



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$8.40

WINDHOEK - 16 March 2021

No. 7484

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Government Notices

MINISTRY OF FINANCE

No. 48 2021

AMENDMENT OF REGULATIONS UNDER THE FINANCIAL INTELLIGENCE ACT, 2012

In terms of section 67 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), and after consulting the Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council and the Financial Intelligence Centre, I have amended the regulations as set out in the Schedule.

I. SHIMI

MINISTER OF FINANCE

Windhoek, 2 March 2021

SCHEDULE

Definitions

1. In these regulations “the Regulations” means the Regulations under the Financial Intelligence Act published under Government Notice No. 3 of 28 January 2015.

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is amended by the insertion of the following definitions:

“appeal board” means the appeal board established by section 57 of the Act;

“appellant” means a person or institution who makes an appeal and who lodges an appeal in terms of section 58 of the Act;

“chairperson” means the chairperson of the appeal board and includes the deputy chairperson who is chosen by the appeal board if the chairperson is absent during a sitting of the appeal board;

“days” means all days of the week excluding Saturday, Sunday or a public holiday;

“file” means to deliver documents to the Centre and to also file it in the manner referred to in regulation 35F;

“legal practitioner” means a person as defined by section 1 the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“person having an interest” means a supervisory body as defined in Schedule II and a regulatory body as defined in Schedule IV of the Act;

“respondent” means the Centre or supervisory body whose decision is appealed against;

“serve” means to deliver documents to the parties to the appeal.

Insertion of regulations 35A, 35B, 35C, 35D, 35E, 35F, 35G, 35H, 35I, 35J, 35K, 35L, 35M, 35N, 35O and 35P.

3. The Regulations are amended by the insertion of the following regulations after regulation 35 of the Regulations:

“Manner in which an appeal is to be lodged and payment of fee

35A (1) For the purposes of section 58(2) of the Act, an appeal is lodged within the period referred to in that subsection, if, within that period -

- (a) a notice of appeal, together with all the documents which in terms of these regulations must be attached thereto and all these documents must comply with all the requirements of these regulations -
 - (i) has been delivered by hand to the Centre at the street address provided in Annexure 8;
 - (ii) has been communicated to the Center in the manner provided for in regulation 35F; and
 - (iii) if an appeal is lodged against a decision of a supervisory authority, the notice has been served in the manner prescribed in regulation 35B(3) on that authority; and
- (b) upon the date of lodging the notice of appeal, pay a fee of five thousand Namibia Dollars:

- (i) into the Financial Intelligence Centre income account:
Bank: Bank of Namibia
Branch Code: 980172
Account No: 800605 (Financial Intelligent Centre – Income)
Reference: Details/Reference of the transaction; or
- (ii) if the appellant is represented by a legal practitioner, into the trust account of the legal practitioner, with proof of payment made available to the Centre, together with the notice of appeal.

(2) A notice of appeal as contemplated in subregulation (1) must be accompanied by an affidavit containing in full -

- (a) the particulars of the appellant;
- (b) the particulars of the respondent;
- (c) the decision appealed against, the grounds for the appeal; and
- (d) the physical address where the appellant will accept delivery of all documents relevant to the appeal.

(3) The affidavit contemplated in subregulation (2) must be accompanied by all supporting documents referred to in the affidavit.

(4) The appellant must serve and file the notice of appeal together with the affidavit and all supporting documents in terms of regulation 35B.

(5) After receiving a notice of appeal as contemplated in subregulation (1), the Centre must inform the Minister of the lodged notice of appeal as soon as practicable.

(6) The appellant must file, in addition to the notice of appeal and the affidavit contemplated in regulation 35A(2), copies of -

- (a) the notice by the respondent informing the appellant of the decision against which the appeal is made; and
- (b) any statement of reasons, documents or information, including annexures, that the respondent may have provided to the appellant, which is relevant to the decision against which the appeal is made.

(7) If the appellant fails to lodge the notice of appeal within 30 days from the date when notice of the decision was received or fails to comply with subregulations (2), (3), (4) or (6), the appellant may lodge an application for condonation at the same time as lodging of the appeal, which must be concise and show good cause.

(8) The application for condonation referred to in subregulation (7) may be made on affidavit or in written submissions.

(9) If the application for condonation is opposed by an interested party, the grounds of opposition must also be stated concisely, provided in writing to the Centre within 30 days of the application for condonation.

(10) Depending on the nature of the application, the application for condonation, whether opposed or unopposed, may be decided on the papers or during the hearing by the chairperson presiding over the appeal board.

