



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 299 Promulgation of Financial Intelligence Act, 2012 (Act No. 13 of 2012), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 299

2012

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 13 of 2012: Financial Intelligence Act, 2012.

ACT

To provide for the establishment of the Financial Intelligence Centre as the national centre responsible for collecting, requesting, receiving and analysing suspicious transaction reports and suspicious activity reports which may relate to possible money laundering or the financing of terrorism; to provide for the objects, powers and functions of the Centre; to provide for the combating of money laundering and financing of terrorism activities; to provide for the establishment of the Anti-Money Laundering and Combating of the Financing of Terrorism Council, and for its functions; to provide for the registration of accountable and reporting institutions; to provide for the powers and functions of the supervisory bodies; to empower the Minister to appoint an appeal board to hear and decide appeals against decisions of the Centre or supervisory bodies; and to provide for incidental matters.

(Signed by the President on 24 December 2012)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

PART 1
PRELIMINARY PROVISIONS

Definitions

1. (1) In this Act, unless the context indicates otherwise -

“accountable institution” means a person or institution referred to in Schedule 1, including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution;

“authorised officer” means any member of -

- (a) the Namibian Police Force authorised by the Inspector-General of the Namibian Police Force;
- (b) the office of the Prosecutor-General authorised by the Prosecutor-General; or

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- (c) the Intelligence Service authorised by the Director-General of the Namibian Central Intelligence Service;
- (d) the Centre authorised by the Director;
- (e) the Anti-Corruption Commission authorised by the Director of the Anti-Corruption Commission;
- (f) a supervisory body or any person authorised by the Head of the supervisory body;
- (g) an investigating authority that may, in terms of any law, investigate unlawful activities who may act under this Act;

“Bank” means the Bank of Namibia established by the Bank of Namibia Act, 1997 (Act No. 15 of 1997);

“bearer negotiable instrument” for the purposes of this Act, means any instrument that may on demand by the bearer thereof be converted to the currency of Namibia or that of another country and includes, amongst others, cheques, promissory notes and money orders;

“beneficial owner” means -

- (a) a natural person who owns or effectively controls a client, including the natural person on whose behalf a transaction is conducted; or
- (b) a natural person who exercises effective control over a legal person or trust,

and a natural person is deemed to own or effectively control a client when the person -

- (i) owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
- (ii) together with a connected person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
- (iii) despite a less than 20% shareholding or voting rights, receives a large percentage of the person’s declared dividends; or
- (iv) otherwise exercises control over the management of the person in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner.

“business relationship” means an arrangement between a client and an accountable or reporting institution for the purpose of concluding transactions on a regular basis;

“cash” means -

- (a) coin and paper money of Namibia or of another country which coin or paper money is designated as legal tender and which circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;

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- (b) travelers' cheques; or
- (c) cheques, but only in respect of payments made by a person who carries on the business of a casino, gambling institution or totalisator betting service; or
- (d) payment instrument, but only in respect of stored value;

“Centre” means the Financial Intelligence Centre established by section 7;

“client” means a person who has entered into a business relationship or a single transaction with an accountable or reporting institution, and the word “customer” has a corresponding meaning;

“competent authority” means any supervisory, the Namibian Police Force, the Anti-Corruption Commission, the Namibia Central Intelligence Service, the Prosecutor-General, the Centre and any other authority that may, in terms of any law, investigate unlawful activities;

“correspondent banking” means the provision of banking, payment and other services by one bank “the correspondent bank” to another bank “the respondent bank” to enable the latter to provide services and products to its clients;

“Council” means the Anti-Money Laundering and Combating the Financing of Terrorism Council established by section 17;

“customer due diligence” means a process which involves establishing the identity of a client, the identity of the client’s beneficial owners in respect of legal persons and monitoring all transactions of the client against the client’s profile;

“Customs and Excise” means a division in the Ministry responsible for finance that is entrusted with customs and excise responsibilities as envisaged by the Customs and Excise Act, 1989 (Act No. 20 of 1998);

“determination” means a determination made under this Act and published by notice in the *Gazette*;

“electronic transfer” means any transaction carried out on behalf of an originator person, both natural and legal, through an accountable or reporting institution in Namibia or an accountable or reporting institution in a foreign country by way of electronic means with a view to making an amount of money available to a beneficiary person at the same or another institution (the originator and the beneficiary may be the same person), and excludes debit orders and stop orders for payment of instalments and premiums;

“establish identity” means a two tier process consisting of ascertainment or collecting of certain identification information, and verification of some of the information against reliable documentation or information;

“financing of terrorism” has the meaning ascribed to it by an Act of the Parliament of the Republic of Namibia which criminalizes the conduct of terrorist financing and includes acts which is aimed at directly or indirectly providing or collecting funds with the intention that such funds should be used, or with the knowledge that such funds are to be used, in full or in part, to carry out any act of terrorism as defined in the

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Organization for African Unity (OAU) Convention on the Prevention and Combating of Terrorism of 1999, irrespective of whether or not the funds are actually used for such purpose or to carry out such acts;

“forfeiture” means the official transfer of property to the State;

“Fund” means the Criminal Assets Recovery Fund established by section 74 of the Prevention of Organised Crime Act;

“Government” means the Government of the Republic of Namibia;

“Governor” means the Governor as referred to in section 1 of the Bank of Namibia Act, 1997(Act No. 15 of 1997);

“inspector” means a person appointed in terms of section 53 to conduct inspections in terms of this Act;

“Intelligence Service” means the Namibia Central Intelligence Service established under the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997);

“investigating authority” means an authority that in terms of legislation may investigate unlawful activities;

“Minister” means the Minister responsible for finance;

“money laundering” or “money laundering activity” means -

- (a) the act of a person who -
 - (i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
 - (ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or
 - (iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;where -
 - (aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
 - (bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity; and
- (b) any activity which constitutes an offence as defined in section 4, 5 or 6 of the Prevention of Organised Crime Act;

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“payment instrument” has the meaning attributed to that term in section 1 of the Payment System Management Act, 2003 (Act No. 18 of 2003);

“person” means a natural or legal person;

“prescribed” means prescribed by regulation;

“Prevention of Organised Crime Act” means the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

“proceeds of unlawful activities” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act;

“property” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act;

“prospective client” means a person seeking to conclude a business relationship or a single transaction with an Accountable institution;

“records” means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

“Registrar of Companies and Close Corporations” means the Registrar of Companies as defined in the Companies Act, 2004 (Act No. 28 of 2004) and the Registrar of Close Corporations as defined in the Close Corporation Act, 1988 (Act No. 26 of 1988);

“regulation” means a regulation made under section 68;

“regulatory body” means a functionary or institution set out in Schedule 4;

“reporting institutions” means a person or institution set out in Schedule 3;

“risk clients” means any person, natural or legal whose activities pose a risk for money laundering or financing of terrorism activities;

“risk management systems” means policies, procedures and controls that enables an accountable institution to establish the risk indicators used to characterise clients, products and services to different categories of risk (low, medium or high risk) with the aim of applying proportionate mitigating measures in relation to the potential risk of money laundering or terrorist financing in each category of risk established;

“senior management” with respect to a legal person or trust, includes a director, controlling officer, partner or any person who is concerned with the management of its affairs;

“single transaction” means a transaction other than a transaction concluded in the course of a business relationship;

“supervisory body” means a functionary or institution set out in Schedule 2;

“transaction” means a transaction concluded between a client and an accountable or reporting institution in accordance with the type of business carried on by that institution, and includes attempted transactions;

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“this Act”, includes regulations and determinations; and

“unlawful activity” has the meaning assigned to it in section 1 of the Prevention of Organised Crime Act.

Application of Act to accountable and reporting institutions

2. (1) This Act applies to all accountable and reporting institutions set out in Schedule 1 and Schedule 3, respectively.

(2) The Minister, by notice in the *Gazette*, may amend the list of accountable or reporting institutions in Schedule 1 or Schedule 3 to -

- (a) add to the list any institution or category of institutions if the Minister reasonably believes that institution or category of institutions is used, and is likely to be used in future, for money laundering or financing of terrorism purposes;
- (b) delete any institution or category of institutions from the list if the Minister reasonably believes that institution or category of institutions is not used, and is not likely to be used in future, for money laundering or financing of terrorism; or
- (c) make technical changes to the list.

(3) Before the Minister amends Schedule 1 or Schedule 3 under subsection (2)(a) or (b), the Minister must consult the Council and the Centre, and -

- (a) if only an individual institution will be affected by the proposed amendment, give the institution at least 60 days written notice to submit written representations to the Minister; or
- (b) if a category of institutions will be affected by the proposed amendment, by notice in the *Gazette* give institutions belonging to that category at least 60 days written notice to submit written representations to the Minister.

Application of Act to supervisory and regulatory bodies

3. (1) This Act applies to all supervisory bodies set out in Schedule 2, but applies only to the regulatory bodies set out in Schedule 4 to a limited extent, and does not impose the same obligations to the regulatory bodies as it impose to the supervisory bodies.

(2) The Minister may, by notice in the *Gazette*, amend the list of supervisory or regulatory bodies in Schedule 2 or Schedule 4, respectively, to -

- (a) add to the list any supervisory or regulatory body which in terms of legislation performs supervisory or regulatory functions in relation to any category of accountable institutions;
- (b) delete any supervisory or regulatory body or category of supervisory or regulatory body from the list if the Minister reasonably believes there is need to do so; or

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(c) make technical changes to the list.

(3) Before the Minister amends Schedule 2 or Schedule 4 under subsection (2)(a) or (b), the Minister must consult the Council and the Centre, and give the Council, Centre and the supervisory or regulatory body concerned, at least 60 days written notice to submit written representations to the Minister.

Application of Act to Registrar of Companies and Close Corporations

4 (1) The Registrar of Companies and Close Corporations must, for the purposes of this Act, in addition to information required for companies and close corporations under any other law -

- (a) annually collect and keep accurate and up-to-date prescribed information in respect of members, directors, shareholders and beneficial owners of companies and close corporations;
- (b) forward to the Registrar of Deeds all changes to members, directors, shareholders or beneficial owners information of companies and close corporations which own immovable properties; and
- (c) avail all information referred to in paragraphs (a) and (b) of companies and close corporations to competent authorities upon request.

(2) All companies and close corporations must upon registration, and annually thereafter, submit to the Registrar of Companies and Close Corporations up-to-date information referred to in subsection (1)(a) in respect of each member, director, shareholder and beneficial owner of such companies and close corporations.

(3) The Registrar of Companies and Close Corporations may not register or renew any registration of a company or close corporation without the information as referred to in subsection (1)(a) being provided.

(4) If a company or close corporation was registered with the Registrar of Companies and Close Corporations before this section came into effect, the Registrar of Companies and Close Corporations must, within a period determined by the Centre, take reasonable steps to obtain the information referred to in subsection(1)(a).

(5) All companies and close corporations registered with the Registrar of Companies and Close Corporations before this section came into effect must annually submit to the Registrar of Companies and Close Corporations up-to-date information referred to in subsection (1)(a) in respect of each member, director, shareholder and beneficial owner of such companies and close corporations.

(6) If the Registrar of Companies and Close Corporations is unable to obtain, the information referred to in subsection (1)(a), within the period referred to in subsection (4), the Registrar may de-register the relevant company or close corporation.

(7) If the company or close corporation refuses or fails to provide the information referred to in subsection (1)(a), within the period referred to in subsection (4), the company or close corporation commits an offence and is liable to a fine not exceeding N\$10 million, or where the commission of the offence is attributable to a

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representative of the company or close corporation, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment, and in addition the Registrar must de-register the relevant company or close corporation.

