



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

JULY 2023

ISLE OF MAN TRUST AND CORPORATE SERVICE PROVIDER THEMATIC REPORT

BUSINESS RISK ASSESSMENT PHASE 1 – QUESTIONNAIRE

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1 Glossary of terms

AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
Authority	The Isle of Man Financial Services Authority
BRA	Business Risk Assessment
Code	The Anti-Money Laundering/Countering the Financing of Terrorism Code 2019
CRA	Customer Risk Assessment
Handbook	The Anti-Money Laundering/Countering the Financing of Terrorism Handbook
ML/FT	Money Laundering/Financing of Terrorism
NRA	National Risk Assessment
Relevant Person	Means a person carrying on business in the regulated sector which is included in paragraphs 2(6)(a) to (t) of Schedule 4 to the Proceeds of Crime Act 2008
Registered Person	Means a person registered under section 9 of the Designated Businesses (Registration and Oversight) Act 2015
Regulated	Refers to firms regulated under the Financial Services Act 2008
TCSP	Trust and Corporate Service Provider

2 Background

2.1 Executive Summary

The Authority is currently undertaking a thematic project involving TCSPs on the Island.

The sector is considered one of the highest AML/CFT risk business areas in the Isle of Man.

The Authority initially gathered data and information on Class 4 (Corporate Services) and Class 5 (Trust Services) licenceholders (“TCSPs”) to review how relevant persons have undertaken an assessment of their exposure to risks such as ML and FT and documented in a BRA their analysis, mitigation of risks and preventative measures applied.



The Authority’s regulatory objectives are:



Securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity



The reduction of financial crime



The maintenance of confidence in the Island’s financial services, insurance and pensions industries through effective regulation, thereby supporting the Island’s economy and its development as an international financial centre

A key part in achieving these objectives is the Authority’s oversight and supervisory functions, which encompasses undertaking supervisory inspections and thematic reviews.

The planning for the thematic began in 2022 and the background was shared in a public statement released on the Authority’s website in December 2022. The Association of Corporate Service Providers Isle of Man also shared the message amongst its members. The statement notified Class 4 and Class 5 licenceholders of the upcoming thematic which was to commence in 2023.

“The TCSP sector is highlighted in the Isle of Man National Risk Assessment as one of the highest risk business sectors in the Island, and the thematic presents a great opportunity to test and evidence how licenceholders are meeting their AML/CFT challenges. In addition to increased engagement with firms during the project, we hope to discover and highlight some best practice that can be shared and fed back with the industry.”

“The thematic work also offers a chance to gain a better overview of the mix of TCSPs on the Island, as they range in size and complexity and international reach, some with customers and beneficial owners from across the globe. This will add to the Authority’s wider AML/CFT evidential understanding and picture of risk, building on from the work the Authority has recently seen with the foreign PEP thematic project.”

We hope to highlight some best practice that can be shared with industry

The thematic exercise is made up of two core phases. Phase 1 of the thematic consisted of a BRA questionnaire issued to 106 TCSP licence-holders for completion, following a selection process, as detailed below in section 2.2. This report will outline the results from this first phase, as well as the Authority's observations on the data and some subsequently identified best practice points in relation to the BRA.

The ongoing Phase 2, which commenced in February 2023, consists of desk-based inspections focusing on the BRA. The whole BRA thematic project is expected to conclude by 2024, where subsequently a Phase 2 report will be issued.

A regulated or registered person's assessment of the ML/FT risks posed by their business and customers (the BRA) is key to establishing and

maintaining a robust compliance and risk management framework to detect and prevent money laundering, terrorist financing in, or through their business.

In line with the requirements of the Code, the BRA needs to be documented, including the basis of the assessment, details of regular reviews and outcomes and any amendments made. The BRA must have regard to the relevant risks the business may face in order to provide an overarching picture of risk to be actively used and considered across the business.

To maintain risk understanding

and protection, the BRA needs to be checked regularly to ensure it is still fit for purpose, and it should be continuously worked upon and reviewed when circumstances change or new risks or threats (or threat assessments) emerge. It is important for the business' various functions and BRA to work together in a continuous feedback loop in order to be effective.

Relevant persons should also consider for each risk factor recorded within the BRA whether they should be calibrated or weighted differently, dependent on how the relevant person's views each of the various factors.

The BRA needs to be checked regularly to ensure it is still fit for purpose

2.2 Thematic Scope

Prior to the questionnaire being issued, data from all 122 regulated TCSPs was collated and analysed. Selection for Phase 1 considered the outcomes of recent supervisory inspections, as well as the data from relevant persons' AML/CFT annual statistical returns.

The Authority then excluded some TCSPs, including some businesses who had recently been inspected, and those in liquidation or surrendering their licence(s). 106 firms were selected for inclusion in Phase 1 of the thematic.

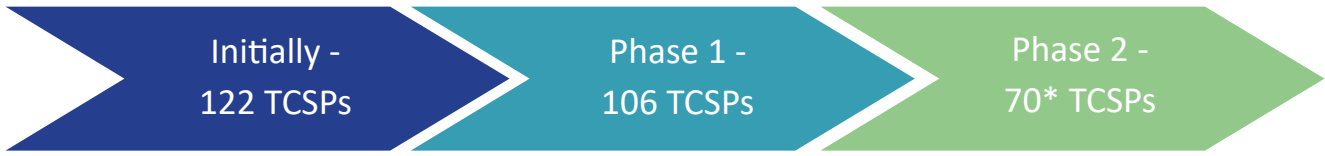
After further analysis of the gathered data against the prescribed risk parameters and the Phase 1 outcomes, an initial 70 TCSPs have been further selected to form Phase 2 of the thematic.

Phase 2 will involve focussed inspections to test and evidence firms'



compliance with the Code in relation to BRAs. Given the large scale and time this thematic will take to complete, the number of TCSPs in

Phase 2 is expected to fluctuate as the thematic progresses, where TCSPs may be added or removed as time progresses.

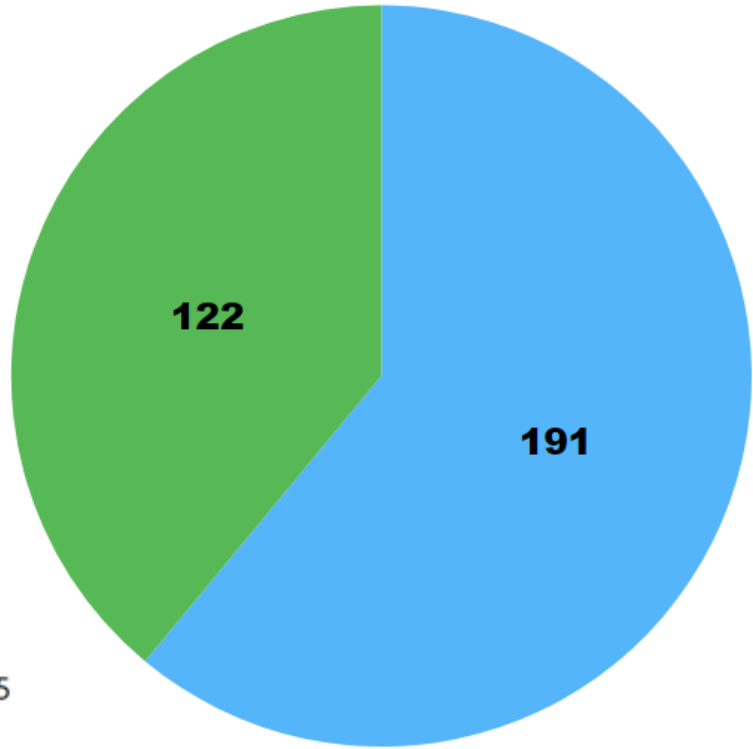


*Phase 2 is ongoing and may fluctuate; this is a provisional figure only.

Number of the Authority’s regulated licenceholders who hold a Class 4 or a Class 5 licence;

- Total relevant persons – **313**
- Class 4 or 5 licenceholders – **122**
- Relevant persons who do not hold a Class 4 or 5 licence – **191**

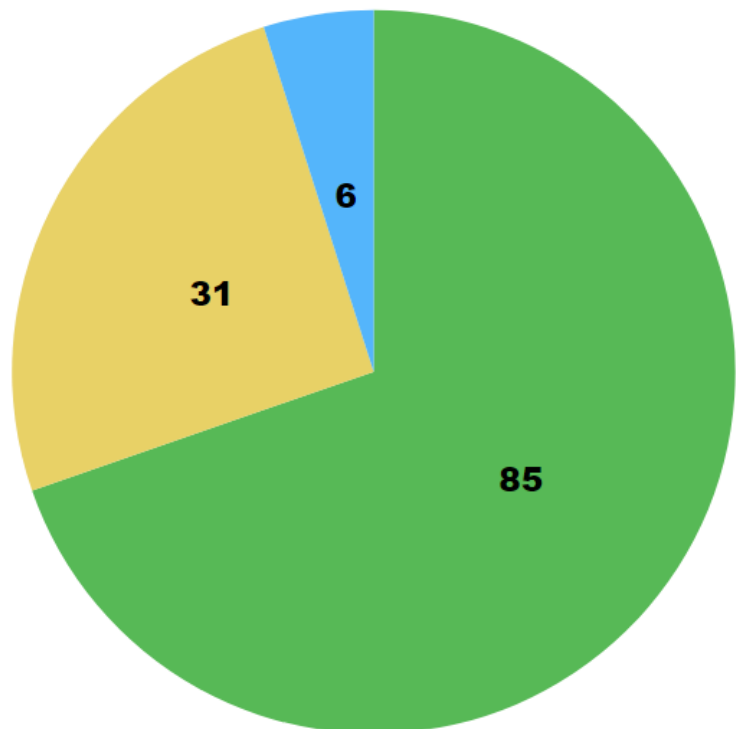
Licence
 ● Other
 ● Class 4 or 5



The data split from the Authority’s public register of those Class 4 or Class 5 licenceholders as at December 2022;

- Class 4 & 5 – **85**
- Class 4 – **31**
- Class 5 – **6**

Licence
 ● Class 4 & 5
 ● Class 4
 ● Class 5



2.3 AML/CFT Code 2019 - BRA obligations

Paragraph 5 of the Code

(5) Business risk assessment

(1) A relevant person must carry out an assessment that estimates the risk of ML/FT posed by the relevant person's business and customers.

