



FINANCIAL INTELLIGENCE CENTRE

SUMMARY OF OBSERVATIONS FROM THE STAKEHOLDERS' SATISFACTION SURVEY: THE LEGAL PRACTITIONERS SECTOR JANUARY 2019

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1. Introduction

The Financial Intelligence Centre (FIC) is Namibia's Financial Intelligence Unit entrusted with, amongst others, the supervisory efforts aimed at:

- a. monitoring various sectors to understand the level of FIA compliance and thus Money Laundering, Terrorism Financing and Proliferation Financing (ML/TF/PF) risk mitigation;
- b. to the extent possible, take reasonable measures to enhance FIA compliance and relevant ML/TF/PF risk mitigation; and
- c. avail the Anti-Money Laundering, Combating the Financing of Terrorism and Proliferation Financing (AML/CFTP) Council with reasonable assurance on the level of FIA compliance and thus ML/TF/PF risk mitigation in such sectors under its supervision.

As part of its supervisory efforts, the FIC values and encourages an open exchange of ideas with relevant stakeholders. Constant engagements in the form of feedback and comments are a major cornerstone of this exchange.

The FIC embarked on this exercise to assess the level of satisfaction amongst Accountable and Reporting Institutions with the FIC's performance as the AML/CFTP supervisor. Part of the reason was to gain an insight on stakeholder expectations and how the FIC is performing in terms of fulfilling same. The purpose of this report is thus to reflect on the outcomes of such survey and, where need be, avail some guidance on issues raised by stakeholders and find ways to enhance supervisory activities.

2. Objectives

The key objectives of the survey were to determine whether the FIC's:

- a. supervisory activities have assisted in enhancing ML/TF/PF risk mitigation and ultimately result in effective compliance with the FIA;

- b. supervisory activities have not unduly impeded the efficient operation of business in supervised sectors;
- c. communication with the regulated entities is clear, targeted, timely, concise and effective (helpful);
- d. interventions or remedial actions are effective and proportionate to identified risk exposure;
- e. compliance and monitoring methods are streamlined and coordinated; and
- f. monitoring and supervision actively contributes to the continuous improvement of Namibia's AML/CFTP regulatory and complementing frameworks.

In addition to the above, recommend policy and legislative reforms to effectively address and mitigate identified risks.

3. Executive Summary

Legal Practitioners provide services that are generally vulnerable to potential ML abuse. It is for this reason that they are captured under the FIA as Accountable Institutions that need to have effective measures in place to mitigate ML/TF/PF risk exposure. The World Economic Forum identified the use of professional facilitators as one of two key enablers of money laundering, alongside the related activity of concealing beneficial ownership through complex corporate and trust structures for the purpose of illicit financial transactions.¹ Locally, the FIC has seen how the services of legal practitioners can be abused through the creation of complex structures to hide beneficial owners in legal persons (trusts, companies). Equally, the risk of abusing services such as conveyancing to hide or move proceeds of crime remains a trend in reports filed with the FIC. Legal practitioners remain crucial stakeholders in ML/TF/PF combatting efforts. The sectoral feedback on the combatting framework's supervisory activities is thus highly appreciated. This will assist the FIC, as its AML/CFTP supervisor to guide and facilitate supervisory

¹ World Economic Forum, Global Agenda Council on Organized Crime, Organized Crime Enablers, July 2012

processes better. This will in turn assist the sector to manage its risk exposure effectively and efficiently.

Overall, feedback provided by the Legal Practitioner's sector indicates that the legal firms have a general understanding of the FIC's mandate and their FIA obligations. Most of the law firms find the FIC's publications and industry specific guidelines to be helpful and useful.

FIA compliance assessments are a major compliance monitoring and supervision tool which the FIC uses to gain reasonable assurance on the level of AML/CFT/CPF control effectiveness. The majority of firms indicated to be generally satisfied with the manner in which such assessments are conducted, with the level of consultations being good.

In furtherance of the mandate mitigate ML/TF/PF risk exposure, the FIC has a need to walk 'hand-in-hand' with the Legal Practitioners' sector and all other sectors under its supervision.

This report presents a summary of outcomes from the supervisory survey and provides clarity on some pertinent observations, in an effort to advance the said mandate.

4. Methodology

The survey was carried out through soliciting data in the form of responses qualitatively. A survey questionnaire was shared with forty Legal Practitioners identified as exposed to the highest ML/TF/PF risks in the sector. These are Legal Practitioners that offer inherently high risk services such as conveyancing transactions and creation of legal persons, as captured in the FIA. Owing to the risk exposure, these forty Accountable Institutions are subjected to FIC compliance monitoring and supervision measures more than others that generally render services which present low or minimum ML/TF/PF risks. It is worth noting that twenty-one Accountable Institutions responded to the questionnaire,

resulting in a response rate of 53 percent. The analysis herein therefore needs to be considered with this limitation in mind.

The survey was structured to focus on the following areas of concentration:

- General understanding of the FIA and FIC;
- FIC publications and industry specific guidelines; and
- FIC compliance assessments

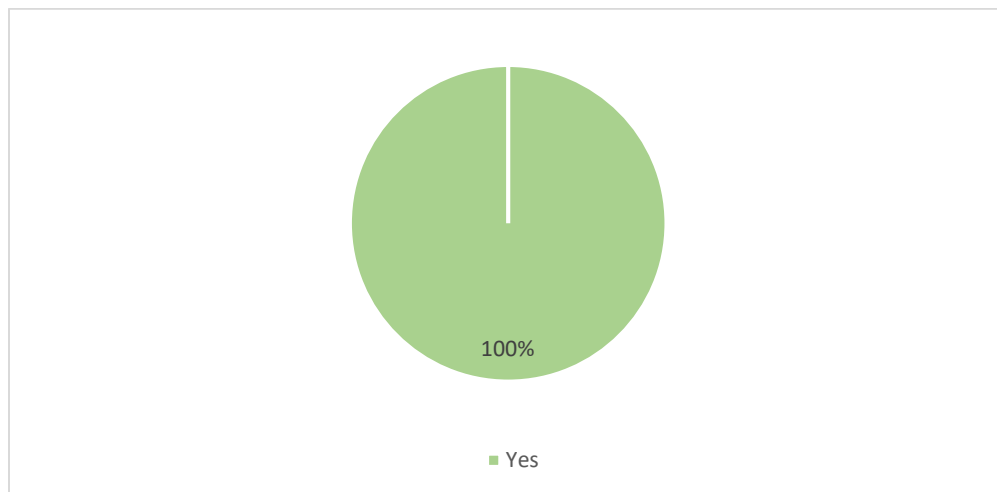
Responses from the survey questionnaire were collated, analysed and this report presents a summary of the output thereof.

5. Summary of survey observations

5.1 General understanding of FIC and the FIA

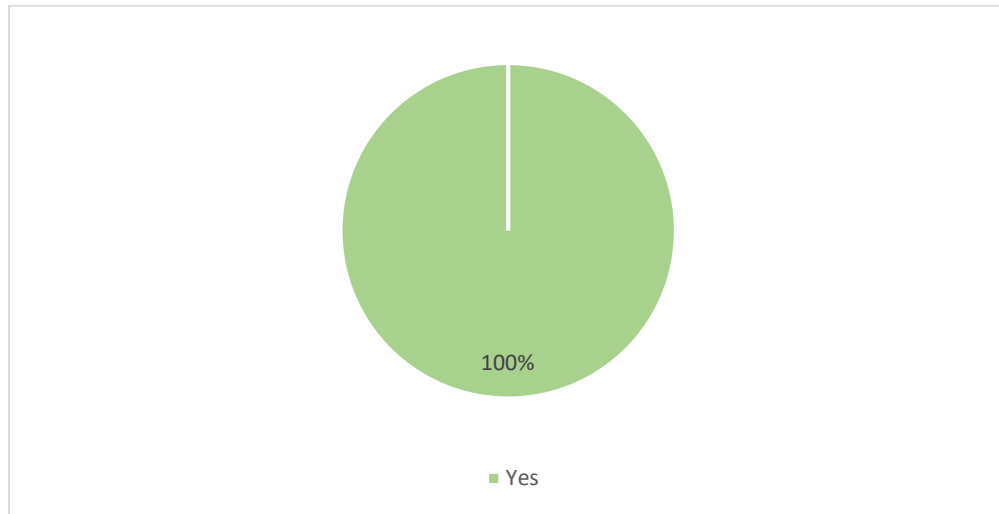
The introductory part of the questionnaire focused on the Legal Practitioner sector's general understanding of the FIC and its mandate. Below is a summary of responses in this regard:

5.1.1 Graph 1: Awareness of the existence of the FIC



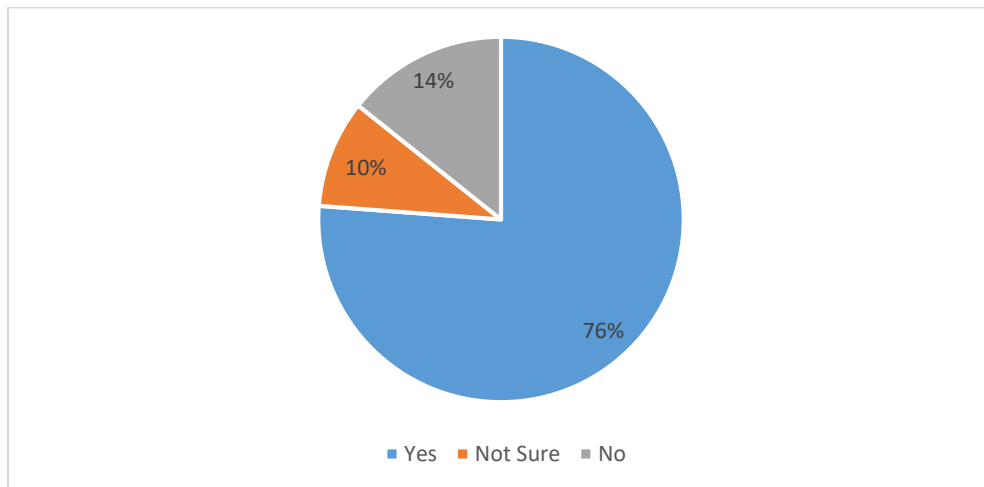
100 percent of respondents indicated that they are aware of the existence of the FIC.

5.1.2 Graph 2: Awareness of the functions and mandate of the FIC



100 percent of the respondents indicated that they are aware of the functions and mandate of the FIC.

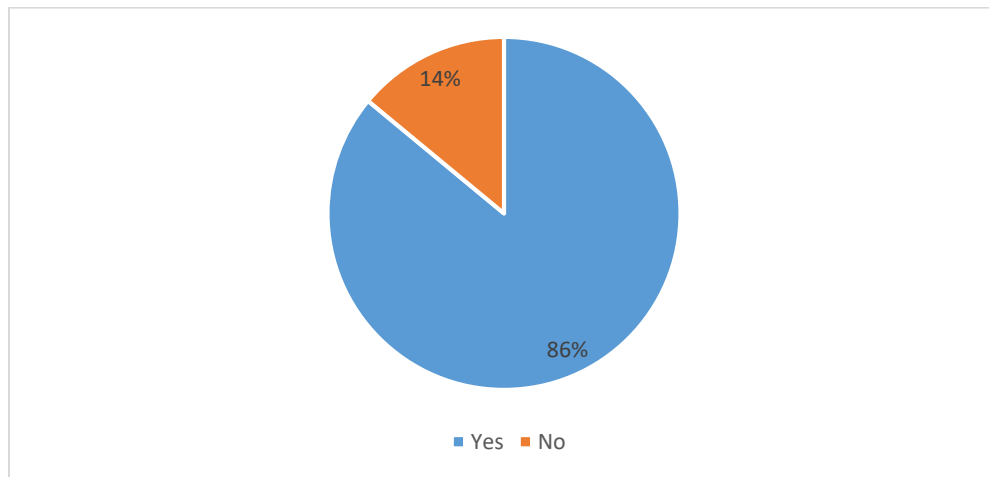
5.1.3 Graph 3: Exposure to some form of AML/CFTP training [e-training, telephonic guidance, internal or external AML capacity building session(s)]



In an effort to enhance compliance, the FIC offers training upon request. In terms of the FIA, all Accountable Institutions have an obligation to ensure that relevant staff members involved in mitigating ML/TF/PF risks are trained or have the necessary capacity to assist in risk mitigation.

In terms of this study, 76 percent of respondents indicated that they have received or attended an AML/CFTP awareness training or similar guidance and capacity building activities. This is a good indicator. However, given that this study was primarily aimed at the portion of the sector inherently exposed to high ML/TF/PF risks, the FIC finds it prudent to increase training coverage in all (100%) high risk institutions.

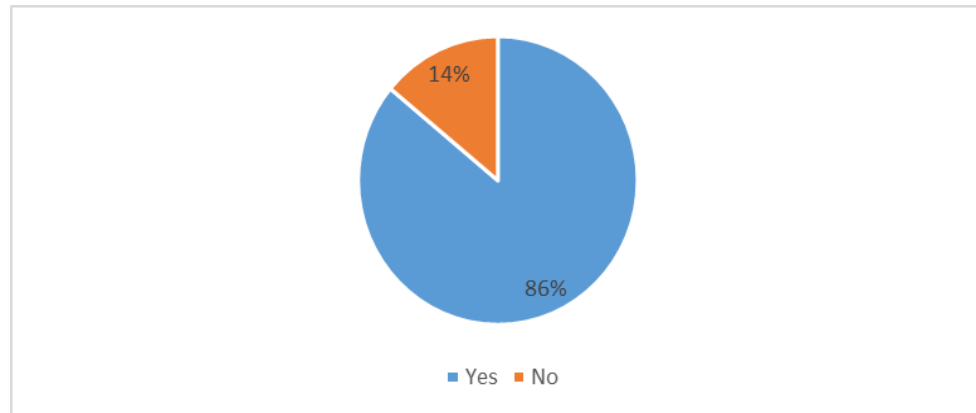
5.1.4 Graph 4: Accessing the FIC website



Most of the FIC's formal communications, Guidance and Directives are published on the FIC website. The aim of evaluating the stakeholder experience on their usage of such website is to understand satisfactory levels from same and if need be, implement measures to enhance the usefulness thereof.

The study observed that 86 percent of the respondents have accessed the FIC website. Some of the 14 percent that have never accessed the FIC website stated that they were not able to access the website, and further informed that the FIC does not respond to any queries, nor does the FIC's website work. There have been some concerns raised relating to non-accessibility of the website at various times on recent years. These are challenges the FIC has attended to and still continues to respond to.

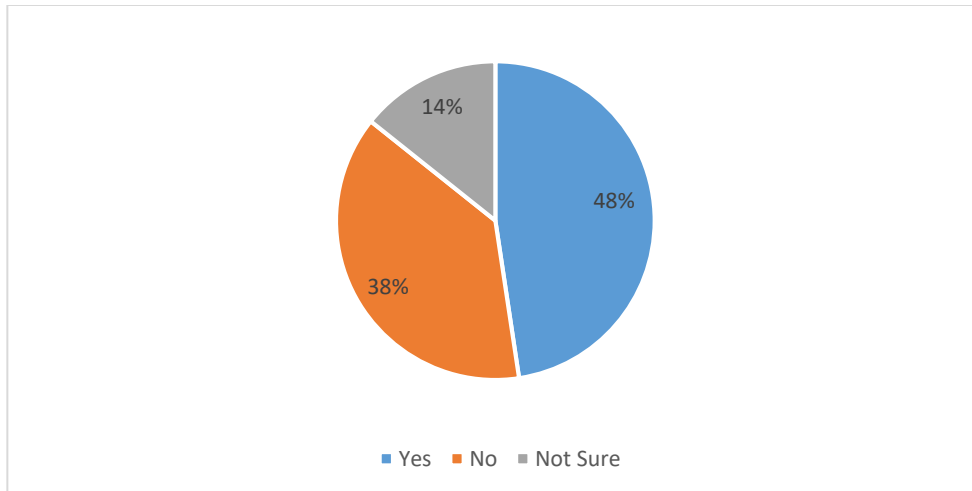
5.1.5 Graph 5: Awareness of all FIA obligations pertinent to an Accountable (AI)



From supervisory activities conducted such as compliance assessments, the FIC has learnt that the level of understanding and appreciation of the FIA in an Accountable Institution often has a bearing on the effectiveness of ML/TF/PF risk mitigation controls in such institutions.

