

PUBLIC COMPLIANCE COMMUNICATION

PUBLIC COMPLIANCE COMMUNICATION No. 47A (PCC 47A)

**GUIDANCE ON THE INTERPRETATION OF
LEGAL PRACTITIONERS, ITEM 1 OF
SCHEDULE 1 TO THE FINANCIAL
INTELLIGENCE CENTRE ACT, 2001
(ACT 38 OF 2001) AND POTENTIAL RISK
INDICATORS**

PCC SUMMARY

A legal practitioner for purposes of item 1 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) includes “(a) *A person who is admitted and enrolled to practise as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) and who is– (i) an attorney (including a conveyancer or notary) practising for his or her own account as contemplated in section 34(5)(a) of that Act; or (ii) an advocate contemplated in section 34(2)(a)(ii) of that Act. (b) A commercial juristic entity, as contemplated in section 34(7) of the Legal Practice Act, 2014*”.

This PCC provides guidance on the practical interpretation and application of the definition of legal practitioner for purposes of the FIC Act, and an overview of certain anti-money laundering, counter terrorist financing and counter proliferation financing vulnerabilities legal practitioners face.

THE AUTHORITATIVE NATURE OF GUIDANCE

The Financial Intelligence Centre (Centre) provides the guidance contained in this 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 on a number of matters concerning compliance with 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 considered when interpreting the provisions of the FIC Act or assessing compliance of an accountable institution with the 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 has been non-compliance with the guidance provided by the Centre. Where it is found that an accountable institution has not followed guidance which the Centre has issued, the institution must be able to demonstrate that it has

nonetheless complied with the relevant obligation under the FIC Act in an equivalent manner.

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 PCC provides clarity on the interpretation of legal practitioner for purposes of the application of the FIC Act.

Further, the PCC highlights vulnerabilities faced by legal practitioners and provides risk indicators that can be considered by a legal practitioner, including a conveyancer or notary, when determining money laundering and terrorist financing risks presented in their client engagements.

1. INTRODUCTION

- 1.1. Schedule 1 to the FIC Act has been amended with effect from 19 December 2022.
- 1.2. Item 1 of Schedule 1 to the FIC Act has been amended. The changes to item 1 are a technical amendment which takes into account the repeal of the Attorneys Act, 1979 (Act 53 of 1979), and which has been replaced by the Legal Practice Act, 2014 (Act 28 of 2014) (LPA).
- 1.3. Item 1 of Schedule 1 to the FIC Act continues to cover attorneys practising for their own account; and legal firms; and now includes advocates contemplated in section 34(2)(a)(ii) of the LPA that practice with a fidelity fund certificate, that is, those advocates that may deal directly with clients from the public.
- 1.4. The purpose of this PCC is to clarify the Centre's interpretation of item 1 in relation to legal practitioners.
- 1.5. The Centre will supervise and enforce compliance with the FIC Act obligations (anti-money laundering, combating of terrorist financing and combating of proliferation financing (AML, CFT and CPF) for legal practitioners in terms of section 4 of the FIC Act.

2. INTERPRETATION OF A LEGAL PRACTITIONER

Definition of a legal practitioner

- 2.1. Item 1 of Schedule 1 to the FIC Act includes as an accountable institution:

“(a) A *person who is admitted and enrolled to practise as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) (LPA) and who is–*

 - (i) *an attorney (including a conveyancer or notary) practising for his or her own account as contemplated in section 34(5)(a) of that Act; or*
 - (ii) *an advocate contemplated in section 34(2)(a)(ii) of that Act.*

(b) *A commercial juristic entity, as contemplated in section 34(7) of the LPA”.*

2.2. This definition of legal practitioner consists of three categories of legal practitioners, as discussed below:

2.2.1. An attorney (including a conveyancer or notary) practising for his or her own account as contemplated in section 34(5)(a) of the LPA Act.

2.2.1.1. Includes natural persons.

2.2.1.2. Practising for their own account, and not in partnership with other attorneys.

2.2.1.3. Where the attorney is on the practising roll of the Legal Practice Council, and

2.2.1.4. Is required to have a fidelity fund certificate.

2.2.2. An advocate contemplated in section 34(2)(a)(ii) of the LPA Act.

2.2.2.1. Includes natural persons.

2.2.2.2. Receives requests directly from a member of the public or from a justice centre for services.

2.2.2.3. Is required to have a fidelity fund certificate, and

2.2.2.4. Is enrolled to practise as an advocate.

2.2.3. A commercial juristic entity, as contemplated in section 34(7) of the LPA 2014

2.2.3.1. Includes instances where the shareholding, partnership or membership comprises attorneys exclusively.

2.2.3.2. That provides legal services to be rendered only by or under the supervision of admitted and enrolled attorneys.

