Financial Intelligence Centre Amendment Act: Pre-implementation Study in South Africa

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1. Introduction and overview

FinMark Trust commissioned and funded the Financial Intelligence Centre (FIC) Amendment Act: Pre-implementation Study in South Africa.

The project was designed to holistically assess the impact of the changing legislation (FIC Amendment Act) on financial institutions and the direct impact thereof on their customers, i.e. in the light of national financial inclusion objectives. It included a high-level scan of existing policy and regulatory frameworks in South Africa and, based on input collected through the components of the study, implementation recommendations have been developed. The purpose thereof is to provide a reference guide for accountable institutions (institutions) and other role players. This will assist them in their internal planning for the changed regulatory environment. The study did not extend to the indirect impact of the FIC Amendment Act.

2. Acknowledgements

The level of cooperation and support provided by regulatory, supervisory and private sector AML/CFT stakeholders who contributed to the study is acknowledged. The willingness of those who made themselves available to assist, at a time where most contributors were extremely busy, is highly valued.

The contributions made during workshops, meetings and interviews held with regulatory, supervisory and institution AML/CFT stakeholders is recognised as the pillar around which the project has been structured. This has provided a sound platform from which to obtain input relating to the research topics and to address key study outputs. Input has been obtained from a panel of experts, who provided insights and feedback relating to the design of the study as well as the project outputs. A sincere word of thanks is extended to all for their contribution over the course of the project, in particular during the three panel meetings that were held.

The study has been undertaken, from the outset and throughout the project, with input from and the support of the regulator as well as supervisors.

This report has been prepared by John Symington with assistance from the Compliance & Risk Resources team.

3. Executive summary

The core output of the study is this report, which contains a write-up of the research findings relating to the respective topics studied, as well as a recommendation framework that can be used as a source of reference to stakeholders that adopt a risk-based approach to AML/CFT.

The study was informed by 27 interviews with stakeholders, three industry workshops and three expert panel meetings. Input was also obtained through the completion of questionnaires, i.e. a detailed questionnaire and a costing questionnaire. Institutions that participated in the study were asked to provide data extracts for the purpose of studying various aspects of products that are the focus of the study, i.e. remittances including cross border remittances and entry level accounts that provide transactional functionality.

The effectiveness of the AML regime will depend on all of the "moving parts" of the new regulatory framework (i.e. the FIC Amendment Act, 2015, regulations, and guidance that is published) working towards the achievement of one set of clear, mutual objectives.

Contributors to the study generally recognised that a "one size fits all" approach to AML/CFT is no longer appropriate. They have, to varying degrees, indicated that the risk-based approach to the regulation of AML/CFT represents an improvement over the previous rules-oriented regulatory framework. However, there is a high level of uncertainty across institutions over how they will comply with the regulatory requirements in question. Undertaking institutional risk assessments without information on national risks identified in a national risk assessment is, for example, viewed as particularly challenging. Incorrect risk identification and assessment may inform expensive design failures of institutional risk mitigation strategies. However, where there is effective consultation, engagement and communication between the respective AML/CFT stakeholders in the development of regulations and guidance, this will increase the likelihood of achieving AML/CFT objectives and of avoiding unintended consequences, for example "de-risking".

Anticipated changes to FICA regulations and guidance have not yet been published. It is therefore too early to assess whether the compliance responses of institutions would tend be overly conservative as a result of the FIC Amendment Act provisions. However, some study contributors have indicated that this could be the case, i.e. in light of the challenges that will be faced in the adoption of a risk-based approach. It would be beneficial to have a clearly articulated view of "what success looks like" from an AML/CFT perspective, i.e. within the wider framework of "what success looks like" for the country as a whole, for all stakeholders. Further, a robust understanding of what should be measured in assessing the achievement of objectives would contribute towards developing an output focused stakeholder view of AML/CFT imperatives.

With the introduction of a comprehensive, mandatory risk-based approach, particularly with the introduction of flexible principle-based law, there is a need for guidance that will shape the regulatory responses of institutions. This is, to a large extent, driven by the need for clarity in the new regulatory regime, i.e. in light of the expected withdrawal of most of the current regulations and guidance. Institutions will be required to invest in systems, process and people controls that will address the regulatory requirements and meet the expectations of regulators and supervisors. This is more likely to be appropriately undertaken with clear guidance. As a point of departure, the establishment of AML/CFT guiding principles would play a valuable role in steering stakeholders towards understanding the planned outcomes of the new regulatory regime. Importantly, it is believed that a private sector led and regulatory authority supported risk-based approach guidance framework (i.e. without creating rules that restrict institutional compliance responses) would significantly improve the effectiveness of the country's AML/CFT regime, i.e. in support of the achievement of specified regulatory objectives. This will reduce the learning curve and take institutions further than they could otherwise go on their own. The development of guidance could be tested / piloted in respect of selected products that support financial inclusion, for example remittances or entry level accounts that provide transactional functionality.

Most study participants pointed out that there will be a significant amount of ground to cover in developing the institutional capacity that will be required in a risk-based approach. In some instances, institutions may be relatively well positioned where, in the past, systems and processes have already been put in place to focus the organisations attention on higher ML/TF risks. The indications are, however, some institutions will require significant developments in respect of their systems and processes, perhaps most notably in respect of smaller organisations.

An appropriate risk assessment methodology and process is needed by institutions in gearing up to comply with the FIC Amendment Act provisions. This will involve the consideration of factors that should be viewed in combination and can be weighted to reflect their respective importance to arrive at a ML/TF risk assessment. These factors can be categorised under the following headings: Product; Delivery channel; Client: Geography; and Transactions profile. Monitoring and surveillance results will, in turn, provide risk data that can be used to inform the risk assessment in question and ongoing compliance responses relating thereto.

Products and services that facilitate access are typically characterised by low margins and may be high volume in nature. It is recognised that some are inherently high risk from an ML/TF perspective, notably in respect of remittances, especially cross border remittances. However, there are circumstances under which they can be assessed as being lower risk using a risk-based approach, as indicated in the report.

There are opportunities to determine balanced approaches to the risk-based approach that avoid situations where financial institutions over protect themselves through overly conservative compliance due diligence responses. In this regard, available data can be utilised to assess risk in alternative ways. It is now possible to explore new forms of identity and risk-related information and to access, retrieve or otherwise interact with such data through sources that have previously been overlooked or left unconsidered. However, while there is an increasing appreciation of the contribution that is made by new data sources, many are currently not accessible by institutions. Where access is possible in future, this could significantly improve the effectiveness of due diligence processes and reduce the costs relating thereto, thereby improving the prospects for access to financial services for the poor. This needs to be accompanied by privacy and data protection measures and should be supported by data governance standards and effective regulation and supervision thereof. The civil and political implications / cost should be considered in relation to access to the data in question.

There is ground to cover in developing a practical understanding of ML/TF risk appetite and tolerance frameworks and practices at both the country and institution levels, as well as governance considerations relating thereto. This links with concerns relating to so-called "de-risking" by institutions. There is the possibility and propensity for service providers to de-emphasise (and possibly even withdraw) from a customer or market where the cost of appropriate risk-based responses are assessed as exceeding the possible revenue that can be derived therefrom. This could, to an extent, be amplified where the risks are unknown or cannot be adequately identified or assessed. Any such de-emphasis or withdrawal from a legitimate market or customer can impact on inclusive growth and development in the country. Clear guidance and agreement about lower risk scenarios and appropriate risk responses can however limit those cases.

The due diligence requirements contained in RICA and FICA are not fully aligned. Furthermore, participants in the study indicated that RICA due diligence is not reliable, i.e. in the light of the quality and integrity of the processes that are followed and the quality and integrity of the data that is available within the system. The integrity of the RICA regulatory regime will also depend on the due diligence that is undertaken being current. Challenges in this regard have been identified. Where the abovementioned regulatory alignment and reliability challenges are addressed, this would lead to synergies in that reliance could be placed on the due diligence undertaken across both regimes, resulting in efficiencies in the on-boarding of clients for both accountable institutions and mobile network operators (MNOs).

It is understood that there is a changing AML/CFT supervisory dynamic, i.e. with the pending introduction of the FIC Amendment Act. It is anticipated that supervisors will approach the supervision of the applicable regulatory requirements in a manner that will evolve over time. At this juncture, this is still

largely an unknown quantity. There are, however, indications of the direction of travel. It is clear that institutions take their cue as to how they should comply with the applicable regulatory requirements from supervisors. It is, therefore, reasoned that where there is a clear understanding of how supervisors impact on the achievement of regulatory objectives in a holistic manner, this will contribute towards painting a view of the way forward. Supervisors play a crucial support role within the AML/CFT regulatory framework, perhaps most importantly in respect of support that will encourage confidence in an institution's view of its risk framework and process meeting the expectations of supervisors. This will assist institutions in applying graduated compliance practices in respect of products and services to facilitate access.

The introduction of the FIC Amendment Act requirements has the potential to have a significant impact on the cost of compliance of institutions, i.e. as a result of the need for systems, processes and staff to comply with the requirements in question. A costing model that can be used analyse costs relating to the introduction of the new regulatory requirements was developed with a view to facilitating discussion relating to what this could mean in respect of products and services that facilitate access. In this regard, costs are categorised as fixed or variable in nature and may be incurred once off in gearing-up to comply with the new requirements or could be ongoing in nature. The model highlights that there will typically be significant up-front risk-based approach development costs, but also takes into account the potential for cost savings as a result of the envisaged flexibility that is offered in the new regulatory regime, i.e. that can be realised over a period of time. If these savings are not achievable, the cost of compliance could be significantly increased and there will be an adverse impact on financial inclusion. On the other hand, where the potential savings are achievable, this could have a positive outcome for financial inclusion, while at the same time offering improved due diligence processes in the new regulatory regime.

4. Methodology and scope

The project has included literature reviews of relevant regulatory frameworks, including a review of the international standards. The current Financial Intelligence Centre Act requirements have been considered and a review of Financial Intelligence Centre Amendment Act requirements has been undertaken.

The detailed investigation and diagnostic component of the study included the following:

- 27 interviews with key stakeholders, including members of the financial sector policy maker, regulatory and supervisory bodies, and institutions;[1]
- Three industry workshops were held, the first to obtain stakeholder input relating to the core study topics, the second to workshop selected aspects of risk-based approach practices, and the third to address key aspects of the study and consider possible unintended consequences of the new regulatory regime;[2] and
- Three expert panel meetings were held over the course of the project, which provided a forum to obtain input relating to AML/CFT and financial inclusion matters.[3]

Two questionnaires were developed in order to obtain input from study participants over and above the interviews, meetings and workshops held:

[1] Interviews were held over the period August to October 2016.
[2] Workshops were held on 20 September, 9 October and 31 October 2016.
[3] Expert panel meetings were held on 23 August, 7 October, and 18 November 2016.

- A detailed questionnaire designed to obtain an understanding of the implications of the regulatory changes in question, specifically in respect of the South African regulatory framework, inappropriate compliance, AML/CFT objectives, ongoing changes to regulatory requirements, guidance and industry coordination, regulatory exemptions, financial exclusion risk, ML/TF risk assessment, risk appetite and tolerance, crime and the proceeds of crime, compliance in smaller organisations, customer due diligence requirements and other laws, and supervision and enforcement (the detailed questionnaire was forwarded to all the study participants and was discussed in all of the interviews held. It was completed by 12 study participants[4], in line with the planned number); and
- A costing questionnaire designed to obtain input in respect of cost implications of the risk-based approach, as well as cost drivers and an analysis of relevant factors relating thereto (the costing questionnaire was sent to all study participants from the private sector and was referred to in all of the interviews held. One costing questionnaire was returned - refer to section 18.2 of this report).

The interviews, workshops, expert panel meetings and questionnaires provided input enabling a consideration of the effectiveness of laws and implementation thereof, as well as potential unintended consequences of the FIC Amendment Act. There was a particular focus on a number of matters that relate to financial inclusion, specifically in respect of:

- The supervisory capacity of supervisory and oversight bodies, including mechanisms to monitor compliance management and market conduct of financial service providers;
- Effectiveness of institutional capacity to implement and enforce risk-based frameworks; and
- Challenges experienced with implementation of laws.

The pre-implementation impact of risk-based compliance of financial institutions that operate in low-income markets was also considered.

The study's terms of reference included a consideration of the compliance responses of individual institutions that participated in the study. However, although there has been strong participation in and support for the project, none of the institutions in question have given their permission to separately include their specific input in the project report. This is, to a large extent, a result of the complexities of the relationship between institutions and regulators/supervisors. Individual institutions are sensitive to publishing separate reports that will place them in the spotlight in a manner that could attract attention from the regulator/supervisors and result in comparison to other institutions. In the past, compliance was, for the most part, not viewed as a competitive business issue, i.e. with a rules-based approach all institutions applied the same due diligence procedures that were specified in the applicable regulatory requirements and addressed in guidance relating thereto. However, with the introduction of a principles-based regulatory framework, the indications are that this dynamic is changing.

Key issues faced in the implementation of the revised regulatory requirements have been identified and recommendations relating thereto have been included.

[4] During August and September 2016.

5. Regulatory framework

5.1. Introduction

The AML/CFT hard law regulatory framework is made up of the applicable statutes and regulations. In addition to enforceable (hard law) rules, soft law rules such as those found in unenforceable standards, industry practices, codes and unenforceable guidance also shape regulatory responses. This section addresses matters relating to hard law rather than soft law and focuses primarily on aspects of relevance to financial inclusion. Soft law, especially some of the harder elements of soft law such as the authoritative yet unenforceable guidance issued by the FIC and the recommendations issued by the FATF have an important regulatory impact on South African institutional compliance decisions.

5.2. FIC Amendment Act

The FIC Amendment Act, 2015, has completed its journey through the law-making process and, all things being equal, awaits the president's signature in order to bring the requirements into effect. The regulatory framework will consist of the FIC Act 2001, as amended by the aforementioned Amendment Act, regulations that are issued in terms of the newly-amended Act and guidance that is published by the FIC. The effectiveness of the AML regime will depend on all of the aforementioned "moving parts" working towards the achievement of objectives.

There is a high level awareness of the legislative changes that will be brought into effect with the FIC Amendment Act and a general appreciation that this will bring with it a fundamentally different AML/CFT regime. This understanding is informed in part by the experiences of major trading partners where counterparts have implemented similar risk-based approaches, in compliance with international AML/CFT standards. However, based on input received during interviews and in questionnaires that have been completed by project participants, there does not, for various reasons, appear to be a consistent understanding of the implications of the risk-based approach across institutions. This is amplified in the commentary set out in part 7 of this report, which includes an analysis of project participant's views relating to the objectives of the legislation in question.

Contributors to the study recognise that a "one size fits all" approach to AML/CFT is no longer appropriate. They have, to varying degrees, indicated that the risk-based approach to the regulation of AML/CFT represents an improvement over the previous rules-oriented regulatory framework.

It is generally understood that the current regulations and exemptions will be withdrawn and that the majority of the guidance that has been published will no longer be applicable. This complete overhaul of the regulatory framework will clearly have a major impact on the way that accountable institutions respond to the AML/CFT challenge, particularly in respect of the due diligence undertaken. This can have an impact on access to financial services, particularly where the ML/TF risks are perceived to be too high for an institution's risk appetite or where compliance costs outweigh the financial benefit of maintaining a product, service or business relationship.

Although the removal of the rules-based "one size fits all" regulatory framework is positively viewed by contributors to the study, concerns have been raised relating to the shape, content and application of any new regulations and guidance that may be published by the regulator.

In the past, the development of regulatory requirements, as well as guidance relating thereto, has been a top-down process that has been driven by the regulator. It is perhaps fair to say that this is, at least in

part, a result of the regulators apparent lack of confidence in the respective industry sectors being adequately focused on the achievement of AML/CFT objectives. On the other hand, it is noted that stakeholders from financial institutions have indicated that the approach that has been adopted in the past has been a major contributor to limiting the AML/CFT regulatory/supervisory regime's effectiveness. For example, there have been instances where guidance has been developed and issued without taking into account the input of private sector stakeholders, which has resulted in significant challenges in applying the guidance in the practical day-to-day operations of institutions. This is, to a large extent, driven by the "one size fits all" dynamic in the current rules-based approach that underpins the regulatory requirements. A majority of project stakeholders are of the view that constructive communication between regulatory, supervisory and private sector stakeholders has been limited by virtue of the top-down approach.

***Recommendation 1**: The design of the regulatory framework and the supervisory approach relating thereto should be informed by appropriate communication between stakeholders with a view to improving the prospects for achieving AML/CFT regulatory objectives. Opportunities to develop a guidance-setting framework that achieves alignment should be maximised during the design phase and it is desirable that mutual communication and cooperation relating to the achievement of the identified objectives should be a key feature of the new regime.*

5.3. National risk assessment

All contributors to the study indicated that a national risk assessment should play a role in the AML regime. It is reasoned that this would provide a valuable platform from which to understand ML/TF risk in the respective sectors/markets. Importantly, it would allow for the collection, collation, analysis, processing and sharing of information that can be used to inform the country's AML/CFT regulatory framework and the risk-based approaches that are adopted by institutions. Industry participants mentioned that there has been no public communication regarding progress such an assessment in South Africa. Also, it was noted that, where a national risk assessment process is set in motion, it could take a significant amount of time to complete and, at first pass, is unlikely to provide a comprehensive identification and assessment of ML/TF risk.

It is noteworthy that the national ML/FT risk assessment model developed by the World Bank recognises the value of also considering financial exclusion risks. One of the modules thereof specifically addresses financial exclusion, as well as financial inclusion policies as a means to mitigate financial exclusion risks. Financial exclusion risks are particularly relevant to the South African economy and it is imperative that a risk assessment should analyse the risk appropriately and position this holistically from a country perspective.

***Recommendation 2**: It is important to launch national risk assessment processes to inform institutional assessments. A national risk assessment should be undertaken for South Africa and there should be consideration of the risk of financial exclusion and AML/CFT implications for financial inclusion.*

5.4. Supervisory approach

Although there are no phase-in provisions in the FIC Amendment Act, the indications are that the regulator does not expect institutions to have fully adopted a risk-based approach that is aligned with the new regulatory requirements when the provisions are brought into effect. It is understood that institutions would be required to develop their regulatory responses within a reasonable period of time. Supervisors will, in terms of the approach that has been communicated at various industry presentations by the regulatory authorities, set milestones in this regard and will correspond accordingly with institutions. It is possible that different milestones could be set in different industries and how the aforementioned dynamic will play out is not yet known. This could serve to increase levels of uncertainty that could have an impact on the compliance responses of institutions.

Regulators may not view the promotion of financial inclusion as being part of their remit. This is perhaps one of the reasons why, in the past, there have been significant unintended consequences, for example where AML/CFT regulatory frameworks have had unfavourable implications for financial inclusion. Reference is also made to the impact that supervisors have on the compliance responses of institutions in section 17 of this report.

***Recommendation 3**: Where there is an effective upfront and ongoing assessment of the impact of regulatory requirements (and the supervisory approaches relating thereto) on AML/CFT stakeholders (taking into account the broad spectrum of matters that impact on the achievement of objectives) this will reduce the likelihood of unintended consequences, i.e. in respect of AML/CFT as well as financial inclusion outcomes.*

5.5. AML/CFT stakeholders

AML/CFT stakeholders include policy makers, government departments, financial integrity stakeholders, financial inclusion stakeholders, telecommunications stakeholders, data stakeholders, regulators, supervisors, law enforcement, non-governmental organisations, industry associations, institutions, and society. Criminals and terrorists carry out illicit activities in a complex and interconnected world. This should be viewed holistically and the circumstances within which these activities take place are relevant.

