EXPLANATORY MEMO TO THE PROPOSED AMENDMENTS OF THE FINANCIAL INTELLIGENCE ACT, 2012, AS AMENDED

1. INTRODUCTION

The Financial Intelligence Amendment Bill, 2023, introduces amendments to the Financial Intelligence Act, 2012.

2. PURPOSE

The purpose of this explanatory memo is to explicate the rationale for the proposed amendments to the Financial Intelligence Act, 2012.

3. BACKGROUND

As Cabinet was informed in August 2020, Namibia underwent her second peer review/mutual evaluation by the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) to assess Namibia's technical and effective compliance with applicable Anti-Money Laundering and Combatting the Financing of Terrorism and Proliferation (AML/CFT/CPF) UN Conventions and mandatory UN Security Council Resolutions issued under Chapter VII of the UN Charter, as embedded in the FATF International Standards. Cabinet noted and committed to the country's second mutual evaluation under reference: Cabinet Action Letter, DECISION NO: 11th/04.08.20/006.

Namibia has made significant progress since the last Mutual Evaluation in 2005, as far as technical compliance is concerned, but there remains significant room for improvement on the overall level of effectiveness of the national AML/CFT/CPF regime.

Following the finalisation of the assessment and adoption of the Report during the ESAAMLG Task Force and Council of Ministers meetings during September/October 2022 in Livingstone, Zambia, the National Focal Committee responsible for the preparation of stakeholders and coordination of the mutual evaluation exercise has drafted a proposed National Action Plan to address shortcomings raised in the Mutual Evaluation Report. The Action Plan was approved by Cabinet on 13 December 2022 as per Cabinet Action Letter, **DECISION NO: 22nd /13.12.22/003.**

In developing the Action Plan which includes the proposed legislative amendments flowing from it, the National Focal Committee looked at the findings of Namibia's mutual evaluation report and also compared the provisions of the current FIA with the essential criteria in the FATF "Methodology for Assessing Compliance with the FATF 40 Recommendations".

To further assist with the amendment process, the Committee also consulted:

- Financial Intelligence Act, No 02 of 2022 of Botswana;
- Financial Crimes Act, 2017 of Malawi
- Money Laundering and Proceeds of Crime Act / Chapter 9; 24 of Zimbabwe
- The Financial Intelligence and Money Laundering Act, Act 06 of 2002, as amended, of Mauritius

- the South African General Amendment Bill ("Omnibus Bill")

In addition the assistance of reputable international technical assistance providers were sought and obtained, namely Open Ownership and the International Monetary Fund, that reviewed the drafted amendments and provided advice on the further augmentation of provisions to align it with international standards and expectations.

In the proposed amendments, the Committee endeavored to:

- Firstly, address the major weaknesses identified by the ESAAMLG Assessors as Priority Areas, thereafter the minor deficiencies and recommendations. The recommendations following the Mutual Evaluation carried out in 2021/2022 pointed out significant weaknesses in the current framework related to the independence and autonomy of the FIC, strengthen Namibia's beneficial ownership framework, provision for enhanced due diligence especially as it pertains to Politically Exposed Persons, the introduction of a framework for Virtual Asset Service Providers
- Certain definitions in the Act needed to be included and augmented to provide more clarity and to ensure proper application thereof in the context of the ever-changing financial system;
- To address any deficiencies in the current Act, which may prove challenging and problematic to implement practically;

Ultimately, the deficiencies the amendments seek to address seek to enhance Namibia's compliance with International Standards, which it is obligated to fulfill.

4. PROPOSED AMENDMENTS

4.1. Objectives

The objectives of the Bill are –

To amend the Financial Intelligence Act, 2012, so as to provide for the establishment of the Board, crystallise the obligations related to the treatment of Prominent Influential Persons, to provide for AML/CFT Supervision for Virtual Asset Service Providers, to enhance preventative measures on Accountable and Reporting Institutions, to augment measures related to high risk jurisdictions, to strengthen the operational independence and autonomy of the Centre and to provide for incidental matters.

4.2. Definitions (Section 1)

4.2.1. The definition of Accountable Institutions

Rationale: Given the measures imposed for insurance intermediaries, it is proposed that the definition of Accountable Institutions, will be augmented with the explicit inclusion of agents in the definition currently reflected.

Amendment to be included in the Bill:

By the substitution of the definition of "Accountable Institution" with the following definition:

'Accountable Institution' means a person or institution referred to in Schedule 1, including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution, including agents;

4.2.2. The definition of Authorised Officer

Rationale: To provide legal clarity on the nature of the Centre as an administrative as opposed to an investigative Financial Intelligence Unit, the definition of authorised officer should exclude officials from the Centre. This removes potential for conflict with the work of existing agencies is an important consideration in this regard. The provisions on the FIU functions do not suggest they are investigative, although they are included as "authorized officers" who exercise investigative powers.

Therefore, it is proposed that the definition of authorised officer be amended to exclude the FIU, as well as other non-investigatory agencies such as the Office of the Prosecutor General and supervisory bodies as defined in the Act.

Amendment to be included in the new Bill:

By substitution of the definition of "authorised officer" with the following definition:

"authorised officer" means any member of –

(a) the Namibian Police Force authorised by the Inspector-General of the Namibian Police Force;

[(b) the office of the Prosecutor-General authorised by the Prosecutor-General]

(b) the Intelligence Service authorised by the Director-General of the Namibian Central Intelligence Service;

[(d) the Centre authorised by the Director]

[(e)] (c) the Anti-Corruption Commission authorised by the Director of the Anti-Corruption Commission; or

[(f) a supervisory body or any person authorised by the Head of the supervisory body;]

(d) an investigating authority that may, in terms of any law, investigate unlawful activities who may act under this Act.

4.2.3. The definition of a Close Associate of a Prominent Influential Person

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found in Non-Compliance with Recommendation 12 because it has no law setting out obligations on Politically Exposed Persons, as defined by the FATF, for AIs/RIs.

The definition for Close Associates of PIPs is derived from the FIC Guidance Note No 01 of 2019 for Politically Exposed Persons. For purposes of the current amendments, the term "Prominent Influential Person" is considered more appropriate in the Namibian context as it is wide enough to cover persons in different sectors that may hold a prominent function. It is not necessary that Namibia adopt the same terminology as the FATF, as long as the measures are catered for in the AML/CFT/CPF framework for a category of persons that aligns to the FATF Definition. Therefore, it was required to provide a definition for a Close Associate of a PIP.

The FATF Standard requires that the measures applied for PEPs must apply for the Close Associates of PEPs, amongst others. A list of examples of what is considered to be a PIP will be catered for in secondary legislation.

Amendment to be included in the new Bill:

By the insertion after the definition of "Centre" of the following definition:

""Close associates of Prominent Influential Person" means individuals who are closely connected to a Prominent Influential Person, either socially or professionally, and include but not limited to:
(i) individuals known to have any close business relationships with a Prominent Influential Person, such as a Prominent Influential Person's business partners or identified as the owners and/or beneficial owners of a legal person or legal arrangement which is associated with a PIP."

4.2.4. The definition of a Competent Authority

Rationale: As it currently reads, the FIA definition of Competent Authority does not include the Namibia Revenue Agency.

The Namibia Revenue Agency (which administers the Income tax Act, VAT Act and Custom & Excise Act) does not have investigative power. Tax evasion is a criminal offence investigated by the Police, with NamRA as a complainant.

NamRA is one of the key stakeholders of the FIC. It received the majority of the Centre's spontaneous disclosures that may initiate or supplement tax audits. It is from tax audit that elements required to criminal investigation of tax crimes emanates. The Act currently does not explicitly refer to NamRA as a competent authority and this is not consistent with key stakeholders that the FIC shares intelligence with.

Amendment to be included in the new Bill:

By the substitution of the definition of "Competent Authority" with the following definition:

"Competent Authority' means any supervisory body, the Namibian Police Force, the Anti-Corruption Commission, the Namibian Central Intelligence Service, the Prosecutor General, the Namibia Revenue Agency, the Centre and any other authority that may, in terms of any law, investigate unlawful activities."

4.2.5. Definition of Correspondent Banking

Rationale: To provide further legal certainty of the current definition.

Amendment to be included in the Bill:

By the substitution of the definition of "correspondent banking" with the following definition:

"correspondent banking" means the provision of banking, payment and other services by one bank "the correspondent bank" to another bank "the respondent bank" to enable the latter to provide services and products to its clients or similar relationships.

4.2.6. Definition of Customer Due Diligence

Rationale: To ensure the definition covers all Customer Due Diligence measures, an amendment is proposed. Further, the concept of beneficial owners is not limited to legal persons, since a natural person can also be controlled by another natural person. This in line with the FATF Standards.

Amendment to be included in the new Bill:

By substitution of the definition of "customer due diligence" of the following definition:

"customer due diligence" means a process which involves establishing the identity of a client, the identity of the client's beneficial owners, understanding the ownership and control structure of the client in respect of legal persons and arrangements, obtaining information on the purpose and intended nature of the business relationship and monitoring all transactions of the client against the client's profile.**[in respect of legal persons and monitoring transactions of the client against the client's profile]**

4.2.7. Definition of Family Member of Prominent Influential Person

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found in Non-Compliance with Recommendation 12 because it has no law setting out Politically Exposed Persons obligations for AIs/RIs.

The definition for Family Member of PIPs is derived from the FIC Guidance Note No 01 of 2019 for Politically Exposed Persons. For purposes of the current amendments, the term "Prominent Influential Person" is considered more appropriate in the Namibian context as it is wide enough to cover persons in different sectors that may hold a prominent function. It is not necessary that Namibia adopt the same terminology as the FATF, as long as the measures are catered for in the AML/CFT/CPF framework for a category of persons that aligns to the FATF Definition.

The FATF Standard requires that the measures applied for PEPs must apply for the Family Members of PEPs, amongst others.

This necessitates the inclusion of a definition for a Family Member of a PIP.

Amendment to be included in the new Bill:

By the insertion after the definition of "establish identity" of the following definition:

"Family member of Prominent Influential Persons' are individuals who are related to a Prominent Influential Person either directly or through marriage or similar (civil) forms of partnership and include but is not limited to:

(i) a spouse or partner of the Prominent Influential Person;

(ii) a sibling of a Prominent Influential Person;

(iii) children of Prominent Influential Person and their spouses or partners; and

(iv) parents of the Prominent Influential Person."

4.2.8. Definition of higher risk jurisdictions

Rationale: To address deficiencies raised in Namibia's Mutual Evaluation, and related amendments to Recommendation 19 below, the inclusion of a definition for "higher risk jurisdictions" is proposed.

Amendment to be included in the new Bill:

By the insertion after the definition of "Governor" of the following definition:

"higher risk jurisdictions" means jurisdictions that carries a higher risk for money laundering or terrorist financing or proliferation financing;

4.2.9. Definition of Namibia Revenue Agency

Rationale: A revision of the definition of Competent Authority will include the recently established Namibia Revenue Agency, as proposed in 4.2.3 above. This necessitates the inclusion of a definition for the Agency, which is consistent with prevailing legislation.

Amendment to be included in the Bill:

By insertion after the definition of "money laundering" of the following definition:

"Namibia Revenue Agency' means the Namibia Revenue Agency established by section 2 of the Namibia Revenue Agency Act, 2017 (Act No 12 of 2017)."

4.2.10. Definition for monitoring

Rationale: The definition for monitoring currently does not feature in the primary law but is provided in the Regulations, for purposes of the Regulations. The Act currently uses the term monitoring in various provisions, thus it is proposed that the definition be introduced in the Act.

Amendment to be included in the Bill:

By insertion after the definition of “money laundering” of the following definition:

“monitoring” means –

i. the monitoring of transactions and activities carried out by the client to ensure that such transactions and activities are consistent with the knowledge that the accountable institution has of the client, the commercial or personal activities and risk profile of the client;

ii. the enhanced monitoring of transactions and activities of identified high risk clients in order to timeously identify suspicious transactions and activities; and

iii. the screening of the name of a client or potential client, and the names involved in transactions, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter; for purposes of combating money laundering, the financing of terrorism and the funding of proliferation activities.

