



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 211

2023

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. 6 of 2023: Financial Intelligence Amendment Act, 2023.

EXPLANATORY NOTE:

_____	Words underlined with a solid line indicate insertions in existing provisions.
[]	Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Financial Intelligence Act, 2012 so as to substitute and insert new definitions; to delete certain provisions requiring companies, close corporations and trusts to submit certain information to the Registrar of Companies and Close Corporations and the Master of the High Court, respectively, in order to avoid duplication with legislation governing companies, close corporations and trusts; to provide for the operational independence and autonomy of the Financial Intelligence Centre; to provide for the establishment of the Board of the Centre and for its powers and functions; to include certain persons as members of the Anti-Money Laundering and Combating of the Financing of Terrorism and Proliferation Council; to amend the functions of the Council; to require accountable institutions to identify and verify beneficiaries and beneficial owners of life insurance policies and other investment related policies and whether the beneficiaries or beneficial owners are prominent influential persons; to require accountable institutions to have in place appropriate risk management and monitoring systems and other measures to determine whether clients or beneficial owners are prominent influential persons; to require supervisory bodies to impose consolidated group supervision on businesses conducted by a group of institutions of which accountable or reporting institutions form part of; to identify non-profit organisations that must be subjected to the applicable provisions of this Act and to monitor the identified non-profit organisations to comply with measures to combat the financing of terrorism; to require accountable institutions with foreign branches and majority owned subsidiaries to implement a group-wide anti-money laundering and financing of terrorism or proliferation measures on the branches and subsidiaries; to provide for the nature and manner in which confidential information may be shared between accountable and reporting institutions to further the objects of this Act; to insert Schedule 5 in the Act providing for categories of natural persons who are regarded as beneficial owners and Schedule 6 providing for persons who are regarded as prominent influential persons; and to provide for incidental matters.

(Signed by the President on 19 July 2023)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014 and section 5 of Act No. 16 of 2022

1. Section 1 of the Financial Intelligence Act, 2012 (hereinafter referred to as the “principal Act”) is amended by -

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- (a) the substitution for the definition of “accountable institution” with the following definition:

““accountable institution” means a person or institution referred to in Schedule 1, including -

(a) _____ branches, associates or subsidiaries outside of that person or institution [**and**];

(b) _____ a person employed or contracted by such person or institution;
and

(c) _____ an agent of such person or institution;”;

- (b) the deletion of paragraphs (b), (d) and (f) from the definition of “authorised officer”;

- (c) the substitution for paragraph (e) of the definition of “authorised officer” with the following paragraph:

““(e) the Anti-Corruption Commission authorised by the Director-General of the Anti-Corruption Commission;”;

- (d) the substitution for the definition of “beneficial owner” with the following definition:

““beneficial owner” means a natural person referred to in Schedule 5 who -

(a) for the purposes of this Act, ultimately owns or controls -

(i) a client or a natural person; or

(ii) a natural person on whose behalf a transaction is being concluded; or

(b) exercises ultimate effective ownership or control over -

(i) a legal person;

(ii) a trust or other legal arrangement;

(iii) the proceeds of a life insurance policy or other related investment policy when an insured event occurred; or

(iv) a partnership,

where such ultimate ownership or ultimate effective control may be exercised directly or indirectly or through a chain of ownership or control other than direct control;”;

- (e) the insertion after the definition of “beneficial owner” of the following definition:

““Board” means the Board of the Centre established in terms of section 16A;”;

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- (f) the insertion after the definition of “client” of the following definition:
- ““close associate”, when used in relation to a prominent influential person, means an individual who is closely connected to the prominent influential person, either socially or professionally, and includes, but is not limited to, an individual who has a close business relationship with the prominent influential person such as the -
- (a) business partner of the prominent influential person; or
- (b) owner or beneficial owner of a legal person, trust, partnership or other legal arrangement which is associated with the prominent influential person”;
- (g) the substitution for the definition of “competent authority” with the following definition:
- ““competent authority” means any supervisory body, the Namibian Police Force, the Anti-Corruption Commission, the Namibian Central Intelligence Service, the Prosecutor-General, the Namibia Revenue Agency, the Centre and any other authority that may, in terms of any law, investigate unlawful activities;”;
- (h) the substitution for the definition of “correspondent banking” with the following definition:
- ““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 or persons with similar relationships”;
- (i) the substitution for the definition of “customer due diligence” with the following definition:
- ““customer due diligence” means a process which involves establishing the identity of a client, the identity of the client’s beneficial owners, understanding the ownership and control structure of a client in respect of legal persons, trusts, partnerships and other legal arrangements and obtaining information on the purpose and intended nature of the business relationship [and monitoring all transactions] of the client against the [client’s profile] knowledge of the client”;
- (j) the insertion after the definition of “determination” of the following definition:
- ““Director”, when used in relation to the Centre, means the Director of the Centre appointed in terms of section 11”;
- (k) the insertion after the definition of “establish identity” of the following definitions:
- ““family member”, when used in relation to a prominent influential person, means an individual who is related to the prominent influential person, either directly or through marriage or other form of relationship or partnership including, but is not limited to -

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- (a) a spouse or partner of the prominent influential person;
- (b) a sibling, including a step-sibling of the prominent influential person and sibling's spouse or partner;
- (c) a child, step-child or adopted child of the prominent influential person and the child's spouse or partner; and
- (d) a parent, including a step-parent of the prominent influential person;

“Financial Action Task Force” means an independent inter-governmental international standard setting body which, amongst others, develops and promotes policies to protect the global financial system against money laundering, the financing of terrorism and the financing of proliferation of weapons of mass destruction;”;

- (l) the insertion after the definition of “Governor” of the following definition:

““initial token offering” means to offer to the public for sale a virtual token in exchange for fiat currency or another virtual asset;”;

- (m) the insertion after the definition of “money laundering” of the following definitions:

““monitoring” means -

- (a) the monitoring by an accountable institution of a transaction or an activity carried out by a client to ensure that such transaction or activity is consistent with the knowledge that the accountable institution has of the client and risk profile of the client, including, where necessary, the source of funds;
- (b) the enhanced monitoring by an accountable institution of a transaction or an activity of an identified high-risk client in order to timeously identify a suspicious transaction or activity; or
- (c) the screening by an accountable or a reporting institution of the name of a client or potential client and any name involved in a transaction against any sanction list issued by the United Nations Security Council under Chapter VII of the United Nations Charter, for purposes of combating money laundering and the financing of terrorism or proliferation activities;

“Namibia Revenue Agency” means the Namibia Revenue Agency established by section 2 of the Namibia Revenue Agency Act, 2017 (Act No. 12 of 2017);

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“non-profit organisation” means a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other type of good works, where the Centre under section 35A identifies certain non-profit organisations to which the applicable provisions of this Act apply.”;

- (n) the insertion after the definition of “proliferation” of the following definition:

““prominent influential person” means a person in a prominent public position or function, whether in Namibia or in a foreign country, listed in Schedule 6, including, but is not limited to -

- (a) a person who previously occupied a prominent public position or function but has vacated such position or function; and
- (b) a person who is or has been entrusted with a prominent position by an international organisation;”;

