

25 March 2026

To :Mr Pieter Smit
Acting Director
Financial Intelligence Centre

Email :Pieter.smit@fic.gov.za

Per email

Dear Sirs

**SUBMISSIONS IN RELATION TO DRAFT DIRECTIVE 11, DRAFT PCC 5E
AND THE DRAFT RISK COMPLIANCE RETURN (RCR) QUESTIONNAIRE**

1. We refer to the consultation note published 11 March 2026, relating to draft Directive 11 on the submission of risk and compliance returns to the Financial Intelligence Centre by specified accountable institutions.
2. The LSSA as a voluntary representative body of the legal profession, particularly the attorneys' profession, brings together the Black Lawyers Association, National Association of Democratic Lawyers, the Independent Lawyers Association as the constituent members of the LSSA.
3. The LSSA remains a crucial role player in the legal profession. We have invited the views of the legal profession on the draft Directive 11 on the submission of risk and compliance returns. We have encouraged the members of the legal profession to make their submissions to the

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Financial Intelligence Centre, our office has also made comments via the comments platform.

4. Over and above such, we have also found it necessary that we write to the Financial Intelligence Centre in raising some of our general and substantive comments in respect of the draft Directive 11.
5. Below we set out some of the more detailed questions we ask, and trust will be considered by the Financial Intelligence Centre in this process.
6. **DOES A LAW FIRM HAVE TO SUBMIT A SEPARATE RISK COMPLIANCE RETURN (RCR) FOR EVERY BRANCH?**

- 6.1 Paragraph 5.1 of the Draft Directive 11 (**DD 11**) provides that:

"Every accountable institution specified in this Directive must submit the completed risk and compliance return to the Centre in accordance with the Schedule to this Directive" [our underlining].

- 6.2 The submissions we make herein are in respect of a medium sized legal practitioner/law firm. A number of law firms, small and medium and big sized, operate in a similar manner and what we set herein is not in relation to one firm but in relation to a number of firms in South Africa.
- 6.3 This particular firm has a head office and branches in different provinces. The firm's compliance, accounting and administrative functions and related staff are all centralised and managed at the head office for the whole national firm. The firm has smaller branches ("**branch**" or "**branches**") in different provinces throughout South Africa.
- 6.4 Item 1 (b) of the Schedule 1 to the Financial Intelligence Centre Act, 2001 (**FICA**) includes in the list of accountable institutions "a

commercial juristic entity, as contemplated in section 34 (7) of the Legal Practice Act, 2014".

6.5 Section 34 (5) of the Legal Practice Act, 2014 (LPA) prescribes that:

"Attorneys may only practise-

(a) for their own account;

(b) as part of a commercial juristic entity referred to in subsection (7) and as such, may only make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance, or otherwise with an attorney;

(c) as part of a law clinic established in terms of subsection (8);

(d) as part of Legal Aid South Africa; or

(e) as an attorney in the full-time employment of the State as a state attorney or the South African Human Rights Commission" [our underlining].

6.6 Section 34 (7) of the LPA provides that:

"A commercial juristic entity may be established to conduct a legal practice provided that, in terms of its founding documents-

(a) its shareholding, partnership or membership as the case may be, is comprised exclusively of attorneys;

(b) provision is made for legal services to be rendered only by or under the supervision of admitted and enrolled attorneys..."

6.7 In the context of these comments, the firm concerned is a partnership which comprises only attorneys and accordingly that partnership is a commercial juristic entity in terms of section 34 (7) of the LPA and as referred to in Item 1(b) of Schedule 1 to FICA.

6.8 It follows that in terms of Item 1 of Schedule 1 to FICA, a legal practitioner which is a partnership is the commercial juristic entity and is accordingly the accountable institution as defined in FICA. The individual attorneys who are partners or employees of that firm's partnership are not themselves accountable institutions as defined by FICA nor are any of the firm's branches.

