Financial Intelligence Centre

PUBLIC COMPLIANCE COMMUNICATION

PUBLIC COMPLIANCE COMMUNICATION 23A

GUIDANCE ON THE INTERPRETATION OF THE SCOPE OF CREDIT PROVIDERS AS DESIGNATED UNDER ITEM 11 OF SCHEDULE 1 TO THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001) AND POTENTIAL RISK INDICATORS

30 March 2026

PCC SUMMARY

A “credit provider” is designated in item 11 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) as follows:

“(a) *A person who carries on the business of a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005).*

(b) A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1)(a) or (b) of that Act.”

This PCC 23A provides guidance on the interpretation of the scope and practical application of the definition of “credit providers” as designated under item 11 of Schedule 1 to the FIC Act. PCC23A also provides guidance through an overview of certain anti-money laundering, counter terrorist financing and counter proliferation financing vulnerabilities, and potential risk indicators.

THE AUTHORITATIVE NATURE OF GUIDANCE

The Financial Intelligence Centre (Centre) provides the guidance contained in this PCC in terms of its statutory function in terms of section 4 (c) of the FIC Act read together with Regulation 28 of the Money Laundering and Terrorist Financing Control Regulations (Regulations) issued in terms of the FIC Act.

Section 4(c) of the FIC Act empowers the Centre to provide guidance in relation to several matters concerning compliance with the obligations in terms 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. Accordingly, guidance provided by the Centre is authoritative in nature and must be considered when interpreting the provisions of the FIC Act or assessing compliance of an accountable or reporting institution with its obligations imposed on it by the FIC Act.

It is important to note that enforcement action may emanate as a result of non-compliance with the FIC Act in areas where there has been non-compliance with the guidance provided by the Centre. Where it is found that an accountable institution has not followed guidance which the Centre has issued, the institution must be able to demonstrate that it has complied with the relevant obligation under the FIC Act in an equivalent manner, nonetheless.

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OBJECTIVE

This PCC 23A provides clarity on the interpretation of a credit provider as designated in amended item 11 of Schedule 1 to the FIC Act.

Further, the PCC highlights vulnerabilities faced by credit providers and provides risk indicators that can be considered by a credit provider when determining money laundering, terrorist financing, and proliferation financing (ML, TF, and PF) risks presented in their client engagements.

1. INTRODUCTION

1.1. The purpose of this public compliance communication (PCC) 23A is to clarify the Centre's interpretation of the scope of item 11 of Schedule 1 in relation to credit providers.

1.2. The Centre monitors, supervises and enforces compliance with the FIC Act, in terms of sections 3(2) and 3(c) of the FIC Act. In particular, the Centre oversees compliance with the obligations (anti-money laundering, combating the financing of terrorism and combating the financing of proliferation of weapons of mass destruction) (AML/CFT and CPF) for credit providers designated under item 11 of Schedule 1, in terms of section 4(g), read with the supervisory responsibility framework designated in terms of Schedule 2 of the FIC Act.

2. INTERPRETATION OF A CREDIT PROVIDER

Financial Action Task Force definition of lending providers

2.1. The Financial Action Task Force (FATF) defines "financial institutions" broadly which includes, but is not limited to:

2.1.1. Lending - which includes consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting).

2.1.2. Financial Leasing - this does not extend to financial leasing arrangements in relation to consumer products.

2.2. The Centre's interpretation and application of the FATF definition for lending and financial leasing includes, but is not limited to:

- banks and deposit taking institutions that extend credit;

- non-bank financial institutions (NBFIs) such as microfinance institutions, financial leasing companies (excluding financial leasing arrangements in relation to consumer products), and factoring firms (with or without recourse);
- credit unions and cooperative banks and cooperative financial institutions;
- mortgage lenders and housing finance companies;
- consumer credit providers (retail credit, instalment finance, and credit store cards);
- credit card issuers and operators;
- finance companies (including those offering bridging finance, hire-purchase, or instalment sales);
- insurance companies when providing credit-like products (e.g., premium financing);
- securities firms and investment companies when extending credit margin loans or credit facilities;
- fintech credit providers;
- arms-length related party lenders (intragroup financing, inter-company loans);
- ad hoc credit arrangements (one-off loans or advances of a commercial character or nature).

General definition considerations of Schedule 11 to the FIC Act

2.3. A credit provider is designated and defined in item 11 of Schedule 1 of the FIC Act as:

"(a) A person who carries on the business of a credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005).

(b) A person who carries on the business of providing credit in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1)(a) or (b) of that Act."

2.4. The terminology mentioned in this definition of "credit provider" is explained below.

2.5. **"A person"** is a phrase which includes both natural persons and juristic persons, (and juristic persons as defined in the National Credit Act, 2005 (Act 34 of 2005) (the NCA).