- (o) the insertion after the definition of “regulatory body” of the following definition:

““religious leader” means a person who is a member of the governing body of any religious body or who is vested with the decision-making authority within the religious body;”;

- (p) the insertion after the definition of “senior management” of the following definition:

““shell bank” means a banking institution that has no physical presence in the country in which it is incorporated and licensed, and which is not affiliated to any regulated financial group that is subject to effective consolidated supervision;”;

- (q) the substitution for the definition of “single transaction” with the following definition:

““single transaction” means a transaction other than a transaction concluded in the course of a business relationship and includes a cash deposit by a person, other than the client, into a client’s bank account;”;

- (r) the substitution for the definitions of “this Act” and “unlawful activity” with the following definitions:

““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[.];”;

- (s) the addition after the definition of “unlawful activity” of the following definitions:

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““virtual asset” means a digital representation of value that -

- (a) can be digitally transferred, stored or traded;
- (b) uses a distribution ledger technology or similar technology; and
- (c) can be used for payment or investment purposes,

but does not include digital representations of fiat currencies, and securities or other financial assets regulated under the securities or financial assets law of Namibia;

“virtual asset service provider” means a person who conducts, as a business, one or more of the following activities or operations for or on behalf of another person or other legal arrangement -

- (a) initial token offering;
- (b) exchanging one virtual asset for another virtual asset;
- (c) exchanging virtual asset for fiat currencies or fiat currencies for virtual assets;
- (d) transfer of virtual assets;
- (e) operating a virtual asset exchange;
- (f) safekeeping of virtual assets or instruments enabling control over virtual assets;
- (g) administration of virtual assets or instruments enabling control over virtual assets;
- (h) participation in and provision of financial services related to a token issuer’s offer and sale of virtual assets or the token issuers offer or sale of virtual asset; or
- (i) any other activities that may be determined or prescribed by the Minister under any law regulating virtual assets.”

Insertion of section 3A in Act No. 13 of 2012

2. The principal Act is amended by the insertion after section 3 of the following section:

“Application of Act to beneficial owners and prominent influential persons

3A. (1) This Act applies to beneficial owners and prominent influential persons set out in Schedule 5 and Schedule 6, respectively.

(2) The Minister, by notice in the *Gazette*, may amend the list of beneficial owners and prominent influential persons set out in Schedule 5 or Schedule 6 to -

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(a) add to the list any person or category of persons if the Minister reasonably believes that person or category of persons is, or is likely to be, a beneficial owner or prominent influential person; or

(b) make technical changes to the list.

(3) Before the Minister amends Schedule 5 or Schedule 6 under subsection (2), the Minister must consult the Council and the Centre.”.

Amendment of section 4 of Act No. 13 of 2012

3. Section 4 of the principal Act is amended by the deletion of subsections (2), (3), (4), (5), (6) and (7).

Amendment of section 5 of Act No. 13 of 2012

4. Section 5 of the principal Act is amended by the deletion of subsections (2), (3), (4), (5), (6), (7) and (8).

Substitution of section 7 of Act No. 13 of 2012

5. The principal Act is amended by the substitution for section 7 with the following section:

“Establishment of Financial Intelligence Centre

7. (1) There is established an operationally independent and autonomous 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.

(1A) The Centre must perform its functions freely and without fear, favour or prejudice and must safeguard against political, administrative and private sector influence and interference.

(2) The Centre is physically hosted within the Bank and the Bank must provide administrative support services to the Centre, where needed.”.

Substitution of section 8 of the Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

6. The Principal Act is amended by the substitution for section 8 with the following section:

“Objects of Centre

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

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Amendment of section 9 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

7. Section 9 of the principal Act is amended -

(a) by the substitution for subsection (1) with the following subsection:

“(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 operational or strategic analysis on its own motion or upon request by a law enforcement agency or a financial intelligence unit of any country 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 using dedicated and secure channels for such dissemination; **[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 **[R]**requests for **[I]** information received and intelligence disseminated;
 - (ii) money laundering and financing of terrorism or proliferation investigations, prosecutions and convictions;
 - (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

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- (vi) formal requests for assistance made or received by supervisory or regulatory bodies relating to money laundering and its predicate offences and financing of terrorism or proliferation and outcomes of such requests;
- (f) to coordinate, at an operational and strategic level, the activities of the various persons, bodies or institutions involved in the combating of money laundering and the financing of terrorism or proliferation;
- (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, capacity development and training, 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 [A] accountable and reporting institutions to combat money laundering or financing of terrorism or proliferation activities[.]; [and]
- (i) to facilitate effective supervision and enforcement of the Act by supervisory bodies[.];
- (j) to monitor and supervise non-profit organisations identified in terms of this Act for compliance with measures to combat the financing of terrorism; and
- (k) to apply consolidated group supervision to all aspects of business conducted by a group of institutions of which an accountable or reporting institution forms part of, as may be determined by the Centre.”;
- (b) in subsection (2) by the substitution for paragraph (d) with the following paragraph:
- “(d) consult a foreign financial intelligence unit, a competent authority or a reporting institution in order to provide or receive feedback on the effectiveness of information sharing arrangement and the quality of information exchanged.”.

Substitution of section 10 of Act No. 13 of 2012

8. The principal Act is amended by the substitution for section 10 with the following section:

“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 -

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- (a) determine its own staff establishment with the approval of the [**Minister**] Board;
- (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**] Centre;
- (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[.];
- ~~(e) establish and implement procedures for the secure and proper management of confidential information, including procedures for accessing, handling, storage, disseminating and protection of confidential information; and~~
- ~~(f) establish secure facilities for the Centre with access to the secured facilities and information being limited to the Director, the staff members of the Centre and persons authorised by the Director.”.~~

Substitution of section 11 of Act No. 13 of 2012

9. The principal Act is amended by the substitution for section 11 with the following section:

“Appointment and removal of Director

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

- (2) A person appointed as Director holds office -
 - (a) for a term of five years, which term [**is**] may be renew[able]; and
 - (b) on terms and conditions set out in a written employment contract.
- (3) A person may not be appointed as the 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**] Board, be subjected to a further security screening investigation as contemplated in subsection (3)(a).

(5) The Minister, on his or her own accord or upon recommendation by the [**Council**] Board, may remove the Director from office before the expiry of the Director's term of office -

(a) _____ on the grounds of misconduct, incapacity or incompetence[.];

(b) _____ based on the outcome of a security screening investigation referred to in subsection (4); or

(c) _____ for any other duly justified reason,

in line with [**fair labour practices and the prevailing labour legislation**] the procedures contemplated in this section.

(6) Despite the provisions of this section, [T]he Minister, after consultation with the Board or upon recommendation by the [**Council**] Board, may suspend the Director from office, pending -

(a) the [**determination**] outcome of any [**disciplinary**] enquiry, in accordance with this section, as to whether grounds of misconduct, incapacity or incompetence or any other duly justified reason exist; or

(b) the outcome of a security screening investigation referred to in subsection[s (3) and] (4).

(7) If the Minister on his or her own accord or if the Board recommends that the Director be removed from office, the Minister must establish a committee in accordance with subsection (8) to inquire into the matter.

