



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 5 May 2009

No. 4253

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Government Notices

MINISTRY OF FINANCE

No. 73

2009

COMMENCEMENT OF FINANCIAL INTELLIGENCE ACT, 2007 (ACT NO. 3 OF 2007)

Under the powers vested in me by section 54 of the Financial Intelligence Act, 2007 (Act No. 3 of 2007), I determine that the provisions of that Act come into operation on 5 May 2009.

S. KUUGONGELWA-AMADHIIA
MINISTER OF FINANCE

WINDHOEK, 16 April 2009

MINISTRY OF FINANCE

No. 74

2009

**FINANCIAL INTELLIGENCE REGULATIONS:
FINANCIAL INTELLIGENCE ACT, 2007**

Under section 48 of the Financial Intelligence Act, 2007 (Act No. 3 of 2007), and after consulting the Anti-Money Laundering Advisory Council and the Bank of Namibia, I make the regulations set out in the Schedule.

S. KUUGONGELWA - AMADHILA
MINISTER OF FINANCE

Windhoek, 16 April 2009

SCHEDULE**ARRANGEMENT OF REGULATIONS**

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Definitions

1. (1) In these regulations, unless the context otherwise indicates, a word or expression defined in the Act has that meaning, and -

“beneficial owner”, when referring to a client who is a juristic person, means the natural person who ultimately owns and controls that client, and when referring to a client who is a natural person, means any natural person or group of persons who ultimately benefits from a business relationship or single transaction entered into by such client;

“close corporation” means a corporation as defined in section 1 of the Close Corporation Act, 1988 (Act No. 26 of 1988);

“company” means a company incorporated under the Companies Act, 1973 (Act No. 61 of 1973);

“Director” means the Director of the FIC to whom the Governor has delegated his or her powers under section 8(1) of the Act for the proper functioning of the Centre;

“document” means -

- (a) the original document or a copy of the original document certified to be a true copy by a commissioner of oaths or public notary in accordance with the provisions of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963); or
- (b) a copy of an original foreign document certified to be a true copy of the original by a person in that foreign country holding a corresponding Namibian office set out in the Schedule to Government Notice No. R1872 of 12 September 1980, or any person within that foreign country being in a legal profession equivalent to a legal practitioner, notary or conveyancer in Namibia; or
- (c) a foreign document authenticated in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents;

“establishing” when used in the context of establishing the identity of a client in terms of these regulations, means a two tier process consisting of ascertainment and verification, referred to in subregulation (2), and “establish” has a corresponding meaning;

“FIC” means the Financial Intelligence Centre, which, for the purpose of these regulations, is the functional unit within the Bank, to which the Governor has delegated the powers, functions and obligations of the Bank under the Act;

“foreign company” means a company, close corporation or other similar entity incorporated outside Namibia;

“guidance notes” means guidelines issued by the FIC concerning -

- (a) the verification of identities;
- (b) reporting of suspicious and unusual transactions; and
- (c) any other obligations imposed on accountable institutions and supervisory bodies under the Act; and

may differ for different accountable institutions or persons, or categories of accountable institutions or persons and for different categories of transactions;

“manager”, in respect of a Namibian or foreign company, means the natural person who is the principal executive officer of the company, by whatever name he or she may be designated and whether or not he or she is a director of that company;

“national identity number” for purposes of -

- (a) a person who is a Namibian citizen or the holder of a Namibian permanent residence permit, means the identity number assigned to such citizen or such permanent resident in terms of section 4 of the Identification Act, 1996 (Act No. 21 of 1996);
- (b) a person other than a person referred to in paragraph (a), means a unique number assigned to such person under the laws governing citizenship or residency of the country of which he or she is a citizen or resident; or
- (c) a person, other than a person referred to in paragraph (b), who is a refugee or a protected person, means an identification document issued to such refugee in terms of section 16 of the Namibia Refugee (Recognition and Control) Act, 1999 (Act No. 2 of 1999), or a travel document issued in lieu of a national passport to such refugee as contemplated under the United Nations Convention Relating to the Status of Refugees of 28 July 1951;

“passport” means a passport or other travel document of identity issued -

- (a) to a person on behalf of the Government of Namibia;
- (b) on behalf of the government of any country recognised by the Government of Namibia, to a person who is a citizen of the country concerned, but who is not also a Namibian Citizen; or
- (c) on behalf of any international organization of which Namibia is a member, to a person who is not a Namibian citizen,

and which contains a personal description of such person, the name of the country in which he or she is born and the date of his or her birth, and to which a photograph of such person is attached in which the features of his or her face are depicted or, in the instance of a travel document issued to a refugee or protected person in lieu of a national passport, such particulars and in such form as set out in the Schedule to the United Nations Convention Relating to the Status of Refugees of 28 July 1951;

“Schedule 1” means Schedule 1 to the Act;

“the Act” means the Financial Intelligence Act, 2007 (Act No. 3 of 2007);

“transaction” means -

- (a) a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution; or
- (b) when used to indicate a transaction concluded between a client and a business which is not an accountable institution, a transaction concluded between a client and that business in accordance with the type of business carried on by that business; and

“trust” means the arrangement through which the ownership in property of one person is by virtue of a trust instrument made over -

- (a) to another person, the trustee, in whole or in part to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons

designated in the trust instrument or for the achievement of the object stated in the trust instrument; or

- (b) to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument,

but does not include the situation where the property of another is to be administered by a person as executor, tutor or curator in terms of the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or a trust established by virtue of a testamentary writing or court order, or a trust established by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund, whether in Namibia or elsewhere.

(2) For the purpose of establishing the identity of a client in terms of these regulations and for the purpose of the definition of “establishing” in subregulation (1) -

- (a) the process of ascertainment, referred to in that definition, includes the act of obtaining information, either orally or in writing or through some other means, without verifying the truth of the information so received, and “ascertain” has a corresponding meaning; and
- (b) the process of verification, referred to in that definition, means the act of establishing the truth of information received through the process of ascertainment, by comparing such information received with reliable documentation, and “verify” and “verifying” have a corresponding meaning.

Accountable institution and identity of client

2. (1) Subject to subregulation (2), an accountable institution may not establish or maintain a business relationship or enter into a single transaction with a client where the institution has actual knowledge of the fact that or reasonably believes the client to be conducting such relationship or transaction under a fictitious or false name.

(2) To ensure that a business relationship is not established or maintained or that a transaction is not concluded under a fictitious or false name an accountable institution must, in accordance with these regulations regarding ascertainment and verification of identity, establish the identity of every client with whom the accountable institution -

- (a) establishes a business relationship; or
- (b) concludes a single transaction.

(3) Despite subregulation (2), an accountable institution is not required to establish the identity of a client concluding a single cash transaction of an amount, which is less than or equal to the amount specified by the FIC under section 13(1) of the Act.

(4) If an accountable institution has established a business relationship with a client prior to the commencement of the Act and such accountable institution has actual knowledge of the fact, or reasonably believes, that such business relationship exists upon or continues to exist after such commencement, such accountable institution must establish the identity of such client within the period determined by the FIC.

Establishing identity

3. (1) For the purpose of establishing the identity of a client under section 13 or 14 of the Act, an accountable institution must comply with the applicable regulations relating to ascertainment and verification of identity.

(2) Despite regulation 2 or any other provision in these regulations requiring compliance with the establishment of the identity of a client, beneficiary or beneficial owner, an accountable institution must, where such regulation or other provisions regarding such establishment can not, due to impossibility or reasonable impracticability, be complied with in terms of these regulations -

- (a) as far as is reasonably possible, take such steps to ascertain or verify such identity; and
- (b) without delay give written notice to the FIC of such impracticability or impossibility indicating any alternative measures used to identify or verify such identity.

