

ORGANISATION: THE BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: DRAFT PUBLIC COMPLIANCE COMMUNICATION (PCC) 123 ON DIRECTIVE 9 OF 2024 CONCERNING THE IMPLEMENTATION OF THE TRAVEL RULE RELATING TO CRYPTO ASSET TRANSFERS

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>General Definitions</p> <p>1) Paragraph 1.4 of the PCC states that the definitions contained in Directive 9 are applicable to draft PCC 123. As such, BASA recommends deleting certain definitions in the draft PCC, to avoid conflict, inconsistent interpretation and/ or application.</p> <p>2) The definitions we suggest be deleted in the draft PCC are –</p> <ul style="list-style-type: none"> i. Beneficiary; ii. Cross-border crypto asset transfer; iii. Domestic crypto asset transfer; iv. Distributed ledger address; and v. Qualifying transfer. <p>3) For ease of reading and identification, it would be beneficial if the remaining definitions are listed alphabetically.</p> <p>4) Should the approach above not be adopted, the definitions included in the draft PCC should align with the definitions in Directive 9.</p> <p>Interpretation concerns</p> <p>5) Elements of the draft PCC introduce substantive compliance expectations that extend beyond what is prescribed in the FIC Act and its Regulations, creating uncertainty for accountable institutions (AIs). In particular, the interpretation in paragraphs 3.5 to 3.9 effectively links the frequency and sequencing of crypto asset transactions to the determination of whether a transaction constitutes a “single transaction” or a “business relationship.” This approach introduces an expectation that most crypto asset activity—especially where fiat is converted into crypto as a precursor step—should be treated as occurring within an ongoing business relationship, thereby triggering verification obligations even where the statutory threshold for a single transaction has not been met.</p>			

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
1.	<p>Para 1.3 The requirement to obtain, hold and transmit certain information for crypto asset transfers enables CASPs to identify suspicious and unusual transactions, to detect possible terrorist financing, proliferation financing and financing of persons designated on targeted financial sanctions lists of the United Nations Security Council (UNSC) resolutions. In addition, it enables the CASPs to freeze crypto assets when necessary, and file reports to the Centre.</p>	<p>1) Please see the next column for punctuation and grammar suggestions.</p>	<p>1) BASA proposes that para 1.3 be amended as follows: “The requirement to obtain, hold, and transmit certain information for crypto asset transfers enables CASPs to identify suspicious and unusual transactions, and to detect potential possible—terrorist financing, proliferation financing and financing of persons designated on targeted financial sanctions lists of the United Nations Security Council (UNSC) resolutions. In addition, it enables the CASPs to freeze crypto assets when necessary, and file reports with to the Centre.”</p>
2.	<p>Para 2.6.1 A ‘qualifying transfer’ includes a crypto asset transfer, whether domestic or cross-border, conducted in the course of a business relationship. The threshold for a crypto asset transaction is zero, this means the travel rule applies to all crypto transactions regardless of the amount.</p>	<p>1) Refer to general commentary on the definitions. 2) The definition of ‘qualifying transfer’ has not been used in the draft PCC. However, it is defined in Directive 9 (para 2.1.9) as meaning ‘a transaction in a business relationship involving a crypto asset which is any value above zero’ and referenced in para 42. 3) BASA is of the view that the definition in the draft PCC and/ or its cross reference to the content of Directive 9 does not serve much purpose and potentially may cause confusion (i.e. qualifying transfer may be misinterpreted</p>	<p>1) BASA proposes that the definition of a ‘qualifying transfer’ be deleted. 2) In the absence of the definition being deleted, BASA proposes that the definition be amended to read: “A ‘qualifying transfer’, as defined in Directive 9, refers to domestic or cross-border includes a crypto asset transfers, whether domestic or cross-border, conducted in the course of a business relationship. The threshold for a crypto asset transaction is zero, this means the travel rule applies to all crypto transactions regardless of the amount.”