(8) The committee must -

(a) consist of not less than three and not more than five persons, and at least one of the members of the committee must be a legal practitioner with more than 15 years of experience or a retired judge;

(b) be chaired by the legal practitioner or the retired judge referred to in paragraph (a); and

(c) enquire into the matter and report on the matter to the Minister.

(9) The Minister must consider the report referred to in subsection (8)(c) and after due deliberation with the Board, the Minister may remove the Director from office.

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- (10) The Director vacates office if the Director -
- (a) resigns from office after giving three months written notice to the Minister of his or her intention to resign; or
 - (b) is removed from office under subsection (9).

(11) If the Director vacates his or her office as contemplated in subsection (10), a new Director must be appointed in accordance with subsection (1).”.

Insertion of section 11A in Act No. 13 of 2012

10. The principal Act is amended by the insertion after section 11 of the following section:

“Acting Director

11A. (1) If the Director is temporarily unable to perform or exercise the functions or powers of office, the Director must designate a staff member of the Centre as the acting Director.

(2) If there is a vacancy in the office of the Director or where the Director has been suspended in accordance with section 11(6), the Minister must appoint a suitably qualified, fit and proper person as the acting Director.”.

Substitution of section 12 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

11. The principal Act is amended by the substitution for section 12 with the following section:

“Responsibilities of Director

- 12.** [1] The Director is responsible for -
- (a) the performance [**by the Centre**] of [**its**] the functions assigned or conferred on the Centre by or under this Act;
 - (b) implementation and administration of applicable provisions of this Act;
 - (c) reporting [**administratively**] to the [**Governor**] Board, subject to the provisions of this Act;
 - (d) [**reporting functionally to the Council**] preparing and submitting the annual report to the Board;
 - (e) the management of the staff, resources and administration of the Centre, including the allocation of resources for carrying out the functions of the Centre and making arrangements for the secure management of the information received and held by the Centre;

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- (f) dissemination of intelligence involving suspected proceeds of crime, money laundering, associated unlawful activity, terrorist property or financing of terrorism or proliferation, to competent authorities and foreign agencies with powers and duties similar to that of the Centre;
- (g) providing relevant advice to the [**Council**] Board;
- (h) providing advice and guidance to assist accountable institutions, reporting institutions and supervisory bodies to comply with their obligations under this Act; [**and**]
- (i) advis[e]ing the Council on aligning the National Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation framework with international Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation standards and best practices[.];
- (j) the implementation of general policies of the Centre; and
- (k) negotiating and signing contracts on behalf of the Centre in line with the rules for good governance of the Centre and the conduct of its business.”.

Substitution of section 13 of Act No. 13 of 2012

12. The principal Act is amended by the substitution for section 13 with the following section:

“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**] in accordance with the staff establishment approved by the Board, may appoint persons as staff members of the Centre.

(2) The [**Governor**] Director may [-

(a) **assign staff members of the Bank to the Centre;**

(b)] request the Bank or 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 Bank or 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 who is to perform functions on behalf of the Centre, and the performance of such functions requires the person to have access to sensitive and confidential information of the Centre may not be appointed or seconded to perform [**any**] such [**of the**] functions of the Centre unless -

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(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).

(6) The Centre must ensure that a staff member who carries out the functions of the Centre is -

(a) trained and understands his or her responsibilities in handling and disseminating of sensitive and confidential information; and

(b) granted the appropriate security clearance in accordance with the nature of his or her functions, where applicable.”.

Amendment of section 14 of Act No. 13 of 2012

13. Section 14 of the principal Act is amended by the substitution for subsection (3) with the following subsection:

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

Amendment of heading of Part 3 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

14. The principal Act is amended by substitution for the heading of Part 3 with the following heading:

“BOARD OF CENTRE AND ANTI-MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM AND PROLIFERATION COUNCIL”.

Insertion of sections 16A, 16B, 16C, 16D, 16E, 16F and 16G in Act No. 13 of 2012

15. The principal Act is amended by the insertion after section 16, but in Part 3 of the following sections:

“Establishment of Board

16A. (1) There is established for the purposes of this Act a Board of the Centre which consists of -

- (a) a chairperson, who must be of proven knowledge and experience in the field of financial services, economics, finance, law, business or commerce or other disciplines relevant to the operation of the Centre;
- (b) a person who has a qualification in law and who has practiced as a legal practitioner or as an advocate in Namibia for at least 15 years; and
- (c) three other persons of high repute, who have extensive knowledge and experience on anti-money laundering and financing of terrorism or proliferation field, financial services provision or regulation, human resources, audit and accounting or technology.

(2) The persons to be appointed as members of the Board must be fit and proper persons and are appointed by the Minister.

(3) For the purposes of appointment of persons as members of the Board in terms of this section, the Minister must, in at least two daily newspapers widely circulating throughout Namibia or in any other manner, invite interested persons who comply with subsection (1) and who are fit and proper persons to be considered for appointment as members of the Board.

(4) The appointment of the members of the Board is on such terms as may be specified in the letter of appointment.

(5) The Minister must in the *Gazette* announce the names of persons appointed as members of the Board.

(6) The Board is responsible for -

- (a) advising the Centre concerning the performance of its functions;
- (b) advising the Centre regarding the financial management of the Centre;
- (c) considering and recommending the proposed annual budget of the Centre to the Minister for approval;
- (d) considering and endorsing human and other resources required by the Centre to effectively carry out its mandate and functions in terms of this Act, as proposed by the Director;
- (e) considering and endorsing any report of a committee established in terms of section 16E, including the risk and assurance report of the Centre;

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- (f) considering and endorsing the annual report and annual audited financial statements of the Centre and report to the Minister on any matter appearing in or arising out of such report or statements; and
- (g) recommending to the Minister the appointment or removal of the Director.

Disqualification for appointment as member of Board

16B. A person may not be appointed as a member of the Board if the person -

- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence;
- (b) is a member of the National Assembly, National Council, local authority council or regional council, unless the person resigns as a member of the National Assembly, National Council, local authority council or regional council;
- (c) during the period of three months preceding the date of the proposed appointment as a member of the Board, has been a director, officer, employee or owner of, or a shareholder in, an accountable or a reporting institution or an identified non-profit organisation or provides professional services to the Centre;
- (d) has been disqualified under any law dealing with companies to hold a position of a director of a company;
- (e) fails to disclose prior to his or her appointment that he or she has been convicted of any offence in terms of any laws dealing with companies or insolvency;
- (f) has not attained the age of 21 years;
- (g) is an unrehabilitated insolvent;
- (h) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine;
- (i) has been convicted of an offence involving dishonesty in Namibia or elsewhere;
- (j) has been disqualified or suspended from practicing a profession on the ground of unprofessional conduct or dismissed from a position of trust due to misconduct;
- (k) has under any law been declared by a competent court to be mentally ill; or
- (l) is a member of the Council.

Meetings of Board

16C. (1) The Board must meet as often as the business of the Centre requires but at least once in every three months during each financial year.

(2) The majority of all the members of the Board constitute a quorum for any meeting of the Board.

(3) The chairperson may at any time and must at the written request of at least three other members of the Board convene a special meeting of the Board and the request must clearly state the purpose for which the meeting is to be convened.

