

PUBLIC COMPLIANCE COMMUNICATION

DRAFT PUBLIC COMPLIANCE COMMUNICATION No. 119

GUIDANCE ON THE INTERPRETATION OF
HIGH-VALUE GOODS DEALERS, ITEM 20
OF SCHEDULE 1 TO THE FINANCIAL
INTELLIGENCE CENTRE ACT, 2001 (ACT 38
OF 2001) AND POTENTIAL RISK
INDICATORS

PCC SUMMARY

A “high-value goods dealer ” (HVGD) is listed in item 20 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) as a person who carries on the business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of R100 000.or more, whether the payment is made in a single operation or in more than one operation that appears to be linked, where “high-value goods” means any item that is valued in that business at R100 000. or more.

This draft public compliance communication (PCC) provides guidance on the practical interpretation and application of the definition of HVGD. Included as HVGDs are certain motor vehicle dealers and dealers in precious metals and dealers in precious stones.

This PCC provides an overview of certain money laundering, terrorist financing and proliferation financing vulnerabilities.

THE AUTHORITATIVE NATURE OF GUIDANCE

The Financial Intelligence Centre (the 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

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provided by the Centre. Where it is found that an accountable or reporting institution has 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 guidance on the practical interpretation and application of the definition of HVGD. Included as HVGDs are certain motor vehicle dealers and dealers in precious metals and dealers in precious stones.

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1. INTRODUCTION

- 1.1. Item 20 of Schedule 1 to the FIC Act lists high-value goods dealers (HVGDs) as accountable institutions. The FIC Act does not provide for the interpretation of an HVGD, and the purpose of this PCC is to clarify the Centre's interpretation of this term.
- 1.2. HVGDs are vulnerable to abuse by criminals for money laundering, terrorist financing and proliferation financing. Trends indicate criminals often seek to buy high-value goods with the proceeds of crime. Therefore, it is vital to regulate the HVGD sector which includes, among others, certain motor vehicle dealers and dealers in precious metals and dealers in precious stones (DPMS).
- 1.3. Listed previously in the FIC Act as reporting institutions, motor vehicle dealers and Kruger rand dealers are removed under Schedule 3 to the FIC Act and in certain instances are included as accountable institutions.

Definition of an HVGD

- 1.4. An HVGD includes *“a person who carries on the business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of R100 000 or more, whether the payment is made in a single operation or in more than one operation that appears to be linked, where “high-value goods” means any item that is valued in that business at R100 000 or more”*.
- 1.5. There are various requirements in this definition that must be met by an entity, before that entity is considered to be an HVGD and as such, an accountable institution. These requirements include:
 - 1.5.1. **“A person”**, which includes both natural and legal persons.
 - 1.5.2. **“Carries on the business of dealing”** – this term is not defined in the FIC Act. The ordinary meaning of the term, within the context of the FIC Act is applied.
 - 1.5.3. **“Business”** is that of a commercial activity or institution, as opposed to a charitable undertaking or government institution, and

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- 1.5.4. **“Dealing”** means to trade, sell or buy with a focus in the retail sector where the ML, TF and PF risk is high.

In other words, a person is an HVGD where the entity’s commercial activity is to trade in high-value goods as part of their ordinary course of business. The intention is to cover the sale or trading of high-value items.

Example 1 – “Business of dealing” is not met

A consulting firm sells their fleet vehicles as part of downsizing for R120 000.00 per vehicle. This activity does not form part of their ordinary course of business, therefore the consulting firm is not regarded as a high-value goods dealer.

- 1.5.5. **“High-value goods”** means that a particular item is valued at R100 000 or more and not a few items where the total combined value amounts to R100 000.
- 1.5.6. The Centre is of the view that high-value goods include movable and tangible items, e.g. vehicles and vehicle parts, precious metals and precious stones where the value of each item is valued at R100 000 or more. This is not an exhaustive list.
- 1.5.7. Excluded from definition of high-value goods are non-tangible items e.g. shares, trading stock, commodities investments. In other words, the high-value good must be an actual physical item.
- 1.5.8. Further, high-value goods can include both new and second-hand goods.

Example 2 – Items that do meet the definition of high-value goods

A dealer in precious metals and precious stones has items that are valued at R100 000 or more per single item (e.g. a diamond ring at R100 000.) and many items valued below R100 000 (watches at R20 000). Given that there are goods where each of the items is valued at R100 000 and more per item, the DPMS would meet the definition of HVGD.