As per above, 86 percent of the respondents indicated that they are aware of their FIA obligations. The remaining 14 percent has indicated that they are not sure at this point in time. Part of the 14 percent further commended that the FIC should create more exposure in newspapers to keep the public informed.

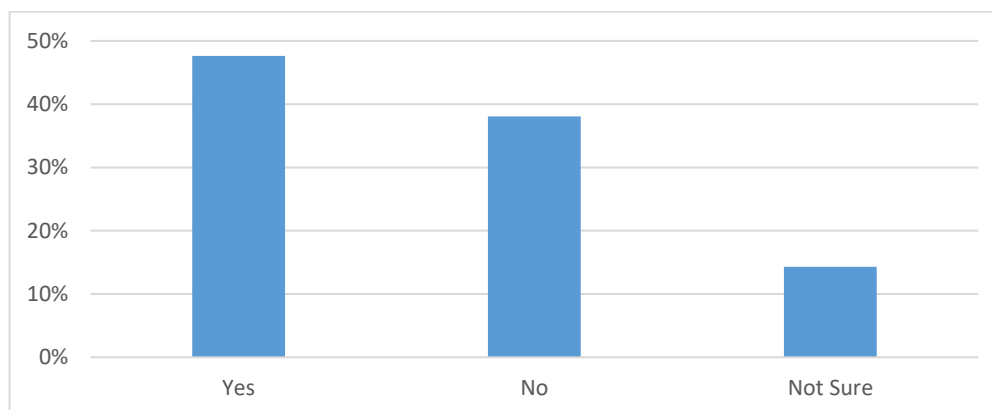
5.1.6 Graph 6: Reporting Suspicious Transaction Reports (STRs) or Suspicious Activity Reports (SARs) to the FIC



AML/CFTP systems are generally designed and implemented to enable the detection of reportable transactions in the form of STRs and SARs. The level of an institution’s AML/CFTP effectiveness can thus be said to be premised on its ability to detect and ensure prudent reporting of such STRs and SARs to the FIC.

In this sector, 38 percent have never reported any of the two reports as per the graph above. No reasons were availed as to why no reports were filed during the feedback session held in October 2018.

5.1.7 Graph 7: Reporting Cash Threshold Reports (on cash transactions above NAD 99 999.99) to the FIC



The expectation, which came into effect in January 2015 is that all Accountable Institutions report to the FIC all transactions in which cash amounts involved exceed NAD 99 999.99.

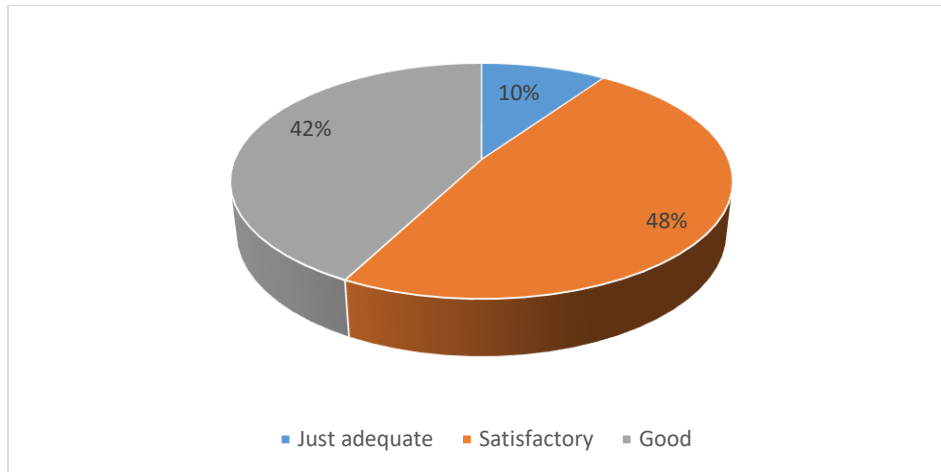
The survey responses indicate that 48 percent of the respondents have reported CTRs to the FIC while 38 percent have never reported such. Some institutions indicated that they are comparably smaller in size and do not receive huge cash amounts as such are paid via EFT into their bank accounts. The FIC in turn has also made this observation via the on-site FIA compliance assessments that many Legal Practitioners do not accept cash at their premises, and that the clients are rather referred to make such deposits into the institution's bank accounts. These factors could be attributed to the relatively lower level of CTR reporting from the sector.

5.2 FIC publications and industry specific guidelines

This section deals with the Legal Practitioners' view on the helpfulness of FIC publications and guidance provided mostly via the FIC website and directly via email communications.

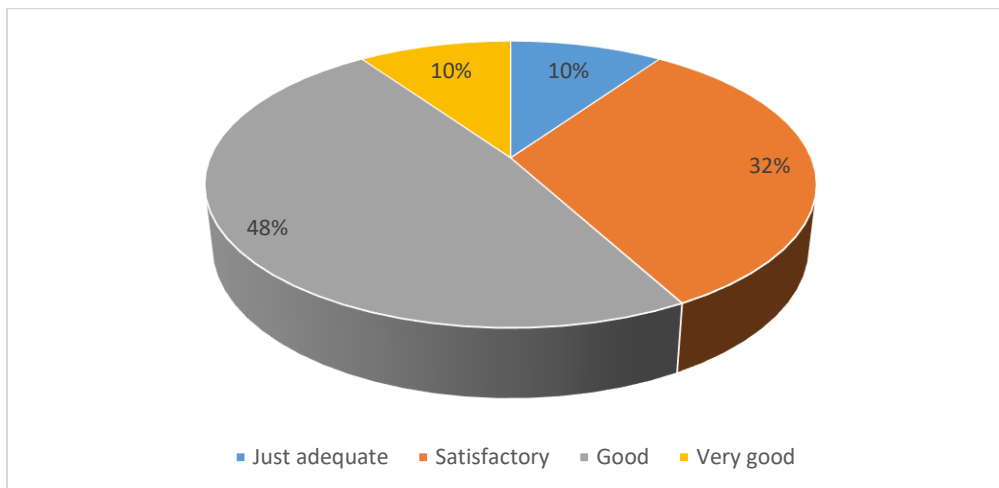
On average, the respondents rated the usefulness of the FIC publications and guidance provided as 'Good' and 'Satisfactory'. Unfortunately, no responses were availed for the poor ratings, despite several attempts to solicit such contributing factors. Below is a summary of the various responses in this regard:

5.2.1 Graph 8: Helpfulness of the FIC website



In this sector, 10 percent rated such level of helpfulness as ‘Just adequate’ and the reasons availed are that at times the FIC is not accessible.

5.2.2 Graph 9: Helpfulness (clarity and conciseness) of the publications and industry specific guidelines issued by the FIC

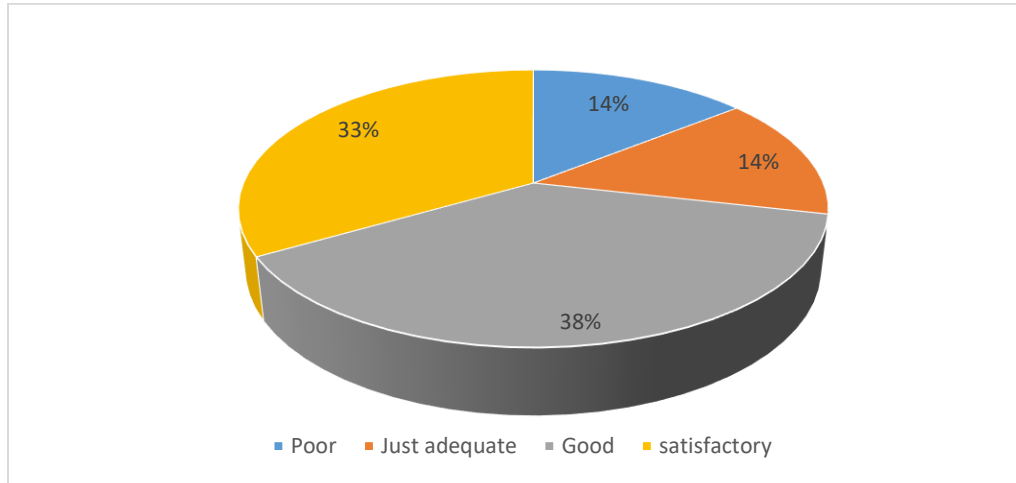


A significant number of respondents felt that the FIC’s publications and industry specific guidance are helpful. The following were the responses recorded:

- a. 32 percent of the respondents find such to be ‘Satisfactory’;
- b. 48 percent indicated that such is ‘Good’;
- c. 10 percent rated it as ‘Just adequate’; and

d. Another 10 percent rated same as 'Very good'.