4.2.11. Definition for Prominent Influential Person

Rationale: To address weaknesses raised in Namibia’s ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found in Non-Compliance with Recommendation 12 because it has no law setting out PEP obligations for AIs/RIs.

The definition is based on the current Guidance Note issued under the FIA (No 01 of 2019),

Amendment to be included in the Bill:

By the insertion after the definition of “prospective client” of the following definition:

‘Prominent Influential Person’ means persons in prominent public positions or functions domestically or in a foreign country, as prescribed by the Minister, including persons who previously occupied prominent public positions but have since vacated such positions or functions and includes persons who are or have been entrusted with a prominent function by an international organization.

4.2.12. Definition of Promptly

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

The requirement for reporting STRs does not meet the element of ''prompt'' in terms of Recommendation 20 of the FATF standards and Namibia was found Partially Compliant.

Amendments made to Section 33 of the Act prescribe that reporting of an STR should occur promptly. Namibian case law does not provide a precedent for the term 'promptly' and the definition was thus included to provide legal clarity to the meaning. The definition is derived from the ordinary dictionary definition and was further qualified to mean no later than 1 to 3 working days.

Based on a review of other legislation in the region, the following was found:

- Botswana - The amended law requires FIs to report a suspicious transaction to the FIA within 5 working days after the suspicion was formed unless the FIA approves a delay in submitting the report (S.17 of the FI Act) and Regulation 18(1). The exemption which existed during the previous ME exercise has been removed through the repeal of S.37 of FI Act. In addition, S.21 of the Banking Act was repealed so that STRs are no longer required to be sent to Bank of Botswana.

- Mauritius -
  14. Reporting of suspicious transaction by reporting person or auditor

  Notwithstanding section 300 of the Criminal Code and any other enactment, every reporting person or auditor shall, as soon as he becomes aware of a suspicious transaction, make a report to FIU of such transaction not later than 5 working days after the suspicion arose.

- Zambia - Criterion 20.1 (Met) – Section.29(1) of the FIC Act requires FIs or their directors, principal officers, partners, professionals or employees that suspect or has reasonable grounds to suspect that any property— (a) is the proceeds of crime; or (b) is related or linked to, or is to be used for, terrorism, terrorist acts or by terrorist organisations or persons who finance terrorism; to report to the FIC no later than three working days after forming the suspicion.

- Angola: In terms of Article 17, "Subject entities must, on their own initiative, immediately report to the Financial Intelligence Unit, whenever they know or have sufficient reasons to suspect that an operation likely to be associated with the crime has taken place, is in progress or has been attempted relates to money laundering or terrorism financing and proliferation of mass destruction weapons or any other crime."

Amendment to be included in the Bill:

By the insertion after the definition of "proceeds of unlawful activities" of the following definition:

'promptly' means without delay upon having reasonable grounds, or a reasonable basis, to suspect or believe a transaction or activity involves unlawful activities, money laundering, or financing of terrorism or proliferation, but not later than three working days after the suspicion arose.

4.2.13. Definition of Reporting Institution

Rationale: It is proposed that the differentiation related to Accountable and Reporting Institutions be done away with, and that if there is an identified risk, the monitoring of certain sector be prescribed, alternatively, a threshold be applied for certain sectors. The current level of risk may not warrant the amount of resources being applied for certain sectors for full scope of AML/CFT/CPF obligations prescribed by the FIA. In order to apply a risk-based approach, one may consider the introduction of a threshold for DNFBPs such as for those dealing in high value goods.

4.2.14. Definition of shell bank

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found Partially Compliant with Recommendation 13 (Correspondent Banking) because it lacks legal provisions that prohibits FIs from entering into or continuing banking relationships, amongst other deficiencies.

Upon review of legislation of jurisdictions within the region that were found compliant in their MER or re-rated, it was found that Anti-Money Laundering legislation in Botswana and Malawi legislation prohibits institutions from entering into or continuing correspondent banking relationships with shell banks.

Thus, it was deemed necessary to include a definition 'shell bank' to support the insertion of a corresponding provision. The Banking Institutions Act, No. 02 of 1998 (as amended) and its secondary legislation does not at present provide for such a definition.

Amendment to be included in the new Bill:

by the insertion after the definition of "senior management" of the following definition:

'shell bank' means a banking institution that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision.

4.2.15. Definition of Specified Non-Profit Organisation

Rationale: To address deficiencies raised in Namibia's MER, NPOs should not be included as DNFBPs in order to meet the requirements of recommendation 8. Since Namibia does not currently have a prudential regulator or legislative framework for the regulation of all NPOs, it is proposed that NPOs be dealt with in terms of the FIA. The FATF Standards require that NPOs are subject to a risk assessment for TF, and until such time that the regulatory framework is established, the FIC is responsible for supervising or monitoring categories of NPOs identified at risk of terrorist financing abuse. In this regard, a definition is proposed in the below terms.

Amendment to be included in the new Bill:

By insertion after the definition of "single transaction" of the following definition:

'Specified Non-Profit Organisation' means a body corporate or other legal person, trustees of a trust, partnership, other association or organisation and any equivalent or similar structure or arrangement, established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social, fraternal purposes or any other type of welfare activity with the intention of benefiting the public or a section of the public and which -

i. ~~has an annual or anticipated annual income of NAD ……or more;~~
ii. receives donations or remittances from one or more higher risk jurisdictions; and
iii. has remitted, or is anticipated to remit, at least 30% of its income in any one year to one or more ultimate recipients in or from one or more higher risk jurisdictions.

4.2.16. Definitions of Virtual Asset, Virtual Asset Service Provider

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was rated non-compliant with section 15 because the country was found not have prudential and AML/CFT framework for regulation of Vas and VASPs. The definitions proposed are related to the establishment of a AML/CFT/CPF Regulatory framework for Virtual Asset Service Providers in Namibia.

Definitions included are aligned with the Botswana Virtual Assets Act, 2022, which provides definitions for:

- Virtual Assets;
- Virtual Asset Service Provider;

Amendment to be included in the new Bill:

a) by the insertion after the definition of "unlawful activity" of the following definition:

"Virtual Asset" means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets provided for or regulated in terms of the Bank of Namibia Act, 2020 or Namibia Financial Institutions Supervisory Act, 2021.

b) By the insertion after the definition of "unlawful activity" of the following definition:

"Virtual Asset Service Provider" means any natural or legal person who as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

a) Exchange between virtual asset and fiat currencies;
b) Exchange between one or more forms of virtual assets;
c) Transfer of virtual assets;
d) Safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
e) Participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

(2) The provision of services with regard to virtual assets will only take place under conditions to be determined by law.

4.3. Amendment of section 4 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: The proposed amendments which will provide for the provision of beneficial ownership information in terms of the corporate legislation and trust legislation in respective laws. Therefore, to avoid duplication of provisions, it is proposed that same be removed from the current Act. Further, the enforcement of obligations on other agencies of government may present challenges.

Amendment to be included in the new Bill:

Application of Act to Registrar of Companies and Close Corporations

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

(a) annually collect and keep accurate and up-to-date prescribed information in respect of members, directors, shareholders and beneficial owners of companies and close corporations;

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

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

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

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

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

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

(7) If the company or close corporation refuses or fails to provide the information referred to in subsection (1)(a), within the period referred to in subsection (4), the company or close corporation commits an offence and is liable to a fine not exceeding N$10 million, or where the commission of the offence is attributable to a representative of the company or close corporation, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment, and in addition the Registrar must de-register the relevant company or close corporation.]

4.4. Amendment to section 5 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: The proposed amendments which will provide for the provision of beneficial ownership information in terms of the corporate legislation and trust legislation in respective laws. Therefore, to avoid duplication of provisions, it is proposed that same be removed from the current Act. Further, the enforcement of obligations on other agencies of government may present challenges.

Amendment to be included in the Bill:

The Principal Act is amended by the substitution of Section 4 with the following section:

Application of Act to Master of High Court

5. (1) For the purposes of this Act, the Master of the High Court must -
(a) register all testamentary and *inter vivos* trusts in the prescribed manner and form;
(b) collect and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts; and

(c) avail founder, trustee, trust beneficiary and trust beneficial ownership information of all registered testamentary and *inter vivos* trusts to competent authorities upon request.

[(2) The Master of the High Court may not register any trust without the information referred to in subsection (1)(b) being provided.

(3) After having registered in terms of subsection (1)(a), a trust must provide the Master of the High Court with all the information referred to in subsection (1)(b).

(4) If a trust was registered with the Master of the High Court before this section came into effect, the Master of the High Court must, within a period determined by the Centre, take reasonable steps to obtain the information referred to in subsection (1)(b).

(5) If a trust refuses or fails to register in terms of subsection (1)(a) or to provide the information referred to in subsection (1)(b), within the period determined under subsection (4), the trust commits an offence and is liable to a fine not exceeding N$10 million, or where the commission of the offence is attributable to a representative of the trust, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment.

(6) An Accountable or reporting institution which has a business relationship with any trust is required to inform the Master of the High Court and the Centre if such a trust is not registered with the Master.

(7) The Master of the High Court is entitled to request from a relevant accountable or reporting institution and the institution must provide the Master with information relating

to trust banking accounts for purposes of monitoring or investigating the transaction activities or operations of any trust.

(8) An accountable or reporting institution which contravenes or fails to comply with subsection (6) or (7) commits an offence and is liable to a fine not exceeding N$10 million, or where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.]

4.5. Amendment to section 7 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

The proposed amendments aim to enhance the operational independence and autonomy of the Centre by prescribing that it must have sufficient resources to carry out its functions.

Further to this, it is proposed that the income of the Centre be provided for to include any financial penalties it imposes on regulated entities as outlined in section 56 of the Act.

Amendment to be included in the new Bill:

The Principal Act is amended by the substitution of section 7 with the following section:

"**Establishment of Financial Intelligence Centre**

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

(2) The Centre will have sufficient financial, human. and technical resources for the full and independent performance of its functions.

(3) The Centre undertakes its functions freely and with safeguards against political, administrative, and private sector influence and interference.

(4) The Centre will be physically hosted within the Bank and the Bank will provide administrative support services to the Centre, where needed."

4.6. Amendment to section 8 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address deficiencies in the current provision in meeting compliance with Recommendation 29.1.

Amendment to be included in the new Bill

The Principal Act is amended by the substitution of Section 8 with the following section:

Objects of Centre

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

4.7. Amendment of section 9 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: In its present form, section 9(1)(a) does not expressly provide for the preparation of strategic analysis. Recommendation 29.4 requires that the FIU be empowered to cover such activities.

Amendment of Section 9 of the Act No 13 of 2012

The Principal Act is amended by the substitution of Section 9 with the following section:

"Powers and functions of Centre

9. (1) In furthering its objects the powers and functions of the Centre are -
(a) to collect, request, receive, process, analyze and assess all reports, requests for information and information received from persons, accountable institutions, reporting institutions, government offices, ministries, or agencies or any other competent authorities and any foreign agencies, in terms of this Act or in terms of any law;
(b) to initiate an operational or strategic analysis of its own motion or upon request based on information in its possession or information received from another source;
(c) to disseminate information to which it has access to competent authorities and foreign agencies with powers and duties similar to that of the Centre using dedicated and secure channels for such disseminations;
and
(d) to make recommendations arising out of any information received;
(e) to collect statistics and records of -

(i) suspicious transactions reports, suspicious activity reports and Requests for Information received and intelligence disseminated;

(ii) money laundering and financing of terrorism or proliferation investigations, prosecutions and convictions;

(iii) property frozen, seized and confiscated under the Prevention of Organised Crime Act, or any other law applicable to the Republic of Namibia;

(iv) mutual legal assistance or other international requests for co-operation;

(v) on-site examinations conducted by the Centre or supervisory bodies and any enforcement actions taken; and

(vi) formal request for assistance made or received by supervisory or regulatory bodies relating to money laundering and financing of terrorism or proliferation and outcomes of such requests;

(f) to coordinate, at an operational and strategic level, the activities of the various persons, bodies or institutions involved in the combating of money laundering and the financing of terrorism or proliferation;

(g) to inform, advise and cooperate with competent authorities and exchange information, available to the Centre, with these authorities for the purpose of administration, intelligence collection, capacity development and training, law enforcement and prosecution;

(h) to supervise, monitor and enforce compliance with this Act, or any regulations, directives, determinations, notices or circulars issued in terms of the Act, by accountable and reporting institutions and give guidance to Accountable and reporting institutions to combat money laundering or financing of terrorism or proliferation activities;

(i) to facilitate effective supervision and enforcement of the Act by supervisory bodies; and

(j) to monitor and supervise Specific Non-Profit Organisations for compliance with measures specified in Section 35A of this Act.