Application of Act to Master of High Court

- 5.** (1) For the purposes of this Act, the Master of the High Court must -
- (a) register all testamentary and *inter vivos* trusts in the prescribed manner and form;
 - (b) collect and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts; and
 - (c) avail founder, trustee, trust beneficiary and trust beneficial ownership information of all registered testamentary and *inter vivos* trusts to competent authorities upon request.
- (2) The Master of the High Court may not register any trust without the information referred to in subsection (1)(b) being provided.
- (3) After having registered in terms of subsection (1)(a), a trust must provide the Master of the High Court with all the information referred to in subsection (1)(b).
- (4) If a trust was registered with the Master of the High Court before this section came into effect, the Master of the High Court must, within a period determined by the Centre, take reasonable steps to obtain the information referred to in subsection (1)(b).
- (5) If a trust refuses or fails to register in terms of subsection (1)(a) or to provide the information referred to in subsection (1)(b), within the period determined under subsection (4), the trust commits an offence and is liable to a fine not exceeding N\$10 million, or where the commission of the offence is attributable to a representative of the trust, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment.
- (6) An Accountable or reporting institution which has a business relationship with any trust is required to inform the Master of the High Court and the Centre if such a trust is not registered with the Master.
- (7) The Master of the High Court is entitled to request from a relevant accountable or reporting institution and the institution must provide the Master with information relating to trust banking accounts for purposes of monitoring or investigating the transaction activities or operations of any trust.
- (8) An accountable or reporting institution which contravenes or fails to comply with subsection (6) or (7) commits an offence and is liable to a fine not exceeding N\$10 million, or where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

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6. If any conflict relating to the matters dealt with in this Act arises between this Act and any other law, a provision of this Act prevails.

PART 2**ESTABLISHMENT OF FINANCIAL INTELLIGENCE CENTRE AND
APPOINTMENT OF DIRECTOR AND STAFF OF CENTRE****Establishment of Financial Intelligence Centre**

7. (1) There is established a national centre to be known as the Financial Intelligence Centre, that is responsible for administering this Act, subject to any general or specific policy directives which the Minister may issue.

(2) The Bank must provide administrative services to the Centre.

Objects of Centre

8. The principal objects of the Centre in terms of this Act are to combat money laundering and the financing of terrorism activities in collaboration with the other law enforcement agencies.

Powers and functions of Centre

9. (1) In furthering its objects the powers and functions of the Centre are -

- (a) to collect, request, receive, process, analyze and assess all reports, requests for information and information received from persons, accountable institutions, reporting institutions, government offices, ministries, or agencies or any other competent authorities and any foreign agencies, in terms of this Act or in terms of any law;
- (b) to initiate an analysis of its own motion based on information in its possession or information received from another source;
- (c) to disseminate information to which it has access to competent authorities and foreign agencies with powers and duties similar to that of the Centre; and
- (d) to make recommendations arising out of any information received;
- (e) to collect statistics and records of -
 - (i) suspicious transactions reports, suspicious activity reports and Requests for Information received and intelligence disseminated;
 - (ii) money laundering and terrorist financing investigations, prosecutions and convictions;

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- (iii) property frozen, seized and confiscated under the Prevention of Organised Crime Act, or any other law applicable to the Republic of Namibia;
 - (iv) mutual legal assistance or other international requests for co-operation;
 - (v) on-site examinations conducted by the Centre or supervisory bodies and any enforcement actions taken; and
 - (vi) formal request for assistance made or received by supervisory or regulatory bodies relating to money laundering and financing of terrorism and outcomes of such requests;
- (f) to coordinate the activities of the various persons, bodies or institutions involved in the combating of money laundering and the financing of terrorism;
 - (g) to inform, advise and cooperate with competent authorities and exchange information, available to the Centre, with these authorities for the purpose of administration, intelligence collection, law enforcement and prosecution;
 - (h) to supervise, monitor and enforce compliance with this Act, or any regulations, directives, determinations, notices or circulars issued in terms of the Act, by accountable and reporting institutions and give guidance to Accountable and reporting institutions to combat money laundering or financing of terrorism activities, and
 - (i) to facilitate effective supervision and enforcement of the Act by supervisory bodies.
- (2) In order to attain its objects and perform its functions the Centre may -
- (a) call for and obtain further information from persons or bodies that are required to supply or provide information to it in terms of this Act or any law;
 - (b) request for information and statistics, from any government office, ministry or agency, law enforcement agency, competent authority, regulatory body and supervisory body, whether listed in Schedule 2 and Schedule 4 or not, for purposes of this Act;
 - (c) direct any accountable or reporting institution, or supervisory body to take such steps as may be appropriate in relation to any information or report received by the Centre, to enforce compliance with this Act or to facilitate any investigation anticipated by the Centre;
 - (d) issue determinations to any supervisory body in terms of which the supervisory body must enforce compliance by an accountable or reporting institution regulated by such supervisory body, with the provisions of this Act;

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- (e) after consultation with supervisory and regulatory bodies, issue guidelines, directives, determinations, circulars or notices to accountable and reporting institutions to ensure compliance with this Act;
- (f) conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and financing of terrorism;
- (g) exercise any other power or to do any other thing not inconsistent with this Act, which is necessary or expedient to ensure the achievement of the objects of this Act; and
- (h) exercise any power or perform any functions conferred to or imposed on it by any law.

(3) The Centre may from time to time consult with the Council on issues of mutual interest with regard to the powers and functions of the Centre under this Act.

(4) Subject to section 7, a person may not unduly influence or interfere with the Centre in exercising its powers and performing its functions as authorised in terms of this Act.

(5) A person who contravenes subsection (4) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Administrative powers of Centre

10. The Centre, with the concurrence of the Governor, may do all that is necessary or expedient to perform its functions effectively, which includes the power to

- (a) determine its own staff establishment with the approval of the Minister;
- (b) appoint employees and receive seconded personnel to posts on its staff establishment in accordance with staff policies and procedure of the Bank as far as reasonably possible;
- (c) obtain the services of any person by agreement, including any state department, functionary or institution, to perform any specific act or function;
- (d) engage in any lawful activity, whether alone or together with any other organisation in Namibia or elsewhere, aimed at promoting its objects.

Appointment and removal of Director

11. (1) The Minister, after consultation with the Council, must appoint a suitably qualified, fit and proper person as the Director of the Centre.

- (2) A person appointed as Director holds office -

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- (a) for a term of five years, which term is renewable; and
- (b) on terms and conditions set out in a written employment contract.
- (3) A person may not be appointed as Director, unless -
 - (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997); and
 - (b) the Minister, after evaluating the gathered information, is satisfied that the person may be so appointed without the possibility that such person may pose a security risk or that such person may act in any manner prejudicial to the objects of this Act or the functions of the Centre.
- (4) The Director may at any time determined by the Minister, upon recommendation by the Council, be subjected to a further security screening investigation as contemplated in subsection (3)(a).
- (5) The Minister, upon recommendation by the Council, may remove the Director from office on the grounds of misconduct, incapacity or incompetence, in line with fair labour practices and the prevailing labour legislation.
- (6) The Minister, upon recommendation by the Council, may suspend the Director from office, pending -
 - (a) the determination of any disciplinary enquiry as to whether grounds of misconduct, incapacity or incompetence exist; or
 - (b) the outcome of a security screening investigation referred to in subsections (3) and (4).

Responsibilities of Director

- 12** (1) The Director is responsible for -
- (a) the performance by the Centre of its functions;
 - (b) implementation and administration of applicable provisions of this Act;
 - (c) reporting administratively to the Governor;
 - (d) reporting functionally to the Council;
 - (e) the management of the staff, resources and administration of the Centre;
 - (f) dissemination of intelligence involving suspected proceeds of crime, money laundering, terrorist property or financing of terrorism, to competent authorities and foreign agencies with powers and duties similar to that of the Centre;

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- (g) providing relevant advice to the Council;
- (h) providing advice and guidance to assist accountable institutions, reporting institutions and supervisory bodies to comply with their obligations under this Act; and
- (i) advise the Council on aligning the National Anti-Money Laundering and Combating the Financing of Terrorism framework with international Anti-Money Laundering and Combating the Financing of Terrorism standards and best practices.

Staff of Centre

13. (1) For the purposes of assisting the Director in the performance of the functions of the Centre, the Director, with the concurrence of the Governor, may appoint persons as staff members of the Centre.

(2) The Governor may –

- (a) assign staff members of the Bank to the Centre;
- (b) request an office, ministry, or agency as defined in the Public Service Act, 1995 (Act No. 13 of 1995), to second a staff member of the Public Service to the Centre for the purposes of assisting the Centre in carrying out its functions in terms of this Act.

(3) Staff members referred to in subsections (1) and (2) perform their duties under the supervision, control and directions of the Director.

(4) A person may not be appointed or seconded to perform any of the functions of the Centre unless –

- (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997); and
- (b) the Director, with the concurrence of the Governor, after evaluating the gathered information, is satisfied that the person may be so appointed or seconded without the possibility that the person poses a security risk or that the person may act in any way prejudicial to the objects or functions of the Centre and the objects of this Act.

(5) Any person referred to in subsection (4) may at any time determined by the Director, with the concurrence of the Governor, be subjected to a further security screening investigation as contemplated in subsection (4)(a).

Funds of Centre

14. (1) For the purpose of exercising its powers and performing its functions conferred and imposed by or under this Act the Centre must utilize funds available from –

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- (a) money appropriated annually by Parliament for the purposes of the Centre;
- (b) any Government grants made to the Centre;
- (c) money made available to the Centre from the Fund; and
- (d) any other money legally acquired by the Centre.

(2) The Centre, with the approval of the Minister, may accept financial donations or contributions from any other source.

(3) For the purpose of subsection (1)(a), the Director must prepare the annual budget of the Centre for consideration by the Council and its subsequent recommendation to the Minister for approval.

Audit

15. All the financial matters of the Centre relating to the Centre's exercising of its powers and performance of its functions in terms of this Act must be kept separate from that of the Bank and must be audited separately.

Delegation

16. (1) The Director may delegate, in writing, any of the powers entrusted to the Centre in terms of this Act to any employee of the Centre, or assign an employee of the Centre to perform any of the functions imposed on the Centre in terms of this Act.

- (2) A delegation or instruction in terms of subsection (1) -
 - (a) is subject to the limitations or conditions that the Director may impose; and
 - (b) does not divest the Director of the responsibility concerning the exercise of the delegated power or the performance of the assigned function.

(3) The Director may confirm, vary or revoke any decision taken by an employee in consequence of a delegation or instruction in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

PART 3**ANTI-MONEY LAUNDERING AND COMBATING FINANCING
OF TERRORISM COUNCIL****Establishment**

17. There is established an Anti-Money Laundering and Combating the Financing of Terrorism Council.

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18. (1) The Minister must appoint members of the Council which consists of -

- (a) the Governor or his or her delegate who is the chairperson;
- (b) the Permanent Secretary of the Ministry responsible for finance;
- (c) the Inspector-General of the Namibian Police Force;
- (d) the Permanent Secretary of the Ministry responsible for trade;
- (e) the Permanent Secretary of the Ministry responsible for justice;
- (f) the Permanent Secretary of the Ministry responsible for safety and security;
- (g) the Director of the Namibian Central Intelligence Service;
- (h) the Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority;
- (i) the Director of the Anti-Corruption Commission;
- (j) the President of the Bankers Association;
- (k) one person representing associations representing a category of accountable or reporting institutions requested by the Minister to nominate representatives; and
- (l) one person representing supervisory bodies requested by the Minister to nominate representatives.

(2) The Council may invite persons who may have special knowledge or skills in any relevant field or discipline to attend its meetings and advise the Council but such persons have no voting right.

(3) The members of the Council must elect a deputy chairperson at the first meeting of the Council.

(4) Any vacancy in the Council must, subject to subsection (1), be filled by the appointment of a new member.

(5) A member of the Council who is in the employment of the State may be paid such allowances for traveling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, out of the funds of the Centre, as the Minister may determine.

(6) A member of the Council, who is not in the employment of the State, may be paid such remuneration, including allowances, for traveling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, out of the funds of the Centre, as the Minister determines.