The notice of appeal and service

35B. (1) The notice of appeal contemplated in regulation 35A(1) must conform as far as possible with the form set out in Annexure 8.

(2) The notice of appeal and the affidavit contemplated in regulation 35A(2), and all other supporting documents, must be served on all parties and service of a process may be affected in any one of the following ways -

- (a) by handing a copy of the process to the person concerned, or to a representative authorised by that person to accept service on behalf of that person;
- (b) by handing a copy of the process to a staff member of the authority against whose decision the appellant intends to appeal; or
- (c) by delivering a copy to the legal representative of the person or authority concerned.

(3) A party requiring any notice of appeal to be served under these regulations may serve the process itself or cause the process to be served by the deputy sheriff of the High Court or by any person designated in writing by the party.

(4) If no person identified in subregulation (2) is willing to accept service, service may be affected by affixing a copy of the process to -

- (a) the main gate or door of the premises or registered office concerned; or
- (b) if the premises or office contemplated in paragraph (a) is not accessible, a post-box or other place to which the public has access.

(5) A party must prove that a process was served in terms of these subregulations by providing the appeal board with duly completed Annexure 9, and with, if process was served by hand a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service.

(6) If proof of service in accordance with subregulation (5) is provided, it is presumed, until the contrary is proved, that the party on whom it was served, and the Centre, has knowledge of the contents of the process.

(7) The appeal board may, on good cause shown, accept proof of service in a manner other than prescribed in these subregulations as sufficient.

(8) Service may be affected at any time between 08h00 and 17h00 on any day, unless the chairperson to the appeal board directs otherwise.

Preparation of appeal board documents

35C. (1) All typed notices, affidavits and other appeal documents must be in clear and legible type in a font size no smaller than 12 points and no larger than 14 points.

(2) Any document served on the appeal board, other than an exhibit or a facsimile thereof, must be clearly and legibly printed or typewritten in permanent black ink on one side only of paper of good quality and of A4 standard size, weighing at least 60g/m² and a document is considered to be typewritten if it is reproduced clearly and legibly on suitable paper by duplicating by means of photographic production.

(3) Any notice, affidavit and other appeal documents must be divided into concise paragraphs and the paragraphs must be consecutively numbered.

(4) A notice, affidavit or other appeal document must at the end of that notice, affidavit or other appeal document contain the particulars of the party filing the document and the party on whom it is served.

(5) Any affidavit filed with the Centre to the appeal board by or on behalf of an appellant or a respondent must, if he or she is represented by a legal practitioner or another representative of his or her choice, on the first page thereof bear the name and address of that legal practitioner or the representative of choice.

(6) A matter will not be heard by the appeal board unless all the papers filed of record in that matter are indexed at least 10 days before the hearing.

(7) A legal practitioner or other representative of choice representing the appellant or if the appellant is representing himself or herself, the appellant must ensure that the requirements in subregulation (6) are complied with.

The serving of a notice to oppose and other affidavits

35D. (1) In the event that a respondent elects to oppose an appeal, it must serve a notice of intention to oppose to the appellant or his or her legal representative within 30 days from the day on which the notice of appeal was received.

(2) The respondent must, within 30 days of serving its notice of intention to oppose, deliver its answering affidavit accompanied by an indexed and paginated record of the documents, as far as reasonably possible with certified copies, which was before it when it made the decision to impose an administrative sanction and any further relevant documents to assist the appeal board in considering the appeal.

(3) The appellant must, within 30 days of receipt of the respondent's answering affidavit, serve a replying affidavit, if it chooses to do so.

Heads of argument

35E. (1) The appellant must not less than 30 days before the hearing, and the respondent must not less than 15 days before the hearing, serve and file heads of argument, but the appeal board may direct otherwise or the appeal board may, on good cause shown, accept heads of argument served out of time.

(2) The practice directions of the High Court pertaining to the heads of argument apply in all circumstances where heads of argument are required.

Filing of documents with Centre

35F. (1) For the appeal board to function effectively, any documents that must be served and filed in terms of the Regulations, must also be served -

- (a) by email to fichelpdesk@fic.na; or
- (b) through the FIC's software application GoAML electronic platform, access to which the Centre makes available through the website www.fic.na.

(2) If documents are sent electronically, they must be both in Adobe Acrobat (.pdf) which conforms with ISO 32000 containing a graphical representation of the signature of the deponent, the stamp and signature of the Commissioner of Oaths and the signature of the appellant or his or her legal representative and in Microsoft Word (.docx) format which conforms with ISO 2145.

Hearing of Appeal

35G. (1) The date, time and place of the hearing are fixed by the chairperson in consultation with the parties and other appeal board members, through the Centre.