6.9 The firm concerned has:

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- 6.9.1 one RMCP, which has been accepted by the Financial Intelligence Centre (FIC);
- 6.9.2 trust accounts centralized and controlled at head office for its whole national business;
- 6.9.3 one business account for its entire national business.
- 6.10 The firm's branches:
 - 6.10.1 are not separate commercial juristic entities in terms of the LPA;
 - 6.10.2 do not conduct business for their own account;
 - 6.10.3 are not separate partnerships;
 - 6.10.4 do not operate separate trust or business bank accounts; and
 - 6.10.5 are subject to centralised compliance, accounting, management and administration control exercised at the firm's head office which functions are not delegated or vested in branches and accordingly, the mischief which the FIC seeks to police can meaningfully only be done at a centralized level in the context of a partnership.
- 6.11 The rationale and findings of the FICA Appeal Board ruling dated 28 March 2025 in the matter between Pam Golding Properties and the FIC (case number 12/3/1/5-PGP/FIC (7/24)) (**Pam Golding Case**) explain the correct application of FICA in relation to a firm and its branches and the principles set out in that case also apply to a law firm which operates as a single national partnership with branches in different provinces. In that matter the Appeal Board found at paragraphs 36 and 37 that:

"The Centre argues in its heads of argument that each branch of Pam Golding is an accountable institution. We disagree: ...

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36.5 The branches are not accountable institutions as they are not natural or juristic persons; do not hold a fidelity fund certificate, do not operate a bank account, do not operate a trust account, and are not registered as property practitioners under the Property Practitioners Act. None of the branches conduct business for their own account.

36.6 The registration of the branches on the Centre's goAML platform does not render the branches 'accountable institutions' as envisaged in the FICA. Neither can the guidance documents issued by the Centre, whether PCC 5C or PCC 5D (the latter which in any event post-dates the deadline for Directive 6) transform something which is not an accountable institution into one. The FICA defines what an 'accountable institution' is. Further, the Centre cannot expand on / amend the list of accountable institutions. (sec 73 of the FICA; Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1999 (1) SA 374 (CC) par [58]).

37. Pam Golding is an accountable institution. The branches of Pam Golding are not separate accountable institutions" [our underlining].

6.12 A copy of the Pam Golding decision is attached.

6.13 It is therefore clear that in relation to its registration with the FIC as a legal practitioner, a firm which is a partnership is one accountable institution only irrespective of the number or location of its branches.

6.14 Despite the principles expressed in the Pam Golding Case, the FIC in PCC 5D provides that:

"9.2.1 *Each branch of a legal practitioner's firm is regarded as a separate accountable institution and will therefore be required to register separately with the Centre.*

9.2.2 *Where a firm has branches within the jurisdiction of a particular Legal Practice Council, the firm must register all branches as separate accountable institutions within the jurisdiction of the province in which each branch lies.*

- 9.2.3 *If a firm has multiple branches within different Legal Practice Council, jurisdictions, independent registration structures must be registered as per the example below*".
- 6.15 This is not consistent with Item 1 of Schedule 1 of FICA as explained in the Pam Golding Case.
- 6.16 Draft PCC 5E (Draft PCC 5E) published for comment by the FIC on 19 March 2026 does not correct the situation and is confusing.
- 6.17 Paragraph 6.3 of Draft PCC 5E provides that: "*In a scenario where a branch of an accountable institution, is an accountable institution in its own right, then that branch must register as a separate accountable institution on the Centre's registration and reporting platform*".
- 6.18 As is clear from the Pam Golding Case read with FICA, where a legal practitioner is a partnership then the commercial juristic entity comprising that partnership in terms of section 37 (5) of the LPA is the accountable institution.
- 6.19 Paragraph 6.5 of the Draft PCC 5E provides that "*Accountable institutions are not required to register branches and subsidiaries as a separate accountable institution to the head office, nor to regard such registered branches and subsidiaries as accountable institutions*".
- 6.20 Paragraph 6.6 of the Draft PCC 5E explains the delegation structure applied to branches which are not accountable institutions and to multiple Schedule 1 accountable institution registrations. There are 3 different methods prescribed for submitting the information required by Directive 10 to the FIC. These methods provide for delegation of branches to a head office. Paragraph 8 of Directive 10 deals with centralisation of registration in terms of the delegation structure. Paragraph 8.1 states that "*Centralisation of registration among head*