The interests of the above stakeholders should, within the wider context of the wellbeing of stakeholders, be considered with the introduction of the new regulatory requirements. Financial crime considerations, and the ML/TF context relating thereto, should not be viewed in isolation. It is not advisable to focus purely on AML/CFT outcomes without developing a holistic view of stakeholder dynamics, including the implications of widespread poverty, conditions in the region, and the need for financial inclusion. For example, in South Africa, there is a large population of people that have relocated from other countries in the region as a result of their economic or political circumstances. Many of these people have applied for refugee status, but others are undocumented in South Africa. This will have implications when they want to remit money to their families that have remained in the country of origin, i.e. they may be excluded from using formal remittance options and will need to make use of informal avenues that are relatively expensive.

***Recommendation 4**: AML/CFT stakeholders should be identified with a view to determining their legitimate interests in the achievement of AML/CFT objectives in order to develop an understanding of how best alignment can be achieved.*

The indications are that an in-depth impact analysis has not yet been undertaken to determine the likelihood of achieving broad AML/CFT objectives or to define these with precision. Further, the impact of the new regulatory requirements on stakeholders and the trade-offs associated with the AML/CFT objectives have not received sufficient attention. Where there is a clear understanding of the AML/CFT "end-game" and agreement about the appropriate trade-offs to be made to advance these objectives, stakeholders will be able to work collaboratively towards the achievement of AML/CFT outcomes. Such results-focused collaboration will differ greatly from the regulatory compliance focus that accompanied the rules-based approach applied in the past.

A consistent theme throughout the study's information gathering process was that criminals and terrorists are "way ahead" of the due diligence processes of institutions and can evade the risk mitigation systems and processes that are put in place. Accordingly, it is advisable that real-world circumstances are taken into account in the design of flexible regulatory and compliance frameworks and supervision thereof.

***Recommendation 5**: An in-depth impact analysis should be carried out to determine the direct and indirect policy objectives of the AML/CFT framework, the relevant trade-offs and consequences to enable effective and efficient achievement of policy objectives in an integrated and holistic manner.*

6. Inappropriate compliance

6.1. Introduction

There are real risks of over-compliance, potentially leading to financial exclusion, and of non-compliance, if the internal processes of service providers are not robust enough to assess the relevant risk correctly and adopt appropriate, balanced risk-mitigation measures. Executive management of institutions will be expected and required to provide their interpretation as to how their institutions will plan to allocate resources and capital to optimally deal with the risks in the evolving environment.

As identified in a FinMark Trust study undertaken in 2011, potential compliance responses to regulatory requirements (whether through action or inaction) range from non-compliant to over-compliant with balanced compliance often viewed as the ideal response by a financial institution. The range of responses can be depicted as shown in the figure contained in Annexure 1, which is included for ease of reference. The responses include: Non-compliance; Liberal compliance; Conservative compliance; and Over-compliance.

This section of the report addresses compliance responses that are considered to be inappropriate, i.e. where these can be viewed as overly conservative. This has the potential to adversely impact on financial inclusion.

6.2. Research responses

Although robust input was obtained through the use of the respective research tools, none of the individual inputs provided the full picture of how overly conservative compliance responses can be avoided. This is perhaps an indication of the complexity of the matter in question as well as the dynamics that are underpinned by the different interests of different stakeholders. For instance, public sector stakeholders may have different policy objectives, for example financial integrity, financial inclusion, or economic development. However, there are policy overlaps, conflicts and alignment dynamics that should be addressed in a balanced manner.

***Recommendation 6**: The policy-setting process of the respective stakeholders (AML/CFT, financial inclusion and other) should ideally be undertaken in a coordinated or integrated manner.*

A majority of the contributors to the study indicated that the withdrawal of the current exemptions will have a significant impact on the compliance responses of institutions, i.e. this will change the way due diligence measures are determined and carried out in relation to different customers, products and services. There was a mixed response from the contributors to the study relating to their views on whether the withdrawal of exemptions will result in institutions applying more conservative due diligence in respect of products and services that currently resort under the likes of exemption 17. Many stakeholders were uncertain of the impact that the risk-based approach would have. Some however strongly argued that the new requirements would tend to make institutions compliance responses more conservative, with a consequential adverse impact on financial inclusion. The nature of the compliance responses will depend on a number of elements, including the following:

- Which exemptions will be withdrawn and the manner in which they will be withdrawn;
- The withdrawal of regulations and the possible introduction of new regulations;
- The withdrawal of guidance and the possible introduction of new guidance;
- The level of confidence institutions will have in the revised regulatory framework and the supervision approach that will be followed in relation to inclusion products; and
- Assessment of risks and institutional risk appetites.

All of the above will have an impact on the compliance responses of institutions and only once the regulations and guidance have been published will it be possible to assess the implications for financial inclusion. The focus of this report is on what can be done to encourage the balance of financial integrity and financial inclusion dynamics.

***Recommendation 7**: Once the anticipated changes have been made to the FICA regulations and guidance, these should be considered in light of the impact thereof on financial inclusion.*

6.3. Compliance with regulatory requirements

The compliance and risk functions of an institution play a support role in assisting management to discharge its responsibility to conduct all business in compliance with applicable regulatory requirements.

Stakeholders within an organisation work together in developing and implementing a risk-based approach to AML/CFT.

The FIC Amendment Act, once implemented, will fundamentally change governance requirements relating to AML/CFT. This is driven by the inclusion of Section 42A, the contents of which are set out in Annexure 3. The board of directors of an accountable institution which is a legal person with a board of directors, or the senior management of an accountable institution without a board of directors, must "ensure compliance by the accountable institution and its employees" with the provisions of FICA and the institution's risk management and compliance programme. This is a sound approach from an organisational governance perspective, and will likely focus the respective governance stakeholders' attention on their personal exposure to ML/TF as well as compliance risk. The result thereof could, however, be to encourage conservative compliance responses, i.e. stakeholders may be mindful of the fines, penalties and sanctions that could be imposed and their risk appetite will inform the level of risk that they are prepared to tolerate.

***Recommendation 8**: The impact of the new regulatory regime on the compliance responses of institutions should be monitored in relation to the impact of section 42A, i.e. to determine that they are not overly conservative, resulting in adverse outcome for financial inclusion. This should include consideration of whether institutions are applying simplified due diligence measures where such measures are appropriate. Note: This links with recommendations 19 and 23.*

The indications are that the regulator is favourably disposed towards supporting a supervisory approach that will involve reviewing the compliance responses of institutions to monitor that they are not overly conservative. This could, for example, focus on whether institutions have an effective process to apply simplified due diligence procedures where there are lower risks.

6.4. Risk-based approach developments

The South African AML/CFT regulatory framework is still evolving and it is anticipated that changes relating to the regulations and guidance that has been developed by the authorities could be published in the near future.

It is useful to consider developments in other countries where different approaches have been applied in adapting their regulatory frameworks to enable a risk-based approach. The UK approach has been implemented and is relatively settled. This jurisdiction has recognised the need for effective communication in order to avoid misunderstanding relating to the compliance responses of institutions and the challenges and complexities relating thereto appear to be robustly addressed. This is evident in the Joint Money Laundering Steering Group[5] (JMLSG) guidance that is developed and in the level of confidence that institutions appear to exhibit in their understanding of what is required in order to comply with the regulatory requirements. It is noted due diligence challenges in this jurisdiction are somewhat different to those of developing countries, but the support for sound communication and the promotion

[5] The Joint Money Laundering Steering Group (JMLSG) is made up of the leading UK Trade Associations in the Financial Services Industry. JMLSG has been producing Money Laundering Guidance since 1990, initially in conjunction with the Bank of England, and latterly to provide regularly updated guidance on the various Money Laundering Regulations in force. JMLSG periodically reviews its Guidance, and make changes and additions as required.

of clarity, as appropriate in a risk-based approach (i.e. without "creating rules that restrict"), is just as important in South Africa.

A number of countries in the Sub-Sahara African region have already introduced flexible principles-driven risk-based approaches to the regulation of AML/CFT. However, the indications are that there are still significant challenges in establishing an understanding of how best to take advantage of new technologies and data sources to support the achievement of AML/CFT objectives.[6] This is, to some extent, encouraged by legacy thinking that has not allowed for due diligence effectiveness and efficiency improvements. For example, a regulator may require institutions to retain paper copies of documents that are used to identify and verify clients.

The Canadian AML/CFT regulatory framework that has recently been updated to some extent still relies on rules to provide stakeholders with clarity relating to the due diligence that must be conducted by institutions. While some benefits will flow from the understanding that this will provide in respect of the specification of what will be acceptable to the regulators and or supervisors, this approach is not recommended for South African circumstances.

6.5. Business realities

Institutions are, by nature, driven by the risk and reward dynamic in all aspects of their business operation. The full universe of risk should be understood, i.e. in relation to ML/TF risk, as well as all other risks that organisations face. The management of ML/TF risk is not undertaken in isolation and inter-relationships between the respective variables that impact on business should be seen within the wider context that is relevant.

Products and services that facilitate access are typically characterised by low margins and may be high volume in nature. It is recognised that some are inherently high risk from an ML/TF perspective, notably in respect of remittances, including cross border remittances. This is addressed in the FATF standards and guidance that has been published. However, there is still much ground to be covered in being able to put forward a comprehensive understanding of ML/TF risk in the Sub-Sahara Africa region and contextualise how this should be addressed by institutions.

***Recommendation 9**: There will be value, from the financial integrity and financial inclusion perspectives, in developing a regional level understanding of the inherent ML/TF risks relating to products and services that facilitate access, particularly in respect of cross-border remittances. This should also address what can be done by countries and institutions to mitigate risk.*

6.6. What can be done to avoid inappropriate compliance?

What can be done to avoid inappropriate compliance should be considered. A study undertaken for FinMark Trust in 2011 included a number of recommendations aimed at avoiding inappropriate

[6] FinMark Trust. John Symington- Compliance & Risk Resources. July 2015. Focus Notes: Anti-Money Laundering and Combating the Financing of Terrorism in Certain SADC Countries.

compliance responses to AML/CFT requirements.[7] These still hold true and the headings under which the recommendations were made are included below:

- Address policy and policy conflicts expressly;
- Clarify legal obligations and ensure that they support financial inclusion;
- Allow adequate time for the implementation of regulatory requirements;
- Identify and manage interaction between hard and soft law requirements;
- Regulate for the long term;
- Address key pressures that may prevent the implementation of simplified customer identification and verification measures;
- Provide certainty about regulator's approach to compliance and enforcement;
- Cooperate with the industry to increase compliance expertise; and
- Build mutual trust.

This report contains further recommendations that relate to inappropriate compliance responses and are intended to serve as a base from which to focus stakeholder attention.

7. AML/CFT objectives

7.1. Introduction

The Financial Intelligence Centre Act has been framed with a number of objectives in mind. These are set out in section 3 thereof and are considered below with a view to developing a high level appreciation of the AML/CFT "big picture".

7.2. Study input

Study participants were asked to indicate whether they believed that AML/CFT objectives have been clearly articulated within the regulatory framework. Responses indicated difference of opinions with some indicating that such objectives have been established, while others argued that these have not been specified in a manner that adequately supports the AML/CFT regime. Notably, some participants pointed to the headings and sections of the respective AML/CFT laws, specifically FICA, PRECCA, POCA and POCDATARA. Relevant extracts from FICA are included below for ease of reference.

Box 1 – Extracts from FICA

FICA abstract:

"To establish a Financial Intelligence Centre and a Counter-Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to clarify the application of the Act in relation to other laws; to provide for the sharing of information by the Centre and supervisory bodies; to provide for the

[7] FinMark Trust. Louis de Koker and John Symington, August 2011. Conservative compliance behaviour: Drivers of conservative compliance responses in the South African financial services industry.

issuance of directives by the Centre and supervisory bodies; to provide for the registration of accountable and reporting institutions; to provide for the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to provide the Centre and supervisory bodies with powers to conduct inspections; to regulate certain applications to Court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith."

FICA section 3:

"1) The principal objective of the Centre is to assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities.
2) The other objectives of the Centre are –
   a) to make information collected by it available to investigating authorities, the supervisory bodies, the intelligence services and the South African Revenue Service to facilitate the administration and enforcement of the laws of the Republic;
   b) to exchange information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities.
   c) to supervise and enforce compliance with this Act or any directive made in terms of this Act and to facilitate effective supervision and enforcement by supervisory bodies."

It has been argued that the legacy FICA due diligence requirements have been geared towards "exclusivity" as opposed to "inclusivity". In other words, individuals and entities will be excluded from the financial system if they cannot produce specified documentation, particularly relating to identity (official identity document) and proof of address (which has limited due diligence value in some rural or informal settlement contexts). Also, most stakeholders have indicated that the rules approach to the regulation of AML/CFT has, in the past, encouraged a "tick-box" approach to AML/CFT.

It is noted that there is a possible misalignment of the objectives of the authorities and the understanding of these objectives by institutions. Priorities relating to crime and the proceeds of crime may be indicated by the regulatory authorities, but there could be an inappropriate focus on ML/TF risks, i.e. by financial institutions, if communication is not effective.

The rapidly changing world, which is, to an extent, driven by digitisation and technology, will provide new opportunities for ML/TF risk mitigation by institutions. This is seen in the use of biometric identifiers (e.g. iris, fingerprint etc.) coupled with individual identifiers (e.g. name, date of birth, ID number, contact particulars etc.) in identifying and verifying the identity of clients. It is reasonable to assume that the dynamics that have brought these opportunities will provide further impetus for change in future. It is likely that, in years to come, the rate of change could accelerate and the nature of change may be difficult to envisage at this juncture.

***Recommendation 10**: AML/CFT objectives should be identified and appropriate communication relating to the achievement thereof encouraged. Further, principles that underpin the country's AML/CFT framework should be published to serve as a platform from which to guide AML/CFT stakeholders in discharging their obligations in terms of the applicable regulatory requirements.*

7.3. What does success look like?

Study participants asked a number of relevant questions over the course of the project, for example: What does success look like? What should be measured? What are we trying to achieve? Are we placing focus where focus is due? and, Are we all working towards the same goal?

There will be value in placing an ongoing focus on improving on and deepening the answers to these questions, i.e. in coming years as the risk-based approach matures. In a number of interactions with project stakeholders, the question of "what does success look like?" was raised. In part, the FIC Amendment Act is being introduced in recognition that changes were needed in order to support the achievement of regulatory objectives. It is envisaged that the risk-based approach will provide a significantly improved framework from which all stakeholders will have the flexibility to respond to the regulatory requirements in a manner that is proportionate to the ML/TF risk.

However, it is advisable to clearly articulate what the objectives are and to develop an understanding of what should be measured in assessing the achievement thereof over time, i.e. before institutions are compelled to design risk-based measures. This could be based on AML/CFT policy/principles that would guide the development of regulatory requirements and the drafting of guidance relating thereto. The achievement of the objectives should, ideally, be tracked by the AML/CFT policymakers as well as other policymakers. This will particularly be the case where there are considerations that impact on different policy objectives and there is a need to obtain input from a number of stakeholders or the interests of the interested policy makers would benefit from a holistic view of the outcomes in question.

It is acknowledged that various stakeholders will see the achievement of objectives differently and could play divergent roles in achieving them.

Box 2 – What does success look like?

During the second workshop that was attended largely by persons that work in private sector institutions, the following answers were provided in respect of what they see as success in the AML/CFT space:

- Develop guidance (avoiding legacy due diligence shortfalls) to promote business growth;
- Broaden the base of consumers that can access financial services;
- Help people to become part of the economy;
- Address all risks that are faced in an institution in a holistic manner;
- Avoid fines, penalties and sanctions;
- Avoid resistance from management when the new requirements are brought into effect;
- Obtain buy-in from all stakeholders for the new requirements;
- Make the business safe from AML/CFT and protect clients;
- Build a framework to address AML/CFT with an appropriate level of residual risk;
- Have a sound interpretation of the AML/CFT end-game that is the same for all stakeholders;
- Sharing of the vision of well-being;
- Allow access to financial services where controls have purpose;
- Where ML/TF abuse occurs, pick this up proactively;
- Transparent & open relationship with stakeholders;
- Diversification of business activities;

- Develop RICA[8] as an enabler (with consideration of the governance thereof);
- Promotion of financial inclusion;
- Harmony between financial integrity and financial inclusion – for the betterment of society;
- The lead regulator should be equally involved in providing guidance; and
- Address regulatory silos e.g. RICA & FICA.

The input provided by each workshop attendee is included above (with some editing thereof). It is clear that key stakeholders may have very different views of success. Their views are informed by a range of variables such as their particular interests, their understanding of AML/CFT outcomes and their views relating thereto, responsibilities and level of seniority within their respective institutions, the nature of business undertaken and the environment within which this is conducted. However, there are a number of matters that should be addressed:

- How will differences in views regarding success impact on the design of institutional AML/CFT measures? and
- How will government policy on social and financial inclusion fit into institutional AML/CFT thought and drive the design of AML/CFT measures?

The question of how AML/CFT and financial inclusion imperatives should be seen within the "big picture" of what constitutes success for the country will also be relevant. Further, a robust understanding of what should be measured in assessing the achievement of objectives would contribute towards developing an output focused stakeholder view of AML/CFT imperatives.

***Recommendation 11**: It would be beneficial to have a clearly articulated view of "what success looks like". This will guide AML/CFT stakeholders in understanding the AML/CFT outcomes, which should ideally be understood within the "big picture" of what constitutes success for the country.*

7.4. What should be measured?

Study participants have not put forward specific or measurable outcomes relating to the AML/CFT regulatory regime. It is acknowledged that this is by no means an easy task, but there will be value in focusing attention on the answer and in viewing AML/CFT within the wider context of policy objectives.

***Recommendation 12**: Where measurable AML/CFT outcomes are determined when the new law is brought into effect, this will provide a platform for monitoring the achievement of objectives. Such outcomes should be formulated with due consideration of the wider policy alignment dynamics of the country.*

[8] Due diligence regime required in terms of Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002.

8. Ongoing changes to regulatory requirements

8.1. Introduction

The question of whether regulatory requirements should be kept unchanged for an extended period of time should be considered, i.e. as was the case in the current AML/CFT regulatory framework. The alternative would be to periodically review the relevant laws and make changes from time to time, i.e. to the extent that is practical.

Where the requirements remain in place for an extended period of time, for instance for at least 5 years, this will provide for regulatory stability and compliance responses relating to the applicable requirements may not need to change. On the other hand, where regulatory requirements are changed from time to time, when required in view of the need to keep pace with changing country circumstances to achieve objectives, compliance responses of institutions would need to change accordingly. This could lead to an erosion of institutional confidence in the ability to invest in systems and processes in a manner that is sustainable.

8.2. Participant responses

The study questionnaire was used to request the views of participants on legal certainty. It was generally felt that that it would be preferable to have regulatory stability than to have an environment where the requirements are constantly changing. Although regulatory requirements should remain up to date, it is felt that frequent regulatory changes will place a significant burden on institutions.

