



DRAFT GUIDANCE

NOTE 7A

ON THE IMPLEMENTATION OF VARIOUS
ASPECTS OF THE FINANCIAL
INTELLIGENCE CENTRE ACT

AMENDMENTS TO CHAPTER 4 OF GN 7
OCTOBER 2017

Third round of consultation

PREFACE

The Financial Intelligence Centre (Centre) in collaboration with the National Treasury, South African Reserve Bank and the Financial Sector Conduct Authority has published draft guidance that will be required to support the implementation of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act)

- i) The FIC Act established the Centre which is the national point for the gathering, analysis and dissemination of financial intelligence. The Centre was established to identify proceeds of crime and assist in combating money laundering and the financing of terrorism, and in so doing has a primary role to protect the integrity of South Africa's financial system. The Centre develops and provides financial intelligence to a range of agencies supporting the investigation and prosecution of criminal activity. The FIC Act is a key component of the regulatory architecture that protects the integrity of the South African financial system, together with legislation such as the Prevention of Organised Crime Act, 1998 (Act 121 of 1998) and the Prevention of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 (Act 32 of 2004), of the legal framework that supports the administration of the criminal justice system.
- ii) This guidance is issued in terms of section 4(c) of the FIC Act read with regulation 28 of the Money Laundering and Terrorist Financing Control Regulations (MLTFC Regulations) which empowers the Centre to provide guidance on a number of matters regarding compliance with the obligations of the FIC Act. Guidance provided by the Centre is the only form of guidance formally recognised in terms of the FIC Act and the MLTFC Regulations issued under the FIC Act. Guidance issued by the Centre is authoritative in nature which means that accountable institutions must take the guidance issued by the Centre into account in respect of their compliance with the relevant provisions of the FIC Act and the MLTFC Regulations. If an accountable institution does not follow the guidance issued by the Centre, it should be able to demonstrate that it nonetheless achieves an

FOR CONSULTATION PURPOSES ONLY

equivalent level of compliance with the relevant provisions of the FIC Act and the MLTFC Regulations. It is important to note that enforcement action may emanate as a result of non-compliance with the FIC Act and the MLTFC Regulations where it is found that an accountable institution has not followed the guidance issued by the Centre.

- iii) Guidance provided by the Centre may be updated and revised from time to time. The Centre therefore advises accountable institutions to regularly monitor communications from the Centre to stay abreast of the current guidance developments.

Disclaimer

- iv) Guidance which the Centre provides does not relieve the user from the responsibility to exercise their own skill and care in relation to the user's legal position. This guidance does not provide legal advice and is not intended to replace the FIC Act or the MLTFC Regulations issued under the FIC Act. The Centre accepts no liability for any loss suffered as a result of reliance on this publication.

Copyright notice

- v) This guidance is copyright. The material in guidance may be used and reproduced in an unaltered form only for non-commercial use. Apart from any use permitted under the Copyright Act, 1978 (Act 98 of 1978), all other rights are reserved.

CONSULTATION

Before issuing guidance to accountable institutions, supervisory bodies and other persons regarding their performance, duties and obligations in terms of the FIC Act or any directive made in terms of the FIC Act, the Centre, must in accordance with section 42B of the FIC Act—

- Publish a draft of the guidance by appropriate means of publication and invite submissions; and
- Consider submissions received.

Guidance Note 7 was issued in October 2017, after having successfully completed a detailed consultation process on the full scope of the document, [available here](#).

The amendments in this draft Guidance Note 7A relate only to Chapter 4 in relation to the discussion of the risk management and compliance programme (RMCP). Consultation comments are open in relation only to draft amendments in this Chapter.

Paragraph numbering has been retained to align with the existing Chapter 4 number sequencing. Where new paragraphs have been inserted, they will be referenced with revised numbering (e.g. paragraph “181A”).

The draft Guidance Note 7A was issued for the first round of consultation from Friday, 1 April 2022 until Monday, 2 May 2022 and for a second round from Friday, 30 September 2022 until Monday, 21 October 2022. The Prudential Authority of the South African Reserve Bank and the Financial Sector Conduct Authority were further consulted on the amendments made to Chapter 4. Given the nature of the feedback, material amendments were further considered, and the draft Guidance Note 7A will be released for a third round of consultation.

FOR CONSULTATION PURPOSES ONLY

Commentators are invited to comment on the amendments within this draft guidance by submitting written comments via the [online comments submission link](#) only.

Any questions or requests relating to this draft Guidance Note 7A may be sent to the Centre only at **consult@fic.gov.za**. Submissions will be received until **Friday, 28 June 2024**, by close of business.