(4) The chairperson must cause reasonable prior notice of every meeting of the Board to be given to the members of the Board, except in urgent matters where a meeting of the Board may be convened without a prior notice.

(5) The chairperson presides at the meetings of the Board and if the chairperson is absent or unable to preside, a board member nominated by the chairperson must preside at the meeting.

(6) The Board may invite a person who has special knowledge or skills in any relevant field or discipline to attend its meeting and advise the Board, but such person has no voting right.

(7) Despite the provisions of this Act, the Board does not have the power to consider, discuss or deliberate on -

- (a) a report of a cash transaction compiled in terms of section 32;
- (b) a report of electronic transfer of money to, from or within, Namibia compiled in terms of section 34;
- (c) a report of cross border movement of cash and bearer negotiable instruments declared and acknowledged in terms of section 36;
- (d) a declaration made in terms of section 38; or
- (e) any matter relating to the lodging, analysing, reporting, requesting or disseminating of information in respect of any suspicious transaction or activity report, nor does it have access to information concerning any suspicious transaction or activity report.

(8) The Board must determine its own procedure in line with the national good governance principles.

(9) The Centre must provide administrative support to the Board to function effectively.

Term of office and remuneration

16D. (1) A member of the Board holds office for a period of five years and may be re-appointed after the expiration of his or her term of office for an additional term.

(2) Despite subsection (1), a member of the Board may not serve as a member of the Board for a period of more than 10 years, but remains in office until a new member of the Board is appointed.

(3) The remuneration, allowances and other terms and conditions of service of the members of the Board are determined by the Minister.

(4) A member of the Board may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by the member in the exercise and performance of powers and functions in terms of this Act.

(5) The remuneration and allowances of the members of the Board must be disclosed in the annual report of the Centre.

Committees of Board

16E. (1) The Board may establish one or more committees to assist the Board in the exercising or performance of its powers and functions under this Act.

(2) A committee consists of members of the Board and must elect its own chairperson.

(3) A committee exercises its powers and performs its functions in accordance with such directions as the Board may determine.

(4) A committee may invite a person who has special knowledge or skills in any relevant field or discipline to attend its meetings and advise the committee.

(5) A function or power performed or exercised by a committee is considered to have been performed or exercised by the Board.

(6) The Board may at any time -

(a) amend, substitute or set aside a decision of a committee; or

(b) dissolve or reconstitute a committee.

Vacation of office by members of Board

16F. (1) The office of a member of the Board becomes vacant if the member -

(a) becomes subject to any of the disqualifications referred to in section 16B;

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- (b) resigns from office, after giving the Minister 30 days written notice of his or her intention to resign;
- (c) has been absent from three consecutive meetings of the Board without leave of the Board; or
- (d) is removed from office under subsection (2).

(2) The Minister may, by notice in writing to a member, remove the member from office before the expiry of his or her term if the Minister is satisfied, after giving such member a reasonable opportunity to be heard, that the member -

- (a) is physically or mentally unfit or unable to effectively perform his or her functions as a member;
- (b) neglects his or her functions as a member;
- (c) divulges confidential information entrusted to the member or obtained by the member during the performance or exercise of his or her powers or functions under or in terms of this Act or any other law; or
- (d) acts in a manner that prejudices or conflicts with the functions of the Board.

Conflict of interest and disclosure of interest by members of Board

16G. (1) A member of the Board may not act as a representative of a commercial, financial, industrial entity or any other entity or accept directions from such commercial, financial, industrial entity or other entity in respect of a function or power to be performed or exercised by the Board under this Act.

(2) A member of the Board may not personally or on behalf of a close relative or any other person accept a gift from any person if the acceptance of the gift may potentially affect the impartiality of the member of the Board in the exercise or performance of his or her powers or function under this Act.

(3) A member of the Board must fully disclose to the Board any direct or indirect personal, pecuniary, commercial, industrial or other interests that the member or his or her close relative may have in a matter to be deliberated on by the Board and which interest may potentially -

- (a) conflict with the interests of the Centre; or
 - (b) affect the impartiality of the member of the Board in exercise or performance of his or her powers or functions under this Act.
- (4) A disclosure referred to under subsection (3) must be made -
- (a) as soon as possible after the relevant facts have come to the knowledge of the member of the Board; or

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(b) before the Board commences with any deliberation on the matter in respect of which the disclosure is made.

(5) Unless the Board determines otherwise, the member disclosing the interest in terms of subsection (4) must leave the meeting of the Board and may not take part in the deliberation and voting on such matter.

(6) A disclosure of interest made under this section must be recorded in the minutes of the meeting of the Board at which such disclosure is made.

(7) A member who -

(a) fails to disclose his or her interest or that of his or her close relative in a matter before the Board; or

(b) without leave of the Board, takes part in the deliberations of the Board on a matter in which he or she or his or her close relative has a direct or indirect interest,

may be removed from office in accordance with section 16F(2).

(8) For the purposes of this section, a “close relative” means -

(a) a spouse or partner of a board member;

(b) a child, step-child or adopted child of a board member and the child’s spouse or partner;

(c) a sibling, including a step-sibling of the board member and sibling’s spouse or partner; or

(d) a parent, including a step parent or adoptive parent of the board member.”.

Amendment of section 18 of Act No. 13 of 2012

16. Section 18 of the principal Act is amended -

(a) by the substitution for subsection (1) with the following subsection:

“(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**] Executive Director of the Ministry responsible for finance;

(c) the Inspector-General of the Namibian Police Force;

(d) the [**Permanent Secretary**] Executive Director of the Ministry responsible for trade;

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- (e) the [**Permanent Secretary**] Executive Director of the Ministry responsible for justice;
 - (f) the [**Permanent Secretary**] Executive Director of the Ministry responsible for safety and security;
 - (g) the Director-General of the Namibian Central Intelligence Service;
 - (h) the Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority;
 - (i) the Director-General of the Anti-Corruption Commission;
 - (j) the [**President**] chairperson of the Bankers Association;
 - (k) one or more persons representing associations representing [a] categor[y]ies 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[.];
 - (m) the Executive Director of the Ministry responsible for international relations and cooperation;
 - (n) the Prosecutor-General;
 - (o) the Commissioner of the Namibia Revenue Agency;
 - (p) the Chief Executive Officer of the Business and Intellectual Property Authority; and
 - (q) the Master of the High Court.”;
- (b) in subsection (8) by the substitution for paragraph (b) with the following paragraph:
- “(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”.

Amendment of section 19 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

17. Section 19 of the principal Act is amended in subsection (1) by -
- (a) the substitution for subparagraph (ii) of paragraph (a) with the following subparagraph:
 - “(ii) the exercise by the Minister of the powers entrusted to the Minister related to policy and coordination under this Act;”;
 - (b) the deletion of paragraphs (c), (d), (e) and (f).

Insertion of section 20A in Act No. 13 of 2012

18. The principal Act is amended by the insertion after section 20, but in Part 4 of the following section:

“Risk management, risk assessment and risk-based anti-money laundering and combating financing of terrorism and proliferation programs

20A. (1) An accountable institution must, on a regular basis, conduct money laundering and financing of terrorism or proliferation activities risk assessments taking into account the scope and nature of its clients, products and services, delivery channels, as well as the geographical area from where its clients and business dealings originate.