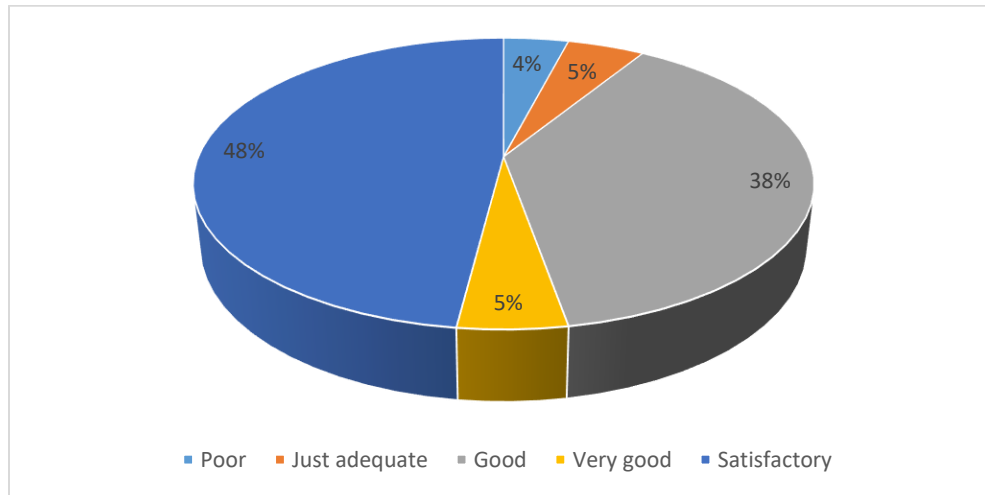
5.2.3 Graph 10: The level of consultation by the FIC before issuing Circulars, formal Guidance, Directives or typology reports etc.



The FIC often consults as widely as possible and seeks inputs on relevant matters before issuing formal Circulars, Guidance Notes or similar documents with the aim of enhancing FIA compliance. Such consultations are needed to enhance the buy-in of stakeholders and enable the publishing of documents which have incorporated the views of affected stakeholders. Consequently, the quality of such guidance notes are enhanced when adequately consulted on.

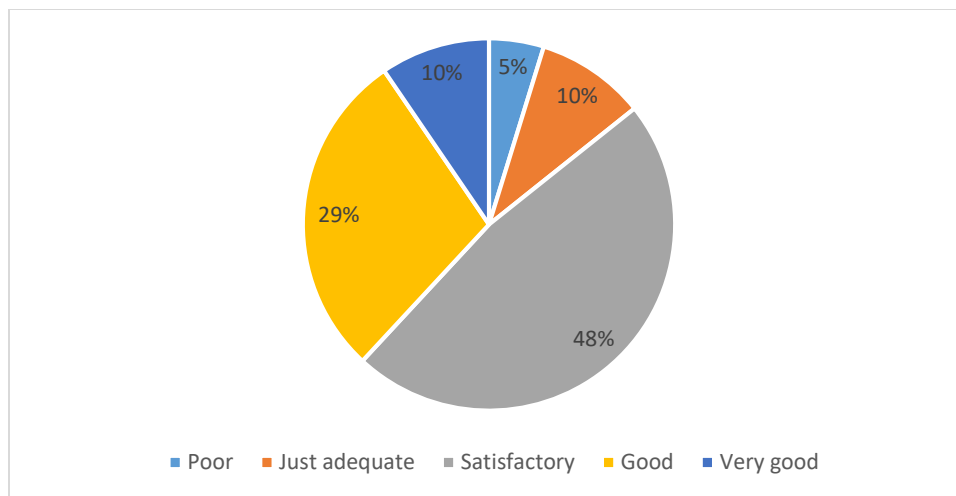
In this regard, 38 percent of the respondents felt that the FIC's level of consultations before issuing Circulars, Guidance, Directives or typology reports is 'Good', while 33 percent is of the opinion that it is 'Satisfactory'. However, 14 percent of the respondents felt that the level of consultation is 'Poor.' The reason availed for the poor rating was that the FIC does not publish industry specific guidance that are relevant to the sector. During the feedback session held, the Legal Practitioners requested for industry specific publications which may include but not limited to compliance findings and other typologies in the sector.

5.2.4 Graph 11: The FIC publishes up-to-date guidance and technical reference material on its website in a format which is user friendly



Some of the of the respondents (48 percent) felt that the FIC publishes up-to-date guidance and technical reference material on its website in a user friendly format, while 38 percent felt that these publications are 'Good'. It is worth noting that 4 percent felt the publications are 'Poor'. Reasons for such poor ratings were not advanced.

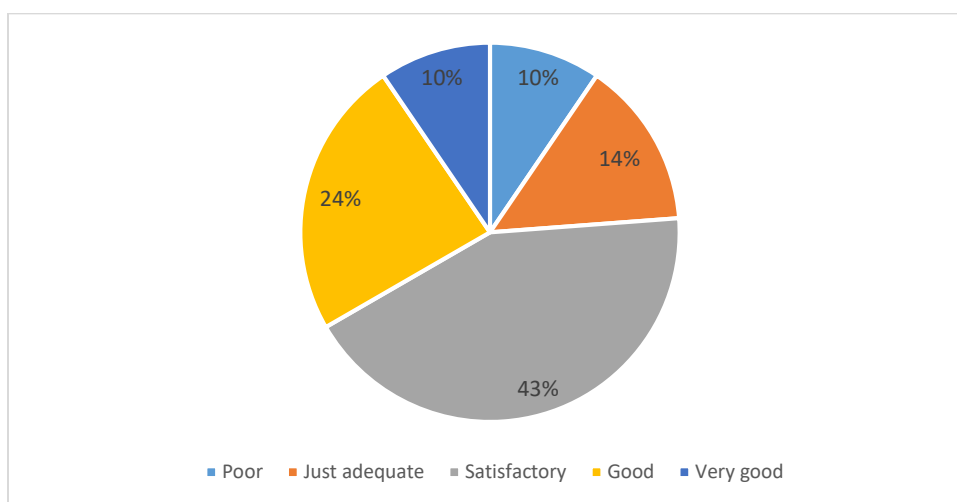
5.2.5 Graph 12: Assessing the FIC's web registration process for AIs



All Accountable Institutions are required to register with the FIC online via the GoAML platform. This registration enables the ease with which such institutions can be readily engaged by the FIC for compliance monitoring and other FIA compliance related matters.

In terms of this survey, 10 percent of respondents consider such online registration process to be 'Very good'. On the other hand, 29, 48, 10 and 5 percent rated the registration process as 'Good', 'Satisfactory', 'Just Adequate' and 'Poor' respectively. No reasons were accordingly provided for such responses. The general comments from the sector was that the compliance officers normally complete the manual registrations and do not effect registrations online.