</p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		<p>to refer to the definition per Directive 9). BASA therefore recommends deleting same.</p> <p>4) If the definition is not deleted, BASA proposes that the definition in the Directive, be adopted in the PCC. Alternatively, cross references the definition in the Directive and refers to a domestic or cross-border crypto asset transfer. The remainder of the definition to be deleted as the more substantive provisions are dealt with in the context of the draft PCC itself.</p> <p>5) The phrase ‘the threshold is zero’ (despite the content of paras 3.1 and 3.2) may be misinterpreted by stakeholders, as it implies a formal monetary threshold exists. Since Directive 9 applies to all transfers irrespective of amount, clearer wording such as ‘no minimum threshold’ or ‘applies to all transfers’ may improve comprehension.</p>	
3.	<p>Para 2.6.7. ‘Beneficiary’ – the term beneficiary as used in the Directive includes the receiver of the crypto assets transferred and has a different meaning to the term ‘beneficial owner’ as defined in the FIC Act.</p>	<p>1) Refer to general commentary on the definitions.</p> <p>2) The word ‘includes’, as it appears in the definition implies a non-exhaustive category/ list whereas in the travel-rule context and per Directive 9, the beneficiary is the receiver of the crypto assets.</p> <p>3) With regards to the definition of ‘beneficiary’, BASA notes the principle being conveyed, namely that the term</p>	<p>1) BASA proposes that the definition of ‘beneficiary’ be deleted.</p> <p>2) If not deleted, the definition to be amended to align with the definition in Directive 9 (which excludes reference to ‘includes’ and the principle pertaining to beneficial owner.</p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		<p>'beneficiary' does not equate to "beneficial owner".</p> <p>4) BASA recommends that the latter principle regarding beneficial ownership (if required) should not be included in the definition, but rather be included as a standalone sentence, under para 2 (General Terms and Application).</p>	
4.	<p>Para 2.6.11. 'Network using distributed ledger or similar technology', includes a digital system for recording the transaction of assets in which the transactions and their details are recorded in multiple places at the same time.</p>	<p>1) BASA proposes the amendment as reflected in the next column to account for shared systems across geographies etc.</p>	<p>1) BASA proposes that para 2.6.11 be amended as follows: ""Network using distributed ledger or similar technology', includes a digital shared record-keeping system across different locations, institutions, geographies for recording the transaction of assets in which the where transactions and their details are recorded in multiple places at the same time."</p>
5.	<p>Para 3.1. A zero threshold applies per crypto asset transfer for business relationships, this means that all crypto asset transfers regardless of the amount, must comply with the travel rule, and must have the information as required in terms of Directive 9.</p>	<p>1) Referring to commentary above regarding the definition of 'qualifying transfer', the substantive provision regarding the required information to appear in all crypto asset transfers should not be referenced in the context of a 'zero threshold' (as it could be mistakenly associated with the monetary threshold, i.e. R5 000).</p>	<p>1) BASA proposes that para 3.1 be amended as follows: "A zero threshold applies per crypto asset transfer for business relationships, this means that aAll crypto asset transfers regardless of the amount, must comply with the travel rule, and must have the information as required in terms of Directive 9."</p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		2) For ease of reading and understanding, BASA proposes that this paragraph be amended as reflected in the next column.	
6.	<p>Para 3.2. The zero threshold that applies for the travel rule should not be confused with the single transaction threshold that determines the scope of customer due diligence (CDD) measures applicable to accountable institutions.</p>	1) With reference to commentary on para 3.1, BASA is of the view that the content of this para is not required.	1) BASA proposes that para 3.2 be deleted.