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- (7) The office of a member of the Council becomes vacant if that member -
- (a) by a written notice addressed to the Minister, resigns from office;
 - (b) is removed from office by the Minister for inability to perform his or her duties due to ill health; or
 - (c) is for any other reasonable cause removed from office by the Minister.
- (8) Before removing a member from office in terms of subsection (7)(c), the Minister must -
- (a) in writing, notify the member concerned of the grounds on which the member is to be removed from membership of the Council;
 - (b) give that member an opportunity to make an oral or a written representation on the matter to the Minister or to any other person designated by the Minister for that purpose; and
 - (c) consider any representation made.

Functions

- 19.** (1) The functions of the Council are to -
- (a) on the Minister's request or at its own initiative, advise the Minister on -
 - (i) policies and measures to combat money laundering and financing of terrorism activities; and
 - (ii) the exercise by the Minister of the powers entrusted to the Minister under this Act;
 - (b) consult, when necessary, with the Centre, associations representing categories of accountable or reporting institutions, offices, ministries or government agencies, supervisory bodies, regulators and any other person, institution, body or association, as the Council may determine, before it takes a policy decision which may impact on such institutions;
 - (c) advise the Centre concerning the performance of its functions;
 - (d) consider and recommend the proposed budget of the Centre to the Minister for approval;
 - (e) consider and recommend the human and other resources required by the Centre to effectively carry out its functions in terms of this Act to the Minister for approval; and
 - (f) recommend to the Minister the appointment or removal of the Director.
- (2) The Centre must provide administrative support for the Council to function effectively.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**Meetings and procedures**

20. (1) The chairperson of the Council, or in his or her absence, the deputy Chairperson, presides at meetings of the Council, or if both the chairperson and the deputy chairperson are absent from the meeting, or are unable to preside at the meeting, the members present must elect one member from among their number to preside at the meeting.

(2) The Council -

(a) must, at a time and place determined by the chairperson of the Council, hold a meeting of the Council at least three times in a year;

(b) may determine its own procedures at meetings; and

(c) may appoint committees from its members to assist it in the performance of its functions or the exercise of its powers.

(3) Any person who is not a member of the Council may be co-opted to serve on the committees mentioned in subsection (2)(c).

(4) When a provision of this Act requires consultation with the Council on any specific matter before a decision may be taken on that matter and it is not feasible to call a meeting of the Council, that provision is satisfied if -

(a) a proposed decision on that matter is circulated to the members of the Council; and

(b) an opportunity is given to them individually to comment in writing on the proposed decision within a reasonable time.

(5) Despite subsection (2)(a), the chairperson of the Council or, in his or her absence, the deputy chairperson of the Council -

(a) may convene a special meeting of the Council;

(b) must, at the written request of the Minister or of at least three members of the Council, convene a special meeting of the Council.

(6) The majority of all the members of the Council constitute a quorum for any meeting of the Council.

(7) A decision of a majority of members of the Council present at a meeting is the decision of the Council and, if there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his or her ordinary vote.

PART 4

MONEY LAUNDERING AND FINANCING OF TERRORISM CONTROL
MEASURES DUTY TO IDENTIFY CLIENTS, CONDUCT ONGOING
AND ENHANCED DUE DILIGENCE, KEEP RECORDS AND
REPORT SUSPICIOUS TRANSACTION
AND SUSPICIOUS ACTIVITIES

Identification when business relationship is established or single transaction is concluded

21. (1) For the purposes of this Part, multiple cash transactions in the domestic or foreign currency which, in aggregate, exceed the amount determined by the Centre must be treated as a single transaction if they are undertaken by or on behalf of any person during any day or such period as the Centre may specify.

(2) An accountable or reporting institution may not establish a business relationship or conclude a single transaction with a prospective client, unless the accountable or reporting institution has taken such reasonable steps in the prescribed form and manner to establish -

- (a) the identity of the prospective client, by obtaining and verifying identification and any further information;
- (b) if the prospective client is acting on behalf of another person, also-
 - (i) the identity of that other person;
 - (ii) the prospective client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
 - (iii) obtain or verify further information about that other person; and
- (c) if another person is acting on behalf of the prospective client, also -
 - (i) the identity of that other person;
 - (ii) that other person's authority to act on behalf of the client; and
 - (iii) obtain or verify further information about that other person.
- (d) Despite any exemption that may be granted in terms of this section, an accountable or reporting institution must establish the identity of a client if there is a suspicion of money laundering or financing of terrorism.

(3) Without limiting the generality of subsection (2)(a) and (b), if a prospective or existing client is a legal person, an accountable or reporting institution must take reasonable steps to establish its legal existence and structure, including verification of -

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- (a) the name of the legal person, its legal form, address, directors, partners or senior management;
- (b) the principal owners and beneficial owners;
- (c) provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the legal person is so authorised, and identify those persons.

(4) An accountable or reporting institution must maintain the accounts in the name of the account holder and must not open, operate or maintain any anonymous account or any account which is fictitious, false or in incorrect name.

(5) An accountable or reporting institution which contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Identification when transaction is concluded in the course of business relationship

22. (1) If an accountable or reporting institution established a business relationship with a client before this Act took effect, it must, within a period determined by the Centre, take such reasonable steps in the prescribed form and manner -

- (a) to establish the identity of the client, by obtaining and verifying identification and any further information;
- (b) if the client is acting on behalf of another person, to establish also -
 - (i) the identity of that other person;
 - (ii) the client's authority to conclude that transaction on behalf of that other person; and
 - (iii) obtain or verify further information about that other person; and
- (c) if another person is acting in the transaction in question on behalf of the client, to establish also -
 - (i) the identity of that other person;
 - (ii) that other person's authority to act on behalf of the client; and
 - (iii) obtain or verify further information about that other person; and
- (d) to trace, on such conditions and period as the Centre may determine, all accounts at that accountable or reporting institution that are involved in transactions concluded in the course of that business relationship.

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(2) If an accountable or reporting institution is unable within a reasonable period to establish to its reasonable satisfaction the identity of any person as required by subsection (1), it may not conclude any further transaction in the course of that business relationship and must immediately file a suspicious activity report.

(3) When the identity of the person referred to in subsection (2) is subsequently established, further transactions may only be concluded after the Centre has been informed of the identity of that person.

(4) Subsection (1) does not apply in respect of a business relationship which an accountable or reporting institution knows or reasonably believes to have ended prior to the commencement of this Act.

(5) If, after this Act took effect, an accountable or reporting institution recommenced a business relationship with a client or a business relationship referred to in subsection (4), the accountable or reporting institution may not conclude a transaction in the course of that business relationship unless the accountable or reporting institution has taken such reasonable steps referred to in subsection (1).

(6) An accountable or reporting institution which contravenes or fails to comply with subsection (1), (2), (3) or (5), commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Risk clients

23 (1) Accountable institutions must have appropriate risk management and monitoring systems in place to identify clients or beneficial owners whose activities may pose a risk of money laundering, financing of terrorism, or both.

(2) Where a client or beneficial owner has been identified through such systems to be a high risk for money laundering, financing of terrorism, or both, the employees of an accountable institution must -

- (a) obtain approval from the directors, partners or senior management of that accountable institution before establishing a business relationship with such new client, or in case of an existing client, obtain approval from the directors, partners or senior management of that accountable institution to continue the business relationship with the client; and
- (b) take measures as prescribed by the Centre to identify, as far as reasonably possible, the source of wealth, funds and any other assets of the client.

(3) An accountable institution which contravenes or fails to comply with subsections (1) and (2) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**On-going and enhanced due diligence**

24. (1) An accountable institution must exercise on-going due diligence in respect of all its business relationships which must, at a minimum, include -

- (a) maintaining adequate current and up-to-date information and records relating to the client and beneficial owner;
- (b) monitoring the transactions carried out by the client in order to ensure that such transactions are consistent with the accountable or reporting institution's knowledge of the client, the client's commercial or personal activities and risk profile; and
- (c) ensuring the obligations relating to high risk clients, as prescribed in section 23, and correspondent banking relationships are fulfilled.

(2) An accountable institution must -

- (a) pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose;
- (b) at the direction of the Minister, pay special attention to business relations and transactions with persons, including legal persons and trusts, from or in countries that do not or insufficiently apply the relevant international standards to combat money laundering and the financing of terrorism;
- (c) examine as far as possible the background and purpose of transactions under paragraphs (a) and (b) and set forth in writing their findings;
- (d) keep the findings made in terms of paragraph (c) available for competent authorities and company auditors for at least five years, or longer if specifically so requested by a competent authority before the expiration of the 5 year period;
- (e) take such specific measures as may be prescribed from time to time by the Minister to counter the risks with respect to business relations and transactions specified under paragraph (b); and
- (f) conduct enhanced monitoring and due diligence when -
 - (i) any doubts arise about the veracity or adequacy of previously obtained customer identification data; or
 - (ii) there is a suspicion of money laundering or financing of terrorism;

so as to prevent money laundering, financing of terrorism or the commission of any other offence.

(3) An accountable institution which contravenes or fails to comply with this section, commits an offence and is liable to a fine not exceeding N\$100 million or,

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where the commission of the offence is attributable to a representative of the accountable institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Identification and account-opening for cross-border correspondent banking relationships

25. (1) Where applicable, when entering into cross-border correspondent banking relationship, the employees of an accountable institution must -

- (a) identify and verify the identification of respondent institutions with which it conduct correspondent banking relationships;
- (b) collect information on the nature of the respondent institution's activities;
- (c) based on publicly-available information, evaluate the respondent institution's reputation and the nature of supervision to which it is subject;
- (d) obtain approval from the directors, partners or senior management of that accountable institution before establishing a correspondent banking relationship;
- (e) evaluate the controls implemented by the respondent institution with respect to anti-money laundering and combating the financing of terrorism;
- (f) establish an agreement on the respective anti-money laundering and combating the financing of terrorism responsibilities of each party under the relationship; and
- (g) in the case of a payable-through account, ensure that the respondent institution has verified its customer's identity, has implemented mechanisms for on-going monitoring with respect to its clients and is capable of providing relevant identifying information on request.

(2) An accountable institution which contravenes or fails to comply with subsection (1), commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Records to be kept of business relationships and transactions

26. (1) Whenever an accountable or reporting institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable or reporting institution has with the client, the accountable or reporting institution must keep records in the prescribed form and manner of -

- (a) the identity of the client;

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- (b) if the client is acting on behalf of another person -
 - (i) the identity of the person on whose behalf the client is acting; and
 - (ii) the client's authority to establish that business relationship or to conclude that single transaction on behalf of that other person;
 - (c) if another person is acting on behalf of the client -
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client;
 - (d) the manner in which the identity of a person referred to in paragraph (a), (b) or (c) was established;
 - (e) the nature of that business relationship or transaction;
 - (f) all accounts at that accountable or reporting institution that are involved in -
 - (i) transactions concluded in the course of that business relationship; or
 - (ii) a single transaction;
 - (g) in the case of a transaction -
 - (i) the amount involved; and
 - (ii) the parties to that transaction;
 - (h) client or transaction files and business correspondence;
 - (i) enhanced due diligence findings referred to in section 24 (2)(c) and (d);
 - (j) copies of all reports filed with the Centre pursuant to sections 32, 33 and 34 and supporting documents;
 - (k) the name of the person who obtained the information referred to in paragraph (a) to (g) on behalf of the accountable or reporting institution; and
 - (l) any document or copy of a document obtained by the accountable or reporting institution in order to verify a person's identity in terms of sections 21 and 22.
- (2) Records kept in terms of subsection (1) may be kept in electronic form.
- (3) The records referred to in subsection (1) must include records as may be determined by the Centre.-

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(4) An accountable or reporting institution which contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(5) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Period for which record must be kept

27. (1) An accountable or reporting institution must keep the records referred to in section 26 which relate to -

- (a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated; or longer if specifically so requested by competent authorities before the expiration of the 5 year period; and
- (b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded, or longer if specifically so requested by competent authorities before the expiration of the 5 year period;
- (c) suspicious transaction reports made pursuant to section 33, including any supporting documentation, for at least five years from the date the report was made, or longer if specifically so requested by competent authorities before the expiration of the 5 year period.