(3) Despite anything to the contrary in these regulations, an accountable institution may establish a business relationship, or take any preparatory steps to conclude a single transaction, before verifying the identity of a client, but must comply with the provisions regarding verification of such client's identity in accordance with these regulations prior to such client receiving any benefit from such transaction.

(4) The steps to be taken for establishing the identity of a client, as contemplated in sections 13 and 14 of the Act, may be completed by an employee or other representative of an accountable institution, but that accountable institution must take reasonable steps to ensure that that person is sufficiently knowledgeable and resourced to ensure compliance with those procedures.

Ascertainment of information concerning natural persons

4. (1) For the purpose of compliance with these regulations and with the Act, where an accountable institution seeks to establish the identity of a natural person, such accountable institution must ascertain the following in relation to such person -

- (a) full name, if available;
- (b) nationality;
- (c) if the person is a citizen or resident of Namibia, one of the following, listed in the order of preference -
 - (i) national identity number;
 - (ii) passport number; or
 - (iii) date of birth;
- (d) if the person is not a citizen or resident of Namibia, one of the following, listed in the order of preference -
 - (i) passport number;
 - (ii) national identity number; or
 - (iii) date of birth;

- (e) Namibian residential address, where the person is a Namibian citizen or resident of Namibia, or where the natural person is not a Namibian Citizen or resident of Namibia, the residential address in his or her country of domicile and physical address in Namibia, if any;
- (f) contact particulars;
- (g) occupation or source of income;
- (h) nature and location of business activities, if any; and
- (i) the source of funds involved in the transaction.

(2) If the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person, the accountable institution must ascertain the particulars referred to in subregulation (1)(a), (b), (c) or (d), (e) and (f) in relation to that other person.

Ascertainment of information concerning companies and close corporations

5. (1) For the purpose of compliance with these regulations and the Act, where an accountable institution seeks to establish the identity of a Namibian or foreign company or close corporation wishing to enter into a business relationship or a single transaction with an accountable institution, it must ascertain -

- (a) its registered name;
- (b) the name under which it conducts business in the country in which it is incorporated;
- (c) if the company or close corporation is incorporated outside of Namibia and conducts business in Namibia using a name other than the name specified under paragraph (a) or (b), the name used in Namibia;
- (d) its registration number;
- (e) the registered address from which it operates in the country where it is incorporated, or if it operates from multiple addresses in that country the address of its head office;
- (f) if the company or close corporation operates within Namibia, the address from which it operates in Namibia, or if it operates from multiple addresses within Namibia the address of the office seeking to establish a business relationship or to enter into a single transaction with the accountable institution concerned;
- (g) the nature of its business;
- (h) the income tax and value added tax registration numbers of the company or close corporation issued by the Receiver of Revenue of Namibia or, if incorporated outside of Namibia, such numbers issued by a similar issuing office in the country in which it is incorporated, if such numbers were issued; and
- (i) the particulars referred to in regulation 4(1)(a), (b), (c) or (d), whichever is applicable, (e) and (f) concerning -

- (i) the manager of the company or, in the case of a close corporation, each member;
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the company or close corporation; and
 - (iii) each natural person holding 25% or more of the voting rights at a general meeting of the company concerned, or acting or purporting to act on behalf of such holder of such voting rights; and
- (j) in the instance of -
- (i) a legal person, the particulars referred to in regulation 6(a), (b), (c) and (e); or
 - (ii) a partnership, the particulars referred to in regulation 7;
 - (iii) a trust, the particulars referred to in regulation 8(1)(a) to (e) and (g),

holding 25% or more of the voting rights at a general meeting of the company concerned, or acting or purporting to act on behalf of such holder of such voting right.

(2) Where 25% or more of the voting rights at a general meeting of a company is held by a legal person or by a trust, an accountable institution must take reasonable steps to ascertain the particulars set out in subregulation (1) in respect of the beneficial owner of that company, unless such accountable institution is exempt from ascertaining such particulars under an exemption order made by the Minister under section 51 of the Act.

Ascertainment of information concerning associations and other entities

6. An accountable institution must ascertain in respect of an entity such as an association, a government department, a representative office of a government, a non-governmental organisation, an international organisation, an intergovernmental organisation as well as a legal person other than a Namibian company or close corporation, or a foreign company or foreign close corporation -

- (a) the registered name of the entity, if so registered;
- (b) the office or place of business, if any, from which it operates;
- (c) the registration number, if any;
- (d) its principal activities; and
- (e) the full name, residential address if available, and one of the following, listed in the order of preference -
 - (i) the national identity number;
 - (ii) the passport number; or
 - (iii) date of birth,

of the natural person purporting to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the entity.

Ascertainment of information concerning partnerships

7. An accountable institution must ascertain in respect of a partnership -
- (a) its name, or where applicable its registered name;
 - (b) its office or place of business, if any, or, where applicable, its registered address;
 - (c) where applicable, its registration number; and
 - (d) the full name, residential address if available, and one of the following, listed in the order of preference -
 - (i) the national identity number;
 - (ii) the passport number; or
 - (iii) date of birth,

of each partner, including silent partners and partners *en commandite*, and any other natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the partnership.

Ascertainment of information concerning trusts

8. (1) An accountable institution must ascertain in respect of a trust -
- (a) its registered name, if any;
 - (b) the registration number, if any;
 - (c) the country where it was set up, if the trust was set up in a country other than Namibia;
 - (d) the management company of the trust, if any;
 - (e) the full name, if available;
 - (f) the residential address, contact particulars and one of the particulars enumerated in the order of preference under paragraph (g)(i) to (iii), of each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the trust; and
 - (g) the full name, if available, and one of the following, listed in the order of preference -
 - (i) national identity number;
 - (ii) passport number; or
 - (iii) date of birth;
- of the following persons -
- (aa) each trustee of the trust;

- (bb) each beneficiary of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created; and
- (cc) the founder of the trust.

(2) If the beneficiaries of the trust are not referred to by name in the trust deed or founding instrument in terms of which the trust is created, the accountable institution must follow the procedure in regulation 3(2) to ascertain the names of the beneficiaries and document the method of determining such beneficiaries.

Additional requirements when a person acts on authority of another

9. When a representative or agent acting on behalf of another person seeks to establish a business relationship or conclude a single transaction with an accountable institution, the accountable institution must -

- (a) take reasonable steps to ensure that the representative is authorised to act on behalf of that person; and
- (b) establish the identity of the representative as well as the identity of that other person in terms of these regulations.

Verification of information

10. (1) Any information or particulars ascertained by an accountable institution as required by regulation 4(1)(a), (b), (c) and (d), 4(2), 5(1), 6(a), (b), (c) and (e), 7, 8(1)(a), (b), (c), (d), (e) and (g) or 9 must, as far as is reasonably practicable in the circumstances, be verified by that accountable institution by comparing such information obtained with the applicable and corresponding information set out in the following documentation -

- (a) trust instrument or deed of trust;
- (b) national identification document issued by that person's country of origin, domicile or citizenship, or under the Namibian Refugee (Recognition and Control) Act, 1999 (Act No. 2 of 1999) or the United Nations Convention Relating to the Status of Refugees of 28 July 1951;
- (c) passport;
- (d) driving license referred to in Chapter 4 of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);
- (e) birth certificate;
- (f) any document of authorisation to act on behalf of such person, company, close corporation, trust or other entity; or
- (g) memorandum of association or close corporation's certificate of incorporation, founding statement or partnership agreement, if any, or other similar documentation including notification of situation of registered and business address,

or any other reliable document, data or information that reasonably serves to verify any of the information obtained by the accountable institution in ascertaining the information set out in regulation 4, 5, 6, 7, 8 or 9.