or main office, branch and subsidiary structures is preferred and is achieved by what is known on the registration and reporting platform as “delegation”” [our underlining]. Delegation includes where “An entity, which conducts business in one Schedule item, and has multiple branches... that are not accountable institutions in their own right. The accountable institution entity must register as an accountable institution head office and thereafter provide particulars of each of its branches and subsidiaries under the “branch of an accountable institutions” registration” (paragraph 8.2.3 of the Draft PCC 5E). Paragraph 8.2.5 of the Draft PCC 5E provides that where an entity “conducts business across several FIC Act Schedule items, the accountable institution that serves as the head or main business of that entity will be registered as the “main office”. All subsequent accountable institutions with different FIC Act Schedule item numbers will be registered as accountable institutions individually and will then be linked to the main office”.

- 6.21 Paragraph 9 of the Draft PCC 5E deals with registration of legal practitioners. Paragraph 9.2.1 requires the legal practitioner to register its head office and “provide information in respect of its branches in accordance with Directive 10”.
- 6.22 The confusion and, with respect, non-compliance of Draft PCC 5E (and the current PCC 5D) with Schedule 1 of FICA arises in paragraph 9.2.2 of the Draft PCC 5E which states that “If a firm has multiple branches within different Legal Practice Council jurisdictions, independent registration structures must be registered as per the example below”. Example 4 reads as follows: “**Legal practitioner X has 27 branches across South Africa. These branches are all within the jurisdiction of nine different provincial Legal Practice Councils. All branches are separate accountable institutions. Firm X must create independent registration structures. These structures will be based on the jurisdictions of the provincial Legal**

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Practice Council". In summary, the effect of paragraph 9.2.2 of the Draft PCC 5E (and paragraph 9.2.2 of PCC 5D) is that:

- 6.22.1 a law firm is 1 accountable institution in terms of Item 1 of Schedule 1 of FICA;
- 6.22.2 despite that, the Draft PCC 5E provides that "*All branches are separate accountable institutions*" and therefore requires the firm which has 27 branches in the areas of jurisdiction of 9 Legal Practice Councils to register **27 accountable institutions** (the Draft PCC 5E is contradictory in this regard). The diagram which illustrates this requirement assumes that each province has a "main office" and branches. This simply does not reflect the reality of the structure of law firms which invariably have only 1 head office nationally and smaller branches.
- 6.23 PCC 5D and the Draft PCC 5E are purporting to amend the definition of accountable institution in Item 1 of Schedule 1 of FICA by defining as separate accountable institutions, the branches of a legal practitioner which is a single commercial juristic entity and therefore 1 accountable institution. The Pam Golding Case makes it clear that this is *ultra vires* the FIC's powers.
- 6.24 The obligation imposed on accountable institutions in paragraph 5.1 of the DD 11 is similar to that set out in paragraph 2.1 of Directive 6 which applied to the submission of risk and compliance returns (RCR) that had to be submitted during 2023. Both DD 11 and Directive 6 only impose the obligation to submit RCRs on accountable institutions and do not say that RCRs must be submitted by accountable institutions for each org ID which they hold. This was a key cause of confusion about the meaning of Directive 6 (which contributed to the Pam Golding Case) and with respect, that confusion has been perpetuated in DD 11.