(2) An accountable or reporting institution must also maintain sufficient records to enable the reconstruction of any transaction for both clients and non-clients whether concluded as a single transaction or in the course of a business relationship, for a period of not less than 5 years from the date the transaction has been completed or the business relationship has been terminated, or longer if specifically so requested by competent authorities before the expiration of the 5 year period.

(3) An accountable or reporting institution must maintain all books and records with respect to their clients and transactions as set forth in section 26 and must ensure that such records, any supporting documentation and underlying information are available on a timely basis at the request of any competent authority

(4) An accountable or reporting institution which contravenes or fails to comply with subsection (1), (2) or (3) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Centralisation of records

28. (1) The duty imposed by section 26 on an accountable or reporting institution to keep records of the matters specified in that section may, in the case of two

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or more accountable or reporting institutions belonging to the same group, be centralised, as prescribed and be deemed to be performed by an accountable or reporting institution within the same group on behalf of those accountable or reporting institutions, provided that such accountable or reporting institutions have free and easy access to the records.

(2) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Records may be kept by third parties

29 (1) The duties imposed by section 26 on an accountable or reporting institution to keep record of the matters specified in that section may be performed by a third party on behalf of the accountable or reporting institution as long as the accountable or reporting institution has unrestricted access to the records.

(2) If a third party referred to in subsection (1) fails to properly comply with the requirements of section 26 on behalf of the accountable or reporting institution concerned, the accountable or reporting institution is liable for that failure.

(3) If an accountable or reporting institution appoints a third party to perform the duties imposed on it by section 26, the accountable or reporting institution must provide the Centre with the prescribed particulars regarding the third party.

(4) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Admissibility of records

30. (1) A record kept in terms of sections 26 and 48, or a certified extract of that record, or a certified printout of an electronic record of which direct oral evidence of its contents may be given, is on its mere production in a court admissible as evidence in a matter before the court.

(2) Any record of an investigation conducted under this Act, any property, report or document produced or any statement is, notwithstanding any law to the contrary, admissible as evidence in any proceedings in any court for, or in relation to, an offence or any other matter under this Act or any other offence under any other law, regardless whether such proceedings are against the person who was examined, or who produced the property, record, report or document, or who made the written statement on oath or affirmation, or against any other person.

Centre has access to records

- 31.** (1) The Centre or an authorised representative of the Centre -
- (a) has access during ordinary working hours to any record kept in terms of this Act, relating to suspicious money laundering or financing of terrorism activities, by or on behalf of -

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- (i) an accountable institution;
 - (ii) a reporting institution;
 - (iii) a supervisory body;
 - (iv) a regulatory body;
 - (v) a law enforcement agency;
 - (vi) any other person or institution that holds relevant records or information, including information on a commercially held database;
 - (vii) any office, ministry or agency within the Government; and
- (b) may examine, make extracts from or copies of those records.

(2) An accountable or reporting institution, a supervisory or regulatory body or any other person or institution must without delay give all reasonable assistance to an authorised representative of the Centre necessary to enable that representative to exercise the powers mentioned in subsection (1).

(3) An accountable or reporting institution, a supervisory body, regulatory body, or any other person which contravenes or fails to comply with subsection (2) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Cash transactions above prescribed limits

32. (1) An accountable and reporting institution must, within the prescribed period, report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount -

- (a) is paid by the accountable or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
- (b) is received by the accountable or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

(2) An accountable or reporting institution which contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

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- 33.** (1) A person who -
- (a) carries on any business or the business of an accountable or reporting institution, or is in charge of, or manages a business undertaking, or a business undertaking of an accountable or reporting institution; or
 - (b) is a director of, secretary to the board of, employed or contracted by any business, or the business of an accountable or reporting institution,

and who knows or reasonably ought to have known or suspect that, as a result of a transaction concluded by it, or a suspicious activity observed by it, it has received or is about to receive the proceeds of unlawful activities or has been used or is about to be used in any other way for money laundering or financing of terrorism purposes, must, within the prescribed period after the suspicion or belief arose, as the case may be, report to the Centre -

- (i) the grounds for the suspicion or belief; and
- (ii) the prescribed particulars concerning the transaction or suspicious activity.

(2) If an accountable or reporting institution or business suspects or believes there are reasonable grounds to suspect that, as a result of a transaction which it is asked to conclude or about which enquiries are made, it may receive the proceeds of unlawful activities or in any other way be used for money laundering or financing of terrorism purposes should the transaction be concluded, it must, within the prescribed period after the suspicion or belief arose, report to the Centre -

- (a) the grounds for the suspicion or belief, and
- (b) the prescribed particulars concerning the transaction.

(3) An accountable or reporting institution or business which made or is to make a report in terms of this section must not disclose that fact or any information regarding the contents of that report, to any other person, including the person in respect of whom the report is or to be made, otherwise than -

- (a) within the scope of the powers and duties of the accountable or reporting institution or business in terms of any legislation;
- (b) for the purpose of carrying out this Act;
- (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (d) in terms of an order of court.

(4) A person who knows or suspects that a report has been or is to be made in terms of this section must not disclose that knowledge or suspicion or any information regarding the contents or suspected contents of that report to any other person, including the person in respect of whom the report is or is to be made otherwise than -

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- (a) within the scope of that person's powers and duties in terms of any legislation;
- (b) for the purpose of carrying out this Act;
- (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (d) in terms of an order of a court.

(5) An accountable or reporting institution or business which contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(6) A person who contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Electronic transfers of money to, from and within Namibia

34. (1) If an accountable or reporting institution through an electronic transfer, on behalf or on the instruction of another person -

- (a) sends money in excess of a prescribed amount, regardless of the destination of such funds; or
- (b) receives money in excess of a prescribed amount, regardless of the origin of such funds,

it must, within the prescribed period after the money was received or transferred, report the transfer, together with the prescribed originator information, to the Centre.

(2) If an accountable or reporting institution undertakes to send an electronic transfer in excess of a prescribed amount it must, where reasonably possible, include the prescribed originator information in the electronic message or payment form accompanying the transfer, or be in a position to request such originator information from the originator institution.

(3) When an accountable or reporting institution acts as an intermediary in a chain of electronic transfers, it must transmit all the information it receives with that electronic transfer, to the recipient institution.

(4) If an accountable or reporting institution referred to in subsection (2) receives an electronic transfer that does not contain all the prescribed originator information, it must take the necessary measures to ascertain and verify the missing information from the ordering institution or the beneficiary, before it honours any of the instructions contained in the transfer.

(5) If an accountable or reporting institution is not able to obtain the prescribed originator information, it must file a suspicious transaction report.

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(6) An accountable or reporting institution must treat an electronic transfer that it undertakes to send, receive or transmit as an intermediary, or receive as the recipient institution, as a transaction for which it must comply with the record-keeping requirements of sections 26 and 27.

(7) An accountable or reporting institution which contravenes or fails to comply with a provision of this section, commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Obligations of and reporting by supervisory bodies

35. (1) If a supervisory body suspects that an accountable or reporting institution has, as a result of a transaction concluded by the institution, knowingly or unknowingly received or is about to receive the proceeds of unlawful activities or has in any other way been used for money laundering or financing of terrorism purposes, it must -

- (a) inform the Centre of the knowledge or suspicion outlining: -
 - (i) the grounds for the knowledge or suspicion; and
 - (ii) the prescribed particulars concerning the transaction or suspicion; and
- (b) retain the records held by it which relate to that knowledge or suspicion, for such period as the Centre may reasonably require, but not less than 5 years from date of the report or longer if specifically so requested by competent authorities before the expiration of the 5 year period.

(2) A supervisory body is responsible for supervising, monitoring and enforcing compliance with this Act or any regulation, order, circular, notice, determination or directive issued in terms of this Act, in respect of all accountable or reporting institutions supervised by it.

(3) Any accountable or reporting institution that is not supervised by a supervisory body is deemed to be supervised by the Centre for purposes of this Act.

(4) The responsibility referred to in subsection (2) forms part of the legislative mandate of all supervisory bodies and constitutes a core function of supervisory bodies which function must be executed using a risk-based approach.

(5) Any Act that regulates a supervisory body or authorises that supervisory body to supervise or regulate any accountable or reporting institution, must be read as including subsection (2) and a supervisory body may utilise any fees or charges it is authorised to impose or collect, to defray expenditure incurred in performing its obligations under this Act or any regulation, order, circular, notice, determination or directive issued in terms of this Act.

(6) A supervisory body, in meeting its obligation referred to in subsection (2) may -

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- (a) delegate the exercise of any power to any of its members, employees or any other suitable person;
- (b) require an accountable or reporting institution supervised or regulated by it to report on that institution's compliance with this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act, in the form, manner and timeframes prescribed by the Centre, after consultation with the supervisory body;
- (c) issue or amend any licence, registration, approval or authorisation that the supervisory body may issue, or has issued, or grant in accordance with any Act, to include the following conditions -
 - (i) compliance with this Act; and
 - (ii) the continued availability of human, financial, technological and other resources to ensure compliance with this Act or any order, notice, circular, determination or directive made in terms of this Act.

(7) A supervisory body must submit to the Centre, within the prescribed period and in the prescribed manner, a written report on any supervision and monitoring activities conducted in respect of an accountable or reporting institution in terms of this Act or any regulation order, notice, circular, determination or directive made in terms of this Act.

(8) A supervisory body must register in the prescribed form and manner particulars of all accountable or reporting institutions, regulated or supervised by it, with the Centre for purposes of supervising compliance with this Act or any regulation, order, notice, circular, determination or directive made in terms of this Act.

(9) The Centre and a supervisory body must consult and cooperate with each other in exercising their powers and the performance of their functions in terms of this Act.

(10) The Centre may issue an administrative notice, penalising a supervisory body by imposing an appropriate, prescribed fine without recourse to a Court, if that body has, without reasonable excuse failed to comply in whole or in part with any obligations under this Part, or any regulation, order, notice, circular, determination or directive issued in terms of this Act.

(11) If the Centre is satisfied that a supervisory body has failed without reasonable excuse to comply in whole or in part with any obligations in this Act it may apply to the High Court for an order compelling any or all the officers or employees of that supervisory body to comply with those obligations.

(12) If the High Court is satisfied that a supervisory body has failed without reasonable excuse to comply in whole or in part with any obligation imposed by this Act it may issue the order applied for in terms of subsection (11), or make any order it considers appropriate.

(13) Despite subsections (11) and (12), the Centre may enter into an enforceable undertaking with any supervisory body that has without reasonable excuse

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failed to comply in whole or in part with any obligations in this Part to implement any action plan to ensure compliance with its obligations under this Part.

(14) A person who contravenes or who fails to comply with an administrative notice under subsection (10) or an enforceable undertaking in terms of subsection (13), commits an offence and is liable to a fine not exceeding N\$10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment and, in the case of a continuing offence, to a further fine not exceeding N\$50 000 for each day during which the offence continues after conviction.

(15) The relevant supervisory body of an accountable or reporting institution or such other person as the relevant supervisory body may think fit must -

- (a) adopt the necessary measures to prevent or avoid having any person who is not fit and proper from controlling, or participating, directly or indirectly, in the directorship, management or operation of an accountable or reporting institution;
- (b) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in an accountable or reporting institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any regulation, order, notice, circular, determination or directive made in terms of this Act, or any involvement in-
 - (i) any money laundering activity; or
 - (ii) any terrorist or financing of terrorism related activity.
- (c) supervise accountable and reporting institutions, and regulate and verify, through regular examinations, that an accountable or reporting institution adopts and implements compliance measures consistent with this Act,
- (d) issue guidelines to assist accountable and reporting institutions in detecting suspicious patterns of behaviour in their clients and these guidelines shall be developed taking in to account modern and secure techniques of money management and will serve as an educational tool for accountable and reporting institutions' personnel; and
- (e) co-operate with other enforcement agencies and lend technical assistance in any investigation, proceedings relating to any unlawful activity or offence under this Act.

