

CONSULTATION FEEDBACK NOTE

Relating to the draft Directive 7 and the final issuance thereof in Directive 6 and Directive 7 on the submission of risk and compliance returns to the Financial Intelligence Centre by specified accountable institutions.

March 2023

INTRODUCTION

1. The Financial Intelligence Centre (FIC) has issued [Directive 6](#) and [Directive 7](#) and an [associated risk and compliance return questionnaire \(annexure A\)](#) in terms of section 43A of the Financial Intelligence Centre Act, 2001 (Act 38 of 200) (FIC Act).
2. Directive 6, Directive 7 and the questionnaire are aimed at gathering relevant information which enables the FIC to better understand, assess, mitigate and monitor the money laundering, terrorist financing and proliferation financing (ML/TF/PF) risks, and allows for coordinated domestic efforts to combat ML/TF/PF. Further, to support the efforts of a risk-sensitive approach to supervising and monitoring accountable institutions' anti-money laundering, combating the financing of terrorism and counter proliferation financing (AML/CFT/CPF) requirements.
3. Directive 6 and Directive 7 are aimed at addressing two key "Immediate Outcomes" identified by the Financial Action Task Force (FATF) as essential for an AML/CTF/CPF framework.
4. The draft Directive 7 together with the draft risk and compliance return questionnaire was published for comment on Friday, 25 November 2022, with comments due on Tuesday, 20 December 2022.
5. Comments have been received from banks, industry associations, attorneys, gambling entities and crypto asset service providers. All comments received have been considered and addressed where relevant.

THEMATIC FEEDBACK

High-level feedback on the consultation comments received are noted thematically below:

Alignment of the use of wording to the FIC Act

6. Certain terms used in the draft questionnaire have been updated to align to the wording of the FIC Act, or a more suitable term. Examples of this include the change

of “business entities” to “juristic persons”. The term “conducts business” was removed and replaced with “establishes a business relationship or conducts a single transaction”, further the term “public” has changed to “prospective clients”, where relevant in questionnaire.

Alignment to the amendments brought about by the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (General Laws Amendment Act)

7. Directive 6, Directive 7 and the questionnaire have been updated to reflect the amendments to the FIC Act, as brought about by the General Laws Amendment Act. The changes include updating the reference to domestic prominent influential persons to domestic politically exposed persons, and foreign prominent public official to foreign politically exposed person, as well as including the new category of prominent influential persons. Further changes include the updating to the part of the questionnaire that deals with beneficial ownership.

Alignment to the amendments brought about by the Protection of Constitutional Democracy Against Terrorist and Related Activities Amendment Act, 2022 (Act 23 of 2022)

8. Directive 6, Directive 7 and the questionnaire have been updated to reflect the amendments to the FIC Act, as brought about by the Protection of Constitutional Democracy Against Terrorist and Related Activities Amendment Act, 2022 (Act 23 of 2022) (POCDATARA Act). The amendment includes the removal of section 25 of POCDATARA Act, and the update of section 26A of the FIC Act, which amendments result in the entire targeted financial sanctions requirements now emanating from the FIC Act.

Scope of accountants’ obligations as accountable institutions

9. In response to the industry association comments regarding the scope of accountants’ obligations under the Directive 6; an accountable institution’s obligations apply in respect of business activities of that accountant, only in so far as the business activities fall within the scope of the definition set in item 2 of Schedule 1 to the FIC

Act. Where an accountant is deemed to be an accountable institution, they must comply with the Directive 6.

Commencement of the Directives and requirement to submit a return

10. Following the consultation process, it was decided to split the risk and compliance return data requests into two separate processes. As such, Directive 6 seeks to obtain information from existing accountable institutions that were not impacted by the Schedule changes in December 2022. Directive 7 will seek to obtain information from new accountable institutions that have been included as a result of these Schedule changes, requiring only six months of data.
11. The requirement to submit the risk and compliance return questionnaire as required in terms of the Directive 6 will commence on date of *gazetting* of the Directive, 31 March 2023, and covers the reporting period for the previous 12 months. All submissions must be in by 17:00 on Wednesday, 31 May 2023.
12. The requirement to submit the risk and compliance return questionnaire as required in terms of the Directive 8 will also commence on date of *gazetting* of the Directive, 31 March 2023 and covers the reporting period from 1 January 2023 to 30 June 2023, both dates inclusive. All submissions must be in by 17:00 on Monday 31 July 2023.
13. A separate, consolidated Directive for subsequent years will be considered in due course.

Geographical risks

14. Commentators have requested further information sources to assist in the risk rating of various geographic areas. Commentators are directed to public compliance communication 49 which provides comprehensive guidance on geographical risks.

Training requirements

15. Commentators sought clarification on whether training applies to all the employees of an accountable institution. Different categories of employees face differing levels of

ML/TF/PF risk, and therefore training must be customised to be proportionate to the risks faced, taking into consideration the role the employee fills in the accountable institution's organisation.

Cost of compliance

16. In response to the comments regarding the scope of accountants' obligations under the FIC Act, where a person opts to provide the products and services that fall within the scope of being an accountable institution, that person is obligated to implement controls that are proportionate to the ML/TF/PF risks identified.

COMMUNICATION WITH THE FIC

17. Queries can be directed to the compliance contact centre on 012 641 6000 and select option 1, or be submitted online by clicking on <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the FIC's website and submitting an online compliance query.

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