(2) In order to attain its objects and perform its functions the Centre may -
(a) call for and obtain further information from persons or bodies that are required to supply or provide information to it in terms of this Act or any law;

(b) request for information and statistics, from any government office, ministry or agency, law enforcement agency, competent authority, regulatory body and supervisory body, whether listed in Schedule 2 and Schedule 4 or not, for purposes of this Act;

(c) direct any accountable or reporting institution, or supervisory body to take such steps as may be appropriate in relation to any information or report received by the Centre, to enforce compliance with this Act or to facilitate any investigation anticipated by the Centre;

[(d) issue determinations to any supervisory body in terms of which the supervisory body must enforce compliance by an accountable or reporting institution regulated by such supervisory body, with the provisions of this Act;]

(d) consulting with foreign financial intelligence units, competent authorities and reporting institutions with a view to providing and receiving feedback on the effectiveness of information sharing arrangements and the quality of information exchanged.

(e) after consultation with supervisory and regulatory bodies, issue guidelines, directives, determinations, circulars or notices to accountable and reporting institutions to ensure compliance with this Act;

(f) conduct research into trends and developments in the area of money laundering and financing of terrorism or proliferation and improved ways of detecting, preventing and deterring money laundering and financing of terrorism or proliferation;

(g) exercise any other power or to do any other thing not inconsistent with this Act, which is necessary or expedient to ensure the achievement of the objects of this Act; and

(h) exercise any power or perform any functions conferred to or imposed on it by any law.

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

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

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

4.8. Amendment to section 10 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found Partially Compliant with Recommendation 29. The Assessors found that although Namibia has put in place a framework to enable the FIC to conduct its core functions, there are concerns on the operational independence and autonomy of the FIC with regards to the requirements prescribed in the FIA that there is concurrence from the Governor of the Bank of Namibia before certain decisions are taken. The provisions which require concurrence from the Governor were thus removed accordingly. In addition, reference to the Bank's policies and procedures has been replaced with FIC's policies and procedures.

Amendment to be included in the new Bill:

"Administrative Powers of the Centre

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

(a) determine its own staff establishment with the approval of the **[Minister]** Board;

(b) appoint employees and receive seconded personnel to posts on its staff establishment in accordance with staff policies and procedure of the Centre **[Bank as far as reasonably possible]**;

(c) obtain the services of any person by agreement, including any state department, functionary or institution, to perform any specific act or function;

(d) to establish and implement procedures for the secure and proper management of confidential information including procedures for handling, storage dissemination and protection or and access to information;

(e) ensure the establishment of secure facilities for the Centre, with access to its facilities and information being limited to the Director, the staff of the Centre and persons authorized by the Director.

(f) engage in any lawful activity, whether alone or together with any other organisation in Namibia or elsewhere, aimed at promoting its objects.

4.9. Amendment to section 11 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found Partially Compliant with Recommendation 29.

The current provision was revised to ensure that the Director's removal or suspension is only effected on the basis of duly justified reasons, and that there is no discretion for undue interference.

Amendment to be included in the new Bill:

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

(2) A person appointed as Director holds office -

(a) for a term of five years, which term is renewable; and
(b) on terms and conditions set out in a written employment contract.

(3) A person may not be appointed as Director, unless -
(a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997); and
(b) the Minister, after evaluating the gathered information, is satisfied that the person may be so appointed without the possibility that such person may pose a security risk or that such person may act in any manner prejudicial to the objects of this Act or the functions of the Centre.

(4) The Director may at any time **[determined by the Minister]**, upon recommendation by the **[Council]** Board, be subjected to a further security screening investigation as contemplated in subsection (3)(a).

(5) The Minister, upon recommendation by the **[Council]** Board, may **suspend or** remove the Director from office for duly justified reasons [**on the grounds of misconduct, incapacity or incompetence, in line with fair labour practices and the prevailing labour legislation**.]

[(6) The Minister, upon recommendation by the Council, may suspend the Director from office, pending -
(a) the determination of any disciplinary enquiry as to whether grounds of misconduct, incapacity or incompetence exist; or
(b) the outcome of a security screening investigation referred to in subsections (3) and (4).]

4.10. Amendment to section 11 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: The current Act does not provide for the appointment of an Acting Director, in the event of a temporary absence of the Director or when there is a vacancy for a Director.

Amendment to be included in the new Bill:

The Principal Act is amended by the insertion of section 11A after section 11 with the following provision:

"Acting Director

11A. When the Director is absent or otherwise temporarily unable to perform the functions of office the Director may designate an Acting Director of the Centre. During a vacancy in the office of Director, the Minister may appoint an Acting Director of the Centre."

4.11. Amendment to section 12 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found Partially Compliant with Recommendation 29.

The Assessors found that although Namibia has put in place a framework to enable the FIC to conduct its core functions, there are concerns on the operational independence and autonomy of the FIC with regards to the requirements prescribed in the FIA that there is reporting to the Governor of the Bank of Namibia and the Council, of which the Governor is the Chairperson. The provisions which require reporting to the Governor were amended to provide for reporting to the Minister. The numbering was adjusted accordingly.

Amendment to be included in the new Bill:

Responsibilities of Director

12. (1) The Director is responsible for -

the performance by the Centre of its functions;

implementation and administration of applicable provisions of this Act;

reporting administratively to the Board **[~~Governor~~]**;

reporting functionally to Parliament **[~~Council~~]**;

the management of the staff, resources and administration of the Centre, including the allocation of resources for carrying out the Centre's functions and making arrangements for the secure management of the information received and held by the Centre;

dissemination of intelligence involving suspected proceeds of crime, money laundering, associated unlawful activity, terrorist property or financing of terrorism or proliferation, to competent authorities and foreign agencies with powers and duties similar to that of the Centre;

providing relevant advice to the Board **[~~Council~~]**;

providing advice and guidance to assist accountable institutions, reporting institutions and supervisory bodies to comply with their obligations under this Act; and

advise the Council on aligning the National Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation framework with international Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation standards and best practices.

4.12. Amendment to section 13 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found Partially Compliant with Recommendation 29. The Assessors found that although Namibia has put in place a framework to enable the FIC to conduct its core functions, there are concerns on the operational independence and autonomy of the FIC with regards to the requirements prescribed in the FIA that there is concurrence from the Governor of the Bank of Namibia before certain decisions are taken. The provisions which require concurrence from the Governor were thus removed accordingly. In addition, the power of the Governor to assign and second staff to the Centre has been removed as this may be perceived to impede on the operational independence and autonomy of the Centre.

Amendment to be included in the new Bill:

Staff of Centre

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

(2) The **[Governor]** Director may –

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

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

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

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

a) information with respect to that person has been gathered in a security screening **[investigation]** by the National Intelligence Agency established by the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997); and

b) the Director, **[with the concurrence of the Governor,]** after evaluating the gathered information, is satisfied that the person may be so appointed or seconded without the possibility that the person poses a security risk or that the person may act in any way prejudicial to the objects or functions of the Centre and the objects of this Act.

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

(6) Staff members who carry out the functions of the Centre shall be trained to understand their responsibilities in handling and disseminating sensitive and confidential information and where appropriate, granted the appropriate security clearance in accordance with the nature of their responsibilities and functions. "

4.13. Amendment to section 14 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address deficiencies in the current provision and in compliance with Recommendation 29.6(b), an amendment is proposed. The amendment has been aligned with the introduction of the Board in terms of section 18 below.

Amendment to be included in the new Bill:

Funds of Centre

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

(a) money appropriated annually by Parliament for the purposes of the Centre;

(b) any Government grants made to the Centre;

(c) money made available to the Centre from the Fund; and

(d) any other money legally acquired by the Centre.

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

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

4.14. Amendment to Part 3 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To provide for the establishment of a Board in section 18 of Part 3.

Amendment to be included in the new Bill:

The Principal Act is amended by the substituting the heading of Part 3 with the following heading:

"PART 3
THE BOARD AND ANTI-MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM AND PROLIFERATION COUNCIL"

4.15. Amendment to section 16 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: It is proposed that in addition to the Council, which serves as a policy advisory body of the FIC, a Board be established which will carry out oversight related to the performance, risk management and budget of the FIC, similar to the manner in which executive boards of entities do so. Examples of jurisdictions which have a similar structure include Mauritius. The AML/CFT/CPF Council consists of representatives from most key stakeholders that form part of the national AML/CFT/CPF value chain. The establishment of a Board will enable a clear division between the policy and performance related issues, whilst maintaining the operational autonomy of the Centre.

Amendment to be included in the new Bill:

Establishment of the Board

16A (1) There is established for the purposes of this Act a Board which shall consist of
(a) a Chairperson, who shall be the Governor of the Bank,
(b) a person who has a qualification in law and who has practiced as a legal practitioner or as an advocate in Namibia for at least 10 years, and

(c) two other members of high repute, who have extensive knowledge and experience in the anti-money laundering and financing of terrorism and proliferation field or in financial services provision or financial services regulation.

(2) The Chairperson and members of the Board shall be appointed by the Minister.

(3) The appointment of the Chairperson and each member of the Board shall be on such terms as may be specified in the instrument of appointment.

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

(5) The functions of the Board shall be to –

(a) advise the Centre concerning the performance of its functions;
(b) advise the Centre regarding the financial management of the Centre;
(c) consider and recommend the proposed annual budget of the Centre to the Minister for approval;
(d) consider and endorse human and other resources, required by the Centre to effectively carry out its mandate and functions in terms of this Act, on recommendation of the Director;
(e) consider and endorse risk and assurance reports of the Centre on recommendation of the Director;
(f) consider and endorse the annual report and annual audited financial statements of the Centre and report to the Minister on any matter appearing in or arising out of such report or statements, and
(g) recommend to the Minister the appointment or removal of the Director.

(6) The Board shall not have the power to consider, discuss or deliberate on any matter relating to the lodging, analysing, reporting, requesting or disseminating of information in respect of any suspicious transaction or activity report, or any other statutory reports, nor will it have access to information concerning any suspicious transaction or activity report, or any other statutory reports.

(7) Subject to subsections (4) to (6), the Board shall determine its own procedure in line with national good governance principles.

4.16. Amendments to section 18 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: As important stakeholders in the national AML/CFT/CPF Framework, it is considered necessary that the following agencies be represented on Namibia's main policy advising body on AML/CFT/CPF:

- The Office of the Prosecutor General, represented by the Prosecutor General. The PG's Office institutes criminal proceedings on behalf of the State and ensures all offences related to ML/TF/PF are successfully prosecuted. It has an

Asset Forfeiture arm that serves to implement freezing and forfeiture orders in respect to proceeds and instrumentalities of crime.