(2) The chairperson may from time to time issue directives relating to the filing of appeal processes and generally with regard to the conduct of the appeal.

(3) The chairperson must send the notice of set down to the Centre for it to serve on the appellant and the respondent if the respondent is an authority other than the Centre.

(4) Matters are set down for as many days as is necessary, depending on the number of appeals to be heard by the appeal board at a time.

(5) The unavailability of a legal representative, or representative of choice, will only in exceptional circumstances be regarded as a reasonable and justifiable ground for postponement of the appeal.

Withdrawal

35H. (1) An appellant or respondent may -

(a) at any time before the appeal has been set down; or

(b) after the appeal has been set down with consent of the parties or with leave of the appeal board,

withdraw the proceedings or the opposition of the appeal in which event the party concerned must serve a notice of withdrawal on the other party and the Center.

(2) If the appellant has withdrawn his or her appeal, the decision stands as if no appeal has been lodged.

(3) If the respondent has withdrawn its opposition to the appeal, the decision is deemed to have been set aside.

Decisions of the appeal board

35I. (1) In any appeal, unless the appeal board's decision is delivered immediately after the hearing, the appeal board must announce or inform the parties in writing of the intended time and date of delivery of its decision and postpone the matter to such date and time.

(2) All appeal board decisions must be published on the website of the respondent, unless the chairperson of the appeal board directs, on application by any party and on good cause shown, that such publication may not reveal the identity of the parties concerned or that no publication may take place.

Record of proceedings

35J. (1) A party to an appeal and a person having a regulatory or supervisory interest therein, with leave of the Centre on good cause shown may, subject to payment of the required fees

listed in Annexure 10, examine any appeal board process, notice or document in that cause or matter at the registered office of the Centre and may against payment of the required fee request from the Centre copies of the appeal process, notice or document in that cause or matter.

- (2) The record of the appeal proceedings consists of -
- (a) an order or ruling given by the appeal board;
 - (b) evidence given during the appeal;
 - (c) affidavits and other supporting documents filed in the appeal;
 - (d) objections made to any evidence received or tendered;
 - (e) the proceedings of the appeal hearing, including a record of an inspection or demonstration given by a witness in the appeal; and
 - (f) any other portion of the proceedings which the appeal board may specifically order to be recorded.

(3) The record referred to in subregulation (2) must be kept by the means as the appeal board considers appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.

(4) The person taking the shorthand notes or making the mechanical record must certify the notes or record as correct and provide them to the Centre.

(5) It is not necessary to transcribe the shorthand notes or mechanical record unless the appeal board so directs.

(6) If the shorthand notes or mechanical record are transcribed, the person transcribing them must certify the transcript of such notes or record as correct and file the transcript, notes and record with the Centre and the transcript of the notes or record certified as correct is deemed to be correct unless the appeal board orders otherwise.

(7) A party to an appeal may apply in writing through the Centre to have the record transcribed, if an order to that effect has not already been made, and that party is entitled to a copy of any transcript ordered to be made on payment of the fees set out in Annexure 10.

(8) A stenographer employed to take down shorthand notes or a person employed to make a mechanical record of any proceedings is considered to be an officer of the appeal board and he or she must, before entering on his or her duties, take the following oath or make the following affirmation:

“I, _____, do swear or affirm that I will faithfully, and to the best of my ability, record in shorthand or cause to be recorded by mechanical means, as directed by the appeal board, the proceedings in any case in which I may be employed as an officer of the appeal board and that I will similarly, when required to do so, transcribe same or, as far as I am able, any shorthand notes or mechanical record made by any other stenographer or person employed to make such mechanical record.”

Destruction of documents

35K. (1) In a matter which has not been adjudicated by the appeal board due to being withdrawn, the Centre may, subject to the provisions of the Archives Act, 1987 (Act No. 4 of 1987),

after the lapse of three years from the date of the filing of the last document in the matter, authorise the destruction of the documents filed with the Centre relating to that matter.

(2) Any matter which has been adjudicated on by the appeal board, must be transferred to an archives depot as contemplated in section 5 of the Archives Act, 1987 (Act No. 4 of 1987), after five years after disposal of the case.

Report by Centre on work of appeal board

35L. (1) The Centre must at the end of every financial year of the Centre, compile and submit to the Council and the Minister, a report containing the following information about the work of the appeal board for the financial year in question -

- (a) all cases lodged with the appeal board;
- (b) the number of cases completed by the appeal board;
- (c) the number of reserved judgments, the length of time during which a judgment remained reserved and the deadline by which the judgment should have been delivered in terms of any directive of the appeal board; and
- (d) the status of each appeal case.