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Example 3 – Items that do not meet the definition of high-value goods

A car dealership stocks vehicles to the value of R60 000 at a maximum per vehicle. The car dealership would not meet the definition of an HVGD, even if there were multiple vehicles in the lot, as it does not sell or buy any vehicles where each vehicle is valued at R100 000 or more.

1.5.9. **“A business receives payment in any form to the value of R100 000.”**

1.5.9.1. The receipt of funds is linked to the value of the high-value good. Where the high-value good is valued at R100 000 or more per single item and the entity receives funds as part of the ordinary course of business.

1.5.9.2. The definition does not specify the form in which the transaction is made, and therefore includes all payment types e.g. cash, cheque, electronic funds transfers, credit card payments and crypto payments. This list is not exhaustive.

1.5.9.3. Where the business receives payment of R100 000 or more through a credit agreement(s) that is facilitated by the HVGD, the credit transaction would fall within the ambit of both the definition of payment as required of an HVGD **and** that of item 11 to Schedule 1 of the FIC Act, a credit provider. Readers are referred to Draft PCC 23A for a discussion on the definition of a credit provider under item 11 and PCC 5D, as a dual registration is required.

1.5.10. **“Whether the payment is made in a single operation or in more than one operation that appears to be linked”**

1.5.10.1. The amount of R100 000 or more can be paid or received in a lump sum (e.g. once-off payment of the full amount) or paid and received in several smaller amounts which add up to an amount of R100 000 or more e.g. a deposit paid of R20 000 and then the remaining R80 000 paid later.

Practical application of the definition of an HVGD

1.6. The FIC Act obligations that apply to accountable institutions are ringfenced to scenarios where the full definition of an HVGD is met.

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- 1.7. Where any high-value good is below the threshold amount of R100 000, such a transaction or business relationship would not attract the full obligations as applicable to the HVGD.
- 1.8. However, reporting of suspicious and unusual transaction in terms section 29 of the FIC Act remains a mandatory obligation regardless whether a transaction or business relationship meets the definitions of an HVGD.
- 1.9. Further, the legal obligation in terms of section 26B of the FIC Act prohibiting any persons from dealing with persons and entities sanctioned by the United Nations Security Council remains an obligation regardless whether or not a transaction or business relationship meets the definition of an HVGD.

Example 4 – application of HVGD definition: items of varying value

A DPMS has items that are valued at R100 000 or more per single item (e.g. a diamond ring at R100 000) and many items valued below R100 000 (watches at R20 000). Given that there are goods where each of the items is valued at R100 000 and more per item, the DPMS would meet the definition of an HVGD.

The DPMS would be required to register with the Centre and have a risk management and compliance programme (RMCP) in place, including training of staff, appointing a compliance officer and keep records.

When entering into the transaction relating to the diamond ring (valued at R100 000), the DPMS must apply all the FIC Act obligations in relation to this client.

When entering into the transaction relating to the watch (valued at R20 000), the DPMS need not apply the FIC Act obligations in relation to this client. Should this transaction be considered suspicious or unusual, there would be a regulatory reporting obligation in terms of section 29 to the FIC Act. Further, should the client be listed on a sanctions list, the DPMS would not be permitted to continue with the transaction.

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- 1.10. Where an entity structures a deal for a high-value goods item in a manner that is intended to evade the threshold so that it may not fall within the definition of an HVGD, the entity will be non-compliant with their obligations in terms of the FIC Act.

2. ACCOUNTABLE INSTITUTIONS' OBLIGATIONS

Registration

- 2.1. An HVGD is required to register as an accountable institution in terms of section 43B of the FIC Act.
- 2.2. Where the business has not yet dealt with a high-value goods item at the threshold of R100 000 or more, however, the business has a reasonable expectation that it will deal in such high-value goods, then that business must register as an accountable institution and not wait until it deals in an item at the prescribed threshold. At this point the business must implement controls to meet the obligations as set out in the FIC Act. This will ensure that the HVGD is in a position to effectively comply with the FIC Act prior to entering into a transaction or business relationship with the client and would not unnecessarily delay their business.
- 2.3. There may be instances where a HVGD also provides credit for the sale of goods, as discussed in paragraph 1.5.7.3 above. In the scenarios where the entity meets the definition of both a HVGD and a credit provider then that entity would be subject to a dual registration obligation. (Credit providers are accountable institutions in terms of item 11 of Schedule 1 to the FIC Act.)

