

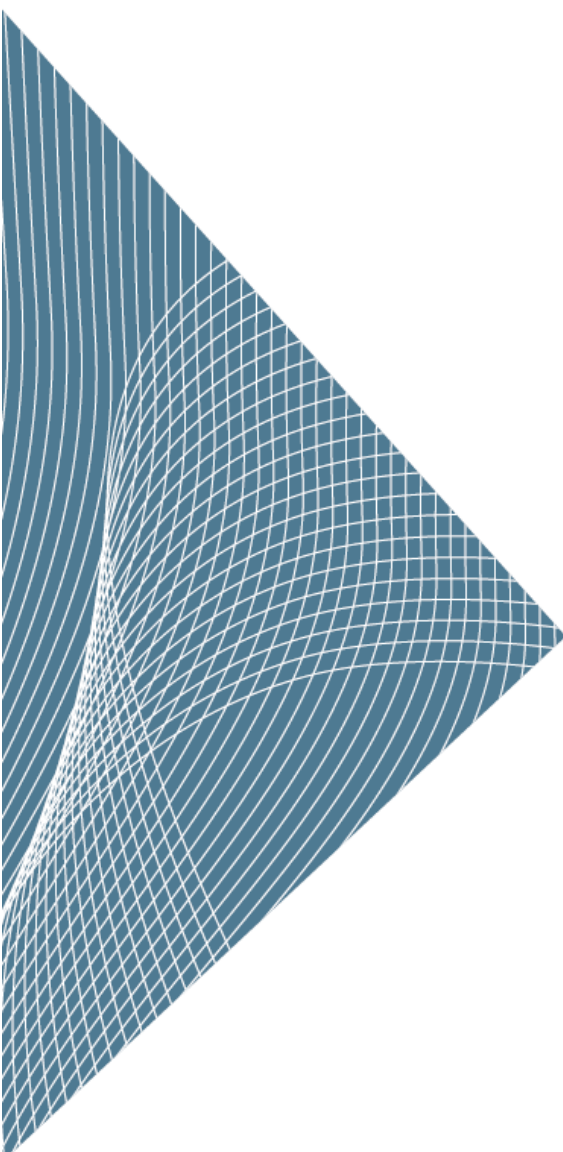
DRAFT GUIDANCE NOTE

DRAFT GUIDANCE NOTE 7A

ON THE IMPLEMENTATION OF VARIOUS ASPECTS OF THE FINANCIAL
INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001)

AMENDMENTS TO CHAPTER 4 OF GN 7 OCTOBER 2017

Second round of consultation



PREFACE

- i) The Financial Intelligence Centre (the Centre) in collaboration with the National Treasury, South African Reserve Bank and Financial Services Board has published draft guidance that will be required to support the implementation of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (the FIC Act) .
- ii) 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, combat 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 by helping to identify the proceeds of crime, combat money laundering and the financing of terrorism. The FIC Act is a key component of the regulatory architecture that protects the integrity of the South African financial system and (together with legislation such as the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) and the Prevention of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No. 32 of 2004) of the legal framework that supports the administration of the criminal justice system.
- iii) 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 in relation to a number of matters concerning 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

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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 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.

- iv) The 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 so as to stay abreast of the current guidance developments.

Disclaimer

- v) Guidance which the Centre provides, does not relieve the user from the responsibility to exercise their own skill and care in relation to the users' 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.

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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 these changes.

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

All additions will be noted in brackets and italics [*example*].

All deletions will be in strikethrough ~~an example of such~~

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

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, 21 October 2022**, by close of business.

CHAPTER 4 RISK MANAGEMENT AND COMPLIANCE PROGRAMME

180. ~~Section 42 of the FIC Act places an obligation on Accountable institutions to [must] develop, document, maintain and implement a Risk Management and Compliance Programme (RMCP) [for anti-money laundering, and combating the financing of terrorism—(AML/CTF), this programme is referred to as the accountable institution's RMCP. The accountable institutions RMCP documentation must record all the elements of the programme as set out in section 42 of the FIC Act. In addition, the Centre strongly encourages accountable institutions to identify, assess, monitor, mitigate and manage the risk of proliferation financing (PF), and include counter proliferation financing risk (CPF) mitigation measures in their RMCP.] An accountable institution's ability to apply a risk-based approach effectively is largely dependent on the quality of its RMCP. An accountable institution's RMCP must be sufficient for countering the ML/TF risks facing the institution. It is important for accountable institutions to bear in mind that a RMCP not only comprises of policy documents, but also of procedures, systems and controls that must be implemented within the institution. The RMCP can therefore be described as the foundation of an accountable institution's efforts to comply with its obligations under the FIC Act on a risk sensitive basis.~~
181. ~~It is important also that accountable institutions note that the board of directors, senior management or the person with the highest level of authority is ultimately responsible for ensuring that the institution maintains an effective internal AML/CFT control structure through a RMCP.~~
- 181 *[The documentation describing the accountable institution's RMCP must be readily available for the accountable institutions employees, relevant supervisory body and the Centre, as contemplated in sections 42(3) and 42(4) of the FIC Act.]*

