

ORGANISATION: THE BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: DRAFT PUBLIC COMPLIANCE COMMUNICATION 122 GUIDANCE ON THE APPLICATION OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001) TO SPECIAL PURPOSE VEHICLES THAT ARE ACCOUNTABLE INSTITUTIONS UNDER ITEM 11 OF SCHEDULE 1 OF THE FIC ACT, 2001

Additions are bolded and underlined in orange ~~xxx~~, and deletions are struck through ~~xxx~~

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	<p>OBJECTIVE This PCC confirms the applicability of the FIC Act requirements to special purpose vehicles that are accountable institutions and provides clarity on the interpretation of special purposes vehicles for the purposes of applying the FIC Act requirements.</p> <p>Further, the PCC highlights vulnerabilities faced by special purpose vehicles and provides risk indicators that can be considered when determining money laundering, terrorist financing and proliferation financing (ML, TF and PF) risks presented in their client engagements.”</p>	<ol style="list-style-type: none"> 1) Para 4.1 of PCC 122 states that “Owing to their operational role within industry, accountable institutions are best placed to understand and identify areas of potential ML, TF, and PF vulnerability”, through the existing obligation to perform business and client risk assessments. 2) The PCC does not highlight vulnerabilities faced by SPVs nor provides risk indicators to be considered. 3) To avoid misdirection of the objectives of the PCC, BASA suggests that the second para of the objective be deleted. 	<ol style="list-style-type: none"> 1) BASA proposes that the second para of the objective para be deleted as follows: “This PCC confirms the applicability of the FIC Act requirements to special purpose vehicles that are accountable institutions and provides clarity on the interpretation of special purposes vehicles for the purposes of applying the FIC Act requirements. <p>Further, the PCC highlights vulnerabilities faced by special purpose vehicles and provides risk indicators that can be considered when determining money laundering, terrorist financing and proliferation financing (ML, TF and PF) risks presented in their client engagements.”</p>

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	<p>Para 1.1. Schedule 1 to the FIC Act sets out the various types of entities that are designated accountable institutions and must register with the Centre as such under each designated item. The legal structure, form or entity type of an institution, may differ from accountable institution to accountable institution. This PCC focuses specifically on accountable institutions whose structure constitutes a special purpose vehicle (SPV) conducting business activity under item 11 of Schedule 1 of the FIC Act.</p>	<ol style="list-style-type: none"> 1) BASA notes that the Centre has not published the final PCC 23A regarding Item 11 of Schedule 1 to the FIC Act, despite issuing the document for the second round of consultation in December 2024. 2) Our comments regarding that draft PCC as it relates to SPVs remain relevant. It is our understanding that this draft PCC is only applicable to SPVs that meet the requirements of item 11 of Schedule 1. 3) To avoid ambiguity, BASA proposes the amendments as reflected in the next column. 	<ol style="list-style-type: none"> 1) BASA proposes that para 1.1 be amended as follows: “Schedule 1 to the FIC Act sets out the various types of entities that are designated accountable institutions and must register with the Centre as such under each designated item. The legal structure, form or entity type of an institution, may differ from accountable institution to accountable institution. This PCC focuses specifically on accountable institutions whose structure constitutes a special purpose vehicle (SPV) conducting business activity under item 11 of Schedule 1 of the FIC Act. This excludes an SPV which does not originate credit.”
	<p>Para 1.2. The Centre supervises and enforces compliance with the FIC Act obligations (anti-money laundering, combating of financing of terrorism and combating of proliferation financing (AML/CFT/CPF) for accountable institutions in terms of the FIC Act.</p>	<ol style="list-style-type: none"> 1) BASA suggests the grammatical amendments as reflected in the next column. 2) Should the Centre elect to retain the current wording, it is suggested that Centre include the addition closed bracket/parenthesis after (AML/CFT/CPF) as reflected in the next column. 	<ol style="list-style-type: none"> 1) BASA proposes that para 1.2 be amended as follows: “The Centre supervises and enforces compliance with the FIC Act obligations by accountable institutions related to (anti-money laundering, combating of financing of terrorism and combating of proliferation financing (AML/CFT/CPF) for—accountable institutions in terms of the FIC Act.”