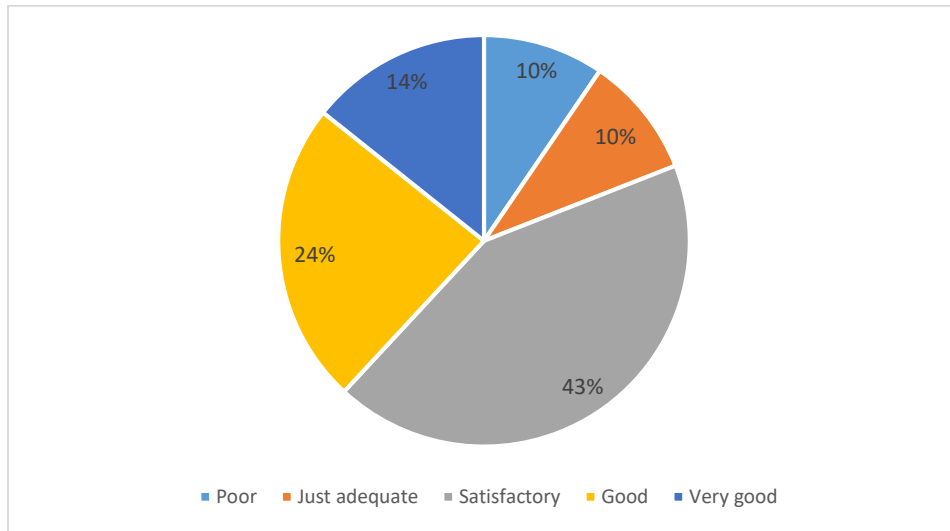
5.2.6 Graph 13: The ease of reporting STRs or SARs to the FIC



The ease with which Accountable Institutions find the experience of filing a STR/SAR with the FIC can have a bearing on the quality of STRs/SARs received. It is therefore important that such experience is appreciated by those who make use of it.

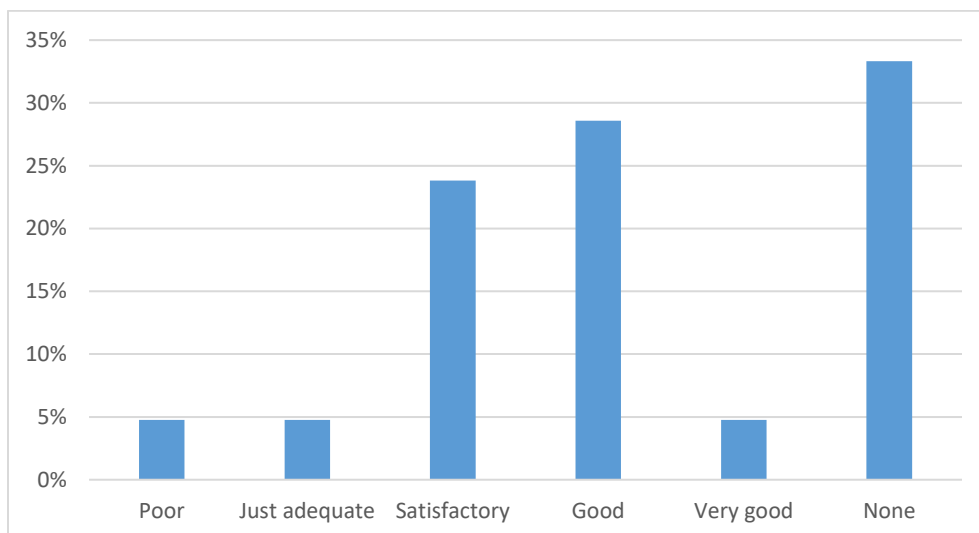
The outcomes indicate that 43 percent of respondents find the reporting of STRs and SARs to be 'Satisfactory', while 10 percent felt it is very easy. As depicted in the chart above, only 10 percent of the respondents felt that the reporting of STRs and SARs is 'Poor' or needs improvement. The reason availed was that *"The FIC website login does not work"*.

5.2.7 Graph 14: The ease with which CTRs are reported to the FIC



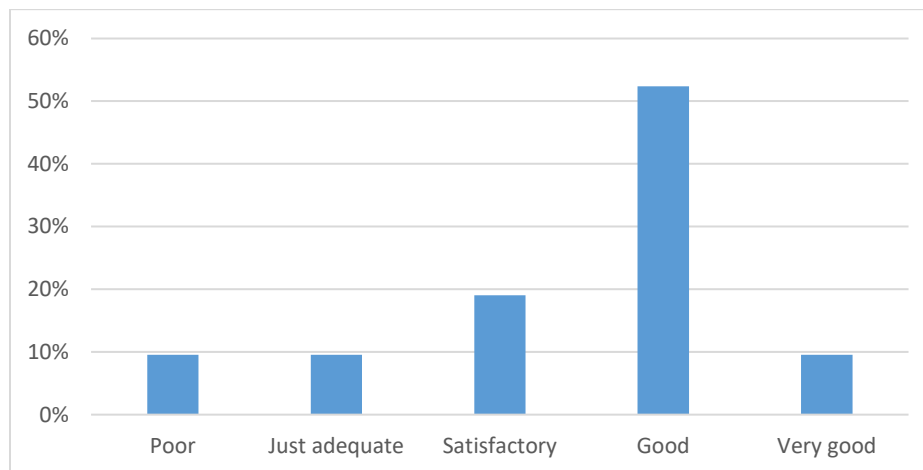
Similar to the reporting of STRs and SARs, most of the respondents indicated that the reporting of CTRs is quite easy, while 10 percent are of the view that the process is not easy, and more training needs to be availed to the industry in this regard.

5.2.8 Graph 15: Helpfulness of training you had with the FIC



Many (35 percent) of the respondents have not received training from the FIC. On the other hand, 5 percent of respondents felt that the training provided by the FIC is 'Very good'. A need was expressed for the FIC to create more "public awareness".

5.2.9 Graph 16: Whether the feedback and recommendations given by the FIC are transparent, consistent and in a timely manner



A significant aspect of the FIC's FIA compliance monitoring and supervision activities entails availing feedback and recommendations during and especially after a compliance assessment (inspection). This is mostly contained in the FIA compliance assessment reports.

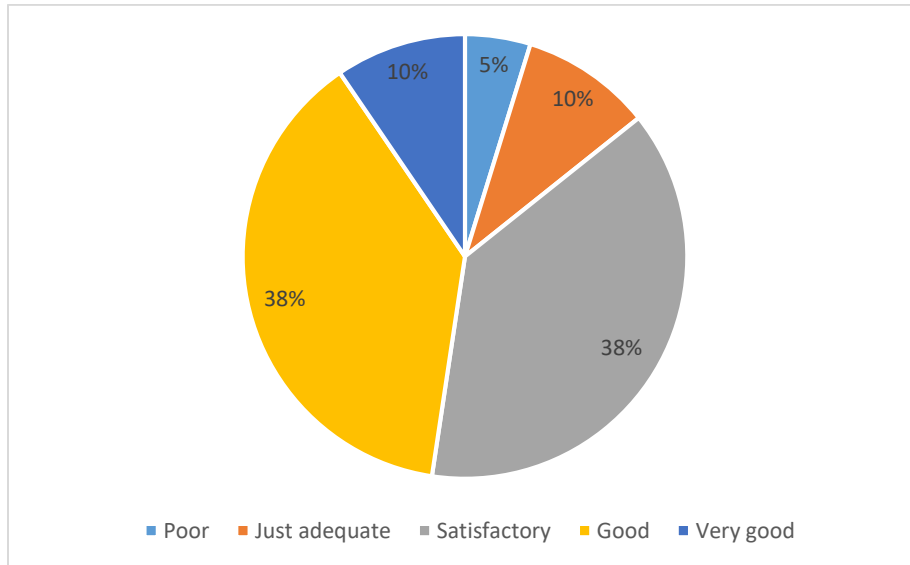
A significant number of respondents opined that the level of transparency, consistency and timeliness of advice and recommendations provided by the FIC was either 'good', 'very good' or 'satisfactory'. The study also revealed that 20 percent are of the view that it is 'just adequate' or 'poor'. No reasons were accordingly availed for the poor ratings by respondents during the feedback sessions.