Transitional registration requirements

- 2.4. All motor vehicle dealers and Kruger rand dealers that are registered on the Centre's registration and reporting platform, goAML, as a reporting institution in terms of the repealed Schedule 3 to the FIC Act will automatically be converted to item 20 to Schedule 1 of the FIC Act on the goAML platform.
- 2.5. Should a motor vehicle dealer or Kruger rand dealer **meet** the definition of an HVGD, they are urged to review their registration profile on goAML to update and confirm:

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- 2.5.1. Their specific business category (select the specific applicable category made available)
 - 2.5.2. The person responsible for compliance (i.e. compliance officer and money laundering and reporting officer as per goAML role profiles). Note, this may be the same person that is currently registered, and if so, no changes would be required, and
 - 2.5.3. Any other information that may have changed.
- 2.6. A motor vehicle dealer or Kruger rand dealer that is registered on the Centre's registration and reporting platform, goAML, as a reporting institution in terms of the repealed Schedule 3 to the FIC Act must **de-register** their profile should they **not meet** the definition of an HVGD.
- 2.7. Failure to update registration information with the Centre amounts to a contravention of Directive 1 as issued by the Centre.
- 2.8. Entities are encouraged to consult PCC 5D to read the registration considerations applicable to accountable institutions.
- Customer due diligence*
- 2.9. Customer due diligence (CDD) obligations relate to part 1 of chapter 3 of the FIC Act and include the obligation to ensure that they do not engage with an anonymous client, must obtain client information and documentation in accordance with their RMCP, conduct ongoing due diligence and apply processes regarding politically exposed persons (PEPs).
- 2.10. CDD obligations arise when the factual requirements as per item 20 of Schedule 1 are met. In other words, an HVGD must perform CDD on a client when entering into a transaction or business relationship that relates to a high-value good.
- 2.11. The HVGD is not considered to be an accountable institution for purposes of transactions conducted that do not meet the full definition of a high-value good. As such, where an HVGD does not deal with high-value goods exceeding R100 000 per

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item with a client, the HVGD does not have to conduct CDD on that client (please refer to example 4 above for practical consideration).

- 2.12. Where the HVGD conducts a single transaction above the single transaction threshold of R5 000 as set out in the Money Laundering and Terrorist Financing Control Regulations, or establishes a business relationship with a client, where in both instances the single item is less than R100 000, the entity would not have a CDD obligation in respect of that client.
- 2.13. Where a client returns on a regular basis to purchase items where the value per item does not exceed R100 000, the entity would not be regarded as an accountable institution and would not have to conduct CDD on that client.
- 2.14. The Centre recommends that an HVGD conducts CDD on clients where the high-value good is less than the threshold but the HVGD becomes aware of a suspicious or unusual transaction or activity

Example 5: examples of when a CDD obligation does not arise

An HVGD that is a motor vehicle dealer has a parts department and a car sales department. The car sales department sells cars above and below R100 000. The parts department sells parts varying in value, but no single item exceeds the amount of R100 000.

The HVGD must register as an accountable institution by virtue of the sale of high-value goods above the threshold.

Client X purchase two vehicles, each at R50 000, totalling R100 000 for the two items; the entity does not have to conduct CDD on this client. Client Y returns occasionally to buy parts of more than R5 000 from the parts department. The entity does not have to conduct CDD on this client.

Client Z buys a motor vehicle which purchase price does not exceed R100 000; the entity does not have to conduct CDD this client.

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Reporting – cash threshold and terrorist property reporting considerations

- 2.15. Similar to the CDD obligations discussed above, an HVGD's reporting obligations relating to cash threshold reports (CTR) in terms of section 28 and terrorist property reports (TPR) in terms of section 28A of the FIC Act only arises in a transaction or business relationship relating to a high-value good with a client.
- 2.16. A CTR or TPR regulatory reporting obligation does not arise for transactions or business relationships relating to items that are not high-value goods (i.e. where the item is less than R100 000). e.g. if an HVGD enters into a transaction of less than R100 000 per item, and they receive cash, this would not be reportable, unless it is a suspicious or unusual transaction.
- 2.17. Should an HVGD enter into a transaction in relation to a high-value good, and the client pays a portion of the R100 000 or more in cash which meets the CTR reporting threshold of R49 999.99 and above, the cash element remains reportable to the Centre as a CTR.

