

CONSULTATION FEEDBACK

Relating to the draft public compliance communication No. 12A and the issuance thereof in public compliance communication 12A on guidance on outsourcing of compliance activities to third-party service providers

24 March 2021

INTRODUCTION

1. The Financial Intelligence Centre (Centre) issued draft public compliance communication 12A (draft PCC 12A) for consideration by all accountable institutions, supervisory and all other bodies in terms of 42B of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) on 21 July 2020, with the consultation period ending 11 August 2020.
2. The Centre received consultation comments from 10 commentators from different sectors including the insurance, banking, consultancy, attorneys, stockbroking and property sectors.
3. This document highlights the feedback received, and the Centre's response thereto, from a high-level thematic perspective. The detailed feedback and responses can be [found here](#).

THEMATIC FEEDBACK

Outsourcing arrangements

4. No inference should be drawn as to the Centre's tolerance of the use, or non-use of third-party service providers. The Centre reiterates that it does not promote, dissuade, or endorse any such outsourcing arrangements.
5. Should an accountable institution consider outsourcing certain of their compliance activities in respect of their compliance obligations as set out in the FIC Act, it should be done so having considered this PCC.

Other regulatory requirements and contractual rights

6. The applicability of this PCC in relation to legal instruments issued by supervisory and/or other regulatory bodies regarding the definition of outsourcing was raised. The Centre has consulted with the relevant supervisory bodies and are in agreement that this PCC is applicable only in so far as compliance with the FIC Act is concerned. This PCC does not define outsourcing for purposes of application of other legal requirements. The PCC has been updated to indicate this.

7. Similarly, this PCC does not apply to the interpretation of other regulatory requirements as issued by other regulatory or supervisory bodies.

Definitions

8. There was a call to define certain words and/or terminology used in the PCC. In certain instances, definitions of terms are given in the text of the PCC which is intentional as the terms must be read within a particular context to avoid any interpretive issues, and as such, a glossary has not been inserted in the PCC.
9. Where no definition or elaboration is given, the words and/or terminology must be read in the ordinary dictionary meanings thereof.

Accountability

10. The third-party service provider cannot and does not discharge any FIC Act obligations on behalf of the accountable institution with which it has entered a contractual relationship. The PCC sets out what assistance can be sought but emphasises that the accountable institution remains liable for all non-compliance in terms of the FIC Act.
11. Reference is made to the sections under Chapter 4 of the FIC Act regarding the compliance and enforcement provisions applicable specifically to accountable and reporting institutions respectively. As such, accountable and reporting institutions cannot shift accountability or culpability to any other person and/or entity, either contractually or otherwise. Contractually, where poor performance is noted by a third-party service provider which leads to supervisory and enforcement action, accountable and reporting institutions could consider their claim of breach of duty towards the third-party service provider, where applicable. The accountable institutions cannot seek to evade accountability through terms of contact with third-party service providers.

Impact on small businesses making use of outsourced compliance functions

12. It is not the intention of the Centre that smaller institutions that are reliant on third-party service providers to assist them with their compliance activities in relation to the FIC Act, be negatively impacted by the provisions put forward in this PCC.
13. The aim of this PCC is to ensure that where an outsourcing arrangement is entered into, that the accountable institution is aware that they cannot completely hand over their FIC Act compliance, and must have sufficient knowledge, input and approval over their processes.

CONCLUSION

14. The Centre thanks all commentators and notes that all comments received have been considered and incorporated in the PCC 12A where appropriate.
15. The final PCC 12A has been issued on 24 March 2021.

COMMUNICATION WITH THE FIC

16. 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 FIC's website and submitting an online compliance query.

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