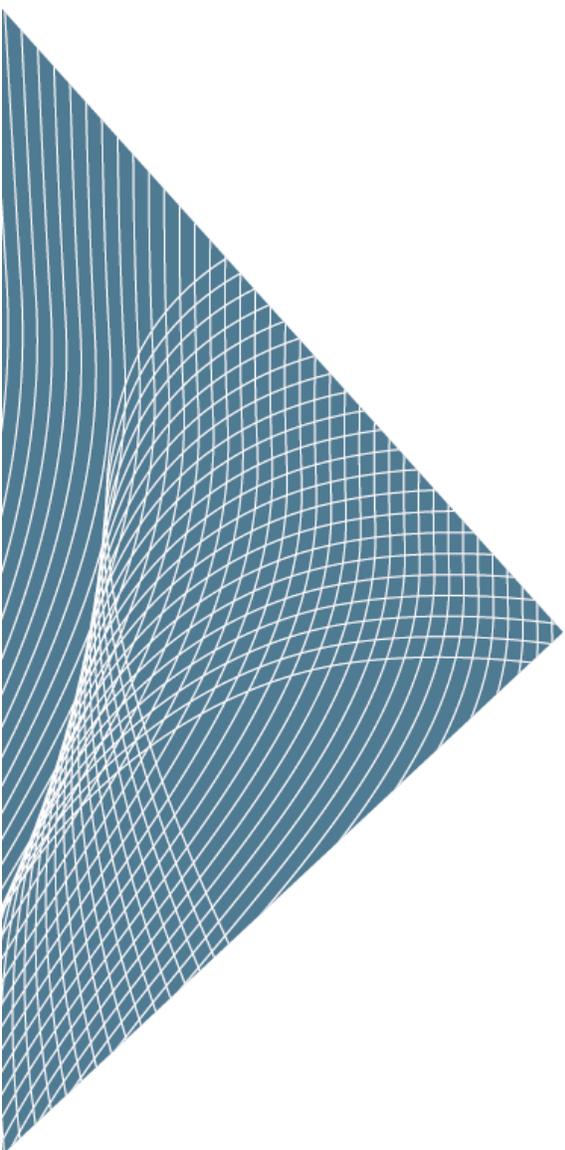


# **DRAFT GUIDANCE NOTE**

## **DRAFT GUIDANCE NOTE 7A**

ON THE IMPLEMENTATION OF VARIOUS ASPECTS OF THE FINANCIAL  
INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001)  
CHAPTER 4 AMENDMENTS



## PREFACE

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- 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in collaboration with the National Treasury, South African Reserve Bank and Financial Services Board has published draft guidance that will be required to support the implementation of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (the FIC Act) .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 and 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 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 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 will 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 on a given issue.

#### **Disclaimer**

- v) Guidance which the Centre provides, does not relieve the user of the guidance 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

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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.

Additions are noted in brackets [ xxx ], and deletions are struck through ~~xxx~~.

Commentators are invited to comment on the amendments within this draft guidance by submitting written comments via the online comments submission link only ([click 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 **Monday, 2 May 2022**, by close of business.

## CHAPTER 4 RISK MANAGEMENT AND COMPLIANCE PROGRAMME

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180. [Accountable institutions must develop, document, maintain and implement an RMCP for anti-money laundering, combating the financing of terrorism and counter proliferation financing (AML/CTF/CPF), this programme is referred to as the accountable institution's RMCP. The RMCP must provide for all the requirements as set out in section 42 of the FIC Act.
181. An RMCP is a programme that comprises a set of minimum criteria that must be considered and implemented by an accountable institution. This programme must be documented to assist the accountable institution as a recording of the required assessments performed, decisions made and controls implemented in managing and mitigating of ML, TF and PF risks. Such a document essentially describes the RMCP in full and is referred to as an Apex RMCP.
182. Accountable institutions are strongly encouraged to develop an overarching enterprise-wide and consolidated RMCP document (referred to as an "Apex RMCP" document). This Apex RMCP would clearly and comprehensively describe and document all core identified ML, TF and PF risk assessment elements, the derived inherent ML, TF and PF risks perspectives. Critically, the document would also show how such identified ML, /TF and /PF risks are mitigated, monitored and managed by business procedures, controls and systems on an enterprise-wide, yet risk sensitive basis, in respect of all the business activities, products and services provided to clients, within the context of the preventative control measures contained in the FIC Act.
183. The Apex RMCP document, must clearly demonstrate the accountable institution's understanding of the inherent ML, /TF and /PF risks it faces, and record the risk mitigation and management measures to address these identified ML, /TF and /PF

