Financial Intelligence Centre

PUBLIC COMPLIANCE COMMUNICATION

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

PCC SUMMARY

An accountable institution relies on different money laundering (ML), terrorist financing (TF) and proliferation financing (PF) indicators to determine the risk that a business relationship and or single transaction may pose to the accountable institution, one of these indicators relates to geographic areas. It is not the geographic area in and of itself that could pose a ML/TF/PF risk, but the features and activities 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 is made by the accountable institutions taking into consideration applicable criteria. There are several open-source resources that accountable institutions may consider when determining the ML/TF/PF risks associated with geographic areas.

At a minimum, the FIC considers the listings as issued by the FATF regarding ML/TF/PF risk per geographical area as a core data source that has certain implications for South Africa for non-consideration of these risks

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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/PF 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, including the client, product or services, delivery channels and geographic areas, can assist in a comprehensive formulation of an understanding of ML/TF/PF risks and the application of an adequate risk-based approach.

1.2. The focus of this PCC is to elaborate on the ML/TF/PF threats and vulnerabilities posed by international geographic areas. The general principles expressed in this PCC should be applied to the application of domestic geographic area risk considerations, where relevant.

1.3. The exclusion of assessing geographic areas, both internationally and domestically, when determining ML/TF/PF risks may result in an incomplete and inadequate risk management process.

1.4. A geographic area risk indicator relates to the ML/TF/PF risks considerations that are associated with a geographic area, where this geographic area is relevant to a single transaction or business relationship with a client. A geographic area indicator can include the geographic area in relation to the client, the product or service and the inflow and outflow of funds such as the source or destination of the funds in relation to the business relationship, or transaction with a client.

1.5. A geographic area is not limited in definition and can include a specific area within the borders of a country, a country, areas of specific interest globally or countries belonging to certain groupings. Geographic areas include international areas and domestic areas i.e. areas within the borders of South Africa.

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

1.7. There may be varying levels of ML/TF/PF risk associated with geographic areas, ranging from a lower to a higher level of ML/TF/PF risk, as determined in the accountable institution’s risk framework.

1.8. The geographic area indicator should not be reviewed in isolation to other risk factors when determining the ML/TF/PF risk as the inter-connectivity between the other ML/TF/PF risk factors and the geographic areas associated to those factors may present different ML/TF/PF risks. This will allow for a holistic understanding of the risk associated with geographic areas. By means of example, the ML/TF/PF risk relating to the geographic area of where the client resides may be a different ML/TF/PF risk compared to the geographic area connected to the source of the funds. As such, the ML/TF/PF risks relating to geographic areas are to be understood against the product/service and client risk features, activities, and the multiple geographic areas concerned.

1.9. 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 it may pose.

1.10. Therefore, in determining the associated 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 can include international anti-money laundering (AML), counter terrorist financing (CTF) and counter proliferation financing (CPF) standard-setting bodies and commercial enterprises.

1.11. Not all sources of data have the same level of detailed information or relevance to ML/TF/PF risk, making some more reliable than others. At a minimum, the FIC considers the listings as issued by the FATF regarding ML/TF/PF risks associated with certain geographical areas as a core data source, that has certain implications for South Africa (see paragraphs 3.3 to 3.6 below).

2. DETERMINING RISK IN RELATION TO GEOGRAPHIC AREAS

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

2.2. The accountable institution could consider the below features or activities 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. Perceived level of adherence to compliance and enforcement of the AML/CTF/PF regulatory framework by accountable institutions;
2.2.4. Country membership to an AML/CTF/CPF organisation;
2.2.5. Perceived compliance to AML/CTF/PF regulatory framework and quality of supervision by regulatory bodies;
2.2.6. Perceived levels of crimes;
2.2.7. Perceived level of prosecutions;
2.2.8. Perceived levels of bribery and corruption;
2.2.9. Perceived levels of influence of the abuse of public office 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 sanction listing e.g. United Nations Security Council (UNSC) listing, as well as countries subject to restrictions such as trade or arms embargoes;
2.2.13. Proximity to geographic area, such as bordering geographic areas that may serve as nodal points for ML/TF/PF activities or states known to have a sympathetic stance towards ML/TF/PF activity;
2.2.14. Countries with porous borders including sea borders;
2.2.15. Efficiency of independent state agencies in carrying out their respective mandates;
2.2.16. Perceived level, activity or support of efforts aimed at undermining AML/CTF/CPF measures and interventions; and
2.2.17. Presence of high-risk products that may facilitate the movement of funds anonymously.

