



## **financial intelligence centre**

**REPUBLIC OF SOUTH AFRICA**

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**PUBLIC COMPLIANCE COMMUNICATION No.03 (PCC 03) –  
IDENTIFICATION AND VERIFICATION MATTERS RELATING TO ACCOUNT  
OPENING PROCEDURES FOR ASYLUM SEEKERS AND REFUGEES IN  
TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT, (ACT 38 OF 2001)**

The Financial Intelligence Centre provides the guidance contained in this Public Compliance Communication in terms of its statutory function under section 4(c) of the Financial Intelligence Centre Act (Act 38 of 2001) (the FIC Act).

### **PCC Summary**

The section 22 permit which grants an asylum seeker temporary residence, and the section 24 certificate issued in terms of the Refugees Act, (Act 130 of 1998) (the Refugees Act) does not meet the requirements of an identity document in terms of the FIC Act, and its subordinate legislation.

Only the official Refugee Identity Document and the United Nations Certified Travel Document Passport are regarded as acceptable forms of identification in terms of the FIC Act and its subordinate legislation.

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### **Objective**

The objective of this PCC is to clarify the identification and verification requirements relating to asylum seekers and refugees in terms of account opening procedures and to provide guidance to accountable institutions in meeting its identification and verification obligations in terms of section 21 of the FIC Act and the Money Laundering and Terror Financing Control Regulations to the FIC Act (the Regulations).

### **Introduction**

The money laundering control measures under the FIC Act impose certain obligations on a variety of financial and non-financial institutions, such as the duty to identify and verify its clients. The challenge that arises is the categorisation of these clients and the ability of accountable institutions to fulfil its obligations in terms of section 21 of the FIC Act.

### **The Centre's Interpretation**

#### ***Application requirements for Refugees and Asylum Seekers Transit Permit***

Section 23 of the Immigration Act, (Act 13 of 2002) (the Immigration Act) as amended, states that the Department of Home Affairs must issue a document to a person when such person arrives at a South African border, whether legally or illegally, and declares that he or she seeks asylum in South Africa. The permit is valid for 14 (fourteen) days and the person must apply for refugee status within this period at a Refugee Reception Office (RRO) in terms of section 21 of the Refugees Act.

An application for the asylum seeker permit in terms of section 21(1) of the Refugee Act must be made in person at the RRO. The RRO must, pending the outcome of an application, issue to the applicant an asylum seeker permit in terms of section 22 of the Refugee Act, which will allow the applicant to remain in the country pending the outcome of his/her application. This permit is valid for 30 (thirty) days and must be renewed while awaiting the outcome of the application. The permit contains the applicant's name, date of birth, photo, thumb print and a bar coded number used for tracking of the application. There is no other unique identifying number on the permit.

Regulation 7 of the Regulations under the Refugees Act states that a permit issued in terms of Section 22 of the Refugees Act must:

- Be in the prescribed form and contain substantially the information contained in Annexure 3 (Asylum Seeker Temporary Permit);
- Be of a limited duration and contain an expiry date;
- Be renewed at the RRO upon the appearance of the applicant for each scheduled appointment;
- Specify the time and date when the applicant must return to a specified RRO; and
- Have the departmental stamp affixed to it in order to be valid.

If the application for refugee status is approved, a certificate is issued in terms of section 24 of the Refugee Act. This certificate is valid for 2 (two) years and is renewable. The certificate contains the person's name, date of birth, photo, thumb print and a bar coded number used for tracking purposes. There is no other unique identifying number on the certificate.

The certificate entitles the person to apply for a 13 (thirteen) digit bar coded identity document as well as for a United Nations issued travel document. The identity document issued by the Department of Home Affairs (DOH) is not linked to the South African identity document database held by the DOH.

In terms of Section 30 of the Refugees Act, once the application for asylum has been granted a refugee is entitled to an identity document in the prescribed form and which must contain the following:

- An identity number of the holder compiled in the prescribed manner;
- The holder's surname, full forenames, gender, date of birth and the place or country where he/she was born;
- The country of which the holder is a citizen, if any;
- A recent photograph of the holder; and
- The holder's fingerprints or other prints.

***Identification and verification requirements in terms of the FIC Act***

In terms of section 21 of the FIC Act an accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps to establish and verify the identity of the client.

