Financial Intelligence Centre

CONSULTATION FEEDBACK NOTE

Relating to the draft Guidance Note 7A on the implementation of the risk management and compliance programme in terms of section 42 to the Financial Intelligence Centre Act

18 June 2024

INTRODUCTION

1. The Financial Intelligence Centre (FIC) issued for consultation the draft guidance note 7A (draft GN 7A) for consideration and comments by accountable institutions, in terms of section 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act).

2. The period for the first consultation draft GN 7A was made available for the first consultation from Friday, 1 April 2022 until Monday, 2 May 2022. Consultation comments were received from banks, financial services providers, industry associations and independent consultants.

3. The period for the second consultation started on Friday, 1 April 2022 until Monday, 2 May 2022. Consultation comments were received from banks, financial services providers, industry associations and independent consultants.

4. The third version of the draft GN 7A has been issued for further consultation.

CONSULTATION FEEDBACK

5. Feedback on the second consultation comments received are noted below:

Comment	Response
1) Whilst the consultation note to draft Guidance Note 7A indicates that the manner in which the guidance is incorporated into an accountable institution's (AIs) RMCP remains within the framework of their risk-based approach and is not prescriptive nor results in the implementation of a rules-based approach, the outcome of certain amendments to the Guidance Note nevertheless has that effect.	The contents of the draft GN7A does not amount to a rules-based approach. Guidance is authoritative in nature, to guide and explain existing obligations and does not introduce new obligations. Technical compliance is required in addition to applying the risk-based approach. Accountable institutions can exercise discretion regarding the manner in which they comply with FIC Act obligations. The Guidance issued does not introduce new

	requirements it merely provides guidance on how to comply.
We understand an "inadequate RMCP documentation / documents" is applied and interpreted as an RMCP that does not meet/ falls short of the requirements as set out in section 42 of the FIC Act and request confirmation of this understanding	The accountable institution's RMCP must comply with the requirements as set out in the FIC Act to be considered as adequate. This includes, but is not limited to, the RMCP having been approved by the board of directors, senior management or person(s) having the highest authority, as well as including a business risk assessment that considers the enterprise wide risk for money laundering, terrorist financing and proliferation financing, and the controls to address the risks.
Description of RMCP and RMCP documentation- There is inconsistent use of phraseology between "RMCP documentation", "referenced documents"; "documents referenced in" … these inconsistencies and uncertainties impact also on the interpretation and application of the responsibilities of the Board of Directors. It is suggested that consistent use of terminology is used in the Guidance Note and, in this regard, it is proposed that the FIC consider using the following wording: "The RMCP is the programme for anti-money laundering, combating the financing of terrorism and counter proliferation financing (AML/CTF[T/CPF]) risk management. This programme comprises	The RMCP is the institution's programme for anti-money laundering, combating the financing of terrorism and countering proliferation financing risk management. This programme comprises all the controls necessary to comply with the obligations as set out in section 42 of the FIC Act, including the documentation describing the RMCP. The board of directors is to approve the RMCP in its totality. Regardless of the title(s) assigned to the documentation describing the RMCP, the document(s) approved by the directors, senior management or person(s) with the highest authority, must include a clear descriptor of the RMCP. The description of the RMCP must be sufficient to allow the board to

a framework and supporting documents as applicable." This will alleviate the need for multiple descriptions of the RMCP. Should the FIC elect to retain the current wording, it should clarify the terminology used so that all AIs understand the expectations. Should there be a need for an over-arching, high level written summary of the complete RMCP to assist boards and supervisors to have a concise view of the broad RMCP documentation, that expectation should be stipulated in a concise and simple manner.	apply its mind to determine whether the RMCP is adequate, and whether the Financial Intelligence Centre Act is in fact being complied with. A supervisor must be able to request and receive the programme, in terms of section 42(4) of the FIC Act. The FIC must be able to review the RMCP and be able to determine whether it sufficiently addresses risks facing the institution. Furthermore, the board of directors or senior management must ensure compliance by their institution and employees in terms of section 42A(1) of the FIC Act.
Responsibilities of the Board/senior management/person with highest authority: - Extreme emphasis is placed on the RMCP and related documentation, evidencing adequate and effective governance and oversight. Similar to banking legislation, the board of an accountable institution assumes ultimate responsibility. - Board accountability is entrenched in the banking environment and the FIC Act should not only align with the principles of the Banks Act 94 of 1990 and Regulations (36(17) and 39 in particular) but also to the spirit thereof …	The principles of FIC Act are aligned to the Banks Act, as well as the spirit thereof. Emphasis is placed on the obligations of the board of directors, senior management and the persons with the highest authority in the accountable institution. The directors, senior management or the persons with the highest authority must approve the RMCP, in terms of section 42(2B) of the FIC Act. The accountability to approve the RMCP may not be delegated to other employees of the accountable institution.

Section 72 of the Companies Act provides boards of directors with the power to appoint board committees, including the option to delegate any of the board authority to such committees. It is further apposite to highlight that as provided for in the King Codes of Good Governance (the King Code), board committees advise that for example those members of senior management responsible for the various areas of risk management should attend its meetings... … It should be considered in this regard that as trite principle that responsibilities can be delegated, but not accountability. The Board is well able to execute on its 'accountability' under section 42A(2B) even though the Board per se may not have physically reviewed and approved the full scope of the RMCP, which would occur inter alia through the activities of duly delegated committees and subcommittees and appropriate reporting on those activities into the full board. This is especially important in view of the devolved nature of a documented RMCP.	Where it is determined that there is a failure of an RMCP control, the directors, senior management and the persons with the highest authority are to be held responsible, especially if it is determined that they did not apply their mind sufficiently to determine whether the control is adequate. Furthermore, it will be assessed whether the business risk assessment is sufficient for the institution to address the degree of risk specific to this business. Various structures include different committees which the committees are responsible for drafting and approving may form part of the overall RMCP controls.

CONCLUSION

6. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the draft GN 7A where appropriate.

7. Draft GN 7A has been issued on 18 June 2024 for consultation.

COMMUNICATION WITH THE CENTRE

8. Queries can be directed to the compliance contact centre on 012 641 6000 and select option 1. Queries can also be submitted online by clicking on https://www.fic.gov.za/compliance-queries/ or visiting the Centre's website and submitting an online compliance query.

Issued By:

Mr Pieter Smit

Acting Director

Financial Intelligence Centre

Private Bag X177

CENTURION

0046

18 June 2024