(2) An accountable institution must identify and assess the risks of money laundering and financing of terrorism or proliferation related to the development of new products and business practices, including new delivery mechanisms and the use of new or developing technologies, and such assessment must take place prior to the launch or use of such products, practices and technologies.

(3) An accountable and a reporting institution must register 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.

(4) An accountable institution 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 or proliferation activities.

(5) A customer acceptance policy, internal rules, programmes, policies, procedures and controls referred to in subsection (4) must be -

- (a) approved by senior management of an accountable institution;
- (b) consistent with the national requirements and guidance; and
- (c) able to protect the systems of an accountable institution against any money laundering and financing of terrorism or proliferation activities, taking into account the results of -
 - (i) any risk assessment conducted under subsections (1) and (2); and
 - (ii) the national or sectoral money laundering and financing of terrorism or proliferation risk assessment.

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- (6) The programmes referred to in subsection (4) must, amongst others, include -
- (a) the establishment of procedures by an accountable institution to ensure high integrity standards of its employees and a system to evaluate the personal, employment and financial history of the employees;
 - (b) on-going employee training programmes, such as “Know Your Customer” programmes and instructing employees with regard to responsibilities under this Act;
 - (c) an independent audit function to check compliance with the programmes;
 - (d) policies and procedures to prevent the misuse of technological developments, including policies and procedures related to electronic means of storing and transferring funds or value, including digital representation of value; and
 - (e) policies and procedures to address the specific risks associated with non-face-to-clients or transactions for purposes of establishing the identity and on-going customer due diligence.
- (7) An accountable institution must designate a compliance officer, at management level, where applicable, who -
- (a) is ordinarily resident in Namibia; and
 - (b) must be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.
- (8) An accountable institution must implement compliance programmes under subsection (4) at its branches and subsidiaries within or outside Namibia as provided for in section 39.
- (9) An accountable institution must develop an audit function to evaluate any policies, procedures and controls developed under this section in order to test compliance with the measures taken by the accountable institution and the effectiveness of those measures.
- (10) The internal rules referred to in subsection (4) must, amongst others, include -
- (a) the establishment and verification of the identity of persons whom an accountable institution must identify in terms of this Part;
 - (b) the information of which records must be kept in terms of this Part;
 - (c) identification of reportable transactions; and

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- (d) the training of employees of an accountable institution to identify and handle suspected money laundering and financing of terrorism or proliferation activities.

(11) Internal rules made under this section must comply with the prescribed requirements and be made available to each employee of an accountable institution.

(12) The Centre may determine the type and extent of measures an accountable institution must undertake with regard to each of the requirements of this section, having regard to the risk of money laundering or financing of terrorism or proliferation and the size of the business or profession.

(13) 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.”.

Amendment of section 21 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

19. Section 21 of the principal Act is amended -

(a) in subsection (2) by the substitution for paragraphs (b) and (c) with the following paragraphs:

“(b) the identity of any beneficial owner of the client by taking reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the accountable or reporting institution is satisfied that it knows who the beneficial owner is; and

(c) if another person is purporting to act[ing] on behalf of the prospective client, also -

(i) the identity of that other person; and

(ii) that other person’s authority to act on behalf of the client[;]; **[and]**

[(iii) obtain or verify further information about that other person.]”;

(b) in subsection (3) by -

(i) the substitution for paragraph (c) with the following paragraph:

“(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[.]; and”;

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- (ii) the addition after paragraph (c) of the following paragraph:

“(d) the identity of the natural person who holds the senior management position in the legal person and record the person as holding that position, in cases where the beneficial owner cannot be identified through reasonable measures and where there is doubt as to whether a person with a controlling ownership interest is the beneficial owner.”.

Insertion of section 21A in Act No. 13 of 2012

20. The principal Act is amended by the insertion after section 21 of the following section:

“Accountable institutions to identify and verify beneficiaries

21A. (1) An accountable institution must, in addition to the customer due diligence measures as required under section 21, conduct the following measures on the beneficiary of a life insurance and other investment related insurance policies as soon as the beneficiary is identified or designated by -

- (a) recording the name of the natural person, legal person, trust, partnership or other legal arrangement, in the case of a beneficiary who is identified as a natural person, legal person, trust, partnership or other legal arrangement; and
- (b) obtaining sufficient information concerning the beneficiary to satisfy itself that it is able to establish the identity of the beneficiary at the time of the pay-out of the policy, in the case of a beneficiary who is designated by characteristic, class or by other means.

(2) An accountable institution must, at the inception of a life insurance policy or other investment related insurance policy, obtain sufficient information concerning the beneficiary to satisfy itself that it is able to verify the identity of the beneficiary at the time of pay-out of the policy.

(3) Before any payment is made under a life insurance policy and other investment related insurance policy, the accountable institution must take reasonable measures to determine whether the beneficiary or any beneficial owner of the beneficiary is a prominent influential person.

(4) If an accountable institution establishes that a beneficiary or the beneficial owner of a beneficiary is a prominent influential person, the accountable institution must -

- (a) obtain approval of senior management of the accountable institution before it pays out any amount under the insurance policy and other investment related insurance policy;
- (b) conduct enhanced scrutiny on the whole business relationship with the policyholder; and

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- (c) consider reporting a suspicious transaction in accordance with section 33.

(5) In determining whether enhanced customer due diligence measures are applicable, an accountable institution must include the beneficiary of a life insurance policy and other investment related insurance policy as a relevant factor, and if the accountable institution determines that a beneficiary is a legal person, trust, partnership or other legal arrangement which presents a higher risk, the accountable institution must take enhanced measures, including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of pay-out of the policy.

(6) An accountable institution which contravenes or fails to comply with subsection (1), (2), (3) or (4) 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.”.

Substitution of section 23 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

21. The principal Act is amended by the substitution for section 23 with the following section:

“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 proliferation, or both.

(1A) An accountable institution must compile a risk profile of each client with whom it maintains a business relationship, and the risk profile must be updated each time an on-going due diligence is exercised in terms of section 24.

(1B) If an accountable institution after an adequate assessment of risk identifies a lower risk, the institution may allow for simplified measures for customer due diligence commensurate with the lower risk factors, but such simplified measures must not be applied when there is a suspicion of money laundering or financing of terrorism or proliferation, in which case the specific higher risk measures apply.

(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 proliferation, or both, the employees of an accountable institution must apply enhanced measures, including -

- (a) obtaining 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

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- (b) tak[e]ing measures [as prescribed by the Centre] to identify, as far as reasonably possible, the source of wealth[,] and 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.”.

Insertion of section 23A in Act No. 13 of 2012

22. The principal Act is amended by the insertion after section 23 of the following section:

“Measures related to prominent influential persons

23A. (1) An accountable institution must have appropriate risk management and monitoring systems in place to determine whether a client or beneficial owner is a prominent influential person.