- The Namibia Revenue Agency, represented by the Commissioner. The Revenue Agency is responsible for administering tax laws and customs and exercises matters and was established as a separate agency from the Ministry of Finance by virtue of the Namibia Revenue Agency Act No 02 of 2017;
- The Business and Intellectual Property Authority, represented by the CEO. The BIPA registers companies and close corporations;
- The Office of the Master of the HC; represented by the Master. The Office of the Master registers trust instruments and registers inter vivos and testamentary trusts.
- The Bankers Association of Namibia; represented by the President.

In addition, the term Permanent Secretary has been replaced with Executive Director in alignment with the title change which was effected in the structures of the Namibian Government announced on 28 December 2018. Further, the titles of the head of the Anti-Corruption Commission and Namibian Central Intelligence Service were corrected to Director General.

Amendments to be included in the new Bill:

14.10.1. The Principal Act is the substitution of section 18 with the following section:

"Constitution, conditions of office and vacation of office

18. (1) The Minister must appoint members of the Council which consists of -
(a) the Governor or his or her delegate who is the chairperson;
(b) the Executive Director **[Permanent Secretary]** of the Ministry responsible for finance;
(c) the Inspector-General of the Namibian Police Force;
(d) the Executive Director **[Permanent Secretary]** of the Ministry responsible for trade;
(e) the Executive Director **[Permanent Secretary]** of the Ministry responsible for justice;
(f) the Executive Director **[Permanent Secretary]** of the Ministry responsible for safety and security;
(g) the Director General of the Namibian Central Intelligence Service;
(h) the Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority;
(i) the Director General of the Anti-Corruption Commission;
(j) the President of the Bankers Association;

(j) the Prosecutor General;
(k) The Commissioner of the Namibia Revenue Authority;
(l) The Chief Executive Officer of the Business and Intellectual Property Authority;
(m) **[(k)]** one person representing associations representing a category of accountable or reporting institutions requested by the Minister to nominate representatives; and
(n) **[(l)]** one or more persons representing supervisory bodies requested by the Minister to nominate representatives.

(2) The Council may invite persons who may have special knowledge or skills in any relevant field or discipline to attend its meetings and advise the Council but such persons have no voting right.
(3) The members of the Council must elect a deputy chairperson at the first meeting of the Council.

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

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

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

(7) The office of a member of the Council becomes vacant if that member -
(a) by a written notice addressed to the Minister, resigns from office;
(b) is removed from office by the Minister for inability to perform his or her duties due to ill health; or
(c) is for any other reasonable cause removed from office by the Minister.

(8) Before removing a member from office in terms of subsection (7)(c), the Minister must -
(a) in writing, notify the member concerned of the grounds on which the member is to be removed from membership of the Council;
(b) give that member an opportunity to make an oral or a written representation on the matter to the Minister or to any other person designated by the Minister for that purpose; and
(c) consider any representation made**."**

4.10. Amendment to section 19 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: The current provision is amended to enhance the reading of the provision.

Amendment to be included in the new Bill:

"Functions

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

(2) The Centre must provide administrative support for the Council to function effectively."

4.11. Amendments to section 21 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: It is proposed that the obligations on Accountable and Reporting Institutions, which are currently provided for in section 39 of the Act, be moved further up in the Act to grant it the necessary priority in the beginning of the Act and emphasise the importance of setting up a framework as the basis for the Risk Based Approach for prevention of ML/TF/PF. In addition, it lends to the logical sequence of the provisions as they are in the Act.

Secondly, the requirement that risk of new technologies must be assessed in terms of R. 15, has been incorporated as 21(1)A.

The heading of the provision has been changed from "Obligations on Accountable and Reporting Institutions" to "Risk Management, Risk Assessment and Risk Based AML/CFT/CPF Programs" which is in line with best practices.

It is proposed that a designated compliance officer in terms of section 39(6) should ordinarily be a resident and not someone sitting at the group structure in another jurisdiction. This presents a challenge as some of the compliance officers designated by some regulated entities are non-resident, and the challenge is that non-resident compliance officers are not involved in the day-to-date compliance activities of the local entities. Sometimes they refer to the legal requirements of other countries where they are residents and not the Namibian legal requirements. Worse of all, they submit compliance programs developed for structures in the jurisdictions where they are based as programs adopted by the local structures, which cannot be implemented locally because they are based on the foreign legal frameworks.

The previous use of the word "may" suggests that the elements are not peremptory. It is proposed that 'may' be replaced with 'must' for legal certainty.

To this end, the proposed amendments of Section 21, previously section 39, seeks to address the shortcomings. The amendment is derived from Malawian Legislation.

The Principal Act is amended by the substitution of section 21 with the following section:

"[Obligations of Accountable and Reporting Institutions] Risk Management, Risk Assessment and Risk-Based AML/CFT/CPF Programs

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

(1A) An accountable institution shall identify and assess the risks of money laundering and financing of terrorism related to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies. Such assessment shall take place prior to the launch or use of such products, practices and technologies.

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

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

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

(5) The programmes in subsection (3) **[may]** must include -
(a) the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of those employees;
(b) on-going employee training programmes, such as "Know Your Customer" programmes and instructing employees with regard to responsibilities under this Act; and
(c) an independent audit function to check compliance with those programmes;

(d) policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value; and
(e) policies and procedures to address the specific risks associated with non-face-to-clients or transactions for purposes of establishing identity and on-going customer due diligence.

(6) Accountable [**and reporting]** institutions must designate compliance officer, who is ordinarily resident in Namibia, at management level, where applicable, who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.

(7) Accountable **[and reporting]** institutions must implement compliance programmes under subsection (3) at its branches and subsidiaries within or outside Namibia as prescribed in section 39.

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

(9) The internal rules referred to in subsection (3) must include -
(a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part 4 of this Act;
(b) the information of which record must be kept in terms of Part 4 of this Act;
(c) identification of reportable transactions; and
(d) the training of employees of the institution to recognise and handle suspected money laundering and financing of terrorism or proliferation activities.

(10) Internal rules made under this section must comply with the prescribed requirements and be made available to each employee of an accountable [**or reporting]** institution.

(11) The Centre may determine the type and extent of measures accountable [**and reporting]** institutions shall undertake with respect to each of the requirements in this section, having regard to the risk of money laundering or financing of terrorism or proliferation and the size of the business or profession.

(12) Any accountable **[or reporting institution]** that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment."

4.12. Amendments to section 21 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: Given the change in sequence as per amendment in 4.11 above, the previous section 21 will become section 21A. In addition to the change in numbering, enhancements are proposed to the provision in its current form to amend the basic requirement to identify/verify the Beneficial Owner as prescribed by Financial

Action Task Force criterion 10.5(b) and the representative in criterion 10.4(c). The term Beneficial Owner is defined under the definition section.

Amendments to be included in the new Bill:

The Principal Act is amended by the insertion of Section 21A after Section 21 with the following sections:

Identification when business relationship is established or single transaction is concluded

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

(2) An accountable or reporting institution may not establish a business relationship or conclude a single transaction with a prospective client, unless the accountable or reporting institution has taken such reasonable steps in the prescribed form and manner to establish -
(a) the identity of the prospective client, by obtaining and verifying identification and any further information;
[(b) if the prospective client is acting on behalf of another person, also –]
[(i)] (b) the identity of the **[at other person]** beneficial owner (if any), by taking reasonable measures to verify the identity of the beneficial owner; using relevant information or data obtained from a reliable source, such that the financial institution is satisfied that it knows who the beneficial owner is.
[(ii) the prospective client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
(iii) obtain or verify further information about that other person;] and
(c) if another person is purporting to act **[ing]** on behalf of the prospective client, also -
(i) the identity of that other person;
(ii) that other person's authority to act on behalf of the client; **[and**
(iii) obtain or verify further information about that other person.]
(d) Despite any exemption that may be granted in terms of this section, an accountable or reporting institution must establish the identity of a client if there is a suspicion of money laundering or financing of terrorism or proliferation.

(3) Without limiting the generality of subsection (2)(a) and (b), if a prospective or existing client is a legal person, an accountable or reporting institution must take reasonable steps to establish its legal existence and structure, including verification of -
(a) the name of the legal person, its legal form, address, directors, partners or senior management;
(b) the principal owners and beneficial owners;
(c) provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the legal person is so authorised, and identify those persons.
(d) in instances where the beneficial owner cannot be identified through reasonable measures, and to the extent that there is doubt about whether a person with a controlling ownership interest is the ultimate beneficial owner, identifying the identity of the relevant natural person who holds the position of senior managing official and recording the person as holding that position.

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

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

4.13. Amendments to section 21 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: The FATF Recommendations in Recommendations 10 & 12 require that in relation to life insurance policies, FIs should be required to take reasonable measures to determine the identity of beneficiaries of life insurance policies at pay-out and whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs.

This should occur, at the latest, at the time of the pay-out. Where higher risks are identified, FIs should be required to inform senior management before the pay-out of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider filing a STR.

Considering the targeted scope of this provision, it should be considered whether it is not better placed in the Regulations.

Amendments to be included the new Bill:

The Principal Act is amended by the insertion of Section 21B after Section 21 and the newly inserted Section 21A with the following sections:

Insurance companies to identify and verify beneficiaries

21B. (1) An accountable institution must, in addition to the customer due diligence measures as required under section 21, conduct the following measures on the beneficiary of a life insurance and other investment related insurance policies as soon as the beneficiary is identified or designated, which is: (a) for a beneficiary that is identified as specifically named natural or legal person, or legal arrangement – by taking the name of the person or arrangement; or

(b) for a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the accountable institution that it will be able to establish the identity of the beneficiary at the time of the payout.

(2) An accountable institution must, at the inception stage, obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to verify the identity of the beneficiary at the time of payout.

(3) Before any payment is made under the life insurance, the accountable institution shall take reasonable measures to determine whether the beneficiary and/or the beneficial owner of the beneficiary where required, is a Prominent Influential Person

(4) Where an accountable institution establishes that a beneficiary or the beneficial owner of a beneficiary is a Prominent Influential Person, the accountable institution shall take the following measures:
a) obtaining approval of senior management before it pays out any sums under the insurance policy.
b) conducting enhanced scrutiny on the whole business relationship with the policyholder, and
c) considering making a suspicious transaction report in accordance with section 33.

(5) The beneficiary of a life insurance policy shall be included as a relevant factor in determining whether enhanced customer due diligence measures are applicable. If the accountable institution determines that a beneficiary is a legal person or arrangement presenting a higher risk, it should take enhanced measures which include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out.

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

4.14. Amendments to section 22 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

The MER highlighted that there is no specific provision for remediation for existing customers on the basis of risk, including on-going due diligence on exiting or onboarding, as required by Recommendation 22. In addition, the reading of the provision was challenges in its format. Thus, a simpler version was drafted while adequately addressing what's needed. Further detail could be included in Regulation.

Based on a review of legislation in the region, the legislation of Malawi was applied which was found compliant with R.22 to explicitly provide for the remediation of legacy clients' information on the basis of risk.

The legislation in Mauritius, in terms of section 17E of the Financial Intelligence and Anti Money Laundering Act of Mauritius, 2002 (as amended), provides that:

> *"The CDD requirements shall be applied at appropriate times and on the basis of materiality and risk, depending on the type and nature of the customer, the business relationship, products or transactions and taking into account whether and when CDD measures have previously been applied and the adequacy of the data obtained, or as may be specified in any guidelines issued under this Act."*

It is proposed that the transitional provisions in sections 22(1), (4) and (5) are better placed under the current section 73 which deals specifically with all transitional matters.

Amendments to be included in the new Bill:

The Principal Act is amended by the substitution of Section 22 with the following section

Identification when transaction is concluded in the course of business relationship

22. [(1) If an accountable or reporting institution established a business relationship with a client before this Act took effect, it must, within a period determined by the Centre, take the measures outlined in section 21 on the basis of materiality and risk, at appropriate times, taking into account whether and when the measures have previously been undertaken and the adequacy of the data obtained.]