(2) The business risk assessment must be —

(a) undertaken as soon as reasonably practicable after the relevant person commences business;

(b) recorded in order to demonstrate its basis; and

(c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.

(3) The business risk assessment must have regard to all relevant risk factors, including —

(a) the nature, scale and complexity of the relevant person's activities;

(b) any relevant findings of the most recent National Risk Assessment relating to the Island;

(c) the products and services provided by the relevant person;

(d) the manner in which the products and services are provided, including whether the relevant person meets its customers;

(e) the involvement of any third parties for elements of the customer due diligence process, including where reliance is placed on a third party;

(f) customer risk assessments carried out under paragraph 6; and

(g) any technology risk assessment carried out under paragraph 7.

Handbook quote

2.2.8 Business risk assessment

The purpose of a BRA is to assist relevant persons to understand where, how and to what extent they are exposed to ML/FT risk and which areas of their business they should prioritise in combatting ML/FT.

The BRA should form the basis of a relevant person's risk based approach and its risk appetite making clear the types of risk and the risk level the relevant person is prepared to accept.

It is the necessary foundation for determining the nature and extent of AML/CFT resources and should be used to inform the policies, procedures and controls to mitigate ML/FT risk, including decisions on the appropriate level and type of CDD to be applied in specific situations to particular types of customers, products, services and delivery channels.

Good practice in relation to conducting a BRA includes ensuring the document:

- clearly sets out the risks the firm faces in relation to customers and their activities and explains the basis of the assessment;
- is tailored to the business and risks of that particular firm;
- is informed by other risk assessments required by the Code as well as the NRA;
- provides detail on the customer base highlighting where key risks lie;
- is evidenced as reviewed and signed off by the Board/senior management of the relevant person at regular intervals;
- has input from subject or product experts from across the business;
- is shared with staff across the organisation so they can understand the ML/FT risks faced;
- has good version controls (and dated versions);
- clearly articulates how much, and what level of, risk the firm is prepared to take; and
- details what risk the firm is not prepared to take.

The Authority's AML/CFT Handbook ("the Handbook") provides information and guidance to help relevant entities consider their obligations. Section 2.2.8 offers further guidance on carrying out a BRA required under the Code.

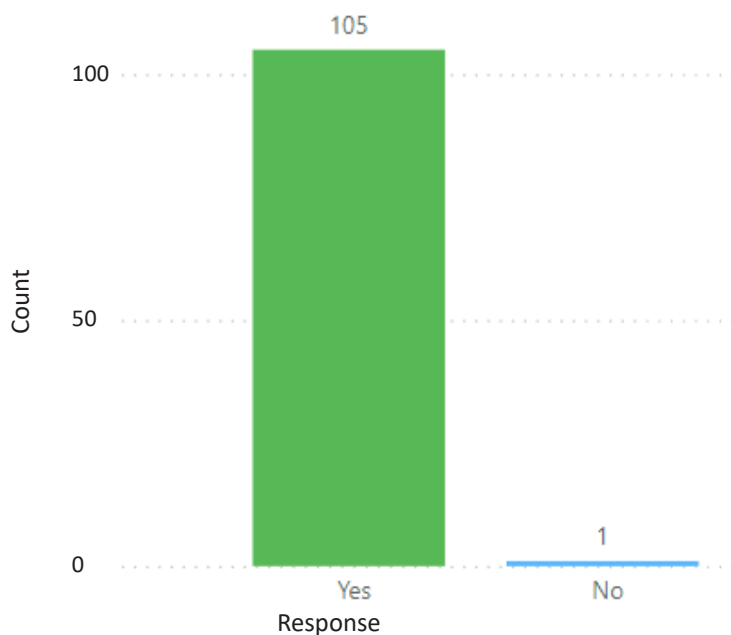
3 Phase 1 BRA questionnaire results: Key findings and observations

Question 1

Is there currently a documented BRA in place?

Of the 106 TCSPs, 105 TCSPs responded with “Yes”, confirming a documented BRA is currently in place by the relevant person. Only 1 TCSP replied with a response confirming there was currently not a documented BRA in place.

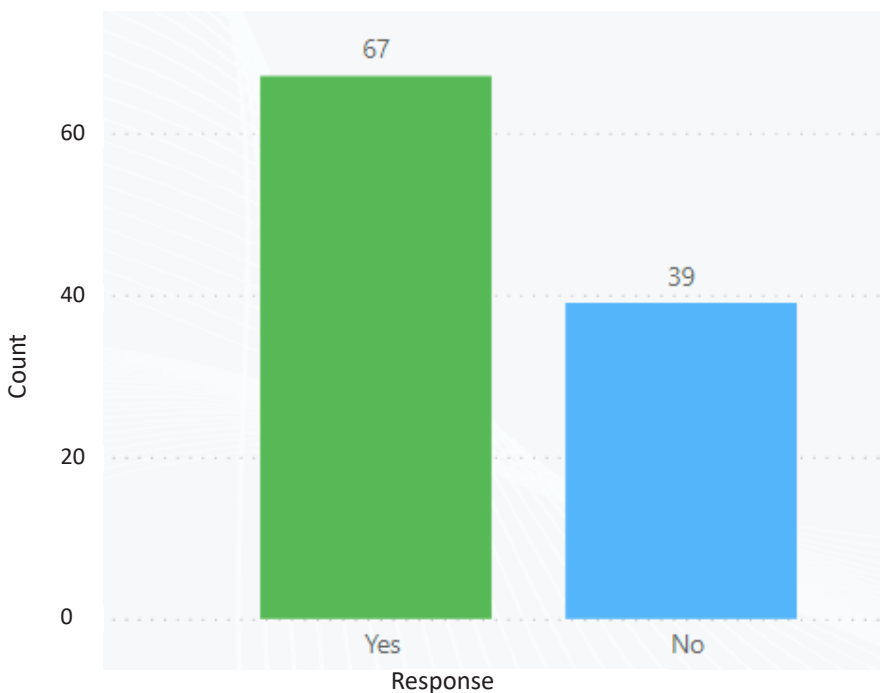
The Authority would like to highlight that all licenceholders and registered persons are obliged under the Code to ensure a documented, sufficient BRA is in place to accurately estimate and assist in managing the risk of ML/FT risk posed by the relevant person’s business and its customers. The BRA should feed into and affect all subsequent policies, procedures and controls, forming and evidencing a licenceholder’s and registered person’s approach to risk.



Question 2

Is there a policy and/or procedure in place to enable a copy of the BRA to be provided to the Authority when requested to do so?

Of the 106 TCSPs, 67 TCSPs responded in the positive with a “Yes”. This low positive response is surprising considering almost all respondents say they have a legally required documented BRA in place. In addition, as TCSPs in the IOM are obliged entities under the Financial Services Act 2008, licenceholders must have suitable IOM resident persons as Head of Compliance responsible for overseeing the firm’s compliance with regulatory requirements including AML/CFT. This includes ensuring the business has robust and documented arrangements appropriate to the size and complexity of the business. Licensed firms must also maintain records in relation to its risk management systems such as to demonstrate to the Authority that the firm complies with its AML/



CFT requirements. Licensed firms are also required to notify the Authority as soon as they are aware of a breach of any of the regulatory requirements (including AML/CFT), and set out the action it has taken to remedy the situation.

As obliged entities and as a matter

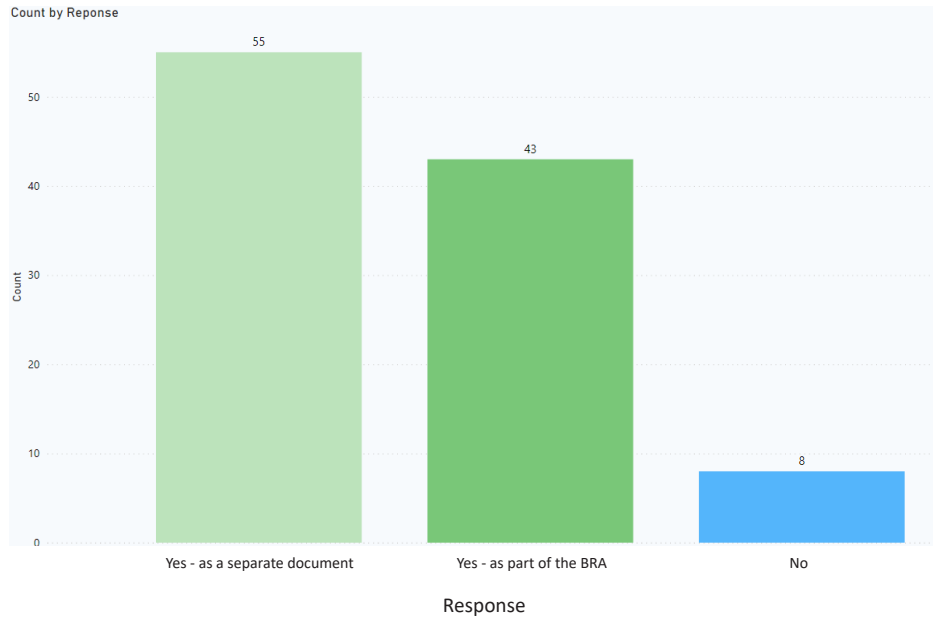
of best practice, relevant persons should ensure there is a documented policy or procedure in place to ensure the effective and timely supply of information and documentation that may be requested by the Authority to evidence compliance with the Code, as part of a questionnaire, thematic or inspection.

Question 3

Is there a documented risk appetite in place?