7.	<p>Para 3.3 The term 'verify the information' and 'verify for accuracy', means that an accountable institution, must ensure the information concerning the client that is captured as required in terms of Directive 9 when processing a crypto asset transfer, has been obtained through CDD.</p>	<p>1) The phrase 'verify for accuracy' is –</p> <ul style="list-style-type: none"> a) not used in the FIC Act, Regulations, or Directive 9; and b) only used in the heading (above para 3.3) and in para 3.3 itself. <p>2) BASA proposes that the reference thereto be deleted for ease of reading and understanding.</p> <p>3) To provide clarification, of the responsibilities of the ordering and receiving CASP, it is suggested that 'the client' be amended to 'its client'.</p> <p>4) See proposed amendments to paragraph 3.3.</p>	<p>1) BASA proposes that</p> <ul style="list-style-type: none"> a) the heading 'verify for accuracy' be deleted and b) para 3.3 be amended as follows: "The term 'verify the information' and 'verify for the accuracy' means that an accountable institution, must ensure the information concerning the its client that is captured as required in terms of Directive 9 when processing a crypto asset transfer <u>is verified in accordance with the accountable institution's risk management and compliance programme.</u>"

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
8.	Para 3.4 Before entering into a business relationship with a client, the CASP must have conducted CDD on its the client in compliance with the FIC Act and in terms of the CASP’s risk management and compliance programme (RMCP).	1) BASA suggests the grammatical changes as reflected in the next column.	1) BASA proposes that para 3.4 be amended as follows: “Before entering into a business relationship with a client, the CASP must have conducted CDD on its the client in compliance accordance with the FIC Act and in terms of the CASP’s risk management and compliance programme (RMCP).”
9.	Para 3.5 When an ordering CASP processes a once-off single crypto asset transfer below R5 000 which is not conducted as part of a business relationship, the obligation to verify the information requested in paragraph 4.5 does not apply.	1) The reference to ‘paragraph 4.5’ is ambiguous, as a reader may assume it refers to paragraph 4.5 of this PCC. To avoid confusion, the PCC should specify that the reference is to paragraphs 4.5 and 4.6 (the latter being referenced for context) of Directive 9 or alternatively include the relevant requirements directly in the PCC for ease of interpretation.	1) BASA proposes that para 3.5 be amended as follows: “When an ordering CASP processes a once-off single crypto asset transfer below R5 000 which is not conducted as part of a business relationship, the obligation to verify the information requested in paragraphs 4.5 and 4.6 of Directive 9 does not apply.”
10.	Para 3.8 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 a transaction that is either (a) a transaction other than a transaction concluded in the course of a business relationship and (b)	1) The inclusion of the word ‘either’ contradicts the definition of a single transaction contained in the FIC Act. 2) BASA suggests that the wording in the PCC be amended to be aligned thereto.	1) BASA proposes that para 3.8 be amended as follows: “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 a transaction that is either (a) a transaction other than a transaction concluded in the course of a business relationship; and (b) where the value of the

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	where the value of the transaction is not less than the amount of R5 000.		transaction is not less than the amount of R5 000.”
11.	<p>Para 3.9 From the definition of a single transaction the emphasis is placed on one transaction. The Centre considers the conversion of fiat to crypto and thereafter further crypto asset transfers as multiple transactions. Given that there is a time frame 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.</p>	<p>1) Directive 9 -</p> <ul style="list-style-type: none"> a) distinguishes between transfers conducted within a business relationship and those that are single transactions (par 3.5 and 3.7 in the draft PCC also refers to single transaction); b) sets out a minimum information set for single transactions below R5 000; and c) provides that, for such single transactions, verification of information is not required unless there is suspicion. <p>As such, Directive 9 accepts that crypto asset transfers can occur outside a business relationship (i.e. that not all crypto asset transfers must always be a business relationship).</p> <p>2) Considering the above, paras 3.9 and 3.10 of the draft PCC 123 are attempting to treat crypto asset transfers as inherently constituting a business relationship and seemingly amending the content of Directive 9 by way of guidance/ interpretation in the PCC (which it cannot).</p>	<p>1) BASA proposes that the Centre consider including a short framing paragraph distinguishing (a) travel-rule applicability to all transfers; and (b) CDD verification rules for single vs sub-threshold once-off transactions, which would improve certainty.</p> <p>2) Alternatively, BASA proposes that para 3.9 be amended as follows: “From the definition of a single transaction the emphasis is placed on one transaction. <u>Sequential or related transactions do not, on their own, constitute a business relationship for purposes of the FIC Act unless the accountable institution has established an ongoing arrangement with the client for the conclusion of transactions on a regular basis. The determination of a business relationship must remain aligned with the statutory definition and should not be inferred solely from transaction frequency or the typical flow of fiat-to-crypto conversion. The Centre considers the conversion of fiat to crypto and thereafter further crypto asset transfers as multiple transactions. Given that there is a</u></p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		3) Draft PCC 123 should provide clear guidance on when a crypto asset transfer may be regarded as a single transaction, notwithstanding the Centre's general expectation that crypto activity is relationship-based. In the absence thereof, uncertainty is created as to how the single-transaction provisions of Directive 9 are intended to operate or be applied.	time frame 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."