(2) If a client or beneficial owner has been identified through risk management and monitoring systems to be a prominent influential person, an accountable institution must -

- (a) obtain approval from the senior management of the accountable institution -
- (i) before establishing a business relationship with such new client; or
- (ii) to continue the business relationship with the client, in case of an existing client;
- (b) conduct enhanced ongoing monitoring of the business relationship; and
- (c) take measures to identify, as far as reasonably possible, the source of wealth and funds of the client or beneficial owner.

(3) Subsection (2) applies with the necessary changes to a family member and close associate of a prominent influential person.

(4) 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, 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.”.

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Amendment of section 24 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

23. Section 24 of the principal Act is amended by the substitution for subsection (2) with the following subsection:

“(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 and apply enhanced due diligence measures proportionate to the risk to business relations and transactions with persons, including legal persons and trusts, from or in countries identified by -

(i) risk assessment of the accountable institution;

(ii) the national risk assessment; or

(iii) the Financial Action Task Force,

that do not or insufficiently apply the relevant international standards to combat money laundering and the financing of terrorism or proliferation;

(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 years period;

(e) take enhanced measures as contemplated in section 23(2) or 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 or proliferation[;],

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

Amendment of section 25 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

24. Section 25 of the principal Act is amended in subsection (1) by -
- (a) the substitution for paragraph (c) with the following paragraph:
- “(c) based on publicly-available information, evaluate the respondent institution’s reputation and the nature of supervision to which it is subject, including evaluating whether the respondent institution has been subject to any investigation or regulatory action on money laundering or financing of terrorism or proliferation activities;”;
- (b) the substitution for paragraphs (f) and (g) with the following paragraphs:
- “(f) establish an agreement on the respective anti-money laundering and combating the financing of terrorism or proliferation 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[.]; and”;
- (c) the addition after paragraph (g) of the following paragraph:
- “(h) not enter into, or continue with, a correspondent banking relationship with a shell bank and the employees of the accountable institution must satisfy themselves that a correspondent banking institution does not permit its accounts to be used by a shell bank.”.

Amendment of section 26 of Act No. 13 of 2012

25. Section 26 of the principal Act is amended in subsection (1) by -
- (a) the substitution for paragraph (k) with the following paragraph:
- “(k) the name of the person who obtained the information referred to in paragraphs (a) to (g) on behalf of the accountable or reporting institution; [**and**];”;
- (b) the insertion after paragraph (k) of the following paragraph:
- “(kA) the results of any analysis undertaken in the course of the business relationship; and”.

Amendment of section 27 of Act No. 13 of 2012

26. Section 27 of the principal Act is amended in subsection (1) by the substitution for paragraph (a) with the following paragraph:

- “(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 years period; **[and]**”.

Amendment of section 31 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

27. Section 31 of the principal Act is amended in subsection (1) by the substitution for paragraph (a) with the following paragraph:

- “(a) has access during ordinary working hours to any record kept in terms of this Act, relating to suspicious money laundering, related unlawful activity or financing of terrorism or proliferation activities, by or on behalf of -”.

Amendment of section 33 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

28. Section 33 of the principal Act is amended -

- (a) in subsection (1) by the substitution for the hanging sentence with the following hanging sentence:

“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 or proliferation purposes, must, **[within the prescribed period]** promptly after the suspicion or belief **[arose]** was formed, as the case may be, report to the Centre, irrespective of the size of the transaction -”;

- (b) by the substitution for the introductory sentence of subsection (2) with the following introductory sentence:

“(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 or proliferation purposes should the transaction be concluded, it must, **[within the prescribed period]** promptly after the suspicion or belief **[arose]** was formed, report to the Centre -”;

- (c) in subsection (3) by the deletion of paragraph (c);

- (d) in subsection (4) by the deletion of paragraph (c); and

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- (e) by the insertion after subsection (4) of the following subsection:

“(4A) For the purposes of this section “promptly” means without delay upon having reasonable grounds or a reasonable basis to suspect or believe that a transaction or an activity involves an unlawful activity, money laundering or financing of terrorism or proliferation activity, but not later than three days after the suspicion or belief was formed.”.

Substitution of section 34 of Act No. 13 of 2012

29. The principal Act is amended by the substitution for section 34 with the following section:

“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, and the accountable institution must have risk-based policies and procedures in place to determine -

- (a) when to execute, reject or suspend an electronic transfer not containing the required originator information; and
- (b) the appropriate follow up action.

(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.

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

(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.”.

Amendment of section 35 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

30. Section 35 of the principal Act is amended -

(a) by the insertion after subsection (2) of the following subsection:

“(2A) In performing a function in terms of subsection (2), a supervisory body may apply a consolidated group supervision to all aspects of a business conducted by a group of institutions of which an accountable or reporting institution forms part of, as may be determined by the Centre.”;

(b) by the substitution for subsection (4) with the following subsection:

“(4) The responsibility referred to in subsections (2) or (2A) 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.”;

(c) in subsection (6) by the -

(i) substitution for the introductory sentence with the following introductory sentence:

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

(ii) substitution for subparagraph (ii) of paragraph (c) with the following subparagraph:

“(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[.]; or”;

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(iii) by the addition after paragraph (c) of the following paragraph:

“(d) issue guidelines to accountable and reporting institutions to ensure compliance with this Act.”.

Insertion of sections 35A and 35B in Act No. 13 of 2012

31. The principal Act is amended by the insertion after section 35 of the following sections:

“Powers of Centre in relation to non-profit organisations

35A. (1) For the purposes of combating the financing of terrorism, the Centre has the powers to identify whether a non-profit organisation is likely to be at risk or likely to be abused for the financing of terrorism.

(2) For the purposes of identification in terms of subsection (1), each non-profit organisation registered or operating in Namibia must -

(a) within a period of 60 days after the commencement of this provision, cause its applicable registration or regulatory authority to update and verify its registration details and applicable requirements to ensure that the non-profit organisation remains registered for the purpose for which it was initially registered; and

(b) before the non-profit organisation updates its registration details and applicable requirements in terms of paragraph (a), obtain a clearance certificate from the Centre after it has assessed whether the non-profit organisation is likely to be at any risk or likely to be abused for the financing of terrorism.

(3) Despite subsection (2) and for the purposes of subsection (1), the Centre -

(a) has the power to access or request for the records of a non-profit organisation registered or operating in Namibia in accordance with section 31; and

(b) may enter the premises and conduct an inspection on a non-profit organisation registered or operating in Namibia in accordance with section 53.

(4) If the Centre has identified that a non-profit organisation is likely to be at any risk or likely to be abused for the financing of terrorism, the Centre may by notice, in writing, to the non-profit organisation inform the non-profit organisation that -

(a) it has been identified as a non-profit organisation that is likely to be at risk or likely to be abused for the financing of terrorism; and

(b) the applicable provisions of this Act apply to the identified non-profit organisation.