However, it is reasoned that the adoption of a full risk-based will, in itself, mean that institutions will have to adapt their compliance responses according to the ML/TF risk that is assessed. It will not be possible to apply a due diligence process that is not responsive to the risks in question. This implies that the new regulatory regime will, to a greater extent than in the past, require institutions to be responsive to the level of risk that is inherent in the business that is conducted. Due diligence responses will also need to be dynamic in order to address the implications of changing risks over time. The ability of institutions to mitigate risk could also change and this will have an impact on compliance responses that will be appropriate.

Private sector contributors to the study indicated that it would be important to ensure that there is appropriate lead-time for the introduction of new regulatory requirements. This is underpinned by the recognition that compliance responses may require significant changes to systems and process. Costs relating thereto could be significant and may take time to develop and implement. Further, it will be important to understand the AML/CFT "end-game" in enough detail so as to avoid having to replace systems or processes when it is found that they have not been appropriate or have not achieved the outcomes required at some point in the future. This links with the support that will be derived for the achievement of regulatory objectives from a clearly articulated view of "what success looks like", as described in the previous section of this report.

Where institutions do not have a high level of confidence that the AML/CFT "end-game" is understood, or that there is a clear understanding of "what success looks like", they will not be encouraged to adequately invest in the systems and processes in question.

***Recommendation 13**: Circumstances that will encourage an appropriate level of investment in systems and processes by institutions should be identified and taken into account in the design of the regulatory requirements and the supervision thereof.*

8.3. Up-front consultation

A contributor to the study stated that "it is important to get the regulatory requirements right up-front". This may sound obvious, but experience has shown that this may not be given the attention that is needed, i.e. by all stakeholders in the AML/CFT value chain. Achieving planned regulatory outcomes is perhaps only possible if extensive, upfront consultation leads to a broad and deep understanding of all important aspects of the AML/CFT moving parts. The level of consultation currently being undertaken by the regulator and the participation of a wide range of stakeholders in consultative processes is an indication of an increasing willingness to focus on determining that the AML/CFT direction of travel is appropriate. Where objectives are clearly specified, and measures relating to the achievement thereof are put in place, this will have a positive impact on focusing attention on the more important considerations by stakeholders.

8.4. Regulations and guidance

It is reasoned that where the anticipated FICA regulations and guidance is published in a manner that enables effective compliance by institutions, i.e. where a high level principles-setting approach is taken, there will be a limited need to change the guidance and rely on such changes by the regulatory authorities to achieve AML/CFT or financial inclusion objectives.

Past experience has shown that changes to rules-type regulatory requirements may not take place timeously and the "one size fits all" approach represents a significant challenge across the range of business types and environments. Reference is made to the South African regulatory framework that has been in place since 2003 without a significant overhaul. In this environment, any change to the regulatory requirements that is needed must be made by the regulator, i.e. in the regulations or guidance that is published. This may not, due to the typical dynamics in a top-down law making process, be responsive to changing ML/TF related circumstances.

***Recommendation 14**: Although the indications are that the revised FICA regulations and guidance will be published in a manner that will not need ongoing changes (to the extent required in the past) in order to keep pace with changing circumstances over time (i.e. they are anticipated to be drafted at a principles level rather than for the purpose of specifying detailed rules), the need for revision of the regulatory requirements should be considered periodically (every two years is proposed). This will go hand-in-hand with a periodic review of whether regulatory objectives are being / will be achieved.*

The next section of this report addresses guidance that will be required by institutions.

9. Guidance and industry coordination

9.1. Introduction

With the introduction of a comprehensive risk-based approach, particularly with the introduction of flexible principle-based law, there is a need for guidance that will shape the regulatory responses of institutions. Further, the question of what guidance is required by institutions when adopting and following a risk-based approach, and who should provide the guidance, is relevant.

Key considerations relating to the aforementioned are addressed in this part of the report.

9.2. Guidance is needed

All study participants acknowledged the need for guidance to assist institutions to comply with the applicable regulatory requirements and to develop their risk-based approaches. This is, to a large extent, driven by the need for clarity in the new regulatory regime.

The benefits of, and enthusiasm for, industry collaboration was a consistent theme throughout the project information-gathering phase. However, the extent to which this is possible will depend on the support of the regulatory authorities. During interviews held, many private sector participants indicated that they do not believe that the regulator will be favorably disposed towards enabling industry collaboration in the development of guidance relating to a risk-based approach and sharing of AML/CFT related information. This appears, to a large extent, to be driven by a lack of trust between stakeholders. However, where this can be addressed, significant gains can be made towards supporting the achievement of AML/CFT objectives.

***Recommendation 15**: The underlying reasons for the apparent lack of trust between some AML/CFT stakeholders should be identified and, where appropriate, action taken to address them. This will, amongst other things, contribute towards encouraging alignment that will support the achievement of AML/CFT objectives. In particular, the development of industry-led, risk-based approach guidance will be held back without the participation of the authorities.*

9.3. What guidance is required?

Consideration should be given to what guidance is required, i.e. to address the diverse needs of the respective industry stakeholders. As a point of departure, guidance opportunities could be seen in terms of the following categories:

- Firstly, the specification of principles on which the AML/CFT framework is built in support of the achievement of regulatory objectives;
- Secondly, to produce an outline of the AML/CFT regulatory framework;
- Thirdly, to produce an interpretation of the regulatory requirements and explain how these can be applied in practice;
- Fourthly, the development of an understanding of what the risk-based approach to AML/CFT entails and what is needed by institutions in the management ML and TF risk;

- Fifthly, the identification and description of the ML/TF risks in respect of different lines of business, products and delivery channels;
- Sixthly, the development of a broad understanding of compliance responses (including due diligence practices) that are appropriate in different circumstances, i.e. addressing good practices relating to different industries; and
- Lastly, the collection, collation, analysis, processing, sharing, control and governance of data / information relating to ML/TF risks, crime and the proceeds of crime and considerations that support the risk-based approaches of institutions.

Some study participants have indicated that the above listing is too granular and the focus of guidance should rather fall on guiding principles and practices. This would be in line with the approach taken in drafting the King IV report and matters relating thereto are addressed in section 9.4. However, the above listing is retained in order to illustrate the multidimensional nature of the guidance in question. This could serve as a platform from which to debate which stakeholders are best placed to participate in the development of each guidance category.

In the past, the regulator has, for the most part, published guidance in order to provide support relating to the interpretation of the rules-based regulatory requirements. This, in the main, fits into the second and third bullets above. However, there are opportunities to consider the full benefit spectrum that can be derived from constructive collaboration between stakeholders, i.e. in the interests of AML/CFT. There will also be an opportunity to address financial inclusion imperatives in light of the guidance that is needed by institutions.

Study participants generally indicated that top-down guidance that is issued by the regulatory authorities will be unlikely to address ML/TF risks at a business- or crime-relevant level or due diligence challenges in a manner that takes into account the client interface dynamics.

***Recommendation 16**: Consideration should be given to what risk-based approach guidance is required, i.e. to address the diverse needs of the respective industry stakeholders. This could include, but is not limited to, the following perspectives: AML/CFT principles, regulatory framework outline, interpretation of regulatory requirements, risk-based approach, ML/TF risks, compliance responses, and ML/TF related data. It is believed that a private sector led and regulatory authority supported risk-based approach guidance framework (i.e. without creating rules that restrict institutional compliance responses) would significantly improve the effectiveness of the country's AML/CFT regime, i.e. in support of the achievement of specified regulatory objectives. The development of this guidance could be tested / piloted in respect of selected products that support financial inclusion, for example remittances or entry level accounts that provide transactional functionality.*

9.4. Guiding principles

The establishment of AML/CFT guiding principles would play a valuable role in steering stakeholders towards understanding the planned outcomes of the new regulatory regime.

Reference is made to the approach adopted in the King Committee in developing the King IV Report that sets out the philosophy, principles, practices and outcomes which serve as the benchmark for corporate governance in South Africa. It was recognised that there is a major challenge in implementing codes of

corporate governance in that practices could be mindlessly adopted as if these were rules, resulting in corporate governance becoming a mere compliance burden. It was also understood that inflexibility in the application of codes leads to an inability to apply them in a mindful way that takes account of the size, resources and the complexity of strategic objectives and operations of an organisation.

The following content elements are differentiated in King IV Code: Practices; Principles; and Governance outcomes. In this regard, the principles in question will be achieved through mindful consideration and application of the recommended practices by institutions. As indicated in King IV, the principle under which a practice recommendation is made in the Code serves as a guide to direct organisations on what they should set out to achieve with implementing the practice. Principles build on and reinforce one another. The emphasis is placed on transparency with regards to how judgment was exercised by institutions when considering the practice recommendations.

The following is stated in the introduction to the King IV Report:

"Globally, leadership is being tested on issues as diverse as inequality, globalized trade, social tension, climate change, population growth, geo-political tensions, radical transparency and rapid technological and scientific advances. For South Africa, in particular, ageing and inadequate infrastructure, service delivery failures, skills shortages, corruption, social transformation, poverty and inequality are pressing matters".

This indicates a developing appreciation of the need to understand real-world circumstances that will drive the need for holistic thinking in an ever more complex environment.

The FICA regulations, and, to some extent, the guidance relating thereto, could enunciate the principles that underpin the regulatory requirements. The FIC guidelines could then expand on the array of proportionate approaches to practicing the principles as is relevant to the industry segments and their risk-significance in relation to ML/TF.

***Recommendation 17**: Consideration should be given to how the AML/CFT guiding principles and practices should articulate within the regulatory framework and guidance relating thereto. This should be done in a manner that takes into account the advances made in the King IV Report.*

9.5. Government-endorsed industry-based ML/TF guidance

Study participants were asked to indicate whether there is room for a government-endorsed industry-based ML/TF guidance body in South Africa - perhaps along the lines of the UK's Joint Money Laundering Steering Group[9] (JMLSG). All stakeholders that contributed to the study indicated the affirmative in this regard. Some indicated strong support, particularly where contributors were staff members of a company that has a business footprint that includes the UK.

The indications are that stakeholders are willing to engage with a view to determining how best to develop risk-based responses. However, if this is the case, the question of why there has, in the past, been

[9] The aim of the JMSG is to promulgate good practice in countering money laundering and to give practical assistance in interpreting the UK Money Laundering Regulations. This is primarily achieved by the publication of industry guidance.

relatively little effective collaboration towards developing industry level guidance by the private sector is relevant.

Input obtained over the course of the study has shed light on a number of multidimensional challenges that have been faced. For example, there have been instances where different guidance covering various matters has been given to different institutions by a regulator or supervisor, which has led to concerns relating to what will be acceptable.

Stakeholders stated that guidance relating to due diligence that will be appropriate in respect of entry level products and services would play a valuable role in supporting financial inclusion outcomes. Guidance should be tailored to suit the circumstances found in each industry. A "one size fits all" approach will not effectively address the requirements across all industries or business types. Perhaps most importantly, guidance should be regulator / supervisor-endorsed. Without this, the guidance will not have the standing needed for institutions to rely on it. In a risk-based approach, guidance should provide a source of reference to assist in applying proportionate compliance responses. It should not be viewed as "quasi law", but should provide a measure of predictability in relation to industry and supervisory expectations and enforcement actions.

It is reasoned that, in order to offer a platform to encourage support from policy makers, regulators, supervisors and other stakeholders, the drafting and publishing of guidance should follow due process and should be appropriately governed. It is suggested that a vehicle should be established to guide and lead the industry guidance processes. A non-profit company may be suitable in this regard. A board with representation from AML/CFT stakeholders could be put in place to govern the entity. The guidance that is developed should ideally be industry-led and could be supported by industry associations and or accountable institutions themselves. Adequate resources for the development and maintenance of guidance, underpinned by detailed research and receipt of industry input, would be needed. There should be an ongoing focus on the achievement of AML/CFT objectives.

This should be developed in separate parts to recognise the need for different types of guidance for institutions. Sector relevant guidance should be developed. The design thereof should allow for flexibility in application by institutions and should be changed or updated when the need for such changes or updating become apparent to achieve objectives. A drafting team could be put in place and an editorial panel established to provide the discipline needed to follow the agreed development process. A robust quality control approach will be required.

***Recommendation 18**: In order to secure regulatory, supervisory and policymaker support for the development of government-endorsed industry-based AML/CFT guidance, stakeholders would need to take steps to gain the trust of the respective authorities. The indications are that where the initiative's core outputs are designed to further the interests of financial integrity, this will increase the likelihood it will succeed. Accordingly, it is recommended that, in order promote the support of the authorities, the central value proposition of the guidance should not be the development of a due diligence "safe haven" for institutions that will be applied mindlessly.*

9.6. Supervisory support

Supervisory bodies will, in conjunction with the Financial Intelligence Centre (FIC), through regular engagement with institutions, monitor that their risk management and compliance programmes are

consistent with the law. This would include consideration of whether a graduated approach to due diligence is applied and that compliance responses are not overly conservative. While it is not the responsibility of the supervisors to ensure that institutions provide access to finance, they could play a valuable role in steering institutions towards outcomes that encourage policy objective alignment.

***Recommendation 19**: It is envisaged that supervisors will play a role in reviewing whether a graduated approach to due diligence is applied by institutions and that compliance responses are not overly conservative. This should extend to an appropriate review of whether an institution's compliance responses are considered to be overly conservative, i.e. as part of supervisors' ongoing supervisory review of financial institutions. Note: This links with recommendations 8 and 23.*

10. Regulatory exemptions

10.1. Introduction

The anticipated withdrawal of the FICA exemptions will fundamentally change the AML/CFT compliance landscape. This section addresses key aspects relating thereto in the light of financial inclusion considerations.

10.2. Withdrawal of exemptions and financial inclusion

Financial inclusion and an effective AML/CFT regime can and should be complementary national policy objectives with mutually supportive policy goals.[10] South Africa recognised the need to support the country's financial inclusion[11] strategy through the implementation of regulatory exemptions that allow for simplified due diligence in certain circumstances. For example, exemption 17 is, in essence, a rules-based due diligence carve-out measure that provides for simplified due diligence where address verification is not required if specified requirements are met. This Exemption provides a framework for the SARB cellphone banking exemption and for low value prepaid card and cross-border remittance exemptions.

The introduction of a comprehensive risk-based approach to AML/CFT by means of the FIC Amendment Act may lead to the withdrawal of the existing exemptions. This will mean that institutions will no longer be able to rely on the exemptions that were in place in the past and will, in future, have to apply proportionate compliance responses in terms of their risk management and compliance programme that is put in place. However, where institutions do not have a clear understanding of how to apply a risk-based approach in response to the new AML/CFT regulatory regime or do not have the confidence to apply simplified due diligence, they may adopt conservative procedures in respect of products and services that currently resort under Exemption 17. This could adversely impact on financial inclusion.

[10] FATF Guidance, February 2013. National Money Laundering and Terrorist Financing Risk Assessment.

[11] In general terms, financial inclusion involves providing access to an adequate range of safe, convenient and affordable financial services to disadvantaged and other vulnerable groups, including low income, rural and undocumented persons, who have been underserved or excluded from the formal financial sector. Financial inclusion also involves making a broader range of financial products and services available to individuals who currently only have access to basic financial products – Refer to FATF, APG and World Bank, February 2013. FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion.

It is understood that, as a point of departure, institutions will be able to apply simplified due diligence processes that could be based on the exemptions that are expected to be withdrawn. Where institutions are confident that the regulator and supervisors will support this approach, i.e. while institutions develop their risk-based approaches, this will assist in avoiding unintended consequences of the new regulatory requirements, specifically in respect of overly conservative compliance.

In future, the indications are that the role of the regulator is likely to involve less prescription in the regulatory requirements or guidance relating thereto. However, the regulator and supervisors will, after institutions have adopted their risk-based approaches, with hindsight, review these and may have findings that do not meet their expectations. This will, in itself, tend to make institutions concerned about the official view and assessment of the appropriateness of their responses.

The detailed study questionnaire included questions relating to whether the withdrawal of exemptions will have a significant impact on the compliance responses of institutions or result in institutions applying more conservative due diligence. A mixed response was received from institutions, with some indicating a "yes" answer and others providing a "no" answer. However, half of the stakeholders that submitted questionnaires thought that the answer to the question is "maybe", indicating that they were unsure of what the impact would be.[12] This picture is interesting for a number of reasons, notably in light of the level of uncertainty that is evident in the answers provided. Contributors to the study generally indicated that new open-ended AML/CFT regime could lead to confusion and frustration when the new requirements are brought into effect, i.e. relating to the assessment of ML/TF risk and applying due diligence procedures that are proportionate. On the other hand, stakeholders were generally enthusiastic about opportunities that are offered in the new regulatory regime. The move away from the restrictive, inflexible rules-approach is, in the main, seen as a positive development that is likely to improve prospects for the achievement of AML/CFT objectives.

Some stakeholders have explained that supervisors have, in the past, made their intentions clear with large penalties. This has contributed towards institutions being motivated to opt for compliance responses that are very conservative, rather than face the possibility of penalties that may be imposed when the regulator does not approve of their approach. This could inhibit business growth and adversely impact on financial inclusion outcomes if left unchecked.

It was noted that the application of the risk-based approach to the regulation of AML/CFT will differ across industries and sectors as risks and risk mitigation measures differ. The variables that will drive compliance behaviour are clearly multi-dimensional involving complex interrelationships. For example, legacy systems may be perceived as prudent, reliable and dependable, but the risk-based approach compels and offers new ways of addressing ML/TF risk and new thinking may be possible and required in the updated regulatory regime. Digitally-enabled businesses will, in many respects, provide opportunities for a far more agile due diligence approach than was possible in the past. This may require new systems, processes, skills and AML/CFT solutions. These may be expensive to design, build and implement. Industry cooperation would on the other hand bring down the costs to individual institutions. It is also possible that the risk-based approaches that are implemented may be over-designed to put pressure on smaller competitors to match compliance spending or may be under-designed to save costs. In both cases such decisions may be driven by objectives to take advantage of the new regulatory regime to

[12] There were 12 completed questionnaires and the following responses were provided: 3 yes answers, 2 no answers, 6 maybe answers, and 1 unanswered question.

inappropriately increase market share without effectively addressing the inherent or residual ML/TF risk relating thereto.

The above commentary is not intended to identify all the dynamics that will drive compliance behaviour. It is included to illustrate considerations raised by study participants and highlight the level of uncertainty relating to the risk-based approach.

***Recommendation 20**: Factors that drive compliance behaviour should be considered in the design of the regulations that will be introduced with the implementation of the new regulatory regime, i.e. including the withdrawal of existing exemptions.*

11. Financial exclusion risk

11.1. Introduction

In the event that revised regulatory requirements adversely impact financial inclusion (e.g. through overly conservative due diligence), this could increase financial exclusion risk, i.e. the risk that the proceeds of crime remains or disappears into the informal cash economy and will fall outside the risk mitigation efforts applied in the formal sector.

11.2. Study input

Respondents to the study were asked how significant they think financial crime risk is in South Africa. Although this is not necessarily considered to be an area of expertise for study participants, it was hoped that some AML/CFT value chain stakeholders would be able to inform an understanding of financial crime, i.e. with a view to proving perspectives that are relevant in the implementation of a risk-based approach. It is noted that one of the reviewers of this report asked the question of whether this is a fair question for the participants in that they are not "crime experts working on the ground with actual organised crime and proceeds". This may be the case, but the limited feedback obtained is an indication of the level of maturity of the AML/CFT framework and process.

