



Financial intelligence centre

REPUBLIC OF SOUTH AFRICA

PUBLIC COMPLIANCE COMMUNICATION NO. 12 (PCC12) OUTSOURCING OF COMPLIANCE ACTIVITIES TO THIRD PARTIES

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 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 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 authoritative 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

Accountable institutions remain responsible for compliance with their obligations in terms of the FIC Act regardless of their internal arrangements relating to the manner in which those obligations are met.

An accountable institution may utilise the services of a third party to perform activities relating to the establishing and verifying of clients' identities as well as the collection of required documents to establish and verify the identity of their clients, and for record-keeping purposes as required in terms of the FIC Act and the Regulations to the FIC Act. However, an accountable institution remains liable for compliance failures associated with and/or caused by such an outsourcing arrangement.

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Objective

The objective of this PCC is to provide guidance and clarity on the establishment and verification of the identity of clients and record keeping by third parties.

1. Introduction

1.1 The money laundering control measures prescribed by the FIC Act impose certain obligations on accountable institutions. These obligations are listed in Chapter 3 of the FIC Act and are *inter alia*:

- The duty to identify clients (Part 1);
- The duty to keep record (Part 2);
- Reporting duties and access to information (Part 3); and
- Measures to promote compliance by accountable institutions (Part 4).

2. Outsourcing of the activities to establish and verify the identity of clients

2.1 Section 21 of the FIC Act prevents accountable institutions from concluding certain transactions unless they have established and verified the identities of their clients.

2.2 An accountable institution may utilise the services of a third party to perform the client identification and verification activity as well as the collection of required documents for client identification and verification and record-keeping purposes.

2.3 It is important to note that even though these activities may be outsourced to third parties, the accountable institution remains responsible to comply with the obligations, and remains liable for any compliance failures associated with and/or caused by outsourcing of compliance activities in terms of the FIC Act.

Example 1

Accountable Institution ABC enters into an agreement with Entity XYZ whereby Entity XYZ undertakes to carry out the activities to establish and verify the identity of clients of Accountable institution ABC for a fee payable only by Accountable Institution ABC. Compliance failures by Entity XYZ remain the responsibility of Accountable Institution ABC.

2.4 The third party may be an accountable institution in its own right. If so, the same principles as discussed above will apply. The fact that a third party is an accountable institution, does not have an effect on the FIC Act obligations of the accountable institution pertaining to its client. The accountable institution remains liable for compliance failures associated with, and caused by outsourcing and the responsibility for compliance failures will not be passed on to the third party.

2.5 When considering whether or not to outsource compliance activities, it is important that an accountable institution take cognisance of the following:

- The accountable institution that establishes a business relationship or concludes a single transaction with a client remains fully responsible for compliance with the FIC Act;
- The accountable institution should exercise strict control over the functions that are being outsourced to minimise the risks associated with such outsourcing;
- It is highly advisable that an outsourcing arrangement be contained in a formal agreement between an accountable institution and the person/entity to whom functions in terms of the FIC Act are being outsourced; and
- Accountable institutions cannot be indemnified from administrative penalties or criminal prosecution for a contravention of the FIC Act on the grounds that compliance with a function pursuant to the FIC Act is outsourced to a third party.

3. Outsourcing of record keeping requirements

3.1 Outsourcing of record keeping requirements is regulated in sections 23 to 26 of the FIC Act and Regulation 20 of the Regulations to the FIC Act. Accountable institutions must comply with these sections of the FIC Act and the Regulations when records are being kept by third parties.

4. Outsourcing of reporting obligations is prohibited

- 4.1 It is important to note that section 29 of the FIC Act does not make provision for the reporting of suspicious and unusual transactions to be performed by a party other than the “person who carries on a business or is in charge of or manages a business or who is employed by a business”.
- 4.2 Section 29 of the FIC Act thus implicitly prohibits the outsourcing of the activity to report such transactions to the Centre.
- 4.3 All other reporting obligations that are imposed by the FIC Act must be performed by the accountable institution and the activity to report such transactions to the Centre may not be outsourced.
- 4.4 The only exception to the above is with regard to reporting by a complex group structure, example a banking group, which would include various accountable and/or reporting institutions. Within such a complex structure reporting to the Centre usually forms part of the central group function which should be governed by and included in the group’s overarching internal rules.

5. Conclusion

- 5.1 The identification and verification of the identity of clients and record keeping activities may be outsourced to third parties, but the accountable institution remains liable for any compliance failures.

For any further enquiries regarding this PCC 12, please contact the Centre on **0860 342 342**, or by sending an email to: fic_feedback@fic.gov.za.

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**The Director
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