(16) The supervisory body or regulatory body of an accountable or reporting institution, upon recommendation of the Centre, may revoke or suspend the licence of the accountable or reporting institution or cause the institution not to carry on such business -

- (a) if the accountable or reporting institution has been convicted of an offence under this Act; or

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- (b) if the accountable or reporting institution consistently failed or refused to adhere to any or all of its obligations under this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act.

(17) The supervisory body or regulatory body must report promptly to the Centre any information received from any accountable or reporting institution related to transactions or activities that could be treated as an offence under this Act.

(18) A supervisory body which contravenes or fails to comply with subsection (1), (2), (7), (8), (15), (16) or (17) commits an offence and is liable to a fine not exceeding N\$10 million or, where the commission of the offence is attributable to a representative of the supervisory body, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(19) An accountable or reporting institution that contravenes or fails to comply with subsection (6)(b) commits an offence and is liable to a fine not exceeding N\$10 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Declaration of cross border movement of cash and bearer negotiable instruments amounting to or exceeding amount determined by Centre

36. (1) Every person entering into or departing from Namibia who is carrying or transporting cash, bearer negotiable instruments, or both, equal to or exceeding an amount determined by the Centre, must declare such cash or instrument, to an officer of the Customs and Excise at the port of entry into or departure from Namibia.

(2) Every person importing into or exporting out of Namibia, through containerized cargo, cash or bearer negotiable instruments equal to or exceeding an amount determined by the Centre, must declare such cash or bearer negotiable instruments to an officer of the Customs and Excise at the port of entry into or departure from Namibia.

(3) Every person mailing or conveying any post whether by mail, telegram or courier entering or departing Namibia that contains cash or bearer negotiable instruments equal to or exceeding an amount determined by the Centre, must declare such cash or bearer negotiable instruments to a designated officer at the relevant Post Office or an officer of the Customs and Excise at the port of entry into or departure from Namibia.

(4) The declaration referred to in subsections (1), (2) or (3) must be made on a prescribed form and be presented to an officer of the Customs and Excise at that port of entry into or departure from Namibia, or to a designated officer at the relevant Post Office.

(5) Once a declaration is made in terms of subsections (1), (2) or (3), an officer of the Customs and Excise or Post Office to whom the declaration is made, must issue an acknowledgement as prescribed by the Centre to the person making the declaration.

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(6) Any person that is required to make a declaration in terms of subsections (1), (2) or (3) of cash or bearer negotiable instruments, or both, and who fails to make such declaration, or makes a false declaration, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(7) Any cash or bearer negotiable instrument that is not declared as aforesaid, or that is falsely declared, is liable for seizure and forfeiture to the State, in the form and manner as prescribed.

Powers of officers of Customs and Excise in respect of cash or bearer negotiable instruments being conveyed in or out of Namibia

37. (1) For the purposes of ascertaining any matter referred to in section 36 or exercising any powers under section 36, an officer of the Customs and Excise or Post Office may require any person referred to in section 36(1), (2) or (3) to -

- (a) answer questions that the officer of the Customs and Excise or Post Office may put to that person which are relevant to any issue referred to in section 36;
 - (b) make and sign a cash or bearer negotiable instrument declaration form;
 - (c) provide information concerning the origin of the cash or bearer negotiable instrument and its intended purpose, in the event of a false declaration or a failure to make a declaration; and
 - (d) answer any other question to ensure compliance with section 36.
- (2) An officer of the Customs and Excise or Post Office may -
- (a) seize and detain cash or bearer negotiable instruments when such officer reasonably suspects that such cash or bearer negotiable instruments -
 - (i) are proceeds of crime;
 - (ii) may be used to commit the offence of money laundering;
 - (iii) may be used to commit the offence of terrorism or terrorist financing;
 - (iv) is connected to terrorist or terrorist financing activities;
 - (b) seize and detain cash or bearer negotiable instruments when such officer reasonably suspects -
 - (i) the person concerned has failed to make a declaration in terms of subsections 36(1), (2) or (3); or
 - (ii) the person concerned has made a false declaration.

(3) An officer of the Customs and Excise or Post Office may seize and detain any cash, bearer negotiable instrument, article, book or document including any

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container or package, which, in his or her opinion, may afford evidence relating to the commission of, or an attempt to commit a money laundering or financing of terrorism offence, or any matter incidental thereto.

(4) An officer of the Customs and Excise may board any ship or aeroplane within the territory, the territorial sea or the exclusive economic zone of Namibia, or may stop and board any vehicle entering or leaving Namibia, and may search any such ship, aeroplane or vehicle or any person found therein or thereon, for undeclared or falsely declared cash or bearer negotiable instruments.

(5) If any container, cargo, vehicle, cabin, place, safe, or package is locked and the keys thereof are not produced to the officer of the Customs and Excise or Post Office on demand, the officer may, for any purpose under this section, open or enter such container, vehicle, cabin, place, safe, or package in any manner he or she thinks appropriate.

(6) All officers of the Customs and Excise or Post Office must cooperate with other law enforcement agencies on any matter concerning investigations of money laundering activities, financing of terrorist activities or both.

(7) An officer of the Customs and Excise or Post Office may detain and hand over to the police any person who has committed an offence under this section to be arrested without a warrant of arrest.

(8) Any cash or bearer negotiable instruments seized and detained by an officer of the Customs and Excise or Post Office in terms of subsection 2(a) must be handed over to the Namibian Police for purposes of criminal investigations and prosecutions.

(9) Any cash or bearer negotiable instruments seized and detained by an officer of the Customs and Excise or Post Office in terms of subsection 2(b) must be handed over to the Centre for purposes of forfeiture as envisaged in subsection 36(7).

Making declarations on cash or bearer negotiable instruments available to Centre

38 (1) The Commissioner of Customs and Excise or the Post Master must within a prescribed period and in the prescribed form and manner make all declarations made in terms of subsections 36(1), (2) or (3) to an officer of the Customs and Excise or Post Office, respectively, available to the Centre.

(2) An officer of the Customs and Excise or Post Office who wilfully fails to electronically register and make information referred to in section 36 available to the Commissioner of Customs and Excise or the Post Master for onward submission to the Centre, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Obligations of accountable and reporting institutions

39. (1) An accountable institution, on a regular basis, must conduct money laundering and financing of terrorism activities risk assessments taking into account the scope and nature of its clients, products and services, as well as the geographical area from where its clients and business dealings originate.

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(2) Accountable and reporting institutions not supervised or regulated by a supervisory body or regulatory body must register their prescribed particulars with the Centre for purposes of supervising compliance with this Act or any regulation, notice, order, circular, determination or directive issued in terms of this Act.

(3) Accountable and reporting institutions must develop, adopt and implement a customer acceptance policy, internal rules, programmes, policies, procedures and controls as prescribed to effectively manage and mitigate risks of money laundering and financing of terrorism activities.

(4) A customer acceptance policy, internal rules, programmes, policies, procedures referred to in subsection (3) must be approved by directors, partners, or senior management of accountable or reporting institution and must be consistent with national requirements and guidance, and should be able to protect the accountable or reporting institution's systems against any money laundering and financing of terrorism activities taking into account the results of any risk-assessment conducted under subsection (1).

(5) The programmes in subsection (3) may include -

- (a) the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of those employees;
- (b) on-going employee training programmes, such as "Know Your Customer" programmes and instructing employees with regard to responsibilities under this Act; and
- (c) an independent audit function to check compliance with those programmes;
- (d) policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value; and
- (e) policies and procedures to address the specific risks associated with non-face-to-clients or transactions for purposes of establishing identity and on-going customer due diligence.

(6) Accountable and reporting institutions must designate compliance officers at management level, where applicable, who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.

(7) Accountable and reporting institutions must implement compliance programmes under subsection (3) at its branches and subsidiaries within or outside Namibia.

(8) An accountable institution must develop audit functions to evaluate any policies, procedures and controls developed under this section to test compliance with the measures taken by the accountable institution to comply with this Act and the effectiveness of those measures.

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- (9) The internal rules referred to in subsection (3) must include -
- (a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part 4 of this Act;
 - (b) the information of which record must be kept in terms of Part 4 of this Act;
 - (c) identification of reportable transactions; and
 - (d) the training of employees of the institution to recognise and handle suspected money laundering and financing of terrorism activities.
- (10) Internal rules made under this section must comply with the prescribed requirements and be made available to each employee of an accountable or reporting institution.
- (11) The Centre may determine the type and extent of measures accountable and reporting institutions shall undertake with respect to each of the requirements in this section, having regard to the risk of money laundering or financing of terrorism and the size of the business or profession.
- (12) Any accountable or reporting institution that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Reporting procedures

- 40.** (1) A report required to be made in terms of this Act must be made in the prescribed manner.
- (2) The Centre, or an investigating authority acting with the permission of the Centre or under the authority of a competent authority may request an accountable institution, reporting institution, supervisory body, regulatory body or person that has made a report in terms of this Act to furnish the Centre or that investigating authority without delay with any additional information concerning the report which the Centre or the investigating authority may reasonably require and which that accountable institution, reporting institution, supervisory body, regulatory body or person has.
- (3) An accountable or reporting institution, supervisory body or regulatory body which fails to comply with a request made under subsection (2) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, supervisory or regulatory body, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.
- (4) A person who fails to comply with a request made under subsection (2) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**Continuation of suspicious transactions**

41. An accountable or reporting institution that has made a report to the Centre in terms of section 32, 33 or 34 concerning a transaction, may continue with and carry out the transaction unless the Centre directs the accountable or reporting institution in terms of section 42 not to proceed with the transaction.

Intervention by Centre

42. (1) If the Centre, after consulting an accountable or reporting institution, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or may constitute money laundering or the financing of terrorism; it may direct the accountable or reporting institution in writing not to proceed with the carrying out of that transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period determined by the Centre, which may not be more than 12 working days, in order to allow the Centre -

- (a) to make the necessary inquiries concerning the transaction; and
- (b) if the Centre thinks it appropriate, to inform and advise an investigating authority or the Prosecutor-General.

(2) An accountable or reporting institution which fails to comply with a direction made under subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Monitoring orders

43. (1) A judge in chambers may, on written application by the Centre, order an accountable or reporting institution to report to the Centre, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specific person with the Accountable or reporting institution or all transactions conducted in respect of a specific account or facility at the accountable or reporting institution, if there are reasonable grounds to suspect that -

- (a) that person is using the accountable or reporting institution for money laundering or financing of terrorism purposes;
- (b) that account or other facility is being used for the purposes of money laundering or financing of terrorism;

(2) An order in terms of subsection (1) lapses after three months unless extended in terms of subsection (3).

(3) A judge in chambers may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if -

- (a) the reasonable grounds for the suspicion on which the order is based still exist; and

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(b) the judge is satisfied that the interest of justice is best served by investigating the suspicion in the manner provided for in this section.

(4) An application referred to in subsection (1) must be heard and an order must be issued without notice to or hearing the person or persons involved in the suspected money laundering or financing of terrorism activities.

(5) An accountable or reporting institution which fails to comply with an order made under subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Reporting duty not affected by confidentiality rules

44. (1) No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance with a provision of this Act.

(2) Subsection (1) does not apply if the obligation of secrecy or other restriction is based on the common law right to professional privilege between a legal practitioner and his or her client in respect of information communicated to the legal practitioner so as to enable him or her to -

- (a) provide advice to the client;
- (b) defend the client; or
- (c) render other legal assistance to the client in connection with an offence under any law in respect of which -
 - (i) the client is charged;
 - (ii) the client has been arrested or summoned to appear in court; or
 - (iii) an investigation with a view to institute criminal proceedings is being conducted against the client.

Protection of persons making reports

45. (1) No action, whether criminal or civil, lies against an accountable or reporting institution, supervisory body or person complying in good faith with a provision of this Part, including any director, employee or other person acting on behalf of that accountable or reporting institution, supervisory or regulatory body or person.

