

CONSULTATION NOTE

Relating to the draft Public Compliance
Communication No. 22A on guidance on
information processing in terms of the
Financial Intelligence Centre Act 38 of 2001 in
relation to data protection

July 2022

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INTRODUCTION

1. The Financial Intelligence Centre (Centre) has issued draft public compliance communication 22A (draft PCC 22A) for consideration by all accountable institutions, supervisory bodies and other persons in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 200) (FIC Act).
2. Draft PCC 22A provides guidance to accountable institution on the compliance with their obligations in terms of the FIC Act in a mutually non-conflicting manner with the principles of data privacy protection laws. The FIC Act provides the necessary justification in law that accountable institutions and reporting institutions require to process personal information in terms of data privacy protection laws.
3. The Centre thanks the Information Regulator for their assistance in the research for and drafting of this draft PCC 22A.

BACKGROUND

4. Guidance Note 7 (GN7) was issued in October 2017 and included a brief discussion on the impact of the Protection of Personal Information Act, 2013 on the identification and verification requirements of the FIC Act, under paragraph 119.
5. Draft PCC 22A aims to provide further insight to clarify the application of the FIC Act in with regard to data protection legislation.
6. Draft PCC 22A is in response to numerous requests from supervisory bodies and accountable institutions for guidance on the application of the FIC Act and the impact of the Protection of Personal Information Act, 2013 (Act 4 of 2013) (POPI Act).
7. Further, to address the areas of concerns as highlighted in the Financial Action Task Force's (FATF) 2019 mutual evaluation final report, which states:

“...the POPI Act does not allow for adequate exchange of information for the purposes of effective transaction monitoring. Sharing of information between financial institutions is only allowed under that Act if it can be considered to be processing in order to comply with

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obligations imposed by law. This may cause a legal issue as essential AML/CFT and related obligations are imposed by secondary legislation (e.g., regulations and directives) and therefore are not within the confines of the POPI Act.”

8. In addition, the FATF mutual evaluation final report highlighted
“there is no evidence of cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions”.
9. Draft PCC 22A provides guidance to accountable institutions on the compliance with their obligations in terms of the FIC Act in a mutually, non-conflicting manner with the principles of data privacy protection laws. The FIC Act provides the necessary justification in law that accountable institutions and reporting institutions require to process personal information in terms of data privacy protection laws

CONCLUSION

10. Commentators are invited to comment on the draft PCC 22A by submitting written comments via the online comments submission link only, [CLICK HERE](#). Any questions or requests relating to this draft PCC 22A may only be sent to the FIC at **consult@fic.gov.za**. Submissions will be received until close of business on Tuesday, 26 July 2022.
11. The Centre intends to conclude the consultation on this draft PCC 22A by publishing a final version no later than Wednesday, 31 August 2022.

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COMMUNICATION WITH THE CENTRE

12. 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 <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx> or visiting the Centre's website and submitting an online compliance query.

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CENTURION

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