DRAFT

CHAPTER 4: RISK MANAGEMENT AND COMPLIANCE PROGRAMME

180. Accountable institutions *must* develop, document, maintain and implement a risk management and compliance programme (RMCP) for anti-money laundering, combating the financing of terrorism and combating proliferation financing (AML, CTF and CPF). The accountable institution's RMCP documentation must record all the elements of the programme as set out in section 42 of the FIC Act.
181. It is important that accountable institutions acknowledge within their RMCPs that the board of directors, senior management or the person(s) with the highest level of authority within the accountable institution is ultimately responsible for ensuring that the accountable institution implements and complies with RMCPs, and clearly demonstrate that there are effective controls in place to mitigate the ML, TF and PF risks to which the institution is exposed. The documentation which fully describes the accountable institution's RMCP must be available for the accountable institution's employees, relevant supervisory body and the Centre, as contemplated in sections 42(3) and 42(4) of the FIC Act.

Role of the board of directors, senior management, or the persons exercising the highest level of authority in relation to the RMCP and the documentation thereof

Responsibilities relating to approval and compliance

- 181A. The board of directors, senior management, or the person(s) exercising the highest level of authority must approve the RMCP and ensure compliance by the accountable institution and its employees with the provisions of the FIC Act and its RMCP. This means that the person who is ultimately responsible for approval and compliance with the FIC Act and the RMCP is always the person(s) with the highest level of authority in the accountable institution. Where there is no board of directors, it would be the senior management. For

FOR CONSULTATION PURPOSES ONLY

an accountable institution that is not a legal person, the person or persons holding the highest level of authority in the institution is responsible.

- 181B. An accountable institution that is a legal person must have a compliance function and assign a person with sufficient competence and seniority to assist the board of directors or senior management in complying with the FIC Act and their RMCP. Similarly, for an accountable institution that is not a legal person the person appointed as a compliance officer must have sufficient competence and seniority.
- 181C. The approval of the RMCP and accountability of the board of directors, senior management or other person exercising the highest level of authority obligation cannot be delegated to other persons, employees or structures within the accountable institution.

Adequacy of RMCP approval

- 181D. The RMCP must adequately address the full scope of section 42 of the FIC Act. The board of directors, senior management or other person(s) exercising the highest level of authority should ensure that the RMCP is adequate, suitable and effective for the accountable institution.
- 181E. The RMCP must be described comprehensively in the documentation tabled for approval by the board, senior management or person(s) with the highest authority. The RMCP should not merely reference other documents, but must include adequate and substantial description of the main elements of its RMCP. Any failure to do so may amount to the board, senior management or person with the highest authority not having (adequately) discharged their duty in terms of section 42A(1) of the FIC Act.

FOR CONSULTATION PURPOSES ONLY

- 181F. The accountable institution must demonstrate that the board of directors, senior management or persons exercising the highest level of authority have been provided with sufficient information and RMCP documentation to demonstrate that they have applied their minds in determining whether the RMCP is adequate.
- 181G. The RMCP documentation must provide substantial information that would enable the board, senior management or person with the highest authority, to gain a full appreciation for the ML, TF and PF risks the accountable institution faces and the controls that are in place to mitigate and manage the risk, and whether the RMCP enables compliance by the accountable institution with its obligations as set out in the FIC Act.
- 181H. Where the RMCP documentation does not fully describe the RMCP, and/or does not demonstrate that the board of directors, senior management or persons exercising the highest level of authority have applied their minds to determine whether the RMCP complies with section 42 of the FIC Act (including mitigating and managing the money laundering, terrorist financing and proliferation financing risk) this may be indicative of non-compliance with section 42(2B) and section 42A of the FIC Act.
- 181I. A board, senior management or person(s) with the highest authority who demonstrates an underdeveloped understanding of the accountable institution's RMCP will be unable discharge their obligation in terms of section 42A(1) of the FIC Act.
- 181J. The RMCP documentation provided to the Centre or supervisory body, on request or during an inspection, must include the approval of the RMCP by the board, senior management or person(s) with the highest authority.

FOR CONSULTATION PURPOSES ONLY

- 181K. An inadequate RMCP and RMCP documentation provided to the Centre or supervisory body, may constitute non-compliance with the FIC Act and may lead to administrative sanctions being imposed. The board, senior management or person(s) with the highest authority could be sanctioned in terms of section 61 of the FIC Act.

Example 1: Inadequate RMCP

During an inspection Bank M provides RMCP documentation which does not describe the bank's risk-based approach, neither does it adequately detail the bank's specific inherent and residual ML, TF and PF risks. Bank M thereafter seeks to add further documentation, which was not form part of the RMCP.

This scenario may indicate that Bank M's RMCP is inadequate and the board therefore cannot evidence that it has discharged its responsibility to ensure compliance with the FIC Act and it's RMCP.