In total, 98 of the 106 TCSPs who took part in the Phase 1 questionnaire responded with “Yes”, confirming they had a documented risk appetite in place, with 55 TCSPs confirming a separate risk appetite statement was in place, while 43 TCSPs confirmed that the risk appetite forms part of the BRA.

8 TCSPs responded with “No”, confirming there is not a documented risk appetite in place. All relevant persons should have a documented risk appetite statement or policy separate or as part of the BRA in



place, in order to better evidence the management and control of poten-

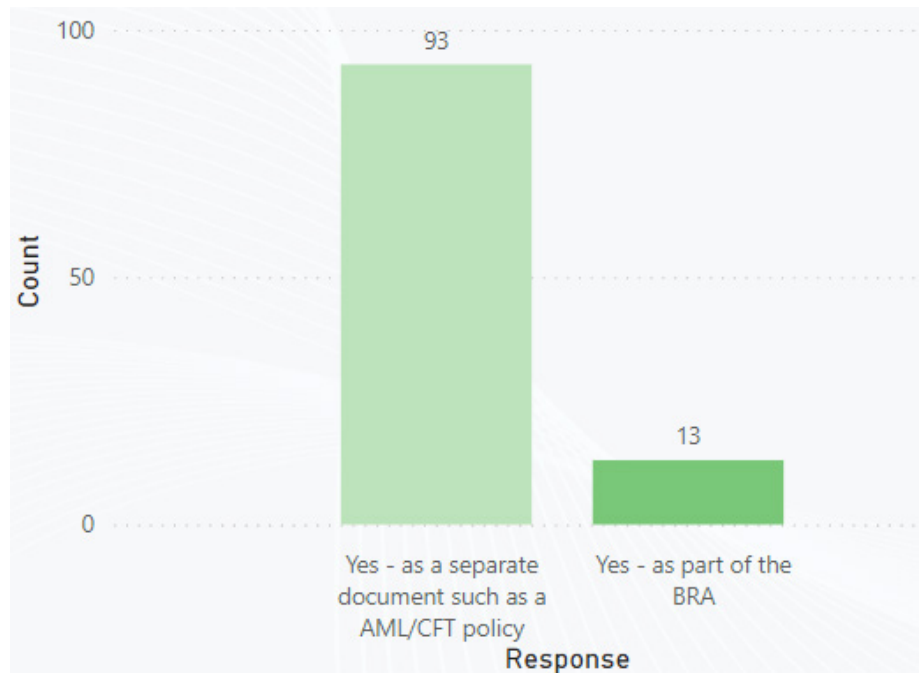
tially unwanted, high risk or out of scope business and customers.

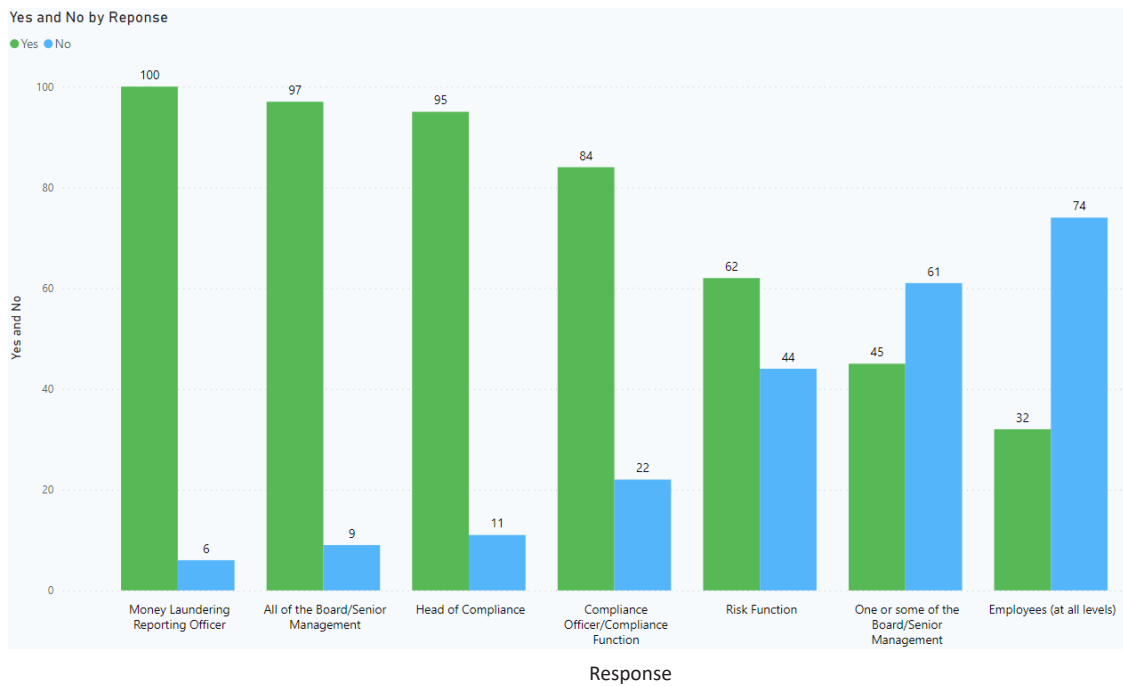
Question 4

Is there a documented AML/CFT policy in place?

All 106 TCSPs who took part in the Phase 1 questionnaire responded with a “Yes”, specifically 93 TCSPs confirmed a separate AML/CFT policy document was in place, while 13 TCSPs confirmed an AML/CFT policy is in place as part of the BRA.

All relevant persons must have a documented AML/CFT policy in place in order to evidence compliance with the various relevant paragraphs of the Code.





Question 5

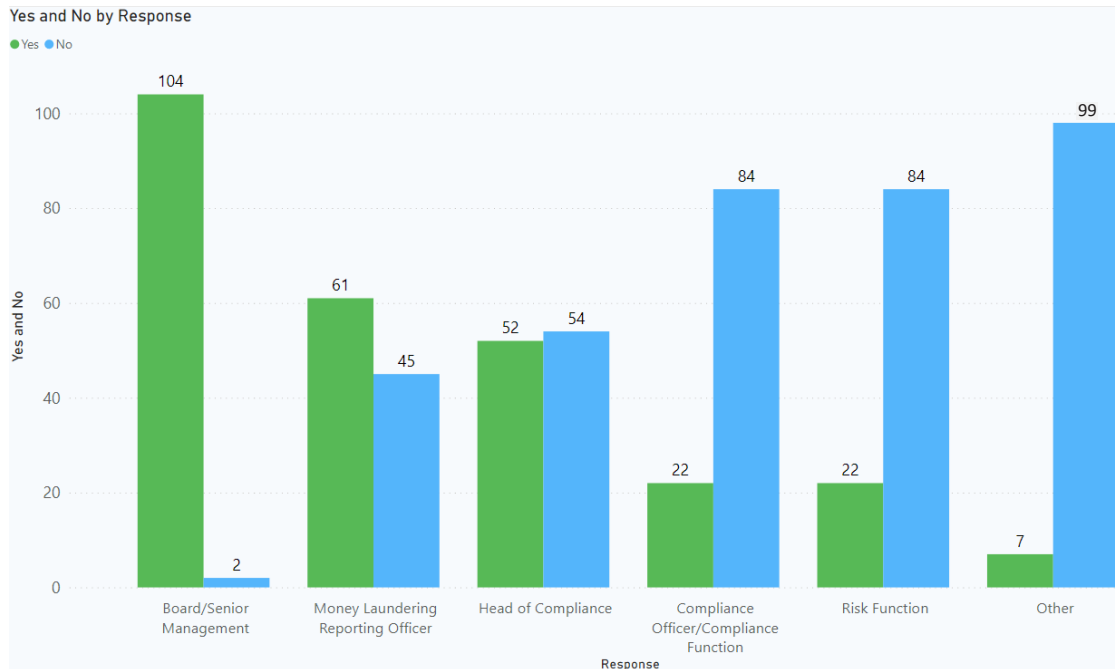
Who has input into the BRA?

The majority of TCSPs had input from the following business areas or functions in the BRA;

- All Board/Senior Management
- Head of Compliance
- MLRO
- Compliance Function
- Risk Function

The minority of TCSPs had input from the following business areas in the BRA;

- One or some of the Board/Senior Management
- Employees at all levels



Question 6

Who has responsibility for approving the BRA?

The majority of TCSPs had the following business areas or functions

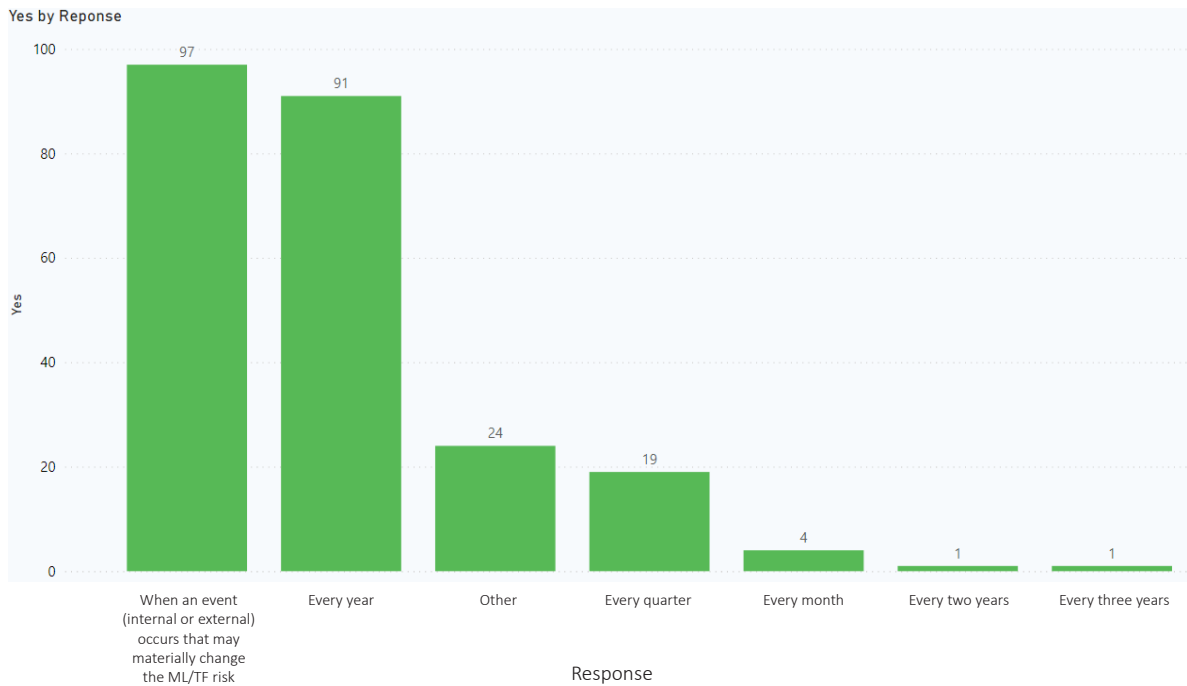
responsible for approving the BRA;

- Board/Senior Management
- MLRO

The minority of TCSPs had the following business areas or functions

responsible for approving the BRA;

- Head of Compliance
- Compliance Function
- Risk Function
- Other



Question 7

How often is the BRA scheduled to be reviewed?