However, based on input received, the indications are that it is believed that cash crime is significant, but the compliance and supervisory audience currently lack a full understanding and statistics. If this is not improved, it is unlikely that they will factor exclusion into their risk assessments. There is an opportunity to develop a holistic view of crime and the proceeds of crime. This will involve the integration of data from various sources, including data from SAPS, FIC and other official stakeholders that will be able to contribute.

***Recommendation 21**: Financial exclusion risk will only be properly factored into a risk assessment if the concept is understood and supported by data. It is therefore vital that consideration is given to the significance of proceeds of crime and terrorist financing that flows via cash and or the informal sector, i.e. with a view to starting a conversation that will encourage a holistic view of the impact of financial exclusion on ML/TF.*

12. Effectiveness of institutional capacity

12.1. Introduction

The Amendment Act offers South African institutions new ways of obtaining information to undertake due diligence to comply with AML/CFT requirements. Institutions are now required to develop, document, implement and maintain AML/CFT risk management and compliance programmes. They are obliged to ensure that their employees are trained to comply with the Amendment Act and these programmes, for which the board of directors or the senior management of the accountable institution are responsible.

The commentary below highlights considerations relating to the effectiveness of institutional capacity.

12.2. What are the challenges?

It is expected that much of the current regulations, exemptions and guidance will be withdrawn with the introduction of FIC Amendment Act. There is currently no clear indication of what will replace the current aforementioned. The preparedness of accountable institutions is a crucial element in this regard, including the adoption and implementation of the risk-based approach.

The FIC Amendment Act offers accountable institutions a degree of flexibility in determining how they will comply with the regulatory requirements and in the risk mitigation responses that are applied. The risk-based approach will allow institutions to develop and establish new ways in which to address their understanding of the risk environment. Existing risk management plans or internal rules will require an overhaul in order to cater for changes that are required in the new AML regime and to provide a base from which to determine and formulate risk responses that are appropriate.

Matters that are relevant in understanding institutional capacity to develop and implement a comprehensive risk-based approach will include considerations such as the systems, processes and people needed in respect of: Reporting via the GoAml reporting portal; Establishment of beneficiary recipient identity in respect of remittances; Record keeping in respect of new layers of digital data; ML/TF risk profile evaluations; Maintenance and storage thereof of risk-related data; Shifting of the institutional mindsets to embrace the new risk paradigm relating to ML/TF; Changes needed in respect of surveillance and risk monitoring; Increased focus on ML/TF risk management as opposed to compliance in a rules environment; Risk management frameworks and processes; Change in customer and institution relationships; Institutions need for flexibility to compete; Updating of operating procedures; Shift away from "tick-box" approach; and Application of discretion.

Institutions will require appropriate governance frameworks as well as resources in the implementation of risk-based AML/CFT frameworks and processes. The effectiveness of the aforementioned will be brought into focus with introduction of the Amendment Act.

Project stakeholders were asked to describe what kinds of changes to systems, processes and resources would be required by institutions in implementing a risk-based AML/CFT framework in terms of the Amendment Act (i.e. as opposed to what was needed in terms of existing FICA requirements) and to indicate what key challenges would be faced therein.

Institutions will need to move away from a so-called "tick-box" approach where this has been used in the past. The rules approach to regulation that underpins the current legislation has, to a significant extent,

incentivised organisations to focus primarily on obtaining due diligence-related documentation, i.e. copies of identity documents and address verification in a manner that was checklist-driven. A full risk-based approach will require institutions to focus on ML/TF risk and then to determine the appropriate risk and compliance responses that would be required. The risk processes and how institutions will formulate their risk assessment and the basis for risk classification will be set out in an institution's risk management and compliance programme.

In some instances, contributors to the study have indicated that the internal rules that were previously put in place as specified in terms of FICA could be adapted to address the FIC Amendment Act requirement relating to the risk-based approach. While this may be the case in respect of certain sections of these internal rules, in the light of the fundamental shift in focus toward identifying and assessing ML/TF risk and applying proportionate responses, much of the internal rules will no longer be fit for use and will require an overhaul. The extent to which internal rules will need to be changed is yet to fully emerge in that the regulations and guidance relating to the new AML/CFT regime have not been published. One of the core drivers of institutional change in this regard will be an opportunity to realise commercial or competitive advantage through system, process and staff efficiencies that are possible in the principles-based law that has been brought into effect. It is understood that an institution's internal rules may have to be changed significantly to include its methodology/thought process on risk assessment, categorisation of risk, application of customer due diligence and other mechanisms to treat risk in varying degrees as well as other aspects that are listed in the FIC Amendment Act for inclusion in a risk management and compliance programme. Refer to Annexure 4 for an analysis the requirements of section 42(2) of FICA.

***Recommendation 22**: With a view to supporting financial inclusion objectives, there would be value in developing a generic understanding of what the risk management and compliance programme should look like (without being prescriptive). Institutions will be on a learning curve towards implementing systems, process and people controls that will address the regulatory requirements and will meet the expectations of regulators and supervisors. In order to reduce this learning curve clear guidance would be beneficial.*

The format of a risk management and compliance programme can be illustrated through the use of templates. However, it is noted that experience has shown that the use of templates for adoption by accountable institutions may not, in themselves, result in effective or adequate compliance responses by institutions and, accordingly, the limitations of such templates should be recognised. Nevertheless, it is suggested that an understanding of risk-based practices should be developed with a view to reducing uncertainty and assisting organisations to gear-up to address the evolving risk-based approach challenges.

With the evolution of regulatory requirements (FIC Amendment Act, FATCA etc.) and development of new technologies, driven by improving mobile and web-based application functionalities, it is understood that the scope and responsibility for regulatory and financial crime compliance departments is expanding. Staff are required to have risk-based approach knowledge, skills and experience, i.e. to a greater extent than in the past. This, paired with the personal liability that is tied to the compliance, informs the need for staff. Where it is not possible to acquire the specialist resources in-house, it may be necessary to outsource certain functions or establish in-house development programmes. The retention and development of staff will be an important value stream in the implementation and maintenance of an effective risk-based approach.

It is evident that staff in institutions will be faced with challenges relating acquiring the knowledge, skills and experience needed to adopt a risk-based approach. This will include all three lines of defense of organisational structures:

- First line of defense – Management and staff will be required to approach ML/TF risk differently and the systems and processes that they have used in the past may no longer be adequate or effective;
- Second line of defense – The compliance functions of institutions may be staffed with individuals that have competencies that revolve around the one size fits all rules approach that was applicable in the past. Risk management knowledge, skills and experience will, to a greater extent than in the past, be required to assist institutions to undertake all business activities in compliance with the applicable regulatory requirements; and
- Third line of defense – The scope of independent assurance engagements will shift towards addressing ML and TF risk and will require changes in the approach and methodologies used.

Systems solutions will play an increasingly important role in a risk management and compliance programme. There is recognition that effective risk mitigation is not possible without adequate data and the analysis thereof in an integrated manner. This is particularly important in higher volume business environments where it is not practical to monitor static and flow information, i.e. relating to products, delivery channels, clients, transactions and geographies, in a manner that adequately addresses ML/TF risk. It is evident that, in light of the flexibility that will be introduced with the introduction of the Amendment Act, there are long term system development-related opportunities that may significantly increase the capabilities of institutions as well as the possibility to push down costs. This revolves around data access, interoperability, storage and analysis which, in design, should be forward looking and adaptable to evolving technology and legislation. This would be a fundamental shift from the legacy systems which, according to a number of stakeholders, have begun to restrict compliance efforts due to complexity and cost challenges. It is noted that the design, development and implementation of systems may be a significant undertaking that has lengthy development cycle.

***Recommendation 23**: Risk-based approach development challenges experienced in the establishment of risk management and compliance programmes by institutions should be monitored with the implementation of a risk-based approach, particularly where there are opportunities to address matters that will avoid unintended financial inclusion consequences. Note: This links with recommendations 8 and 19.*

12.3. Current institutional capacity

An assessment of the current level of capacity within institutions will provide a basis to determine a way forward in terms of identifying which areas of operation may require development in order to meet both regulatory and organisational objectives under the risk-based approach AML/CFT regulatory framework.

Study participants were requested to rate both the effectiveness of the current capacity of institutions in the implementation of a risk-based AML/CFT framework as well as the availability and adequacy of skills required to access and assess relevant data that is required to assess ML/TF risk. Respondents indicated that the risk-based AML/CFT framework would require them to make changes to systems, processes and resources. Most pointed out that there will be a significant amount of ground to cover with regard to institutional capacity that will be required in a risk-based approach. In some instances, institutions may be relatively well positioned where, in the past, systems and processes have already been put in place to

focus the organisations attention on higher ML/TF risks. The indications are, however, some institutions will require significant developments in respect of their systems and processes, perhaps most notably in respect of smaller organisations.

Concern was expressed by some contributors relating to level of skills in the industry to implement a risk-based approach. There are challenges in respect of new processes that will be applied and the systems required. Based on input provided, institutions generally do appear to have the capacity to apply a comprehensive risk-based approach at this juncture. It could take a number of years to get to the point that capacity could be rated as adequate.

***Recommendation 24**: Consideration should be given to the provision of support to institutions in order to reduce the learning or development curves towards the embedding of effective systems and process that will cater for the risk-based approach to the regulation of AML/CFT.*

12.4. Institutional risk mitigation pillars

The introduction of the FIC Amendment Act will mean that institutions must develop and implement an AML/CFT risk management and compliance programme.

Study participants were asked to identify and describe the most significant changes and/or challenges to implementing a risk-based approach in terms of the Customer Identification and Verification; Statutory Reporting; Record Keeping; Training of Staff; Monitoring and; Other.

It is understood that many stakeholders are challenged by the degree of flexibility and discretion that will be available to institutions. Much of this revolves around a lack of understanding of what the regulators and supervisors may accept as appropriate and fear of spending money where this lack of understanding exists. Some respondents expressed concern that the regulatory authorities may not have a detailed enough understanding of their institutions to be able to conduct a comprehensive assessment of the risk responses that are put in place. Institutional stakeholders indicated that collaboration and communication with the regulator/supervisors would be welcomed during the design, development and implementation of an institution's risk management and compliance programme.

***Recommendation 25**: Communication between institutions and regulator/supervisors should be encouraged where this will improve the design, development and implementation of a risk-based approach, specifically in respect of customer identification and verification, statutory reporting, record keeping, training of staff, monitoring and other matters.*

12.5. Institutional culture

Much has been said about the need for a so called "compliance culture" in institutions. This has, in the past, as a result of the rules-oriented regulatory environment in South Africa, revolved around obtaining information and documentation relating to the identity of clients. However, the new AML/CFT regulatory regime will, to an extent, provide the impetus for changing this dynamic towards organisations placing increasing emphasis on what will be needed to develop and maintain a "risk culture". Compliance with

the applicable regulatory requirements will remain important, but ML/TF risk could now be seen to take center stage in organisations.

While South African institutions are not starting from a zero base in the adoption of a risk-based approach, changes will be required going forward. These will include moving away from a "tick-box" approach, which will, in itself, have significant operational implications. Developments will include: Risk and compliance programmmes; Systems, processes and people controls; Staff training; Risk methodologies and processes; and Ongoing risk monitoring.

***Recommendation 26**: An industry level discussion relating to a so-called "risk culture" will assist institutions in developing their risk-based approaches.*

13. ML/TF risk assessment

13.1. Introduction

With the introduction of principles-based regulatory requirements, individual institutions will design, develop and maintain AML/CFT risk-based approaches that are suitable for their circumstances. These could vary from institution to institution. The new South African AML/CFT regulatory regime will, amongst other things, mean that institutions will need to obtain sufficient reliable data relating to:

- Client identification and verification; and
- ML/TF risk assessment.

This section of the report addresses the ML/TF risk assessment methodologies and data sources that may be used by institutions in complying with the FIC Amendment Act requirements. The FIC Amendment legislation offers South African institutions new ways of obtaining data to undertake due diligence and to comply with AML/CFT requirements.

The commentary set out below is intended to serve as a platform from which to develop a framework that institutions can use as a source of reference when developing their compliance responses to the new regulatory regime.

13.2. Background

The risk-based approach is, by nature, an output focused process that is increasingly being geared towards achieving AML/CTF objectives. This will, depending on the regulations and guidance that is published, together with supervisory approaches that are applied, encourage institutions to move away from a "tick-box" approach to compliance. The legacy frameworks and processes that have been put in place in response to the existing rules-based approach have not been favourably described by contributors to the study.

Institutions are now working towards obtaining a robust understanding of where ML/TF risks lie and what is needed to mitigate these. However, there is still ground to be covered in this regard. This section of the report addresses the factors that could be considered in a risk-based approach. AML/CFT stakeholders generally acknowledge that it is not sufficient to focus primarily on identifying and verifying customers,

i.e. on obtaining information relating to identify and keeping copies of documents that are used to verify this (supported by staff training and the reporting of suspicions) in order to achieve AML/CFT objectives. Product features (e.g. those on which the rules-based Exemption 17 focus) remain an important consideration in the design of institutional compliance responses to the ML/TF risk in question. However, in a full risk-based approach, this will not cover all of the bases, i.e. there are delivery channel, client, geography and transaction profile variables that should be considered in assessing the ML/TF risk.

13.3. Development of risk management disciplines

Risk management disciplines, and the methodologies and tools that are used in a risk management framework and process, are relatively new. Over a period of time, in various industries, some aspects of risk management are relatively well developed. For example, banks typically have sophisticated credit, capital adequacy, trading, liquidity, market and other risk management disciplines in place. However, ML/TF risk assessment frameworks and processes are still developing and may take some time to reach the point where they can be considered to be mature. This should be recognised by AML/CFT stakeholders, i.e. regulators, supervisors and institutions. As the understanding of what can be accomplished towards achieving AML/CFT objectives matures, there will be an increasing appreciation of the how best to frame the risk assessment methodologies of institutions.

Further, it is fair to say that risk management is not an exact science. Any ML/TF risk assessment that is carried out will be an expression of the level of risk by an institution relating to the variable that are being assessed using the risk assessment methodology that has been adopted. From an intuitive standpoint, this can be held to be a representation of the risk reality, but will not necessarily reflect the actual risk for various legitimate reasons, i.e. the risk may be underestimated, overestimated or simply not identified. This will depend on numerous systems, processes and staff variables and on the quality of the data that is used in the risk assessment process.

There are opportunities to determine balanced approaches to the risk-based approach that avoid situations where financial institutions over protect themselves through very conservative compliance due diligence responses. In this regard, available data can be utilised to assess risk in alternative ways. It is understood that the current due diligence paradigm is reliant on identity documentation and proof of residential address. Although institutions may still collect the same data and documentation as required in the past, in light of financial inclusion objectives and, applying the discretion allowed by the FIC Amendment Act, it is possible to explore new forms of identity and risk-related information and to access, retrieve or otherwise interact with such data through sources that have previously been overlooked or left unconsidered.

***Recommendation 27**: It should be recognised by all stakeholders that ML/TF risk management is not an exact science and that country and institution level risk frameworks and process should be viewed as a work in progress.*

13.4. Compliance as a competitive advantage

In the past, AML/CFT compliance was not necessarily viewed as a competitive business issue, i.e. with the rules-driven framework that was in place in the past, institutions typically applied the same due diligence procedures. However, with the introduction of a principles-oriented risk-based approach regulatory framework, the indications are that this dynamic is changing. Some contributors to the study indicated

that they were not in a position to provide detailed information relating to their ML/TF risk assessment methodologies in that this was their intellectual property and their compliance framework and process would allow them to access certain markets to a greater extent than in the past. In other words, they would be able to apply simplified due diligence in respect of lower risk clients in a manner that would efficiently facilitate the establishment of business relationships and the processing of transactions.

Further, various interactions with some stakeholders from institutions indicated that they are sensitive to sharing information that will place them in the spotlight in a manner that could attract attention from regulators / supervisors and result in comparison to other institutions. This dynamic may change once the adoption of a risk-based approach has gained traction and institutions are more confident that their compliance responses will be effective and comply with the applicable regulatory requirements.

It can be reasoned that the baseline ML/TF risk assessment methodology that will be applied by institutions will have common features that will be applicable to all institutions. Accordingly, there would be value in establishing a source of reference that will guide institutions in this regard. There would still be space for innovative approaches that will give institutions a competitive edge in undertaking their business operations, but the underlying risk assessment principles and standards could be developed in a manner that provides institutions with a leading practice framework for reference purposes. This thinking has held true for various risk disciplines; for example, in respect of the COSO and ISO31000 risk frameworks. The approach is also likely to be the case in respect of AML/CFT related risk assessment.

***Recommendation 28**: A source of reference for the development of risk assessment methodologies should be available to institutions. This should be updated when necessary and should keep pace with changing country and AML/CFT circumstances. In this regard, it reasoned that there would be aspects of ML/TF risk methodologies that will not be competitive in nature and there will be benefits from the development of generic source of reference (ideally private sector developed and regulatory authority endorsed). Standards could be developed in a manner that builds on existing frameworks such as COSO and ISO31000.*

13.5. What are the risks?

In broad terms, the concern is that institutions may be misused for ML/TF purposes. Accordingly, the risks in question relate to its business activities where clients undertake:

- Money laundering; or
- Terrorist financing.

On the other hand, an institution is exposed to compliance risk in respect of its due diligence practices and in the application of its risk-based approach to AML/CFT.

As a point of departure, it is recognised that institutions may not conduct business with anonymous clients and clients acting under false or fictitious names. Requirements in this regard are specified in the following FIC Amendment Act sections:

Box 3 – FIC Amendment Act sections

"20A. An accountable institution may not establish a business relationship or conclude a single transaction with an anonymous client or a client who is entering into that business relationship or single transaction under an apparent false or fictitious name."

"21(1) When an accountable institution engages with a prospective client to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding that single transaction or establishing that business relationship and in accordance with its Risk Management and Compliance Programme—

(a) establish and verify the identity of the client;
(b) if the client is acting on behalf of another person, establish and verify—
    (i) the identity of that other person; and
    (ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
(c) if another person is acting on behalf of the client, establish and verify—
    (i) the identity of that other person; and
    (ii) that other person's authority to act on behalf of the client."

The above requirements are in line with the specifications contained in the FATF recommendations.

A risk-based approach to due diligence may now be applied and the "one size fits all" rules oriented law that encouraged a so-called "tick-box" approach to compliance will be withdrawn. However, in terms of the above regulatory requirements, institutions must still establish and verify the identity of all of its clients. What is new is that this may, to a greater extent in the past, now be done in a manner that is proportionate to the ML/TF risks in question.

13.6. Risk assessment

A ML/TF risk management process will involve the use of an appropriate risk assessment methodology in the consideration of a number of factors that are viewed in combination to arrive at a risk assessment that can be used to underpin an organisation's due diligence responses.

It is anticipated that the FICA regulations or guidance that will be published could provide a high level platform that will indicate what factors could be considered in the assessment of ML/TF risk. The indications are, however, that these would not specify how they should be applied or what variables relating thereto will point to ML/TF risk.