In brief, regulation 3 under the FIC Act requires accountable institutions to obtain, among others, the following information from South African citizens and residents:

- Full name;
- Date of birth;
- Identity number; and
- Residential address

If a person is not in possession of green bar coded identity document as defined in the regulations, the source document must contain the following in respect of that person:

- A photograph;
- Full name or initials and surname;
- Date of birth; and
- Identity number.

In respect of foreign nationals, Regulation 5 requires, among others, the following information from the person:

- Full name;
- Date of birth;
- Nationality;
- Passport number; and
- Residential address.

The Regulations under the FIC Act define an identification document, in respect of a natural person, as:

- An official identity document issued to a citizen or a resident of the Republic
- If a person is not a citizen or not a resident of the Republic, a passport issued by the country of which that person is a citizen.

Upon accountable institutions establishing a business relationship or concluding a single transaction with asylum seekers, the following should be considered in terms of the section 22 asylum seekers permit:

- It is a permit and NOT an identification document;
- It is a temporary document which has an expiry date attached to it;
- It serves to give the asylum seeker status in the country but it does not legalise the asylum seeker within the country;
- It does however make the position of the asylum seeker more certain in that said person is in the process of having his/her status within the Republic determined; and
- Only once the RRO determines whether the asylum seekers application has been granted or denied will he/she be entitled to full legal protection of the law.

The section 22 permit issued by the DOH granting the asylum seeker temporary residence does not meet the requirements of an identity document in terms of the Regulations under the FIC Act. Hence accountable institutions must refrain establishing business relationships or concluding single transactions (e.g. opening accounts) with asylum seekers who have not been granted refugee status and have

been issued with an asylum seeker permit in terms of section 22 of the Refugees Act.

The section 24 certificate which is issued when a person is granted refugee status may also not be regarded as sufficient proof of identity for the purposes of Regulation 3 and 5. Here again, the lack of an identity number as well as the susceptibility to forgery are factors weighing against the use of this document for purposes of proof of identity.

The refugee identity document, which contains a 13 digit bar coded identity number, meets the requirements of an identifying document for the purposes of Regulation 3 (information concerning South African citizens and residents). The United Nations Certified Travel Document passport is also regarded as an acceptable form of identification.

Since refugees are given the status of residents and are in possession of a refugee identity document which can be dealt with in the same way as a South African identity document, the identity of such individuals should be established and verified in terms of Regulations 3 (information concerning South African citizens and residents), and Regulation 4 (verification of information concerning South-African citizens and residents).

However, accountable institutions need to take note that the refugee identity document is temporary in nature in that it is valid for 2 (two) years. The document is, however, renewable. Accountable institutions should therefore have internal controls in place to periodically monitor such accounts to ensure that on the expiry of the 2 (two) year period, these accounts are suspended/frozen to prevent any transactions occurring on these accounts. Once the identity document has been renewed the hold can be lifted.

For any further enquiries regarding this Public Compliance Communication No.03, please contact the Centre on 0860342342, or by sending an email to: [fic\\_feedback@fic.gov.za](mailto:fic_feedback@fic.gov.za).

***Issued By:***

**The Director**

**Financial Intelligence Centre**

**28 May 2010**

## **Addendum**

### **Extracts from the FIC Act and the Money Laundering and Terror Financing Regulations**

#### **21 Identification of clients and other persons**

(1) An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps-

- (a) to establish and verify the identity of the client;
- (b) if the client is acting on behalf of another person, to establish and verify-
  - (i) the identity of that other person; and
  - (ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
- (c) if another person is acting on behalf of the client, to establish and verify-
  - (i) the identity of that other person; and
  - (ii) that other person's authority to act on behalf of the client.

(2) If an accountable institution had established a business relationship with a client before this Act took effect, the accountable institution may not conclude a transaction in the course of that business relationship, unless the accountable institution has taken the prescribed steps-

- (a) to establish and verify the identity of the client;
- (b) if another person acted on behalf of the client in establishing the business relationship, to establish and verify-
  - (i) the identity of that other person; and
  - (ii) that other person's authority to act on behalf of the client;
- (c) if the client acted on behalf of another person in establishing the business relationship, to establish and verify-
  - (i) the identity of that other person; and
  - (ii) the client's authority to act on behalf of that other person; and
- (d) to trace all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship.

### **Regulation 3**

#### **3. Information concerning South African citizens and residents.**

(1) An accountable institution must obtain from, or in respect of, a natural person who is a citizen of, or resident in, the Republic, that person's—

- (a) full names;
- (b) date of birth;
- (c) identity number;
- (d) income tax registration number, if such a number has been issued to that person; and
- (e) residential address.