(2) If it is believed to be reasonably necessary, taking into account any guidance notes concerning the verification of identity that may apply to that institution, an accountable institution must, in addition to the verification undertaken in terms of subregulation (1), verify any of the other particulars ascertained as part of establishing identity, by comparing such particulars with any applicable and corresponding reliable document, data or information.

Verification in absence of contact with person

11. When an accountable institution ascertained information in terms of these regulations about a natural or legal person, partnership, trust or other entity without contact in person, whether with that natural person, or with a representative of that natural or legal person, partnership, trust or other entity, the institution must take reasonable steps to ensure the existence and to establish the identity of that natural or legal person, partnership, trust or other entity, taking into account any guidance notes concerning the verification of identities that may apply to that institution.

Accountable institution maintains correctness of particulars

12. An accountable institution must take reasonable steps, taking into account any guidance notes which may apply to that institution, in respect of an existing business relationship to maintain the correctness of particulars which are susceptible to change and which particulars were ascertained under these regulations or the Act for the purpose of establishing identity.

Customer acceptance policy

13. (1) A comprehensive customer acceptance policy must be adopted, developed and implemented and must include clear guidelines and criteria as to the information required and methods to be used in ascertaining and verifying the identity and acceptance of current and prospective clients in accordance with these regulations and any guidance notes applicable to such institution, which guidance notes must set out international standards to be met in respect of customer due diligence.

(2) The information required as part of an accountable institution's customer acceptance policy must include -

- (a) relevant information pertaining to the client's background;
- (b) the client's country of origin and residence;
- (c) any linked accounts that the client or any other party, to the business relationship or single transaction, may have at that institution;
- (d) the nature and location of the client's business activities, as well as the nature and source of personal income;
- (e) the volume or expected volume of transactions in which the client engages or is suspected to engage in;
- (f) the client's business partners; and
- (g) any other information that may assist the institution to determine whether the business relationship with the client may be vulnerable to the laundering of the proceeds of corruption or any other crime.

Electronic form of documents, records and reports

14. Unless otherwise indicated in these regulations or determined in writing by the FIC, any document, record or report, as well as copies thereof, required under these regulations may be kept or submitted in electronic form.

Record-keeping

15. (1) An accountable institution must, in addition to its responsibility under section 15 of the Act to keep records in the manner and form as set out in that section, further keep a copy of each report sent to the FIC in terms of sections 20 and 22 of the Act.

(2) A person authorised by the FIC to receive a report under section 24 of the Act must keep a copy of each report so received.

(3) A person, accountable institution or supervisory body required to send a report to the FIC in terms of sections 21 and 23(1) of the Act must keep a copy of that report, as well as copies of records and documents supporting that report, in a manner that allows any additional information requested under section 26(2) of the Act to be forwarded without delay to such person requesting such additional information.

(4) Every copy, record or document referred to in subregulations (1), (2) and (3) must be kept -

- (a) for a period of not less than five years from the date of the filing of such report with the FIC; and
- (b) in a manner that protects the confidentiality of such copy, record or document.

Record-keeping by third parties

16. (1) For the purpose of facilitating with the obligation to keep records under section 15 of the Act, a third party may keep on behalf of that accountable institution the records referred to in that section, but such accountable institution must have sufficient access to such records in order to comply with its obligations under the Act without undue delay.

(2) If the third party referred to in subregulation (1) fails to properly comply with the requirements of section 15 of the Act on behalf of the accountable institution concerned, the accountable institution is liable for that failure.

(3) If an accountable institution appoints a third party to perform the duties imposed on it by section 15 of the Act, the accountable institution must forthwith provide the FIC with the identification and contact particulars of the third party, including the following particulars -

- (a) the third party's -
 - (i) full name, if the third party is a natural person; or
 - (ii) registered name, if the third party is a close corporation or company;
- (b) the name under which the third party conducts business;
- (c) the full name and contact particulars of the individual who exercises control over access to those records;

- (d) the physical address where the records are kept;
- (e) the address from where the third party exercises control over the records; and
- (f) the full name and contact particulars of the individual who liaises with the third party on behalf of the accountable institution concerning the retention of the records.

Manner of reporting

17. (1) Subject to subregulation (2), a suspicious transaction report made under section 21 or 23(1) of the Act must be made in accordance with the format specified by the FIC, and must be sent electronically to the FIC by means of -

- (a) the internet-based reporting portal provided by the FIC for this purpose; or
- (b) another method determined by the FIC, whether as an alternative means or an exclusive means.

(2) If a person or accountable institution required to make a report referred to in subregulation (1) does not at that time have the technical capability or for another reason, acceptable to the FIC, is unable to make a report in accordance with that subregulation, such person must make a report substantially in the form as set out in Annexure I to these regulations, and must provide such completed form to the FIC, including such further information as may be requested by the FIC, by -

- (a) sending it by facsimile to the Director at the facsimile number specified in writing by the FIC from time to time for this purpose;
- (b) delivering it to the FIC: 3rd Floor, Bank of Namibia, 71 Robert Mugabe Avenue, P.O Box 2882, Windhoek or to an address specified, from time to time, in writing by the FIC; or
- (c) sending it by another method determined by the FIC, whether as an alternative means or as an exclusive means.

Information to be reported

18. (1) A person, supervisory body or accountable institution, other than an institution referred to in items 1, 6 or 12 of Schedule 1 of the Act, required to report a suspicious transaction report under section 21 or section 23(1) of the Act must complete the applicable parts of the suspicious transaction report form set out in Annexure I to these regulations and must send such report to the FIC in accordance with regulations 17 and 19.

(2) An accountable institution referred to in items 1, 6 or 12 of Schedule 1 of the Act, which is required to report a suspicious transaction under section 21 of the Act must make such suspicious transaction report by completing an electronic Extensible Markup Language form, provided to such accountable institution for that purpose, which Extensible Markup Language form is based on the suspicious transaction report form set out in Annexure I to these regulations and must send such report to the FIC in accordance with regulations 17 and 19.

Period for reporting, consultation and intervention by FIC

19. (1) A report made in terms of sections 21 or 23(1) of the Act must be sent to the FIC as soon as possible, but not later than 15 days, excluding Saturdays, Sundays and public holidays, after the suspicion or belief arose concerning the transaction that gave rise to the requirement to report, unless the FIC in writing approves the sending of the report after the expiry of that period.

(2) For the purposes of section 27 and 28 of the Act and in order to facilitate the recognition and handling by accountable institutions of suspected money laundering transactions -

- (a) if suspicion or belief arises that is the basis for an accountable institution making a report under section 21 of the Act regarding a transaction; and
- (b) if it is reasonably foreseeable that carrying out that transaction or other related transactions will jeopardize any significant law enforcement or regulatory interest under Namibian law, including, but not limited to, forfeiture of the proceeds of crime under the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004), where such proceeds have been put beyond the reach of Namibian authorities,

the accountable institution must, in addition to making such report within the time period specified in subregulation (1), contact as soon as reasonably possible the Director of the FIC, or his or her authorised representative, at such contact details as may be specified in writing by the FIC from time to time for the purposes of consultation and intervention as provided for under section 28 of the Act.