The factors referred to above could be categorised under the following broad headings:

- Product;
- Delivery channel;
- Client;
- Geography; and
- Transactions profile.

The variables that could be assessed in respect of each of the above are highlighted below:

Box 4 – Risk assessment variables

Product risk assessment: Product type; Transaction size; Transaction frequency; Cumulative transaction value; Traceability of transaction flows; Account balances; Methods of funding; Cross border functionality; Anonymity; Elusiveness; Rapidity; Cash-linked transactions; Segmentation of services; and Oversight at all steps of a transaction.

Delivery channel risk assessment: Features of the delivery channel such non face-to-face business; Use of agents.

Client risk assessment: Client type; Age of client; Age of relationship; Occupation; Source of income / wealth; Income / wealth level or category; and Other client data / data-tracks.

Geographical risk assessment: Nationality; Place of birth; Residence; Geographical location of the originator of a remittance; Geographical location of the beneficiary of a remittance;

Transactions profile: Nature and size of debits; Nature and size of credits; Nature and size of balances where there is an account; Many to one transactions; and One to many transactions.

The above is not meant to be an exhaustive itemisation of all factors that may be considered in the ML/TF risk assessment process. The items included will, however, serve as a point of departure in designing a risk assessment process. They will be viewed in combination and can be weighted to reflect their respective importance to arrive at a risk assessment relating to the product in question, the delivery channel, the client, geographic factors and the transactions profile. This can be used to provide an overall ML/TF risk assessment.

Monitoring and surveillance results will, in turn, provide risk data that can be used to inform the risk assessment in question and ongoing compliance responses relating thereto. Factors that could be considered in this regard are: Monitoring / surveillance considerations: Name screening; Payments and transactions monitoring; Surveillance results; Audit findings; National risk assessment; and Information sharing.

Risk assessment outputs can be enhanced through an understanding of technical aspects of risk assessment, including the levels of confidence, precision and assurance relating to the risks in question. The type and sophistication of the risk assessment process that is appropriate for an institution will depend on the institution's circumstances and the level, nature and extent of the ML/TF risk in question.

Some institutions make use of predictive data analytics using complex mathematical models. This may be appropriate in some instances, but may not be needed where organisations do not have risk profiles that warrant this.

***Recommendation 29**: The country risk assessment source of reference that is developed should include a high level description of how the following variables may be used to assess risk: Product; Delivery channel; Client; Geography; and Transactions profile.*

13.7. Risk assessment of remittances

Study participants have indicated that the ML/TF risk assessment challenge in respect of remittances that facilitate access to financial services revolves around the delivery of an inherently high risk product being offered to low-income clients in a high-volume, low-margin business model.

In order to facilitate discussion relating to the assessment of ML/TF risk in respect of remittances, the following workshop activity was given to study stakeholders during a workshop that was attended by some 16 people that where mainly from private sector institutions:

Box 5 – Risk assessment workshop activity

Background:

With the introduction of principles-based regulatory requirements, individual institutions will design, develop and maintain AML/CFT risk-based approaches that are suitable for their circumstances. These could vary from institution to institution. The new South African AML/CFT regulatory regime will, amongst other things, mean that institutions will need to obtain sufficient reliable data relating to:

- Client identification and verification; and
- ML/TF risk assessment.

Study participants have indicated that the ML/TF risk assessment challenge in respect of remittances is that an inherently high-risk product is being offered to low-income clients in a high-volume, low-margin business environment. An understanding of risk and appropriate risk responses is required.

Purpose:

To discuss relevant risk factor inputs, obtain input around risk assessment best practice and to provide a platform from which to explore new data opportunities.

Workshop questions:

1. Can cross-border remittances be assessed as lower risk?
2. If so, under what circumstances?

Following some debate, the workshop consensus was, where the remittance product functionality was limited (to say R3000 per transaction and that a maximum of R10 000 in a month) and client screening is undertaken and an effective monitoring system is in place, the residual risk could be assessed as being

low. There would, however, need to be appropriate due diligence. This could be undertaken using technology-enabled processes that make use of data sources that provide assurance that the client's identity is established and verified.

The risk assessment discussion referred to above revolved around the respective factors identified in section 13.6 above: Product; Delivery channel; Client; Geography; and Transactions profile.

***Recommendation 30**: An industry supported initiative to undertake a detailed analysis of remittances-related ML/TF risk variables will provide the support needed to avoid inappropriate compliance responses and thereby limit unintended consequences on financial inclusion.*

Beneficiary and originator data that is obtained, in a manner that allows an institution to appropriately classify clients for risk assessment purposes, will serve as a foundation for the risk-based approach to AML/CFT. Where a firm's systems allow for the appropriate analysis of client accounts (where a business relationship is established and an account is maintained), and transactions that are undertaken by clients, this can be used, in combination with relevant risk data, to determine what would be usual for any particular category of client. From a transactions perspective, this could be done taking into account the following variables: Transaction dates, transaction values, transaction volumes and characteristics of the transactions. It would be possible to monitor these in relation to the accounts in question and in respect of the count or value minimum, average, median, maximum, or ranges – as appropriate. The number of client transactions and or values thereof could be analysed in order to provide a profile that could be used to inform the risk monitoring approach. Where a large proportion fall within parameters that would be considered usual, this may not result in a large number of exceptions that would need to be addressed or cleared in order to address ML/TF risk considerations. The converse would also hold true. Transactions data, whether usual or unusual, could be used to inform the institution's view of the usage of products on an ongoing basis. Obtaining, storing, retrieving and analysing risk-related data is essential in a risk-based approach and has the potential to be used to the advantage of business outcomes, including product development that can support financial inclusion.

If the client base of an institution is made up primarily of individuals that need to remit periodic low value amounts to their family members in neighbouring countries, the basic needs of this population could be understood in terms of the actual transactions profile. For example, if the large majority of transactions are smaller than R3 000 and the cumulative value of such transactions for a client does not exceed R10 000 per month, or R60 000 per annum, this may be considered usual for the population in question, i.e. relating to the remittance needs thereof. Inferences may be drawn about the above-mentioned transactions profiles in the light of relevant variables.

On the other hand, a single transaction of some R50 000, or a significant number of large transactions amounting to some R500 000, would fall outside of what would be expected for the population that is described above. It is noted that, while the transactions may fall outside of what would be expected for the population, they may not fall outside of the profile of the individual in question. For example, he/she may be using the product or service to undertake legitimate business across borders and is using the product or service because it meets his / her needs. Accordingly, the systems and processes used by institutions would need to be able to address the universe of risk perspectives that may be relevant. The indications are that there is extensive ground to be covered in this regard before institutions could be seen to have a mature approach to the management of ML/TF risk.

13.8. Level of assurance in respect of AML/CFT

In terms of general practice, institutions design, develop, implement and maintain controls that are designed to ensure that objectives are achieved. An example of such an objective is: *Undertake all business in compliance with applicable AML/CFT regulatory requirements within a ML/TF risk profile that is consistent with the risk appetite and tolerances of the institution.* It is noted that this example has both compliance and ML/TF risk elements to it.

The question as to what level of assurance is required in respect of the controls in question should be considered, i.e. in respect of both the elements referred to above. It is submitted that this should be positioned as "reasonable" assurance, i.e. the controls should provide that reasonable assurance that objectives will be achieved. It is advisable that standards or guidance is developed in order to assist institutions to determine due diligence practices in this regard.

***Recommendation 31**: Industry standards or guidance should specifically recognise the level of assurance that is required by institutions in respect of compliance with AML/CFT requirements and ML/TF risk.*

13.9. Data available

The quality of an institution's due diligence or ML/TF risk assessment processes will depend on the data that is available to undertake the determination of a client's risk profile which, ideally, would be formulated taking into account both static and flow data relating to the client and the client's activity over the course of the relationship. The study has relied on the input of a number of stakeholders that have an in-depth understanding of data sources.[13]

Institutions will have access to various databases that will provide information that can be pieced together to provide a base from which to assist in establishing the identity of clients and to assess the ML/TF risks relating to such clients. Where these are accurate and reliable, they have the potential to substantially improve the due diligence and risk-based approach process that is applied by institutions. They may currently make use of the following data sources: Sanctions lists; Credit bureau data; and Information available in media searches.

There are a number of third party service providers that offer collated publically available risk data, e.g. relating to Politically Exposed Persons (PEPs), sanctions and other risks. This value proposition has recently been extended by some service providers to include data and documentation that facilitates a more comprehensive ML/TF risk assessment of clients (with the provision of more information than was available in the past) and can assist in the verification of identity. It is noted that such services could be provided by private or public sector providers or a combination of both.

There is an appreciation that the legacy data sources can be expanded to include data sources that are relevant to an individual's life-cycle. As people progress through life, various life events result in the production of documents / records. Life-cycle data sources that are currently available include the following: Birth Register; Citizenship Register; Marriage Register; Death Register; Primary and Secondary

[13] Specific reference is made to input provided by Alf Allen during meetings and interviews held, as well in elelctoinic correspondence.

School Registers; Pre- and Matriculation Registers; Tertiary Education Registers; Centralised Qualification System / SAQA Registers; Trade qualification and Industrial Services Registers; Institutional Affiliation Registers; ABET; Telecom Registers; and Taxpayer Registers.

The data sources listed above currently exist, but they are not necessarily interoperable and may not have been assessed for quality standard accreditation. The current usage thereof is generally for silo-based purposes. These silos may also be found in developed countries and will serve to limit access to data. This helps to protect against inappropriate use thereof across different platforms, however, there would be of value in considering how data governance will play out in an ever-increasingly integrated and connected world. Privacy and data protection matters will be at he center of this discussion, i.e. if all accountable institutions have access to all key government-held data on individuals this will have significant consequences from a privacy perspective. Due diligence processes will be easier to undertake and the efficiency thereof will be improved. However, the civil and political implications / cost should be considered. It is crucial that effective protective measures are put in place and that there is appropriate supervision thereof.

Other existing ancillary life-cycle data sources include the following: Motor Vehicle Register; Property Register; Business License Register; License Registers in general (e.g. fire-arms); National Registers (sport; culture; recreation); Private Registers (clubs; associations; networks); Social Media Registers (Twitter; Facebook; Google); Co-Operative and TU Groups; Security Groups; Civil Society Groups; Crime and Fraud Registers; Employer and Employee Groups; Export / Import Licenses; Health Care and OAR Facility Licenses.

The above data sources are in existence. However, they are specific in nature and may be exclusively accessed.

Emerging life-cycle data sources include the following: Electronic National Administration Traffic Information System (eNATIS); National Student Financial Aid Scheme (NSFAS); National Health Insurance (NHI); National Procurement and Tender Register; Department of Home Affairs in respect of foreigners; SARS in respect of the Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA); Student Fees; Electoral Commission of South Africa (IEC); Domestic Prominent Influential Persons (DPIPs); and SADC Passports.

The above data sources are in existence and are government-led and have a mandatory nature. The intended usage thereof is generally for silo-based purposes.

During discussions held at the second study workshop, attendees indicated that, while there may be an increasing appreciation of the contribution that is made by the data sources outlined above, these are, to a large extent, not currently accessible by institutions. However, it was acknowledged that, where dynamic access is possible, this could significantly improve the effectiveness of due diligence processes and reduce the costs relating thereto, thereby improving the prospects for access to financial services for the poor. This needs to be accompanied by privacy and data protection measures and it is noted that the commentary set out in the data governance discussion contained in section o of this report is relevant in this regard.

In order to develop a ML/TF profile of clients, it would not be necessary to have access to all of the databases that are referred to in this section of the report. For instance, to do a pattern of life analysis or verification, the national identity of a person can be combined with one data set or a few other data sets.

Where more information is obtained than is necessary to identify and verify a client or to conduct a ML/TF risk assessment, this would not be appropriate and should not be allowed.

***Recommendation 32**: The use of new data sources in undertaking client due diligence and in ML/TF risk assessment processes should be encouraged and consideration should be given to establishing frameworks that will enable appropriate access to data. These processes will be easier to undertake and the efficiency thereof will be improved as a result. However, this needs to be accompanied by privacy and data protection measures and should be supported by data governance standards and effective supervision thereof. The civil and political implications / cost should be considered in relation to access to data.*

13.10.Crime and the proceeds of crime

Contributors to the study indicated that they do not have access to statistics or country crime profiles that are effective in understanding these for the purpose of adopting a risk-based approach. This has not been a core focus of the AML/CFT framework in the past.

***Recommendation 33**: Value would be derived where information relating to crime and the proceeds of crime is available to institutions to inform the risk responses that they put in place.*

In light of input received during interviews held over the course of the project, the risk-based approach of institutions would benefit from appropriate generalised feedback from the FIC in respect of regulatory reporting that is submitted. It has been represented that the FIC has a broad financial intelligence picture on the strength of the suspicious transaction and other reporting that is submitted by individual institutions and analysed by the FIC in terms of its mandate.

There will be an ongoing need for data to inform the risk-based approaches of institutions, i.e. they will be required to identify and assess ML/TF risks and the effectiveness of institutional responses will not be optimised if they are not able to obtain adequate data in this regard. This may, in particular, be a challenge in respect of smaller organisations that may not have the resources to carry out their own analysis or develop a comprehensive understanding of relevant typologies.

The regulatory authorities may identify instances of abuse of the financial system for money laundering purposes. For example, criminal organisations could be making use of cross-border remittances to remit funds to individuals in foreign countries. A high level description of such abuse would aid institutions to undertake risk assessments.

***Recommendation 34**: There should be appropriate generalised feedback to institutions in support of the risk-based approach of these institutions, i.e. relating to the regulatory reporting that is submitted to the FIC by institutions.*

13.11. Data governance

The maintenance and usage of the data sources identified in the previous section generally reflects legacy data management thinking. There are, however, opportunities to reflect on how this can, taking into account the interests of stakeholders, be moved towards embracing digital age data perspectives.

As a point of departure in establishing a holistic view of the governance of data, consideration should be given to how the data, in the broad context the interests of stakeholders, is regulated. Data standards that address various aspects that will improve the value that can be derived from data and protections relating thereto should be provided to stakeholders, e.g. in respect of security, collaborative, quality, integrity, and interoperability. Considerations such as affordability and access to data will play an important role. The broad cross section of interests, including AML/CFT due diligence interests of institutions responsible for collecting, processing, reporting, and storing data, should ideally be addressed in a holistic manner.

There is the potential for the misuse data that is available for use in respect of client due diligence or ML/TF risk assessment. Individuals in society have a right to privacy and they should be afforded appropriate protection relating to their data, including protection from institutions and the state or state agencies that make use of their data, including, but not limited to, data that is used for AML/CFT purposes.

It has been advocated that a Government established work group should be launched to explore various aspects of data. This could holistically address matters that require attention in respect of existing databases and opportunities for new databases in the country, notably in respect of data standards referred to above. Privacy and data protection matters could also be considered. There will be an opportunity to address alignment matters in relation to other regulatory requirements, for example RICA[14] and POPI[15]. This initiative could explore the feasibility of creating a data association (that could be could be named the National Data Association of South Africa) as well a data regulator (that could be named the National Data Regulator) in terms of new regulatory requirements (that could be named the National Data Act.

Reference is made to the National Integrated ICT policy white paper.[16] This recognises the role that is played by information and communication technologies to facilitate socio-economic transformation in South Africa. It specifically covers matters relating to technology convergence and outlines an overarching policy framework. This has the potential to contribute towards an integrated view of data and the protection thereof.

***Recommendation 35**: Consideration should be given to how data is governed in the country. This should include a focus on the establishment of data standards, a data association, and a data regulator, i.e. enabled through the development of data regulatory requirements and the appropriate supervision thereof.*

[14] Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002.
[15] Protection of Personal Information Act 4 of 2013.
[16] Department of Telecommunications and Postal Services. National Integrated ICT Policy White Paper 2016.

14. Risk appetite and tolerance

14.1. Introduction

With the adoption of a risk-based approach there is always a risk that, despite appropriate assessment and control measures, institutions could be abused for ML/TF purposes.

Institutions will, with the adoption of a risk-based approach, within a framework of enabling legislation, regulation and guidance, need to embrace various aspects of risk management. This will include addressing risk appetite and tolerance in respect of the following:

- ML/TF risk; and
- Compliance risk.

14.2. Setting of risk tolerance and appetite

Study participants were asked whether risk appetite and tolerance levels should be understood and determined at an institutional level. Respondents indicated in the affirmative. Further, the regulator and supervisors indicated that this would be expected of institutions. Based on input received, there is ground to cover in developing a practical understanding of risk appetite and tolerance frameworks and practices at both the country and institution levels, as well as governance considerations relating thereto.

Institutions will determine the type and amount of risk that they are willing to be exposed to in undertaking business. This will typically be addressed and governed in a manner that is aligned with other risks that are managed on an ongoing basis. Risk appetite would be set in terms of appetite level, which may be expressed using appropriate descriptors, e.g. "low" risk appetite, or "higher" risk appetite. Where institutions have a higher risk appetite, it is somewhat more difficult to specify descriptors for obvious reasons. Such an appetite may be appropriate in the circumstances taking into account real world conditions where inclusive but disciplined growth is likely to lead to developments that will, in future, bring people into the formal financial system in a manner where transactions will become transparent and can be monitored. This is perhaps not fully aligned with the direction of travel in respect of the international AML/CFT standards, but may positively impact on the achievement of the country's AML/CFT objectives.

Risk tolerance limits may be set by institutions in respect of ML/TF risks. Such limits should be set in a manner that will facilitate an institution's response when or if they are exceeded. For example, from a compliance perspective, an institution may be prepared to tolerate a level of missing documentation that is required for due diligence purposes, which could recognise that there are qualitative and quantitative measures that could be applied. The setting of limits in respect of ML/TF risk typically represents a challenge in that this relates to possible fines, penalties, sanctions and reputational damage. Notably, there will still be criminal exposure for individuals or institutions that do not report in terms of section 29 of FICA. Where there are higher ML/TF risks, it is, to an extent, more likely that there could be suspicious transactions that could be inadvertently missed.

FATF guidance has increasingly recognised the need to address the governance of ML/TF risk management. Notably, senior management would be expected to find ways to support AML/CFT

initiatives, specifically in respect of deciding on measures needed to mitigate the ML/TF risks identified and on the extent of residual risk the bank is prepared to accept.[17] ML/TF risk would be understood in terms of the inherent risks that are identified and the residual risk assessed in terms of the factors that are set in in section 13 above, i.e. product, delivery, client, geography and transactions profile.

It is fair to say the international standards and guidance on what is required in respect of AML/CFT risk management is very high level in nature. This is, in essence, an opportunity for institutions, or associations of stakeholders, to develop risk responses / disciplines that are appropriate for their circumstances, bearing in mind that these will need keep pace with the dynamic business environment. Where stakeholders work together in setting the principles and standards that represent leading practice, this often results in positive outcome for the wide community of stakeholders that is impacted. This was the case when the COSO risk framework was developed and in the development of Generally Accepted Compliance Practice by the Compliance Instituted of South Africa.