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(5) The identification referred to in subsection (4) may, amongst others, be based on -

- (a) the nature of threats posed by terrorist entities to non-profit organisations that are likely to be at risk or likely to be abused for financing of terrorism;
- (b) the findings of a risk assessment, trend or typology report identifying that due to the activity or characteristic of a non-profit organisation it is likely to be at risk or likely to be abused for financing of terrorism;
- (c) the type of donations received, or remittance made, by a non-profit organisation;
- (d) an activity or a characteristic of a non-profit organisation that is likely to be at risk or likely to be abused for financing of terrorism;
- (e) a non-profit organisation that is, amongst others, involved in -
 - (i) the cross-border movement of funds;
 - (ii) complex international transactions or structures;
 - (iii) cash fund-raising from anonymous sources; or
 - (iv) transferring or disbursing funds to entities not associated with its programmes or activities; or
- (f) any other matter making a non-profit organisation likely to be at risk or likely to be abused for financing of terrorism.

(6) The identified non-profit organisation must, within the period stated in the notice referred to in subsection (4), register with the Centre as an identified non-profit organisation for the purposes of this Act in accordance with any prescribed registration requirements.

(7) The Centre must keep a register of all non-profit organisations identified in terms of subsection (4) and the Centre must implement the necessary control measures on the identified non-profit organisations to combat the risk of financing of terrorism.

(8) The Centre has power to disseminate information on the identified non-profit organisations to domestic or foreign competent authorities or agencies that have similar powers and duties as that of the Centre using dedicated and secure channels for such dissemination.

(9) Without prejudice to any other remedies available to the Centre in terms of this Act or any other law, the Centre may make an urgent application to the High Court for -

- (a) an order to restrain an identified non-profit organisation from continuing operating its business; or

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(b) the cancellation of the registration or licence of the identified non-profit organisation.

(10) The Minister may, in respect of an identified non-profit organisation, prescribe -

(a) the registration details and applicable requirements that must be updated and verified in terms of subsection (2);

(b) governing documents, management and control structure that an identified non-profit organisation must have in place;

(c) the grounds on which an identified non-profit organisation may be removed from the register of identified non-profit organisations;

(d) obligations that an identified non-profit organisation must comply with, including but not limited to -

(i) the keeping of records by the identified non-profit organisation;

(ii) establishing strong financial controls, monitoring systems and procedures to combat the financing of terrorism; and

(iii) disclosing the identity of donors and beneficiaries of donations.

(11) A non-profit organisation or an identified non-profit organisation that contravenes or fails to comply with subsection (2) or (6) 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 organisation, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Application of sections 31, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62 and 65

35B. Sections 31, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62 and 65 apply with the necessary changes to an identified non-profit organisation.”

Substitution of section 39 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

32. The principal Act is amended by the substitution for section 39 with the following section:

“Accountable institutions with foreign branches and subsidiaries

39. (1) An accountable institution with foreign branches or majority-owned subsidiaries must ensure that a group-wide anti-money laundering and combating the financing of terrorism or proliferation programme are implemented by its foreign branches or subsidiaries.

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(2) An accountable institution must ensure that the obligations contemplated in section 20A apply to its foreign branches and subsidiaries and in addition must include -

- (a) policies and procedures for information sharing within the group of institutions for purposes of customer due diligence and money laundering and financing of terrorism or proliferation for purposes of risk management;
- (b) information on customers, accounts and transactions, including information on transactions and activities which appear unusual from branches and subsidiaries for purposes of anti-money laundering and the financing of terrorism or proliferation, or vice versa; and
- (c) adequate safeguards on the confidentiality and use of information exchanged.

(3) An accountable institution must ensure that its foreign branches or majority owned subsidiaries apply measures -

- (a) against money laundering and the financing of terrorism or proliferation; and
- (b) on handling of proceeds of crime,

that are not less stringent than the measures provided for in terms of this Act and to the extent that the laws of the foreign country permit.

(4) An accountable institution must apply appropriate additional measures to manage money laundering and financing of terrorism or proliferation if the foreign country in which the branch or subsidiary is located does not permit the proper implementation of the measures set out in this Act, and the accountable institution must inform the supervisory authority accordingly.

(5) Any accountable 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 institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.”.

Amendment of section 42 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

33. Section 42 of the principal Act is amended by the substitution for the introductory sentence of subsection (1) with the following introductory sentence:

“(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 or proliferation[;], it may direct [**the**] an accountable or a 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] 18 working days, in order to allow the Centre -”.

Insertion of section 44A in Act No. 13 of 2012

34. The principal Act is amended by the insertion after section 44 of the following section:

“Sharing of information between accountable and reporting institutions

44A. (1) Despite the Banking Institutions Act, 1998 (Act No. 2 of 1998) or any other law prohibiting the sharing of information of confidentiality or secrecy nature between accountable and reporting institutions, the Director may, in furtherance of the objects of this Act, determine the nature and manner in which such information may be shared between the institutions in order to strengthen effort to combat money laundering and financing of terrorism or proliferation activities.

(2) The sharing of information under subsection (1) must be for purposes of -

- (a) investigation and reporting of any suspicious transaction in terms of this Act;
- (b) establishing the identity of a client or beneficial owner in terms of this Act;
- (c) risk assessment of a client or beneficial owner in terms of this Act;
- (d) conducting due diligence on a correspondent banking relationship; or
- (e) compliance with the requirements for the screening of electronic funds transfer and wire transfer.”.

Substitution of section 47 of Act No. 13 of 2012

35. The principal Act is amended by the substitution for section 47 with the following section:

“Reports made to Centre not admissible as evidence

47. For the purposes of this Act -

- (a) information reported to the Centre or shared by the Centre; or
- (b) intelligence shared with the Centre or shared by the Centre,

is not admissible as evidence in a matter before court.”.

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Amendment of section 48 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

36. Section 48 of the principal Act is amended -

(a) in subsection (3) by the substitution for paragraph (a) with the following paragraph:

“(a) the name of the client or of the importer or exporter, parties to or related to the transaction or any person or entity acting on their behalf;”;

(b) by the substitution for subsection (8) with the following subsection:

“(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 similar 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[.]; and

(c) that the information is to be used solely for the purpose for which it has been requested and provided unless the Centre has given consent to the foreign institution or agency to use the information for any other purpose.”.

Amendment of section 49 of Act No. 13 of 2012

37. Section 49 of the principal Act is amended in subsection (1) by the deletion of paragraph (d).

Substitution of heading of section 50 of Act No. 13 of 2012

38. The principal Act is amended by the substitution for the heading of section 50 with the following heading:

“Protection of providers of information”.

Amendment of section 51 of Act No. 13 of 2012

39. Section 51 of the principal Act is amended by the substitution for subsection (2) with the following subsection:

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“(2) Despite the penalties provided for in terms of [sub]sections 20A(13), 21(5), 21A(6), 22(6), 23(3), 23A(4), 24(3), 25[(8)](2), 26(4), 27[(3)](4), 31(3), 32(2), 33(5), 34(7), 35[(12)]18 and (19), 35A(11), 39[(10)](5), 40(3), 42(2) and 43(5), the Centre or a supervisory body may, if the circumstances of the non-compliance so justifi[ies]y, first exhaust measures provided for in terms of sections 54, 55, 56 and 60.”.

