

## ACCOUNTABLE INSTITUTIONS

### Introduction

An **accountable institution** is defined as a person, or an organisation referred to and listed in Schedule 1 of the Financial Intelligence Centre Act, 38 of 2001 (FIC Act) that carries on the business of any entity. Accountable institutions must fulfil certain obligations in terms of the FIC Act.

An accountable institution must develop, document, maintain and implement a programme for anti-money laundering, counter-terrorist financing and proliferation financing risk management and compliance.

### Accountants as accountable institutions

As an accountant you are most likely to be an accountable institution if you fall under the category of trust and company service providers. This means as a business you offer clients the following services as an example:

- **Creation:** Assisting in the formation and registration of companies.
- **Operation:** Providing ongoing support for the company's day-to-day operations.
- **Management:** Offering management services, including administrative and compliance support

The following do not constitute trust and company service for accountants:

- **Financial Record Keeping:** Maintaining accurate financial records, including transactions, expenses, and revenues.
- **Financial Statements:** Preparing financial statements such as income statements, balance sheets, and cash flow statements.
- **Compliance:** Ensuring compliance with tax laws and accounting standards

### Illustrative example of whether tax practice is an accountable institution



The administrative functions of a tax practice would have to be assessed on a case by case basis as to whether they are:

- Administrative activities that relate solely to the recording, or capturing of company data or information, such as capturing tax records
- The administrative submissions of information or data for legislative purposes, such as the filing of tax returns.
- Activities that do not amount to decision-making within the client's business activities.

There is no exhaustive list but the above case by case assessment has to be done by each TCSP to conclude if they are an accountable institution.

### Why this has become important

### FATF Recommendation 22: Designated Non-Financial Businesses and Professions (DNFBPs)

The Financial Action Task Force (FATF) Recommendation 22 focuses on the application of anti-money laundering (AML) and counter-terrorist financing (CTF) measures to Designated Non-Financial Businesses and Professions (DNFBPs). These entities are often involved in activities that can be exploited for money laundering or terrorist financing, making it crucial to extend AML/CTF obligations to them.

### Key Points:

1. **Scope of DNFBPs:** DNFBPs may include a variety of professions and businesses such as:
  - Casinos
  - Real estate agents
  - Dealers in precious metals and stones
  - Lawyers, notaries, and other independent legal professionals
  - Accountants

- Trust and company service providers (TCSPs).
2. **Customer Due Diligence (CDD):** DNFBPs must conduct CDD when they engage in certain activities, such as:
    - Buying and selling real estate
    - Managing client money, securities, or other assets
    - Managing bank, savings, or securities accounts
    - Organizing contributions for the creation, operation, or management of companies
    - Creating, operating, or managing legal persons or arrangements, and buying and selling business entities.
  3. **Record-Keeping:** DNFBPs are required to maintain records of transactions and CDD information for at least five years. These records must be sufficient to permit reconstruction of individual transactions so that they can provide evidence for prosecution of criminal activity if necessary.
  4. **Suspicious Transaction Reporting (STR):** DNFBPs must report suspicious transactions to the relevant authorities. This includes transactions that are unusual or inconsistent with the client's known legitimate business or personal activities.
  5. **Internal Controls and Compliance:** DNFBPs should establish internal policies, procedures, and controls to ensure compliance with AML/CTF obligations. This includes appointing a compliance officer, providing ongoing employee training, and implementing an independent audit function to test the system.
  6. **Regulation and Supervision:** Countries should ensure that DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CTF requirements. This includes licensing or registration and appropriate regulatory oversight.

FATF Recommendation 22 aims to extend AML/CTF measures to DNFBPs, recognizing their potential role in money laundering and terrorist financing. By implementing these measures, DNFBPs can help safeguard the financial system and contribute to global efforts to combat financial crime.

### Overview of PCC 6A Guidance on TCSPs

Public Compliance Communication (PCC) 6A provides guidance on the obligations of trust and company service providers (TCSPs) under the FIC Act. This guidance is essential for ensuring compliance with AML, CTF, and counter-proliferation financing (CPF) legislative requirements.

A TCSP for the purposes of FIC is defined as any person who, in the ordinary course of business, assists clients with the creation, operation, and management of companies, external companies, foreign companies, close corporations, or trusts. This includes activities such as company formation, providing registered office addresses, and acting as company directors or trustees.