12.	Para 3.10 In light of the above, it is the Centre's interpretation that crypto asset transfers are considered to be business relationships. As such, the customer due diligence and targeted financial sanctions obligations set out in sections 21F, 21G, 21H and 28A of the FIC Act and other relevant sections must be applied.	1) Refer to our comments on para 3.9 above.	1) BASA proposes that the Centre consider including a short framing paragraph distinguishing (a) travel-rule applicability to all transfers; and (b) CDD verification rules for single vs sub-threshold once-off transactions, which would improve certainty.
13.	Para 3.11 The CASP should determine which factors make a crypto asset transfer higher risk, and apply enhanced measures to such crypto asset	1) Enhanced due diligence is a concept generally applied at client level and would not be applied at a transaction level for the examples provided. 2) By way of example, a client that is considered high risk would have enhanced	1) BASA proposes that para 3.11 be substituted as follows: <u>"The CASP should implement appropriate controls in accordance with its RMCP to manage the risk of the CASP being used for ML, TF, PF or sanctions evasion."</u>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	<p>transfers, factors may include but are not limited to:</p> <p>3.11.1. The transaction is unusual for the client type</p> <p>3.11.2. Either the originator or beneficiary are based in a high-risk country</p> <p>3.11.3. The transaction is linked to a designated person</p> <p>3.11.4. The client is high risk</p> <p>3.11.5. The funds are coming from or going to an unhosted wallet</p> <p>3.11.6. Crypto assets are sent to or received from high-risk or adverse media related counterparty CASPs.</p>	<p>due diligence applied which contemplates all exposure across all products. Subsequent transactions should not by rule then be treated as high risk.</p> <p>3) The lack of limitation on “adverse media” may result in unintended consequences.</p> <p>4) Furthermore, application of controls to the counterparty CASP extends due diligence requirements outside the scope of the directive. The provision should be principle based as proposed in the next column.</p>	
14.	<p>Para 3.14</p> <p>Prior to conducting crypto asset transfers, the CASP must scrutinise the counterparty CASP information against the targeted financial sanctions list and must conduct CDD on the counterpart CASP. Important factors to consider when conducting due diligence include:</p> <p>...</p>	<p>1) The provisions of the draft PCC extend the requirements of Directive 9.</p> <p>2) BASA proposes that:</p> <p>a) Para 3.14 be replaced with the wording proposed in the next column; and</p> <p>b) paras 3.14.1 to 3.14.12 be deleted.</p> <p>3) Should the above proposal not be accepted-</p> <p>a) while a risk-based approach (para 3.13) when dealing with counterparty CASPs is welcomed, some of the factors</p>	<p>1) BASA proposes that para 3.14 be amended as reflected below and paras 3.14.1 to 3.14.12 be deleted:</p> <p><u>“Prior to conducting crypto asset transfers, the CASP must scrutinise the counterparty CASP information against the targeted financial sanctions list and must conduct CDD on the counterpart CASP in accordance with their RMCP.”</u></p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	<p>3.14.9. Full disclosure on the locations of the counterpart CASP's clients.</p> <p>...</p>	<p>considered are time-consuming, such as determining the beneficial owners of the counterparty CASPs. Furthermore, this information may not be readily available in the counterparty's foreign country. It is stated that not every transaction requires due diligence, but particularly when an institution commences with crypto transactions, they will need to build their database of counterparties, placing burden on the newly registered CASPs as the information may not be readily available.</p> <p>b) Directive 9 does not require CDD for the counterparty CASP, rather "due diligence"- the distinction is noted as the counter party CASP is not a client.</p> <p>c) BASA therefore suggests that paras 3.14 and 3.14.9 be amended as reflected in the next column.</p>	