(3) If after the consultation referred to in subregulation (2) the FIC does not consider it necessary to direct the accountable institution to refrain from the carrying out of that transaction or any other transaction, in respect of the funds contemplated in section 28 of the Act, the accountable institution may continue and carry out any such transaction as provided under section 27 of the Act.

Analysis of reports received and referral of suspected offences

20. (1) For the purpose of determining whether any information contained in a report, required to be submitted to the FIC in terms of the Act or these regulations, constitutes reasonable grounds to suspect that -

- (a) a person, accountable institution or supervisory body has committed any act or omission which constitutes an offence under the Act or these regulations; or
- (b) a person has committed an offence under section 4, 5, 6 or 7 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004),

the FIC must analyse all such information and reports received by it.

(2) If the FIC has reasonable grounds, after analysing the reports submitted to it under subregulation (1), to suspect that a person, accountable institution or supervisory body has committed an offence referred to in paragraph (a) or (b) of that subregulation it must refer the matter, together with any recommendation the FIC may consider appropriate, to the relevant investigating authority.

Compliance programmes to be implemented by accountable institutions

21. (1) An accountable institution must adopt, develop and implement a program which ensures compliance with obligations imposed upon such accountable institution in terms of the Act and these regulations.

(2) Subject to regulation 22, 23 and 24 an accountable institution must adopt, develop and implement, as part of the compliance program referred to in subregulation (1), internal rules, which -

- (a) confirm the responsibility of the management of the institution in respect of compliance with the Act and the internal rules;

- (b) provide for the necessary procedures to insure that persons are identified and the required particulars concerning the identities are verified under the Act;
- (c) provide for the necessary procedures, including effective ongoing monitoring systems, to enable staff to recognise potentially suspicious and unusual transactions or series of transactions and to report such suspicious transactions in terms of these regulations;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning record keeping are complied with;
- (e) provide for disciplinary steps against the relevant staff members for non-compliance with the Act and the internal rules; and
- (f) take into account any guidance notes concerning those duties that may apply to that institution.

(3) Where an accountable institution has employees or agents or persons authorised to act on behalf of the accountable institution the programme referred to in subregulation (1) must furthermore include, as far as practicable, an ongoing compliance training programme for those employees, agents or persons to ensure that they are able to comply with their duties imposed upon them in terms of the Act and these regulations

(4) An accountable institution that designates a compliance officer under section 25(3) of the Act must take reasonable steps to ensure that the person has the training and resources to discharge his or her obligations in terms of these regulations and under the Act.

(5) An accountable institution must adopt an independent audit function to check compliance with this regulation.

Internal rules concerning reporting of suspicious and unusual transactions

22. The internal rules of an accountable institution concerning the reporting of suspicious and unusual transactions must -

- (a) provide for the necessary processes and working methods which will ensure that suspicious and unusual transactions are reported without undue delay;
- (b) provide for the necessary processes and working methods to enable staff to recognise potentially suspicious and unusual transactions or series of transactions;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act, these regulations and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious and unusual transactions are complied with;
- (e) provide for disciplinary steps against the staff members concerned for non-compliance with the Act and the internal rules regarding the reporting of suspicious and unusual transactions; and
- (f) take into account any guidance notes concerning the reporting of suspicious or unusual transactions which may apply to that institution.

Internal rules concerning ascertainment and verification of identities

23. The internal rules of an accountable institution concerning the establishment and verification of identities must -

- (a) provide for the necessary processes and working methods to ensure that the required particulars, concerning the identities of the parties to a business relationship or single transaction, are obtained on each occasion when a business relationship is established or a single transaction is concluded with the institution;
- (b) provide for steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or single transaction;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act and the internal rules regarding ascertainment and verification of identity;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the ascertainment and verification of identities are complied with;
- (e) provide for disciplinary steps against the staff members concerned for non-compliance with the Act and the internal rules regarding ascertainment and verification of identity; and
- (f) take into account any guidance notes concerning the ascertainment and verification of identities which may apply to that institution.

Internal rules concerning the keeping of records

24. The internal rules of an accountable institution concerning the keeping of records in terms of sections 15 and 16 of the Act must -

- (a) provide for the necessary processes and working methods to ensure that the relevant staff members of the institution obtain the information pertaining to which records must be kept on each occasion when a business relationship is established or a transaction is concluded with the institution;
- (b) provide for the responsibility of the management of the institution in respect of compliance with the Act, these regulations and the internal rules regarding the keeping of records;
- (c) allocate responsibilities and accountability to ensure that staff duties concerning the keeping of records are complied with;
- (d) provide for disciplinary steps against the staff members concerned for non-compliance with the Act and the internal rules regarding the keeping of records;
- (e) provide for the necessary processes and working methods to ensure that the accuracy and that the integrity of those records are maintained for the entire period for which they must be kept;
- (f) provide for the necessary processes and working methods to ensure that access as may be required or authorised under the Act by the relevant staff members to those records can be obtained without undue hindrance; and

- (g) take into account any guidance notes concerning the keeping of records which may apply to that institution.

Application for exemption

25. (1) A person or class of persons, who wish to be exempt under section 51 of the Act from complying with any or all of the provisions of the Act, must make an application to be so exempt.

(2) An application referred to in subregulation (1) must be addressed to the Minister for the attention of the Director and be submitted to the Director together with the grounds upon which the exemption is sought.

- (3) An application for exemption, referred to in subregulation (1) must be submitted-
 - (a) by facsimile for the attention of the Director at the number specified by the FIC from time to time for that purpose;
 - (b) to the FIC on the 3rd Floor, Bank of Namibia, 71 Robert Mugabe Avenue, P.O Box 2882, Windhoek; or
 - (c) by such other method specified by the FIC for that purpose, whether as an alternative means or an exclusive means.

Orders and documents for inquiry and legal proceedings

26. (1) After consultation with the Inspector General of the Namibian Police Force as contemplated in section 37(1) of the Act and after the Prosecutor-General has directed that the interests of justice do not merit a criminal prosecution, the FIC may institute an administrative inquiry under Part V of the Act.

(2) Where the FIC has reasonable grounds to suspect that an accountable institution has committed an act or an omission which may constitute an offence in terms of the Act, and -

- (a) that institution agrees to submit itself to an inquiry against it by the FIC and to abide by any finding made in terms of section 40 of the Act; and
- (b) the institution complies with the provisions of section 37(3)(b) of the Act,

the FIC must institute an inquiry the proceedings of which are civil in nature and, subject to the provisions dealing with the holding of inquiry in terms of the Act, are conducted in the same manner in which civil proceedings are conducted in the magistrates court.

(3) A summons served upon a person to appear at an inquiry must be made in writing and be made substantially in the form as set out in Annexure II to these regulations.

(4) A summons, notice or other document required to be served on any person for purposes of the intended inquiry or in terms of the Act must be made in writing and must be served by -

- (a) delivering it to the person to whom it is addressed at his or her residential, office or business address or, if that person is not available, to a person who is above the age of 16 years and who resides at that person's residence or who works at that person's office or business;

- (b) sending it by registered post to that person at his or her last known residence, office or place of business in Namibia;
- (c) transmitting it electronically to that person's facsimile or electronic mail address; or
- (d) any other manner authorised by and in accordance with the rules of court.

(5) After the holding of an inquiry under Part V of the Act and if the person conducting the inquiry finds that the accountable institution is guilty of having committed the offence as charged that person may, substantially in the form as set out in Annexure III to these regulations, make a written order of forfeiture to the State against that institution, by way of penalty of the whole or a part of the amount deposited or secured by that accountable institution.

