



Financial intelligence centre

REPUBLIC OF SOUTH AFRICA

REVISED PUBLIC COMPLIANCE COMMUNICATION NO. 21 (PCC21) ON THE SCOPE AND APPLICATION OF EXEMPTION 17 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 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 in terms of 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

PCC21 has been revised and takes effect from the date of issue of this PCC. The previous version of this PCC is hereby withdrawn.

Exemption 17 of the Exemptions to the FIC Act (“exemption 17”) exempts designated accountable institutions from compliance with certain client identification and verification obligations required by the FIC Act.

Exemption 17 can only be applied when the accountable institution concludes a single transaction or enters into a business relationship with a client, who is a natural person and also a South African citizen or resident.

Certain criteria and conditions have to be met before the exemption can be applied. If any of the conditions of exemption 17 are exceeded, the exemption lapses and all relevant FIC Act obligations must be complied with.

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Objective

The objective of this PCC is to provide guidance and clarity on the scope and application of exemption 17 of the Exemptions to the FIC Act.

1. Introduction

1.1 The money laundering control measures in terms of 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. Part 1 of Chapter 3 of 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 of the FIC Act, deals with the establishment and verification of the identity of the different types of clients and must 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 of the FIC Act deals with record keeping, specifically the particulars of third parties keeping records for the accountable institution and must be read in conjunction with section 24 of the FIC Act.

4. Scope of Exemption 17

4.1 Exemption 17 of the Exemptions to the FIC Act is applicable to the following accountable institutions that are listed in Schedule 1 to the FIC Act:

- Item 6 – A person who carries on the “business of a bank” as defined in the Banks Act, 1990 (Act No. 94 of 1990);
- Item 7 – A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993)
- Item 14 – The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).
- Item 16 – The Ithala Development Finance Corporation Limited.
- Item 19 – A person who carries on the business of a money remitter, but only in respect of transactions in terms of which both the sending and receipt of the funds in question takes place in the Republic.

4.2 Exemption 17 of the Exemptions to the FIC Act provides that accountable institutions mentioned in paragraph 4.1 above are exempted from certain parts of the FIC Act and only in certain circumstances.

5. Purpose of exemption 17

5.1 The intention of exemption 17 is to reduce certain identification and verification requirements pertaining to a client at account opening stage.

5.2 Exemption 17 does not exempt the above mentioned accountable institutions from complying with the identification and verification requirements pertaining to their clients. It simply reduces identification requirements and alleviates some of the verification and record keeping requirements in terms of the FIC Act and the applicable Regulations with regards to a product that falls within the parameters of the Exemption.

6. When can Exemption 17 be applied?

- 6.1 Exemption 17 of the Exemptions to the FIC Act is only applicable to clients of the accountable institution who are natural persons and South African citizens or residents.

- 6.2 Exemption 17 of the Exemptions to the FIC Act may only be applied in the case of single transactions and business relationships that:
 - 6.2.1 enable the client to withdraw or transfer or make payments of an amount not exceeding R5 000 (Five Thousand Rand) per day and not exceeding R25 000 (Twenty Five Thousand Rand) in a monthly cycle; and
 - 6.2.2 does not enable the client to effect a transfer of funds to any destination outside the Republic, except for a transfer as a result of a point-of-sale payment or a cash withdrawal in a country in the Rand Common Monetary Area.

- 6.3 The exemption is conditional and paragraph 17(4) of the exemption sets out the conditions within which exemption 17 applies. The two conditions which apply to account-based products are:
 - 6.3.1 the balance in such an account may never exceed R25 000, or
 - 6.3.2 a client shall not simultaneously hold two or more accounts which meet the criteria referred to in paragraph 6.2 above and which are similar in nature with the same accountable institution.

- 6.4 The conditions are stated as alternatives (using "or" between the paragraphs), as opposed to cumulatively. This means that if either one of the conditions are exceeded exemption 17 may not be applied by the accountable institution.

- 6.5 If the abovementioned balance of R25 000 is exceeded or the client has more than one account which is similar in nature with the same accountable institution that meet the criteria referred in paragraph 6.2 above, the provisions of paragraph 17(5) of the exemption are applicable, which effectively means that no debit from the account may be effected before:

6.5.1 the client identification and verification requirements as set out by section 21 of the FIC Act, read with the relevant regulations 3 and 4 are completed by the accountable institution; and

6.5.2 record keeping requirements as set out in the FIC Act are completed.

6.6 Determining whether two accounts “are similar in nature” within the meaning of this phrase in paragraph 17 (4) (b) of exemption 17, is a factual question which must be determined on a case by case basis, based on the nature of the accounts in question. Factors that would be considered as indicative that two (or more) accounts are similar in nature include that they allow the customer to perform similar types of transactions, such as deposits, withdrawals and electronic payments for example. It should be noted that the accounts in question need not offer exactly the same transaction facilities in order to be considered “similar in nature”. If there is an overlap in the functionality of the accounts in question that would suffice to constitute accounts that are similar in nature.

Practical application:

Exemption 17 is not product specific and therefore offering two exempted accounts to a client (by whatever name the accounts are designated) that offers similar functionalities, will result in the condition to exemption 17 being exceeded. This has the consequence that the exemption will not/no longer apply.

