Financial Intelligence Centre

CONSULTATION NOTE

Relating to the draft Guidance Note 7A: Chapter 4 on the risk management and compliance programme (RMCP) and documentation thereof

September 2022

INTRODUCTION

1. The Financial Intelligence Centre (FIC) issued draft Guidance Note 7A (draft GN 7A), chapter 4 for consultation and requested c comments on this proposed guidance product by accountable institutions to the FIC in terms of section 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act).

2. The draft GN7A was initially published on 1 April 2022, with the first consultation period ending on 2 May 2022. Consultation comments were received from banks, financial service providers, industry associations, and consultants.

3. These comments were considered, and the draft GN7A was updated accordingly. Owing to the material changes made, the FIC will re-issue draft GN7A for a second round of consultation.

4. A final version of the draft GN7A will be issued as Guidance Note 7A (GN 7A) after this second round of consultation is successfully concluded.

THEMATIC FEEDBACK

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

Applicability

5. Draft GN 7A, specifically chapter 4, applies to all accountable institutions including financial institutions, which form part of group structures or have advanced or complex structures. The FIC does not prescribe what an advanced or complex structure may be.

Risk-based versus rules-based approach

6. The guidance provided aims to enhance the understanding and documenting of money laundering, terrorist financing and proliferation financing risks, and provides factors that when considered would effectively demonstrate adequate risk identification, assessment, mitigation and management. 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 approach adopted regarding the need for a comprehensive RMCP document 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 states:

> "*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 draft GN7A. The use of the term Apex RMCP sought to describe the highest-level RMCP document of the accountable institution which 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 considered as *ultra vires*.

RMCP documentation comprises more than one document for complex entities

9. GN 7A addresses the concerns regarding the practice by accountable institutions of providing a fragmented, unintegrated representation of the documentation of an RMCP. Accordingly, the expectation is that there be RMCP documentation that clearly sets out the RMCP, which references all related documentation.

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 revised draft GN 7A where appropriate.

12. Commentators are invited to comment on the revised draft GN7A by submitting written comments via the online comments submission link only: here. Any questions or requests relating to this draft GN 7A may only be sent to the FIC at **consult@fic.gov.za.** Submissions will be received until close of business on Friday, 21 October 2022.

13. The Centre intends to conclude the consultation on this draft GN 7A by publishing a final version no later than Friday, 31 October 2022.

COMMUNICATION WITH THE FIC

14. 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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