Application to Judge-President for granting of monitoring order

27. (1) Where the FIC, under section 29 of the Act, has reasonable suspicion that a person is using an accountable institution for money laundering purposes or that an account or other facility is being used for the purposes of money laundering, the FIC may make a written application to the Judge-President, substantially in the form as set out in Annexure IV to these regulations, for the granting of an order compelling such accountable institution to report to the FIC, on such terms and in such confidential manner as specified in such order, all transactions concluded by such person or all transactions conducted in respect of such account or facility.

(2) An application referred to in subregulation (1) must be addressed to the Judge-President, in writing, who may personally hear the application or may designate any other judge to hear the application, and such hearing of the application must be heard as a matter of urgency.

(3) Where the Judge-President designates another judge to hear the application he must notify the person designated by the FIC to conduct the inquiry, in terms of section 37(6) of the Act, as to the name of the designated judge.

- (4) An application referred to in subregulation (6) must -
- (a) be directed to the Judge-President, or where applicable to the designated judge;
 - (b) request a date and time for the application to be heard in closed chambers; and
 - (c) be signed by the Director or his or her Deputy.

(5) The Director or his or her deputy may, at the hearing of an application, appear in person or be represented by a duly instructed legal practitioner.

(6) The Judge-President or designated judge hearing the application may, upon application by the Director, or his or her deputy, and on good cause shown condone any non-compliance with this regulation.

- (7) The Judge-President or designated Judge may after hearing the application -
- (a) grant the application and issue the order;
 - (b) dismiss the application and refuse to issue the order;
 - (c) adjourn the application upon such terms as to the filing of further affidavits by the Director, or his or her deputy, as the Judge-President or designated Judge may consider necessary;

- (d) grant leave to the Director, or his or her deputy, to renew the application on the same papers duly amplified by further affidavits;
- (e) make any other order as the Judge-President or designated judge may consider necessary.

(8) Where an application in terms of subregulation (1) is granted and an order is issued, such order lapses after a period of 3 months, but such order may, subject to section 29(3) of the Act, be extended for further periods not exceeding 3 months at a time.

(9) Where the Judge-President or designated judge issues an order such order must be made in writing and signed by such Judge-President or such designated judge.

(10) The Judge-President or designated judge who heard the application must direct that the application and the duplicate original of the order issued by him or her be filed in such manner as the Judge-President may from time to time determine, having due regard to the need for secrecy and confidentiality.

(11) If the Judge-President is for any reason not available, or has recused himself or herself by reason of any direct or substantial interest in an application brought under this regulation, the functions entrusted to the Judge-President under this regulation must be performed by the next most senior available judge.

(12) For the purpose of this regulation -

- (a) “designated judge” means a judge of the High Court of Namibia designated under subregulation (4); and
- (b) “Judge-President” means the Judge-President of the High Court of Namibia.

Powers of examination

28. (1) In order to carry out an examination of records as contemplated under section 19 of the Act, the FIC or an authorised representative of the FIC may -

- (a) at any time during normal office hours without previous notice enter any premises occupied by an accountable institution or a supervisory body and require the production to it or to him or her of any or all of such accountable institution’s or supervisory body’s securities, books, records, accounts or documents;
- (b) search any premises occupied by an accountable institution or supervisory body for any moneys, securities, books, records, accounts or documents;
- (c) open or cause to be opened any strongroom, safe or other container in which it is suspected that any moneys, securities, books, records, accounts or documents of an accountable institution or a supervisory body are kept;
- (d) examine and make extracts from and copies of all securities, books, records, accounts and documents of an accountable institution or supervisory body or, against a full receipt issued by the FIC or its authorised representative for such securities, books, records, accounts or documents, remove them temporarily from the premises of such accountable institution or supervisory body for that purpose;
- (e) require an explanation of any entries in the books, records, accounts or documents of such accountable institution or supervisory body;

- (f) against a full receipt issued by the FIC or by its authorised representative, seize any securities, books, records, accounts or documents of such accountable institution or supervisory body which in his opinion may afford evidence of an offence or irregularity; and
- (g) retain any such seized securities, books, records, accounts or documents for as long as they may be required for any criminal or other proceedings.

(2) In carrying out an examination under section 19 of the Act the FIC or its authorised representative may examine under oath in relation to the business of an accountable institution or supervisory body any person who is or formerly was a director, auditor, local auditor, attorney, valuator, agent, servant, employee, member, debtor, creditor, policy-holder or shareholder of the accountable institution or supervisory body, as the case may be, and may administer an oath or affirmation to that person being examined: Provided that the person examined, whether under oath or not, may have his or her legal adviser present at the examination.

(3) A person contemplated in subsection (2) must, when requested by the FIC or its authorised representative to do so, produce to the FIC or its authorised representative every security, book, record, account or document of such accountable institution or supervisory body to which such person has access and must, at the request of the FIC or its authorised representative, provide the FIC or such representative any information at such person's disposal relating to the affairs of the financial institution.

(4) The FIC, or its authorised representative, may further inspect the securities, books, records, accounts or documents of any person, partnership or company -

- (a) where the FIC, or its authorised representative, has reason to believe that the accountable institution or supervisory body, the affairs of which are being inspected, has or had a direct or indirect interest in or in the business of that person, partnership or company;
- (b) where the FIC, or its authorised representative, has reason to believe that such person, partnership or company has or had a direct or indirect interest in or in the business of such accountable institution or supervisory body;
- (c) where the FIC, or its authorised representative, considers it necessary for a proper inspection of the affairs of such accountable institution or supervisory body that those securities, books, records, accounts or documents be inspected,

and the provisions of subregulations (1), (2) and (3) apply mutatis mutandis in respect of such an inspection: Provided that for the purpose of paragraph (b) of this subregulation a person, who holds shares as a nominee or in trust on behalf of another in an accountable institution or supervisory body, is considered to have an interest in the accountable institution or supervisory body, and must upon request of the FIC, or its authorised representative, disclose the name of that other person.

(5) An authorised representative of the FIC must on demand produce the certificate furnished to him or her by the FIC authorising him or her, as a representative of the FIC, to conduct examinations against any accountable institution or supervisory body in terms of the Act.

(6) An accountable institution or supervisory body of which the securities, books, records, accounts or documents have been seized under subregulation (1)(f) or the lawful representative of such accountable institution or supervisory body is entitled to examine, make entries in and make extracts from such securities, books, records, accounts or documents during office hours and under such supervision as the FIC or an authorised representative of the FIC may determine.

Offences and penalties

29. Any person, accountable institution or supervisory body who or which contravenes any of these regulations commits an offence and is liable to a fine not exceeding N\$200 000 or imprisonment for a period not exceeding six months.