The majority of TCSPs reported to operate a scheduled BRA review and update cycle which would occur every year and when events (internal

or external) occur that may materially change the proposed ML/FT risk to the business.

The Authority would like to reiterate that all reviews should be clearly documented and recorded in order to evidence compliance with the Code. This evidence could be assisted

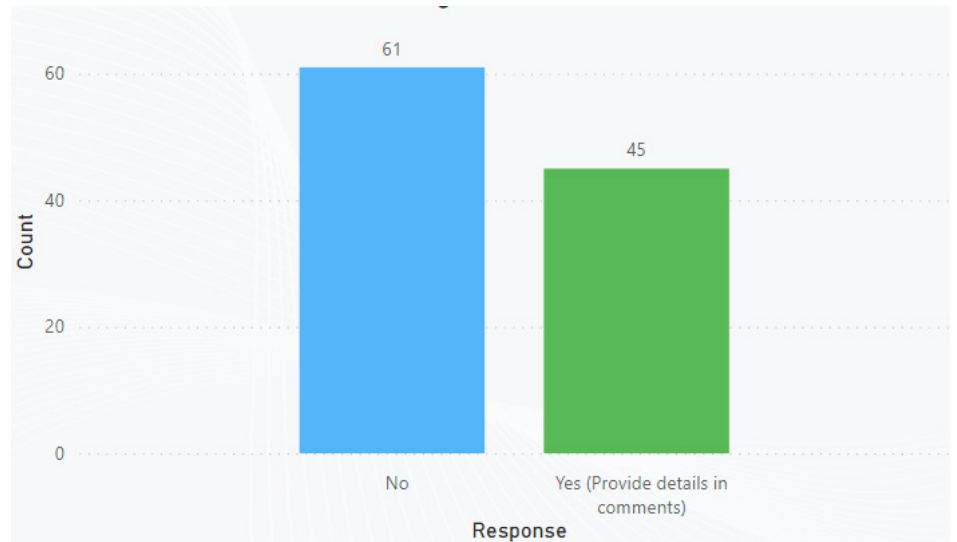
by a detailed version/control history within the BRA which could show details such as the date of review, the reviewer, the change undertaken and the senior management approval in a historic timeline/control format which is easily read and displayed to all internal or external parties.

Question 8

Have any events (internal or external) occurred in the last year which have materially changed the BRA?

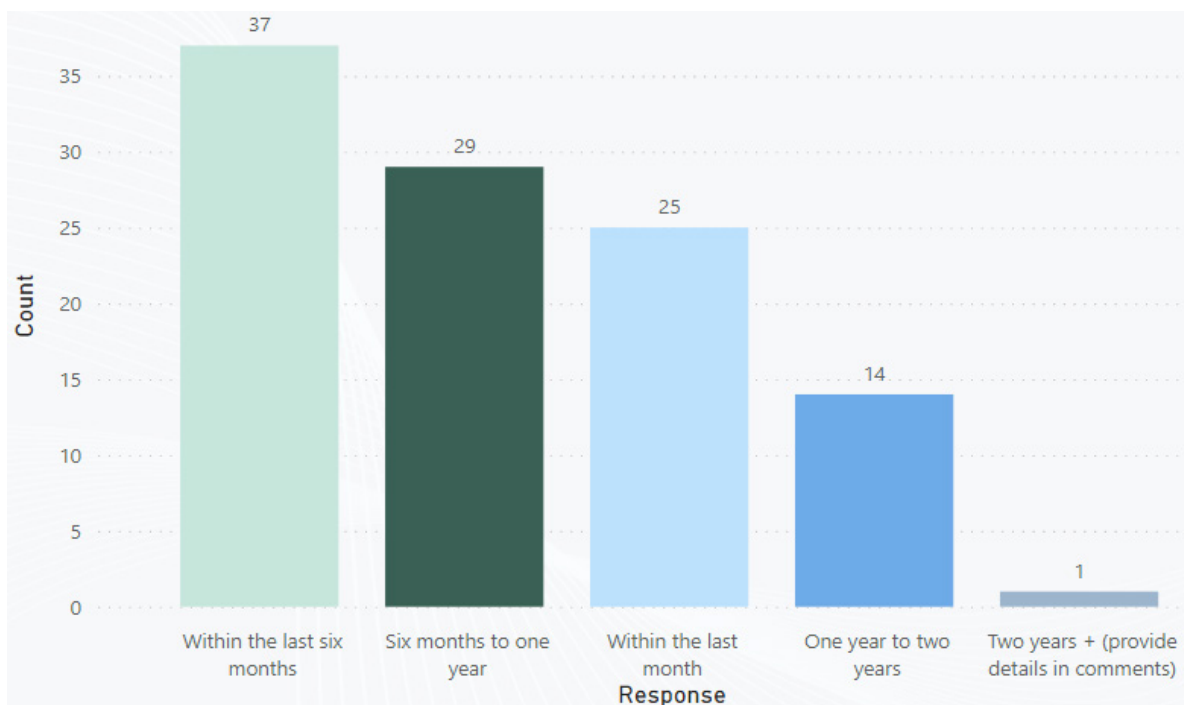
Of the 106 responses, 45 TCSPs (42.5%) declared an internal or external event has occurred in the last year which has materially changed the BRA.

The Code expects relevant persons to monitor their risks and approach throughout the year, and take prompt action if there are any deficiencies in arrangements. In addition to any routine/annual reports to senior management/the Board, the Authority would expect relevant persons to review and update the BRA on an ad-hoc basis, specifically, at the occurrence of an event or when circumstances or information



changes that could affect the posed risk of ML/FT. This helps evidence a strong robust compliance program and is in line with paragraph 5(2) (c) and paragraph 30 of the Code. Alongside this, annual reports to the Board/ senior management of the

firm are required on the adequacy of the AML/CFT policies and procedures including the BRA, and anything that has changed in the year in terms of the business, or in ML/FT risks more generally which are relevant to the firm.



Question 9

When was the BRA last approved?

Of the 106 responses, 15 TCSPs stated that the BRA was last approved over one year ago, with 1 licenceholder last approving a BRA over two years ago. In order for the BRA to be effective, the Authority would expect for

relevant persons to view the BRA as a living document which is re-assessed in a timely manner, as opposed to every couple of years or longer.

Ideally as a best practice, a relevant person's BRA should be reviewed (the review, and any changes made should be documented) at least annually (every 12 months) as well

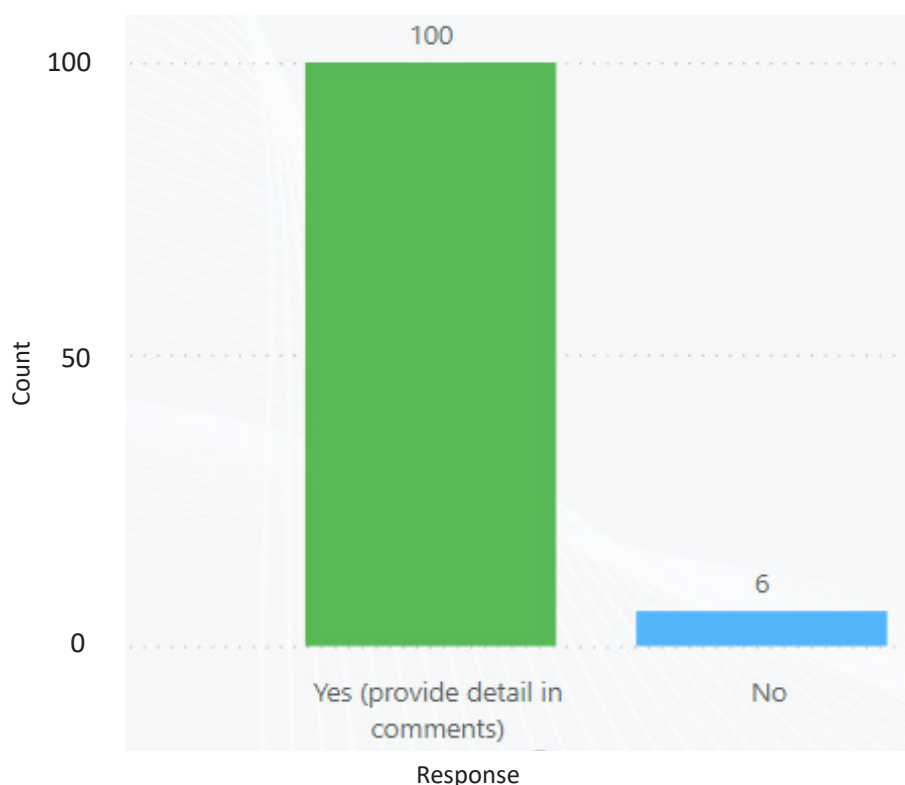
as a number of more focused ad-hoc reactive and proactive reviews and updates as and when risk information changes or events or risks occur and are identified. Section "2.2.6 Risk assessment reviews" of the Handbook further outlines the Authority's minimum expectations in relation to firms' compliance with paragraph 5(2)(c) of the Code.