Culture of compliance

182. The board of directors or senior management should ensure a culture of compliance within the accountable institution is maintained, ensuring that the accountable institution's policies, procedures and processes are designed to identify, assess, monitor, mitigate and control risks of ML, TF and PF and are fully consistent with FIC Act obligations and that employees adhere to them.
183. The board of directors, senior management and person(s) with the highest level of authority should be fully engaged in decision-making processes and take ownership of the risk-based measures adopted since they will be held accountable if the RMCP is found to be inadequate.

FOR CONSULTATION PURPOSES ONLY

Example 2: Ratification of an RMCP without adequate application of mind

Bank O's AML, CFT and CPF risk committee approved the RMCP documentation, and the board ratified the committee decision without having reviewed and applied their minds to determine whether the RMCP sufficiently and adequately enables compliance with the FIC Act. This constitutes non-compliance by the board, senior management or person(s) with the highest authority in terms of its obligations in terms of the FIC Act.

Example 3: Version control

During an inspection, financial services provider M provides RMCP documentation, but the RMCP is merely an outline, and does not provide a description of the RMCP which has been board approved.

This scenario may indicate that FSP M's RMCP has not been approved by the board. This may constitute non-compliance with the board's obligation in terms of the FIC Act.

Example 4: Version control

During an inspection, financial services provider (FSP) Q, FSP Q provides the approved RMCP to the supervisor. However, FSP Q has subsequent to the approval of the RMCP updated and implemented a revised RMCP that has not been approved by the Board or senior management of FSP Q. This scenario may indicate that the RMCP implemented by FSP Q has not been approved by the board. This may constitute non-compliance by the board, senior management or person with the highest level of authority in terms of its obligations with the FIC Act.

Elements of an effective RMCP and the documentation of an RMCP

183A. Section 42(1) and 42(2) indicates what must be included in an accountable institution's RMCP. The Centre recommends that the RMCP documentation be set out in three parts:

Part 1 – Identification and assessment of the risk the accountable institution faces of being abused for ML, TF and PF (e.g. risk-based approach assessment and methodology or framework, business risk assessments, new products and process risk assessments, client risk assessment methodology, as well as an indication of the accountable institution's risk tolerance level or appetite.)

Part 2 – Mitigation and management of risks identified through applying appropriate controls, including customer due diligence (CDD), reporting and record keeping etc.

Part 3 – Monitoring whether the controls implemented are adequate and effective to mitigate and manage the risks as identified and assessed.

Risk identification

183B Accountable institutions must first conduct a risk assessment (including assessments on the business, product and processes, and client risks etc.) to identify the ML, TF and PF risks they face, before determining the compliance controls required to mitigate these risks.

183C The business risk assessment is an important first step in ensuring that an appropriate RMCP can be developed as it should be comprehensive enough to enable an accountable institution to clearly identify, assess and appreciate the inherent and residual ML, TF and PF risks and threats it faces, taking into account the nature, size, products and service offerings, industry, client base, geographic locations, complexity of business, and any other relevant

FOR CONSULTATION PURPOSES ONLY

factors of the accountable institution. Business risk assessment must be enterprise wide.

183D The risk assessments should also be informed by the national and sector risk assessments that must be reflected in the RMCP insofar as it is applicable to the business of the accountable institution.

183E A business risk assessment is a separate exercise to that of a client risk assessment. The client risk assessment is one aspect of the business risk assessment and takes into account the various risk factors linked to a client (client risk could impact the risk profile of an accountable institution, for example, an accountable institution that has the majority of its client base as high risk foreign politically exposed persons engaging in regular cross-border transactional activity to high risk jurisdictions will have a higher risk weighting as compared to another accountable institution with domestic clients who only receive their funds from salaries on a regular basis and do not conduct any high risk activities, nor present with any adverse media etc.)

Documentation considerations

183F. The RMCP documentation constitutes the identifiable and readily accessible documentation that comprehensively records the RMCP. This would be the documentation that the accountable institution would make available to employees and also be used for training. Most importantly, it would be the documentation provided to the FIC or other supervisory body, on their request, for examination purposes in terms of section 42(3) of the FIC Act.

183G. RMCP documentation must reference related documentation that constitutes and enables the full implementation of the RMCP. Documentation that is not referenced in the RMCP documentation is not considered to be part of the RMCP.

Example 4: Documentation that fully identifies all RMCP information

A well-structured, and fully collated RCMP documentation would include:

1. Content page
2. Executive summary of the RMCP
3. Board of directors, senior management or person(s) with the highest authority's approval, including the process followed in obtaining this approval
4. Content of RMCP:
Risk identification and assessment (part 1),
Risk controls (part 2),
Control monitoring (part 3)
Residual risk aspects
5. Annexures of all associated policies, procedures and control documents

184. The RMCP documentation should include a description of the board of directors, senior management or person(s) with the highest authority, the compliance function to assist the board, senior management or person with the highest level of authority with their RMCP and compliance with the FIC Act as well as the seniority and experience of the person who assists in ensuring compliance with the FIC Act.