(2) In the case where the accountable institution is aware or ought reasonably to be aware that the person referred to in sub regulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person the accountable institution must, in addition to obtaining the particulars referred to in sub regulation (1), obtain from, or in respect of, of that other person—

- (a) his or her full names;
- (b) his or her date of birth;
- (c) his or her identity number;
- (d) his or her residential address; and
- (e) his or her contact particulars

### **Regulation 4**

#### **4. Verification of information concerning South-African citizens and residents.**

(1) An accountable institution must verify the full names, date of birth and identity number of a natural person referred to in regulation 3(1)(a), (b) or (c), or 3(2)(a), (b) or (c) by comparing these particulars with—

- (a) (i) an identification document of that person; or
- (ii) in the case where that person is, for a reason that is acceptable to the institution, unable to produce an identification document, another document issued to that person, which, taking into account any guidance notes concerning the verification of identities which may apply to that institution, is acceptable to the institution and bears—

- (aa) a photograph of that person;
  - (bb) that person's full names or initials and surname;
  - (cc) that person's date of birth, and
  - (dd) that person's identity number; and
- (b) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

(2) An accountable institution must verify the income tax registration number referred to in regulation 3(1)(d) by comparing this number with a document issued by the South African Revenue Service bearing such a number and the name of the natural person.

(3) An accountable institution must verify the residential address referred to in regulation 3(1)(e) or 3(2)(f) by comparing these particulars with information which can reasonably be expected to achieve such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution.

## **Regulation 5**

### **5. Information concerning foreign nationals.**

(1) An accountable institution must obtain from, or in respect of, a natural person who is a citizen of another country and is not resident in the Republic, that person's—

- (a) full names;
- (b) date of birth;
- (c) nationality;
- (d) passport number;
- (e) South African income tax registration number, if such a number has been issued to that person; and
- (f) residential address.

(2) In the case where the accountable institution is aware or ought reasonably to be aware that the person referred to in sub regulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person the accountable institution must, in addition to obtaining the particulars referred to in sub regulation (1), obtain from, or in respect of, of that other person—

- (a) his or her full names;
- (b) his or her date of birth;
- (c) his or her nationality;
- (d) his or her passport number;
- (e) his or her residential address, and
- (f) his or her contact particulars.

## **Regulation 6**

### **6. Verification of information concerning foreign nationals.—**

(1) An accountable institution must verify the particulars obtained in terms of regulation 5(1)(a), (b), (c) and (d) or 5(2)(a), (b), (c) and (d) from or in respect of a natural person who is not a citizen of the Republic and not resident in the Republic, by comparing those particulars with an identification document of that person.

(2) An accountable institution must verify the income tax registration number obtained in terms of regulation 5(1)(e) from or in respect of a natural person who is not a citizen of the Republic and not resident in the Republic, by comparing those particulars with a document issued by the South African Revenue Service bearing such a number.

(3) An accountable institution must verify any of the particulars referred to in sub regulation (1) or (2) with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

## **Extracts from the Refugees Act**

### **Section 21**

#### **21. Application for asylum.—**

(1) An application for asylum must be made in person in accordance with the prescribed procedures to a Refugee Reception Officer at any Refugee Reception Office.

(2) The Refugee Reception Officer concerned—

- (a) must accept the application form from the applicant;
- (b) must see to it that the application form is properly completed, and, where necessary, must assist the applicant in this regard;
- (c) may conduct such enquiry as he or she deems necessary in order to verify the information furnished in the application; and
- (d) must submit any application received by him or her, together with any information relating to the applicant which he or she may have obtained, to a Refugee Status Determination Officer, to deal with it in terms of section 24.

(3) When making an application for asylum, every applicant must have his or her fingerprints or other prints taken in the prescribed manner and every applicant who is 16 years old or older must furnish two recent photographs of himself or herself of such dimensions as may be prescribed.

(4) Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if—

- (a) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such person has had an opportunity to exhaust his or her rights of review or appeal in terms of Chapter 4; or
- (b) such person has been granted asylum.

(5) The confidentiality of asylum applications and the information contained therein must be ensured at all times.

### **Section 22**

## **22. Asylum seeker permit.—**

(1) The Refugee Reception Officer must, pending the outcome of an application in terms of section 21 (1), issue to the applicant an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions, determined by the Standing Committee, which are not in conflict with the Constitution or international law and are endorsed by the Refugee Reception Officer on the permit.