5.3 FIA Compliance Assessments

This section deals with the FIA compliance assessments conducted by the FIC in an effort to gain reasonable assurance on the level of effectiveness of AML/CFTP controls within

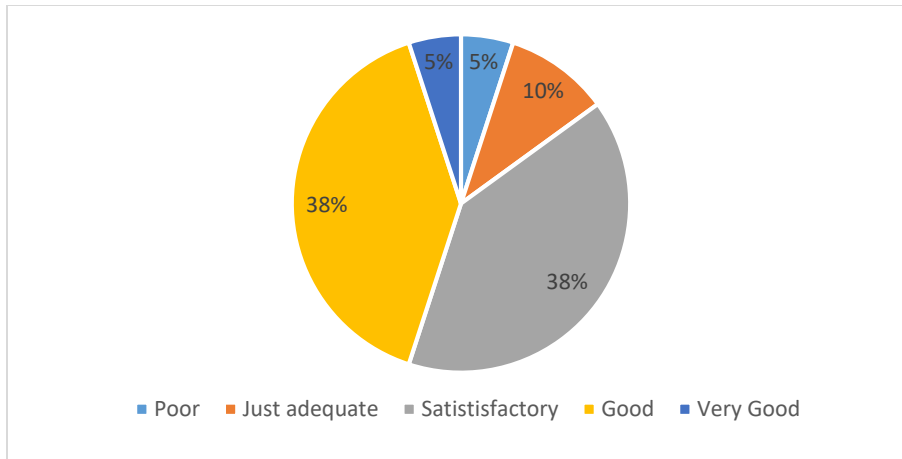
Als. Observations indicate that on average, the respondents are satisfied with the way the FIA compliance assessments are conducted. Below is a summary of responses in this regard:

5.3.1 Graph 17: The period of notice given to arrange the compliance assessment (Notice before onsite activities commence)



Generally, a significant number of the respondents indicated that the notification period given to prepare for FIA compliance assessments is sufficient. This is supported by 38 percent who opined that the notice period given is ‘Satisfactory’ while the other 38 percent rated same to be ‘Good’. It is worth noting that 5 percent opined that same was ‘Poor’. No reasons were availed for the 5 percent rating in this regard during the feedback session held.

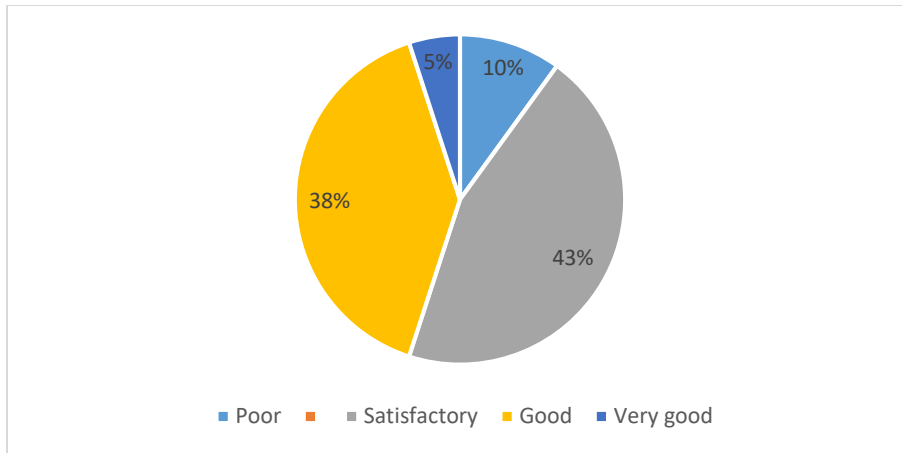
5.3.2 Graph 18: The compliance analysts’ understanding of AI’s systems and operational activities



The essence of executing a supervisory compliance assessment lies in understanding what the regulated populace is trying to achieve, how they are going about achieving same and advise or intervene to offer guidance on effecting regulatory expectations. FIA compliance analysts therefore always commence with efforts to understand the nature of operations before executing assessments of such, in order to understand the level of compliance. A sound understanding also enables a supervisory body to avail practically efficient guidance which considers the nature of operations.

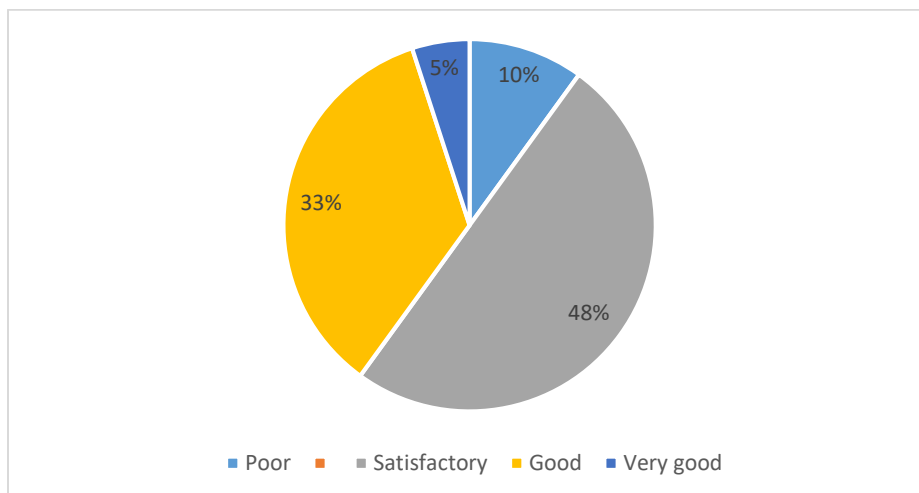
Overall, the majority (76 percent) of respondents indicated that the compliance analysts have either a 'Good' or 'Very Good' understanding of the Legal Practitioners' systems and operational activities. On the other hand, 5 percent perceive the compliance analysts' understanding to be 'Poor'. No reasons were advanced to support this rating during the feedback session held.

5.3.3 Graph 19: Efficient execution of compliance assessments with minimum disruptions



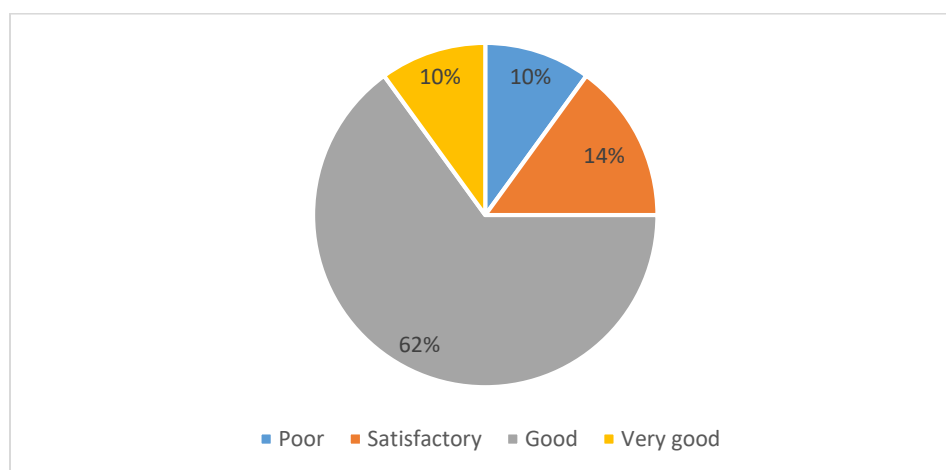
The aim was to understand whether the execution of FIA compliance assessments create operational disruptions and, where applicable, the extent of any such disruptions caused by the FIC’s supervisory activities. Overall, respondents appear satisfied with the execution of the FIA compliance assessments in this regard. It appears from the results (as indicated in the graph above) that the FIA compliance assessments are conducted with minimum or no disruptions of operational activities in the sector, with the exception of 10 percent indicating that it was ‘Poor’ (or disruptions were experienced) in this regard. Although no reasons were availed in this regard, the FIC plans to embark on a root cause analysis to better understand potential room for improvement.