2.6. **"Carries on the business"** – This phrase is not defined in the FIC Act. Applying the principles of interpretation, the ordinary meaning of the term, within the context of the FIC Act applies.

2.6.1. An entity is considered by the Centre to carry on the business of a credit provider, in relation to the first category under item 11 (a), where that entity conducts or carries on that type of business of a credit provider as defined by the National Credit Act.

2.6.2. In relation to the second category under item 11(b) when determining whether an entity carries on the business, the Centre considers the substance and economic reality of the activity. This includes, but is not limited to:

- the frequency and regularity of credit transactions;
- whether the activity is conducted for commercial gain or profit;
- the existence of systems, infrastructure or arrangements to advance, manage or recover credit; and
- whether the activity is marketed or made available to third parties;

The Centre considers that no single factor is determinative, and all relevant facts and circumstances would be considered holistically.

2.7. **"Business**" – This concept means the commercial activity of a firm or institution for profit, as opposed to a charitable undertaking or government institution.

First category of credit provider considerations – Item 11(a) of Schedule 1

2.8. The **first category of credit providers under item 11 (a)**, includes persons who carry on the business as a credit provider as defined in the NCA and which persons are required to register as a credit provider with the NCR.

2.9. In terms of section 1 of the NCA, the definition of credit provider is wide and includes numerous different persons which include:

2.9.1. The party who supplies goods or services under a discount transaction, incidental credit agreement (subject to section 5 of the NCA) or instalment agreement;

2.9.2. The party who advances money or credit under a pawn transaction;

2.9.3. The party who extends credit under a credit facility;

2.9.4. The mortgagee under a mortgage agreement;

2.9.5. The lender under a secured loan;

2.9.6. The lessor under a lease;

2.9.7. The party to whom an assurance or promise is made under a credit guarantee;

2.9.8. The party who advances money or credit to another under any other credit agreement; or

2.9.9. Any other person who acquires the rights of a credit provider under a credit agreement after it has been entered.

Inclusions: Factoring, cession, and sale of loan book

2.10. Where a registered credit provider cedes its right in terms of the agreement or facility to another person, that other person then steps into the role of a credit provider, and as such must register as an item 11 accountable institution with the Centre. This includes scenarios such as factoring and the creation of certain special purpose vehicles, as an example.

2.11. Where an institution purchases a loan book and provides ongoing credit, they replace the existing credit provider and acquires those rights of the credit provider. As a result, buyers of loan books fall within the ambit of a credit provider and will need to register as an accountable institution. Where an institution purchases a loan book for collection and not for the purpose of carrying on the business of a credit provider, this institution would not fall within the definition of item 11 of schedule 1.

2.12. There may be instances where institutions no longer provide credit, however, they are still managing a run-off loan book. These institutions are included as credit providers.

2.13. In scenarios where a business merely provides a third-party service to a credit provider (i.e., debt collection) and none of the rights and obligations in terms of the credit agreement passes to the third party, then that third party is not considered to carry on the business of a credit provider. Refer to PCC 12A, which sets out guidance on third-party service providers. This scenario is different in comparison to factoring where rights and obligations in terms of the credit agreement pass from one entity to another.

Exclusions: Incidental credit under the NCA

2.14. The NCA includes, as a credit provider in respect of a credit agreement, the party who supplies goods or services under an incidental credit agreement. However,

section 40 of the NCA does not require a person who only enters into incidental credit agreements to be registered as a credit provider with the NCR.

2.15. Consequently, the Centre is of the view that an entity which only enters into incidental credit agreements and that entity does not **carry on the business** of providing credit is not deemed to be an accountable institution in terms of item 11(a) of Schedule 1 to the FIC Act. The factual circumstances of what constitutes "incidental credit" must be determined on a case-by-case basis, having regard to the substance of the activity rather than its form.

2.16. Where multiple incidental credit arrangements are entered into in a manner that collectively results in the regular provision of credit, such conduct may indicate that the entity is, in substance, carrying on the business of a credit provider.

2.17. The artificial structuring, fragmentation or repetition of incidental credit arrangements will not be regarded as a valid basis for excluding an entity from the ambit of item 11 of Schedule 1 to the FIC Act.

Example 1: Incidental credit and Item 11(a) of Schedule 1 to the FIC Act

A medical doctor sends a statement of account to client A, indicating that additional charges may apply where payment of the amount due is late. Client A makes payment late and is therefore charged additional fees, this is referred to as "mora credit" and an incidental credit agreement.

The medical doctor is not required to register as an accountable institution with the Centre, as the medical doctor would not be considered to be carrying on the business of a credit provider, and the medical doctor is not required to register with the NCR.

