



Financial intelligence centre

REPUBLIC OF SOUTH AFRICA

**PUBLIC COMPLIANCE COMMUNICATION No. 18 (PCC 18) –
TRAINING AND APPOINTMENT OF A COMPLIANCE OFFICER BY
ACCOUNTABLE INSTITUTIONS IN TERMS OF SECTION 43 OF THE
FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001**

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 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

An accountable institution is required to provide training to its employees and to formulate internal rules, in order to comply with its compliance obligations as set out in the FIC Act.

An accountable institution is also required to appoint a person, referred to as the section 43 compliance officer. It is the responsibility of the section 43 compliance officer to ensure that the accountable institution and employees of the accountable institution comply with the provisions of the FIC Act and the internal rules formulated for and applicable to the accountable institution.

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Objective

The objective of this PCC is to provide guidance to accountable institutions to assist them in meeting their compliance obligations in terms of section 43 of the FIC Act.

Introduction

The money laundering control measures in terms of the FIC Act impose certain obligations on financial and non-financial accountable institutions, such as the duty to provide training to its employees and to appoint a compliance officer.

A. Training

1. The content of training

- 1.1. Section 43(a) of the FIC Act requires all accountable institutions as listed in Schedule 1 to the FIC Act to provide training to its employees.
- 1.2. Even though the FIC Act does not specify the format of the required training, it is the Centre's view that training provided by the accountable institution should enable its employees to comply with the provisions of the FIC Act and the accountable institution's internal rules.
- 1.3. A training program should educate employees of the accountable institution on the following compliance obligations and the accountable institution's internal procedures dealing with:
 - The duty to identify clients in terms of section 21 of the FIC Act and Regulations 3 to 19 to the FIC Act. A training programme should enable employees to correctly identify different types of clients in accordance with the FIC Act and the Regulations.
 - The duty to keep records in terms of section 22 to 26 of the FIC Act and Regulation 20 of the Regulations. Employees should understand the duty to keep records correctly as per the accountable institution's internal procedures.
 - The reporting duties and access to information in terms of section 27 to 41 of the FIC Act and Regulations 22 to 24 of the Regulations. Employees should be able to correctly identify and report different reportable transactions in accordance with the FIC Act and the Regulations.
 - The measures to promote compliance by accountable institutions in terms of section 42 to 43 of the FIC Act and Regulations 25 to 27 of the Regulations.

1.4. A training programme should educate employees on the content of the accountable institution's internal rules, the details of its compliance officer as well as the responsibilities of the compliance officer.

2. Training of employees and the extent of training required

2.1 Accountable institutions have to establish from their respective risk frameworks and business models the level of training to be provided to relevant staff members in terms of the FIC Act. Different training programmes can be designed and implemented for the different levels of employees within an accountable institution.

2.2 It is the view of the Centre that employees within the accountable institution should receive appropriate training with regards to the FIC Act in line with their responsibilities, activities and skills.

2.3 Employees who are involved in the business of the accountable institution that fall within the parameters of the FIC Act and/or who interact with clients are required to have intensive training on the provisions of the FIC Act.

2.4 Employees that are not involved in the above activities may only require basic training. This will include basic training on the relevant legislation, the accountable institution's internal rules and procedures, and the more obvious warning signs in relation to money laundering.

2.5 Accountable institutions must provide training to the employees in any manner it deems appropriate. Accountable institution must be able to demonstrate that the training took place and that it was sufficient to enable the employees to understand and comply with the FIC Act.

3. Should staff interact with clients before receiving the required training?

3.1 One of the most important controls over the prevention and detection of money laundering is to ensure that employees are alert to the risks of money laundering

and terrorist financing, and are sufficiently trained in the identification of unusual activities or transactions which may prove to be suspicious.

- 3.2 It is therefore the view of the Centre that employees of the accountable institution should not be allowed to deal with clients if they have not received training on the FIC Act and internal rules of the accountable institution. It is further recommended that this should form part of the induction program of the applicable accountable institution.

4. Knowledge assessments

- 4.1 Even though knowledge assessments are not required by the FIC Act, it is the view of the Centre that an accountable institution's training program should include assessments of employees (possibly on different levels, depending on their position within the accountable institution) to ascertain their level of knowledge in relation to the FIC Act obligations

- 4.2 Employees may be assessed, interviewed or be required to write tests in order to evaluate the level of knowledge and understanding on the compliance obligations imposed by the provisions of the FIC Act. However, each accountable institution must determine in accordance with their risk appetite and risk management system whether knowledge assessments should form part of its training programme.