***Recommendation 36**: The development of AML/CFT risk management standards, ideally led by the private sector and supported by regulatory authorities, will provide a platform for institutions to benchmark against leading practice, e.g. along the lines of the COSO or ISO frameworks. The AML/CFT risk management standards should build on existing standards and should address risk frameworks and processes, as well as risk appetite and tolerance. This should be an enabling framework rather that specifications that amount to rules. They should not compromise the achievement of AML/CFT objectives.*

14.3. De-Risking

The so-called "de-risking" topic is somewhat sensitive, however, in view of the potential adverse implications thereof on financial inclusion, it is advisable that this topic is addressed within the context of the new regulatory requirements. It is perhaps fair to say that stakeholders have a developing understanding of the challenges relating to the implications of a risk-based approach. However, the question of why it was not anticipated that institutions would de-risk when ML/TF or compliance risks exceeded their risk appetite or tolerance levels is, in itself, surprising. Institutions typically adopt a risk management process that categorises risk responses as follows: Reduce; Avoid; Accept; and Share.[18] Avoiding risk is a valid and rational risk response when risk levels exceed acceptable levels for institutions. It is noted that risk avoidance will not only relate to the exit from existing business when risk levels are too high, but also to institutions avoiding new business opportunities.

There is the possibility and propensity for service providers to de-emphasise (and possibly even withdraw) from a customer or market where the cost of appropriate risk-based responses is assessed as exceeding the possible revenue that can be derived therefrom. Any such withdrawal from a legitimate market or customer can impact on inclusive growth and development in the country.

[17] FATF, October 2014. Guidance for a Risk-Based Approach - The Banking Sector.
[18] COSO risk responses.

***Recommendation 37**: It is suggested that it would be advisable to undertake a detailed "coal-face" study of real-world circumstances in the region in light of ML/TF risk profiles that exist and to develop a deep and broad understanding of AML/CFT challenges and opportunities. Where this is done taking a long view of the factors that will contribute towards both improved financial integrity and financial inclusion, a clearer "big-picture" view will emerge. Governance considerations at country and institutional levels will be relevant in this regard.*

The indications are that regulatory authorities do not want de-risking to take place and may take the view that requirements, in the form of regulations or guidance, could be introduced to specify that institutions should not de-risk. In other words, requirements that dictate that institutions must apply a graduated due diligence approach could be introduced, i.e. institutions that treat all customers the same way could face sanctions, specifically where simplified due diligence is not applied when lower ML/TF risks would make this appropriate. This will go some way towards focusing an institution's attention on financial inclusion opportunities where the ML/TF risks are lower, but the extent to which this will provide for balanced compliance responses remains to be seen. Where compliance practices of institutions are not built on a foundation of risk governance principles that allow for risk avoidance when this is justified, it is likely that there will be unintended outcomes. Even where a balanced risk-based approach is implemented there will be circumstances in which the cost of compliance will make business in the target market unattractive from an operations or profitability perspective. Clear guidance and agreement about lower risk scenarios and appropriate risk responses can however limit those cases.

***Recommendation 38**: Clear guidance and agreement about lower risk scenarios and appropriate risk responses will contribute towards limiting the potential for inappropriate de-risking by institutions. This should be developed in a manner designed to encourage appropriate risk responses taking into account governance principles.*

15. Compliance in smaller organisations

15.1. Introduction

Smaller organisations will face capacity challenges in developing compliance responses that address the revised regulatory requirements (FIC Amendment Act).

This section highlights key aspects thereof and how certain matters can be addressed.

15.2. Study input

Study participants were asked to indicate whether they think smaller organisations find it significantly more challenging than larger organisations to comply with the revised regulatory requirements. They generally answered in the affirmative. In broad terms, smaller organisation will be faced with challenges in that they may not have the resources to implement a framework and process that will fully address the regulatory requirements.

It was acknowledged that small organisations might find comfort in a rules-based approach from the standpoint that they may not have the skills or experience needed to develop compliance responses that are proportionate to the ML/TF risks in question. They may also not have the systems and processes needed as a result of the costs that are involved. AML/CFT systems developments may be required in an environment where organisations do not have in-house IT resources (for development or maintenance purposes). Accordingly, systems may need to be acquired and there will be there will be a reliance on third parties in this regard.

Study participants were also asked to indicate what could be done to address these challenges. Responses to this question revolved around support that can be provided by regulatory authorities and between institutions in a collaborative format relating to acceptable practices and implementation toolkits. The facilitation of interactive workshops with industry stakeholders was also identified as an opportunity. The hosting of due diligence-related data by reliable data providers or access to databases that will support the identification of clients and provide information relating to risk would improve the risk-based approaches of smaller institutions. It was also indicated that it might be appropriate for the regulatory authorities to allow smaller organisations to continue to apply a rules-based for a period of time.

The question of whether the governance of smaller organisations will represent a significant challenge in meeting the regulatory requirements is relevant, i.e. with reference to section 42A of the FIC Amendment Act. Study participants provided mixed responses in this regard. This is perhaps a result of different perceptions of what the new regulatory regime will require in terms of governance in smaller organisations. The roles and responsibilities of the board and management can be somewhat blurred and the governance of ML/TF risk may require some attention.

***Recommendation 39**: There would be value in facilitating a sound understanding of the governance dynamics that will play out in future, specifically focused on smaller organisations. This could be done during the industry workshops referred to above.*

15.3. Industry support

Stakeholders that are exposed to the regulatory approach that has been adopted in the UK have indicated that smaller organisations in this jurisdiction typically use the guidance that is produced by the Joint Money Laundering Steering Group (JMLSG) as the basis for their compliance responses, i.e. relatively unchanged from the text that is published. This provides them with a baseline that serves to guide their AML/CFT approach and build confidence in the adoption of their risk management and compliance programme. On the other hand, larger organisations may tend to adopt their own risk-based approaches and will be more comfortable in being held accountable for the approach taken.

***Recommendation 40**: Support for the development of an understanding of practices that will underpin the achievement of AML/CFT principles would assist smaller organisations in framing their compliance responses.*

16. Customer due diligence requirements and other laws

16.1. Introduction

The due diligence requirements contained in RICA[19] and FICA are not fully aligned. In relation to mobile phone-based services there are opportunities to consider how best to improve the alignment of the identification processes to enable FICA reliance on RICA processes and vice versa. Reliance on the due diligence undertaken across both regimes would result in efficiencies in the on-boarding of clients for both accountable institutions and mobile network operators (MNOs).

16.2. RICA requirements

In terms of RICA, MNOs may not activate a SIM card on their electronic communications systems unless the user is identified and the identification detail is verified. Customers are required to provide specific documents in person to verify their identity. Where customers transfer SIM cards to someone that is not a family member, due diligence procedures must be carried out in respect of both parties to the transfer. There are significant penalties for non-compliance with these requirements. MNOs have widespread networks of agents that are appointed to undertake the RICA customer identification and verification processes. Due diligence is undertaken on agents by MNOs and training of agents is undertaken to ensure compliance with applicable regulatory requirements.

The due diligence requirements referred to above are similar in nature to those imposed in terms of FICA (prior to the FIC Amendment Act implementation). There are, however, a number of differences, for example:[20]

- Face-to-face process are required in terms of RICA but not necessarily required in terms of FICA;
- RICA does not require information about the verification documents to be captured and recorded as required for purposes of section 22 of FICA;
- RICA allows customers to use a range of alternative official identification documents to verify their names and identity numbers, while FICA requires a customer to produce an identification document, which is interpreted by the FIC as the green bar-coded document. Only if a customer's green bar-coded identity document is not available for a reason that is acceptable to the bank, may alternative identification documents, including official documents, be used for FICA purposes;
- The RICA processes relating to address particulars and verification are not aligned with the FICA requirements. FICA requires residential addresses to be recorded and verified. RICA, on the other hand, allows a range of other addresses to be captured when a residential address is not available or when a client resides in an informal settlement. Where alternative addresses are captured, the RICA data will not meet the FICA requirements; and
- RICA does not require RICA agents to record the document that was used for verification purposes. This means that the RICA verification process will not capture the information required to be recorded in terms of section 22(i) of FICA.

[19] Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002.
[20] Louis de Koker, October 2010. Will RICA's customer identification data meet anti-money laundering requirements and facilitate the development of transformational mobile banking in South Africa? An exploratory note. FinMark Trust, 8 <http://cenfri.org/aml-cft/the-impact-of-rica-on-financial-inclusion-2010>.

The above is not intended to be an exhaustive comparison between RICA and FICA but is included to illustrate key considerations.

There is an opportunity for convergence between the RICA and FICA regulatory regime in terms of Guidance Note 6/2008,[21] where a bank may verify customer details against a database that contains official data on South African citizens and residents. If the RICA data is linked to such a database, it may serve as a further source to verify information. It is also noted that MNO and the bank will need to ensure that privacy rules are adhered to.

However, a bank will be accountable for its due diligence in terms of FICA and must ensure that its systems, processes and people controls are adequate and effective to ensure compliance. The non-alignment of FICA and RICA means that banks cannot, without processes that achieve FICA compliance, rely on the regulatory regime applicable to MNOs from a due diligence perspective. Full alignment of formal requirements will not be sufficient in itself. Banks will need assurance that RICA processes are performed with sufficient integrity to allow reliance without exposure to regulatory or reputational risk.

With the introduction of the FIC Amendment Act, the RICA due diligence regulatory requirements will be further misaligned. Most notably, the existing rules-based RICA regulatory framework does not incorporate a risk-based approach to compliance and opportunities for simplified due diligence where there are lower ML/TF risks will not be available to MNOs in the same context as it is to banks. However, banks will have increased scope to rely on RICA-related due diligence in lower risk scenarios, provided that there is assurance that this is reliable.

16.3. RICA concerns

Reliability of RICA-related customer due diligence, record-keeping and training depends on the systems, process and staff of MNOs, i.e. in complying with the applicable regulatory requirements. Further, the integrity of the regulatory regime will, to a large extent, depend on the effective supervision of MNO compliance by the supervisor. It is noted that much of the commentary that is contained in this report in respect of the achievement of regulatory objectives (refer to section 7) and the effectiveness of institutional capacity (refer to section 12) will be relevant in the RICA context.

Most participants in the study indicated that RICA due diligence measures are not reliable. The quality and integrity of the processes that are followed and the quality and integrity of data that is available within the system are questioned. A contributor stated "the RICA process does not provide assurance that a person has been adequately identified when they acquire a SIM card". Further, the integrity of the RICA regulatory regime will depend on the due diligence that is undertaken being current and robust. Challenges in this regard have been identified. This means that, over and above the challenges arising from non-alignment of the RICA and FICA regulatory regimes, the reliability of RICA data is brought into question.

Concerns relating to the governance of the RICA regulatory framework were raised. Some stakeholders have indicated that the RICA regulatory regime has not achieved its regulatory objectives, i.e. to adequately identify mobile platform users and to track and trace in respect of platforms. Further, it is reasoned that where data quality is not adequate, i.e. in a RICA-type database, this goes against the

[21] Ibid.

principles that underpin the likes of the new privacy laws[22] that are being brought into effect in South Africa.

The so-called "pre-RICA" activities that take place in the market were also raised as a concern. Stakeholders indicated that it is possible to obtain a SIM card from certain agents where this has already been activated, i.e. without going through a proper due diligence process. If this is the case, the integrity of the RICA regime will be in question. There has been media coverage in respect of "pre-RICA" matters that indicate that the due diligence objectives will, to an extent, be compromised.[23]

The nature and intensity of the supervision of RICA due diligence requirements is, according to the input provided by study participants, not at the same level as that applied in respect of FICA.

***Recommendation 41**: An initiative to assess, and where required and feasible, improve the reliability of RICA data would assist institutions in developing their due diligence responses in a risk-based approach.*

16.4. Regulatory alignment

Based on input provided during the survey, amongst other things, there is a need to address the integrity of RICA processes and in particular the use of fraudulent documents by customers and agents and the undermining of RICA processed by corrupt and dishonest agents and employees. While it is understood there were spectrum concerns relating to expanding the RICA process when it was first introduced, this has become less of a concern over time. There are opportunities to improve the due diligence that is undertaken with the wider bandwidth that is now available. This could be undertaken with a view to develop a holistic view of data governance in South Africa. There are also options to integrate RICA-type processes with data that is kept by Home Affairs (HANIS) or other data sources.

A number of countries are considering the rationalisation of due diligence requirements in AML/CFT and telecommunications regulatory regimes. The harmonisation of due diligence requirements across banking, MNO and other regulatory regimes is, for example, recognised in the Indian eKYC initiative. In order to reduce the risk of identity fraud, document forgery and have paperless know your customer (KYC) verification, the Unique Identification Authority of India (UIDAI) has launched an eKYC service. In terms of the regulatory approach adopted, this is accepted as a valid process for KYC verification purposes under Prevention of Money Laundering (Maintenance of Records) Rules, 2005. An individual user of the service must authorise the UIDAI to release their identity/address through biometric authentication. The UIDAI then transfers the data of the individual comprising name, age, gender, and photograph of the individual electronically to the institution in question. Each customer has a unique twelve digit identification number that is used in this process. The eKYC platform is available to banks and MNOs in implementing cost effective technology-driven client identification and verification.

In the final analysis, it should not be onerous to establish the identity of clients and to verify their identity.[24] The process should be efficient and should meet due diligence quality standards that are set.

[22] Protection of Personal Information Act, No. 4 of 2013.
[23] http://www.capetalk.co.za/articles/6182/merchants-making-money-off-illegal-selling-of-pre-rica-d-sim-cards
[24] This view was expressed by both public and private sector stakeholders during various workshops and interviews held.

***Recommendation 42**: An initiative that is designed to identify FICA and RICA harmonisation opportunities, and that provides a platform for achieving improved due diligence in the light of the new risk-based paradigm, will improve the outlook for the achievement of objectives in both regulatory regimes. This should ideally involve policy makers, regulators, supervisors and other stakeholders in respect of both FICA and RICA. The success of the project will depend on top-level support from the relevant government departments.*

17. Supervision and enforcement

17.1. Introduction

The nature and extent of the impact that supervisors have on the behaviour and the compliance responses of institutions was a common thread through most of the interviews that were held during the study.

This section highlights key considerations in relation to financial inclusion.

17.2. Supervision of the new AML/CFT regime

It is understood that there is a changing AML/CFT supervisory dynamic, i.e. with the pending introduction of the FIC Amendment Act. It is anticipated that supervisors will approach the supervision of the applicable regulatory requirements in a manner that will evolve over time. At this juncture, this is still largely an unknown quantity. There are, however, indications of the direction of travel.

Study participants were asked to identify what, if any, challenges may prevent or hinder the implementation of the risk-based approach. Contributors were generally aware that there is a new risk paradigm being introduced and that institutions will now be required to develop and implement risk management and compliance programmes in terms of the regulatory changes. Institutions are granted a degree of discretion around the formulation of their risk responses, which may introduce new challenges for supervisors in discharging their supervisory responsibilities. This would include consideration of institution's risk environment and risk appetite/tolerance, as well as the risk management framework and process adopted by institutions.

It is clear that institutions take their cue as to how they should comply with the applicable regulatory requirements from supervisors. It is, therefore, reasoned that where there is a clear understanding of how supervisors impact on the achievement of regulatory objectives in a holistic manner, this will contribute towards painting a view of the way forward.

Some contributors to the study indicated that institutions cannot afford to implement a risk-based approach (with the systems, process and people developments needed) where this will not meet the expectations of supervisors at a later time. This concern will tend to make institutions overly conservative in their compliance responses. The question of what institutions will be fined, sanctioned or penalised for is a significant concern for institutions. The threat of enforcement action, in the light of previous actions taken, will have a significant impact on institutions.

17.3. Factors that impact on the compliance responses of institutions

The factors that impact on the compliance responses on institutions were identified in a study undertaken for FinMark Trust in 2011. These include the following:

- The "hard law" (binding and enforceable regulatory requirements);
- Applicable "soft law" (not binding through state action and not enforceable by the state);
- Supervisory conduct;
- Relevant (general) business management considerations; and
- The company's own framework and reality.

A diagram that was developed as part of this study is included in Annexure 2 for ease of reference. The role that supervisors play in shaping the compliance practices of institutions is positioned therein.

***Recommendation 43**: The dynamics that are reflected in the FinMark Trust 2011 research relating to conservative compliance responses remain relevant and should be considered in the design of a regulatory framework. Where there is a shared vision of success between policy makers, regulators, supervisors and institutions, this is likely to positively position the role that is played by the regulatory authorities.*

The level at which the abovementioned factors are understood by the respective AML/CFT stakeholders will, to some extent, be an indication of the maturity of the AML/CFT framework.

17.4. Crucial support role

It is recognised that a zero tolerance risk approach is not practical. Quite literally, when this is applied, no business can be undertaken. However, the determination of the level of risk that will be tolerable and the compliance responses relating thereto is, to some extent, moving into unchartered territory.

Supervisors play a crucial support role within the AML/CFT regulatory framework, perhaps most importantly in respect of support that will encourage confidence in an institution's view of its risk framework and process meeting the expectations of supervisors. This will assist institutions in applying graduated compliance practices in respect of products and services to facilitate access.

***Recommendation 44**: The impact that supervisors have on institutions should be considered in the implementation of the FIC Amendment Act, i.e. in light of risk-based approach dynamics. This will include the following matters: The expectations of supervisors relating to the new risk-based approach to the regulation of AML/CFT in view of the factors that impact on compliance responses of institutions; Development of risk management and compliance programmes; and What institutions will be fined, sanctioned or penalised for.*

18. Cost of compliance

18.1. Introduction

The introduction of the FIC Amendment Act requirements has the potential to have a significant impact on the cost of compliance of institutions, i.e. as a result of the need for systems, processes and staff to comply with the requirements in question. Costs relating thereto can be categorised as fixed or variable in nature. Further, the costs may be incurred once off in gearing-up to comply with the new requirements or could be ongoing in nature.

This section of the report identifies certain costs that may be incurred as well as the cost drivers relating to the risk-based approach. It also includes a description of the implications thereof in relation to financial inclusion considerations.

18.2. Research input

A costing questionnaire was distributed to selected research participants. This was designed to obtain input in respect of the cost of compliance and cost drivers relating to the new regulatory requirements. However, only one questionnaire was returned and limited input was received in respect of the aforementioned questionnaire during interviews held and in respect of the generic request for costing input in the detailed questionnaire. Further, the input provided during interviews, meetings or workshops was high-level in nature and did not allow for specific analysis thereof. This was, to a large extent, anticipated prior undertaking the study and the outcome is consistent with the writer's understanding of previous industry initiatives designed to obtain cost of compliance information.

Accordingly, the researchers have developed a costing model that can be used to analyse costs relating to the introduction of the new regulatory requirements with a view to facilitating discussion relating to what this could mean in respect of products and services that facilitate access.

18.3. Costs and cost drivers

Based on high level input that was received during interviews held, in light of the researcher's understanding of the systems, processes and people-related responses that are needed to address ML/TF risk, key risk-based approach development imperatives have been identified and the cost drivers relating thereto have been highlighted. This is set out in the box below:

Box 6 – Costs and cost drivers

Systems: Core systems upgrade together with any upgrade relating to feeder systems; Licensing of system applications; Development, mapping and tuning of data feeds and risk assessment; Access to central data repositories; Integration of static and flow information to dynamically assess and address ML/TF risk; Interactive risk assessment model; Single view of customer; Cash threshold and aggregation detection; Name screening systems; DPIPs and EDD related enhancements; Related party enhancements; Payment screening and transaction screening / monitoring systems; Customer facing systems – that allow customers to input information or upload documents; and Reporting systems and automation.