Second category of credit provider considerations – under Item 11(b) of Schedule 1

2.18. The **second category of credit providers** that are included under item 11(b) of Schedule 1 to the FIC Act, are all persons who carry on the business of providing credit in terms of any credit agreement that is ***excluded*** from the application of the NCA, by virtue of section 4(1)(a) or (b) of the NCA. Entities that have only entered into incidental credit agreements are not considered to be carrying on the business of a credit provider for purposes of the second category as well, item 11(b), for purposes of the second category as well. The facts in each case will determine whether the credit provider is carrying on the business of providing credit.

2.19. The second category of credit providers is wide. All credit agreements where the consumer is a juristic person with means and who do not require the protection of the NCA (see criteria in S4(1)(a)) falls within the ambit of item 11(b) of Schedule 1, which are excluded from the NCA. The entity should still be carrying on the business of providing credit, regardless of whether the credit agreement is not specifically excluded from the application of the NCA. The onus is on the entity to evidence that they do not fall within this category, where such assertions are made. The NCA does not apply to item 11(b) credit providers and therefore the sections pertaining to interest and costs are equally not applicable. Any credit provided where a loan amount is deferred and paid overtime, even without any interest, fees or costs are deemed to be credit. The specific terminology used in the second category of credit providers is discussed below.

2.20. **"Credit agreement"** includes, *inter alia,* a credit facility, credit transaction, credit guarantee, any combination of a credit facility, credit transaction, and credit guarantee.

2.21. Read in alignment with section 4(1)(a) and (b), as well as section 9(4) of the NCA, the definition of credit agreement for purposes of the application of the second category **includes** instances where:

2.21.1. The agreement is at arms-length;

2.21.2. The credit provider's clients are juristic persons and its asset value or annual turnover at the time of conclusion of the credit agreement is equal to or exceeds R 1 million, or threshold as determined by the Minister of Trade and Industry;

2.21.3. The credit agreements are large agreements[1], where the client is a juristic person[2]; and

2.21.4. The credit provider, whether a natural or juristic person, is registered as a credit provider with the National Credit Regulator, where required in terms of the National Credit Act, or otherwise carries on its credit-providing activities in South Africa.

2.22. Read in alignment with sections 8(2) of the NCA, the definition of credit agreement **excludes** instances where:

2.22.1. The products include a policy of insurance, or credit extended by an insurer solely to maintain the payment of premiums on a policy of insurance;

2.22.2. The agreement is a lease of immovable property, and

2.22.3. The transaction is between a stokvel and a member of that stokvel in accordance with the rules of that stokvel.

2.23. The exclusions set out in paragraph 2.22 apply solely for purposes of determining the scope of a credit agreement under the NCA. These exclusions do not, in and of themselves, determine whether a person is designated as an accountable

1 Threshold as determined in terms of section 7(1) of the NCA.
2 Refer to the NCA for the definition of juristic person

institution under item 11 of Schedule 1 to the FIC Act. The Centre will assess whether a person carries on the business of providing credit for purposes of item 11 having regard to the substance and economic reality of the arrangement, the nature and regularity of the activity, and all other relevant facts and circumstances.

2.24. Similarly, an entity does not **carry on the business** of providing credit, where from time to time the entity enters into an incidental credit agreement, and is therefore deemed not to be an accountable institution in terms of item 11(b) of Schedule 1 to the FIC Act. Accountable institutions are cautioned against seeking to evade their obligations in terms of the FIC Act, by claiming to only have entered into incidental credit agreements, or by structuring credit arrangements in a manner intended to avoid designation, when the actual substance of their business entails the provision of credit facilities.

Example 2: Incidental credit and Item 11(b) of Schedule 1 to the FIC Act

Entity B provides a credit facility for its clients to buy equipment up to an amount of five million rand, and payment is deferred to a later date in terms of the credit agreement. Entity B charges interest as a normal course of business, and not on an incidental basis.

Entity B is required to register as an accountable institution with the Centre, as it is considered to be carrying on the business of a credit provider.

Threshold

2.25. Credit providers that do not fall under the first category of item 11 of Schedule 1 to the FIC Act, would fall under the second category, with the consequence that all credit providers are covered by item 11 of Schedule 1. Generally, there is no maximum monetary threshold applicable when determining if an entity is a credit provider and an accountable institution in terms of item 11(b) of Schedule 1.

Single transaction or business relationship

2.26. A business relationship is an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis. A single transaction is either (a) a transaction other than a transaction concluded in the course of a business relationship and (b) where the value of the transaction is not less than the amount of R5 000.