5.3.4 Graph 20: The level of consultations during the assessment



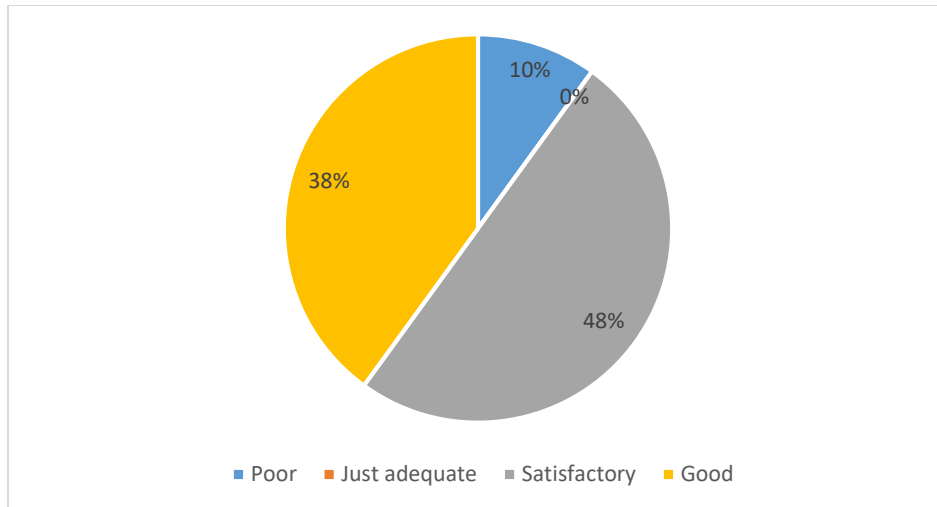
The level of consultation between the compliance analysts from the FIC and the assessed institution, in as far as the assessment is concerned was mostly rated as 'Good' and 'Satisfactory' as per the graph above. 48 percent of the respondents felt that the consultation between the parties is 'Satisfactory while 10 percent felt it was 'Poor'. Again, no reasons for such poor ratings were availed.

5.3.5 Graph 21: The compliance assessments are carried out professionally and objectively



Most of the respondents rated the professionalism and objectivity of the compliance assessments as 'Good', while 10 percent rated same as 'Poor'. Reasons for the poor rating were not availed in this regard during the feedback sessions held.

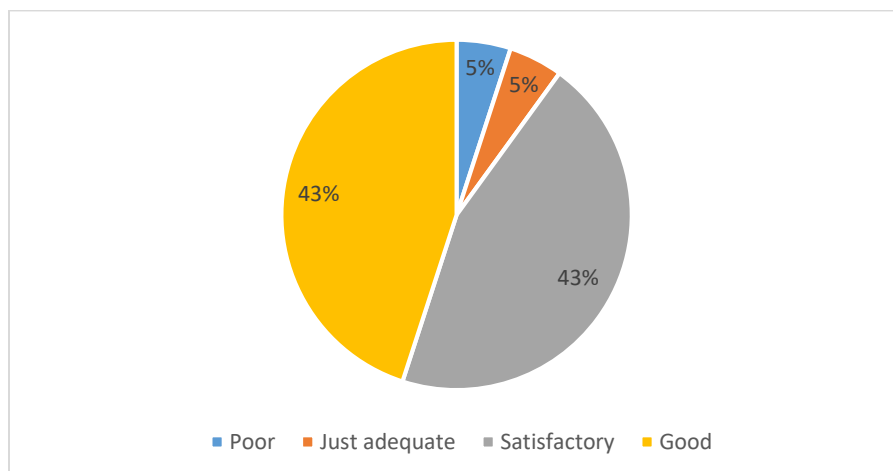
5.3.6 Graph 22: The draft report and/or exit meeting addresses the key issues and is usually relevant



At the end of every compliance assessment, the FIC presents major observations or findings to the assessed entity. Usually, these discussions are guided by a draft report or similar guidance. This further enables the discussion and agreement of positions to be adopted in the final FIA compliance assessment reports.

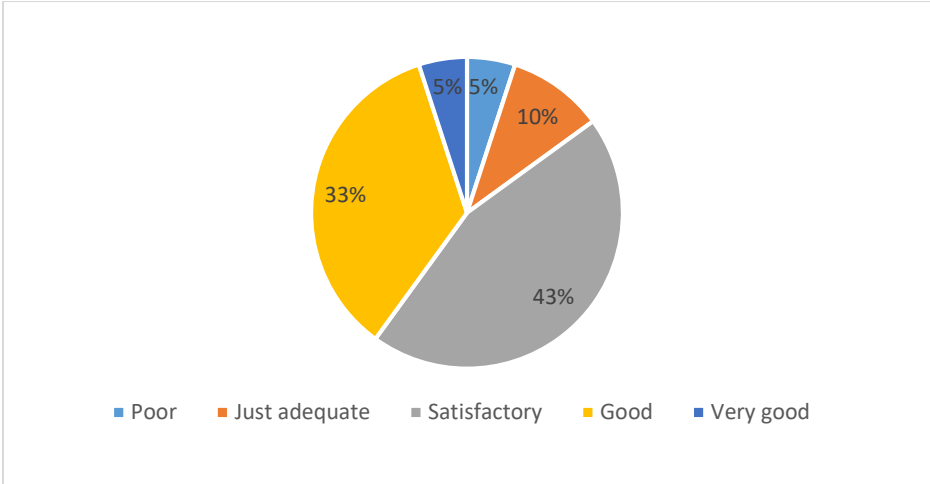
Overall, most of the respondents indicated that the draft reports and exit meetings always address the key issues and such meetings are relevant. The graph above reflects the effectiveness and efficiency of such exit meetings and draft reports as far as assessed entities are concerned.

5.3.7 Graph 23: Whether AIs are granted an opportunity to comment on findings made



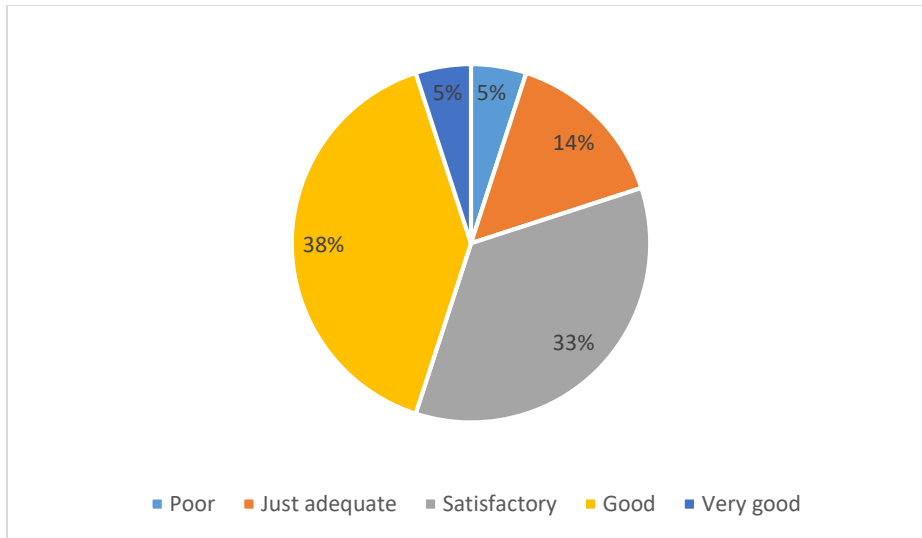
Apart from exceptional circumstances as may be determined by the FIC, before assessment reports are finalised, FIC compliance assessment procedures dictate that assessed institutions be afforded an opportunity to avail inputs, correct inconsistencies and avail relevant comments or guidance. Overall, the respondents appear to be satisfied with the opportunity they are granted to comment on the FIA compliance assessment findings, before such are finalized in the FIA compliance assessment reports.

