DRAFT PUBLIC COMPLIANCE COMMUNICATION

DRAFT PUBLIC COMPLIANCE COMMUNICATION No. 110

GUIDANCE ON MONEY LAUNDERING, TERRORIST FINANCING AND PROLIFERATION FINANCING RISK CONSIDERATIONS RELATING TO GEOGRAPHIC AREAS

PCC SUMMARY

An accountable institution may rely on different money laundering (ML), terrorist financing (TF) and proliferation financing (PF) indicators to determine the risk that a business relationship and/or single transactions may pose to the accountable institution. One of these indicators relates to geographic locations. It is not the geographic area in of itself that could pose a ML/TF/PF risk, but the features associated with such a geographic area.

There is no single list that accountable institutions can rely on to determine the ML/TF/PF risk posed by a particular geographic area. Rather, this determination must be made by the accountable institutions taking applicable criteria into consideration. There are several open source resources that accountable institutions may consider when determining the ML/TF/PF risks associated with geographic areas.

Where a geographic area is considered to present a high ML/TF/PF risk, the accountable institution must determine how this ML/TF/PF risk will be managed and mitigated.

DISCLAIMER

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OBJECTIVE

This PCC provides guidance on certain ML/TF/PF risk considerations and provides suggested resources that may be consulted in determining the ML/TF risk related to geographic areas.

1. INTRODUCTION

1.1. There are several indicators that may be indicative of money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risks. As expressed in guidance note 7, these indicators can include factors relating to the client, product or services, delivery channels and geographic areas. These indicators assist in the formation and application of the risk-based approach (RBA) to ML/TF/PF.

1.2. The focus of this draft PCC is to elaborate on the geographic area indicator.

1.3. A geographic indicator relates to the ML/TF/PF risks considerations that are associated with a geographic area, where this geographic area is relevant to an engagement with a client. This can include the geographic area in relation to the client, the product or service and the source or destination of the funds in relation to the business relationship, or transaction with a client.

1.4. A geographic area is not limited in definition and can include a specific area within the borders of a country, a country, part of a country, areas of specific interest globally or countries belonging to certain groupings.

1.5. A geographic area in and of itself does not present a ML/TF/PF risk, rather the features attached to the geographic area serve as an indication of the potential abuse for ML/TF/PF within that geographic area.

1.6. Geographic areas may present varying levels of ML/TF/PF risk, ranging from low to high ML/TF risk, as determined in the accountable intuition's risk framework.

1.7. The geographic area indicator must not be reviewed in isolation when determining the ML/TF/PF risk. The geographic area considerations must take into account the inter-connectivity between the other ML/TF/PF risk factors and the geographic areas associated with those factors, as different scenarios may present different ML/TF/PF risks. For example, the ML/TF/PF risk relating to the geographic area of where the client resides may be different compared to the ML/TF/PF risk of the geographic area connected to the source of the funds. As such, the ML/TF/PF risks relating to geographic areas must be understood against the product/service and client risk features and the multiple geographic areas concerned.

1.8. There is no specific list that details the ML/TF/PF risk that countries pose either in South Africa, or internationally. There are, however, organisations that have independently researched certain risks relating to geographic areas, that may be indicative of the ML/TF/PF risk that the geographic area may pose.

1.9. Therefore, in determining the ML/TF/PF risks in relation to geographic considerations within their risk framework, an accountable institution should take into account various external data as published by reliable, reputable and independent third parties which include international anti-money laundering (AML), counter terrorist financing (CTF) and counter proliferation financing (CPF) standard setting bodies.

2. DETERMINING RISK IN RELATION TO GEOGRAPHIC AREAS

2.1. In order to determine the ML/TF/PF risk, an accountable institution would need to review the geographic area against a certain set of factors or criteria. This may result in the accountable institutions deeming the geographic area risk to present either a lower risk, or a higher risk.