Question 10

Is there documentation (such as formal meeting minutes) which evidences the consideration and approval of the BRA?

Of the 106 responses, 100 TCSPs confirmed that there is a document in place which evidences the consideration and approval of the BRA.

In line with paragraphs 4(1)(a), 5(2)(b) and 5(2)(c) of the Code, the BRA's consideration and approval should be clearly documented and recorded by the relevant person in order to evidence compliance with these various sub-paragraphs. Paragraph 5(2)(c) of the Code states that details of any reviews or updates must be documented and recorded with approvals and assessments of the BRA also maintained.

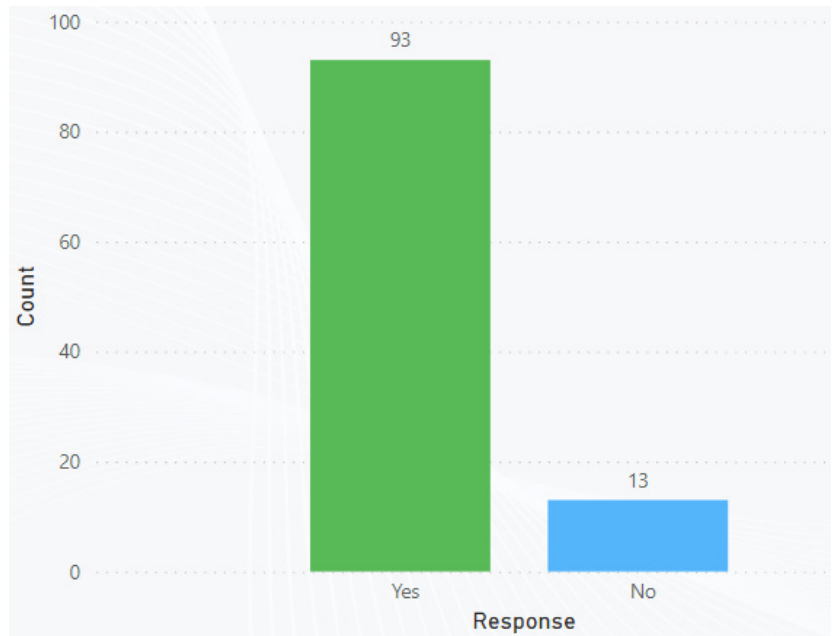


Question 11

Is there a documented risk assessment methodology in place?

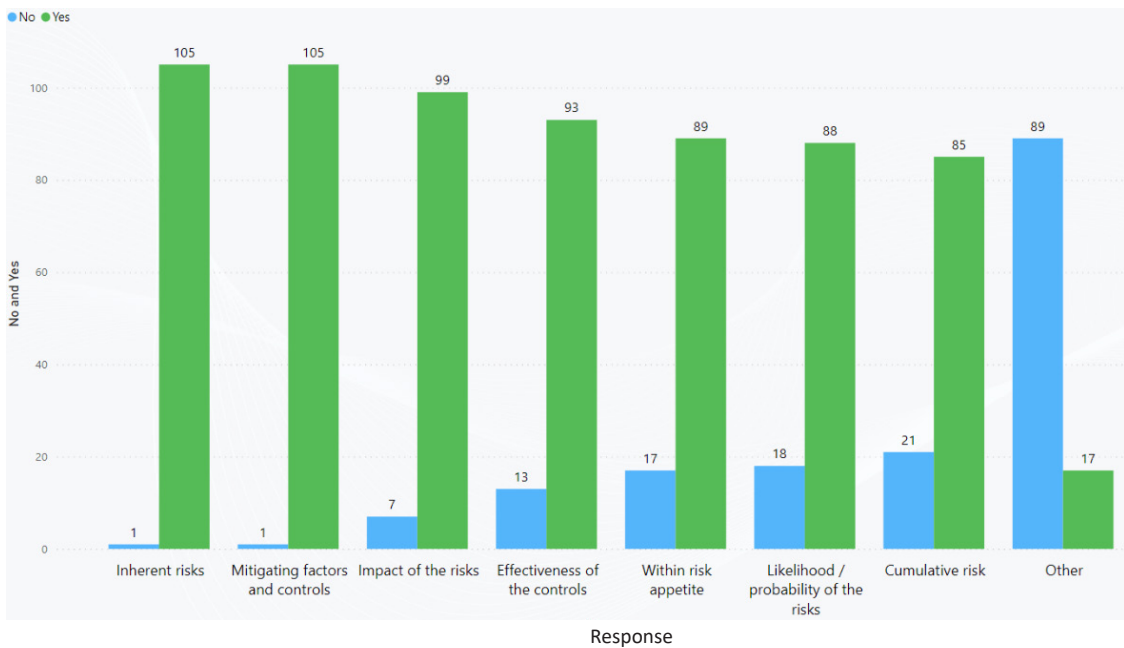
Of the 106 responses, 93 relevant persons responded with “Yes”. Having a documented risk scoring or risk assessment methodology is a vital tool which can be used by firms to clearly document and establish their view of the prioritisation and weighting of the identified risk factors within a BRA or other risk assessments carried out by a relevant person.

In order to better evidence compliance with paragraph 5(1) of the Code a relevant person should consider how they document the estimation of ML/FT risks posed by the business



and its customers within the BRA, and if a clearly documented risk assess-

ment methodology would achieve this objective and Code requirement.



Question 12

Does the risk assessment methodology used for the BRA include the following?

When creating and operating a risk assessment methodology, as a matter of best practice, a relevant person should consider and implement all the prescribed assessments and identifications markers contained within question 12 of the Phase 1 BRA thematic questionnaire in order to best document and demonstrate

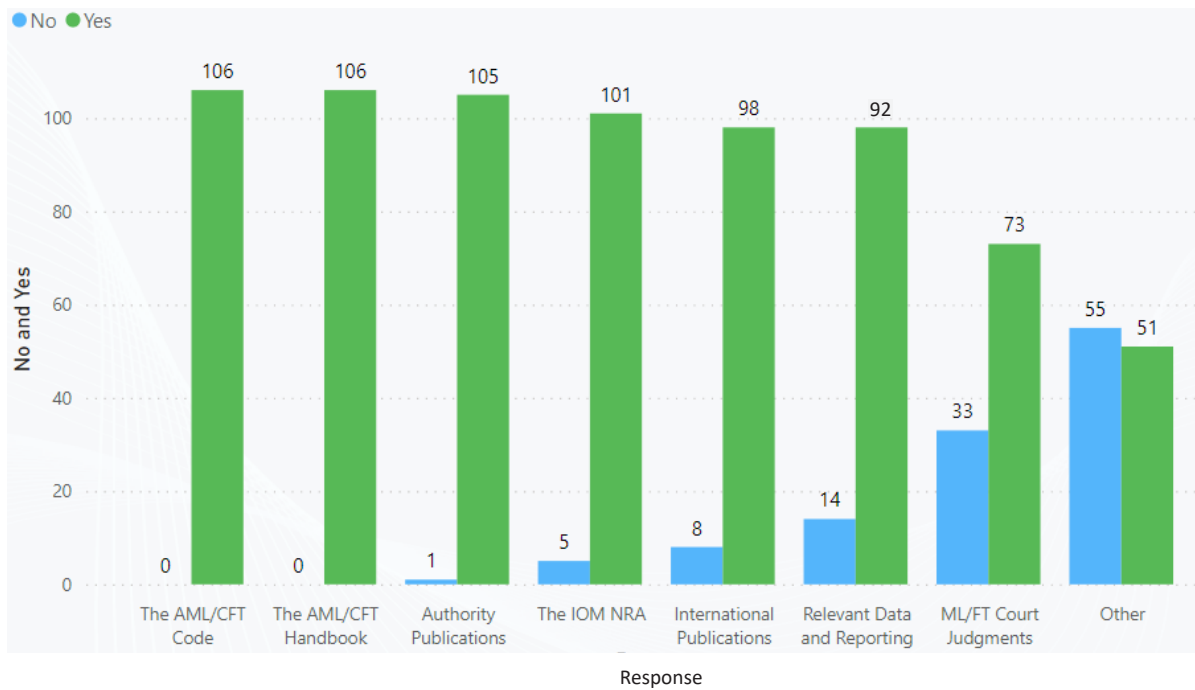
compliance with requirements of paragraph 5 of the Code.