(2) A person who has made, initiated or contributed to a report in terms of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

(3) No evidence concerning the identity of a person who made a report in terms of this Part or the contents of that report, or the grounds for that report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

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(4) No evidence concerning the identity of a person who initiated or contributed to a report in terms of this Part is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

Tipping off

- 46.** A person who -
- (a) knows or has reason to suspect that an authorised officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and who discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
 - (b) knows or has reason to suspect that a disclosure has been made to an authorised officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be concluded following the disclosure,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a term not exceeding 30 years, or to both such fine and such imprisonment.

Admissibility as evidence of reports made to Centre

47. A certificate issued by an official of the Centre that information specified in the certificate was reported to the Centre in terms of this Part, is, subject to section 45(3) and (4), on its mere production in a court admissible as evidence in a matter before that court.

Access to information held by Centre

48. (1) If the Centre, on the basis of its analysis and assessment under section 9 has reasonable grounds to suspect that information would be relevant to the national security or economic stability of Namibia, the Centre must disclose that information to an investigating authority inside Namibia, relevant Supervisory Bodies, relevant regulators and to the Namibia Central Intelligence Service.

(2) The Centre must record in writing the reasons for all decisions to disclose information made under subsection (1).

(3) For the purposes of subsection (1), “information”, includes in respect of a financial transaction or an importation or exportation of currency or monetary instruments -

- (a) the name of the client or of the importer or exporter, or any person or entity acting on their behalf;
- (b) the name and address of the place of business where the transaction occurred or the address of the port of entry into Namibia where the importation or exportation occurred and the date when the transaction, importation or exportation occurred;

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- (c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;
 - (d) in the case of a transaction, the transaction number and the account number, if any; and
 - (e) any other similar identifying information that may be prescribed for the purposes of this section.
- (4) The Centre may, spontaneously or upon request disclose any information to an institution or agency in a foreign state that has powers and duties similar to those of the Centre under this Act on such terms and conditions as are set out in an agreement, between the Centre and that foreign agency regarding the exchange of that information.
- (5) Without limiting the generality of subsection (4), an agreement entered into under that subsection may -
- (a) restrict the use of information to purposes relevant to investigating or prosecuting an unlawful activity, money laundering, financing of terrorism, or an offence that is substantially similar to such offences; and
 - (b) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the Centre.
- (6) The Centre may in writing authorise a competent authority to have access to such information as the Centre may specify for the purposes of performing the relevant authority's functions.
- (7) The Centre may, in writing, authorise the Prosecutor-General or his or her designated officer to have access to such information as the Centre may specify for the purpose of performing his or her duties or dealing with a foreign state's request to mutual assistance in criminal matters.
- (8) Despite anything to the contrary in subsection (4) the Centre may, spontaneously or upon request, disclose any information to an institution or agency in a foreign state that has the powers and duties to those of the Centre under this Act if the Centre is satisfied that that corresponding institution has given appropriate written undertakings -
- (a) for protecting the confidentiality of any information communicated to it; and
 - (b) for controlling the use that will be made of the information, including an undertaking that it will not be used as evidence in any proceedings.
- (9) The Centre may make inquiries on behalf of a foreign agencies agency where the inquiry may be relevant to the foreign agencies agency's analysis of a matter involving suspected proceeds of crime, money laundering, terrorist property or suspected financing of terrorism.

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- (10) In making inquiries as provided for in subsection (9), the Centre may -
- (a) search its own databases, including information related to reports of suspicious transactions and suspicious activities, requests for information and other databases to which the Centre has direct or indirect access, including law enforcement databases, public databases, administrative databases and commercial databases;
 - (b) obtain from accountable institutions or reporting institutions, or from any other person holding records or information on behalf of such accountable or reporting institutions, information that is relevant in connection with such request;
 - (c) obtain from competent authorities information that is relevant in connection with such request ; and
 - (d) take any other action in support of the request of the foreign agencies that is consistent with the authority of the Centre.

(11) A person who obtains information from the Centre must use that information only within the scope of that person's powers and duties and for the purposes authorised by this Act.

(12) The Centre may make available any information obtained by it, or to which it has access, to any ministry, office or agency within Government, a supervisory body, a regulator, a self-regulating association or organisation or accountable and reporting institutions that is affected by or has a legitimate interest in that information.

(13) A person who uses information obtained from the Centre otherwise than in accordance with this section commits an offence and is liable on conviction to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and imprisonment.

Protection of confidential information

49. (1) A person may not disclose confidential information held by or obtained from the Centre except -

- (a) within the scope of that person's powers and duties in terms of any legislation;
- (b) for the purpose of carrying out this Act;
- (c) with the permission of the Centre;
- (d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (e) in terms of an order of a court.

(2) A person who has obtained information from the Centre under this Act may not, when he or she is no longer authorised to keep the information under this

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Act, make a record of the information, disclose or communicate the information in any circumstances.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Protection of informers and information

50. (1) Where a person discloses to the Centre information in terms of section 33, that any proceeds of unlawful activities is used in connection with or derived from money laundering, or terrorist financing or any matter on which that information is based -

- (a) if he or she does any act in contravention of the provisions of this Act and the disclosure relates to the arrangement concerned he or she does not commit an offence if the disclosure is made -
 - (i) before he or she does the act concerned, being an act done with the consent of the Centre ; or
 - (ii) after he or she does the act, but the disclosure is made on his or her initiative and as soon as it is reasonable for him or her to make it;
- (b) despite any other written law or the common law the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and
- (c) he or she is not liable for any damages for any loss arising out of -
 - (i) the disclosure; or
 - (ii) any act done or committed to be done in relation to the property in consequence of the disclosure

(2) Where any information relating to an offence under this Act is received by an authorized officer the information and identity of the person giving the information must be confidential between the authorized officer and that person and everything contained in such information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, may not be disclosed except for the purposes of assisting the Centre to carry out its functions as stated under this Act.

(3) A person who obstructs, hinders or threatens another person in the performance of their duties in terms of this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**PART 5
COMPLIANCE AND ENFORCEMENT OF ACT****Exhausting of other measures before penalties**

51. (1) For purposes of sections 54 and 55, the Centre must perform its functions and exercise its powers after consultation with the relevant supervisory body of an accountable or reporting institution.

(2) Despite the penalties provided for in terms of subsections 21(5), 22(6), 23(3), 24(3), 25(8), 26(4), 27(3), 31(3), 32(2), 33(5), 34(7), 35(12), 39(10), 40(3) and 43(5), the Centre or a supervisory body may, if the circumstances of the non-compliance so justifies, first exhaust measures provided for in terms of sections 54, 55, 56 and 60.

Appointment of inspectors

52. (1) The Director or the head of a supervisory, as the case may be, may appoint any person in the service of the Centre or supervisory body or any other suitable person as an inspector for the purposes of determining compliance with this Act or any regulation, notice, order, circular, determination or directive issued in terms of this Act.

(2) The Director or the head of a supervisory may determine the remuneration to be paid to a person who is appointed in terms of subsection (1) that is not in the full-time service of the Centre or supervisory body.

(3) The Director or the head of a supervisory body must issue an inspector appointed in subsection (1) with a certificate of appointment signed by the Director or the head of the supervisory body.

(4) A certificate of appointment issued under subsection 3 must have -

- (a) the full name of the person so appointed;
- (b) his or her identity number;
- (c) his or her signature;
- (d) his or her photograph;
- (e) a description of the capacity in which he or she is appointed; and
- (f) the extent of his or her powers to inspect.

(5) Where the head of a supervisory body is authorised by any other Act to appoint inspectors, he or she may extend the appointment and functions of inspectors under that Act to include the undertaking of inspections under this Act.

(6) In undertaking inspections under this Act, an inspector whose appointment or functions have been extended under subsection (5), may, in addition to the functions imposed upon such inspector under the Act contemplated in subsection (5), perform any of the functions imposed in terms of this Act.

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(7) Any extended appointment contemplated in subsection (5) must be reflected in any certificate or appointment document issued by the head of the supervisory body to an inspector under the Act contemplated in that subsection.

(8) When an inspector undertakes an inspection in terms of this Act, the inspector must -

- (a) be in possession of a certificate of appointment; and
- (b) on request, show that certificate to any person who is -
 - (i) directly affected by the performance of the functions of the inspector; or
 - (ii) is in charge of any premises to be inspected.

Inspections

53. (1) For the purposes of determining compliance with this Act or any regulation, notice, order, circular, determination or directive issued in terms of this Act, an inspector may at any time and on notice, enter and inspect any premises at which the Centre the supervisory body or regulatory body reasonably believes the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted.

- (2) An inspector, in conducting an inspection, may -
 - (a) in writing direct a person to appear for questioning before the inspector on a date, time and place determined by the inspector;
 - (b) order any person who has or had any document in his or her or its possession or under his or her or its control relating to the affairs of the accountable institution, reporting institution or person:
 - (i) to produce that document; or
 - (ii) to furnish the inspector at the place and in the manner determined by the inspector with information in respect of that document;
 - (c) open any strong room, safe or other container, or order any person to open any strong room, safe or other container, in which the inspector suspects any document relevant to the inspection is kept;
 - (d) use any computer system or equipment on the premises or require reasonable assistance from any person on the premises to use that computer system to -
 - (i) access any data contained in or available on that computer system; and
 - (ii) reproduce any document from data stored on that computer system;

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- (e) examine or make extracts from or copy any document in the possession of an accountable institution, reporting institution or person and against the issue of a receipt, remove that document temporarily for that purpose; and
- (f) against the issue of a receipt, seize any document obtained in terms of paragraphs (c) to (e) which in the opinion of the inspector may constitute evidence of non-compliance with a provision of this Act or any regulation, order, determination or directive issued in terms of this Act.

(3) An accountable institution, reporting institution or other person to whom this Act applies, must without delay provide reasonable assistance to an inspector acting in terms of subsection (2).

(4) An inspector may not disclose to any person not in the service of the Centre or supervisory body any information obtained in the performance of functions under this Act, accept-

- (a) for the purpose of enforcing compliance with this Act or any regulation, order, determination or directive issued in terms of this Act;
 - (b) when required to do so by a court order ; or
 - (c) if the Centre or supervisory body is satisfied that it is in the public interest to release such information.
- (5) A person who -
- (a) obstructs, hinders or threatens an inspector;
 - (b) who fails to appear for questioning;
 - (c) who gives false information to the inspector; or
 - (d) who fails to comply with a reasonable request or order by an inspector in the performance of his or her duties or the exercise of his or her powers in terms of this Act,

commits an offence and is liable to a fine not exceeding N\$10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Directives

54. (1) The Centre, after consultation with the relevant supervisory body may by notice in the Gazette issue a directive to all institutions, or any category of institutions, or other category of persons to whom this Act applies, regarding the application of this Act.

(2) The Centre or a supervisory body may in writing, over and above any directive contemplated in subsection (1), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom this Act applies , to -

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- (a) provide the Centre or that supervisory body, as the case may be -
 - (i) with the information, reports or statistical returns specified in the directive, at the time or at the intervals specified in the directive; or
 - (ii) with any document in its possession or custody or under its control, within the period specified in the directive;
 - (b) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;
 - (c) perform acts necessary to remedy any non-compliance with this Act; or
 - (d) perform acts necessary to meet obligations imposed by this Act.
- (3) The Centre or supervisory body may examine a document submitted to it in terms of subsection (2)(a)(ii) or make a copy thereof or part hereof.
- (4) The costs incurred in complying with a directive must be borne by the accountable institution, reporting institution or person concerned.
- (5) An accountable institution or a reporting institution or person that fails to comply with a directive issued in terms of this section commits an offence and is liable to a fine not exceeding N\$10 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Enforceable undertakings and enforcement

55. (1) The Director, after consultation with any relevant supervisory body, may accept any of the following undertakings from a person authorised to act on behalf of either an accountable or reporting institution -

- (a) a written undertaking that the accountable or reporting institution will, in order to comply with this Act, its regulations, orders, notices, circulars, determinations or directives made in terms of this Acts, take specified action;
- (b) a written undertaking that the accountable or reporting institution will, in order to comply with this Act, or any regulations, orders, notices, circulars, determinations or directives issued in terms of this Act, refrain from taking specified action;
- (c) a written undertaking that the accountable or reporting institution will take specified action directed towards ensuring that the accountable or reporting institution does not contravene this Act, or any regulations, order, notice, circular, determination or directive issued in terms of this Act, or that it is unlikely for the accountable or reporting institution to contravene this Act, or any regulations, order, notice, circular, determination or directive issued in terms of this Act, in the future.

