financial intelligence centre
REPUBLIC OF SOUTH AFRICA

PUBLIC COMPLIANCE COMMUNICATION NO. 11 (PCC11)
THE CLOSING OF A CLIENT'S ACCOUNT BY AN ACCOUNTABLE INSTITUTION AMOUNTS TO A TRANSACTION IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT NO. 38 OF 2001, AS AMENDED

The Financial Intelligence Centre (the Centre) provides the guidance contained in this Public Compliance Communication (PCC) in terms of its statutory function under section 4(c) of the Financial Intelligence Centre Act No. 38 of 2001, as amended (the FIC Act), read together with Regulation 28 of the Money Laundering and Terrorist Financing Control Regulations (the Regulations) issued under 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 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 under the FIC Act. Guidance provided by the Centre is authoritive in nature. An accountable institution must comply with guidance issued by the Centre, or explain the reasons for non-compliance if prompted by the Centre. 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.

PCC Summary

The closing of a client's account by an accountable institution and the transferring of the remaining balance to the client amounts to the conclusion of a transaction with a client in terms of the FIC Act.

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.

Objective

The objective of this PCC is to provide the Centre's view on an accountable institution closing a client's account and subsequently transferring the remaining balance to the client.

1. Introduction

1.1 The money laundering control measures prescribed by the FIC Act impose certain obligations on accountable institutions. The duty to identify clients and the duty to keep record are listed in Part 1 and Part 2 of Chapter 3 of the FIC Act respectively.

2. Part 1 of Chapter 3 the FIC Act - The duty to identify clients

2.1 Part 1 of Chapter 3 of the FIC Act, and specifically section 21 of the FIC Act deals with the identification of clients and other persons. Section 21 prohibits accountable institutions from establishing business relationships or entering into single transactions with their clients unless they have established and verified the identities of their clients, or established and verified the identities of persons representing their clients.

2.2 Chapter 1 of the Regulations, and specifically Regulations 2 to 16, deals with the establishment and verification of the identity of the different types of clients and should be read in conjunction with section 21 of the FIC Act.

3. Part 2 of Chapter 3 of the FIC Act - The duty to keep record

3.1 Part 2 of Chapter 3 of the FIC Act deals with the duty of accountable institutions to keep record of business relationships and transactions with clients (section 22). It furthermore sets out the period for which records must be kept (section 23) and the keeping of records by third parties (section 24).

3.2 Regulation 20 deals with record keeping, specifically the particulars of third parties keeping records for the accountable institution and should be read in conjunction with section 24 of the FIC Act.

4. Closing of an account amounts to a transaction

4.1 A transaction is defined in the FIC Act as a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution.

4.2 The closing of an account is an action which terminates a business relationship. This is inherently linked to the existence of a business relationship and is performed in the course of that business relationship.

4.3 Hence the termination of a business relationship in accordance with the nature of an accountable institution's business, such as the closing of an account by an accountable institution which provides account-based services to its clients, amounts to a transaction in the course of that business relationship.

4.4 It is the Centre's view that the closing of a client's account by an accountable institution and the transferring of the remaining balance to the client amounts to the conclusion of a transaction with a client in the course of a business relationship.

4.5 An accountable institution may not conduct a transaction in the course of a business relationship unless it has complied with Part 1 and Part 2 of Chapter 3 of the FIC Act as well as the relevant Regulations.

5. Conclusion

5.1 The closing of a client's account amounts to a transaction and may not be performed unless an accountable institution has complied with the relevant identification, verification and record keeping requirements as prescribed by the FIC Act at the time when the relevant business relationship was established.

5.2 For any further enquiries regarding this PCC 11, please contact the Centre on **0860 342 342**, or by sending an email to: fic_feedback@fic.gov.za.

Issued By:

The Director
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