



financial intelligence centre

REPUBLIC OF SOUTH AFRICA

PUBLIC COMPLIANCE COMMUNICATION No.06 (PCC 06) – CLARITY ON ITEM 2 OF SCHEDULE 1 OF THE FIC ACT

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).

PCC Summary

It is not the intention of the FIC Act to require all trustees of trusts to register with the Centre in terms of section 43B of the FIC Act.

For the purposes of registration in terms of section 43B of the FIC Act, only a board of executors, a trust company or any other person who, as a regular feature of his or her business, invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act No 57 of 1988 (the Trust Act) should register with the Centre.

Exemption 10(2) of the Exemptions to the FIC Act deals with the exemptions applicable to accountable institutions in terms of item 2 of Schedule 1 to the FIC Act in relation to the duty to identify clients and record keeping.

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Objective

The objective of this PCC is to provide guidance and clarity on who is required to register with the Centre in terms of section 43B of the FIC Act, by virtue of that person being classified an accountable institution in terms of item 2 of Schedule 1 of the FIC Act. It furthermore provides clarity on the content of Exemption 10(2) of the exemptions to the FIC Act in relation to item 2 of Schedule 1 of the FIC Act.

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 establish and verify the identities of its clients. The challenge that arises is the timing of these different transactions, the documentation used, and the ability of accountable institutions to fulfil its obligations in terms of section 21 of the FIC Act.

Section 21 of the FIC Act prevents 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 concerned and of the agents and principals of their clients.

The Centre's view

Item 2 of Schedule 1 to the FIC Act, is described as follows:

“A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act No. 57 of 1988).”

The Trust Act defines a trustee as any person (including the founder of a trust) who acts as trustee by virtue of an authorisation under section 6 of the Trust Act and includes any person whose appointment as trustee is already in force and effect at the commencement of the Trust Act.

However, the compliance obligations of accountable institutions under Chapter 3 of the FIC Act arise from business relationships or single transactions with clients. These obligations would therefore not arise for persons who are appointed as trustees on an occasional basis, or who perform this function in a personal capacity, as opposed to doing so on a professional basis for clients.

Therefore it is the Centre's view that only a board of executors, a trust company or any other person who, as a regular feature of his or her business, invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Act should register with the Centre in terms of section 43B of the FIC Act.

This means that a person who performs an occasional administration of a trust or does so in his or her personal capacity should not register as an accountable institution in terms of section 43B of the FIC Act.

Exemption 10 in relation to item 2 of Schedule 1 of the FIC Act

Exemption 10(2) of the exemptions made under section 74 of the FIC Act provides that accountable institutions in terms of item 2 of Schedule 1 to the Act are exempted from complying with Parts 1 (duty to identify clients) and 2 (duty to keep record) of Chapter 3 of the FIC Act in respect of the following transactions:

- a) The preparation of a testamentary writing;

- b) The administration of a deceased estate as an executor of that estate;
- c) The administration of trust property as trustee of a trust established by virtue of a testamentary writing or court order; and
- d) The administration of trust property as trustee of a trust established to administer funds payable from an employees' benefit fund for the benefit of a nominated beneficiary of dependant of a deceased member of such an employee's benefit fund.

Exemption 10(2) is only applicable to accountable institutions in terms of item 2 of Schedule 1 and impacts on the identification and record keeping requirements of these institutions. In terms of this exemption, these obligations do not apply to persons who are appointed as trustees of trusts *mortis causa* or trusts established to administer funds payable from an employees' benefit funds.

Conclusion

It is not the intention of the FIC Act to require all trustees of trusts to register with the Centre in terms of section 43B of the FIC Act.

Only entities or persons that administer trust property as a regular feature of their business are required to register with the Centre.

For any further enquiries regarding this Public Compliance Communication No. 06, please contact the Centre on 012 641 6292, or by sending an email to: fic_feedback@fic.gov.za.

Issued By:

**The Director
Financial Intelligence Centre
23 March 2011**

Glossary

EXEMPTIONS FOR ATTORNEYS AND ADMINISTRATORS OF PROPERTY

Exemption from Parts 1 and 2 of Chapter 3 of Act 38 of 2001

10. (2) Every accountable institution which performs the functions of an accountable institution referred to in item 2 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of Chapter 3 of the Act in respect of every business relationship or single transaction concerning:

- a) the preparation of a testamentary writing;
- b) the administration of a deceased estate, as executor of that estate;
- c) the administration of trust property as trustee of a trust established by virtue of a testamentary writing or court order; or
- d) the administration of trust property as trustee of a trust established to administer funds payable from an employees' benefit fund for the benefit of a nominated beneficiary or dependant of a deceased member of such an employees' benefit fund.

Section 43B of the FIC Act: Registration by the accountable institutions and reporting institutions

- (1) Every accountable institution referred to in schedule 1 and reporting institutions referred to in schedule 3 must, within the prescribed period and in the prescribed manner, register with the Centre.
- (2) The registration of an accountable institutions and reporting institution contemplated in subsection (1) must be accompanied by such particulars as the Centre may require.
- (3) The Centre must keep and maintain a register of every accountable and reporting institution registered in terms of subsection (1).
- (4) A registered accountable institution or reporting institution must notify, in writing, of any changes to the particulars furnished in terms of section within 90 days after such a change.

TRUST PROPERTY CONTROL ACT, 1988

6 Authorization of trustee and security

- (1) Any person whose appointment as trustee in terms of a trust instrument, section 7 or a court order comes into force after the commencement of this Act, shall act in that capacity only if authorized thereto in writing by the Master.
- (2) The Master does not grant authority to the trustee in terms of this section unless-
 - a) he has furnished security to the satisfaction of the Master for the due and faithful performance of his duties as trustee; or
 - b) he has been exempted from furnishing security by a court order or by the Master under subsection (3) (a) or, subject to the provisions of subsection (3) (d), in terms of a trust instrument:

Provided that where the furnishing of security is required, the Master may, pending the furnishing of security, authorize the trustee in writing to perform specified acts with regard to the trust property.

- (3) The Master may, if in his opinion there are sound reasons to do so-
 - a) whether or not security is required by the trust instrument (except a court order), dispense with security by a trustee;
 - b) reduce or cancel any security furnished;
 - c) order a trustee to furnish additional security;
 - d) order a trustee who has been exempted from furnishing security in terms of a trust instrument (except a court order) to furnish security.
- (4) If any authorization is given in terms of this section to a trustee which is a corporation, such authorization shall, subject to the provisions of the trust instrument, be given in the name of a nominee of the corporation for whose actions as trustee the corporation is legally liable, and any substitution for such nominee of some other person shall be endorsed on the said authorization.