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			<p>2) Should the above proposal not be accepted, BASA proposes the correction below: “The Centre supervises and enforces compliance with the FIC Act obligations (anti-money laundering, combating of financing of terrorism and combating of proliferation financing (AML/CFT/CPF)) for accountable institutions in terms of the FIC Act.”</p>
	<p>Para 1.3. A “special purpose vehicle” (SPV) for the application of this PCC may include, but is not limited to any juristic person, trust, partnership or other legal arrangement established as a legally distinct entity, structure or vehicle for a specific, limited or ring-fenced objective or purposes, that normally has its own assets, liabilities, and legal status separate from its forming parent institution or entity. The SPV may include an issuer special purpose institution (SPI) or similar entity used in securitisation, asset-backed funding, risk transfer, repackaging, or</p>	<p>1) It is noted that:</p> <ul style="list-style-type: none"> a) The proposed definition is open-ended (by use of the words “may include”) and references the Banks Act and Securitisation Regulations. The definition therefore acknowledges the existence of other types of SPVs, commonly used in the finance and banking sector (for example, ring-fenced or nominee companies to isolate financial risk, facilitate securitisation, enable processing in the securities trading market, or enable structured finance). b) The “characteristics of a SPV” described in section 2 of this PCC is not limited to credit providers. c) Certain SPVs (for example, in structured finance deals) may be created for a 	

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	<p>structured finance transactions, which is bankruptcy-remote, has restricted objects, and is prohibited from conducting business outside its defined mandate¹.</p> <p>¹ Refer to the Banks Act, 1990, read together with the Securitisation Regulations, and guidance issued by the of the South African Reserve Bank Prudential Authority.</p>	<p>specific purpose and liquidated once that purpose is fulfilled. That is, the entity has a limited and predictable 'legal life'. This could also be considered in the context of the administrative effort that will be dedicated to FIC Act compliance (registering as an accountable institution, appointing compliance officers, developing and maintaining an RMCP, and being subject to FIC Act inspection and supervision – together with fact that, in line with current procedure, the Centre may be required to manually process several deregistration requests for such entities).</p> <p>2) Given that this PCC is specific to SPVs that fall into the category of Item 11 alone (as stated in para 1.1 and the proposed title of this PCC), BASA requests clarity on whether:</p> <ol style="list-style-type: none"> a) a separate PCC will be published 'to clarify the interpretation' and application of FIC Act requirements in such other types of SPVs; or b) the contents of this PCC apply equally to other types of SPVs. 	

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	<p>Para 1.6. There are no exemptions that apply to compliance with the FIC Act. Operationalised and non-operationalised SPVs are required to comply with all the obligations as set out in the FIC Act.</p>	<ol style="list-style-type: none"> 1) BASA’s understanding is that draft PCC 122 articulates the FIC Act obligations where the SPV is in fact an accountable institution. 2) To avoid legal uncertainty and misinterpretation, BASA proposes that: <ol style="list-style-type: none"> a) for consistency with other provisions of the draft PCC (e.g. paras 1.5 and 2.4) that the Centre reiterate the wording throughout the PCC. b) the terms “operationalised” and “non-operationalised” be described or elaborated upon in the context of this statement. 3) BASA suggests that the term “passive” be used to align with the wording of the draft PCC. 	<ol style="list-style-type: none"> 1) BASA proposes that para 1.6 be amended as follows: “There are no exemptions that apply to compliance with the FIC Act. Operationalised and non-operationalised passive SPVs that are accountable institutions are required to comply with all the obligations as set out in the FIC Act.”
	<p>Para 2.1.5. The entity may essentially be a shell structure that has outsourced all operational functions. May be set up in a manner that does not have operations but essentially outsources the operations.</p>	<ol style="list-style-type: none"> 1) The current wording repeats the same idea twice (“outsourced all operational functions” and “does not have operations”). 2) BASA recommends the deletion as reflected in the next column. 	<ol style="list-style-type: none"> 1) BASA proposes that para 2.1.5 be amended as follows: “The entity may essentially effectively be a shell structure that has outsourced all operational functions, and does not conduct any operations itself. May be set up in a manner that does not have operations but essentially outsources the operations.”
	<p>Para 2.2. SPVs that directly or indirectly conduct business activity with</p>	<ol style="list-style-type: none"> 1) It is important to note that Schedule 1 does not have a “SPV” category. An SPV would only qualify as an accountable institution if 	<ol style="list-style-type: none"> 1) BASA proposes that para 2.2 be amended as follows:

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	<p>clients cannot evade accountability for complying with the FIC Act obligations merely because it lacks employees or operational capacity. The SPV has rights and obligations and may be used to channel funds, in relation to clients, as per any other accountable institution, and therefore there is a money laundering, terrorist financing and proliferation financing risk that it must mitigate.</p>	<p>its activities fall within item of Schedule 1 to the FIC Act.</p>	<p>“SPVs that directly or indirectly conduct business activity with clients cannot evade accountability for complying with the FIC Act obligations merely because it lacks employees or operational capacity. The SPV has rights and obligations and may be used to channel funds, in relation to clients, as per any other accountable institution, and therefore there is a money laundering, terrorist financing and proliferation financing risk that it must mitigate. <u>An SPV will only qualify as an accountable institution where it conducts activities that fall within the ambit of Schedule 1 to the FIC Act.</u>”</p> <p>2) Alternatively, BASA suggests that the proposed sentence be included at the beginning of the PCC.</p>
12	<p>Para 2.3. SPVs must implement governance arrangements that ensure compliance through measures such as contractual delegation and robust oversight.</p>	<p>1) Given that many SPVs may rely on a primary accountable institution to perform operational functions, BASA proposes the inclusion of wording indicating that governance arrangements implemented will include agreements between the SPVs and the primary accountable institution to ensure compliance with the FIC Act.</p>	<p>1) BASA proposes that para 2.3 be amended as follows: “SPVs <u>and the primary accountable institution</u> must implement governance arrangements that ensure compliance through measures such as contractual delegation and robust oversight.”</p>

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		2) BASA proposes the wording as reflected in the next column.	
13	<p>Para 2.3. Example Company X is a registered credit provider and is registered with the Centre as an Item 11(a) credit provider in terms of Schedule 1 to the FIC Act. Company X creates a SPV Company X (RF) and cedes all rights and obligations in terms of existing credit agreements are this SPV, as part of a securitisation scheme. The operations of the SPV however remains with Company X which is the entity that created the SPV.</p> <p>The SPV Company X (RF) therefore steps into the role of an accountable institutions in terms of item 11(a) of Schedule 1 to the FIC Act as it carries on the business of a credit provider.</p>	<p>1) Para 2.3 deals with governance arrangements. The placement of this example under paragraph 2.3 appears misplaced as it does not appear relevant to illustrating how SPVs implement governance arrangements with their primary accountable institution. The example instead illustrates when an SPV becomes an accountable institution.</p> <p>2) BASA is not aligned with the interpretation in the example provided. Item 11 of Schedule 1 does not determine that an SPV becomes an accountable institution merely because it “steps into a role” of a credit provider. Item 11 requires further definitional requirements to be met including “carries on a business”.</p> <p>3) Referring to draft PCC 23A, and the matter of where the SPV is the originator of credit is the instance that meets the definition of credit provider. However, in instances where an SPV has taken over a credit book, same does not amount to the SPV becoming an accountable institution.</p> <p>4) BASA suggests:</p>	<p>1) BASA proposes that this example be moved under para 2.2 and be amended as follows: “Company X is a registered credit provider and is registered with the Centre as an Item 11(a) credit provider in terms of Schedule 1 to the FIC Act. Company X creates a SPV Company X (RF) and cedes all rights and obligations in terms of existing credit agreements are to this SPV, as part of a securitisation scheme. The SPV also originates credit. The operations of the SPV however remains with Company X which is the entity that created the SPV.</p> <p>The SPV Company X (RF) therefore steps into the role of an accountable institutions in terms of item 11(a) of Schedule 1 to the FIC Act as it carries on the business of a credit provider. <u>However, where the SPV does not originate credit, it will not step into the role of an accountable institution in terms of item 11(a) of Schedule 1 to the FIC Act.</u>”</p>