ANNEXURE I

Suspicious Transaction Report
(regulation 18)

SUSPICIOUS TRANSACTION REPORT

**PART A: PARTICULARS OF THE PERSON/ENTITY SUBMITTING THE REPORT**

Full Name of the Person/Entity (if not already registered, complete the rest of Part A):		
Reporting Entity ID:		
Registration, SWIFT/BIC or Income Tax Number:		
Registration Number:	SWIFT/BIC Number:	Income Tax Number:
Operating Street Address:		
Operating City:		
Operating Country:		
Nature/Type of Business (e.g. Legal Practitioner, Casino, etc):		
Particulars of Compliance Officer/Contact Person:		
Surname	First Name:	
Telephone Nr:	Fax Nr:	
Location of Office Conducting the Transaction: (If any)		
Operating Street Address		
Operating City:		

PART B: PARTICULARS OF THE TRANSACTION

Date of Transaction:	Transaction Type:
Name of Business representative conducting the transaction:	
Currency Type:	Foreign Amount:
	Local Amount: N\$

PART B1: PARTICULARS OF THE CONDUCTOR OF THE TRANSACTION

(This is the person undertaking the transaction, not the employee of the reporting entity)

Surname:	First Name:	Middle Name:
Type of Identification Document and Number: (At least one, but preferably more)		
Identity Document:	Preferred if Namibian Citizen or Resident	
Passport:	Preferred if Non-Namibian Citizen or Resident	
Driver's License:		
Other:	Description:	
Date of Birth:	dd/mm/yyyy	
Residential Address:		Business Address:
City:		City
Country:		Country
Telephone:		Telephone
Mobile:		Mobile
Occupation:		
Name of Employer:	Employer Address:	

City:		Country:	
Telephone		<i>(International-Country-Area-Number)</i>	

PART B2: DESCRIPTION OF THE TRANSACTION

(eg. Rolex watch purchased by client with cash):

If transaction involved purchase of sale of property or goods, describe below:

Particulars of the Property:	
Description of the Property:	
Full Name of the Registered Owner before Transaction was concluded:	
Full Name of the Registered Owner after Transaction was concluded:	
Estimated Value of the Property:	
Manner in which Property was disposed of:	
Value for which the Property was disposed of:	
Street address of the Property:	
City where the Property is located:	
Country where Property is located:	

Specify if funds originated from the conductor, or from an account *(mark with X)*:

Conductor
 Account
 (if from Conductor complete PART B4, or if from Account complete PART B3)

PART B3: SOURCE ACCOUNT OF THE FUNDS

Account SWIFT/BIC	Account Number:	Branch/office where account is held:
Account currency:	Balance in account at date of transaction:	
Type of account <i>(Mark with X)</i> :	Date Account was opened:	<i>dd/mm/yyyy</i>
<input type="checkbox"/> Personal <input type="checkbox"/> Current <input type="checkbox"/> Savings <input type="checkbox"/> Business	<i>if business, provide details of the business owning the account in B3.1 below</i>	

B3.1 Business owning this account:

Name	Incorporation/SWIFT number:		
Registered Address Details		Operating Address Details	
City:		City	
Country:		Country	
Telephone:		Telephone	

Type of Business *(Mark with X)*:

<input type="checkbox"/> Attorney	<input type="checkbox"/> Bank	<input type="checkbox"/> Broker	<input type="checkbox"/> Collective Investment	<input type="checkbox"/> Estate Agent	<input type="checkbox"/> Foreign Exchange	<input type="checkbox"/> Insurance	<input type="checkbox"/> Investment Advisor	<input type="checkbox"/> Money Remitter	<input type="checkbox"/> Accountant
<input type="checkbox"/> NonPost Savings	<input type="checkbox"/> Casino	<input type="checkbox"/> Other	Description of Other:						

B3.2 Director/Owner of the Business

Surname:	First Name:	Middle Name:

Type of Identification Document and Number: (At least one, but preferably more)

Identity Document:		Preferred if Namibian Citizen or Resident
Passport:		Preferred if Non-Namibian Citizen or Resident
Driver's License:		
Other:		Description:
Date of Birth:		dd/mm/yyyy

B3.3 Owners and signatories to the account (Particulars of Director(s), or Other Principal(s) having signatory authority over the account - if more than one, repeat information for each person)

Surname: _____ First Name: _____ Middle Name: _____

Type of Identification Document and Number: (At least one, but preferably more)

Identity Document:		Preferred if Namibian Citizen or Resident
Passport:		Preferred if Non-Namibian Citizen or Resident
Driver's License:		
Other:		Description:
Date of Birth:		dd/mm/yyyy

Residential Address:		Business Address:	
City:		City	
Country:		Country	
Telephone:		Telephone	

Name of Employer: _____ Employer Address: _____

City: _____ Country: _____

Telephone: _____ (International-Country-Area-Number)

PART B4: PARTICULARS OF THE DESTINATION OF THE FUNDS

(If the destination of funds is an account, complete PART B4, or B5 if destination is a person)

Account SWIFT/BIC: _____ Account Number: _____ Branch/office where account is held: _____

Account currency: _____ Balance in account at date of transaction: _____

Type of account (Mark with X): _____ Date Account was opened: _____ dd/mm/yyyy

<input type="checkbox"/> Personal	<input type="checkbox"/> Current	<input type="checkbox"/> Savings	<input type="checkbox"/> Business
-----------------------------------	----------------------------------	----------------------------------	-----------------------------------

If business, provide details of the business owning the account in B4.1 below

B4.1 Business owning this account:

Name: _____ Incorporation/SWIFT number: _____

Registered Address Details		Operating Address Details	
City:		City	
Country:		Country	
Telephone:		Telephone	

Type of Business (Mark with X):

<input type="checkbox"/> Attorney	<input type="checkbox"/> Bank	<input type="checkbox"/> Broker	<input type="checkbox"/> Collective Investment	<input type="checkbox"/> Estate Agent	<input type="checkbox"/> Foreign Exchange	<input type="checkbox"/> Insurance	<input type="checkbox"/> Investment Advisor	<input type="checkbox"/> Money Remitter	<input type="checkbox"/> Accountant
<input type="checkbox"/> NamPost Savings	<input type="checkbox"/> Casino	<input type="checkbox"/> Other	Description of Other:						

B4.2 Owners and signatories to the account (Particulars of Director(s), or Other Principal(s) having signatory authority over the account - if more than one, repeat information for each person)

Surname: _____ First Name: _____ Middle Name: _____

Type of Identification Document and Number: (At least one, but preferably more)

Identity Document: _____ Preferred if Namibian Citizen or Resident

Passport:		Preferred if Non-Namibian Citizen or Resident
Driver's License:		
Other:		Description:
Date of Birth:	dd/mm/yyyy	
Residential Address:		Business Address:
City:		City
Country:		Country
Telephone:		Telephone
Name of Employer:		Employer Address:
City:		Country:
Telephone		(International-Country-Area-Number)

PART B5: PARTICULARS OF THE DESTINATION INDIVIDUAL OF THE FUNDS (If not a business)

Surname:	First Name:	Middle Name:

Type of Identification Document and Number: (At least one, but preferably more)

Identity Document:		Preferred if Namibian Citizen or Resident
Passport:		Preferred if Non-Namibian Citizen or Resident
Driver's License:		
Other:		Description:
Date of Birth:	dd/mm/yyyy	
Residential Address:		Business Address:
City:		City
Country:		Country
Telephone:		Telephone
Mobile:		Mobile
Occupation:		
Name of Employer:		Employer Address:
City:		Country:
Telephone		(International-Country-Area-Number)

PART C: DESCRIPTION OF THE SUSPICIOUS ACTIVITY

(Describe clearly and completely the facts or unusual circumstances that led to the suspicion of the transaction; Use additional page(s) if necessary)

PART D: DESCRIPTION OF THE ACTION TAKEN

(Describe clearly and completely what action was or will be taken after the suspicion was formed)

AND TAKE FURTHER NOTICE THAT-

If you do not, with lawful or reasonable excuse, present yourself at the inquiry at the time and place specified herein and if you do not remain in attendance until excused or if you fail to produce any document specified herein, you commit an offence, in terms of section 39 of the Financial Intelligence Act, 2007 (Act No. 3 of 2007), and are liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

.....

