

PUBLIC COMPLIANCE COMMUNICATION

**DRAFT PUBLIC COMPLIANCE
COMMUNICATION**

No. 118

GUIDANCE ON THE INTERPRETATION OF
MONEY OR VALUE TRANSFER SERVICE
PROVIDERS, ITEM 19 OF SCHEDULE 1 OF
THE FINANCIAL INTELLIGENCE CENTRE
ACT, 2001 (ACT 38 OF 2001) AND
POTENTIAL RISK INDICATORS

PCC SUMMARY

The Centre views money or value transfer service (MVTs) providers as “a person who carries on the business of a money or value transfer provider” which includes providing financial services that involve the acceptance of cash, cheques, electronic funds, other monetary instruments or other stores of value and the payment of a corresponding sum in cash, cheque, electronic funds or other form of value to a beneficiary by means of a communication, message, physical or electronic transfer or through a clearing network to which the MVTs provider belongs.

An MVTs can be both formal and informal. The following entities are considered to be formal MVTs providers – authorised dealers (such as banks), authorised dealers with limited authority (other than banks) and a category of financial services providers that have a direct reporting dispensation under the Regulations of the Currency and Exchanges Act, 1933 (Act 9 of 1933) (the Exchange Control Regulations).

THE AUTHORITATIVE NATURE OF GUIDANCE

The Financial Intelligence Centre (Centre) provides the guidance contained in this draft PCC in terms of its statutory function in terms of section 4 (c) of 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 in terms 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 in terms of the FIC Act. Accordingly, guidance provided by the Centre is authoritative in nature and must be taken into account when interpreting the provisions of the FIC Act or assessing compliance of an accountable or reporting institution with its obligations imposed on it by the FIC Act.

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. Where it is found that an accountable or reporting institution has

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not followed guidance which the Centre has issued, the institution must be able to demonstrate that it has complied with the relevant obligation under the FIC Act in an equivalent manner nonetheless.

DISCLAIMER

The publication of a PCC concerning any particular issue, as with other forms of guidance which the Centre provides, does not relieve the user of the guidance from the responsibility to exercise their own skill and care in relation to the users' legal position. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

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OBJECTIVE

This draft PCC provides clarity on the interpretation of "a person who carries on the business of a money or value transfer provider" as designated in item 19 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act).

Further, the draft PCC highlights vulnerabilities faced by MVTs and provides risk indicators that can be considered by an MVTs provider when determining money laundering, terrorist financing and proliferation financing (ML, TF and PF) risks presented in their client engagements.

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1. INTRODUCTION

- 1.1. MVTS providers are accountable institutions as listed in item 19 of Schedule 1 to the FIC Act. The FIC Act does not provide a definition of an MVTS or MVTS provider, and the purpose of this PCC is to clarify the Centre's interpretation of these terms.
- 1.2. Schedule 1 to the FIC Act has been amended and has taken effect from 19 December 2022. Through these changes, item 19 of Schedule 1 to the FIC Act has been amended.
- 1.3. The purpose of this PCC is to clarify the Centre's interpretation of item 19 in relation to MVTS.
- 1.4. MVTS providers face a heightened risk of being misused by criminals for money laundering, terrorist financing and proliferation financing (ML, TF and PF), and as such must adopt measures to mitigate these risks. Heightened risk indicators specific to MVTS are discussed in this PCC.

2. DEFINITION OF A MONEY OR VALUE TRANSFER SERVICE PROVIDER

- 2.1. An MVTS provider is defined in item 19 of Schedule 1 to the FIC Act as:
"A person who carries on the business of a money or value transfer provider".
- 2.2. This definition consists terminology which is discussed below.

General terminology used

- 2.3. **"A person"** which includes both natural persons and legal persons.
- 2.4. **"Carries on the business"** this term is not defined in the FIC Act. The ordinary meaning of the term, within the context of the FIC Act is applied. The use of this term implies that MVTSs are provided as a service to clients.
- 2.5. **"Business"** is that of a commercial activity or institution, as opposed to a charitable undertaking or government institution.

Specific terminology used

- 2.6 **“Money remitter or value transfer”** which includes providing financial services that involve:
- 2.6.1 The acceptance of cash, cheques, other monetary instruments or other stores of value.
 - 2.6.2 The payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer or through a clearing network to which the MVTs provider belongs.
 - 2.6.3 One or more intermediaries and a final payment to a third party and may include any new payment methods.
- 2.7 The concept of an MVTs provider is broad and includes both formal and informal types of persons and entities.

Formal MVTs

- 2.8 It is the Centre’s view that the following entities fall within the definition of formal MVTs providers:
- 2.8.1 Banks
 - 2.8.2 Authorised dealers (ADs) and authorised dealers with limited authority (ADLAs)
 - 2.8.3 A category of financial services providers that have a direct reporting dispensation under the Exchange Control Regulations
 - 2.8.4 Foreign exchange providers
 - 2.8.5 Non-bank issued open loop prepaid cards providers, where a payment is made in order to credit the equivalent amount (or minus a small fee) onto a prepaid card or debit card. This includes a voucher card or a gift card.
 - 2.8.6 Non-bank mobile money service providers (e.g. airtime transfers etc.)
 - 2.8.7 Informal cash transfer service providers. The Centre considers MVTs providers to include informal money remitters who arrange for the transfer and receipt of money or equivalent value and settle through trade, cash and net settlement.