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(2) The person may withdraw or vary the undertaking only with the consent of the Director.

(3) The Director may, after consultation with any relevant supervisory body by written notice given to the person, cancel the undertaking.

(4) The Director may publish a copy of the undertaking or make available to any interested person a copy of the undertaking.

(5) The Director, before making available such undertaking, must delete information that the Director is satisfied is-

- (a) confidential information with commercial value; or
- (b) information that may not be released as it is against the public interest to do so; or
- (c) information that consists of personal details of an individual.

(6) If the Director has reason to believe that any person who has given an undertaking in terms of this section has breached such undertaking, the Director may apply to the High Court for an order in terms of subsection (7).

(7) If the High Court is satisfied that the person has breached the undertaking, the Court may make -

- (a) an order directing the person to comply with the undertaking;
- (b) an order directing the person to pay to the Fund, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any other order the Court thinks appropriate.

Administrative sanctions

56. (1) The Centre or a supervisory body may impose an administrative sanction referred to in subsection (3) on any accountable institution, reporting institution or other person to whom this Act applies when satisfied on available facts and information that the institution or person -

- (a) has failed to comply with a provision of this Act or any regulation, order, determination or directive issued in terms of this Act;
- (b) has failed to comply with a condition of a licence, registration, approval or authorisation issued or amended in accordance with this Act or any other law; or
- (c) has failed to comply with a directive issued in terms of section 54(1) or (2).

(2) In determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors -

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- (a) the nature, duration, seriousness and extent of the relevant non-compliance;
- (b) whether the institution or person has previously failed to comply with any law;
- (c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;
- (d) any steps taken or to be taken against the institution or person by -
 - (i) another supervisory body; or
 - (ii) a voluntary association of which the institution or person is a member; and
- (e) any other relevant factor, including mitigating factors.

(3) The Centre or a supervisory body after consultation with each other, and where applicable, after consultation with relevant regulatory body, may impose any one or more of the following administrative sanctions -

- (a) a caution not to repeat the conduct which led to the non-compliance referred to in subsection (1);
 - (b) a reprimand;
 - (c) a directive to take remedial action or to make specific arrangements;
 - (d) the restriction or suspension of certain identified business activities;
 - (e) suspension of licence to carry on business activities; or
 - (f) a financial penalty, not exceeding N\$10 million, as determined by the Centre, after consultation with the relevant supervisory or regulatory bodies.
- (4) The Centre or supervisory body may -
- (a) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any regulation, order, determination or directive issued in terms of this Act;
 - (b) direct that a financial penalty must be paid by a natural person(s) for whose actions the relevant institution is accountable in law, if that person or persons was or were personally responsible for the non-compliance;
 - (c) suspend any part of an administrative sanction on any condition the Centre or the supervisory body considers appropriate for a period not exceeding five years.

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(5) Before imposing an administrative sanction, the Centre or the supervisory body must give the institution or person reasonable notice in writing -

- (a) of the nature of the alleged non-compliance;
- (b) of the intention to impose an administrative sanction;
- (c) of the amount or particulars of the intended administrative sanction; and
- (d) advise that the institution or person may, in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.

(6) After considering any representations and the factors referred to in subsection (2), the Centre or the supervisory body, subject to subsection (8), may impose an administrative sanction the Centre or supervisory body considers appropriate.

(7) Upon imposing the administrative sanction the Centre or supervisory body must, in writing, notify the institution or person of -

- (a) the decision and the reasons therefor; and
- (b) the right to appeal against the decision in accordance with section 58.

(8) The Centre must, prior to taking a decision contemplated in subsection (6), consult the relevant regulator, where applicable.

(9) Any financial penalty imposed must be paid into the bank account of the Fund, within the period and in the manner as may be specified in the relevant notice.

(10) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the Centre or the supervisory body may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in subsection (7) and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of the Centre or supervisory body.

(11) An administrative sanction contemplated in this section may not be imposed if the respondent has been charged with a criminal offence in respect of the same set of facts.

(12) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of this Act, the court may take into account any administrative sanction imposed under this section in respect of the same set of facts.

(13) An administrative sanction imposed in terms of this Act does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(14) Unless the Director or the head of a supervisory body is of the opinion that there are exceptional circumstances present that justify the preservation of the

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confidentiality of any decision, the Director or the head of the supervisory body must make public the decision and the nature of any sanction imposed if -

- (a) an institution or person does not appeal against a decision of the Centre or supervisory body within the required period; or
- (b) the appeal board confirms the decision of the Centre or supervisory body.

Appeal board

57. (1) Upon receipt of a notice of appeal by an institution or person made under section 58 against the decision of the Centre or a supervisory body, the Minister, on recommendation of the Council, must appoint an appeal board to hear and decide the appeal.

- (2) The Appeal board consists of -
 - (a) one person who has a qualification in law and with at least 10 years' experience, who is the chairperson; and
 - (b) two other persons who have experience and extensive knowledge of financial institutions or financial services provision or financial services regulation.

(3) The Minister may prescribe additional qualifications, terms and conditions and other requirements for appointment as members of the appeal board.

(4) If before or during the consideration of any appeal it transpires that any member of the appeal board has any direct or indirect personal interest in the outcome of that appeal, the member must declare his or her interest and recuse himself or herself and must be replaced by another person.

(5) A member of the appeal board may be paid such remuneration and allowances as the Minister may determine.

(6) The Centre is responsible for the expenditure of and administrative support for the appeal board.

Appeals

58. (1) Any institution or person may appeal to the appeal board against a decision of the Centre or a supervisory body made in terms of this Act.

(2) An appeal must be lodged within 30 days of the delivery of the decision of the Centre or a supervisory body, in the manner, and on payment of the fees prescribed by the Minister.

(3) An appeal under subsection (1) takes place on the date, at the place and time determined by the appeal board.

(4) An appeal is decided on the affidavits and supporting documents presented to the appeal board by the parties to the appeal.

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- (5) Despite the provisions of subsection (4) the appeal board may -
- (a) summon any person who, in its opinion, may be able to give information for the purposes of deciding the appeal or who it believes has in his, her or its possession, custody or control any document which has any bearing upon the decision under appeal, to appear before it on a date, time and place specified in the summons, to be questioned or to produce any relevant document and retain for examination any document so produced;
 - (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and
 - (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control.
- (6) The chairperson of the appeal board may determine any other procedural matters relating to an appeal.
- (7) An applicant or respondent to an appeal is entitled to be represented at an appeal by a legal practitioner or any person of his or her choice.
- (8) The appeal board may -
- (a) confirm, set aside or vary a decision of the Centre or supervisory body; or
 - (b) refer a matter back for consideration or reconsideration by the Centre or the supervisory body concerned in accordance with the directions of the appeal board.
- (9) The decision of a majority of the members of the appeal board constitutes the decision of that Board.
- (10) The decision of the appeal board must be in writing, and a copy thereof must be made available to the appellant, the Centre and the supervisory body.
- (11) If the appeal board sets aside any decision of the Centre or supervisory body, the fees contemplated in subsection (2) paid by the appellant in respect of the appeal in question must be refunded to the appellant.
- (12) If the appeal board varies any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.
- (13) Subject to subsection (14), a decision of the appeal board may be taken on appeal to the High Court as if it were a decision of a magistrate in a civil matter.
- (14) The launching of appeal proceedings in terms of subsection (13) does not suspend the operation or execution of a decision, unless the Centre or supervisory body directs otherwise.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**Referral of suspected offences to competent authorities or Prosecutor-General or other public bodies**

59. Despite sections 54, 55 and 56, if the Centre in the performance of its functions has reasonable grounds to suspect that an accountable or reporting institution, or any other person who is subject to this Act, has contravened or failed to comply with any provision of this Act or any regulation, order, rule, circular, notice, directive, determination, undertaking or guideline applicable to that accountable or reporting institution or person, it may, if it considers it appropriate to do so, refer the matter to a relevant competent authority, together with any recommendation the Centre considers appropriate.

Application to court

60. (1) The Centre or any supervisory body, after consultation with each other, may institute proceedings in the High Court against any accountable institution, reporting institution or person to whom this Act applies, to -

- (a) discharge any obligation imposed by the Centre or supervisory body in terms of this Act;
- (b) compel the institution or person to comply with any provision of this Act;
- (c) cease contravening a provision or provisions of this Act;
- (d) compel the institution or person to comply with a directive issued by the Centre or supervisory body under this Act; or
- (e) obtain a declaratory order against the institution or person on any point of law relating to any provision of this Act or any regulation, order, notice, circular, determination or directive made in terms of this Act.

(2) If the Centre or a supervisory body has reason to believe that an institution or person is not complying with this Act or any regulation, order, notice, circular, determination or directive made in terms of this Act, it may, if it appears that prejudice has occurred or might occur as a result of such non-compliance, apply to a court having jurisdiction for -

- (a) an order restraining the institution or person from continuing business pending an application to court by the Centre or supervisory body as contemplated in subsection (1); or
- (b) any other order the Court may think appropriate.

(3) If an accountable or reporting institution or person, to whom this Act applies, fails to comply with an order of court as contemplated in subsection (1), the Centre or supervisory body may, after consultation with each other, refer the matter for investigation or prosecution as contemplated in section 59.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**Powers of authorised officers**

61. (1) Where an authorised officer is satisfied, or has reason to suspect, that a person has committed an offence under this Act or the Prevention of Organized Crime Act, he or she may, without a search warrant -

- (a) enter any premises belonging to or in the possession or control of the person or his or her employee, and in the case of a body corporate, its director or manager;
- (b) search the premises for any property, electronic information and devices, record, report or document;
- (c) inspect, make copies of or take extracts from any record, report or document so seized and detained;
- (d) seize, take possession of, and detain for such duration as he or she thinks necessary, any property, electronic information and devices, record, report or document produced before him or her in the course of the investigation of or found on the person who is being searched by him or her.

(2) An authorized officer in the course of his or her investigation or search must -

- (a) prepare and sign a list of every property, electronic information and devices, record, report or document seized; and
- (b) state in the list the location in which, or the person on whom, the property, record, report or document is found.

(3) When conducting his or her duties in terms of this section an authorised officer may call on any other authorised officer or competent authority to assist him or her.

(4) Any person who -

- (a) refuses any authorized officer access to any premises, or fails to submit to the search of his or her person;
- (b) assaults, obstructs, hinders or delays an authorized officer in effecting any entrance which he or she is entitled to effect;
- (c) fails to comply with any lawful demands of any authorized officer in the execution of his or her duties under this Act;
- (d) refuses to give to an authorized officer any property, document or information which may reasonably be required of him or her and which he has in his power to give;
- (e) fails to produce to, or conceal or attempt to conceal from, an authorised officer, any property, record, report or document, which the authorized officer requires;

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- (f) rescues or attempts to rescue anything which has been seized;
- (g) furnishes to an authorised officer as true any information which he or she knows or has reason to believe is false; or
- (h) before or after any search or seizure, breaks or otherwise destroys anything to prevent its seizure, or the securing of the property, record, report or document,

commits an offence and is liable to a fine not exceeding N\$10 million or to imprisonment for a term not exceeding 10 years, or to both such fine and such imprisonment, and in a case of a continuing offence, to a further fine not exceeding N\$50 000 for each day during which the offence continues after conviction.

(5) An authorized officer may, by a notice in writing require any person to deliver to him or her any property, record, report or document which he or she has reason to suspect has been used in the commission of an offence under this Act or is able to assist in the investigation of an offence under this Act that is in the possession or custody of, or under the control of, that person or within the power of that person to furnish.