[(2)] (1) If an accountable or reporting institution is unable within a reasonable period to establish to its reasonable satisfaction the identity of any person as required by **[sub]**section 21A**[(1)]**, it may not conclude any further transaction in the course of that business relationship and must immediately file a suspicious activity report.

[(3)] (2) When the identity of the person referred to in subsection (**[2]**1) is subsequently established, further transactions may only be concluded after the Centre has been informed of the identity of that person.

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

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

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

4.15. Amendments to section 23 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Recommendation 10 requires that there is a specific provision which permits FIs to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or FIs. Further detail should be provided for in secondary legislation, while the general principle to apply EDD targeting the higher risk factors when higher risk is identified is included in the primary law.

Based on a review of legislation in the region, the legislation of Malawi was applied which was found compliant with R.10.18 to permit AIs/RIs to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or FIs.

The abovementioned provision is similar to the Financial Intelligence and Anti Money Laundering Act, 2002 (as amended) of Mauritius, which provides in Section 17C that:

> *"(4) Where the risks are lower, a reporting person may conduct simplified due diligence measures, unless there is a suspicion of money laundering or terrorism financing in which case enhanced CDD measures shall be undertaken."*

The Botswana Financial Intelligence Act, 2022, provides that:

> "28. (1) A specified party may apply simplified customer due diligence measures to a particular business relationship or transaction where the risk of commission of a financial offence is considered to be low taking into account —
>
> (a) the risk assessment carried out in terms of section 13;
>
> (b) any guidance notes issued by a supervisory authority under section 49 (1) (c); and
>
> (c) a National Risk Assessment.
>
> (2) A specified party under subsection (1) may —

(a) verify the identity of the customer and the beneficial owner after the establishment of the business relationship;

(b) reduce the frequency of customer identification updates;

(c) reduce the degree of on-going monitoring and scrutinising of transactions; and

(d) not require specific information or carry out specific measures to understand the purpose and intended nature of the business relationship, but shall infer the purpose and nature from the type of transaction or business relationship established.

(3) A specified party shall not carry out simplified customer due diligence measures where —

(a) there is suspicion of a commission of a financial offence;
(b) in terms of its risk assessment, the business relationship or transaction no longer poses a low risk of a commission of a financial offence;
(c) if it doubts the veracity or accuracy of any documents or information previously obtained for the purposes of identification or verification;

or

(d) any of the conditions set out in section 21 apply."

The provision of measures for Prominent Influential Persons, to address deficiencies related to Recommendation 12, are best placed here directly following the measures related to risk clients. Namibia was found in Non-Compliance with Recommendation 12 because it has no law setting out PEP obligations for AIs/RIs.

Amendments to be included in the new Bill:

4.13.1. The Principal Act is amended by the insertion of Section 23(1)A after section 23(1) with the following section:

"Risk Clients

23. (1) Accountable institutions must have appropriate risk management and monitoring systems in place to identify clients or beneficial owners whose activities may pose a risk of money laundering, financing of terrorism or proliferation, or both. An accountable institution draws up a risk profile for each customer with whom it maintains a business relationship, which will be kept up to date following the on-going due diligence measures as required under section 24.

(1)A Where the Accountable Institution following an adequate assessment of risk identifies lower risks, the Accountable institution may decide to allow simplified measures for customer due diligence. commensurate with the lower risk factors. Such measures are not acceptable whenever there is suspicion of ML or TF, or specific higher risk scenarios apply.

(2) Where a client or beneficial owner has been identified through such systems to be a high risk for money laundering, financing of terrorism or proliferation, or both, enhanced measures must be applied, including: [**the employees of an accountable institution must**] –

(a) obtain approval from the **[directors, partners or]** senior management of that accountable institution before establishing a business relationship with such new client, or in case of an existing client, obtain approval from the directors, partners or senior management of that accountable institution to continue the business relationship with the client; and

(b) take measures **[as prescribed by the Centre]** to identify, as far as reasonably possible, the source of wealth and funds **[funds and any other assets]**of the client.

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

4.15.2. The Principal Act is amended by the insertion of Section 23A after section 23 with the following section:

Measures related to Prominent Influential Persons

23A (1) Accountable institutions and Reporting Institutions must have appropriate risk management and monitoring systems in place to determine whether clients and beneficial owners are Prominent Influential Persons.

(2) Where a client or beneficial owner has been identified through such systems to be Prominent Influential Persons an accountable institution or reporting institution must –

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

(3) Section (2) applies to Family Members and known Close Associates of a Prominent Influential Persons

(4) An accountable institution and reporting institution which contravenes or fails to comply with subsections (1), (2) and (3) commits an offence and is liable to a fine not exceeding N$100 million or, where the commission of the offence is attributable to a representative of the

accountable institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment."

4.16. Amendment to section 24 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found partially compliant with Recommendation 19, because Namibia does not require FIs to apply enhanced due diligence, proportionate to the risks, to business relationships and transactions with natural and legal persons, including FIs, from countries for which this is called for by the FATF, and independent of the calls by the FATF.

Based on a review of legislation in the region, the legislation of Malawi was applied which was found compliant with R.19.1.

In the Financial Intelligence and Anti Money Laundering Act, 2002 of Mauritius, as amended, provides in section 17H that:

17H. High risk country

(1) Where a jurisdiction is identified by the Financial Action Task Force as having significant or strategic deficiencies in its AML/CFT measures, the Minister may –

(a) on the recommendation of the National Committee; and

(b) after giving due consideration to such factors as may be prescribed,

identify that jurisdiction as a high risk country.

(2) A reporting person shall, with respect to business relationships or transactions involving a high risk country, apply such enhanced CDD measures as may be prescribed.

(3) In addition to subsection (2), a reporting person shall, where applicable and proportionate to the risks, apply one or more of the following additional mitigating measures to persons and legal entities carrying out transactions involving a high risk country –

(a) the application of additional elements of enhanced due diligence;

(b) the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions;

(c) the limitation of business relationships or transactions with natural persons or legal entities from the countries identified as high risk countries.

(4) Where the Minister identifies a high risk country under subsection (1), he shall, on the recommendation of the Financial Action Task Force or the National Committee, and having regard to the level of the risk, specify that one or more of the following countermeasures, and any other measures that have a similar effect in mitigating risks, shall apply to the high risk country –

(a) refusing the establishment of subsidiaries or branches or representative offices of reporting persons from the country concerned, or otherwise taking into account the fact that the relevant reporting person is from a country that does not have adequate AML/CFT systems;

(b) prohibiting reporting persons from establishing branches or representative offices in the high risk country, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT systems;

(c) limiting business relationships or financial transactions with the identified country or persons in that country;

(d) prohibiting reporting persons from relying on parties located in the country concerned to conduct elements of the CDD process;

(e) requiring reporting persons to review and amend, or if necessary terminate, correspondent banking and other similar relationships with institutions in the country concerned;

(f) requiring increased supervisory examination and external audit requirements for branches and subsidiaries of reporting persons based in the country concerned;

(g) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned.

(5) FIU shall immediately disseminate to reporting persons in such manner as it may determine –

(a) any high risk country identified by the Minister under subsection (1);

(b) any countermeasures which are applicable on the country;

(c) the concerns regarding the weaknesses in the AML/CFT systems of that country; and

(d) any publicly available information published by the Financial Action Task Force on any jurisdiction which has been identified by it as having significant or strategic deficiencies in its AML/CFT measures.

Amendments to be included in the new Bill:

The Principal Act is amended by the substitution of section 24 with the following section:

"On-going and enhanced due diligence

24. (1) An accountable institution must exercise on-going due diligence in respect of all its business relationships which must, at a minimum, include -
(a) maintaining adequate current and up-to-date information and records relating to the client and beneficial owner;
(b) monitoring the transactions carried out by the client in order to ensure that such transactions are consistent with the accountable or reporting institution's knowledge of the client, the client's commercial or personal activities and risk profile; and
(c) ensuring the obligations relating to high risk clients, as prescribed in section 23, and correspondent banking relationships are fulfilled.

(2) An accountable institution must -
(a) pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose;
(b) pay special attention to business relations and transactions with persons, including legal persons and trusts, from or in countries that have publicly been declared to **[do]** not or insufficiently apply the relevant international standards to combat money laundering and the financing of terrorism or proliferation;
[(c) at the direction of the Minister, pay special attention to business relations and transactions with persons, including legal persons and trusts, from or in countries that have been identified as high risk independent of a call in terms of (b);]

[(c)] (d) examine as far as possible the background and purpose of transactions under paragraphs (a) and (b) and set forth in writing their findings;
[(d)] (e) keep the findings made in terms of paragraph [(c)] (d) available for competent authorities and company auditors for at least five years, or longer if specifically so requested by a competent authority before the expiration of the 5 year period;
[(e)] (f) take such specific measures as may be prescribed from time to time by the Minister to counter the risks with respect to business relations and transactions specified under paragraph (b); **[and]**
(g) take such specific measures as may be prescribed from time to time by the Minister to counter the risks with respect to business relations and transactions specified under paragraph (c); and
[(f)] (h) conduct enhanced monitoring and due diligence when -
(i) any doubts arise about the veracity or adequacy of previously obtained customer identification data; or
(ii) there is a suspicion of money laundering or financing of terrorism or proliferation;
so as to prevent money laundering, financing of terrorism or proliferation or the commission of any other offence.

(3) At the direction of the Minister, countermeasures can be applied proportionate to the risks, when called upon to do so internationally, and independent of such call.

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

4.17. Amendment to section 25 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found Partially Compliant with Recommendation 13 (Correspondent Banking).

In relation to cross border correspondent banking and other similar relationships, AI/RIs are required in terms of section 25, to gather information on the nature of the respondent institution's activities and use publicly available information to evaluate the reputation of the institution and the quality of supervision to which it is subject and evaluate the controls implemented by the respondent institution with respect to anti-money laundering and combating the financing of terrorism or proliferation. However, the provision does not extend to cover ML/TF investigation or regulatory action as prescribed by the Standard.

The Standard further requires that FIs are prohibited from entering into or continuing correspondent banking relationships with shell banks.

Upon review of legislation of jurisdictions within the region that were found compliant, the amendment proposed is derived from Malawi legislation.

A definition has been provided for Shell Banks in Section 1. Banking Law was reviewed and there is currently no definition provided for in the Banking Institutions Act, No 9 02 of 1998 or secondary legislation.

Section 24 of the Botswana Financial Intelligence Act, 2022, 24. (1) A financial institution that provides cross-border correspondent must:

> *(a) gather sufficient information about a respondent bank to understand the nature of the respondent's bank business;*
>
> *(b) determine, from publicly available information from credible sources, the reputation of the respondent bank it proposes to enter into a correspondent banking relationship with, including —*
>
> > *(i) the quality of supervision to which the respondent bank is subject, and*

(ii) whether the respondent bank has been subject to —

(aa) investigation with respect to the commission of a financial offence, or

(bb) regulatory action for non-compliance with counter financial offence measures;

(a) assess the respondent institution's counter financial offence controls;

Amendments to be included in the new Bill:

The Principal Act is amended by the substitution of section 25 with the following sections:

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

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

(a) identify and verify the identification of respondent institutions with which it conduct correspondent banking relationships;

(b) collect information on the nature of the respondent institution's activities;

(c) based on publicly-available information, evaluate the respondent institution's reputation and the nature of supervision to which it is subject, including whether it has been subject to a ML/TF investigation or regulatory action;

(d) obtain approval from the directors, partners or senior management of that accountable institution before establishing a correspondent banking relationship;

(e) evaluate the controls implemented by the respondent institution with respect to anti-money laundering and combating the financing of terrorism or proliferation;

(f) establish an agreement on the respective anti-money laundering and combating the financing of terrorism or proliferation responsibilities of each party under the relationship; and

(g) in the case of a payable-through account, ensure that the respondent institution has verified its customer's identity, has implemented mechanisms for on-going monitoring with respect to its clients and is capable of providing relevant identifying information on request.