risks in a manner that is commensurate with the risk profile of the accountable institution as informed by its business activities conducted.

184. The Apex RMCP document constitutes the identifiable and readily accessible single document that comprehensively records the risk management and compliance programme. It would be the single document the board of directors, or senior management would approve, and that the accountable institution would make available to all employees and train them on. Most importantly it would be the single document provided to the FIC or other supervisory body on their request for examination purposes in terms of section 42(3) of the FIC Act.
185. Furthermore, the Apex RMCP document should make clear reference to all underlying, related operational business procedures, controls and supporting documentation, which would collectively constitute the risk management and compliance programme, and which reflects and records all the underlying, detailed risk and compliance elements of the programme, as envisaged in section 42 of the FIC Act.
186. Failure to produce such an Apex RMCP document could be considered as inadequate documentation describing the accountable institution' RMCP as read with section 42(3) of the FIC Act.
187. 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 Apex RMCP document and any associated RMCP documents.
188. DNFBP accountable institutions are to refer to draft PCC 114 for a detailed explanation on how an RMCP may be documented.]
- ~~189. Section 42 of the FIC Act places an obligation on accountable institutions to develop, document, maintain and implement a 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.~~

190. 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/[CPF] control structure through an RMCP.
191. The board of directors and/or senior management must create a culture of compliance within the accountable institution, ensuring that the institution's policies, procedures and processes are designed to limit and control risks of ML, /TF and /PF and are fully consistent with the law and that employees adhere to them.
192. The board of directors or senior management should be fully engaged in decision-making processes and take ownership of the risk-based measures adopted as they will be held accountable if the content of the RMCP (or its application in the accountable institution), [and if the documentation thereof] is found to be inadequate.
193. [The board of directors and/or senior management must approve their RMCP, including the documentation of the RMCP]
194. [The documentation of the] RMCP should include a description of the board of director's or senior management's accountability and the appointment of a person with adequate seniority and experience to assist in ensuring compliance with the

FIC Act. It is suggested that this description also indicates how the function to manage the establishment and maintenance of effective AML/CFT systems and controls is discharged in the accountable institution. The accountable institution's RMCP, [and the 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 criminal property, money laundering or terrorist financing risk management.
- Appropriate provision of regular and timely information to the board of directors and/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 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 CDD 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 of new clients
  - Changes in the institution's business profile.

195. 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 RMCP for an accountable institution which does not provide a wide range of products or services, or which deals with a diverse range of clients could be relatively simple. The RMCP of a complex financial institution would thus be expected to be much more complex. An accountable institution is required to

indicate in its [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.

196. 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 diversity
  - Its client, product or services profile
  - Its distribution channels
  - The volume and size of its transactions
  - The degree of risk associated with each area of its operation.
197. 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 within the group and adequately tailored where necessary.
198. Accountable institutions situated in South Africa and operating in jurisdictions outside the country should also be aware of local AML/CFT obligations in all jurisdictions in which they operate. This should be reflected in the accountable institution's RMCP document. Procedures should be in place to meet local AML/CTF obligations in each jurisdiction where an accountable institution operates. If there are conflicts between South African and the foreign jurisdiction's AML/CTF 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.

199. It is important that the [RMCP and the] content of an accountable institution's RMCP [documentation of their RMCP] is communicated widely throughout the institution, as may be applicable, to increase the effectiveness of its implementation.
200. 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 per the process discussed above].

**End**

**Issued By:**

**THE DIRECTOR  
FINANCIAL INTELLIGENCE CENTRE  
1 APRIL 2022**