15.	<p>Par 3.17. From the definition in Directive 9 of an 'intermediary crypto asset service provider', the intermediary does not necessarily establish a business relationship with either the originator or beneficiary, in certain scenarios.</p>	<p>1) The phrase "in certain scenarios" is vague and unnecessary, as the definition of an intermediary CASP in Directive 9 already recognises that an intermediary does not have a business relationship with the originator or beneficiary.</p> <p>2) In the event an intermediary crypto service provider has a relationship with the</p>	<p>1) BASA proposes that para 3.17 be amended as follows: "From the definition in Directive 9 of an 'intermediary crypto asset service provider', the intermediary does not necessarily establish a business relationship with either the originator or beneficiary, in certain scenarios."</p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		<p>beneficiary or originator, it would not be acting in its capacity as an intermediary.</p> <p>3) BASA proposes the deletion of ‘necessarily’ and the ambiguous qualifier ‘in certain scenarios’, as reflected in the next column.</p>	
16.	<p>Para 4.3 Real-time monitoring must enable the swift suspending of transactions that are non-compliant.</p>	<p>1) This para can only be operationalised when all CASPS are subject to the same rule. BASA suggests the amendments in the next column.</p>	<p>1) BASA proposes that para 4.3 be deleted and substituted to read: <u>“Where a CASP identifies a transaction that is non-compliant the CASP must implement risk-based controls to manage the risk of non-compliance with Directive 9.”</u></p>
17.	<p>Para 4.9 Where accountable institution uses monitoring systems, such systems used to comply with the travel rule obligation for the safe and immediate transmission of the relevant originator and beneficiary data, storing, and monitoring, should enable the following:</p> <ul style="list-style-type: none"> • Interoperability with internal and external systems • Ability to handle the volumes of transactions processed 	<p>1) In BASA’s view, the last bullet ‘Ability to identify and suspend or block transactions that are non-compliant (missing information or inaccurate or incomplete information)’ does not account for a risk-based approach. BASA suggests the amendments in the next column.</p>	<p>1) BASA proposes that the last bullet in para 4.9 be amended as follows: <u>“Ability to identify and, suspend, or block <u>or otherwise manage the risk of</u> transactions that are non-compliant (missing information or inaccurate or incomplete information).”</u></p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	<ul style="list-style-type: none"> Ability to identify and suspend or block transactions that are non-compliant (missing information or inaccurate or incomplete information) 		
18.	<p>Para 4.10 The intermediary CASP and the recipient CASP should only execute (complete) a crypto asset transfer when full information, as required in Directive 9 in respect of the originator and beneficiary, is provided to the intermediary and recipient CASPs either prior to or simultaneously with the transfer.</p>	1) This para creates more stringent obligations than Directive 9. BASA proposes that para 4.10 be deleted as the obligations are adequately covered in the preceding paragraphs above.	1) BASA proposes that para 4.10 be deleted.
19.	<p>Para 4.11 The requirement to suspend applies to both cross-border and domestic crypto asset transfers. The CASP should develop a process to suspend a transaction, and where required, request relevant information from the counterpart CASP.</p>	1) Refer to our comments on para 4.10.	1) BASA proposes that para 4.11 be deleted.

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
20.	<p>Para 4.13 If the Centre issues a directive under section 34 of the FIC Act to a CASP, the CASP must immediately freeze for a period of 10 working days the transaction or wallet address mentioned in the section 34 directive.</p>	<ol style="list-style-type: none"> 1) The para extends the application of the FIC Act, which provides for a time period “not longer than 10 days”, and has the effect of crafting the 10 days as a permanent timeline irrespective of the nature of the transaction. 2) BASA suggests that the para be deleted as the provisions of section 34 are adequate in this regard. 3) Should the Centre elect to retain the contents of para 4.13, the word “freeze” is not used in section 34 of the FIC Act, which empowers the Centre to direct an institution not to proceed with a transaction or proposed transaction for a period not longer than 10 days. Further the term ‘freeze’ may be confused with a ‘targeted financial sanctions freeze’, which could cause legal uncertainty. 4) BASA recommends that the term “wallet address” be amended to the defied term “distributed ledger”. 	<ol style="list-style-type: none"> 1) BASA proposes that para 4.13 be deleted. 2) Alternatively, BASA proposes that para 4.13 be amended as follows: “If the Centre issues a directive under section 34 of the FIC Act to a CASP, the CASP must not proceed with the transaction or any activity involving the distributed ledger wallet address immediately freeze for a period of 10 working days the transaction or wallet address mentioned in the section 34 directive.”