(h) An accountable institution shall not enter into, or continue, correspondent banking relationships with shell banks and shall satisfy themselves that correspondent banking institutions do not permit their accounts to be used by shell banks.

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

4.18. Amendment to section 26 of the Financial Intelligence Act, 2012 (Act No 13 of 2012, as amended)

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

It was found that Namibia does not prescribe an express obligation for record-keeping to cover analysis undertaken during CDD which resulted in a minor deficiency in criterion 11.2. The insertion of sub-section 26(1)(kk) aims to address the deficiency.

Amendments to be included in the new Bill:

"Records to be kept of business relationships and transactions

26. (1) Whenever an accountable or reporting institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable or reporting institution has with the client, the accountable or reporting institution must keep records in the prescribed form and manner of -
(a) the identity of the client;
(b) if the client is acting on behalf of another person -
(i) the identity of the person on whose behalf the client is acting; and
(ii) the client's authority to establish that business relationship or to conclude that single transaction on behalf of that other person;
(c) if another person is acting on behalf of the client -
(i) the identity of that other person; and
(ii) that other person's authority to act on behalf of the client;
(d) the manner in which the identity of a person referred to in paragraph (a), (b) or (c) was established;
(e) the nature of that business relationship or transaction;
(f) all accounts at that accountable or reporting institution that are involved in -
(i) transactions concluded in the course of that business relationship; or
(ii) a single transaction;
(g) in the case of a transaction -
(i) the amount involved; and
(ii) the parties to that transaction;
(h) client or transaction files and business correspondence;

(i) enhanced due diligence findings referred to in section 24 (2)(c) and (d);
(j) copies of all reports filed with the Centre pursuant to sections 32, 33 and 34 and supporting documents;
(k) the name of the person who obtained the information referred to in paragraph (a) to (g) on behalf of the accountable or reporting institution; and
(kk) the results of any analysis undertaken in the course of that business relationship."
(l) any document or copy of a document obtained by the accountable or reporting institution in order to verify a person's identity in terms of sections 21 and 22.
(2) Records kept in terms of subsection (1) may be kept in electronic form.
(3) The records referred to in subsection (1) must include records as may be determined by the Centre.
(4) An accountable or reporting institution which contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.
(5) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Period for which record must be kept

27. (1) An accountable or reporting institution must keep the records referred to in section 26 which relate to -
(a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated; or longer if specifically so requested by competent authorities before the expiration of the 5 year period; and
[The semicolon after the word "terminated" should be a comma. The word "and" at the end of paragraph (a) is probably an error.]

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

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

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

(4) An accountable or reporting institution which contravenes or fails to comply with subsection (1), (2) or (3) commits an offence and is liable to a fine not exceeding N$100 million or, where the

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

4.19. Amendment to section 31 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To ensure access is authorised to records related to unlawful activity not provided for by the Act.

Amendment to be included in the new Bill:

Centre has access to records

31. (1) The Centre or an authorised representative of the Centre -

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

(i) an accountable institution;

(ii) a reporting institution;

(iii) a supervisory body;

(iv) a regulatory body;

(v) a law enforcement agency;

(vi) any other person or institution that holds relevant records or information, including information on a commercially held database;

(vii) any office, ministry or agency within the Government; and

(b) may examine, make extracts from or copies of those records.

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

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

4.20. Amendment to section 33 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

The requirement for reporting STRs does not meet the element of ''prompt'' in terms of the FATF standards. The proposed substitution of Section 33 is derived from Zimbabwean legislation. Zimbabwe was found compliant with Recommendation 20.

In order to ensure legal certainty, a definition was provided for "promptly" in Section 1 (see line 4.2.9. above).

Analysis of other legislation in the region:

The amended law requires FIs to report a suspicious transaction to the FIA within 5 working days after the suspicion was formed unless the FIA approves a delay in submitting the report (S.17 of the FI Act) and Regulation 18(1). The exemption which existed during the previous ME exercise has been removed through the repeal of S.37 of FI Act. In addition, S.21 of the Banking Act was repealed so that STRs are no longer required to be sent to Bank of Botswana.

Mauritius

PART IV – MEASURES TO COMBAT MONEY LAUNDERING AND THE FINANCING OF TERRORISM

14. Reporting of suspicious transaction by reporting person or auditor

> (1) Notwithstanding section 300 of the Criminal Code and any other enactment, every reporting person or auditor shall, as soon as he becomes aware of a suspicious transaction, make a report to FIU of such transaction not later than 5 working days after the suspicion arose.

Zambia

Criterion 20.1 (Met) - Section.29(1) of the FIC Act requires FIs or their directors, principal officers, partners, professionals or employees that suspect or has reasonable grounds to suspect that any property— (a) is the proceeds of crime; or (b) is related or linked to, or is to be used for, terrorism, terrorist acts or by terrorist organisations or persons who finance terrorism; to report to the FIC no later than three working days after forming the suspicion.

<u>Amendments to be included in the new Bill:</u>

The Principal Act is amended by the substitution of Section 33 with the following sections:

“Suspicious transactions and suspicious activities

33. (1) A person who -
(a) carries on any business or the business of an accountable or reporting institution, or is in charge of, or manages a business undertaking, or a business undertaking of an accountable or reporting institution; or
(b) is a director of, secretary to the board of, employed or contracted by any business, or the business of an accountable or reporting institution, and who knows or reasonably ought to have known or suspect that, as a result of a transaction concluded by it, or a suspicious activity observed by it, it has received or is about to receive the proceeds of unlawful activities or has been used or is about to be used in any other way for money laundering or financing of terrorism or proliferation purposes, must, promptly within the prescribed period after the suspicion or belief arose, as the case may be, report to the Centre -
(i) the grounds for the suspicion or belief; and
(ii) the prescribed particulars concerning the transaction or suspicious activity.

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

(3) An accountable or reporting institution or business which made or is to make a report in terms of this section must not disclose that fact or any information regarding the contents of that report, to any other person, including the person in respect of whom the report is or to be made, otherwise than -
(a) within the scope of the powers and duties of the accountable or reporting institution or business in terms of any legislation;
(b) for the purpose of carrying out this Act;
(c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
(d) in terms of an order of court.

(4) A person who knows or suspects that a report has been or is to be made in terms of this section must not disclose that knowledge or suspicion or any information regarding the contents or suspected contents of that report to any other person, including the person in respect of whom the report is or is to be made otherwise than -
(a) within the scope of that person’s powers and duties in terms of any legislation;
(b) for the purpose of carrying out this Act;
(c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
(d) in terms of an order of a court.

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

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

4.21. Amendment to section 34 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was found largely compliant with R. 16, but the provisions in their current form have deficiencies in terms of R 16.12 because there is no requirement in the law on (a) when AIs/RIs should execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action.

Amendment to be included in the new Bill:

The Principal Act is amended by the substitution of Section 34 with the following section:

"Electronic transfers of money to, from and within Namibia

34. (1) If an accountable **[or reporting]** institution through an electronic transfer, on behalf or on the instruction of another person -
(a) sends money in excess of a prescribed amount, regardless of the destination of such funds; or
(b) receives money in excess of a prescribed amount, regardless of the origin of such funds,
it must, within the prescribed period after the money was received or transferred, report the transfer, together with the prescribed originator information, to the Centre.

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

(3) When an accountable **[or reporting]** institution acts as an intermediary in a chain of electronic transfers, it must transmit all the information it receives with that electronic transfer, to the recipient institution. The accountable **[or reporting]** institution should have risk based policies and procedures in place for determining when to:
a) execute, reject or suspend a wire transfer lacking the required information; and
b) the appropriate follow up action

(4) If an accountable **[or reporting]** institution referred to in subsection (2) receives an electronic transfer that does not contain all the prescribed originator information, it must take the necessary

measures to ascertain and verify the missing information from the ordering institution or the beneficiary, before it honours any of the instructions contained in the transfer.
(5) If an accountable **[or reporting]** institution is not able to obtain the prescribed originator information, it must file a suspicious transaction report.

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

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

4.22. Amendments to section 35 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: The current section 35(15)(d) significantly limits the scope of guidelines which NAMFISA, as a supervisory body in terms of the Act, may issue. This undermines NAMFISA's supervisory powers in that it is unable to independently provide compliance guidelines on matters affecting its regulated populace.

To address deficiencies raised in Namibia's MER, NPOs should not be included as DNFBPs in order to meet the requirements of recommendation 8. Since Namibia does not currently have a prudential regulator or legislative framework for the regulation of all NPOs, it is proposed that NPOs be dealt with in terms of the FIA. The FATF Standards require that NPOs are subject to a risk assessment for TF, and until such time that the regulatory framework is established, the FIC is responsible for supervising or monitoring categories of NPOs identified at risk of terrorist financing abuse.

Amendments to be included in the new Bill:

4.22.1. The Principal Act is amended by the substitution of sub-section 35 with the following section:

Obligations of and reporting by supervisory bodies

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

(a) inform the Centre of the knowledge or suspicion outlining: -

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

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

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

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

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

(6) A supervisory body, in meeting its obligation referred to in subsection (2) may -
(a) delegate the exercise of any power to any of its members, employees or any other suitable person;
(b) require an accountable or reporting institution supervised or regulated by it to report on that institution's compliance with this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act, in the form, manner and timeframes prescribed by the Centre, after consultation with the supervisory body;
(c) issue or amend any licence, registration, approval or authorisation that the supervisory body may issue, or has issued, or grant in accordance with any Act, to include the following conditions -
(i) compliance with this Act; and
(ii) the continued availability of human, financial, technological and other resources to ensure compliance with this Act or any order, notice, circular, determination or directive made in terms of this Act.

(d) **[After consultation with the Centre and regulatory bodies, i]** Issue guidelines to accountable and reporting institutions to ensure compliance with this Act.

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

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

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

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

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

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

(13) Despite subsections (11) and (12), the Centre may enter into an enforceable undertaking with any supervisory body that has without reasonable excuse failed to comply in whole or in part with any obligations in this Part to implement any action plan to ensure compliance with its obligations under this Part.

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

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

(16) The supervisory body or regulatory body of an accountable or reporting institution, upon recommendation of the Centre, may revoke or suspend the licence of the accountable or reporting institution or cause the institution not to carry on such business -
(a) if the accountable or reporting institution has been convicted of an offence under this Act; or
(b) if the accountable or reporting institution consistently failed or refused to adhere to any or all of its obligations under this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act.

(17) The supervisory body or regulatory body must report promptly to the Centre any information received from any accountable or reporting institution related to transactions or activities that could be treated as an offence under this Act.
(18) A supervisory body which contravenes or fails to comply with subsection (1), (2), (7), (8), (15), (16) or (17) commits an offence and is liable to a fine not exceeding N$10 million or, where the commission of the offence is attributable to a representative of the supervisory body, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

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

4.22.2. The principal Act is amended by the insertion of the following provision under section 35:

Obligations of Specified Non-Profit Organisations

35A (1) A Specified Non-Profit Organisation shall not have legal personality unless it is registered and has been issued with a certificate of registration by the Business and Intellectual Property Authority.

(2) (a) A Specified Non-Profit Organisation, including a foreign non-profit organisation that intends to operate in Namibia, must register prescribed information about its office-bearers, control structure, governance, management, administration and operations with the Centre and keep such information up-to-date with the Centre.

(b) a foreign non-profit organisation, that intends to operate in Namibia must be registered in terms of this Act before it commences operations, subject to paragraph (c), and in accordance with prescribed registration requirements, whereafter it will be regarded as a Specified Non-Profit Organisation.

(c) A Specified Non-Profit Organisation or foreign non-profit organisation that is operating in Namibia but is not registered in terms of this Act on the date of commencement of this provision, must register within the period determined by the Minister by notice in the Gazette, in accordance with prescribed transitional arrangements and registration requirements.

(c) A Specified Non-Profit Organisation or foreign non-profit organisation, whether registered in terms of the Act or not, must comply with the requirements of this Act.