5. Attendance registers

- 5.1 It is the Centre's view that the accountable institution should keep an attendance register to ensure that a record of training attended is kept. Although the use of an attendance register is not required in terms of the FIC Act, it is an acceptable business practice and can serve as proof that the training requirement has been met. The use of an attendance register can also assist the accountable institution to track the number of employees that have been trained

6. The frequency of training that should be conducted

- 6.1 Training should be ongoing and the Centre recommends that employees should also receive refresher training to ensure that employees are kept abreast of any new developments in terms of the FIC Act. The manner, content and frequency of the training is not prescribed and each accountable institution must determine in accordance with their internal rules and risk management system how and when the refresher training should be provided.
- 6.2 Any changes to internal policy, changes in legislation or any other related matters must be included in the training programme and communicated to all employees.
- 6.3 It is also recommended that record be kept of any refresher training conducted by the accountable institution.

7. Courses and certificates

- 7.1 The Centre does not provide courses or certificate courses and furthermore does not endorse any training, courses, seminars, training material or certificate courses dealing with the FIC Act and the Regulations. The Centre does however from time to time present awareness sessions to accountable institutions on the content of the FIC Act and the relevant Regulations in conjunction with the relevant supervisory bodies.

B. Monitoring of Compliance

8. Who should be appointed as a compliance officer?

- 8.1 Section 43(b) of the FIC Act requires all accountable institutions to appoint a person (compliance officer) with the responsibility to ensure compliance by the accountable institution and its employees with the obligations imposed by the provisions of the FIC Act.
- 8.2 The compliance officer is also responsible to ensure that employees comply with both the provisions of the FIC Act as well as internal rules applicable to them.

- 8.3 The FIC Act does not list any specific fit and proper requirements to be appointed as a compliance officer in terms of Section 43(b). However, it is recommended that a compliance officer has a thorough understanding of the institution and the application of the FIC Act to the institution.
- 8.4 It is further recommended that the compliance officer must have sufficient authority and seniority within the institution to be able to fulfil the responsibilities in terms of the FIC Act as well as sufficient independence to have access to all areas of the institution's operations to effect corrective actions accordingly.
- 8.5 It is the Centre's view that a compliance officer should be able to monitor compliance and implement corrective measures to ensure compliance with the FIC Act, and should preferably be at the management or executive level of an accountable institution. Given the differences in nature, size and complexity of businesses, management may be interpreted broadly to mean a person who undertakes the handling, direction or control of FIC Act compliance obligations within a particular accountable institution. This is particularly relevant where the accountable institution is a small business.

9. Formal appointment of the Compliance officer

- 9.1 It is the view of the Centre that the compliance officer should be formally appointed by the board of directors, or the governing board or senior management of the accountable institution. The compliance officer should be issued with a formal appointment letter or at least a detailed description outlining all FIC Act compliance functions that he/she is required to perform.

10. Compliance Officer – Employee or Independent Contractor / Consultant

- 10.1 The FIC Act does not specify whether the compliance officer must be an employee of the accountable institution or an independent contractor / consultant. However, the person appointed as a compliance officer must be a person who has the authority to make, or participate in making decisions that affect the business from a FIC Act compliance perspective.

10.2 It is important to note that the accountable institution remains responsible for any compliance failures.

11. Non-compliance with the provisions of section 43

11.1 An accountable institution that fails to comply with the provisions of section 43 of the FIC Act is guilty of an offence and can be liable to imprisonment for a period not exceeding five years or to a fine not exceeding R10 Million; in terms of section 62 read with section 68 of the FIC Act.

For any further enquiries regarding this Public Compliance Communication No.18, 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
March 2013**

Addendum

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

43. Training and monitoring of compliance— An accountable institution must -

- (a) provide training to its employees to enable them to comply with the provisions of this Act and the internal rules applicable to them;
- (b) appoint a person with the responsibility to ensure compliance by -
 - (i) the employees of the accountable institution with the provisions of this Act and the internal rules applicable to them; and
 - (ii) the accountable institution with its obligations under this Act.