2.27. From the definition of a single transaction the emphasis is placed on **one transaction**. The Centre considers the payout of a loan and the repayment of the loan as multiple transactions. Given that there is an element of time duration to this engagement, there is an expectation on the part of accountable institutions that the engagement with the client would recur over a period of time.

2.28. Considering the above, it is the Centre's interpretation that credit agreements are considered to be business relationships. As such, the customer due diligence and targeted financial sanctions obligations set in sections 21F, 21G, 21H, and 28A of the FIC Act and other relevant sections must be applied.

2.29. Accordingly, credit providers designated under item 11 are required to develop, implement and maintain a Risk Management and Compliance Programme in accordance with section 42 of the FIC Act, proportionate to the nature, size and complexity of their business and tailored to the specific ML, TF and PF risks inherent in the provision of credit.

3. POTENTIAL ANTI-MONEY LAUNDERING, COUNTER TERRORIST FINANCING AND COUNTER PROLIFERATION FINANCING RISK INDICATORS

3.1. Credit providers must conduct money laundering, terrorist financing, and proliferation financing (ML, TF, and PF) risk assessments on a business and at a client level. Due to operating in the industry, credit providers would be best placed to determine where the potential ML, TF and PF vulnerabilities are.

3.2. Credit providers should refer to the Centre's sector risk assessment on Lenders of money against the security of securities which sets out certain inherent risks that are particular to the credit provider industry.

3.3. Possible indicators of ML in the provision of credit facilities to businesses and individuals include, but are not limited to, the following:

3.3.1 The use of credit funds for illicit activities;

3.3.2 Reversing transactions before repayments of a loan have started, resulting in the borrowed funds being repaid within a short space of time;

3.3.3 Repayment amounts for loans are higher or within a shorter time frame than originally agreed upon with no reasonable explanation for this or the source of funds used;

3.3.4 Multiple cash repayments without plausible explanation for source of funds;

3.3.5 Clients are hesitant to provide personal information and information on their proposed business;

3.3.6 The business being established does not make economic sense and does not fit into the profile of the borrower;

3.3.7 A change in the business or the business strategy of the borrower that does not make economic sense;

3.3.8 The client is part of a complex structure or group or is a trust established in a foreign jurisdiction;

3.3.9 The loan is serviced by a third party that was not part of the original transaction;

3.3.10 Multiple loans are taken out which do not make sense or do not fit the economic profile of the client;

3.3.11 Credit facilities have been found to be high risk for TF;

3.3.12 As compared to ML, only small amounts are needed to raise funds for terrorist causes.

3.4. Credit providers should apply enhanced scrutiny where juristic person borrowers exhibit opaque or complex ownership or control structures, including the use of nominee shareholders, trusts, foreign legal arrangements, or layered group structures that may obscure the identity of the beneficial owner.

3.5. Possible indicators of TF in the provision of credit facilities to businesses and individuals, include the following:

3.5.1. A mortgage credit facility is paid up multiple times before the end of the agreement and money withdrawn continuously without a reasonable explanation;

3.5.2. After several months of small regular payments there is a significant payment that has been deposited into the mortgage account without a reasonable explanation;

3.5.3. Where large purchases of crypto assets are made on credit, and the customer has not shown any patterns of purchasing crypto assets previously;

3.5.4. Where multiple credit cards are requested, and the credit card is used by third parties to withdraw cash in foreign jurisdictions;

3.5.5. Where there is a settlement payment on the account for a significant amount more than the balance due, and the overpayment of the balance is later requested by the client with no reasonable justification;

3.5.6. Where multiple purchases of similar or the same amounts are made on credit in multiple cities within a short time frame, or on the same day, and the customer does not have any branches or businesses in those cities;

3.5.7. Where the credit card holder makes multiple purchases at institutions that are outside of the country, but their economic activity does not justify doing so;

3.6. Possible indicators of proliferation financing risk in the provision of credit facilities include, but are not limited to:

3.6.1. credit facilities extended to entities involved in dual use goods, sensitive technologies, or controlled commodities;

3.6.2. transactions involving jurisdictions subject to United Nations Security Council or South African sanctions related to proliferation activities;

3.6.3. complex trade based credit arrangements that lack a clear commercial or economic rationale; and

3.6.4. attempts to circumvent targeted financial sanctions screening or controls.

4. COMMUNICATION WITH THE CENTRE

4.1. The Centre has a dedicated Compliance Contact Centre geared to assist accountable institutions to understand their registration obligations in terms of the FIC Act. Please call the compliance contact centre on telephone number **(012) 641 6000 and select option 1**.

4.2. Compliance queries may also be submitted to the Centre online by clicking on: http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx or visiting by the Centre's website https://www.fic.gov.za/compliance-queries/, and submitting an online compliance query.

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