

JOINT CONSULTATION FEEDBACK NOTE

Relating to the draft Directive 6 and draft public compliance communication (PCC) 116 on the screening of employees for competency and integrity and scrutinising of employee information against targeted financial sanctions lists as a money laundering, terrorist financing and proliferation financing control measure, and the issuance thereof in PCC 55 and Directive 8

March 2023

INTRODUCTION

1. The Financial Intelligence Centre (FIC) issued for consultation draft Directive 6 of 2022 alongside draft public compliance communication 116 (draft PCC 116) for consideration and the provision of comments by all interested persons to the FIC in terms of section 42B and 43A(1) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) on 29 July 2022. The consultation period ended on 19 August 2022.
2. Consultation comments were received from banks, financial service providers, industry associations, and consultants.
3. The final version of the draft Directive 6 of 2022, and draft PCC 116 has been issued as [Directive 8](#) and [public compliance communication 55 \(PCC 55\)](#).

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

Screening of employee information does not exceed ambit of FIC Act

Comment	FIC response
The commentator indicated the FIC Act's explicit 'human resourcing obligations' against accountable institutions is limited to the section 42A(2)(b) person. Further, that screening of employees for "competence and integrity" falls outside the scope of the grounds of a Directive issued in terms of section 43A(1) of the FIC Act.	Section 43A of the FIC Act enables the Centre to issue directives which may reasonably be required to give effect to the Centre's objectives contemplated in section 3 of the FIC Act. The screening of employees for competence, integrity and against targeted financial sanctions contributes toward combating money laundering and terrorist financing.

Screening of employee information against the TFS lists

Comment	FIC response
The commentator indicated the requirement in terms of the draft	The FIC is empowered to issue Directives, and the issuance thereof is not considered to be ultra vires.

<p>Directive is premised on the requirements as issued in section 26B of the FIC Act and seeks to expand the obligation to wider than clients, which could be argued to be ultra vires.</p>	<p>Directives issued in terms of section 43A of the FIC Act enables the FIC Act to expand obligations, provided that such directive reasonably be required to give effect to the FIC's objectives as listed in section 3 of the FIC Act.</p> <p>Further, the FIC is issuing this Directive in response to the deficiency identified and the associated recommended action 18.1b as provided by the Financial Action Task Force (FATF) Mutual Evaluation Report of South Africa. In particular, this addresses the issue that there are no procedures regarding screening for employees noted in the FIC Act or the guidance notes issued by the FIC.</p>
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Criteria of competence and integrity

Comment	FIC response
<p>The commentator indicated the criteria for screening should be in the accountable institutions sole discretion, as part of its risk-based approach, the Directive and PCC therefore seem to be an over-reach.</p>	<p>These comments have been addressed by updating the suggested criteria for both competence and integrity as set out in the PCC 55, which results in a greater discretion for an accountable institution.</p>

Applicability of South African labour laws and Financial Advisory Intermediary Services Act (FAIS Act)

Comment	FIC response
<p>The commentator indicated the draft PCC fails to acknowledge the rights and responsibilities of employees in terms of Protection of Personal Information Act, Basic</p>	<p>PCC 55 does not override applicable labour laws in South Africa. Similarly, PCC 55 does not replace the requirement of a fit and proper person in terms of the FAIS Act. References to employees being fit and proper have been removed to minimise confusion with other legislation.</p>

Conditions of Employment Act, and Labour Relations Act etc.	
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Authoritative nature of guidance

Comment	FIC response
A commentator had noted that a Guidance Note issued by the FIC has more authority than a PCC issued by the FIC.	Guidance notes and public compliance communications (PCCs) 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

- The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the Directive 8 and PCC 55 where appropriate.
- The Directive 8 and final PCC 55 has been issued on 31 March 2023, and can be found on the FIC website at www.fic.gov.za.

COMMUNICATION WITH THE FIC

- 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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