution from their reporting obligations in terms of section 28 of the FIC Act (cash threshold reporting) or section 29 (suspicious or unusual transaction reporting). Neither
accountable institution may cite this exemption should a transaction relating to their client become reportable.

5. **Exemption 4 and sections 27 and 32 of the FIC Act**

5.1 An accountable institution may in terms of section 27 and section 32 of the FIC Act be requested to advise the Centre of a client’s particulars or for additional information following a report submitted to the Centre. No reliance may be placed on Exemption 4 should a request be made by the Centre for such information. It remains the responsibility of both accountable institutions to be in possession of all relevant information and documentation relating to their client.

6. **Conclusion**

6.1 An accountable institution may rely on Exemption 4 where a client of the primary accountable institution is introduced to the secondary accountable institution to make use of the services or products of the secondary accountable institution. The client of the primary accountable institution also becomes a client of the secondary accountable institution.

6.2 The secondary accountable institution may rely on the functions performed by the primary accountable institution as far as it is performed to the satisfaction of the secondary accountable institution.

For any further enquiries regarding this Public Compliance Communication No. 29, 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
18 July 2014
Glossary

Exemption 4

Exemption from section 21 and 22 of the Act 38 of 2001 – Every accountable institution is exempted from compliance with the provisions of section 21 and 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act, in respect of a business relationship or single transaction which is established or concluded with that institution (the second accountable institution) by another accountable institution (the primary accountable institution) acting on behalf of a client of that primary accountable institution, subject to the condition that the primary accountable institution confirms in writing to the satisfaction of the second accountable institution that:

(a) it has established and verified the identity of the client in accordance with section 21 of the Act, or

(b) in terms of its internal rules and the procedures ordinarily applied in the course of establishing business relationships or concluding single transactions the primary accountable institution will have established and verified, in accordance with section 21 of the Act, the identity of every client on whose behalf it will be establishing business relationships or conducting concluding single transactions with the second accountable institution.