Question 12’s full responses and number of firms who responded with “Yes” for each;

- Assessment of the inherent risks relevant to the business – 105
- Identification of mitigating factors and controls to manage and reduce the impact of the above risks – 105
- Assessment of the impact of the

above risks – 99

- Assessment of the effectiveness of the controls – 93
- Assessment and consideration as to whether the residual risk is within risk appetite – 89
- Assessment of likelihood/probability of the above risks – 88
- Assessment of cumulative risk (which may exceed sum of each individual risk element) – 85
- Other - 17

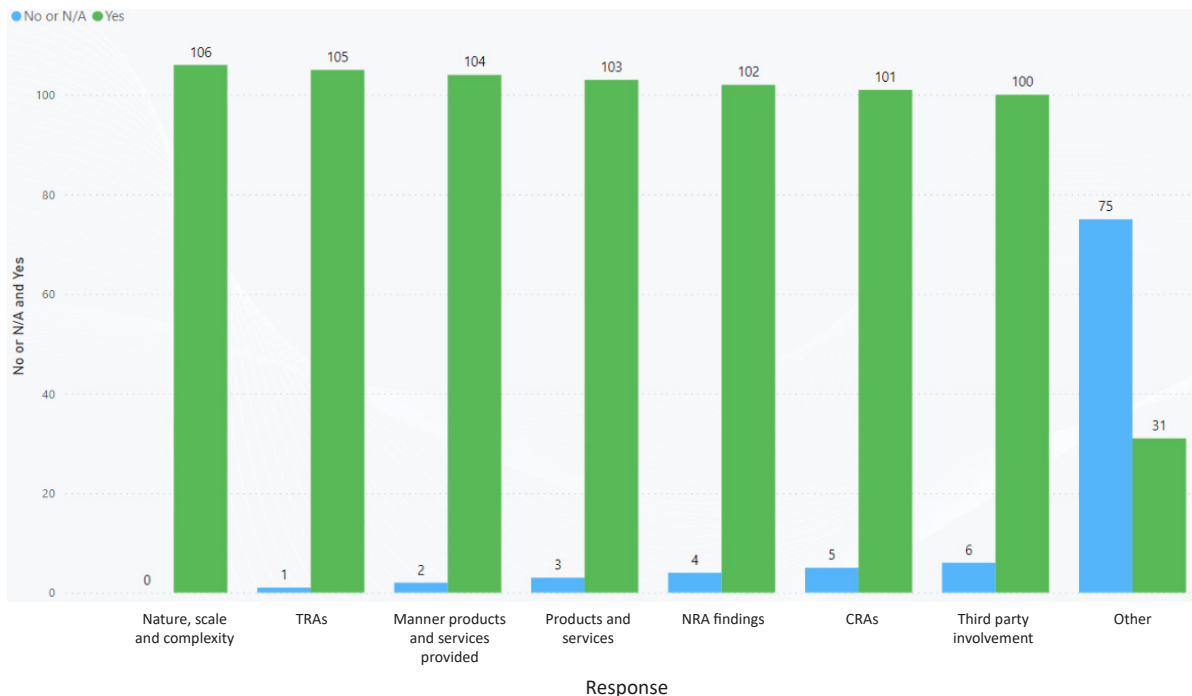


Question 13

What information sources are considered when developing the BRA?

There is a requirement to have regard to all relevant risk factors (not just the specified list in paragraph 5(3) of the Code). Firms should be considering information from multiple sources (both national and inter-

national) when developing and when reviewing a BRA in order to have a rounded, robust and up-to-date view of current and upcoming risks posed by the business and its customers.



Question 14

What factors are considered when determining the business' exposure to ML and FT risk?

All the risk factors prescribed in paragraph 5(3) of the Code must be fully considered, assessed, and the analysis clearly documented and articulated within the BRA. However this list is not exhaustive and firms should

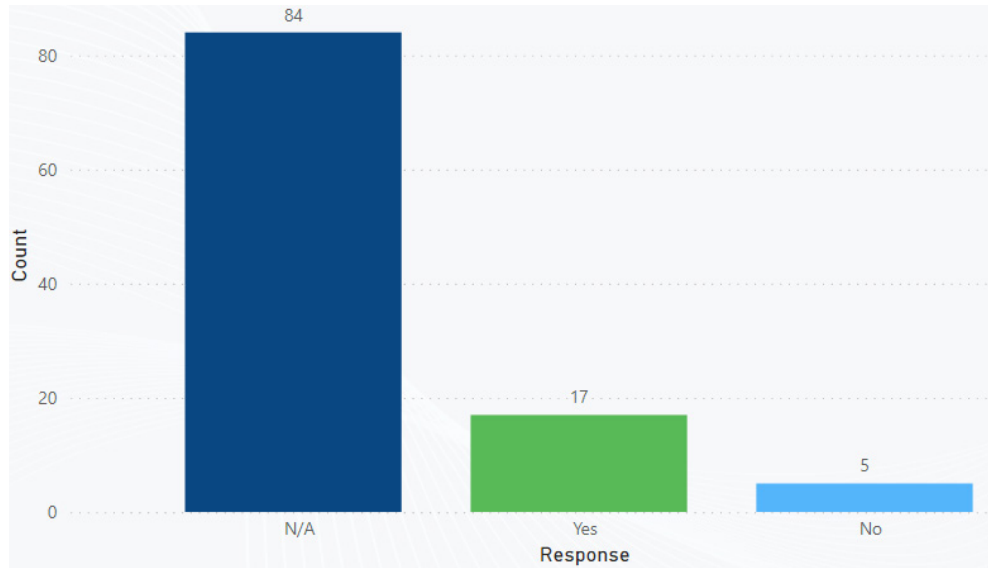
consider all relevant risk factors even if not expressly included in paragraph 5(3). Any other relevant risk factors that expose the relevant person to risk should also be considered and documented.

Question 15

If the relevant person is part of a group and the BRA was a group led initiative, does the BRA consider the specific risks relevant to the Isle of Man regulated entity?

The vast majority of the relevant persons responded with “N/A”. Of those TCSPs whom question 15 was applicable to, the majority of the TCSPs where the BRA is group led, confirmed the BRA did consider the specific risks relevant to the Isle of Man entity.

The Authority would like to highlight that the BRA must always be compliant to the specific entity’s jurisdic-



tion, document and assess their specific risks, and reference the rele-

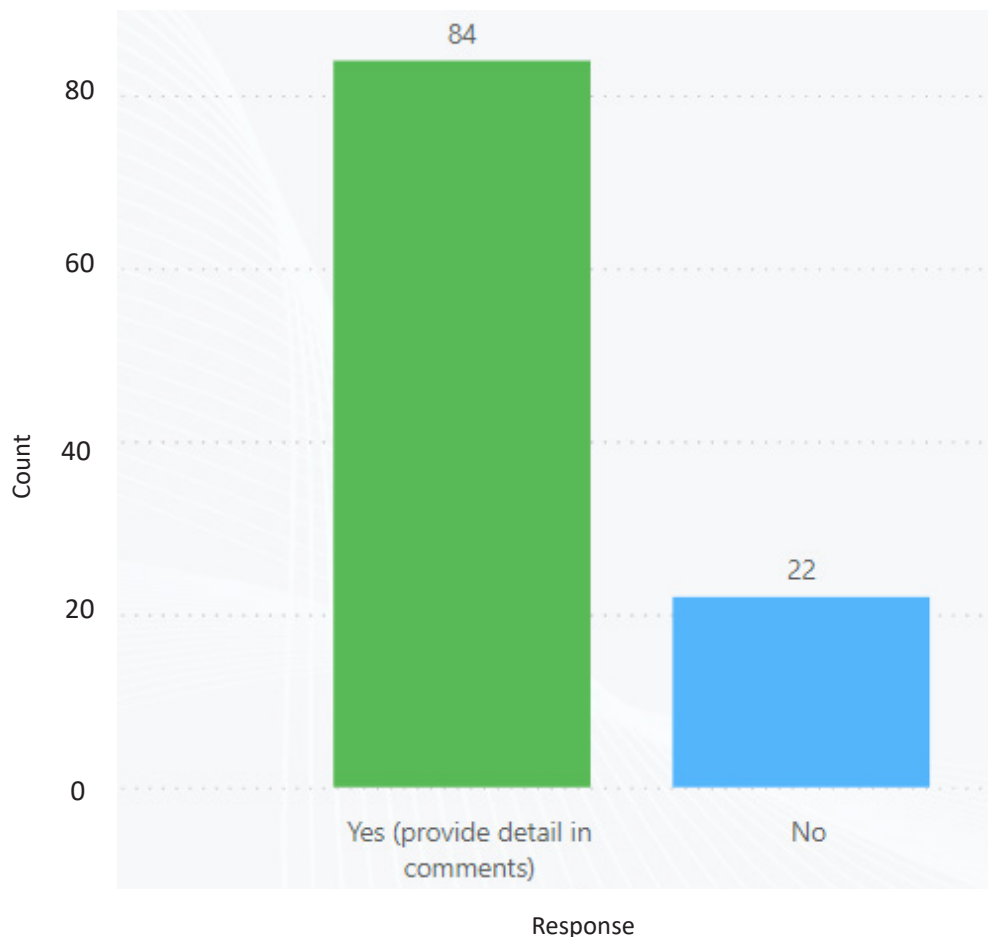
vant person’s business and customers in line with the Code.

Question 16

Are employees made aware of the risks, controls and conclusions contained within the BRA?

Of the 106 responses, 84 TCSPs responded with a “Yes” and 22 responded with “No”. All relevant persons should take appropriate measures in making its employees aware of the risks, controls, assessments and conclusions contained within the BRA in order to better collectively apply and action the findings and operate the documented measures and controls for the desired outcomes.

As per paragraph 4(1)(b) of the Code, firms must take appropriate measures for the purpose of making its employees and workers aware of the AML/CFT legislation and the procedures and controls established, recorded, maintained and operated under 4(1)(a) of the Code, including the firms BRA.