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		<p>a) positioning the example under para 2.2 as it demonstrates the point that SPVs cannot evade compliance with the FIC Act; and</p> <p>b) the amendments as reflected in the next column be effected and the grammatical error be corrected as reflected in the next column.</p> <p>5) Alternatively, BASA suggests that the example be removed.</p>	
17	<p>Par 2.4. Some of the practical challenges SPVs that are accountable institutions face may include but are not limited to, the operational requirement where an authorized/appointed compliance officer is required to register the entity and users, development and implementation of a risk management and compliance programmes (RMCP), completion of customer due diligence (CDD), transaction monitoring, scrutinizing of client information</p>	<p>1) BASA suggests that the grammatical error be corrected as reflected in the next column.</p>	<p>1) BASA proposes that para 2.4 be amended as follows: “Some of the practical challenges SPVs that are accountable institutions face may include but are not limited to, the operational requirement where an authorized/appointed compliance officer is required to register the entity and users, development and implementation of a risk management and compliance programmes (RMCP), completion of customer due diligence (CDD), transaction monitoring, scrutinizing of client information and reporting due to the SPVs limited operational capacity.”</p>

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	and reporting due to the SPVs limited operational capacity.		
18	Para 3.1. Delegation of authority structures on the reporting and registration platform goAML, is a mechanism designed to centralise registration and reporting for accountable institutions that operate within a group structure or grouped portfolios. Delegation structures are allowed in the scenarios as set out in draft Public Compliance Communication 5E.	<ol style="list-style-type: none"> 1) BASA is unaware of draft PCC 5E having been released for consultation. For the purpose of referencing other PCCs, BASA recommends that only final existing documents be referenced. 2) BASA therefore recommends the: <ol style="list-style-type: none"> a) deletion of “draft”; and b) the correction to reference PCC 5D. 3) In the event that the Centre persists with reference to draft PCC 5D, BASA requests that the Centre: <ol style="list-style-type: none"> a) conduct a second round of consultation on PCC 122 after/simultaneously with the consultation of PCC 5E; or b) confirm that there are no relevant amendments within PCC 5E that may impact the commentary to PCC 122. 	<ol style="list-style-type: none"> 1) BASA proposes that para 3.1 be amended as follows: “Delegation of authority structures on the reporting and registration platform goAML, is a mechanism designed to centralise registration and reporting for accountable institutions that operate within a group structure or grouped portfolios. Delegation structures are allowed in the scenarios as set out in draft Public Compliance Communication 5ED.”
21	Par 3.2. Where a SPV is an accountable institution, that forms part of a portfolio of a primary accountable institution, and receives the rights and obligations of that accountable institution, then the SPV must register as an	<ol style="list-style-type: none"> 1) BASA’s interpretation of Schedule 1 is that a person is an accountable institution if it meets the definitional requirements of the relevant categories in Schedule 1. The mere fact that rights and obligations are ceded and delegated does not amount to the SPV become an accountable institution – 	<ol style="list-style-type: none"> 1) BASA proposes that: <ol style="list-style-type: none"> a) para 3.2 be deleted. b) Alternatively amended as follows: “Where a SPV is an accountable institution, that forms part of a portfolio of a primary accountable institution, and receives the rights and obligations of that accountable institution, and the SPV is a

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	accountable institution with the Centre.	<p>especially where the SPV does not “carry on a business”.</p> <p>2) BASA proposes that para 3.2 be deleted. Should the Centre retain the wording, BASA suggests that the grammatical error be corrected as reflected in the next column.</p>	<p><u>credit originator</u>, then the SPV much <u>must</u> register as an accountable institution with the Centre.”</p>
24	<p>Par 3.3. The SPV as provided for in paragraph 3.2. may send a request to the Centre to be linked via a delegation structure to the primary accountable institutions for operational purposes.</p>	<p>1) Clarity is requested on this possible deviation from standard practice, wherein the ‘principal’ accountable institution is itself able to register a delegated entity on goAML.</p>	
25	<p>Para 3.4. The written request to the Centre must be on formal letterhead and set out in detail the ownership and organisational structure and operations of both the primary accountable institution and the SPV accountable institution. The Centre will then consider the request to determine whether a delegation is permissible given the risk and context of the SPV.</p>	<p>1) Following BASA’s comment on para 3.3, BASA requests clarity on whether this deviation from existing processes is perhaps based on the contents of a revised draft PCC 5D, i.e. PCC5E (not yet released for consultation); or is this a new measure for the Centre to ensure applicability and pre-authorise <i>all</i> new registrations or merely SPV registrations.</p>	