184A. The accountable institution's RMCP and documentation thereof should also cover, among other aspects:

- Appropriate training on ML, TF and PF to ensure that employees are aware of, and understand, their legal and regulatory responsibilities and their role in handling possible criminal information or property and money laundering and/or terrorist financing risk management
- Appropriate provision of regular and timely information to the board of directors or senior management relevant to the management of the institution's ML, TF and PF risks

FOR CONSULTATION PURPOSES ONLY

- Appropriate documentation of the institution's risk management policies, risk assessment methodologies and risk profile in relation to ML, TF and PF, including documentation of the institution's application of those policies
 - Appropriate descriptions of decision-making processes regarding different categories of customer due diligence and other risk management measures, including escalation of decision-making to higher levels of seniority in the accountable institution where necessary
 - Appropriate measures to ensure that ML, [TF and PF] risks are taken into account in the day-to-day operation of the institution, including in relation to:
 - The development of new products
 - The taking on or onboarding of new clients
 - The ongoing monitoring of business relationships
 - Changes in the institution's business risk profile.
185. An accountable institution's RMCP must be commensurate with the size, complexity of the institution, and the nature of its business. This implies that the RMCP for an accountable institution which does not provide a wide range of products and/or services or which does not deal with a diverse range of clients could be relatively simplistic, whereas complex financial institutions which provide a wide range of products and services or deal with a diverse range of clients would be expected to be more complex and multi-faceted.
- 185A. An accountable institution is required to indicate in the documentation of its RMCP whether any of the elements described in section 42 of the FIC Act do not apply to that particular institution. The institution is also required to indicate in its RMCP why such processes are not applicable to the institution [or alternative] control measures implemented.
186. The nature and extent of an accountable institution's internal systems and controls which form part of its RMCP depends on a variety of factors, including:
- The nature, scale and complexity of the accountable institution's business

FOR CONSULTATION PURPOSES ONLY

- The diversity of its operations, including geographical locations
 - Its client, product or services profile
 - Its distribution channels
 - The value, volume and size of its transactions
 - The degree of risk associated with each area of its operations.
187. Accountable institutions which operate in groups of companies may implement group-wide RMCPs. In doing so, accountable institutions must ensure that the various elements of group-wide RMCPs, including internal processes, systems and controls are appropriate for the different entities or branches within the group and are adequately tailored to specific entities or branches within the group, commensurate with their individual risks, where necessary. The RMCP should describe in the group wide RMCP what is applicable to different entities and what is not applicable to different entities within the group.
188. Accountable institutions situated in South Africa and operating in jurisdictions outside the country should also be aware of the local AML, CFT and CPF obligations in all jurisdictions where they operate. This should be reflected in the accountable institution's RMCP document. Procedures should be in place to meet local AML, CTF and CPF obligations in each jurisdiction where an accountable institution operates. If there are variations or conflicts between the South African and the foreign jurisdiction's AML, CFT and CPF compliance requirements and meeting local requirements would result in a lower standard than in South Africa, the accountable institution must implement measures which meet the South African requirements. Alternatively, the higher or stricter requirements of either jurisdiction, may be implemented.
189. It is important that the RMCP and the content of an accountable institution's documentation of their RMCP is communicated widely throughout the institution,

FOR CONSULTATION PURPOSES ONLY

as may be applicable, and the implementation thereof is monitored consistently and audited periodically to increase the effectiveness of its implementation.

- 190. An accountable institution must review its RMCP at regular intervals to ensure that it remains relevant to the institution's operation and the risks identified. The review, and any amendments made to the RMCP must be documented and approved as described above.
- 190A. Designated non-financial businesses and professions (DNFBP) accountable institutions are urged to refer to public compliance communication (PCC) 53 for a detailed explanation on how an RMCP may be documented, including using a template that could aid in the documentation of an RMCP.

Supervisory approach

- 190AA. When conducting an inspection, the supervisory body may inspect whether the board of directors, senior management or persons exercising the highest authority approved the RMCP.
- 190BB. The supervisory body will analyse and apply its mind to determine whether the accountable institution's board of directors, senior management or persons exercising the highest authority, have an understanding of the risks, which is translated into appropriate and adequate controls, including monitoring and oversight measures as part of the RMCP.
- 190CC. This is an holistic assessment of whether Part 1, Part 2 and Part 3 stated above have been covered in the accountable institution's RMCP and has been described in the RMCP documentation, and whether the RMCP documentation (including reviews and amendments) have been approved by the board, senior management or persons exercising the highest authority.

End

Issued by:

MR PIETER SMIT

ACTING DIRECTOR

FINANCIAL INTELLIGENCE CENTRE

18 June 2024

DRAFT