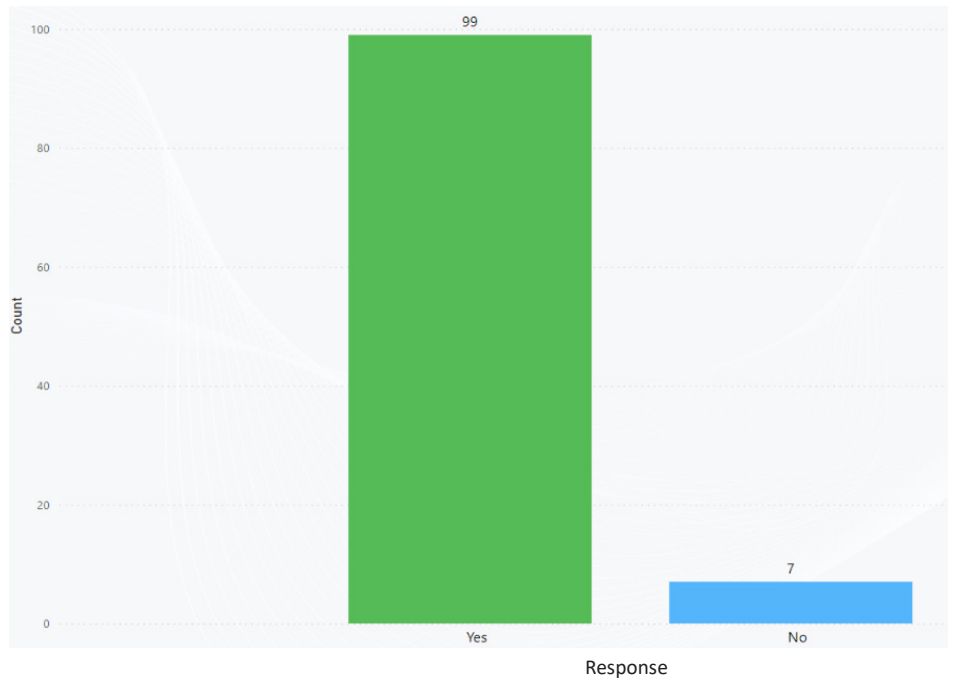
Question 17

Is the customer base reflected and documented in the BRA and risk appetite document(s)?

Of the 106 responses, 99 relevant persons responded with a “Yes” whilst 7 responded with “No”. Paragraph 5(1) of the Code requires firms to estimate the risk posed to the business by their customers.

In line with paragraph 5(3)(f) of the Code, the BRA must show regard to the CRAs carried out on each customer. The statistical outcomes and findings from the CRAs is a key source of information, with a documented assessment of the data, trends and risks informing the required estimate of risks to the firm from its customer base.

Relevant persons should in particular highlight higher risk relationships



and the proportion of the customer base such customers represent.

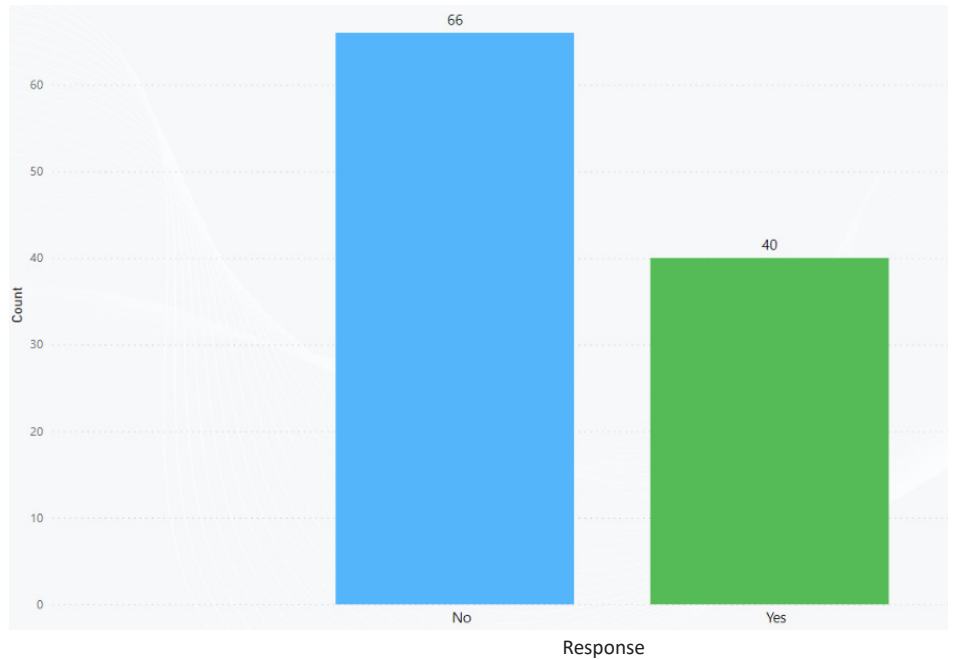
Handbook sections “2.2.3 Risk assessments” and “2.2.8 Business

risk assessment (“BRA”) can provide further details on the importance of operating effective risk assessments and risk appetites, which collectively work together.

Question 18

Are there any deficiencies or areas for development self-identified within the BRA?

Of the 106 responses, 40 relevant persons answered with a “Yes” and 66 with “No”. The BRA (and/or the reports to the Board/senior management under paragraph 30) would be a suitable place to document any self-identified deficiencies or areas for development, and action taken to remedy any deficiencies as per paragraph 30 of the Code.

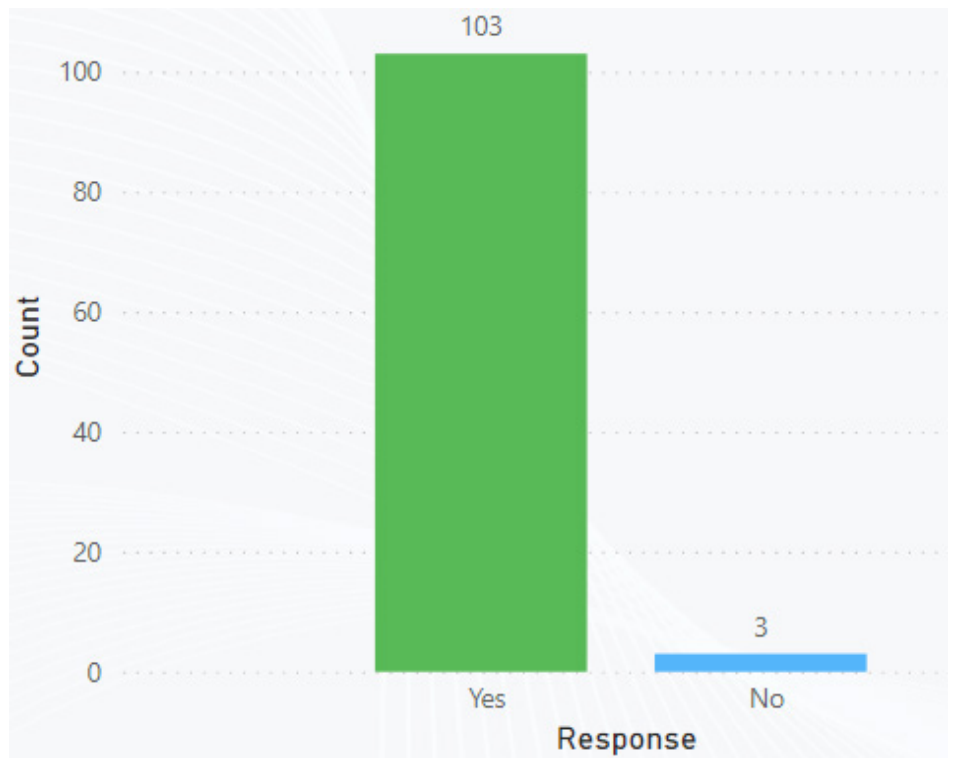


Question 19

Have systems and controls been designed and implemented to mitigate the risks identified in the BRA?

Of the 106 responses, 103 relevant persons responded with a “Yes” highlighting that systems and controls have been designed and implemented to mitigate the risks identified in the BRA.

The purpose of the BRA is for relevant persons to carry out an assessment that estimates the risk of ML/FT posed by their business and customers which should form the basis of the relevant person’s risk based approach and risk appetite, affecting their policies and procedures.

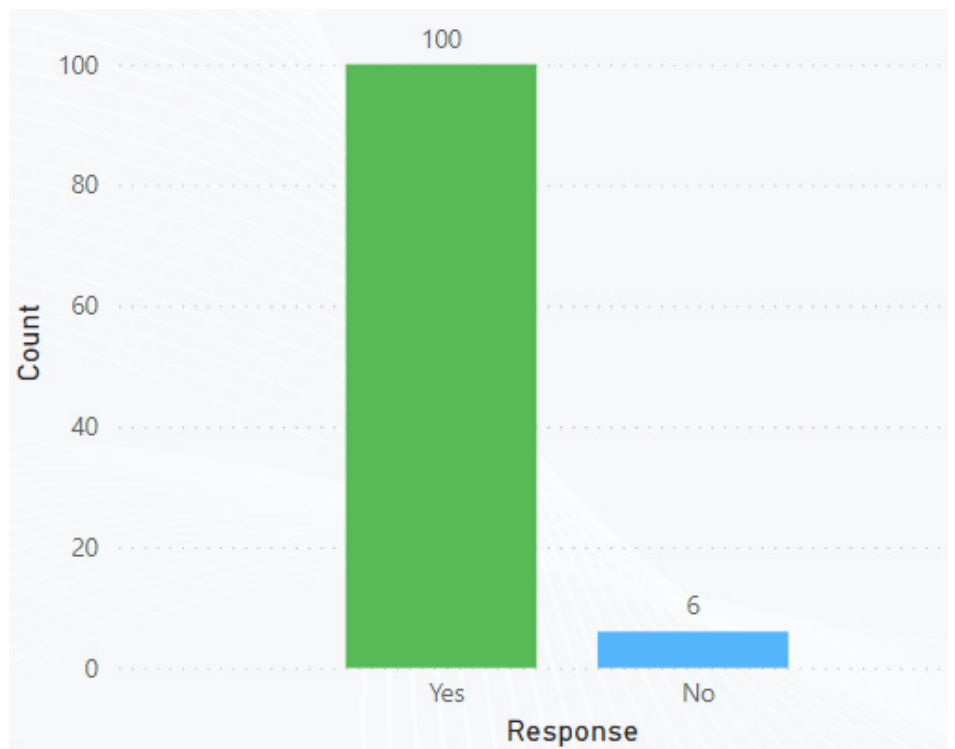


Question 20

Have systems and controls been assessed, to ensure they are effective in mitigating the risks identified in the BRA?

100 TCSPs responded with “Yes”, confirming systems and controls have been assessed to ensure they are effective in mitigating the risks identified in the BRA.

As part of a relevant person’s reviews of the BRA, systems and controls should be continuously assessed for their effectiveness in mitigating the risks identified.