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26	Para 3.5. The proposed compliance officer of the SPV accountable institution could be the same appointed compliance officer for the primary accountable institution.	1) BASA proposes that the grammar be corrected as reflected in the next column.	1) BASA proposes that para 3.5 be amended as follows: “The proposed compliance officer of the SPV accountable institution could may be the same appointed compliance officer for the primary accountable institution.”
27	Par 3.6. The SPV must be able to demonstrate that it forms part of a broader group or is linked to the broader group, which group it may benefit from in the form of sharing operational resources and mutual control.	1) BASA proposes that the grammar be corrected as reflected in the next column.	2) BASA proposes that para 3.6 be amended as follows: “The SPV must be able to demonstrate that is it forms part of a broader group or is linked to the broader group, which group it may benefit from in the form of sharing operational resources and mutual control.”
29	Para 3.8. The primary accountable institution is not seen as an agent of the SPV but rather linked to the SPV through a chain of mutual control, therefore forming a unique part of a group to which the SPV belongs.	1) To avoid a conflict with securitisation legislation (the Banks Act, 1990, read together with the Securitisation Regulations), BASA suggests that “linked” be amended to “connected” to reflect that the SPV is not linked to the primary accountable institution through a chain of mutual control.	1) BASA proposes that para 3.8 be amended as follows: “The primary accountable institution is not seen as an agent of the SPV but rather linked connected to the SPV through a chain of mutual control, therefore forming a unique part of a group to which the SPV belongs.”
30	Para 3.9. In addition to the guidance stated in draft PCC 5E, note that each accountable institution that qualifies under Schedule 1 of the	1) Refer to our comments in para 3.1. 2) BASA therefore recommends the: a) deletion of “draft”; b) correction to reference PCC 5D; and	1) BASA proposes that para 3.9 be amended as follows: “In addition to the guidance stated in draft PCC 5 ED , note that each accountable institution that qualifies under Schedule 1 of

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	Financial Intelligence Centre Act, Act 38 of 2001 as amended (FIC Act) must register in its own right, before being linked under a delegation structure.	c) deletion of reference to the “Financial Intelligence Centre Act, Act 38 of 2001” as amended as the FIC Act is referenced at the beginning of the PCC.	the Financial Intelligence Centre Act, Act 38 of 2001 as amended (FIC Act) must register in its own right, before being linked under a delegation structure.”
32	<p>Par 3.10. For the purpose of this PCC, delegation structure cannot be allowed in the event of operative SPVs. Where an SPV operates outside a group structure, has operational employees, ongoing business operations, has diverse functions beyond a special purpose, single project, or risk-isolated purposes.</p>	<ol style="list-style-type: none"> 1) The SPVs are passive, but even the passive SPVs operate outside of a group structure (See previous comments on ownership in this regard). 2) The nature of SPVs and the registration thereof, is so that they are not within the group structure. The inclusion of “outside a group structure” would contradict the definition of “passive” as passive SPVs are too outside the group structure. 3) The current second sentence is incomplete and deviates from PCC 5D. It introduces a new prohibition on delegation for operative SPVs. Rewording is needed to clarify the intended distinction between passive SPVs (where delegation is allowed) and operative SPVs (where it is not), and to align the drafting with PCC 5D's framework. 4) BASA proposes the amendment as reflected in the next column. 	<ol style="list-style-type: none"> 1) BASA proposes that para 3.10 be amended as follows: “For the purpose of this PCC, delegation structure cannot be allowed in the event of operative SPVs. Where an SPV operates outside a group structure, has operational employees, ongoing business operations, has diverse functions beyond a special purpose, single project, or risk-isolated purposes, <u>the SPV would be regarded as an operative structure and delegation structures would not be allowed.</u>”