The main cost driver in respect of the above will be the specification, design, development, testing, handover and maintenance of systems required. This will involve a relatively high up-front cost and there will be ongoing costs in maintaining the systems in question. These costs will be largely fixed in nature. The extent of the costs relating to systems will depend on the systems that are already in place and on the need to map data feeds and the handling and maintenance thereof in addressing ML/TF risk and the due diligence levels that will be appropriate.

Framework: AML/CFT policy update; Risk management and compliance programme development and implementation thereof; and Governance developments.

The main cost drivers in respect of the above will be up-front development and implementation costs relating to the risk-based approach framework and ongoing costs to maintain this. These costs will be primarily fixed in nature.

Processes: Identity and risk-related data and documentation; ML/TF risk assessment of clients; KYC remediation - Reviewing and updating client information and documentation; Reporting of unusual and suspicions - Procedural update of internal reporting and external reporting; Record keeping - Physical client documentation and storing digital client documentation; and Monitoring - Procedural updates.

The main cost drivers will be volume of accounts, transactions or periodic actions taken to address risk-based approach requirements. These costs will be largely variable in nature.

People: Up-skilling of existing compliance staff; Initial risk-based approach awareness training for staff; Specific training of staff member in respect of risk-based approach requirements; Ongoing refresher training; Additional workload on front-line staff members; and Additional second line staff members to assist the organisation to comply.

The main cost drivers will vary according to the activities in question. For instance, training will vary according to staff numbers in the light of the training need. The number of additional staff will depend on the incremental workload relating each aspect of the risk-based approach. The third line assurance will be required in view of the need to address the ML/TF risk assessment specifically and to undertaken controls and substantive testing of the AML/CFT risk management framework and process in general.

Other: Organisational change management; Project management; Outsourcing of risk-based approach development to overcome initial workload; and Third line assurance relating the risk-based approach.

The cost drivers relating to the above will be varied. For costing model purposes, they can be assumed to be largely fixed in nature, with a relatively high cost in the first year, i.e. as a result of the upfront implementation of a risk-based approach.

The above listings and commentary represents a high level identification of costs and cost drivers. It is not a complete analysis of all costs that may be incurred with the introduction of the AML/CFT regime.

18.4. Costing model

The costing model that has been developed has been used to facilitate an understanding of risk-based approach costing implications in different sized organisations. This was addressed during various

workshops held over the course of the study and is structured under the headings set out in the left hand column of the able below:

Costs	Category	Primary Cost Driver
Systems and framework	Fixed	Risk-based approach systems & framework development needs
Processes	Variable	Accounts and transactions volumes
Training	Variable	Staff numbers
People	Mixed	Additional staff required
Other	Mixed	Year 1 fixed driven by other risk-based approach needs and variable thereafter driven by number of accounts / transactions

For the purposes of developing the costing model, each of the costs reflected in the left hand column of the above table have been classified as "fixed", "variable" or mixed[25]. Fixed costs are costs that don't vary with an increase or decrease in business activity. On the other hand, variable costs vary with the level of business activity. For example, the development of computer systems may be incurred up-front in the implementation of a risk-based approach, i.e. in a manner that does not vary with the level of business activity. These would be considered to be fixed in nature (such costs are included in the "systems and framework" line item in the table above). There may also be ongoing costs that could be incurred in respect of certain business activities. For example, when a new client is on-boarded the client's name would be screened for ML/TF purposes. These costs would be considered to be variable in nature, i.e. the cost in relation to the number of accounts (such costs are included in the "processes" line item in the table above).

The format of the costing model is set our in Annexure 4. This reflects the variables that have been considered in the approach applied.

The costing methodology that is used in the model relies on high-level assumptions. It is intended to facilitate discussion relating to the variables that have a significant influence on the cost of compliance. It may not accurately reflect all costing dynamics in question and has been used to encourage a conversation that could be further developed.

***Recommendation 45**: Consideration should be given to further developing the costing methodology that is included in the study report. This will, amongst other things, provide perspectives that will be relevant to understanding the cost-related impact of the risk-based approach in respect of products and services that enable financial inclusion.*

An example of the cost implications for a medium sized organisation has been modeled and the outputs thereof are described in the box below.

[25] Descriptions of the cost types (i.e. fixed and variable) have been included in this section of the report. Reference has been made to Investopedia in this regard: http://www.investopedia.com/terms/

Box 7 – Costing model example

The following business profile is assumed for a medium sized financial institution:

Number of business relationships - 200,000
Number of transactions per relationship per annum - 30
Number of staff members - 1000

Organisations may require significant systems and framework developments. This could cost between R1m and R10m depending on the size, nature and complexity of the business in question, as well as the variables indicated in section 18.3 of this report. For illustration purposes, a substantial systems and framework development could amount to some R3m. This will allow for the costs relating to a team of systems developers over a period of say 6 months. For the purposes of the costing model, it is assumed that the full cost will be written off in the first year of implementation of the risk-based approach. There would be ongoing maintenance costs relating thereto that could be in the region of 10% of the up-front cost, i.e. R300k per annum.

Incremental process-related costs will be incurred as highlighted in section 18.3. Costs could be significant where these are incurred on top of legacy due diligence processes that have been used in the past, for example where it is perceived that the authorities will require copies of documentation that is used to identify and verify clients, i.e. as opposed to relying on effective new data sources that can be used. For illustration purposes, it could be assumed that the costs could be some R20 per business relationship in the first year, i.e. R4m, and ongoing costs could be 50% thereof, i.e. R2m per annum.

Training of staff members relating to the risk-based approach will be required. This would be relatively high in the first year of implementation, say R200 per staff member, i.e. R200k in total, and may be lower in following years once staff members have some experience of applying a risk-based approach, say 50% of the initial first year cost, i.e. R100k per annum.

Additional staff members may be required to assist the organisation to implement and maintain the risk-based approach. It is assumed that 3 first line staff members and 3 second line staff members will be adequate for this purpose at a cost to company of R250k; the annual cost will be R1.6m.

Other costs relating to the implementation and maintenance of a risk-based approach could amount to some R250k in the first year and could be in the region of 10% of this amount following years, i.e. R25k per year.

If the assumptions that have been made hold true, the following incremental cost of compliance would be seen:

	Year 1	Year 2
Total incremental annual cost	R9,0m	R4,0m
Cost per account	R45,3	R20,2
Cost per transaction	R1,5	R0,7
Cost per staff member	R9,1k	R4,0k

The above cost profile represents costs that could be incurred in order to obtain capacity to implement and maintain a risk-based approach, i.e. while at the same time, to a large extent, holding onto legacy due diligence processes. They are significant in relation to the operations of a medium sized business.

However, the costs do not recognise efficiencies that could be derived from innovative and effective risk-based approach enabled compliance responses. Based on input from stakeholders, there could be substantial savings from a move away from legacy paper-driven due diligence process to a process that allows for the use of innovation and data sources that will comply with the new regulatory requirements. If the saving is R35 per business relationship per annum, and this is achievable from year 2, the following incremental cost / (saving) profile will be seen:

	Year 1	Year 2
Total incremental annual cost	R9,0m	R4,0m
Savings (expected from year 2)	R0	(R7,0m)
Total after savings	R9,0m	(R3,0m)
Cost / (saving) per account	R45,3	(R14,8)
Cost / (saving) per transaction	R1,5	(R0,5)
Cost / (saving) per staff member	R9,1k	(R3,0k)

If the respective assumptions hold true, there is an opportunity to reduce compliance costs in future. There could be an annual saving of R3m in year 2. Provided the new regulatory regime will allow for the envisaged operational efficiencies, it is possible to offset the upfront development and implementation costs (some R9,0m) over a period of time (3 years in the example). This could be achieved while at the same time offering effective due diligence approaches that could improve the outlook for financial inclusion.

The commentary that is set out above highlights that there will typically be significant up-front risk-based approach development costs, but also takes into account the potential for cost savings as a result of the envisaged flexibility that is offered in the new regulatory regime. However, it is noted that the above picture may need to be adjusted once the FICA regulations and guidance have been published and more is known about the implications of the risk-based approach.

Recommendation 46*: The high-level costing model that was developed as part of the study could be used to encourage a conversation relating to the cost impact (of the new AML/CFT regulatory regime) in relation to financial inclusion. In particular, there should be a focus on the incremental costs needed to develop and maintain the capacity required for a risk-based approach and the potential for cost savings where due diligence and other efficiencies can be achieved should be addressed.*

It is possible to analyse the cost implications of the changing regulatory regime using high level assumptions (as illustrated in the example above), i.e. in order to provide a broad indication of the possible impact on financial inclusion. The approach that is used will need to take into account a number of variables, including: Current systems and other capacity of institutions (where there is existing capacity, incremental capacity costs will be limited and a marginal cost approach may be appropriate, at least in the short term); Up-front and ongoing costs (institutions will have different business profiles and here will be different cost implications); Activities that drive costs (these should be identified in a manner that is appropriate for different institutions); Regulatory and supervisory support for due diligence processes making them less onerous (cost savings can be achieved over a period of time where the new regulatory regime moves away from legacy approaches); and Confidence of institutions that the

AML/CFT "end-game" is understood and that the regulatory / supervisory regime is on-track (this will increase the likelihood that institutions will appropriately invest in systems, processes and people for longer term AML/CFT success).

19. FIC Amendment Act implementation matters (recommendations)

19.1. Introduction

This section of the report is intended to assist AML/CFT stakeholders in identifying matters that will be relevant in supporting the achievement of AML/CFT objectives with the implementation of the new regulatory regime, i.e. by referring them to a collated version of the recommendations that are contained in the study report.

19.2. Recommendations

The recommendations contained in the various sections of this report are included in Annexure 6. Each recommendation is structured under the heading that it is applicable to.

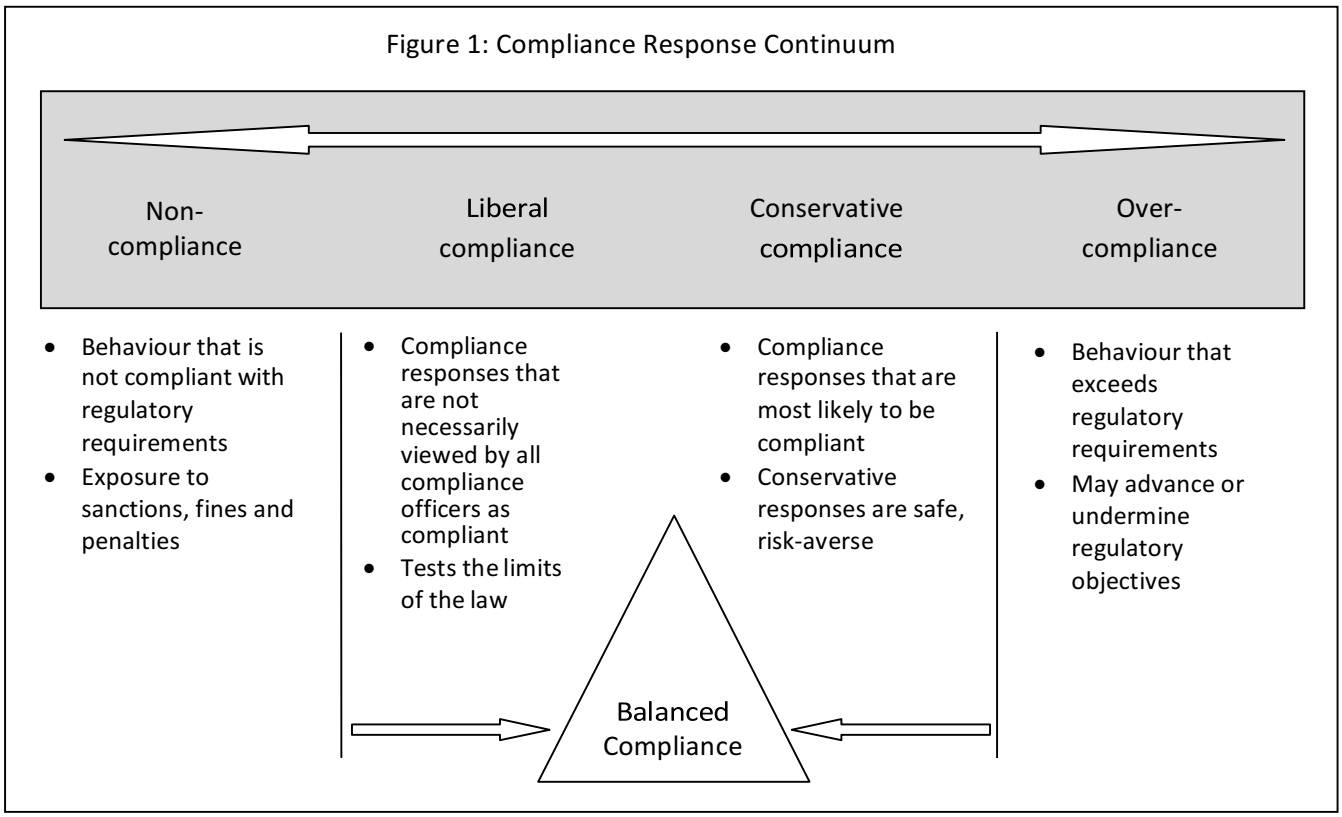
20. End-note

The study report has been published prior to the FIC Amendment Act provisions being brought into effect, i.e. the research that has been carried out represents a pro-active engagement and has the potential to inform the development of some aspects of the risk-based approach direction of travel. This is, in itself, a positive development that has been enabled by FinMark Trust and supported by regulatory/supervisory authorities and private sector stakeholders. The project approach has facilitated robust stakeholder engagement and the outputs thereof are available for consideration at an early stage of the development of compliance responses by institutions. However, in view of the potential impact of the new regulatory regime on financial inclusion, it is submitted that there will be value, from both financial integrity and financial inclusion perspectives, in revisiting the report recommendations and tracking risk-based approach developments in this regard.

Annexure 1
Compliance Response Continuum

As identified in a FinMark Trust study undertaken in 2011, potential compliance responses to regulatory requirements (whether through action or inaction) range from non-compliant to over-compliant with balanced compliance often viewed as the ideal response by a financial institution. The range of responses can be depicted as a compliance response continuum:

Figure 1: Compliance Response Continuum

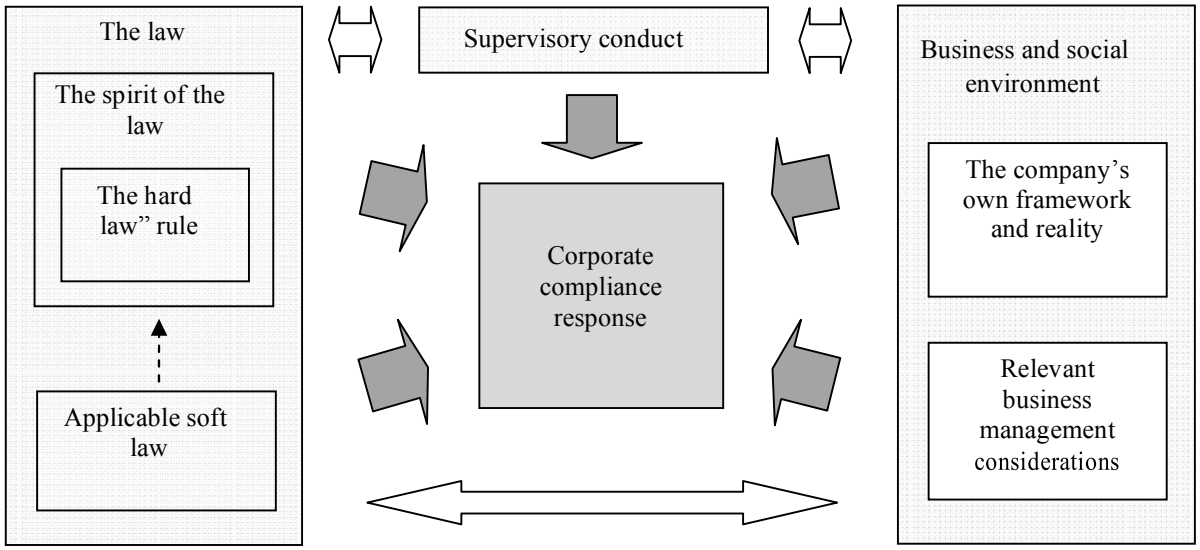


Note: The above diagramme has been included with a view to providing an AML/CFT compliance response frame of reference / terminology relating to the risk-based apporach, i.e. when the FIC Amendment Act is brought into effect.

Annexure 2
Factors Impacting on the Corporate Compliance Response

Factors that impact on the compliance responses of institutions were identified in a FinMark Trust study undertaken in 2011.[26] These are reflected in Figure 2 of the report that was published, which is included below together with commentary relating thereto:

Figure 2: Five broad factors impacting on the corporate compliance response



- **The "hard law"** (binding and enforceable regulatory requirements), interpreted in accordance with the spirit of the law and in view of the potential enforcement impact of a breach or contravention.
- **Applicable "soft law"** (not binding through state action and not enforceable by the state), such as codes of conduct, corporate governance codes, international, national and industry standards and non-binding regulatory guidance. Although these requirements do not have the force of hard law, they tend to influence companies to interpret their hard law obligations broadly and to adopt practices that go beyond the text of the regulatory requirement itself. Soft law is often used as a guide by compliance officers to determine the so called "spirit of the law", thereby impacting on their interpretation of the companies' hard law obligations. Some companies voluntarily subject themselves to a particular set of soft law requirements, thereby elevating the status of these requirements in relation to the company and, in particular, their impact on their compliance responses.
- **Supervisory conduct,** that ranges from formal guidance and enforcement action to informal guidance and even agreements with senior managements of financial institutions. The majority of financial institutions in South Africa appear respectful of the power of the financial industry supervisors. Interventions may draw on hard law but may also go beyond. Interviewees cited examples where the management of larger institutions agreed to comply with soft law requirements because they were requested by the supervisor to do so.

[26] FinMark Trust. Louis de Koker and John Symington. August 2011. Conservative compliance behaviour: Drivers of conservative compliance responses in the South African financial services industry.

- **Relevant (general) business management considerations,** for instance for the business to be profitable, for its systems, risks and opportunities to be managed well and for the business to be sustainable, which would include being viewed as compliant with industry standards and meeting the approval of the supervisor.
- **The company's own framework and reality,** for example its ethics, compliance culture, business context and human resources. The response may also be linked to, and sometimes embedded in, the management of other risks (for instance fraud risk, and consumer protection risk) and business opportunities by the company (for example, the company's marketing and customer service strategy).

Note: The above figure and commentary was developed some ago, but remains relevant in considering factors that impact on compliance responses of institutions.

Annexure 3
Governance of AML/CFT Compliance

The contents of section 42A, as specified in the FIC Amendment Act, 2015, are set out hereunder. This provides an indication of the evolving regulatory appreciation of the need for appropriate AML/CFT governance within organisations.

Governance of anti-money laundering and counter terrorist financing compliance

"42A. (1) The board of directors of an accountable institution which is a legal person with a board of directors, or the senior management of an accountable institution without a board of directors, must ensure compliance by the accountable institution and its employees with the provisions of this Act and its Risk Management and Compliance Programme.