### Key Obligations:

1. **Customer Due Diligence (CDD):** TCSPs must conduct thorough CDD to verify the identity of their clients and understand the nature of their business relationships. This includes identifying beneficial owners and assessing the risk of money laundering or terrorist financing.
2. **Record-Keeping:** TCSPs are required to maintain accurate records of all transactions and CDD information for at least five years. These records must be readily available for inspection by regulatory authorities.
3. **Reporting Suspicious Transactions:** TCSPs must report any suspicious transactions to the Financial Intelligence Centre (FIC) without delay. This includes transactions that appear unusual or inconsistent with a client's known business activities.
4. **Risk Assessment:** TCSPs should conduct regular risk assessments to identify and mitigate potential AML/CTF risks. This involves evaluating the client's business activities, geographic location, and the nature of the services provided.

**Risk Indicators:** PCC 6A provides a list of risk indicators that TCSPs should consider when assessing the risk of money laundering, terrorist financing, or proliferation financing. These indicators include unusual transaction patterns, clients from high-risk jurisdictions, and complex ownership structures.

**Compliance Programmes:** TCSPs are encouraged to implement robust compliance programmes that include policies, procedures, and internal controls to ensure adherence to the FIC Act. This includes regular training for staff on AML/CTF obligations and the appointment of a compliance officer.

PCC 6A emphasizes the importance of compliance for TCSPs in preventing financial crimes. By adhering to the guidance provided, TCSPs can contribute to the integrity of the financial system and help combat money laundering, terrorist financing, and proliferation financing.

### **Definition of Trust and Company Service Providers (TCSPs) expanded**

Trust and Company Service Providers (TCSPs) are entities or individuals that offer a range of services related to the formation, operation, and management of companies and trusts. These services can include:

- **Forming companies or other bodies corporate:** Assisting clients in the creation of companies, including drafting formation documents and facilitating registration.
- **Acting as a director or secretary:** Serving as a director or secretary of a company under an arrangement with a person other than the company.
- **Providing registered office or business address:** Offering a registered office or business address for a company.
- **Acting as trustees:** Serving as trustees of express trusts.

TCSPs play a crucial role in the financial system by providing services that can be exploited by criminals to disguise the origin and ownership of assets through complex structures like shell companies or trusts.

## When TCSPs Become Accountable Institutions

TCSPs become accountable institutions under the FIC Act when they engage in specific activities that expose them to risks of money laundering, terrorist financing, or proliferation financing. According to Schedule 1 of the FIC Act, TCSPs are considered accountable institutions if they:

**1. Prepare for or carry out transactions for a client involving:**

- **The creation, operation, or management of a company** or external company, foreign company, or close corporation.
- **Acting as a nominee** for a client as defined in the Companies Act.

**2. Perform active roles in a client's business** where they make decisions that steer the direction of the client's operations or business.

These activities make TCSPs gatekeepers to the financial system, providing potential access points for criminals to conduct business with financial institutions without revealing their identities. Therefore, TCSPs must adhere to stringent compliance measures to mitigate these risks.

## Common questions

### Is an auditor and accountable institution?

An external auditor is an independent professional who examines the financial statements and records of an organization to ensure accuracy and compliance with various standards and regulations. Due to that level of independence and an audit coming after decisions are made by an organization, an auditor may be deemed not to be an accountable institution. However, an auditor should still be aware of the risks an accountable institution would ordinarily be monitoring. In addition, it has been noted that auditors fall under the purview of the Independent Regulatory Board of Auditors and are legislatively obligated to report on reportable irregularities which mitigate the risk of auditors not being accountable institutions. This can apply to other forms of assurance engagements.

### **Is an accounting practice an accountable institution?**

An accounting practice refers to a business that provides accounting services to clients. These services can include bookkeeping, financial statement preparation, tax planning and compliance, auditing, and advisory services. As such some components of an accounting practice may lead to the practice being an accountable institution. Offering compliance support to management, tax planning and advisory services to assisting with decision making on creation, management and operations of a business would make a practice an accountable institution. However, offering bookkeeping services or financial statement preparation would not fall under the definition of an accountable institution. Having just one client out of 100 where tax planning services are offered, automatically makes one an accountable institution. There is currently no exemption process in the legal framework.

### **Once identified as an accountable institution what is the next step?**

- **Register with the Financial Intelligence Centre (FIC):** You must register your institution with the FIC. This involves providing details about your business and the services you offer
- **Implement a Risk Management and Compliance Programme (RMCP):** Develop and implement an RMCP that outlines how your institution will manage and mitigate risks related to money laundering and terrorist financing.

### **What is the effect of FIC Public Compliance Communication 6A**

According to the FIC, accountants who provide services such as the creation, operation, or management of companies, trusts, or close corporations are considered TCSPs under Schedule 1 of FICA. Please note that each accountant in the employ of an accountable institution is not considered as an individual accountable institution and does not have to register separately.

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