(3) (a) Every Specified Non-Profit Organisation shall have a Board which shall –

(i) administer the property of the organization; and
(ii) carry out the objects of the organisation

(b) A Board shall be set up in accordance with its charter or constitution or memorandum of association or Articles, whichever the case may be, and shall have the following duties and powers -

(i) conduct the affairs of its organisation in accordance with its charter or constitution or memorandum of association or Articles, whichever the case may be,
(ii) generally, supervise the management and conduct of its organisation,
(iii) act honestly and in good faith with a view to promoting the best interests of the organisation; and
(iv) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(c) A Board may appoint such officers as may be necessary for the effective discharge of its duties and obligations under this or any other Act, or its charter or constitution or memorandum of association or Articles, whichever the case may be,

(d) An officer shall be under the supervision of the Board and shall act in accordance with the lawful instructions of the Board.

(4) (1) A person is disqualified from being an office-bearer of a Specified Non-Profit Organisation if the person -

(a) is an unrehabilitated insolvent;

(b) has been prohibited by a court to be a director of a company, or has been declared by a court to be delinquent in terms of the Companies Act, 2004 (Act No. 8 of 2004), or the Close Corporations Act, 1988 (Act No. 26 of 1988);

(c) is prohibited in terms of any law to be a director of a company;

(d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty;

(e) has been convicted, in Namibia or elsewhere, and imprisoned with or without the option of a fine, or has been fined for theft, fraud, forgery, perjury or an offence -

(i) involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities as defined in the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and the Prevention and Combating of Terrorist and Proliferation Activities Act 2014 (Act No 4 of 2014);
(ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in the Companies Act, 2004; or
(iii) under this Act, the Companies Act, 2004, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1988, the Competition Act, 2003(Act No. 2 of 2003), the Financial Intelligence Act, 2012, the Namibia Financial Institutions Supervisory Act, 2001(Act No. 3 of 2001), the Anti-Corruption Act, 2003 (Act No. 8 of 2003), the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014, or the Income Tax Act, 1981 (Act No. 24 of 1981); or

(f) is an unemancipated minor or is under a similar legal disability.

(5) Every Specified Non-Profit Organisation shall have a registered office and physical presence in Namibia to which all communications and notices shall be addressed, and which shall constitute the address for service of legal proceedings on the organization.

(6) (a) The charter or constitution or memorandum of association or Articles, whichever the case may be, of a Specified Non-Profit Organisation shall specify -

(i) the name of the organisation;
(ii) the particulars of the founder, including –

(aa) his name and address;

(bb) where the founder is a legal person or body corporate, its name and registered address and particulars of its office-bearers, control structure, governance and management; and

(cc) an address for the founder for service of documents;

(b) the purposes and objects of the organisation;

(c) details regarding the control structure, governance, management, administration and operations of the organisation;

(d) the endowment of the property which shall be the initial assets of the organisation;

(e) the beneficiary of the organisation or the manner in which he/she/it may be appointed and, if applicable, the manner in which he/she/it may be removed;

(f) the period, if any, for which the organisation is established;

(g) the address of the registered office of the organisation;

(h) the procedure for appointment of office bearers; and

(i) the procedure for the appointment of the Board and its powers and duties.

(7) A Specified Non-Profit Organisation shall –

(a) keep proper records of –

(a) all sums of money received, expended and distributed, specifying the purpose of any such receipt, expense and distribution;
(b) all sales and purchases made by the organisation;
(c) the assets and liabilities of the organisation;
(d) the name of the beneficial owner, if any; and
(e) where the beneficiary is a nominee, the name of the beneficial owner or ultimate beneficial owner.

(b) prevent financial abuse and misuse of resources and funds by establishing strong financial controls and procedures subject to Board oversight.

(c) clearly state programme goals when collecting funds and ensure that funds are applied as intended and that information about the activities carried out is made publicly available.

(d) ensure that they are informed as to the sources of their income and establish criteria to determine whether donations should be accepted or refused.

(e) ensure that sources of financing, including details regarding the main contributors, both public and private, as well as the amounts contributed, should be available to the public.

(f) have a documented anti-corruption policy.

(g) analyse and define the risks of corruption in the specific context they are working in, like fraud, excessive pricing and kickbacks, double payments, cumulated salaries or exchange rate manipulation.

(h) In respect of donors a Specified Non-Profit Organisation shall -

(i) confirm the identity of donors, including regular donors, and keep records of such donors;
(ii) keep records of the mode of payment by donors whether by cheque, cash, direct credit or virtual currency;
(iii) keep records of the amount received from donors, whether domestic or foreign, whether significant or small.
(iv) Keep records for categories of donations received (domestic /foreign philanthropy, domestic/foreign private individuals)
(v) disclose to the Centre whether funds were received or sent to high-risk jurisdictions, including the country, the amount and reason for the receipt or disbursement;
(vi) disclose to the Centre funds received from anonymous donors;
(vii) identify beneficiaries, whether domestic or foreign, and keep a list of such beneficiaries; and
(viii) conduct due diligence on donors, beneficiaries, members of the Board, directors of the company and shareholders.

(i) A Specified Non-Profit Organisation shall keep accounting records which shall –

(i) be sufficient to show and explain the transactions of the organisation;
(ii) disclose with reasonable accuracy, at any time, the financial position of the organisation; and
(iii) allow financial statements to be prepared.

(8) (a) Every Specified Non-Profit Organisation shall keep at its registered office –

(i) a file containing accurate records and a copy of all documents filed with the Centre, including accurate copies of its charter or constitution or memorandum of association or Articles, whichever the case may be;
(ii) the minutes of proceedings of any meeting of the Board;
(iii) a register showing the names and addresses of the members of its Board, any founder and any person who may have endowed assets to the organisation;

(b) The records and copy of documents required to be kept by an organisation under this section shall be open for inspection by any founder, authorised officer, competent authority, supervisory body or the Centre during business hours.

(9) A Specified Non-Profit Organisation shall have adequate systems in place for accurate project planning and monitoring and shall, amongst others -

(a) establish internal controls and monitoring systems to ensure that funds and services are being used as intended by, amongst others, clearly defining the purpose and scope of their activities,

(b) identify beneficiary groups and consider the risks of terrorist financing and risk mitigation measures before undertaking projects.

(c) maintain detailed budgets for each project and generate regular reports on related purchases and expenses by establishing procedures to trace funds, services, and equipment, and carry out transactions through the banking system to maintain transparency of funds and mitigate the risk of terrorist financing.

(d) monitor Project performance on a regular basis by verifying the existence of beneficiaries and ensuring he receipt of funds.

(e)take appropriate measures, based on the risks, to account for funds and services delivered.

(f) verify and screen potential beneficiaries and partners against the United Nations Security Council Sanctions Lists, issued under Chapter VI of the United Nations Charter.

4.23. Amendment to section 39 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

This provision will replace the current section 39, which is proposed to be moved to section 21 of the new Bill.

Namibia was rated Partially Compliant with Recommendation 18 (Internal Controls and Foreign Branches and Subsidiaries) because the FIA contains no provision for financial groups to implement group-wide programs against ML/TF risks to all branches and subsidiaries of the financial group.

Further, AIs are not required to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures which are consistent with the home country requirements, where the host country requirements are less strict.

Section 15 of the Botswana Financial Intelligence Act, 2022, takes a similar approach, as it prescribes that:

> 5. (1) A specified party shall implement group-wide programmes to counter the risk of a commission of a financial offence consistent with guidance notes issued under section 49 (1) (c) which should be applicable and appropriate to all branches and majority owned subsidiaries of the group.
>
> (2) A specified party shall maintain throughout its group, controls and procedures for —

(a) protection of personal data in accordance with the Data Protection Act; and

(b) sharing of information required for —

(i) customer due diligence,

(ii) preventing or managing risk associated with the commission of a financial offence with other members of the group; and

(c) safeguarding the confidentiality and use of information exchanged, including to prevent a tip off.

(3) A specified party shall apply measures referred to in section 14 (1) to all branches and majority owned subsidiaries of the group."

Section 49 of the Botswana Act provides for the obligations of supervisory authorities.

Amendments to be included in the new Bill:

The Principal Act is amended by the substitution of Section 39 with the following section:

"Foreign branches, subsidiaries or head office

39A (1) Accountable and reporting institutions which form part of a group must implement group-wide AML/CFT programmes under its branches and majority-owned subsidiaries within or outside Namibia.

(2) The obligations set out in section **[9]** 21 must apply to all foreign branches and majority-owned subsidiaries of an accountable or reporting institution and must include—
(a) policies and procedures for sharing information within the group for purposes of customer due diligence and money laundering and terrorist financing risk management purposes;
(b) the provision, at group-level compliance, audit, and/or anti-money laundering and combatting the terrorist financing functions, of customer, account, and transaction information, including information on transactions and activities which appear unusual from branches and subsidiaries when necessary for anti- money laundering and combatting terrorist financing purposes, or vice versa; and
(c) adequate safeguards on the confidentiality and use of information exchanged.

(3) An accountable or reporting institution must ensure that its foreign branches and majority owned subsidiaries apply measures against money laundering, terrorist financing and handling of proceeds of crime that are not less stringent than those under this Act, to the extent that the host country laws and regulations permit.

(4) Every accountable institution or reporting institution must apply appropriate additional measures to manage the ML/TF/PF risk, if the country in which the branch or subsidiary is located

does not permit the proper implementation of the measures in accordance with this Act. The supervisory authority will be informed accordingly.

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

4.24. Amendment to section 47 of the Financial Intelligence Act, 2012 (Act No 13 2012) as amended

Rationale: Information held by the Centre constitutes intelligence and not evidence. Hence such information collected for the purpose of analysis should not be tendered into court. A provision is thus proposed that protects the Centre, the director and staff from being compelled to give evidence in any court on the activities of the Center.

Amendments to be included in the new Bill:

The Principal Act is amended by the substitution of Section 47 with the following provision:

Admissibility as evidence of reports made to Centre

47. Information that was reported to or intelligence that was shared with the Centre is not admissible as evidence in a matter before that court.

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

4.25. Amendment to section 48 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: Sections 48(3)(a) and 48(8) is amended in order to explicitly provide for facilitators of transactions and to ensure that the information shared with a foreign FIU will be used solely for the purpose for which it was requested and provided, unless the FIC's consent is received.

Amendments to be included in the new Bill:

Access to information held by Centre

48. (1) If the Centre, on the basis of its analysis and assessment under section 9 has reasonable grounds to suspect that information would be relevant to the national security or economic stability

of Namibia, the Centre must disclose that information to an investigating authority inside Namibia, relevant Supervisory Bodies, relevant regulators and to the Namibia Central Intelligence Service.

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

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

(a) the name of the client or of the importer or exporter, parties to or related to the transaction or any person or entity acting on their behalf;
(b) the name and address of the place of business where the transaction occurred or the address of the port of entry into Namibia where the importation or exportation occurred and the date when the transaction, importation or exportation occurred;
(c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;
(d) in the case of a transaction, the transaction number and the account number, if any; and
(e) any other similar identifying information that may be prescribed for the purposes of this section.

(4) The Centre may, spontaneously or upon request disclose any information to an institution or agency in a foreign state that has powers and duties similar to those of the Centre under this Act on such terms and conditions as are set out in an agreement, between the Centre and that foreign agency regarding the exchange of that information.

(5) Without limiting the generality of subsection (4), an agreement entered into under that subsection may -

(a) restrict the use of information to purposes relevant to investigating or prosecuting an unlawful activity, money laundering, financing of terrorism or proliferation, or an offence that is substantially similar to such offences; and

(b) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the Centre.

(6) The Centre may in writing authorise a competent authority to have access to such information as the Centre may specify for the purposes of performing the relevant authority's functions.

(7) The Centre may, in writing, authorise the Prosecutor-General or his or her designated officer to have access to such information as the Centre may specify for the purpose of performing his or her duties or dealing with a foreign state's request to mutual assistance in criminal matters.