(2) After approving the report referred to in subregulation (1), the Council and the Minister must direct the Centre to publish the approved report on the Centre's webpage.

Tariff of appeal board fees

35M. The fees payable in respect of the appeal board are contained in Annexure 10.

Translation of documents

35N. (1) Where a document in a language other than the official language of Namibia is produced in appeal proceedings, it must be accompanied by a translation certified to be correct by a sworn translator.

(2) Unless contrary evidence is adduced, it is assumed that a sworn translation is a correct translation of the document in question.

(3) If no sworn translator is available or if in the opinion of the appeal board it would not be in the interest of justice to require a sworn translation whether because of the expense, inconvenience or delay involved the appeal board may, despite subregulation (1), admit in evidence a translation certified to be correct by any person who it is satisfied is competent to make that translation.

Interpretation of oral evidence into official language

35O. (1) Where evidence in appeal proceedings is given in a language other than the official language of Namibia, that evidence must be interpreted by a competent interpreter, sworn to interpret faithfully and to the best of his or her ability into the official language.

(2) Before a person is employed as an interpreter the appeal board may, if in its opinion it is expedient to do so or if a party on reasonable grounds so desires, satisfy itself as to the competence and integrity of that person after hearing evidence, if the hearing of evidence is reasonable and practicable.

Transitional matters

35P. (1) Subject to subregulation (2) and (5), an appeal that has been lodged with the Centre or a supervisory body, prior to the date that these regulations came into force is deemed to have been properly lodged as contemplated in regulation 35A(1) and, subject to any further directives from the chairperson, is deemed to comply with the requirements prescribed for the lodging appeals prescribed by these regulations.

(2) The chairperson may, in writing, direct the appellants to file any additional documents or information, that was not part of the appeal lodged before the date that these regulations came into force, to ensure that those appeals comply with the requirements of the form and manner for lodging an appeal in terms of these regulations.

(3) Without derogating from the generality of subregulation (2), the chairperson may direct an appellant to -

- (a) pay the fee for lodging an appeal as required in terms of regulation 35A(1)(b);
- (b) file a notice of appeal which conforms as far as possible with the form set out Annexure 8;
- (c) file an affidavit as required by regulation 35A(2); and
- (d) comply with regulation 35A(6).

(4) An appellant must, within 30 days from the date of any directive by the Chairperson in terms of subregulation (2), file and serve the required documents or information.

(5) The Chairperson must direct the Centre to notify the parties that the lodging of the appeal is complete if in his or her opinion -

- (a) the appellant has complied with a directive in terms of subregulation (2); or
- (b) an appeal filed and served before the date that these regulations have come into force sufficiently complies with the requirements for the form and manner of lodging an appeal and does not require any directives in terms of subregulation (2).

(6) For the purposes of regulation 35A(1), the date on which a notice of appeal is deemed to have been served is the date on which the notice referred to in subregulation (5) has been communicated -

- (a) to the Center, if the appeal is against a decision of the Center; or
- (b) to the supervisory body in question if the appeal is against the decision of a supervisory authority.

Amendment to the Schedule of the Regulations

4. The Schedule of the regulations is amended by insertion of the following Annexures:

“ANNEXURE 8**IN THE APPEAL BOARD OF THE FINANCIAL INTELLIGENCE ACT, 2012**

In the matter between	Appeal no
ABC (name of appellant)	Appellant
DEF (insert the name of the Financial Intelligence Centre or supervisory body that imposed the sanction)	First Respondent
XYZ (insert name of second respondent, if applicable)	Second Respondent

NOTICE OF APPEAL**1. Particulars of the appellant**

- 1.1. Appellant's full name
- 1.2. Telephone numbers: *[the telephone number(s) of the appellant and its legal representative or representative of choice]*
- 1.3. Fax numbers: *[Fax number (s) of appellant and its legal representative or representative of choice]*
- 1.4. E-mail Address: *[E-mail address of the appellant and its legal representative or representative of choice]*
- 1.5. Residential Address; *[Only in the case of natural persons]*
- 1.6. Business Address: *[Essential]*
- 1.7. Respondent's full name
- 1.8. Telephone numbers: *[the telephone number(s) of the appellant and its legal representative or representative of choice]*
- 1.9. Fax numbers: *[Fax number (s) of appellant and its legal representative or representative of choice]*
- 1.10. E-mail Address: *[E-mail address of the appellant and its legal representative or representative of choice]*
- 1.11. Residential Address; *[Only in the case of natural persons]*
- 1.12. Business Address: *[Essential]*