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[Role of the board of directors, senior management, or the person with the highest level of authority in relation to the RMCP and the documentation thereof

- 181A. *Where there is a board of directors, that board cannot delegate its obligation in terms of the section 42A of the FIC Act to senior management. Where there is no board, the then senior management or persons with highest authority in institution is responsible to ensure compliance by the accountable institution and its employees with the provisions of the FIC Act and its RMCP.*
- 181B. *Accountable institutions must be able to demonstrate that the board of directors, senior management or the person with the highest level of authority is ultimately responsible for ensuring that the institution maintains an effective internal AML/CFT/CPF control structure through an RMCP. The board, where there is no board senior management or person with the highest authority bears the ultimate responsibility to ensure compliance with every aspect that forms part of the RMCP.*
- 181C. *The board of directors, or senior management must approve the accountable institutions RMCP and evidence its approval, including the documentation describing the RMCP (RMCP documentation).*
- 181D. *Where the board, senior management or person with the highest authority approves RMCP documentation that does not adequately describe the RMCP, the accountable institution will consequently be unable to demonstrate or evidence that it has approved an adequate RMCP. The board, senior management or person with the highest authority should therefore ensure that the RMCP is adequate, suitable and effective for the accountable institution.*
- 181E. *Where the board, senior management or person with the highest authority states that it has approved the RMCP in terms of section 42(2B) of the FIC*

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Act, yet has failed to approve the RMCP documentation or has approved inadequate RMCP documentation, this failure would be seen as non-compliance with section 42A(1) of the FIC Act.

- 181F. *Inadequate RMCP documentation provided to the Centre or supervisory body, constitutes non-compliance with the FIC Act and may lead to the imposition of administrative sanctions. The board, senior management or person with the highest authority itself can be sanctioned in terms of Section 61 of the FIC Act.*
- 181G. *Similarly, where the board, senior management or person with the highest authority, approves an RMCP document that merely references other documents, but does not substantially describe the elements of its RMCP, the board, senior management or person with the highest authority would not have adequately discharged its duty in terms of section 42A(1) of the FIC Act.*
- 181H. *The RMCP documentation must provide substantial information that enable the board, senior management or person with the highest authority, to gain a full appreciation for the ML/TF/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.*
- 181I. *A board, senior management or person with the highest authority that demonstrates an underdeveloped understanding of the accountable institution's RMCP will be unable discharge its 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 be approved by the board, senior management or person with the highest authority.*

Example

During an inspection on bank M, bank M provides RMCP documentation which does not describe the risk-based approach and bank specific ML/TF/PF risks. The RMCP is found to be inadequate. Bank M thereafter seeks to add further documentation, which did not form part of what has been signed off by the board, senior management or person with the highest authority, as part of the RMCP documentation and has not been referred to in the RMCP documentation.

This scenario is an indicator that bank M's RMCP documentation is inadequate and the board, senior management or person with the highest authority has not fully discharged its responsibility to ensure compliance with the FIC Act and RMCP.]

182. The board of directors or senior management must create a culture of compliance within the accountable institution, ensuring that the [accountable] institution's policies, procedures and processes are designed to [identify, assess and] ~~limit and~~ control risks of ML, TF [and PF] and are fully consistent with the law and that staff adhere to them.
183. The board of directors or senior management 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 and RMCP documentation] ~~if the content of the RMCP (or its application in the accountable institution) are found to be inadequate.~~

[Example – Ratification of RMCP without adequate application of mind

Bank O's AML/CFT/CPF committee approved the RMCP documentation, and the board merely ratified the committee decision, without actually having reviewed and applied their minds to determine whether the RMCP is adequate

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and enables compliance with the FIC Act. This constitutes non-compliance with the board, senior management or person with the highest authority obligations in terms of the FIC Act.

Example – Version control

During an inspection on financial services provider (FSP) M, FSP M provides RMCP documentation which version of the RMCP documentation is not board approved. It was found that only an earlier version was board approved.

This scenario is an indicator that FSP M's RMCP documentation has not been approved by the board. This constitutes non-compliance with the board's obligation in terms of the FIC Act.]