2.3. The criteria used for the ML/TF/PF risk determination relating to a geographic area must be noted in the accountable institution's risk management and compliance programme (RMCP).

3. AVAILABLE SOURCES OF INFORMATION BY INTERNATIONAL BODIES

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

3.2. Although these publications do not specifically determine the ML/TF/PF risk, they do provide an indication of certain behaviours and/or activities 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/CTF/CPF matters, the FATF identifies geographic areas that have significant strategic deficiencies in their AML/CFT/CPF regimes.

3.4. When such 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. Accountable institutions are to take note of these FIC issued advisories and review the content against their compliance controls and make adjustments to their risk processes as contained in their RMCP, where so required. An accountable institution must be able to demonstrate to their supervisory body if the information contained in the advisory is of relevance to their business and additionally, where it is, the measures taken to address the advisory.

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

3.6.1. Jurisdictions under increased monitoring (informally referred to as the grey list); and

3.6.2. High-risk jurisdictions subject to a call for action (informally referred to as the black list).

Transparency International

3.7. Transparency international issues an annual report on the corruption perceptions index (CPI). They score countries according to the perceived level of corruption of a country's public sector, according to experts and business executives. This list is useful in understanding the perceived level of corruption in a particular country.

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

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

3.9. The OECD established the Anti-Bribery Convention, which has established standards on the prevention of bribery of foreign public officials. All countries that are members of this convention are subject to peer review examinations. The results of these assessments give an overview of the level of compliance with the Anti-Bribery Convention.

3.10. This is available at: http://www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm

The United Nations Office on Drugs and Crime (UNODC)

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

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

3.13. 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 required.

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

The United Nations Security Council (UNSC)

3.15. The UNSC is created in terms of the United Nations Charter and aims 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.

3.16. Under the current measures imposed by the UNSC, 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 in and of itself is sanctioned by the UNSC, the UNSC is not precluded from doing so. The reason that has led to the UNSC sanctions listings may, however, be indicative of a higher level of PF and TF risk relating to the geographic area.

3.17. Public compliance communication 44 discusses the sanctions listings in greater detail.

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

3.19. 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. Rather, the accountable institution must develop its own risk-based methodology in order to determine the risk associated with a geographic area in relation to their clients and product or service offering.

4.2. An accountable institution is reminded that a holistic view of all risk indicators will adequately determine the ML/TF/PF risk in relation to a business relationship or single transaction. As such, in a scenario where a high ML/TF/PF risk is associated to a geographic area, the accountable institution should not automatically classify this client relationship as a high ML/TF/PF 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 approach to ML//TF/PF risk indicators.

4.4. Accountable institutions should determine their risk appetite in relation to the ML/TF/PF risk associated with a geographic area. This would entail understanding the ML/TF/PF risk relating to the geographic area and the inter-connectivity with other ML/TF/PF 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/PF risk relating to the geographic area is high, without having considered all factors.

Geographic risk indicators

4.5. Consideration of geographic area risk indicators can be applicable when the accountable institution*:

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

*This is not an exhaustive list

5 COMMUNICATION WITH THE CENTRE

5.1 The Centre has a dedicated contact call centre geared to assist accountable institutions to understand their registration obligations in terms of the FIC Act. Should you have any queries please contact the Centre's compliance call centre on 012 641 6000 and select option 1.

5.2 In addition, you can submit an online compliance query by clicking on: http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx or visiting the Centre's website and submitting an online compliance query.

Issued By:

The Director Financial Intelligence Centre
Private Bag X177
CENTURION
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