2. Particulars of the decision appealed against

An appeal is hereby noted against the Respondent's decision contained in his letter dated and received by the appellant on [the date of the letter received from the Respondent and the date of receipt of the letter must both be stated.] A copy of the aforesaid letter is attached hereto as annexure A. *[Please note that it is not necessary to describe the Respondent's decision and/or to quote from the letter containing the decision as the letter has to be annexed]*

3. Grounds of appeal

The appellant appeals against the decision on the following grounds:

- (a)
- (b)
- (c)

[Please state the grounds of appeal succinctly and annex all accompanying documents numbered consecutively]

4. Proof of payment

Attached hereto as Annexureis proof of payment of the amount of NAD 5 000,00.

DATED AT WINDHOEK ON THIS 2ND DAY OF MARCH 2021.

.....
[Signature of appellant or the attorney]

TO: **THE CENTRE
FINANCIAL INTELLIGENCE ACT APPEAL BOARD**
For attention: The Director, Financial Intelligence Centre
3rd Floor, Bank of Namibia Building
Robert Mugabe Avenue
Windhoek

E-mail: fichelpdesk@fic.na or via the FIC's GoAML electronic platform
Tel: +264 61 283 5287/83/15

PLEASE NOTE: As per Regulation 35A(2), the notice of appeal must be accompanied by an affidavit containing the full the particulars of the appellant, the decision appealed against, the grounds for the appeal and must also state the physical address where the appellant will accept delivery of all documents relevant to the appeal

It remains the responsibility of the appellant to ensure that the appeal is received by the Centre and all the other parties to the decision.

ANNEXURE 9
(Sub-regulation 35B(3))

RETURN OF SERVICE OF PROCESS

In the matter between:

Appellant

and

Respondent

I,

do hereby certify that on the day of 20 at

..... (state time) I duly served the following document(s)

.....
.....
.....
.....

.....
(describe the document(s) served) in the following manner:

*(Complete (a), (b) or (c) as appropriate, *delete as appropriate)*

(a) By handing a copy to
(full name of the person served) the respondent / a person apparently not less than 16 years of age
and employed at the respondent's place of business / registered office * and he / she* refused to sign
a copy thereof;

Dated at this day of 20

.....
(full name and signature of person affecting service)

ANNEXURE 10
APPEAL BOARD FEES
Tariff of Appeal Board Fees
 (Regulation 35M)

1. For each copy of an order of the appeal board or judgment made available by the Centre, for each A4-size page or part thereof 10.00
2. For each copy of a document, notice, pleading or part of the appeal board record made by the Centre, for each A4-size page or part thereof 10.00
3. On a request to inspect an appeal board record made within 5 days after judgment was delivered 10.00
4. On a request to examine any appeal board process, notice or document
 200.00
5. For each electronic sound or video file of any recorded session of any proceedings digitally recorded, per session, irrespective whether the file is provided on a separate disk, copied onto any other external device provided to the Centre or transmitted via e-mail
 200.00
6. For each copy of any document, notice, pleading, judgment or part of a transcribed appeal board record provided by the Centre in electronic format, irrespective whether the document, notice, pleading, judgment or part of an appeal record is provided on a separate disk, copied onto any other external device provided to the registrar or transmitted via e-mail
 200.00
7. For each copy of any document, notice or pleading submitted to the Centre for purpose of scanning, for each A4-size or part thereof 10.00”

MINISTRY OF FINANCE

No. 49

2021

DETERMINATION OF REMUNERATION AND ALLOWANCES FOR MEMBERS OF THE
 APPEAL BOARD: FINANCIAL INTELLIGENCE ACT, 2012

In terms of section 57(5) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), and after consulting the Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council, the Financial Intelligence Centre and the Namibia Financial Institutions Supervisory Authority, I hereby determine the remuneration and allowances to be paid to members of the Appeal Board appointed in terms of section 57(1) of the Act as set out in the Schedule.

I. SHIMI
MINISTER OF FINANCE

Windhoek, ?? March 2021

SCHEDULE

Definitions

1. In this notice, unless the context otherwise indicates, a word or expression defined in the Act has that meaning, and -

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

“determination” means a determination made under the Act;

“sitting of the appeal board” for purposes of this determination means an entire day’s work by the appeal board, regardless of the number of appeal cases heard during such a sitting; and

“the Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012).

Remuneration and allowances

2. In terms of Section 57(5) of the Act, remuneration and allowances payable to appeal board members is determined in the amount of N\$14,373 for the Chairperson and N\$8,128 per member, per sitting of the appeal board.