- 6.25 If the FIC requires accountable institutions to submit separate RCRs for each org ID held by that accountable institution, it will therefore be necessary that such requirement is expressly and unambiguously set out.. PCC 5D is confusing and inconsistent with FICA and Draft PCC 5E does not improve or clarify the position.
- 6.26 Neither PCC 5D nor Draft PCC 5E explain why the FIC considers each branch of a legal practitioner operating in a different province to be a separate accountable institution. The FIC treats geographic risk as attaching to the location of each office operated by a legal practitioner. Geographic risk attaches to clients of the legal practitioner and is factored into a firm's RMCP, including, where necessary, any geographic risk which may be specific to a branch. Especially in the context of a national firm, geographic risk is usually not a function of the location of the firm's offices but of its clients and their businesses.
- 6.27 In addition, it is important to bear in mind that section 4 of the LPA creates the South African Legal Practice Council which is a national council. While section 23 (1) of the LPA provides for the establishment of provincial Legal Practice Councils for areas of jurisdiction corresponding with the jurisdictional areas of the High Court divisions, that section only permits the LPC to delegate to such provincial councils "such powers and functions which, in the interests of the legal profession are better performed at provincial level". Regulation 5 to the LPA lists the provincial LPC's powers which do not include FICA compliance. Compliance with FICA is clearly a matter of national importance which is, as a matter of fact, managed centrally by the national LPC. In the circumstances, there is no need or justification for the FIC considering each branch of a legal practitioner in a different province/each branch to be a separate accountable institution.

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- 6.28 It is a fundamental principle that the law must be certain and clear. The FIC, as a regulator institution with significant penalty powers, must clearly set out its requirements for compliance. Directive 6 gave rise to enormous confusion and non-compliance simply because the FIC did not clearly explain its requirements for RCRs in Directive 6. In this context and bearing in mind the decision in the Pam Golding Case, it is inexplicable why the FIC has largely repeated the form of Directive 6 and has not taken the opportunity to clearly state its requirements for RCR submission. In addition, compliance should be made as easy as possible and in this regard, if the FIC requires accountable institutions to refer to other documents published by the FIC in implementing DD 11 (such as Draft PCC 5E), it should expressly refer to those documents and provide appropriate links in DD11.
- 6.29 The approach which appears to have been adopted by the FIC in respect of legal practitioners' head offices and branches is not consistent with that applied in the United Kingdom. In terms of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**UK Regulations**) solicitors must register with the supervisory authority for their profession when carrying out specified services identified as posing money laundering, terrorist financing and proliferation financing (**MLTFPF**) risks. While the details of each branch of a law firm must be provided to Solicitors Regulatory Authority (**SRA**) in the application for registration, the solicitor does not register each such branch separately with the SRA.
- 6.30 Where a solicitor also performs work which falls within the scope of a trust and company services provider in terms of regulation 12 (2), the solicitor makes 1 application for registration to the SRA and in relation to any TCS which the solicitor wishes to provide, the SRA applies to the Financial Conduct Authority (**FCA**) for registration of

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those solicitors providing TCS on the FCA's register. Regulation 7 provides that where there may be more than 1 supervisory authority for a "relevant person" the supervisory authorities agree between themselves which authority will regulate that person. Notably, the FCA only exercises authority over TCSPs who are registered financial services providers and not solicitors providing TCS who are regulated by the SRA.

- 6.31 This simpler, and we submit, far more efficient registration process still provides the supervisory authority with a full picture of the location of all offices of a legal practitioner and the type of services provided but eliminates the enormous complication, duplication of work and reporting (with its significant risk to the integrity of the FIC's database) and inefficiency resulting from the FIC's insistence on what is, in reality, largely a duplicate registration of an accountable institution for every branch of a legal practitioner.

7. HOW SHOULD RCRS BE PREPARED AND SUBMITTED FOR DELEGATED TRUST AND COMPANY SERVICES PROVIDERS WHERE THOSE ACCOUNTABLE INSTITUTION REGISTRATIONS ARE DELEGATED TO THE LEGAL PRACTITIONER, THE ACCOUNTABLE INSTITUTION'S CORE BUSINESS?