[Elements of an effective RMCP and the documentation of an RMCP

- 183A. *The RMCP documentation must set out the manner in which the accountable institution:*
- 183B. *Part A – Identifies and assesses the risk the accountable institution faces of being abused for money laundering, terrorist financing and proliferation financing, (e.g., risk-based approach assessment and methodology/framework, business risk assessments, new products and process risk assessments, client risk assessment methodology, as well as an indication of the accountable institutions risk tolerance level/risk appetite.)*
- 183C. *Part B – Mitigates and manages the risks including by applying appropriate controls, including through CDD, reporting and record keeping etc. (that constitutes controls that the accountable institution has implemented to comply with its obligations as set out in Chapter 3 of the FIC Act and its RMCP).*

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- 183D. *Part C – Monitors whether the controls implemented are adequate and effective to mitigate and manage the risks as identified and assessed.*
- 183E. *Accountable institutions should note that in response to a request for documentation in terms of section 42(4) of the FIC Act, it should provide the RMCP documentation and referenced documents in the RMCP. The supervisory bodies are authorised to request referenced documents in order to test the efficacy of the controls. that have been implemented.*
- 183F. *The RMCP documentation must clearly reference and summarise all other related documentation that constitute, and enable, the full implementation of the RMCP. Documentation that is not referenced in the RMCP documentation is not part of the RMCP.*

Example – Referenced documents

RMCP documentation approved by the board adequately describes the RMCP. RMCP documentation also clearly references other documents which form part of the RMCP and describes the specific targeted financial sanctions controls which includes the Sanctions policy in the accountable institution. The RMCP document provides a comprehensive description of the accountable institutions risk appetite and sufficient information to determine whether controls are adequate. The Sanctions policy is clearly referenced in the RMCP documentation.

The supervisory body inspectors may in addition to inspecting the RMCP documentation, also call for all the referenced documents, in this case the Sanctions policy, to test the controls that form part of the approved RMCP.

- 183G. *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 all*

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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.]

183H. The documentation of the RMCP should include a description of the board, senior management or person with the highest authority accountability, as well as the seniority and experience of the person who assists in ensuring compliance with the FIC Act. The RMCP should also describe the compliance function.

184. ~~A RMCP [The documentation of the RMCP] should include a description of the board, of directors' or senior management [or person with the highest authority accountability, as well as the seniority and experience of the] accountability and the appointment of a person [who assists in] with adequate seniority and experience to assist with ensuring compliance with the FIC Act. It is suggested that this description also indicate how the function to manage the establishment and maintenance of effective AML/CFT systems and controls is discharged in the accountable institution.~~

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/*]property and money laundering/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;
- 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;

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- Appropriate descriptions of decision-making processes [*regarding*] in respect of the application of different categories of CDD and other risk management measures, including escalation of decision-making to higher levels of seniority in the accountable institution where necessary; and
 - 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/[*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 ~~always~~ be commensurate with the size and complexity of the institution and the nature of its business. This implies that ~~an~~ [*the*] RMCP for an accountable institution which does not provide a wide range of products or services or [*which does not*] deal with a diverse range of clients could be relatively simple. [*The RMCP of a*] ~~while that of a~~ complex financial institution would be [*thus*] expected to be ~~much~~ more complex.
- 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 the reason 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;
 - The diversity of its operations, including geographical [*locations*] ~~diversity~~;
 - Its client, product or services profile;
 - Its distribution channels;

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- The [*value*], volume and size of its transactions; and
 - 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.
188. Accountable institutions situated in South Africa and operating in jurisdictions outside of ~~South Africa~~ [*the country*] should also be aware of [*the*] local AML/CFT[*/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[*/CPF*] obligations in each jurisdiction where an accountable institution operates. If there are [*variations or*] conflicts between the South African and [*the foreign jurisdictions AML/CFT/CPF compliance*] local AML/CTF requirements and meeting local requirements would result in a lower standard than in the 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, as may be applicable, ~~to~~ [*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.*]

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190A. *DNFBP accountable institutions are urged to refer to 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, senior management or persons exercising the highest authority approved the RMCP documentation.*

190BB. *The supervisory body will analyse and apply its mind to determining whether the accountable institution's board, senior management or persons exercising the highest authority, has an understanding of the risk, which is translated into appropriate and adequate controls, including monitoring and oversight measures as part of the RMCP.*

190CC. *This is a holistic assessment of whether Part A, Part B and Part C 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:

THE DIRECTOR

FINANCIAL INTELLIGENCE CENTRE

30 September 2022