21.	<p>Para 4.15 A process of escalation when non-compliant transactions are identified must be developed and implemented. The process must provide for either the remediation</p>	<ol style="list-style-type: none"> 1) BASA suggests that para 4.15 be amended as reflected in the next column - <ol style="list-style-type: none"> a) for improved sentence flow; and b) reference to ‘within escalated timelines’ be deleted as a transaction where required information is not provided, is 	<ol style="list-style-type: none"> 1) BASA proposes that para 4.15 be amended as follows: “A process of escalation when non-compliant transactions are identified must be developed and implemented. The process must provide for either (i) the remediation followed by

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	followed by execution of a transaction, the suspension of a non-compliant transaction, and the rejection where required information is not provided within escalation timelines. There are no exemptions to the travel rule obligation. Clear breach and remediation processes should be set out as part of a CASP's RMCP.	not determined based on whether the information is provided within the escalation timelines or not. This is determined based on the content of the RMCP in this regard.	execution of a transaction, (ii) the suspension of a non-compliant transaction, and or the rejection where required information is not provided within escalation timelines . There are no exemptions to the travel rule obligation. Clear breach and remediation processes should be set out as part of a CASP's RMCP."
22.	Par 4.16 Where CASPs detect activity with a client that seems to be counterparty CASP type activity, such as high volume of transactions, this should be reported through to the Centre, as it could be an indicate the client is an unlicensed or unregistered CASP.	1) The para extends the reporting obligations of the FIC Act. Accountable institutions are required to report activity that meets the requirements of section 29. BASA proposes that the para be adjusted accordingly.	1) BASA proposes that para 4.16 be amended as follows: <u>"A CASP must report activity to the Centre, which meets the requirements of section 29(1)."</u>
23.	Para 4.18 Accountable institutions are advised to consider the use of real-time automated sanctions screening of crypto asset transfers to ensure compliance with section	1) Draft PCC 123 explicitly instructs CASPs to refer to PCC 44A for guidance on targeted financial sanctions screening in paras 1.4, 4.12 and 4.18. It should be noted that PCC 44A was issued prior to the regulation of crypto asset transfers and does not explicitly	

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	<p>26B of the FIC Act, read together with section 28A of the FIC Act. Refer to PCC 44A for guidance on targeted financial sanctions, read together with the FIC targeted financial sanctions manual.</p>	<p>address sanctions screening requirements in the CASP environment, including the screening of distributed ledger addresses, unhosted wallets or the application of TFS obligations in the context of Directive 9.</p> <p>2) BASA therefore suggests that the Centre update PCC 44A with CASP specific guidance to ensure that accountable institutions can implement section 28A obligations consistently in a matter appropriate to crypto asset transfers.</p>	
24.	<p>Para 4.19 All crypto asset transfers must be scrutinised against the UNSC targeted financial sanctions list, which is also available on the FIC website www.fic.gov.za, to determine whether any designated persons or entities are linked to the crypto asset transfer. This includes, but is not limited to, the information regarding the originator, beneficiary and counterpart CASP which could include an intermediary CASP and wallet addresses (distributed ledger address).</p>	<p>1) BASA suggests that certain aspects articulated in FIC Guidance Note 8 equally find application and relevant in this PCC. As an example, Guidance Note 8 provides for the use of asylum seeker or refugee permit numbers where clients do not hold identity or passport numbers (pars 3.13; 3.14.1 and 3.14.2). For further examples, refer to paras 2.6; 2.15; 3.2; 6.2; and 6.3.</p>	

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
25.	<p>Para 4.20. In no scenario may the crypto asset value be given to the client prior to scrutinising the information concerning the client against the targeted financial sanctions list. The CASP must comply with the targeted financial sanctions obligations as set out in section 26A, 26B, 26C and 28A of the FIC Act.</p>	<p>1) As it relates to sanctions screening of wallet addresses (DLT addresses), it is BASA’s view, it would be helpful if the draft PCC 123 clarify:</p> <ul style="list-style-type: none"> a) whether blockchain analytics-based wallet risk scoring qualifies as “scrutinising” under section 26B; b) what sources of evidence would be considered acceptable for linking DLT addresses to designated persons; and c) what constitutes “reasonable grounds” for freezing. 	