- 7.1 In PCC 6A the FIC requires legal practitioners who also do work included in the definition of trust and company service providers item 2 of Schedule 1 to FICA to register both as a legal practitioner and as trust and company service providers (TCSP).
- 7.2 The firm only provides trust and company services (TCS) as part of its legal services business. Compliance for TCS services is also carried out by the legal practitioner's compliance function as part and parcel of the legal services compliance. In the United Kingdom, the nature of TCS services provided by legal practitioners is recognized

by the fact that legal practitioners who are TCSPs are supervised by the SRA whereas TCSPs who are financial services providers are regulated by the FCA.

7.3 In the context of the firm, all of the TCS work done is done only by the firm as part of its legal services business. The firm does not have a separate entity or company or other business that performs the TCS services.

7.4 Where the FIC reflects a firm's TCSP accountable institution registrations as "delegated" under the head office accountable institution registration, this acknowledges that:

7.4.1 there is no TCS business or entity separate from the legal practitioner's business of providing legal services;

7.4.2 there could never be an inspection of the TCSP's "business" because no such separate business exists;

7.4.3 when answering or attempting to answer some questions in the latest draft RCR accompanying DD 11 the questions asked clearly demonstrate how it is inappropriate to deal with TCS services provided by legal practitioners as a separate accountable institution for example, many of the questions about trust services presuppose that the trust is the client when in fact, usually the TCS are provided to clients which are not trusts and involve, for example, drafting a trust deed or resolutions;

7.4.4 identifying the TCS practice areas as separate accountable institutions is artificial and RCR obligation should recognize the reality that the TCS are simply part of the legal services provided by the legal practitioner.

7.5 If DD 11 ultimately requires a separate RCR to be filed for each accountable institution, that implies that separate risk rating is

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required for the TCS work as if it were a standalone business. Any such risk rating would be inaccurate and distorted and impossible to perform. This is because the MLTFPF risks associated with TCS work provided by a legal practitioner are the risks associated with legal services save that the type of work concerned, if TCS, may be higher risk. In short, the TCS are legal services provided by legal practitioners and must be risk rated as such.

7.6 Many of the questions in the draft RCR are simply inappropriate in a legal services TCS context because they:

7.6.1 assume that the TCS services are provided to a trust as client when usually those services are provided to a client in relation to an existing trust or one being formed;

7.6.2 assume that the company/trust in relation to which trustee or director services are provided is an accountable institution.

8. OTHER CONCERNS

8.1 In addition to the fact that requiring a legal practitioner to register every branch as a separate accountable institution is not permitted by FICA (see Pam Golding Case):

8.1.1 where a compliance function is centralised, it is unduly onerous and leads to duplicate reports (which skews and may compromise the validity and integrity of reporting data) to require legal practitioners to register and report separately for every branch and/or as TCSPs;

8.1.2 it is unreasonable, unjustified and unfair to require legal practitioners to be required to report per branch as accountable institution when other accountable institutions such as banks or TCSPs that also have branches are not required to do so;

- 8.1.3 in other legislation such as the Broad-Based Black Economic Empowerment Act, 2003, the legal practitioner is assessed centrally and in fact, anti-avoidance measures apply preventing measurement of the legal practitioner on a split basis such as per branch.
- 8.2 MLTFPF risks arise from a legal practitioner's clients and in that regard, the geographic location of the client and its business is relevant. It is neither necessary nor fair to require attorneys to register and report separately for each branch as an accountable institution, especially where the compliance function is centralized. The FIC's requirement that the legal practitioner's offices are accountable institutions is founded on an assumption that the clients of a legal practitioner are drawn from the geographic area in which its office is situated. That assumption may well be incorrect, especially in the context of a firm with a national footprint.
- 8.3 Requiring submissions to be made in a preset form or format constrains the submissions and means that those "consulted" are not able to provide their unrestricted feedback. The pre-populated answers provided as drop downs in the form have not been made available for consideration and comment. Where comments can be provided, the character limitations and inability to upload relevant supporting and contextualizing documents is not provided. In short, this is not true consultation.
- 8.4 The previous RCR's were extremely user unfriendly in the following respects:
- 8.4.1 a partially completed form could not be saved and had to be completed and filed at once which, bearing in mind the length and complexity of the form is unduly onerous;