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34	<p>Para 3.11. Delegation is allowed for purposes of passive SPVs where an SPV that is an accountable institution falls within, or is linked to a group either through a chain of ownership or mutual control, where the primary accountable institution (controlling entity) coordinates and conducts the operational functions, of the SPV including functions in terms of the FIC Act.</p>	<ol style="list-style-type: none"> 1) The link is through a contractual requirement to the group and not via being owned and controlled (e.g. through the setting up of a SPV structure, the SPV assets originating within the group, the group determining which assets to securitise, the operational functions being executed by group entities). 2) The originator (primary accountable institution) has a servicing structure responsible for the functions in terms of the FIC Act. 3) BASA proposes the amendment as reflected in the next column. 	<ol style="list-style-type: none"> 1) BASA proposes that para 3.11 be amended as reflected below: “Delegation is allowed for purposes of passive SPVs where an SPV that is an accountable institution falls within, or is linked to a group either through a requirement of the group, a chain of ownership or mutual control or management, where the primary accountable institution (controlling or originating entity) coordinates, manages and conducts the operational functions, of the SPV including functions in terms of the FIC Act.”
36	<p>Para 3.17. Where an accountable institution that is a SPV, and is delegated to a primary accountable institution, the SPV accountable institution must have an RMCP that aligns with the parent accountable institution’s framework but reflects its own ML, TF and PF risk profile. The RMCP must demonstrate how the SPV identifies, assesses, manages and mitigates the identified risk. The</p>	<ol style="list-style-type: none"> 1) The SPVs should be considered to form part of the group so that the group can apply a groupwide AML/CFT programme and allow it to leverage the FIC Act compliance activities fulfilled by the linked primary accountable institution. 2) Para 2.19 of PCC 5D states: <i>“The Centre is aware that within group structures compliance functions are often centralised. The Centre encourages accountable institutions within a group structure to apply a group wide RMCP.”</i> 3) Paragraph 6.2 of PCC 43 states: 	<ol style="list-style-type: none"> 1) BASA proposes that para 3.17 be amended as follows: “Where an accountable institution that is a SPV, and is delegated to a primary accountable institution, the SPV accountable institution must have an RMCP that aligns with the parent primary accountable institution’s framework but reflects its own ML, TF and PF risk profile. The RMCP must demonstrate how the SPV identifies, assesses, manages and mitigates the identified risk. The RMCP must clarify the relationship between the SPV and the primary accountable institution, defining

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	<p>RMCP must clarify the relationship between the SPV and the primary accountable institution, defining the roles and responsibilities for compliance oversight.</p>	<p><i>“The Centre encourages accountable institutions within a group structure to apply a groupwide AML/CFT programme. This would allow for a single standard to be applied across the group structure.”</i></p> <p>4) Consideration must be given that RMCP of the SPV will place full reliance on the primary accountable institution’s controls.</p> <p>5) SPVs do not perform any operational functions and do not maintain independent structures and have no independent systems or employees.</p> <p>6) A servicing agreement is concluded between the SPV and the original debt owner. In terms of this agreement, all operational activities are performed by the original debt owner. By way of an example, where the SPV re-advances funds, the application process including the credit assessment, any required validations and the flow of funds is facilitated through the original debt owner’s systems and processes, and the customer keeps the same account number.</p> <p>7) Practically this limits what functions the SPV can perform. Second, by virtue of the legal structure and servicing agreement, the SPV does not control the underlying client</p>	<p>the roles and responsibilities for compliance oversight. <u>In the case of passive SPVs, the SPV may adopt the group RMCP in full, provided that the RMCP reflects the governance arrangements between the SPV and the primary accountable institution and the SPV’s reliance on the controls and operational processes of the primary accountable institution.</u></p>

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		<p>information and transactional data. This information is held by the original debt originator and is managed in terms of business-as-usual processes including those in place to meet regulatory obligations such as monitoring, reporting etc.</p> <p>8) Para 17 appears to permit SPVs that have delegated their compliance functions to align with a group-level RMCP. However, the additional obligations introduced in this para create practical constraints that may significantly limit the effectiveness of such alignment. This potentially poses particular challenges for passive SPVs that do not maintain independent structures and are intentionally designed to have no employees, operational processes, independent systems, and internal capability to identify, assess or manage financial crime risks.</p> <p>9) These entities rely entirely on the governance, systems and controls of the primary accountable institution and instead adopt the group RMCP in full as permitted under Guidance note 7A.</p> <p>10) Accordingly, requiring passive SPVs to have RMCPs is disproportionate.</p>	