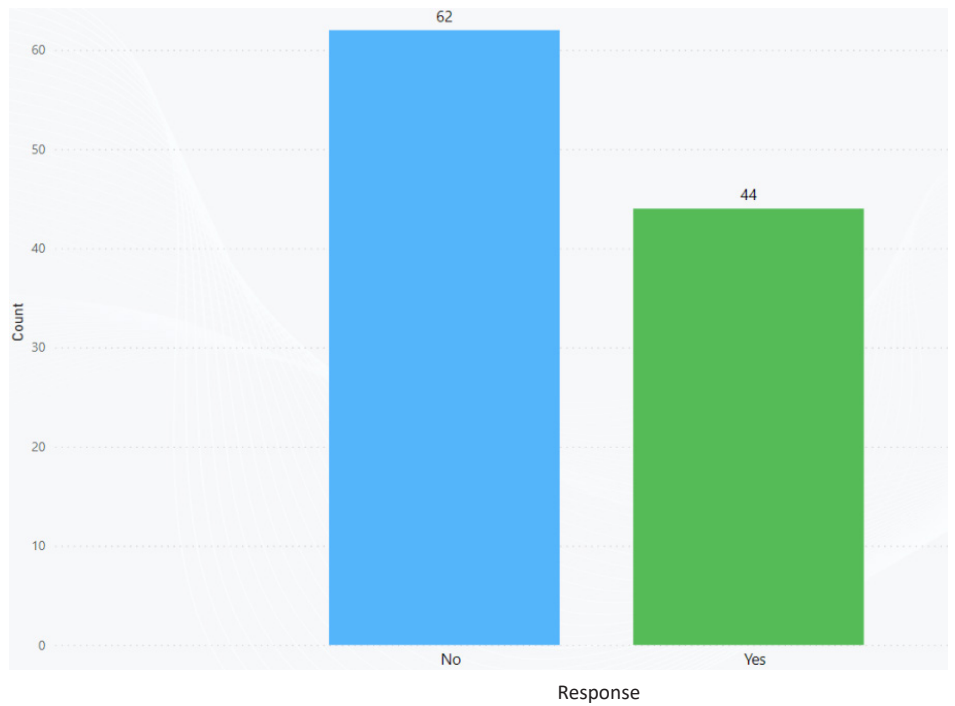


Question 21

Are there any deficiencies or areas for development self-identified within the systems and controls?

44 TCSPs answered with a “Yes” highlighting that there are areas for development self-identified within the systems and controls while 62 TCSPs answered with a “No”.

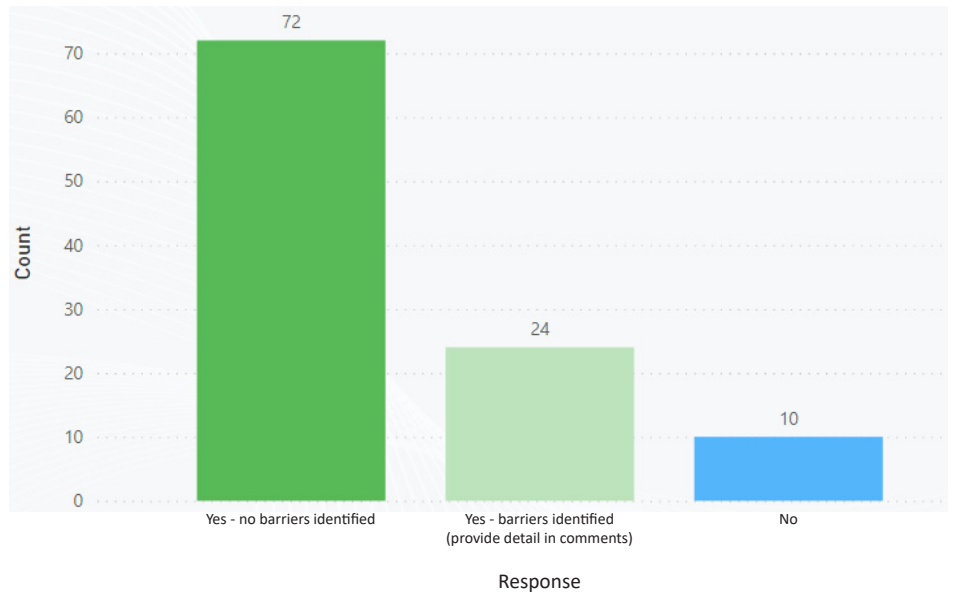
Documenting and putting in places systems and controls for self-identified deficiencies is a strong compliance measure which allows the relevant person to show documented steps have been taken if later questioned on any deficiencies.



Question 22

Does the board/senior management consider what barriers (including cultural barriers) exist to prevent the operation of effective systems and controls?

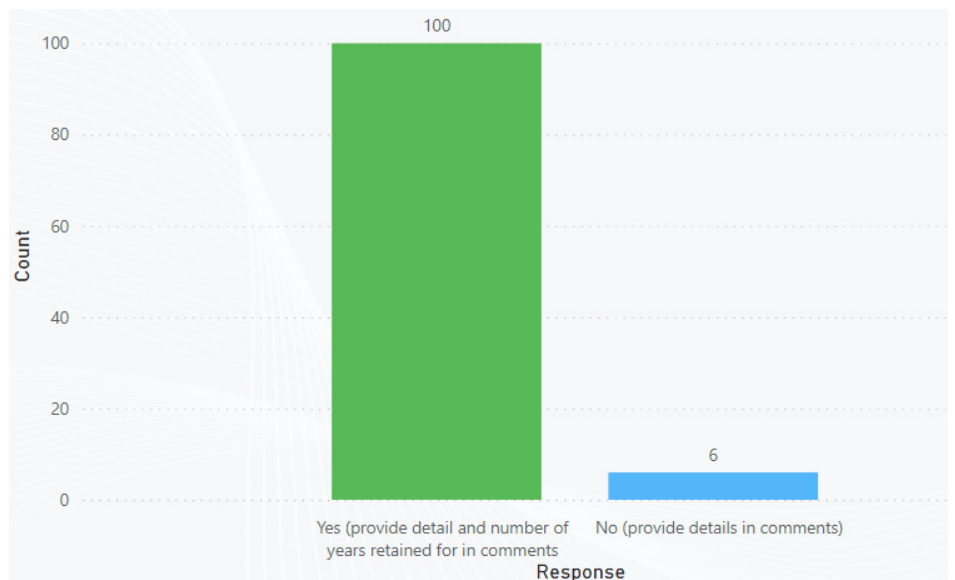
When assessing the operation of effective systems and controls, as a matter of best practice the relevant person should consider and document all aspects that may affect the success of the systems and controls in the BRA.



Question 23

Are records of superseded BRAs retained?

Overall 100 TCSPs answered with a “Yes” highlighting that records of superseded BRAs are retained, whilst 6 TCSPs confirmed they do not retain these records. In order to demonstrate compliance with paragraphs 4, 5, 33, 34 and 35 of the Code, relevant persons must retain and document all previous versions, copies, updates, amendments and reviews for a minimum of 5 years.

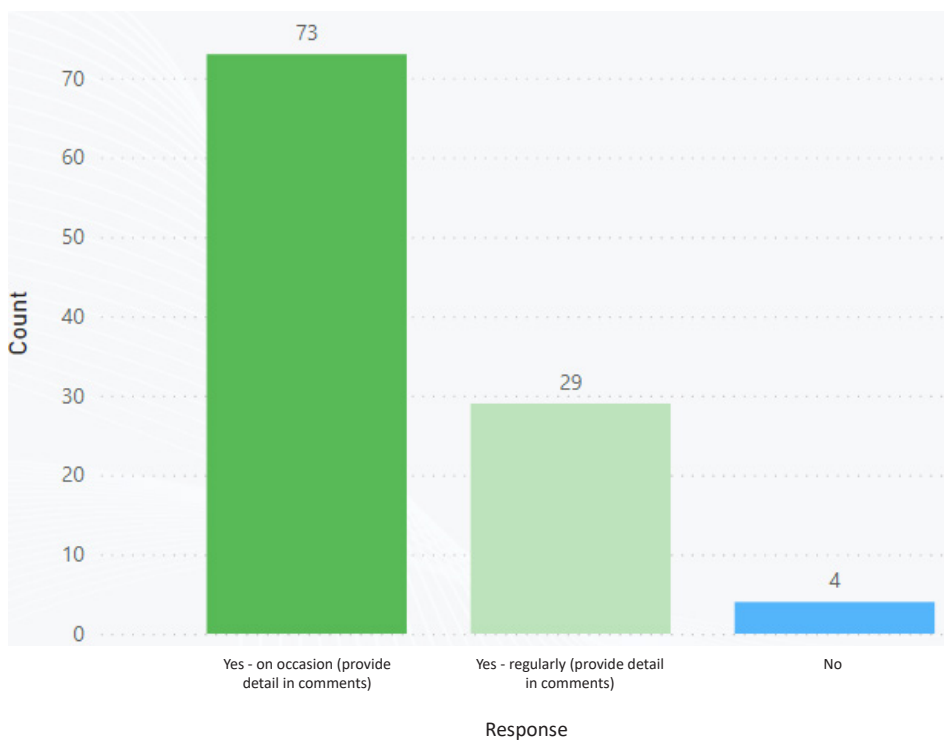


Question 24

Except for any scheduled reviews, would the BRA ever be reviewed and updated following a trigger event?

In total, 102 of the 106 TCSPs who took part in the Phase 1 questionnaire responded with “Yes”, confirming the BRA is reviewed following a trigger event, with 73 TCSPs confirming this is undertaken on occasion whilst 29 confirming the BRA is regularly reviewed following a trigger event.

The BRA should be operated and maintained as a living document that is regularly updated following any relevant internal or external trigger events. Trigger events for firms could include; changes in risk information, legislation, guidance, or when relevant events or risks occur.



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