Amendment of section 56 of Act No. 13 of 2012

40. Section 56 of the principal Act is amended -

(a) by the substitution for the introductory sentence of subsection (2) with the following introductory sentence:

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

(b) by the substitution for subsection (3) with the following subsection:

“(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.**”;

(c) by the substitution for subsection (6) with the following subsection:

“(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.”;

(d) in subsection (7) by the substitution for paragraph (a) with the following paragraph:

“(a) the decision and the reasons [**therefor**] for the decision; and”;

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- (e) by the deletion of subsection (8);
- (f) by the substitution for subsection (9) with the following subsection:

“(9) Any financial penalty imposed must be paid into [**the bank account of the Fund**] an account specified in the notice given to the accountable or reporting institution or person, within the period and in the manner as may be specified in the relevant notice.”;
- (g) in subsection (14) by the substitution for paragraph (b) with the following paragraph:

“(b) the appeal board confirms the decision of the Centre or supervisory body, where an institution has appealed in terms of section 58.”.

Amendment of section 67 of Act No. 13 of 2012 as amended by section 63 of Act No. 4 of 2014

- 41. Section 67 of the principal Act is amended in subsection (1) by -
 - (a) the substitution for paragraph (d) with the following paragraph:

“(d) internal rules to be formulated and implemented in terms of section [39] 20A.”;
 - (b) the substitution for paragraphs (f) and (g) with the following paragraphs:

“(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**]
 - (c) insertion after paragraph (g) of the following paragraph:

(gA) the turnover of private entities whose senior executives are regarded as prominent influential persons; and”.

Amendment of Schedule 1 of Act No. 13 of 2012 as amended by Government Notice No. 339 of 2019

- 42. Schedule 1 of the principal Act is amended by -
 - (a) the substitution for the paragraph 2 with the following paragraph:

“2. Any other person or entity that, as part of their normal business activities, buys and/or sells real estate [**for cash**].”;
 - (b) the substitution for the paragraph 8 with the following paragraph:

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- “8. Any person or entity trading in [**the following**], or doing business in or as -
- (a) money market instruments;
 - (b) foreign exchange;
 - (c) a currency exchange;
 - (d) exchange, interest rate and index instruments;
 - (e) transferable securities;
 - (f) commodity futures trading; and
 - (g) any other securities services.”;

- (c) the substitution for paragraph 14 with the following paragraph:

- “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 -
- (a) Individual and/or Collective portfolio management;
 - (b) Long term insurer registered in terms of the Long-Term Insurance Act, 1998 (Act No. 5 of 1998), including an agent or broker of the insurer;
 - (c) Micro lender;
 - (d) Friendly society; and
 - (e) Unit trust managers.”;

- (d) the substitution for paragraph 18 with the following paragraph:

- “18. A person that carries on the business of a virtual asset service provider.”.

Amendment of Schedule 3 of Act No. 13 of 2012

43. Schedule 3 of the principal Act is amended by the deletion of paragraph 5.

Addition of Schedule 5 and Schedule 6 in Act No. 13 of 2012

44. The principal Act is amended by the addition after Schedule 4 of the following Schedules:

"SCHEDULE 5

CATEGORIES OF NATURAL PERSONS REGARDED AS BENEFICIAL OWNERS

(SECTION 3A)

The followings are categories of natural persons regarded as beneficial owners:

1. A natural person on whose behalf a transaction is conducted.
2. In relation to a legal person -
 - (a) a natural person who directly or indirectly or through a trust, other legal person or other legal arrangements holds 25 percent or more of the shares, voting rights or other ownership interest in the legal person, and where -
 - (i) there is doubt as to whether the natural person identified is the beneficial owner or the natural person on whose behalf a transaction is conducted; or
 - (ii) a natural person is not identified as the beneficial owner, the natural person exercising control over the legal person through other means is regarded as the beneficial owner;
 - (b) where a beneficial owner cannot be identified in terms of subparagraph (a), a natural person who holds the position of senior management in the legal person and record that the person has been identified as holding that position;
 - (c) natural persons or through a trust, other legal person or other legal arrangements who jointly exercise direct or indirect control over the legal person;
 - (d) natural person who directly or indirectly controls several legal persons and holds a combination of 25 percent or more of shares, voting rights or ownership interest in the legal persons;
 - (e) a natural person who has the right, directly or indirectly, to appoint or remove majority of the board of directors of the legal person;
 - (f) a natural person who has the power to materially influence the decision-making or policy of the legal person;
 - (g) a natural person who derives substantive economic benefits, including dividend, right to profit, enjoyment of assets of legal person or able to use significant assets of the legal person, even if the person has no other formal link to the legal person; or
 - (h) a natural person who has influence or ultimate control over the legal person through any other means.

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3. In relations to a trust -
- (a) the settlor;
 - (b) a trustee;
 - (c) a protector, if any;
 - (d) a natural person who is a beneficiary of a trust or a class of beneficiaries if the individuals benefiting from the trust are yet to be determined;
 - (e) any other natural person exercising ultimate control over the trust by other means; or
 - (f) any other natural person exercising ultimate effective control over a trust by means of direct or indirect ownership or by other means, such that when the person acts alone or jointly with another person or with the consent of another person, the person has ultimate power to -
 - (i) dispose of, advance, lend, invest, pay or apply trust property;
 - (ii) vary or terminate the trust;
 - (iii) add or remove a person as a beneficiary or as a class of beneficiaries of the trust;
 - (iv) appoint or remove a trustee or give another person control over the trust; or
 - (v) direct, withhold consent or overrule the exercise of a power referred to in subparagraphs (i) to (iv).
4. In relation to other legal arrangements, the natural person holding an equivalent or a similar position referred to in paragraph (3).
5. In the case of insurance, the ultimate natural person who is the beneficiary of proceeds of a life insurance policy or other related investment policy when an insured event covered by the policy occurs.
6. In relation to partnership, a natural person who ultimately owns or controls the partnership by -
- (a) holding 25 percent or more of the ownership interest in the partnership; or
 - (b) being able to exercise, directly or indirectly, 25 percent or more of the votes in decision-making on amending the agreement on which the partnership is based or regarding the performance of that agreement otherwise than by acts of management, in so far as in that agreement decision-making by majority of votes is required, and where -
 - (i) there is doubt as to whether the natural person identified is the beneficial owner or the natural person on whose behalf a transaction is conducted; or

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(ii) a natural person cannot be identified as the beneficial owner,

the person who holds the position of senior management in the partnership and record that the person has been identified as holding that position.

SCHEDULE 6

PROMINENT INFLUENTIAL PERSONS (Section 3A)

1. Heads of state, heads of government, ministers and deputy ministers, assistant ministers, senior politicians and senior government officials.
2. Members of parliament or similar legislative bodies.
3. Members of the governing bodies of political parties.
4. Significant or important political parties officials.
5. Members of local authority councils and members of regional councils.
6. Senior management, executives and board members of public-owned enterprises.
7. Judicial officers.
8. Ambassadors and high-ranking officers in the armed forces.
9. Members of the administrative, management or supervisory bodies of public-owned enterprises.
10. Traditional leaders as defined in Section 1 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000).
11. Religious leaders.
12. Senior executives of private entities where the private entities are of such turnover as may be prescribed.
13. Senior executives of international organisations operating in Namibia.”.

Short title

- 45.** This Act is called the Financial Intelligence Amendment Act, 2023.
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