

## **CONSULTATION FEEDBACK NOTE**

Relating to the draft Public Compliance Communication 114 on the RMCP for DNFBP accountable institutions and the issuance thereof in Public Compliance Communication 53

**August 2022**

## INTRODUCTION

1. The Financial Intelligence Centre (FIC) issued for consultation draft public compliance communication 114 (Draft PCC 114) for consideration and the provision of comments on the draft by accountable institutions to the FIC in terms of section 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) on 1 April 2022, with the consultation period ending on 2 May 2022.
2. [Consultation comments](#) were received from banks, financial service providers, industry associations, and consultants.
3. The final version of the draft PCC 114 has been issued as public compliance communication 53 (PCC 53).

## THEMATIC FEEDBACK

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

### *Applicability*

4. PCC 53 does not apply to financial institutions, accountable institutions that form part of a group structure, or that have a complex or advanced compliance structure. PCC 53 applies to all designated non-financial business and professions (DNFBPs) unless the entity falls within the ambit highlighted as being excluded.
5. The FIC does not prescribe what an advanced or complex structure may be. Where the draft RMCP template as set out in PCC 53 is too simplistic and will not achieve the desired level of compliance, which is required of an accountable institution, then the accountable institution must develop a suitable RMCP. Although the principles can be equally applied, the proposed template is only intended for smaller DNFBPs.

### *Risk-based versus rules-based approach*

6. The guidance provided aims to enhance the understanding and documenting of money laundering and terrorist financing risks and provides factors that when considered would effectively demonstrate effective risk identification, assessment, mitigation, management and monitoring. The manner in which this is incorporated

into an accountable institution's risk management and compliance programme (RMCP) remains within the framework of their risk-based approach, and as such is not prescriptive nor results in the implementation of a rules-based approach.

7. The guidance provided on the risk-based approach addresses concerns raised during the Financial Action Task Force's (FATF's) 2019 mutual evaluation of South Africa, and effectively facilitates and addresses the immediate outcome 4 recommended actions emanating from this assessment. Refer to the FATF 2019 Mutual Evaluation final report, which priority actions state

*“South Africa should ensure that accountable institutions adequately implement an RBA, including through better assessing and understanding their inherent risks and refining and implementing their RMCPs to mitigate their risks. The authorities should provide better guidance on these matters and on major ML/TF risks such as corruption.”*

#### *Use of the term Apex*

8. The use of the term “Apex” has been reconsidered and removed from PCC 53. The use of the term Apex RMCP sought to describe the highest level RMCP document of the accountable institution, which document is approved by the person exercising the highest level of authority in the accountable institution and provides an overview of the RMCP. The term Apex RMCP document was not intended to introduce an additional legislative requirement and as such was not *ultra vires*.

#### *RMCP documentation comprises more than one document for complex entities*

9. PCC 53 provides guidance on the drafting of RMCP documentation, the expectation is that there be RMCP documentation which clearly references all documentation that forms part of the RMCP in terms of section 42 of the FIC Act.

### *Authoritative nature of guidance*

10. Guidance notes and public compliance communications are equally authoritative and are provided in terms of the FIC regulatory function as set out in section 4(c) of the FIC Act read together with Regulation 28 of the Money Laundering and Terrorist Financing Control Regulations issued in terms of the FIC Act.

### **CONCLUSION**

11. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the PCC 53 where appropriate.
12. The final PCC 53 has been issued on 30 August 2022.

### **COMMUNICATION WITH THE FIC**

13. 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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