(2) Upon the issue of a permit in terms of subsection (1), any permit issued to the applicant in terms of the Aliens Control Act, 1991, becomes null and void, and must forthwith be returned to the Director-General for cancellation.

(3) A Refugee Reception Officer may from time to time extend the period for which a permit has been issued in terms of subsection (1), or amend the conditions subject to which a permit has been so issued.

(4) The permit referred to in subsection (1) must contain a recent photograph and the fingerprints or other prints of the holder thereof as prescribed.

(5) A permit issued to any person in terms of subsection (1) lapses if the holder departs from the Republic without the consent of the Minister.

(6) The Minister may at any time withdraw an asylum seeker permit if—

- (a) the applicant contravenes any conditions endorsed on that permit; or
- (b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent; or
- (c) the application for asylum has been rejected; or
- (d) the applicant is or becomes ineligible for asylum in terms of section 4 or 5.

(7) Any person who fails to return a permit in accordance with subsection (2), or to comply with any condition set out in a permit issued in terms of this section, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

## **Section 24**

#### **24. Decision regarding application for asylum.—**

(1) Upon receipt of an application for asylum the Refugee Status Determination Officer—

- (a) in order to make a decision, may request any information or clarification he or she deems necessary from an applicant or Refugee Reception Officer;
- (b) where necessary, may consult with and invite a UNHCR representative to furnish information on specified matters; and
- (c) may, with the permission of the asylum seeker, provide the UNHCR representative with such information as may be requested.

(2) When considering an application the Refugee Status Determination Officer must have due regard for the rights set out in section 33 of the Constitution, and in particular, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented.

(3) The Refugee Status Determination Officer must at the conclusion of the hearing—

- (a) grant asylum; or
- (b) reject the application as manifestly unfounded, abusive or fraudulent; or
- (c) reject the application as unfounded; or
- (d) refer any question of law to the Standing Committee.

(4) If an application is rejected in terms of subsection (3)(b)—

- (a) written reasons must be furnished to the applicant within five working days after the date of the rejection or referral;
- (b) the record of proceedings and a copy of the reasons referred to in paragraph (a) must be submitted to the Standing Committee within 10 working days after the date of the rejection or referral.

(5)....

(6)....

#### **Section 30**

### **30 Identity document to refugee.**

- (1) A refugee must be issued with an identity document which must contain—
- (a) an identity number of the holder compiled in the prescribed manner;
  - (b) the holder's surname, full forenames, gender, date of birth and the place or country where he or she was born;
  - (c) the country of which the holder is a citizen, if any;
  - (d) a recent photograph of the holder; and
  - (e) the holder's fingerprints or other prints, taken and displayed in the prescribed manner.
- (2) An identity document referred to in subsection (1) must be in the prescribed form.

### **Regulation 7 of the Regulations in terms of section 38 of the Refugees Act**

#### **7. Asylum seeker permit.—**

- (1) A permit issued in terms of section 22 of the Act—
- (a) must be in the form and contain substantially the information prescribed in Annexure 3 to these Regulations;
  - (b) will be of limited duration and contain an expiry date;
  - (c) will be renewed at the Refugee Reception Office upon the appearance of the applicant for each scheduled appointment; and
  - (d) will specify the time and date when the applicant must return to a specified Refugee Reception Office;
  - (e) will notify the applicant that failure to comply with the condition of appearing personally at a designated Refugee Reception Office no later than the time and date specified will result in withdrawal of the asylum seeker permit in terms of section 22(6) of the Act and subject the applicant to detention pending a decision on the asylum application.
- (2) Asylum applicants must at all times be in possession of the original permit as proof of their legal status should such proof be required.
- (3) An asylum seeker permit referred to in section 22(1) of the Act shall be valid only if a Departmental stamp has been affixed to it.

## **Extracts from the Immigration Act**

### **Section 23 Asylum transit permit.**

(1) The Director-General may issue an asylum transit permit to a person who at a port of entry claims to be an asylum seeker, which permit shall be valid for a period of 14 days only.

(2) Despite anything contained in any other law, when the permit contemplated in subsection (1) expires before the holder reports in person to a Refugee Reception Officer at a Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugees Act, 1998 (Act No. 130 of 1998), the holder of that permit shall become an illegal foreigner and be dealt with in accordance with this Act.