5.3.8 Graph 24: Clarity and conciseness of the final assessment report



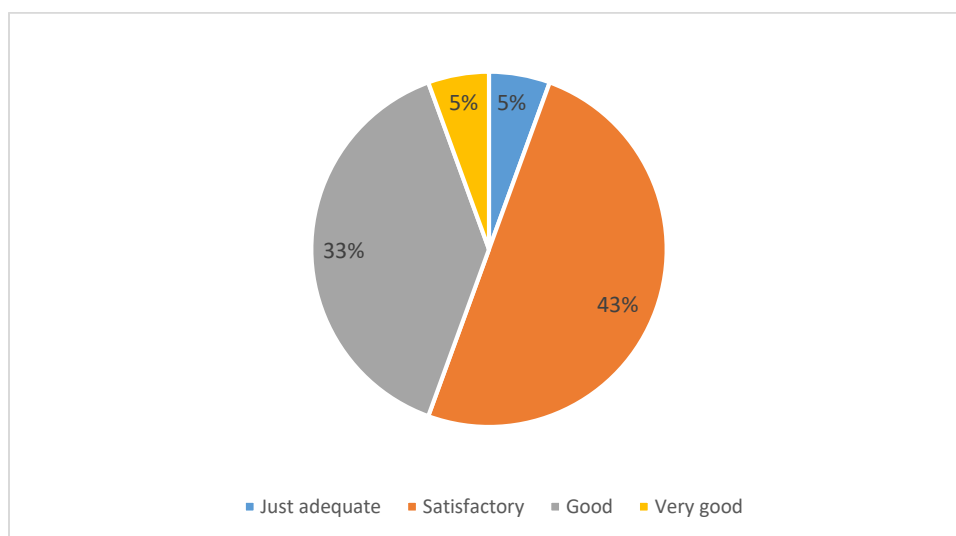
As per the graph above, a significant number of respondents are satisfied with the level of clarity and conciseness of the FIA compliance assessment reports issued. Only 5 percent of the respondents rated the level of clarity and conciseness as 'Poor'. The reasons for such poor ratings were however not availed during the feedback session.

5.3.9 Graph 25: The timeliness with which the final report is issued



Overall, the respondents appear to be generally satisfied with the timeliness of the issuance of the final FIA compliance assessment reports. As per graph 25, 38 percent of the respondents rated the timeliness of the reports as ‘Good’, while 33 percent rated same as ‘Satisfactory’.

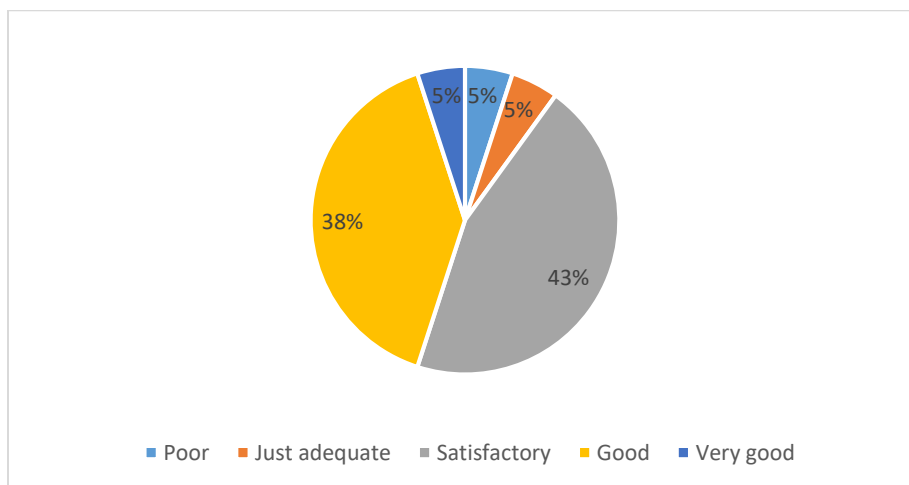
5.3.10 Graph 26: The recommendations in the final report will/have improved AI controls and/or effectiveness



The aim of conducting assessments is to ensure practical and effective guidance is shared which enables the implementation of effective ML/TF/PF controls. Such guidance is shared through recommendations in reports.

The common ratings indicate that recommendations provided by the FIC have improved controls and risk mitigation effectiveness in the sector. 43 percent of the respondents rated this element as 'Satisfactory' and 33 percent rated same as 'Good'.

5.3.11 Graph 27: The period availed to Legal Practitioners to respond to the compliance assessment findings and to supply periodic progress reports



The graph above sums up the Legal Practitioners' view with regards to the period they are granted within which to respond to the FIA compliance assessment observations and findings. Overall, the sector indicates that the period is sufficient, as 38 percent rated such period to be 'Good', while 43 percent rated same to be 'Satisfactory'.

6. General observations

6.1 Summary of areas that may need improvements

This section presents a summary of the major observations from survey response. The following general observations were noted as areas that need improvement:

- a. The number of STRs filed by the Legal Practitioners are low as there are some institutions that are not reporting suspicious transactions. Observations from FIA compliance assessment reports in the sector indicate that sectoral reporting behavior could be enhanced;
- b. There are still some institutions that have never reported CTRs;
- c. 14 percent of the sector indicated that the consultation by the FIC with the sector, before issuing of Circulars, formal Guidance and various reports is not good enough;
- d. 10 percent of the respondents indicated that the reporting of CTRs is not easy;
- e. 5 percent of the respondents still find the FIC trainings unhelpful;
- f. 5 percent felt that the FIA compliance assessment reports are not concise and clear enough;
- g. 5 percent of the respondents felt that the compliance analysts do not understand their systems and operations; and
- h. 10 percent indicated that the level of consultation during the assessment is "Poor".

The section below provides some of the reasons advanced to support poor ratings.

6.2 Respondents' views and reasons as to why some areas need improvements (reasons for poor ratings)

While the FIC is pleased that most respondents recorded a certain level of satisfaction with its supervisory activities, it remains committed to taking deliberate measures aimed at enhancing stakeholder experience of its supervisory activities. It is only through a satisfied stakeholder that the entire AML/CFTP framework can meaningfully advance. Below are the a few considerations which informed the poor ratings cited above:

- 6.2.1 communication channels with the FIC are not good enough;
- 6.2.2 the FIC does not avail/publish known successes such as statistics in order to encourage the combating of money laundering;
- 6.2.3 inadequate AML/CFTP public awareness: some respondents are of the opinion that the FIC does not do enough to promote public awareness, e.g., through the

media. This is perhaps to enable the ease with which members of the public can be subjected to FIA due diligence measures when engaging legal practitioners;

6.2.4 respondents opine that the FIC has not compiled a manual outlining FIA obligations for the sector which could enhance compliance;

6.2.5 some respondents indicated that *“the website does not work and are unable to reset passwords”*;

6.2.6 *“Accountable institutions should be seen and treated as partners in order to combat illegal activities together”*;

In addition, respondents availed the following recommendations:

6.2.7 the need for industry specific training especially on new trends. This will improve compliance and make the supervision and monitoring process effective; and

6.2.8 a limitation to file reports (STRs) as they are not allowed to deliver the reports manually (hand deliveries) or via fax.

7. Respondents’ position in terms of areas that require improvements

Based on the outcomes of the survey, the FIC held a feedback session on the 10th October 2018 to enhance understanding on some of the low rated aspects in the survey. During the session, the sector gave comments such. The following is a summary of the points raised in the meeting with the sector:

7.1 The sector requested that when there are publications i.e. guidance notes, directives which are applicable to them, such should be shared with the Law Society of Namibia (LSN) to ensure that such information reaches everyone;

7.2 The sector acknowledged receiving FIA training from the LSN, however, they such to be insufficient and they requested the FIC to offer refresher trainings;

7.3 Some AIs indicated that they have never received feedback from the FIC after submitting their compliance programs;

7.4 The sector expressed a need for some regular engagement platforms with the FIC and the LSN;

7.5 Some AIs want a tailored AML Compliance Program to be send to the LSN and shared with every registered Legal Practitioner;

7.6 The sector requested for an industry publication which may include all compliance assessment findings and typologies in the sector; and

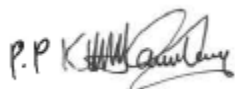
7.7 Participants requested that the LSN be included in the UNSC mailing list.

8. Conclusion

The FIC would like to thank the Legal Practitioners for the time taken to respond to the survey and attend the October 2018 feedback session.

Although the majority of respondents indicated a general level of satisfaction with the FIC's compliance monitoring and supervisory activities, it is clear that there is still room for improvement in some areas of FIC supervision. Specifically, emphasis on AML/CFTP public awareness, AI training on general compliance and reporting procedures were highlighted. The FIC is studying these areas and will employ an action plan to positively impact on supervisory activities in such areas.

The working relationship between the FIC as regulator and the Legal Practitioners as supervised entities has enabled the building of a FIA compliance framework within the sector and by extension nationally. This exercise was a stepping stone towards understanding challenges in this framework, in our continued efforts to improve such.



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