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		11) BASA therefore proposes the amendments as reflected in the next column.	
37	<p>Par 3.18. Where an accountable institution is an SPV, and is delegated to a primary accountable institution, the SPV accountable institution may rely on the reporting controls as developed and implemented by the primary accountable institution, only in so far as the primary accountable institution conducts the transactions operationally on behalf of the SPV accountable institution.</p>	<p>1) To avoid ambiguity, BASA suggests that the word “passive” be inserted in para 3.18 as reflected in the next column.</p> <p>2) There does not appear to be a reference to the obligation to report to key FIC Act obligations, being CDD, record keeping, reporting (CTR, STR, TPR) and RMCP, which are operationally not performed on behalf of the SPV accountable institution.</p>	<p>1) BASA proposes that para 3.18 be amended as follows: “Where an accountable institution is an passive SPV, and is delegated to a primary accountable institution, the passive SPV accountable institution may rely on the reporting controls as developed and implemented by the primary accountable institution, only in so far as the primary accountable institution conducts the transactions operationally on behalf of the SPV accountable institution.”</p> <p>2) BASA proposes that the PCC should:</p> <p>a) clearly specify which compliance related functions may be outsourced and outline the applicable reporting processes where such functions are performed at group level rather than by the SPV itself. In particular, guidance should be provided on whether regulatory reports must be submitted under the bank’s accountable institution registration or under the SPV’s registration- this is relevant given that the</p>

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			<p>SPV does not own the client relationship, this sits with the bank.</p> <p>b) Include the FICs expectations of “shared operations on the below aspects will be helpful:</p> <ul style="list-style-type: none"> • Record keeping • Compliance officer • Training
	<p>Para 3.19. The reporting controls as stated may include the monitoring of transactions in order to detect reportable activity, as well as the actual reporting of the activity to the Centre. This should be done by the SPV appointed compliance officer, and the assistance of SPV appointed money laundering reporting officer (MLROs), if any. This would therefore not be in breach of the FIC Directive 2.</p>	<ol style="list-style-type: none"> 1) The actual reporting of activities to the Centre may be conducted by a centralised function and not necessarily the MLRO. BASA proposes that the wording reflected in the next column be removed from the para. 2) Should the above proposal not be accepted, to avoid ambiguity, BASA suggests that the word “operative” be inserted in para 3.18 as reflected in the next column. 3) BASA requests clarity on the reference to Directive 2 (which essentially states that log-in credentials may only be used by the individual to whom such credentials have been allocated) in the context of para 3.19. 	<ol style="list-style-type: none"> 1) BASA proposes that para 3.19 be amended as reflected below: “The reporting controls as stated may include the monitoring of transactions in order to detect reportable activity, as well as the actual reporting of the activity to the Centre. This should be done by the SPV appointed compliance officer, and the assistance of SPV appointed money laundering reporting officer (MLROs), if any. This would therefore not be in breach of the FIC Directive 2.” 2) Alternatively, BASA proposes that para 3.19 be amended as follows: “The reporting controls as stated may include the monitoring of transactions in order to

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			<p>detect reportable activity, as well as the actual reporting of the activity to the Centre. This should be done by the operative SPV appointed compliance officer, and the assistance of the operative SPV appointed money laundering reporting officer (MLROs), if any. This would therefore not be in breach of the FIC Directive 2.”</p>
	<p>4. POTENTIAL ANTI-MONEY LAUNDERING, COUNTER TERRORIST FINANCING AND COUNTER PROLIFERATION FINANCING RISK INDICATORS” Para 4.1. Accountable Institutions must conduct money laundering, terrorist financing and proliferation financing (ML, TF and PF) risk assessments on a business and at a client level. Owing to their operational role within industry, accountable institutions are best placed to understand and identify areas of potential ML, TF, and PF vulnerability.”</p>	<p>1) In the absence of indicators being provided, BASA suggests that: a) risk indicators are provided; b) this para is deleted; or c) the heading be amended.</p>	<p>1) BASA suggests that: a) risk indicators are provided; b) this para is deleted; or c) the heading be amended as follows: “4. ASSESSMENT OF POTENTIAL ANTI-MONEY LAUNDERING, COUNTER TERRORIST FINANCING AND COUNTER PROLIFERATION FINANCING RISKS INDICATORS”</p>