7. FIC Act obligations that are exempted by Exemption 17

7.1 If the conditions of the exemptions are met, the following identification and verification obligations are exempted pertaining to clients of the accountable institution that are South African citizens or residents:

- obtaining and verifying the income tax registration number of the client;
- obtaining and verifying the residential address of the client;
- if another person is acting on behalf of the client, obtaining the residential address of the other person;
- obtaining the contact particulars of the person acting on behalf of the client.

- 7.2 If the conditions of the exemption are met the accountable institution is furthermore exempted from the duty to keep record (in terms of section 22 of the FIC Act) of the information described in paragraph 7.1.
- 7.3 Exemption 17 of the Exemptions to the FIC Act does not exempt an accountable institution from keeping record of the remaining client particulars that must be verified within the provisions of the exemption. An accountable institution's records must be sufficient so that transactions that fall within the scope of exemption 17 can be reconstructed should the need arise. The accountable institution should also be able to provide an audit trail of the establishment and verification of the identity of the client for regulatory purposes. Consequently the accountable institution has to retain some form of record (electronically or a hard copy) of the client's identity.

Practical application:

An accountable institution may perform the verification of a client's identity particulars by comparing the information provided by the client with the information in the client's identity document. The institution may then record this information e.g. by taking a digital photograph of the identity document. The accountable institution needs to record and demonstrate the way in which it has verified the information of the client.

- 7.4 Exemption 17 further does not exempt an accountable institution from other record keeping requirements as set out in section 22 of the FIC Act. This includes keeping record of:
- 7.4.1 the amount involved in the transaction;
 - 7.4.2 the parties to the transaction; and
 - 7.4.3 all accounts that are involved in the transaction in the course of the business relationship or single transaction.
- 7.5 Accountable institutions should be aware that the requirements to request a client to furnish an income tax registration number (regulation 3(1)(d) of the Regulations to the FIC Act) and to verify the supplied income tax registration

number (regulation 4(2) of the Regulations to the FIC Act) are themselves exempted in terms of exemption 6(2) of the Exemptions to the FIC Act. Therefore no legal obligation exists to comply with these particular requirements at present.

7.6 It is important to note that exemption 17 does not exempt an accountable institution from its reporting obligations imposed under Part 3 of the FIC Act, and the accountable institution therefore remains obliged to report to the Centre:

- cash transactions above the prescribed limit (section 28),
- property associated with terrorist and related activities (section 28A); and
- suspicious and unusual transactions (section 29).

8. Conclusion

8.1 The intention of exemption 17 is to reduce certain identification and verification requirements pertaining to a client at account opening stage. The exemption is only applied where accounts are opened for clients that are South African citizens or residents.

8.2 Relevant accountable institutions may only rely on Exemption 17 if the conditions of the exemption as set out above are met. If the conditions are exceeded the accountable institution must comply with all relevant obligations of the FIC Act.

For any further enquiries regarding this revised PCC 21, please contact the Centre on 0860 222 200, or by sending an email to: fic_feedback@fic.gov.za.

Issued By:

**The Director
Financial Intelligence Centre
12 February 2014**

Addendum – Exemption 17

17. Exemption from regulations made under Act 38 of 2001.—
- (1) This exemption applies to every accountable institution referred to in—
- (a) items 6, 7, 14 and 16 of Schedule 1 to the Act; and
 - (b) item 19 of Schedule 1 to the Act, but only in respect of transactions in terms of which both the sending and receipt of the funds in question take place in the Republic.
- (2) Every accountable institution referred to in paragraph (1), above, is exempted, subject to the conditions set out in paragraph (4), below, from compliance with the provisions of—
- (a) regulations 3 (1) (d), 3 (1) (e), 3 (2) (d), 3 (2) (e), 4 (2) and 4 (3) of the Regulations, concerning the particulars to be obtained and verified in establishing and verifying persons' identities; and
 - (b) section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the records to be kept of the particulars referred to in subparagraph (a),
- in respect of every business relationship or single transaction referred to in paragraph (3), below, with a client who is a citizen of, or resident in, the Republic.
- (3) The business relationships and single transactions referred to in paragraph (2), above, are every business relationship or single transaction which—
- (a) enables the client to withdraw or transfer or make payments of an amount not exceeding R5 000,00 per day and not exceeding R25 000,00 in a monthly cycle; and
 - (b) does not enable the client to effect a transfer of funds to any destination outside the Republic, except for a transfer as a result of a point-of-sale payment or a cash withdrawal in a country in the Rand Common Monetary Area.

- (4) This exemption is subject to the conditions that, should a business relationship referred to in paragraph (2), above, entail the holding of an account—
- (a) the balance maintained in that account does not exceed R25 000,00 at any time; or
 - (b) the same person does not simultaneously hold two or more accounts which meet the criteria referred to in paragraph (3) and are similar in nature with the same institution.
- (5) No debit from an account, referred to in paragraph (4), may be effected before—
- (a) the prescribed steps referred to in section 21 of the Act, read with the Regulations, concerning the establishing and verification of the identity of the client concerned are completed; and
 - (b) the records pertaining to the establishing and verification of the identity of a client referred to in paragraph (a), which an institution is required to keep in accordance with section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act, are obtained, in the case where—
 - (i) the balance in an account referred to in paragraph (4) (a) exceeds R25 000,00; or
 - (ii) a person acquires more than one account referred to in subparagraph (4) (b) with the same institution.

[Exemption 17 substituted by GNR.1353 of 2004.]