2.2. The accountable institution could consider the factors below when reviewing a particular geographic area:

2.2.1. AML/CTF/CPF regulatory framework
2.2.2. The quality of the AML/CTF/CPF regulatory framework
2.2.3. Adherence to and enforcement of the AML/CTF regulatory framework
2.2.4. Country membership to an AML/CTF/CPF organisation
2.2.5. Perceived level of adherence to AML/CTF regulatory framework
2.2.6. Levels of crimes
2.2.7. Level of prosecutions
2.2.8. Perceived levels of bribery and corruption
2.2.9. Perceived levels of state capture by criminal entities
2.2.10. Secrecy and protection of information, and access to information regulatory regimes

2.2.11. Perceived tax havens

2.2.12. Listing of a geographic location on a sanctions listing

2.2.13. Proximity to geographic area, such as bordering geographic areas that may serve as nodal points for ML/TF/PF activities

2.3. Once the ML/TF/PF risk has been determined, the accountable institution must note this in their risk management and compliance programme (RMCP).

3. AVAILABLE SOURCES OF INFORMATION FROM INTERNATIONAL BODIES

3.1. There are several international AML/TF/PF associations publications that accountable institutions may consider as source information to assist in their determination of ML/TF/PF risk in relation to geographic area.

3.2. Although these publications do not specifically determine the ML/TF risk, they do provide an indication of certain behaviours and/or practices that are closely associated to, and act in the facilitation of, ML/TF/PF.

Financial Action Task Force (FATF)

3.3. As the international standard setting body on AML/TF/PF matters, the FATF identifies geographic areas that have significant strategic deficiencies in their AML/CFT regimes.

3.4. When a geographic area is identified and published by the FATF, the FIC will issue advisories explaining the considerations and actions to be taken by accountable institutions in a South African context. These advisories can be found on the FIC's website at www.fic.gov.za under "Media Releases".

3.5. The FATF has identified such geographic areas under the following headings:

3.5.1. Jurisdictions under increased monitoring (informally referred to as the grey list)

3.5.2. High-risk jurisdictions subject to a call for action (informally referred to as the blacklist).

Transparency International

3.6. Transparency International issues an annual report on the corruption perceptions index (CPI). The CPI scores and ranks countries/territories based on how corrupt a country's public sector is perceived to be by experts and business executives. This list is useful in understanding the perceived level of corruption in a particular country.

3.7. This list is available at: https://www.transparency.org/en/cpi

The Organisation for Economic Co-Operation and Development (OECD)

3.8. The OECD established the Anti-Bribery Convention which establishes standards on the prevention of bribery of foreign public officials. All member countries are subject to peer review examinations. The results of these assessments give an overview of the level of compliance with the Anti-Bribery Convention.

3.9. The Anti-Bribery Convention's country reports are available at: http://www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm

The United Nations Office on Drugs and Crime (UNODC)

3.10. The UNODC is a United Nations office which works towards the fight against drugs, organised crime, corruption and terrorism. As part of this, the UNODC has several conventions pertaining to ML, corruption and TF issues.

3.11. This resource is available at: https://www.unodc.org/unodc/en/topics.html.

3.12. The UNODC has further created the International Money-Laundering Information Network (IMoLIN) that provides for an AML/CFT research resource that focuses on the review of several countries' AML/CFT laws and regulations and has identified areas for improvement.

3.13. This resource is available at: https://www.unodc.org/unodc/en/money-laundering/imolin-amlid.html?ref=menuside

The United Nations Security Council (UNSC)

3.14. The UNSC is created in terms of the United Nations Charter and aim to maintain and/or restore international peace. In the achievement of this objective, the UNSC issues sanctions in the form of economic and trade sanctions, arms embargoes, travel bans and financial or commodity restrictions.