Investigating Officer:
Financial Intelligence Centre

.....

.....

.....

(address)

ANNEXURE III

FINANCIAL INTELLIGENCE CENTRE

ORDER OF FORFEITURE TO THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

**FINANCIAL INTELLIGENCE ACT, 2007 (ACT No. 3 OF 2007)
(section 40, regulation 26(5))**

NOTICE TO ACCOUNTABLE INSTITUTION

In the matter between:

THE FINANCIAL INTELLIGENCE CENTRE

and

.....

TAKE NOTICE that in terms of an inquiry held by the FINANCIAL INTELLIGENCE CENTRE against Mr. / Ms in his or her capacity as of, an accountable institution listed or determined in terms of the Financial Intelligence Act, 2007 (Act No. 3 of 2007) and of (address), held at on the day of 20....., it has been found that he / she is guilty on the charge as set out in the summons issued to him / her on day of 20

In terms of section 40 of the Financial Intelligence Act, 2007 (Act No. 3 of 2007), an amount of N\$..... being the amount or part of the amount deposited or secured with the Financial Intelligence Centre, in terms of section 37(3)(b) of the Financial Intelligence Act, 2007 (Act No. 3 of 2007), is hereby forfeited to the State, by way of penalty.

DATED at this day of 20

.....
Director of the Financial Intelligence Centre

.....
.....

(Address)

**ANNEXURE IV
FINANCIAL INTELLIGENCE CENTRE**

APPLICATION TO JUDGE-PRESIDENT FOR GRANTING OF MONITORING ORDER

FINANCIAL INTELLIGENCE ACT, 2007 (ACT No. 3 OF 2007)
(section 29, regulation 27(1))

Application No.

BEFORE A JUDGE OF THE HIGH COURT OF NAMIBIA

Ex parte:

The Director of the Financial Intelligence Centre Applicant

In re:
(insert the name of the person, body or organisation in respect of which the order is being sought) Respondent

Notice of application under section 29 of the Financial Intelligence Act, 2007

PLEASE TAKE NOTICE that the above-named applicant intends to bring an application before a judge of the High Court of Namibia at a date and time to be determined, or as soon thereafter as the applicant or counsel acting on his or her behalf can be heard, for a direction to be issued in the following terms:

1. That an order be granted compelling the respondent to report to the applicant or his or her duly appointed representative, on such terms and in such manner as may be specified in such order, on *all transactions concluded between *(insert name of person suspected of committing money laundering)* and the respondent *or all transactions concluded in respect of *account *or facility number: *(specify the account or facility number and type of account or facility)* held with the respondent.
*(delete whichever is not applicable)
2. That this order be of force and effect until *(insert date)*.

KINDLY set the application down for hearing and inform the applicant of the date and time thereof.

PLEASE TAKE FURTHER NOTICE that the affidavit of (specify name) hereto will be used in support of this application.

DATED AT WINDHOEK ON THIS DAY OF

APPLICANT

TO: JUDGE-PRESIDENT (OR DESIGNATED JUDGE)
HIGH COURT OF NAMIBIA
WINDHOEK

MINISTRY OF FINANCE

No. 75

2009

**EXEMPTION ORDER: GENERAL EXEMPTIONS:
FINANCIAL INTELLIGENCE ACT, 2007**

The Minister responsible for finance makes, in terms of section 51 of the Financial Intelligence Act, 2007 (Act No. 3 of 2007) and on the recommendation of the Bank of Namibia, the exemption order set out in the Schedule.

S. KUUGONGELWA – AMADHILA
MINISTER OF FINANCE

Windhoek, 16 April 2009

SCHEDULE**Definitions**

1. In this exemption order, unless the content otherwise indicates, a word or expression defined in the Act has that meaning, and –

“the Regulations means the Financial Intelligence Regulations promulgated under Government Notice No. 74 of 5 May 2009; and

“the Act” means the Financial Intelligence Act, 2007 (Act No. 3 of 2007).

Exemption from establishing identity

- 2.1 For the purpose of regulation 2(3) of the Regulations, an accountable institution, which has not established a business relationship, is exempt from establishing the identity of a client concluding a single cash transaction subject to the condition that such single cash transaction is less than or equal to the amount specified by the FIC under section 13(1) of the Act.

- 2.2 For the purpose of regulation 3 of the Regulations, an accountable institution which enters into a business relationship or single transaction with a client who is a client of another accountable institution, is exempt from establishing the identity of such client subject to the condition that -

2.2.1 the other accountable institution has established the identity of the client in accordance with the Regulations; or

2.2.2 the establishment of a client’s identity is ordinarily applied in terms of the other accountable institution’s internal rules and the procedures in the course of establishing a business relationship or concluding a single transaction with each client,

and such other accountable institution undertakes to forward to the first mentioned accountable institution copies of all documents obtained in the course of verifying such identity.

- 2.3 For the purpose of regulation 3 of the Regulations, an accountable institution does not need to establish the identity of a client, subject to the condition that-

2.3.1 the client is situated in a FATF member country and for purpose of this subitem, “FATF” means the Financial Action Task Force, established by the Group of Seven

- Countries in 1989, being an inter-governmental body which sets standards and develops and promotes policies to combat money laundering and terrorist financing;
or
- 2.3.2 the client is situated in a country outside of Namibia where, to the satisfaction of the accountable institution, anti-money laundering regulation and compliance therewith, within that country, is equivalent to regulation and compliance requirements applicable to such accountable institution in Namibia; and
- 2.3.3 the person or financial institution in a country referred to in subitem 2.3.1 or subitem 2.3.2 provides written confirmation, to the satisfaction of the accountable institution in Namibia, that such person or financial institution has verified the particulars concerning that client obtained in accordance with the Regulations by the accountable institution in Namibia; and
- 2.3.4 the person or financial institution referred to in subitem 2.3.3 undertakes to forward to the accountable institution in Namibia all documents obtained in the course of verifying such particulars.
- 2.4** For the purpose of regulation 3 of the Regulations, an accountable institution referred to in item 2.3 to which documentation was forwarded as contemplated in subitem 2.3.4 is exempt from section 15 of the Act to the extent that such documents forwarded to it do not meet all of the requirements of subsection (1) of that section, subject to the condition that such accountable institution -
- 2.4.1 keeps all such documents as well as any further document received under subitem 2.4.2 as far as is reasonably possible in the form and manner prescribed under section 15(1) of the Act; and
- 2.4.2 requests the person or financial institution referred to in subitem 2.3.3 to forward such additional documentation required for such accountable institution to fully comply with the requirements of section 15(1) of the Act.
- 2.5** For the purpose of regulation 3 of the Regulations, an accountable institution is exempt from establishing the identity of a company and from making further enquiries as to the identity of the beneficial owner or individual directors, subject to the condition that -
- 2.5.1 the company is a public company, the securities of which are listed on an exchange that is an ordinary, associate, or affiliate member of the International Organization of Securities Commissions, or is regulated by such a member or by the Namibia Financial Institutions Supervisory Authority, or a state-owned enterprise, as defined in section 1 of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006), as well as any subsidiary of such company or enterprise; and
- 2.5.2 the accountable institution ascertains and verifies -
- 2.5.2.1 the registered name;
- 2.5.2.2 the registration number under which it is incorporated;
- 2.5.2.3 the address from which it operates in Namibia or, if it operates from multiple addresses, the address of the office seeking to establish a business relationship or to enter into a single transaction with the accountable institution; and

2.5.2.4 the mandate of the representative seeking to establish the business relationship or conclude the single transaction on behalf of that company.