3. REGISTRATION OBLIGATIONS IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT

3.1. All legal practitioners as set out in item 1 of Schedule 1 to the FIC Act must register as accountable institutions with the Centre, in the manner as set out in Public compliance communication 5D (PCC5D) as published on the Centre's website.

3.2. Legal practitioners who are employed by a commercial, juristic entity, as contemplated in section 34(7) of the LPA, which entity is registered with the Centre, are not required to register separately with the Centre.

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

- 4.1. Legal practitioners offer a wide range of legal services to a diverse range of clients. Property conveyancing services, advising and creating of legal entities, including shell companies and trusts, and the holding of client funds in trusts, makes legal practitioners potentially vulnerable to abuse by criminals. These services may be of interest to criminals as it may enable them to transfer illicit proceeds obtained from criminal activities between parties and to obscure ownership.
- 4.2. Legal practitioners may be used to add the perception of respectability to their clients' activities, e.g. financial institutions may ask fewer questions of the transaction or accounts due to the perceived respectability and legitimacy added by the involvement of a legal practitioner acting on behalf of a client.
- 4.3. Below are examples of risk indicators that may be helpful to legal practitioners when evaluating risk in the ordinary course of business. The list is not exhaustive.
 - 4.3.1. The legal practitioner is located far away from the client and there is no logical or economic reason for this.
 - 4.3.2. The legal practitioner does not have the necessary experience or specialist knowledge that the client requires.
 - 4.3.3. The client is prepared to pay excessive amounts in fees and charges to the legal practitioner.
 - 4.3.4. The client has changed legal practitioners numerous times within a short period.
 - 4.3.5. Another legal practitioner has refused to provide the services sought by the client.
 - 4.3.6. Instructions from the client to the legal practitioner are inconsistent with the size, experiences or services offered by the legal practitioner.
 - 4.3.7. There are significant differences between the declared price and the approximate actual values for immovable or movable property.
 - 4.3.8. Transactions involve large amounts of cash, inconsistent with the client profile.

- 4.3.9. The client is represented by a third party without logical or economic explanation.
- 4.3.10. The client makes cash payments into the legal practitioner's trust account.
- 4.3.11. A third party pays for the client transaction with no apparent logical or economic reason.
- 4.3.12. The transaction includes the transfer of funds to or from a foreign geographic area with no valid economical or logical reason.
- 4.3.13. The transaction includes the transfer of funds to or from a foreign high-risk geographic area.
- 4.3.14. The transaction involves crypto assets.
- 4.3.15. The legal practitioner's expenditure is funded by a third-party entity or government entity.
- 4.3.16. Payment is deferred to a later date, with no guarantee to pay later, with no logical or economic reason.
- 4.3.17. The client requests to pay for the transaction over an excessive period (either an unusually short or long repayment period) which does not make logical or economic sense.
- 4.3.18. The transaction involves the purchase of property with cash and soon thereafter the property is used as security for a loan.
- 4.3.19. The client requests a change to the payment method or type with no logical or economic reason.
- 4.3.20. The client is a recently incorporated company or established entity with large capital amounts which does not match the client's source of funds.
- 4.3.21. The legal practitioner's client receives excessive capital donations with no logical explanation.
- 4.3.22. There is an excessively high or low price attached to the securities transferred with regard to any circumstance indicating such an excess (e.g. volume of revenue, trade or business, premises, size, knowledge of declaration of systematic losses or gains) or with regard to the sum declared in another operation.
- 4.3.23. The transaction involves a foreign politically exposed person, a domestic politically exposed person or a prominent influential person as beneficial owner of the client.

5. ADDITIONAL RESOURCES

- 5.1. To assist legal practitioners, the Centre published a sector risk assessment in March 2022 titled, [Assessment of the inherent money laundering and terrorist financing risks: Legal Practitioners](#), which is available on the Centre's website.
- 5.2. For additional reading consult the [Guidance for a risk-based approach: Legal professionals](#) (2019) available on the Financial Action Task Force website.

6. COMMUNICATION WITH THE CENTRE

- 6.1 The Centre has a dedicated compliance contact centre geared to assist all legal practitioners to understand their registration obligations in terms of the FIC Act. The compliance contact centre may be reached by calling 012 641 6000 and thereafter selecting option 1.
- 6.2. In addition, queries may be submitted via 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 Acting Director: Financial Intelligence Centre

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