Example 6: CTR considerations for when a portion of the funds are in cash

Where the HVGD sells a vehicle that costs R100 000 to client X. Client X then proceeds to pay the HVGD, an amount of R60 000 in cash and the remaining balance of R40 000 via an EFT payment.

The HVGD has an obligation to file a CTR report to the Centre on the cash part of the payment, as it exceeds the prescribed cash threshold for CTRs. Refer to Guidance Note 5B.

3. *Examples of business activities that fall within the HVGD item 20 category*

- 3.1. The following list provides examples of HVGDs:
 - 3.1.1. Kruger rand dealers, which include any person who as a regular feature of his/her business, deals in jewellery, ornaments, watches or other objects that contain Kruger rands irrespective of the value of the turnover of the Kruger rand dealer. The Kruger rand can be either gold, platinum or silver.

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- 3.1.2. Dealers in valuable coins e.g. numismatic dealers – those dealing in any valuable coins in precious metals.
- 3.1.3. Motor vehicle dealers, which include any person who is engaged in the business of buying, selling, or exchanging any new and second-hand self-propelled vehicle, including a vehicle having pedals and an engine, or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by these means on land, as well as any trailer and caravan.
- 3.1.4. Dealers in precious metals and dealers in precious stones, which include any persons who is a dealer in the metal gold, any metal of the platinum group and the ores of such metals, and any other metal that the relevant Minister has declared by notice in the Gazette to be a precious metal for the purposes of the Precious Metals, 2005 (Act 37 of 2005), and the ores of any such metal, as defined in such Act.
- 3.1.5. Second-hand dealers in precious metals and stones, including metals such as gold, iron ore, platinum and copper.
- 3.1.6. Diamond dealers, which include any persons that holds a diamond dealer license in terms of section 26 of the Diamonds Act, 1986 (Act 56 of 1986).
- 3.1.7. Antique dealers which include any persons who deal in goods representing a previous era in human society and which are collected or desirable because of age, rarity, condition, utility, or other unique features, as defined in the Second-Hand Goods Act, 2009 (Act 6 of 2009).
- 3.1.8. Fine art dealers which include any persons who as a business sell works of art that are valued at R100 000 or more.
- 3.1.9. Aircraft and helicopters dealers which include any persons who is engaged in the business of buying, selling or exchanging any new and second-hand self-propelled aircrafts or helicopters.
- 3.1.10. Luxury boat or yacht dealers which include any person who is dealing in any type of vessel capable of navigation by water including a barge, lighter or other floating vessel; a structure that is able to float or be floated and is able to move or be moved from one place to another, and a dynamically supported craft.
- 3.2. The above list of HVGDs is not exhaustive, where a person fulfils the definition as set out in item 20 of Schedule 1 to the FIC Act, then that person is an accountable institution.

Consultation note: Call for recommendations

The Centre calls for recommendations on which other entities should be considered to fall within the definition of an HVGD. Examples can include dealers in art and antiques, dealers in boats/yachts, mining, farming, etc. Consideration must be given to the level of ML/TF/PF risk that industry faces.

Note, that this activity must form part of their ordinary course of business, that is, a person is a HVGD where the entity's commercial activity is to trade in high-value goods as part of their ordinary course of business.

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

- 4.1 HVGDs must conduct a risk assessment of their business, to identify and assess the particular ML, TF and PF risk that they face. Public compliance communication 53 (PCC53) and Guidance Note 7 provides detailed guidance on how this is to be done and provides general factors to consider when compiling a risk management and compliance programme (RMCP).
- 4.2 There are additional specific ML, TF and PF risk indicators that an HVGD should consider, these are expanded on below:

Potential heightened risk indicators

- HVGDs could consider the following potential heightened risk indicators: Unusual sales or purchase activity by client
- Unusually linked transactions
- Goods purchased by suspected criminal syndicates
- A potential sale or purchase of goods does not appear to be normal business practice, does not have a valid commercial reason or makes no economic sense.
- A client seeks to structure cash payments in a manner aimed at avoiding detection of cash threshold reporting
- High-value cash payments

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- A new customer with minimal history in dealing in precious metals and stones making numerous payments
- Goods purchased far away from residential or business area with no rational reason
- The transaction involves an FPIP or high-risk DPIP, their immediate family member or known close associate.
- Cash payment followed by cancellation and request for a refund via electronic funds transfer
- Large denomination cash payments
- Payments from high-risk jurisdictions.

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—

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

5.1.2. Consider submissions received.

5.2. Commentators are 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 119 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

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- 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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