- 2.6** For the purpose of regulation 3 of the Regulations, if a person or entity, which is an accountable institution, opens or operates a professional trust account at another accountable institution the latter accountable institution is exempt from complying with the provisions of sections 13, 14 and 15 of the Act in respect of the clients of such person or entity, subject to the condition that the latter accountable institution has reasonable grounds to believe that the account is to be used solely for the purposes of such clients.

Exemption of keeping records by an accountable institution

- 3.1** For the purposes of regulation 16(1) of the Regulations and section 15 of the Act, a third party may on behalf of an accountable institution keep such records, subject to the condition that such accountable institution has sufficient access to such records in order to comply with its obligations under the Act without undue delay.
- 3.2** For the purposes of regulation 16 of the Regulations, an accountable institution is exempt from the requirement, in terms of section 16(2) of the Act, of maintaining records for a period of not less than 6 years from the date the transaction is completed or terminated for purposes of enabling reconstruction of transactions in excess of the amount specified by the FIC.

Exemption from reporting to FIC

- 4.** A person required under section 21 of the Act to report a suspicious transaction may make, for the proper facilitation of the Act, such report internally, by -
- 4.1 reporting the matter to the compliance officer of the business referred to in that section; or
- 4.2 reporting the matter to such person's superior, if any, if -
- 4.2.1 such business, referred to in section 21, had not appointed such a compliance officer;
- 4.2.2 such business, referred to in section 21, failed to provide training to such person to enable such person to comply with an alternative reporting procedure; or
- 4.2.3 the internal rules do not apply to such person.

Exemption from implementing compliance programs

- 5.** A natural person who is an accountable institution and who is also in a partnership, company or close corporation, is exempt from the provisions of regulation 21(1) of the Regulations and from sections 13(2), 14(1), 15(1), 16 and 25 of the Act, if those provisions are complied with by another person employed by that partnership, company or close corporation.

Note: For purposes of item 2.3 regarding which countries are FATF member countries and which countries meet the recommended anti-money laundering measures as set out in the 2003 Financial Action Task Force Forty Recommendations, please revert to the guidance notes issued by the FIC.

MINISTRY OF FINANCE

No. 76

2009

**EXEMPTION ORDER:
FOR PURPOSES OF PHASING-IN OF OBLIGATIONS:
FINANCIAL INTELLIGENCE ACT, 2007**

Under section 51 of the Financial Intelligence Act, 2007 (Act No. 3 of 2007), and on the recommendation of the Bank of Namibia, I make the exemption order as set out in the Schedule.

S. KUUGONGELWA – AMADHILA
MINISTER OF FINANCE

Windhoek, 16 April 2009

SCHEDULE**Definitions**

1. In this exemption order, unless the context otherwise indicates, a word or expression defined in the Act has that meaning, and –
 - “Schedule 1” means Schedule 1 of the Act; and
 - “Schedule 2” means Schedule 2 of the Act; and
 - “the Act” means the Financial Intelligence Act, 2007 (Act No. 3 of 2007).

Phasing-in of obligations

- 2.1 The following accountable institutions, supervisory bodies or persons, as the case may be, are exempt as indicated in this item for a period of 6 months from the date upon which the Act comes into operation:
 - 2.1.1 All accountable institutions listed under items 1, 3, 5, 6, 12, 13, 14, 15, 16 and 19 of Schedule 1, other than a person registered in terms of section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951) who is a member of the Institute of Chartered Accountants of Namibia, are exempt from complying with section 25 of the Act.
 - 2.1.2 All supervisory bodies under items 1, 6 and 7 of Schedule 2 are exempt from complying with section 23, except section 23(1), of the Act.
- 2.2 The following accountable institutions, supervisory bodies or persons, as the case may be, are exempt as indicated in this item for a period of 12 months from the date upon which the Act comes into operation:
 - 2.2.1 All accountable institutions listed under items 2 and 4 of Schedule 1 and any person registered in terms of section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951), who is a member of the Institute of Chartered Accountants of Namibia, are exempt from complying with section 25 of the Act.
 - 2.2.2 All supervisory bodies under items 3, 4 and 5 of Schedule 2 are exempt from complying with section 23, except section 23(1), of the Act.
- 2.3 The following accountable institutions are exempt as indicated in this item for a period of 18 months from the date upon which the Act comes into operation:

- 2.3.1 All accountable institutions listed under items 7, 8, 9, 10, 11, 17 and 20 of Schedule 1 are exempt from complying with section 25 of the Act.
- 2.3.2 The supervisory body listed as item 2 of Schedule 2 is exempt from complying with section 23, except section 23(1), of the Act.
- 2.4** The following exemption is made regarding the obligation by an accountable institution to make a report under section 20 of the Act:
- 2.4.1 Subject to subitem 2.4.2, all accountable institutions are exempt from the obligation to report the prescribed particulars, contemplated under section 20(1), concerning a cash transaction, regardless of the amount of cash involved, for a period of 12 months from the date upon which the Act comes into operation.
- 2.4.2 Notwithstanding the exemption granted under subitem 2.4.1, a cash transaction, especially of a large amount, may, by its very nature, give rise to a suspicion or belief that requires a report to be made in terms of section 21 of the Act and such exemption does not excuse a person from such obligation to report such suspicion or belief in terms of that section.
- 2.5** The following exemption is made regarding the obligation by an accountable institution to make a report under section 22 of the Act:
- 2.5.1 Subject to subitem 2.5.2, all accountable institutions are exempt from the requirement under section 22 of the Act to report any particulars concerning an electronic transfer of money, either from Namibia or to Namibia, regardless of the amount transferred, for a period of 12 months from the date upon which the Act comes into operation.
- 2.5.2 Notwithstanding the exemption granted under subitem 2.5.1, an electronic transfer of money, especially of a large amount, may, by its very nature, give rise to a suspicion or belief that requires a report to be made in terms of section 21 of the Act and such exemption does not excuse a person from such obligation to report such suspicion or belief in terms of that section.
- 2.6** The following exemption is made regarding the obligation by a person to report, in terms of section 24 of the Act, the prescribed particulars concerning the conveyance of cash into or out of Namibia:
- 2.6.1 Subject to subitem 2.6.2, all persons are exempt from the obligation to report those particulars, prescribed in terms of section 24 of the Act, concerning the conveyance of cash into or out of Namibia for a period of 12 months from the date upon which the Act comes into operation.
- 2.6.2 Notwithstanding the exemption granted under subitem 2.6.1, the conveyance of cash to or from Namibia, especially in a large amount, may, by its very nature, give rise to a suspicion or belief that requires a report to be made in terms of section 21 of the Act and such exemption does not excuse any person, especially any Namibian Customs Official, who may be aware of such conveyance, from his or her reporting obligations to report such suspicion or belief in terms of that section or under any other law applicable within Namibia concerning the conveyance of cash across borders.

Designation of institution by Minister

3. Where the Minister designates, as contemplated under item 18 of Schedule 1 an institution in terms of section 2(2)(p) of the Banking Institutions Act, 1998 (Act No. 2 of 1998), such designated institution is exempt for a period of 12 months, from the date of such designation, from complying with the Act.

Specific exemptions

4. The exemptions granted and the time periods imposed under items 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 3 of this exemption order do not detract from any other specific or general exemption granted to any accountable institution, supervisory body or person, as the case may be, upon or after the date of publication of this exemption order.
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