

Administrative FSP – Who is responsible for Customer Due Diligence

By Carolee Reyneke-Minnaar Compliance Researcher and Developer at Moonstone Compliance

Questions surrounding customer due diligence (CDD) have always been prevalent when dealing with instructions from another party. Where the contact with the underlying client of the instructing party is also limited, these questions become even more uncertain.

The Financial Intelligence Centre Act 2002, as amended (FIC Act) places an obligation on all accountable institutions (AIs) to perform CDD on prospective clients entering into a single transaction with the AI, or with whom a business relationship is established. In terms of section 21A of the FIC Act, an AI may not conclude a single transaction or establish a business relationship with an anonymous client.

The question that needs to be answered is, who is the client?

Where an Administrative Financial Services Provider (FSP) being an AI in terms of item 12 of Schedule 1, is engaged by another business, B, to help with work for one of its clients, C, then the Administrative FSP should consider whether its client is, in fact, B, and not C? The critical question to be answered is whether the Administrative FSP has entered into a business relationship or concluded a single transaction with C. If the answer is yes, then there is an obligation to perform CDD on the underlying client, being C.

The FIC Act defines a single transaction as a transaction, other than a transaction concluded in the course of a business relationship and where the value of the transaction is not less than R5 000.00 (five thousand rand). A single transaction is a once-off transaction with no expectation from the accountable institution, or the client, that further transactions will occur again. As opposed to a business relationship, a single transaction will be concluded only once.

A business relationship is defined as an arrangement between a client and an AI for concluding transactions on a regular basis. The term 'arrangement' has not been defined, but entering into a contract or agreement could constitute such an arrangement.

Where an Administrative FSP pays out money (the benefit) to the underlying client C, then that would constitute a single transaction resulting in CDD being required to be completed on the underlying client. If the administrative FSP enters into an agreement with the underlying

client C, then it would constitute a business relationship, and again there would be a requirement to perform CDD on C.

In terms of section 42(2)(b) of the FIC Act, an AI must provide for the manner in which it will determine if a prospective client or current client has entered into a business relationship or single transaction with the AI in its Risk Management and Compliance Program (RMCP). As a result, AIs must state in its RMCP who will be considered to be its clients.

It must be remembered that not all the sections relating to CDD applies to a single transaction. In terms of Public Compliance Communication 43 (PCC 43), Administrative FSP can furthermore rely on the instructing business (an FSP that is also an accountable institution) to provide CDD information and/or documentation in relation to a shared client. Where there is a reliance on such information, the procedure must be well documented in the Administrative FSP's RMCP.

It is of utmost importance that all parties are aware of their obligations as imposed by the FIC Act and all duties that may be as a result thereof.

Should you require any assistance relating to any FICA related matter, please contact our Compliance Department on the following details, for further assistance:

support@moonstonecompliance.co.za.