- 8.4.2 answers to the form are structured as pre-populated dropdowns and the inability to upload relevant supporting documents means that the responses may not be properly contextualised thus leading to inaccurate reporting.
- 8.5 If the FIC wants legal practitioners to track the percentage legal services comprising TCS and data such as the proportion of domestic and foreign PEPs of total clients, that requirement should be advised well in advance and not required retrospectively, especially for 3 years.
9. The extensive information required to answer the draft RCR form in its present form, especially if separate forms are required for each branch and for TCSP registrations, requires a longer deadline for filing of the RCR responses as the deadlines of 30 April 2026 for TCSPs and 30 May 2026 for legal practitioners are simply unreasonably short.
10. The period allowed by the FIC for comments on DD 11 and Draft PCC 5E is unduly and unfairly short (in fact, Draft PCC 5E was published on 19 March 2026 for comments due a week later by 27 March 2026).
11. At the outset, it must be noted that the draft directive lacks procedural clarity. There is no indication of how the report is to be accessed and where the report must be submitted on the FICA website. This omission is significant and renders compliance unnecessarily difficult, if not impossible, for accountable institutions.
12. The questionnaire is detailed. Sector-specific guidance on how to complete it accurately, issued before the directive is finalized would significantly improve the quality of submissions and allow the profession to prepare meaningfully.
13. The questionnaire is exceptionally onerous. It contains 146 questions per reporting period, and when applied across three years of reporting,

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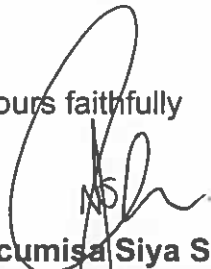
effectively requires responses to 441 questions. It is important that the FIC must appreciate that the vast majority of attorneys, particularly those in small and medium-sized practices, simply do not have the capacity to engage with a compliance exercise of this magnitude, which may potentially take three to five days to complete, due to the high demand of practice obligations legal practitioners are realistically faced with.

14. It will also appear that in terms of the RCR questionnaire there appears to be a number of sections which may not be relevant to a legal practitioner. It is also not clear from the directive whether there will be provision on the online questionnaire for institutions to only respond only to the sections relevant to their business where not applicable such option will be available.
15. Item 9.2 of the questionnaire deals with a question about legal services being provided by the institution, however, the draft form does not provide with response options ie: yes/no/not applicable. Will these options be available on the form?
16. The RCR Questionnaire is likely to create a substantial administrative and process burden not only on legal practitioners which is already heavily regulated but also on the FIC, particularly relating to the historical review and analysis of data requested.
17. It is also our observation that because the legal profession is largely made up of micro-practitioners with sole proprietorship practitioners, it is likely that the RCR process will generate a vast amount of data with little or value in the context. It is further difficult to identify any tangible or practical impact that this measure will have on the actual prevention of money laundering or financing of terrorism. A consideration may need to be made by the FIC that a threshold can be established under which such micro-practices can be exempted from the obligations created in

this process, ie: fee threshold, or under a certain average trust account balance threshold.

18. More concerning are the challenges observed in the practical implementation of FICA requirements which remain deeply flawed. There are concerns from legal practitioners in respect of the current FICA online platform being inefficient, unintuitive and not fit for purpose. It will further appear that administrative officials appear unable to provide clear and consistent guidance on its use.
19. While it is acknowledged that the broader regulatory objective may be legitimate and understood, the current format risks undermining participation and the quality of responses. A more streamlined, risk-based and proportionate approach is required. Our view is that unless the questionnaire is significantly simplified, it is unlikely to achieve its intended purpose in practice.
20. Many of the questions in the RCR are vague or confusing and in many instances conflates the transaction for legal services with the underlying client's transaction such as in relation to trusts and companies where the questionnaire frequently assumes that the client to whom TCS are provided is the trust or company in question when that is often not the case. Except where the underlying trust or company is an accountable institution, many of the requirements described in the questions are not required of it.

Yours faithfully



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