3.15. Under the current UNSC measures, sanctions are largely imposed against a particular activity that is present in a specific geographic area (country). Although the current sanctions listings do not indicate that the geographic area is, in and of itself, sanctioned, the UNSC is not precluded from doing so. The reason for a UNSC sanctions listing may, however, be indicative of a higher level of PF and TF risk relating to the geographic area.

3.16. Public Compliance Communication 44 discusses the sanctions listings in greater detail.

3.17. The Counter-Terrorism Committee (CTC) further publishes reports on the implementation of the TF sanctions imposed through United Nations Security Council resolutions 1373 (2001) and 1624 (2005).

3.18. Both the sanctions listings and the reports issued by the UNSC can be found at: https://www.un.org/securitycouncil/sanctions/information.

4. RECOMMENDATIONS TO ACCOUNTABLE INSTITUTIONS

4.1. Accountable institutions should not automatically ratify/adopt the ratings given by a particular source. The accountable institution must rather develop its own risk-based methodology in order to determine a geographic area's overall risk rating in relation to their clients and product or service offering.

4.2. Accountable institutions are reminded that in determining the ML/TF risk in relation to a business relationship or single transaction, they must have a holistic view of all indicators. As such, in a scenario where a geographic area risk is presented as a high ML/TF risk, the accountable institution should not automatically classify this client relationship as a high ML/TF risk. It is not the intention of the risk-based approach to routinely assign the same level of risk to all clients based on a single indicator.

4.3. The accountable institution is advised to review guidance note 7 for a further discussion on the application of a holistic approached to ML/TF risk indicators.

4.4. Accountable institutions should determine their risk appetite in relation to the geographic ML/TF risk. This would entail understanding the ML/TF risk relating to the geographic area and the interconnectivity with other ML/TF indicators and the effectiveness of controls that could be implemented to mitigate or manage this risk. It is not considered effective risk management if an accountable institution decides to de-risk the client and/or transaction only because the ML/TF risk relating to the geographic area is high, without having considered all factors.

Geographic risk indicators

4.5. Geographic risk indicators* must be considered when the accountable institution:

- 4.5.1. Seeks to establish or continue business operations in a geographic area
- 4.5.2. Establishes a business relationship with a client who is based in a different geographic area
- 4.5.3. Seeks to conduct a single once off transaction for a client based in a different geographic area
- 4.5.4. Seeks to process a transaction where either the originator/s, intermediary/ies and/or beneficiary/ies are based in a different geographic area
- 4.5.5. Product and/or service in relation to the client engagement is in a different geographic area.

*This is not an exhaustive list

Recommended controls when exposed to high-risk geographic area

4.6. Where an accountable institution has determined that the ML/TF risk relating to a geographic area is high, in consideration with the other ML/TF risk indicators, they are to consider:

4.6.1. The levels of enhanced due diligence, and the mitigation that would need to be applied in response of the geographic ML/TF risk

4.6.2. The extent of enhanced transaction monitoring

4.6.3. When not to proceed with transactions, whether the funds are coming from, or going to a high-risk geographic area

4.6.4. When they would be required to consider to exit a business relationship where there is a serious ongoing risk of ML/TF/PF within the geographic area that is not in line with the accountable institutions risk appetite.

Consultation note

Commentators are invited to provide additional examples/best practice methods of controls as suggested above.

6. CONSULTATION

6.1 Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding their performance, duties and compliance 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—

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

6.1.2 Consider submissions received.

6.2 Commentators are invited to comment on the draft PCC110 by submitting written comments via the online comments submission link (here) only. Any questions or requests relating to this draft PCC110 may be sent to the FIC only at **consult@fic.gov.za**. Submissions will be received until close of business on **Friday, 27 November 2020.**

7. COMMUNICATION WITH THE CENTRE

7.1 Queries can be directed to the Compliance Contact Centre on 012 641 6000 and select option 1. Queries can also be submitted online by clicking onhttp://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx or visiting the FIC's website and submitting an online compliance query.

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The Director Financial Intelligence Centre

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