26.	<p>Para 4.21. The CASP must apply an immediate automatic obligation to freeze crypto assets where it is linked to a designated person or entity.</p>	<p>1) Draft PCC 123 contemplates that in no scenario may the crypto asset value be given to the client prior to scrutinising the information against the targeted financial sanctions list, whereas Directive 9 emphasises immediate transaction processing, potentially creating operational tension, especially where automated sanctions screening systems produce false positives or delays.</p> <p>2) BASA recommends that the draft PCC:</p> <ul style="list-style-type: none"> a) provide sanction screening examples specific to CASPs illustrating how screening should be applied in scenarios including: 	

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		<ul style="list-style-type: none"> i. Treatment of unhosted wallets linked to designated persons. ii. Expected evidence thresholds before freezing. iii. Required client notification prohibitions under section 26A. 	
27.	<p>Para 4.25</p> <p>Transfers from the CASP’s client to unhosted wallets pose a heightened risk of ML, TF and PF, as there is no beneficiary CASP that has conducted CDD on its client. The CASP must apply enhanced due diligence when processing transfers to unhosted wallets.</p>	<p>1) The paragraph creates a rule and therefore impedes the application of a risk-based approach. BASA proposes that the last sentence of para 4.25 be deleted and substituted with the amended wording proposed in the next column.</p>	<p>1) BASA proposes that para 4.25 be amended as follows: “Transfers from the CASP’s client to unhosted wallets may pose a heightened risk of ML, TF and PF, as there is no beneficiary CASP that has conducted CDD on its client. <u>The CASP must take actions in accordance with its RMCP to mitigate the heightened risk. The CASP must apply enhanced due diligence when processing transfers to unhosted wallets.</u>”</p>
28.	<p>Para 4.26</p> <p>Where the transaction involves an unhosted wallet where the beneficiary or the originator is an unhosted wallet, sufficient control measures must be implemented to ensure compliance with directive 9</p>	<p>1) Whilst BASA understands the purpose of this statement, the implementation of obtaining information of the unhosted wallet will be difficult to obtain from the client, and the information may be insufficient, for example incorrect first name, incomplete name and so forth. For certainty of understanding, BASA would appreciate if the Centre could</p>	<p>1) BASA proposes that para 4.26 be amended as follows: “Where the transaction involves an unhosted wallet where the beneficiary or the originator is an unhosted wallet, sufficient control measures must be implemented to ensure compliance with dDirective 9. <u>Where the CASP is unable to collect the required</u></p>

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		<p>clarify whether in such circumstances, the transaction would be able to continue.</p> <p>2) BASA proposes that para 4.26 be amended as reflected in the next column.</p>	<p><u>originator and beneficiary information, or when there is doubt about the veracity of such information, then the CASP has not satisfied the Directive 9 obligation.”</u></p>
29.	<p>Para 4.29 Peer-to-peer crypto transfers, or unhosted- to-unhosted wallets face a heightened risk of being abused for ML, TF and PF because an accountable institution is not a party to the transfer which essentially bypasses compliance obligations.</p>	<p>1) Unhosted wallets operate outside the regulatory perimeter and as FATF has noted, are often preferred precisely because they enable pseudonymous peer-to-peer activity beyond institutional oversight. Due to this, BASA requests clarification on the Centre’s expectations regarding:</p> <p>a) fulfilling the travel rule requirements when a transfer occurs from one unhosted wallet to another unhosted wallet (i.e., peer-to-peer); and</p> <p>b) what reasonable steps a CASP can take to verify beneficiary information when sending funds to an unhosted wallet or verifying originator information when receiving funds from an unhosted wallet.</p>	