(2) An accountable institution which is a legal person must—

(a) have a compliance function to assist the board of directors or the senior management, as the case may be, of the institution in discharging their obligations under subsection (1); and

(b) assign a person with sufficient competence and seniority to ensure the effectiveness of the compliance function contemplated in paragraph (a).

(3) The person or persons exercising the highest level of authority in an accountable institution which is not a legal person must ensure compliance by the employees of the institution with the provisions of this Act and its Risk Management and Compliance Programme, in so far as the functions of those employees relate to the obligations of the institution.

(4) An accountable institution which is not a legal person, except for an accountable institution which is a sole practitioner, must appoint a person or persons with sufficient competence to assist the person or persons exercising the highest level of authority in the accountable institution in discharging their obligation under subsection (3)."

Annexure 4
Risk Management and Compliance Programme

This table that is included below has been developed with reference to section 42(2) of FICA, as amended by the FIC Amendment Act, 2015. It contains the sub-section number and an edited version of the contents thereof together with headings for ease of reference. The headings are not included in the law and are set out purely to make the table easier to read.

Sec 42(2)	Heading	Contents
a)	**AML/CFT risk management**	Enable the accountable institution to: (i) identify; (ii) assess; (iii) monitor; (iv) mitigate, and (v) manage, the risk that the provision by the accountable institution of products or services may involve or facilitate money laundering activities or the financing of terrorist and related activities.
b)	**Establishment and verification of identity**	Provide for the manner in which and the processes by which the establishment and verification of the identity of persons whom the accountable institution must identify in terms of Part 1 of Chapter 3 is performed in the institution.
c)	**Transactions profile**	Provide for the manner in which the institution determines whether future transactions that will be performed in the course of the business relationship are consistent with the institution's knowledge of a prospective client.
d)	**Additional due diligence (legal persons etc.)**	Provide for the manner in which and the processes by which the institution conducts additional due diligence measures in respect of legal persons, trust and partnerships.
e)	**Ongoing due diligence**	Provide for the manner in which and the processes by which ongoing due diligence and account monitoring in respect of business relationships is conducted by the institution.
f)	**Complex and unusual transactions**	Provide for the manner in which the examining of— (i) complex or unusually large transactions; and (ii) unusual patterns of transactions which have no apparent business or lawful purpose, and keeping of written findings relating thereto, is done by the institution.
g)	**Doubts about veracity of due diligence**	Provide for the manner in which and the processes by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information.
h)	**Customer due diligence and**	Provide for the manner in which and the processes by which the institution will perform the customer due diligence requirements in accordance with

Sec 42(2)	Heading	Contents
	suspicious or unusual activity	sections 21, 21A, 21B and 21C when, during the course of a business relationship, the institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29.
i)	**Termination of business**	Provide for the manner in which the accountable institution will terminate an existing business relationship as contemplated in section 21E.
j)	**FPPOs or DPIPs**	Provide for the manner in which and the processes by which the accountable institution determines whether a prospective client is a foreign prominent public official (FPPO) or a domestic prominent influential person (DPIP).
k)	**Enhanced and simplified due diligence**	Provide for the manner in which and the processes by which enhanced due diligence is conducted for higher-risk business relationships and when simplified customer due diligence might be permitted in the institution.
l)	**Records**	Provide for the manner in which and place at which the records are kept in terms of Part 2 of Chapter 3.
m)	**Reporting**	Enable the institution to determine when a transaction or activity is reportable to the Centre under Part 3 of Chapter 3.
n)	**Reporting processes**	Provide for the processes for reporting information to the Centre under Part 3 of Chapter 3.
o)	**Implementation**	Provide for the manner in which— (i) the Risk Management and Compliance Programme is implemented in branches, subsidiaries or other operations of the institution in foreign countries so as to enable the institution to comply with its obligations under FICA; (ii) the institution will determine if the host country of a foreign branch or subsidiary permits the implementation of measures required under FICA; and (iii) the institution will inform the Centre and supervisory body concerned if the host country contemplated in sub-paragraph (ii) does not permit the implementation of measures required under FICA.
p)	**Implementation processes**	Provide for the processes for the institution to implement its Risk Management and Compliance Programme.
q)	**Prescribed matters**	Provide for any prescribed matter.

Annexure 5
Risk-Based Approach Costing Model

Costs	Category	Cost Driver	Unit Cost	First Year R	Ongoing R	Ongoing %
Systems and framework	Fixed	RBA needs	R	R	R	%
• Core systems upgrade together with any upgrade relating to feeder systems; • Licensing of applications; • Development, mapping and tuning of data feeds and risk assessment; • Access to central data repositories; • Integration of static and flow information to dynamically assess and address ML/TF risk; • Interactive risk assessment model; • Single view of customer; • Cash threshold and aggregation detection; • Name screening systems; • DPIPs and EDD related enhancements; • Related party enhancements; • Payment screening and transaction screening / monitoring systems; • Customer facing systems – that allow customers to input information or upload documents; and • Reporting systems and automation.						
Processes	Variable	Accounts	R	R	R	%
• Identity / risk-related data and documentation; • ML/TF risk assessment of clients; • KYC remmediation relating to RBA; • Reporting of suspicions; • Record keeping; and • Monitoring.						
Training	Variable	Staff	R	R	R	%
• Compliance skills; • Initial RBA staff awareness training; and • Specific training of staff members						
People	Variable	Additional	R	R	R	%
• Additional first line staff; and • Additional second line staff.						
Other	Mixed	RBA needs	R	R	R	%

Costs	Category	Cost Driver	Unit Cost	First Year R	Ongoing R	Ongoing %
• Organisational change management; • Project management; • Outsourcing of RBA development to overcome initial workload; and • Third line assurance relating the RBA.						
Total				R	R	
Savings as a result of RBA	Variable	Accounts	R	R	R	
Total after savings				R	R	
Cost per account				R	R	
Cost per transaction				R	R	
Cost per staff member				R	R	

Annexure 6
Recommendations

The recommendations contained in the study report are included in this Annexure. Each recommendation is structured under the relevant report heading.

Regulatory framework

Recommendation 1: The design of the regulatory framework and the supervisory approach relating thereto should be informed by appropriate communication between stakeholders with a view to improving the prospects for achieving AML/CFT regulatory objectives. Opportunities to develop a guidance-setting framework that achieves alignment should be maximised during the design phase and it is desirable that mutual communication and cooperation relating to the achievement of the identified objectives should be a key feature of the new regime.

Recommendation 2: It is important to launch national risk assessment processes to inform institutional assessments. A national risk assessment should be undertaken for South Africa and there should be consideration of the risk of financial exclusion and AML/CFT implications for financial inclusion.

Recommendation 3: Where there is an effective upfront and ongoing assessment of the impact of regulatory requirements (and the supervisory approaches relating thereto) on AML/CFT stakeholders (taking into account the broad spectrum of matters that impact on the achievement of objectives) this will reduce the likelihood of unintended consequences, i.e. in respect of AML/CFT as well as financial inclusion outcomes.

Recommendation 4: AML/CFT stakeholders should be identified with a view to determining their legitimate interests in the achievement of AML/CFT objectives in order to develop an understanding of how best alignment can be achieved.

Recommendation 5: An in-depth impact analysis should be carried out to determine the direct and indirect policy objectives of the AML/CFT framework, the relevant trade-offs and consequences to enable effective and efficient achievement of policy objectives in an integrated and holistic manner.

Inappropriate compliance

Recommendation 6: The policy-setting process of the respective stakeholders (AML/CFT, financial inclusion and other) should ideally be undertaken in a coordinated or integrated manner.

Recommendation 7: Once the anticipated changes have been made to the FICA regulations and guidance, these should be considered in light of the impact thereof on financial inclusion.

Recommendation 8: The impact of the new regulatory regime on the compliance responses of institutions should be monitored in relation to the impact of section 42A, i.e. to determine that they are not overly conservative, resulting in adverse outcome for financial inclusion. This should include consideration of whether institutions are applying simplified due diligence measures where such measures are appropriate. Note: This links with recommendations 19 and 23.

Recommendation 9: There will be value, from the financial integrity and financial inclusion perspectives, in developing a regional level understanding of the inherent ML/TF risks relating to products and services that facilitate access, particularly in respect of cross-border remittances. This should also address what can be done by countries and institutions to mitigate risk.

AML/CFT objectives

Recommendation 10: AML/CFT objectives should be identified and appropriate communication relating to the achievement thereof encouraged. Further, principles that underpin the country's AML/CFT framework should be published to serve as a platform from which to guide AML/CFT stakeholders in discharging their obligations in terms of the applicable regulatory requirements.

Recommendation 11: It would be beneficial to have a clearly articulated view of "what success looks like". This will guide AML/CFT stakeholders in understanding the AML/CFT outcomes, which should ideally be understood within the "big picture" of what constitutes success for the country.

Recommendation 12: Where measurable AML/CFT outcomes are determined when the new law is brought into effect, this will provide a platform for monitoring the achievement of objectives. Such outcomes should be formulated with due consideration of the wider policy alignment dynamics of the country.

Ongoing changes to regulatory requirements

Recommendation 13: Circumstances that will encourage an appropriate level of investment in systems and processes by institutions should be identified and taken into account in the design of the regulatory requirements and the supervision thereof.

Recommendation 14: Although the indications are that the revised FICA regulations and guidance will be published in a manner that will not need ongoing changes (to the extent required in the past) in order to keep pace with changing circumstances over time (i.e. they are anticipated to be drafted at a principles level rather than for the purpose of specifying detailed rules), the need for revision of the regulatory requirements should be considered periodically (every two years is proposed). This will go hand-in-hand with a periodic review of whether regulatory objectives are being / will be achieved.

Guidance and industry coordination

Recommendation 15: The underlying reasons for the apparent lack of trust between some AML/CFT stakeholders should be identified and, where appropriate, action taken to address them. This will, amongst other things, contribute towards encouraging alignment that will support the achievement of AML/CFT objectives. In particular, the development of industry-led, risk-based approach guidance will be held back without the participation of the authorities.

Recommendation 16: Consideration should be given to what risk-based approach guidance is required, i.e. to address the diverse needs of the respective industry stakeholders. This could include, but is not limited to, the following perspectives: AML/CFT principles, regulatory framework outline, interpretation of regulatory requirements, risk-based approach, ML/TF risks, compliance responses, and ML/TF related data. It is believed that a private sector led and regulatory authority supported risk-based approach guidance framework (i.e.

without creating rules that restrict institutional compliance responses) would significantly improve the effectiveness of the country's AML/CFT regime, i.e. in support of the achievement of specified regulatory objectives. The development of this guidance could be tested / piloted in respect of selected products that support financial inclusion, for example remittances or entry level accounts that provide transactional functionality.

Recommendation 17: Consideration should be given to how the AML/CFT guiding principles and practices should articulate within the regulatory framework and guidance relating thereto. This should be done in a manner that takes into account the advances made in the King IV Report.

Recommendation 18: In order to secure regulatory, supervisory and policymaker support for the development of government-endorsed industry-based AML/CFT guidance, stakeholders would need to gain the trust of the respective authorities. The indications are that where the initiative's core outputs are designed to further the interests of financial integrity, this will increase the likelihood it will succeed. Accordingly, it is recommended that, in order promote the support of the authorities, the central value proposition of the guidance should not be the development of a due diligence "safe haven" for institutions that will be applied mindlessly.

Recommendation 19: It is envisaged that supervisors will play a role in reviewing whether a graduated approach to due diligence is applied by institutions and that compliance responses are not overly conservative. This should extend to an appropriate review of whether an institution's compliance responses are considered to be overly conservative. Note: This links with recommendations 8 and 23.

Regulatory exemptions

Recommendation 20: Factors that drive compliance behaviour should be considered in the design of the regulations that will be introduced with the implementation of the new regulatory regime, i.e. including the withdrawal of existing exemptions.

Financial exclusion risk

Recommendation 21: Financial exclusion risk will only be properly factored into a risk assessment if the concept is understood and supported by data. It is therefore vital that consideration is given to the significance of proceeds of crime and terrorist financing that flows via cash and or the informal sector, i.e. with a view to starting a conversation that will encourage a holistic view of the impact of financial exclusion on ML/TF.

Effectiveness of institutional capacity

Recommendation 22: With a view to supporting financial inclusion objectives, there would be value in developing a generic understanding of what the risk management and compliance programme should look like (without being prescriptive). Institutions will be on a learning curve towards implementing systems, process and people controls that will address the regulatory requirements and will meet the expectations of regulators and supervisors. In order to reduce this learning curve clear guidance would be beneficial.

Recommendation 23: Risk-based approach development challenges experienced in the establishment of risk management and compliance programmes by institutions should be monitored with the implementation of a

risk-based approach, particularly where there are opportunities to address matters that will avoid unintended financial inclusion consequences. Note: This links with recommendations 8 and 19.

Recommendation 24: Consideration should be given to the provision of support to institutions in order to reduce the learning or development curves towards the embedding of effective systems and process that will cater for the risk-based approach to the regulation of AML/CFT.

Recommendation 25: Communication between institutions and regulator/supervisors should be encouraged where this will improve the design, development and implementation of a risk-based approach, specifically in respect of customer identification and verification, statutory reporting, record keeping, training of staff, monitoring and other matters.

Recommendation 26: An industry level discussion relating to a so-called "risk culture" will assist institutions in developing their risk-based approaches.

ML/TF risk assessment

Recommendation 27: It should be recognised by all stakeholders that ML/TF risk management is not an exact science and that country and institution level risk frameworks and process should be viewed as a work in progress.

Recommendation 28: A source of reference for the development of risk assessment methodologies should be available to institutions. This should be updated when necessary and should keep pace with changing country and AML/CFT circumstances. In this regard, it reasoned that there would be aspects of ML/TF risk methodologies that will not be competitive in nature and there will be benefits from the development of generic source of reference (ideally private sector developed and regulatory authority endorsed). Standards could be developed in a manner that builds on existing frameworks such as COSO and ISO31000.

Recommendation 29: The country risk assessment source of reference that is established should include a high level description of how the following variables may be used to assess risk: Product; Delivery channel; Client; Geography; and Transactions profile.

Recommendation 30: An industry supported initiative to undertake a detailed analysis of remittances-related ML/TF risk variables will provide the support needed to avoid inappropriate compliance responses and thereby limit unintended consequences on financial inclusion.

Recommendation 31: Industry standards or guidance should specifically recognise the level of assurance that is required by institutions in respect of compliance with AML/CFT requirements and ML/TF risk.

Recommendation 32: The use of new data sources in undertaking client due diligence and in ML/TF risk assessment processes should be encouraged and consideration should be given to establishing frameworks that will enable appropriate access to data. These processes will be easier to undertake and the efficiency thereof will be improved as a result. However, this needs to be accompanied by privacy and data protection measures and should be supported by data governance standards and effective supervision thereof. The civil and political implications / cost should be considered in relation to access to data.

Recommendation 33: Value would be derived where information relating to crime and the proceeds of crime is available to institutions to inform the risk responses that they put in place.

Recommendation 34: There should be appropriate generalised feedback to institutions in support of the risk-based approach of these institutions, i.e. relating to the regulatory reporting that is submitted to the FIC by institutions.

Recommendation 35: Consideration should be given to how data is governed in the country. This should include a focus on the establishment of data standards, a data association, and a data regulator, i.e. enabled through the development of data regulatory requirements and the appropriate supervision thereof.

Risk appetite and tolerance

Recommendation 36: The development of AML/CFT risk management standards, ideally led by the private sector and supported by regulatory authorities, will provide a platform for institutions to benchmark against leading practice, e.g. along the lines of the COSO or ISO frameworks. The AML/CFT risk management standards should build on existing standards and should address risk frameworks and processes, as well as risk appetite and tolerance. This should be an enabling framework rather that specifications that amount to rules. They should not compromise the achievement of AML/CFT objectives.

Recommendation 37: It is suggested that it would be advisable to undertake a detailed "coal-face" study of real-world circumstances in the region in light of ML/TF risk profiles that exist and to develop a deep and broad understanding of AML/CFT challenges and opportunities. Where this is done taking a long view of the factors that will contribute towards both improved financial integrity and financial inclusion, a clearer "big-picture" view will emerge. Governance considerations at country and institutional levels will be relevant in this regard.

Recommendation 38: Clear guidance and agreement about lower risk scenarios and appropriate risk responses will contribute towards limiting the potential for inappropriate de-risking by institutions. This should be developed in a manner designed to encourage appropriate risk responses taking into account governance principles.

Compliance in smaller organisations

Recommendation 39: There would be value in facilitating a sound understanding of the governance dynamics that will play out in future, specifically focused on smaller organisations. This could be done during the industry workshops referred to above.

Recommendation 40: Support for the development of an understanding of practices that will underpin the achievement of AML/CFT principles would assist smaller organisations in framing their compliance responses.

Customer due diligence requirements and other laws

Recommendation 41: An initiative to assess and, where required and feasible, improve the reliability of RICA data would assist institutions in developing their due diligence responses in a risk-based approach.

Recommendation 42: An initiative that is designed to identify FICA and RICA harmonisation opportunities, and that provides a platform for achieving improved due diligence in the light of the new risk-based paradigm,

will improve the outlook for the achievement of objectives in both regulatory regimes. This should ideally involve policy makers, regulators, supervisors and other stakeholders in respect of both FICA and RICA. The success of the project will depend on top-level support from the relevant government departments.

Supervision and enforcement

Recommendation 43: The dynamics that are reflected in the FinMark Trust 2011 research relating to conservative compliance responses remain relevant and should be considered in the design of a regulatory framework. Where there is a shared vision of success between policy makers, regulators, supervisors and institutions, this is likely to positively position the role that is played by the regulatory authorities.

Recommendation 44: The impact that supervisors have on institutions should be considered in the implementation of the FIC Amendment Act, i.e. in light of risk-based approach dynamics. This will include the following matters: The expectations of supervisors relating to the new risk-based approach to the regulation of AML/CFT in view of the factors that impact on compliance responses of institutions; Development of risk management and compliance programmes; and What institutions will be fined, sanctioned or penalised for.

Cost of compliance

Recommendation 45: Consideration should be given to further developing the costing methodology that is included in the study report. This will, amongst other things, provide perspectives that will be relevant to understanding the cost-related impact of the risk-based approach in respect of products and services that enable financial inclusion.

Recommendation 46: The high-level costing model that was developed as part of the study could be used to encourage a conversation relating to the cost impact (of the new AML/CFT regulatory regime) in relation to financial inclusion. In particular, there should be a focus on the incremental costs needed to develop and maintain the capacity required for a risk-based approach and the potential for cost savings where due diligence and other efficiencies can be achieved should be addressed.

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Abbreviations/glossary

The following abbreviations are used:

AML	Anti-Money Laundering
CFT	Counter Terrorist Financing
CDD	Customer Due Diligence
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Centre Act 38 of 2001
FPPO	Foreign Prominent Public Official
JMLSG	Joint Money Laundering Steering Group
ML	Money Laundering
MNO	Mobile Network Operator
DPIP	Domestic Prominent Influential Person
POCA	Prevention of Organised Crime Act 121 of 1998
POCDATARA	Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004
POPI	Protection of Personal Information Act 4 of 2013
PRECCA	Prevention and Combating of Corrupt Activities Act, 12 of 2004
RBA	Risk-Based Approach
RICA	Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002
TF	Terrorist Financing
UIDAI	Unique Identification Authority of India