Release of property, record, report or document seized

62. (1) An authorized officer, unless otherwise ordered by a court, must -

- (a) at the close of an investigation or any proceedings arising from the investigation; or
- (b) with the prior written consent of the Centre or investigating authority, at any time before the close of an investigation,

release any property, record, report or document seized, detained or removed by him or her or any other authorized officer, to such person as he or she determines to be lawfully entitled to the property, record, or document if he or she is satisfied that it is not required for the purpose of any prosecution, freezing or forfeiture of proceeds of crime or property of corresponding value under the Prevention of Organized Crime Act, 2004, or proceedings under this Act, or for the purpose of any prosecution under any other law.

(2) An authorised officer effecting the release under subsection (1) must record in writing the circumstances of and the reason for such release.

(3) Where the authorized officer is unable to determine the person who is lawfully entitled to the property, record, report or document or where there is more than one claimant to the property, record, report or document, or where the authorised officer is unable to locate the person under subsection (1) who is lawfully entitled to the property, record or document, the authorised officer must report the matter to a magistrate who must then deal with the property, record, report or document in terms of the relevant law dealing with such matters.

PART 6
OFFENCES AND PENALTIES

Offences in general

- 63.** A person who -
- (a) knowing or suspecting information is held by the Centre directly or indirectly brings, otherwise than in the course of discharging an obligation under this Act, that information or the fact that that information is held to the attention of another person;
 - (b) destroys or in any other way tampers with information kept by the Centre for the purposes of this Act;
 - (c) knowing or suspecting that information has been disclosed to the Centre, directly or indirectly brings information which is likely to prejudice an investigation resulting from that disclosure to the attention of another person;
 - (d) unduly influences, obstructs, hinders, interferes with or threatens or attempts to unduly influence, obstruct, hinders, interferes with or threaten an official or representative of the Centre in the performance of their duties or the exercise of their powers in terms of this Act;
 - (e) with intent to defraud, in respect of a document to be produced or submitted under any provision of this Act, makes or causes to be made a false entry or omits to make, or causes to be omitted any entry;
 - (f) fails to comply with the provisions of any regulation, guideline, circular, notice, directive, determination or undertaking issued in terms of this Act,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Jurisdiction of magistrates' courts in respect of offences

64. (1) Despite anything to the contrary in any other law contained, a magistrate's court has jurisdiction to impose any penalty provided for in this Act, even though that penalty may, either alone or together with any additional penalty imposed by that court, exceed the punitive jurisdiction of that court.

(2) Where an act, course of conduct or omission which constitutes an offence under this Act is or was -

- (a) done by a national of Namibia within Namibia or elsewhere;
- (b) done by any person on a vehicle, ship or other seafaring vessel or aircraft traveling through Namibia, putting into port in Namibia or landing on a landing strip or airport in Namibia; or

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- (c) done by a person outside Namibia and other acts, courses of conduct or omissions forming part of the offence are done or to be done in Namibia;
- (d) done by any person outside Namibia and the effects of the offence are felt in Namibia,

the person concerned may, regardless of anything in any law to the contrary, but subject to this Act, be tried and punished by any court which has jurisdiction over criminal matters in Namibia.

Offence committed by person acting in official capacity

65. (1) Where an offence is committed by a legal person, trust or an association of persons, a person -

- (a) who is its director, controller, or partner; or
- (b) who is responsible for the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his or her consent or connivance and that he or she exercised such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her function in that capacity and to the circumstances.

(2) Despite the fact that a legal person, trust or association of persons has not been convicted of an offence under subsection (1), an individual may be prosecuted for that offence.

(3) Subsection (1) does not affect the criminal liability of the legal person, trust or association of persons for the offence referred to in that subsection.

(4) Any person who would have committed an offence if any act had been done or omitted to be done by him or her personally commits that offence and is liable to the same penalty if that act had been done or omitted to be done by his or her agent or officer in the course of that agent's business or in the course of that officer's employment, unless he or she proves that the offence was committed without his or her knowledge or consent and that he or she took all reasonable precautions to prevent the doing of, or omission to do that act.

PART 7**MISCELLANEOUS****Act not to limit powers of investigation authorities**

66. This Act does not affect a competent authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**Regulations**

67. (1) The Minister, after consulting the Council and the Centre, may make regulations concerning -

- (a) any matter that may be prescribed in terms of this Act;
 - (b) measures to ensure the security of information disclosed to and obtained by the Centre;
 - (c) the recognition and handling by accountable or reporting institutions of suspected money laundering or financing of terrorism transactions;
 - (d) internal rules to be formulated and implemented in terms of section 39;
 - (e) the manner and form in which accountable or reporting institutions are to keep records required by this Act;
 - (f) the reasonable steps to be taken by an accountable or reporting institution to establish the identity of an existing client or prospective client; and
 - (g) the procedures to be followed when cash or bearer negotiable instruments are forfeited to the State in terms of subsection 36(7); and
 - (h) any other matter which may facilitate the implementation of this Act.
- (2) Regulations in terms of subsection (1) may -
- (a) differ for different accountable or reporting institutions, categories of accountable or reporting institutions and different categories of transactions; and
 - (b) be limited to a particular accountable or reporting institution or category of accountable or reporting institutions or a particular category of transactions.
- (3) A regulation made under this section may provide for -
- (a) criminal penalties of a fine not exceeding N\$10 million or imprisonment for a period not exceeding five years, or of both such fine and such imprisonment for any contravention of or failure to comply with such regulation; or
 - (b) administrative penalties of a fine not exceeding N\$10 million.

Indemnity

68. The Minister, Council, Centre, an employee or representative of the Centre, a supervisory body or any other person performing a function or exercising a power in terms of this Act is not liable for anything done in good faith in terms of this Act.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**Service of notices**

69. Any notice, statement or other document which is required to be prepared, executed or served under this Act must be prepared, executed or served in the prescribed manner.

Exemptions

70. (1) The Minister may, on the recommendation of the Council, if he or she considers it consistent with this Act or in the interest of the public, by order published in the *Gazette*, exempt a person or class of persons from all or any of the provisions of this Act for such duration and subject to any conditions which the Minister may specify.

(2) The Minister may, after having granted an exemption as referred to in subsection (1), and on recommendation of the Council, by order in the *Gazette*, withdraw such an exemption.

Documents tracking

71. (1) Where the Centre or any other competent authority has reason to believe that a person is committing or is about to commit an offence under this Act, the Centre or the competent authority may order -

- (a) that any document relevant to identifying, locating or quantifying any property necessary for the transfer of the property, belonging to, or in the possession or under the control of that person or any other person, be delivered to it; or
- (b) any person to produce information on any transaction conducted by or for that person with the first-mentioned person.

(2) Any person who does not comply with an order under subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding, or to both such fine and such imprisonment.

Repeal of laws

72. The Financial Intelligence Act, 2007 (Act No. 3 of 2007), and Government Notice No. 235 of 15 December 2011 are repealed.

Transitional provisions and savings

73. (1) With effect from the date of commencement of this Act the current Director and staff of the Centre are deemed to have been appointed in accordance with this Act and on such conditions of service as applied to them at that date.

(2) Any regulation made or any exemption, notice, circular, determination or guidance issued or any other thing done under the Act repealed by section 72 is deemed to have been made, issued or done under the corresponding provision of this Act.

Act No. 13, 2012 FINANCIAL INTELLIGENCE ACT, 2012**Short title and commencement**

74. (1) This Act is called the Financial Intelligence Act, 2012 and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act is construed as a reference to the date determined under subsection (1) in relation to that particular provision.

SCHEDULE 1

ACCOUNTABLE INSTITUTIONS

(Section 2)

1. A person in his or her capacity as either a legal practitioner as defined in the Legal Practitioners Act, 1995 (Act No.15 of 1995) and who is in private practice, or an estate agent as defined in the Estate Agents Act, 1976 (Act No. 112 of 1976), or an Accountant or Auditor, or in any other capacity, who accepts instructions from a client to prepare for or carry out a transaction for the client in respect of one or more of the following activities:
 - (a) Buying and selling of real estate for cash or otherwise;
 - (b) Managing of client money, securities, bank or securities accounts or other assets;
 - (c) Facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements;
 - (d) Creation, operation or management of legal persons or legal and commercial arrangements;
 - (e) Buying and selling of business entities, or parts thereof; and
 - (f) Buying and selling of legal rights.
2. Any other person or entity that, as part of their normal business activities, buys and/or sells real estate for cash.
3. Trust and Company Service Providers when they prepare for and carry out transactions for their client in relation to the following activities -
 - (a) acting as a formation agent of legal persons;
 - (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (c) providing a registered office; business address or office accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal or commercial arrangement;
 - (d) acting as (or arranging for another person to act as) a trustee of a trust; and
 - (e) acting as (or arranging for another person to act as) a nominee shareholder for another person.
4. A person or institution that carries on “banking business” or who is “receiving funds from the public” as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998).

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5. A person that carries on the business of a casino.
6. A person or entity that carries on the business of lending, including but not limited to the following:
 - (a) The Agricultural Bank of Namibia established in terms of the Agricultural Bank of Namibia Act, 2003 (Act No.5 of 2003);
 - (b) The Development Bank of Namibia established in terms of the Development Bank of Namibia Act, 2002 (Act 8 of 2002);
 - (c) The National Housing Enterprise established in terms of the National Housing Enterprise Act, 1993 (Act No.5 of 1993).
7. A person who carries on the business of trading in minerals specified in Schedule 1 of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) or petroleum as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991 (Act No. 2 of 1991).
8. Any person or entity trading in the following -
 - (a) money market instruments;
 - (b) foreign exchange;
 - (c) currency exchange;
 - (d) exchange, interest rate and index instruments;
 - (e) transferable securities;
 - (f) commodity futures trading; and
 - (g) any other securities services.
9. A person who carries on the business of rendering investment advice or investment brokering services.
10. Namibia Post Limited established by section 2(1) (a) of the Posts and Telecommunications Companies Establishment Act, 1992.
11. A person, who issues, sells or redeems traveller's cheques, money orders, or similar payment instruments.
12. A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
13. Any person or entity that carries on the business of electronic transfer of money or value.
14. Any person or entity regulated by the Namibia Financial Institutions Supervisory Authority (NAMFISA) who conducts as a business one or more of the following activities -

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- (a) Individual and/or Collective portfolio management;
 - (b) Long term insurer;
 - (c) Micro lender;
 - (d) Friendly society; and
 - (e) Unit trust managers.
15. A person who conducts or carries on the business of an auctioneer.
16. A person or entity that carries on the business of lending money against the security of securities.

Act No. 13, 2012**FINANCIAL INTELLIGENCE ACT, 2012****SCHEDULE 2****SUPERVISORY BODIES**

(Section 3)

1. The Namibia Financial Institutions Supervisory Authority established in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).

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1. A person or institution that carries on the business of a motor vehicle dealership.
2. A person that carries on the business of second hand goods.
3. A person that carries on the business of a gambling house, a totalisator or bookmaker.
4. A person or entity that carries on the business of trading in jewellery, antiques or art.
5. Any person or entity regulated by the Namibia Financial Institutions Supervisory Authority (NAMFISA) who conducts as a business one or more of the following activities -
 - (a) Short term insurer.

Act No. 13, 2012**FINANCIAL INTELLIGENCE ACT, 2012****SCHEDULE 4****REGULATORY BODIES**

(Section 3)

1. The Bank of Namibia as defined in the Bank of Namibia Act, 1997 (Act No. 15 of 1997) to the extent that the Bank exercises its powers and fulfils its regulatory functions under the Banking Institutions Act, 1998 (Act No. 2 of 1998) as amended, the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), the Prevention of Counterfeiting of Currency Act, 1965 (Act No. 16 of 1965), and the Payment System Management Act, 2003 (Act No. 18 of 2003).-
 2. The Law Society established in terms of the Legal Practitioners Act, 1995 (Act No. 15 of 1995).
 3. The Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act No. 112 of 1976).
 4. The Public Accountants' and Auditors' Board established in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).
 5. The Namibia Stock Exchange established in terms of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
 6. The Casino Board established by the Casinos and Gambling Houses Act, 1994 (Act No. 32 of 1994).
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