Informal MVTs

2.9 This includes the transfer of value through alternative remittance systems that do not make use of regulated financial institutions. These are persons or entities which provide informal MVTs services, and which sometimes have ties to particular geographic regions and are described using a variety of specific terms. These include, but are not limited to:

2.9.1 Hawala dealers,

2.9.2 Hundi, and

2.9.3 Fei-chen.

Exclusions

2.10 The Centre is of the view that the following services are excluded from the item 19:

2.10.1 The national payment system, as defined in the National Payment System Act (Act 78 of 1998), as this service does not provide an MVTs service to end user clients. Rather, the service is provided to accountable institutions.

2.10.2 Cash aggregators, for example, where the cash aggregator provides the service of collection and aggregation of a client's cash and payments into clients account.

2.10.3. Third-party payment providers (TPPPs) as defined in the South African Reserve Bank's Directive 1 of 2007. TPPPs provide a collection and payment function on behalf of their clients where payment is due in terms of an underlying contract.

3. POTENTIAL MONEY LAUNDERING, TERRORIST FINANCING AND PROLIFERATION FINANCING RISK INDICATORS

3.1. An MVTs provider must conduct an ML, TF and PF risk assessment on a business level, and at a client level. Due to operating in the industry, an MVTs would be best placed to determine where the potential ML, TF and PF vulnerabilities lie. For further information on risk determination, please refer to Guidance Note 7, issued by the FIC and available on www.fic.gov.za.

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Product and service risk indicators

- 3.2 Possible indicators of heightened risk of ML, TF and PF in the business offering, and the abuse of the MVTs offering, may include but not be limited to:
- 3.2.1 The product inadvertently enabling anonymity.
 - 3.2.2 The transaction limit of a product is high or there is no limit.
 - 3.2.3 The product enables fast cross-border transfer of funds either as an electronic funds transfer, cash transportation, or value transfer including mobile money or prepaid card.
 - 3.2.4 The product can be exchanged for another type of value, such as a prepaid card.
 - 3.2.5 Rapid in and out of transactions across an account.
 - 3.2.6 Several individuals deposit money into a single bank account on a frequent basis, followed by international transfers outward.
 - 3.2.7 Transactions conducted in a manner that falls beneath the cash transaction reporting threshold.
 - 3.2.8 Currency transfers to high-risk jurisdictions.
 - 3.2.9 Implausible explanation regarding source of the funds.
 - 3.2.10 Transactions not consistent with the client's usual foreign business transactions.
 - 3.2.11 Numerous cash withdrawals near a geographic border.
 - 3.2.12 Client in possession of large amounts of foreign currency without a reasonable explanation.
 - 3.2.13 Usage of false identity documents to send money and to claim cash by someone using false documentation to identify themselves as the beneficiary.
 - 3.2.14 The transferring of currency to high-risk jurisdictions without reasonable explanation and transactions not consistent with the customer's usual foreign business dealings.
 - 3.2.15 The exchange of large amounts of currency in low denomination notes for higher denominations.
 - 3.2.16 Purchasing foreign currency with large cash amounts.

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- 3.2.17 Client's personal remittance has no link to the country to which they send or receive money, or no apparent family or business links and they cannot adequately explain why money is being sent or received from there.
- 3.2.18 Client makes use of different money remittance businesses for transactions and money is received from different money remittance businesses.
- 3.2.19 Funds are transferred by the same client on the same day to several money remitter locations to purportedly the same or different recipients.
- 3.2.20 There is an unusual request made by the client for collection or delivery.
- 3.2.21 The geographic location to or from which payment is being made is of immense importance, there is a heightened risk of MVTS provider products and services being misused for ML, TF and/or PF.

Client risk indicators

- 3.3 In addition to the factors stated in FIC Guidance Note 7, there are specific client level indicators that are applicable to the MVTS sector, which include:
 - 3.3.1 The client resides or operates a business an unusual distance from the MVTS where it chooses to transact.
 - 3.3.2 Client networks are evident from transaction patterns such as, various originators sending funding to the same beneficiary etc.
 - 3.3.3 Client does not want to disclose information on originator.
 - 3.3.4 Client operates a cash intensive business which does not appear to be legitimate
 - 3.3.5 Nature and volume of transactions do not match the client's historic transaction patterns i.e. larger transactions take place when illegal drugs are produced.
 - 3.3.6 The transactions do not match the client historic patterns.

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4. POTENTIAL MONEY LAUNDERING, TERRORIST FINANCING AND PROLIFERATION FINANCING RISK INDICATORS RELATING TO THE USE OF A MONEY OR VALUE TRANSFER SERVICE PROVIDER AS A CORRESPONDENT

4.1 Where an accountable institution conducts business through a correspondent MVTS provider, the following indicators may be considered when assessing the ML, TF and PF risks:

- 4.1.1 Nature and size of the MVTS
- 4.1.2 The risk profile of the MVTS' clients
- 4.1.3 The complexity of the MVTS business and clients
- 4.1.4 Whether the MVTS is based in a country of concern due to that country's levels of ML, TF and PF including considering whether that country has a weak regime for AML, CFT and/or CPF
- 4.1.5 The transaction limits and whether they are below reporting threshold
- 4.1.6 The volumes and values of the MVTS' transactions.

5 CONSULTATION

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

- 5.1.5 Publish a draft of the guidance by appropriate means of publication and invite submissions
- 5.1.6 Consider submissions received.

5.2 Commentators are thus invited to comment on the draft guidance by submitting written comments via the [online comments submission link only](#). Any questions or requests relating to this draft PCC 118 may be sent to the Centre only at **consult@fic.gov.za**. Submissions will be received until **Friday, 20 January 2023** by close of business.

6 COMMUNICATION WITH THE CENTRE

- 6.1 The Centre has a dedicated compliance contact centre geared to assist accountable institutions to understand their registration obligations in terms of the FIC Act. Please call the compliance contact centre on 012 641 6000 and select option 1.
- 6.2 Compliance queries may also be submitted online 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

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