(8) Despite anything to the contrary in subsection (4) the Centre may, spontaneously or upon request, disclose any information to an institution or agency in a foreign state that has the powers and duties to those of the Centre under this Act if the Centre is satisfied that that corresponding institution has given appropriate written undertakings -

(a) for protecting the confidentiality of any information communicated to it; and

(b) for controlling the use that will be made of the information, including an undertaking that it will not be used as evidence in any proceedings.
(c) that the information will be used solely for the purpose for which it was requested and provided, unless the Centre's consent is received.

[(8) Despite anything to the contrary in subsection (4) the Centre may, spontaneously or upon request, disclose any information to an institution or agency in a foreign state that has the powers and duties to those of the Centre under this Act if the Centre is satisfied that that corresponding institution has given appropriate written undertakings -

(a) for protecting the confidentiality of any information communicated to it; and

(b) for controlling the use that will be made of the information, including an undertaking that it will not be used as evidence in any proceedings.]

(9) The Centre may make inquiries on behalf of a foreign agencies agency where the inquiry may be relevant to the foreign agencies agency's analysis of a matter involving suspected proceeds of crime, money laundering, terrorist property or suspected financing of terrorism or proliferation.

(10) In making inquiries as provided for in subsection (9), the Centre may -

(a) search its own databases, including information related to reports of suspicious transactions and suspicious activities, requests for information and other databases to which the Centre has direct or indirect access, including law enforcement databases, public databases, administrative databases and commercial databases;

(b) obtain from accountable institutions or reporting institutions, or from any other person holding records or information on behalf of such accountable or reporting institutions, information that is relevant in connection with such request;

(c) obtain from competent authorities information that is relevant in connection with such request ; and

(d) take any other action in support of the request of the foreign agencies that is consistent with the authority of the Centre.

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

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

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

4.26. Amendment to section 56 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

In terms of enforcement actions to remedy the non-compliance of Accountable and Reporting Institutions, Supervisory Bodies have limited powers, particularly on determining the appropriate financial sanctions. Rec 27 requires supervisors to have powers to impose a range of sanctions including financial sanctions. Under the current regulative regime Supervisory Bodies can only impose financial penalties that are determined by the Centre (Sec. 56(3)(f) of FIA).

There is need to amend this provision in order to give powers to Supervisory Bodies to determine and impose financial sanctions.

Further, the legislation of jurisdictions within the region were reviewed and it was found that the procedural requirements regarding consultation with the regulatory body are not prescribed in those laws.

For example, in the Mauritius Financial Intelligence and Anti Money Laundering Act, 2002, as amended, it states in Section 18(2) that:

(a) Where it appears to the Bank of Mauritius that a bank or cash dealer subject to its supervision has failed to comply with any requirement imposed under this Act, any regulation made under this Act or any code or guideline issued by it under subsection (1)(a), and that the failure is caused by a negligent act or an omission or by a serious defect in the implementation of any such requirement, the Bank of Mauritius, in the absence of any reasonable excuse, may –

(i) in the case of a bank, proceed against it under sections 11 and 17 of the Banking Act on the ground that it is carrying on business in a manner which is contrary to the interest of the public; or

(ii) in the case of a cash dealer, proceed against it under section 17 of the Banking Act on the ground that it is carrying on business in a manner which is contrary to the interest of the public.

(b) Notwithstanding paragraph (a), where a bank or cash dealer has failed to comply with any requirement imposed under a code or guideline issued by the Bank of Mauritius under subsection (1)(a), the Bank of Mauritius may impose an administrative penalty on that bank or cash dealer which may be recovered by deduction from any balance of the bank or cash dealer with, or as money owing to, the Bank of Mauritius, as if it were a civil debt.

Section 46(1) of the Botswana Financial Intelligence Act, 2022, reads as follows:

> *46. (1) A specified party or accountable institution that fails to make a report under this Part or continues with a transaction in contrary to the provisions of section 45 is liable to —*
>
> > *(a) an administrative fine not exceeding P5 000 000;*
> >
> > *(b) a suspension or revocation of licence or registration as the case may be; or*
> >
> > *(c) both penalties provided under paragraphs (a) or (b), as may be imposed by the supervisory authority.*
>
> *(2) A person who fails to make a report under this Part or continues with a transaction in contravention of section 45 commits an offence and is liable to a fine not exceeding P3 000 000 or to imprisonment for a term not exceeding 20 years, or to both.*
>
> *(3) A person who knows or suspects that a suspicious transaction report is being made to the Agency shall not disclose to any other person information or any other matter which is likely to prejudice any proposed investigation or disclose that the Agency has requested further information under section 52 (1).*
>
> *(4) A person who contravenes the provision of subsection (3) commits an offence and is liable to a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 15 years, or to both.*

Amendments to be included in the new Bill:

The Principal Act is amended by the substitution of section 56 with the following section:

Administrative sanctions

56. (1) The Centre or a supervisory body may impose an administrative sanction referred to in subsection (3) on any accountable institution, reporting institution or other person to whom this Act applies when satisfied on available facts and information that the institution or person -
(a) has failed to comply with a provision of this Act or any regulation, order, determination or directive issued in terms of this Act;
(b) has failed to comply with a condition of a licence, registration, approval or authorisation issued or amended in accordance with this Act or any other law; or
(c) has failed to comply with a directive issued in terms of section 54(1) or (2).

(2) In determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors -
(a) the nature, duration, seriousness and extent of the relevant non-compliance;
(b) whether the institution or person has previously failed to comply with any law;
(c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;

(d) any steps taken or to be taken against the institution or person by -
(i) another supervisory body; or
(ii) a voluntary association of which the institution or person is a member; and
(e) any other relevant factor, including mitigating factors.

(3) The Centre or a supervisory body **[after consultation with each other, and where applicable, after consultation with relevant regulatory body,]** may impose any one or more of the following administrative sanctions –
(a) a caution not to repeat the conduct which led to the non-compliance referred to in subsection (1);
(b) a reprimand;
(c) a directive to take remedial action or to make specific arrangements;
(d) the restriction or suspension of certain identified business activities;
(e) suspension of licence to carry on business activities; or
(f) a financial penalty, not exceeding N$10 million **[, as determined by the Centre, after consultation with the relevant supervisory or regulatory bodies]**.

(4) The Centre or supervisory body may -
(a) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any regulation, order, determination or directive issued in terms of this Act;
(b) direct that a financial penalty must be paid by a natural person(s) for whose actions the relevant institution is accountable in law, if that person or persons was or were personally responsible for the non-compliance;
(c) suspend any part of an administrative sanction on any condition the Centre or the supervisory body considers appropriate for a period not exceeding five years.

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

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

(7) Upon imposing the administrative sanction the Centre or supervisory body must, in writing, notify the institution or person of -
(a) the decision and the reasons therefore; and
(b) the right to appeal against the decision in accordance with section 58.

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

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

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

10. If an institution lodges an appeal, the lodgment of an appeal will not suspend the operation of an administrative sanction imposed, until such time that the Appeal Board established in terms of section 57 has ruled otherwise.

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

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

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

(14) Unless the Director or the head of a supervisory body is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of any decision, the Director or the head of the supervisory body must make public the decision and the nature of any sanction imposed if -
(a) an institution or person does not appeal against a decision of the Centre or supervisory body within the required period; or

(b) [**where an institution has appealed in terms of section 58,]** the appeal board confirms the decision of the Centre or supervisory body, where an institution has appealed in terms of section 58"

4.27. Amendment to Schedules of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended

Rationale: To address weaknesses raised in Namibia's ESAAMLG/FATF Mutual Evaluation Report and align the Act with Financial Action Task Force (FATF) Recommendations.

Namibia was rated non-compliant with section 15 because the country was found not have prudential and AML/CFT framework for regulation of VAs and VASPs.

Therefore, the inclusion of Virtual Asset Service Providers as Accountable Institutions is inserted in Schedule 1. A definition has also been included in Section 1 of the Act for VASPs, inter alia, which is aligned to the FATF Glossary.

Further, Schedule 1 was has been augmented with the inclusion of long term insurance brokers as this is prescribed by the FATF Standards.

Amendments to be included in the new Bill:

The Principal Act is amended by the substitution of Schedule 1 with the following schedule:

"SCHEDULE 1

ACCOUNTABLE INSTITUTIONS

(SECTION 2)

1. A person in his or her capacity as either a legal practitioner as defined in the Legal Practitioners Act, 1995 (Act No. 15 of 1995) and who is in private practice, or an estate agent as defined in the Estate Agents Act, 1976 (Act No. 112 of 1976), or an Accountant or Auditor, or in any other capacity, who accepts instructions from a client to prepare for or carry out a transaction for the client in respect of one or more of the following activities:

(a) Buying and selling of real estate for cash or otherwise;

(b) Managing of client money, securities, bank or securities accounts or other assets;

(c) Facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements;

(d) Creation, operation or management of legal persons or legal and commercial arrangements;

(e) Buying and selling of business entities, or parts thereof; and

(f) Buying and selling of legal rights.

2. Any other person or entity that, as part of their normal business activities, buys and/or sells real estate for cash.

3. Trust and Company Service Providers when they prepare for and carry out transactions for their client in relation to the following activities -

(a) acting as a formation agent of legal persons;

(b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(c) providing a registered office; business address or office accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal or commercial arrangement;

(d) acting as (or arranging for another person to act as) a trustee of a trust; and

(e) acting as (or arranging for another person to act as) a nominee shareholder for another person.

4. A person or institution that carries on "banking business" or who is "receiving funds from the public" as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998).

5. A person that carries on the business of a casino.

6. A person or entity that carries on the business of lending, including but not limited to the following:

(a) The Agricultural Bank of Namibia established in terms of the Agricultural Bank of Namibia Act, 2003 (Act No. 5 of 2003);

(b) The Development Bank of Namibia established in terms of the Development Bank of Namibia Act, 2002 (Act 8 of 2002);

(c) The National Housing Enterprise established in terms of the National Housing Enterprise Act, 1993 (Act No. 5 of 1993).

7. A person who carries on the business of trading in minerals specified in Schedule 1 of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) or petroleum as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991 (Act No. 2 of 1991).

8. Any person or entity trading in the following -

(a) money market instruments;

(b) foreign exchange;

(c) currency exchange;

(d) exchange, interest rate and index instruments;

(e) transferable securities;

(f) commodity futures trading; and

(g) any other securities services.

9. A person who carries on the business of rendering investment advice or investment brokering services.

10. Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992.

11. A person, who issues, sells or redeems traveller's cheques, money orders, or similar payment instruments.

12. A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).

13. Any person or entity that carries on the business of electronic transfer of money or value.

14. Any person or entity regulated by the Namibia Financial Institutions Supervisory Authority (NAMFISA) who conducts as a business one or more of the following activities -

(a) Individual and/or Collective portfolio management;

(b) Long term insurer and long – term insurance brokers;

(c) Micro lender;

(d) Friendly society; and

(e) Unit trust managers.

15. A person who conducts or carries on the business of an auctioneer.

16. A person or entity that carries on the business of lending money against the security of securities.

17. Any -

(a) agent appointed in terms of section 108(1) of the Customs and Excise Act, 1998 (Act No. 20 of 1998);

(b) agent appointed and who in writing has accepted the appointment, by -

(i) an importer or exporter;

(ii) a container operator, pilot, manufacturer, licensee or remover of goods in bond; or

(iii) another principal,

to carry out an act under the Customs and Excise Act, 1998 (Act No. 20 of 1998) on behalf of that importer, exporter, container operator, pilot, manufacturer, licensee, remover of goods in bond or another principal; or

(c) person who represents himself or herself to an officer as defined in the Customs and Excise Act, 1998 (Act No. 20 of 1998), and is accepted by the officer as the agent of -

(i) an importer or exporter;

(ii) a container operator, pilot, manufacturer, licensee or remover of goods in bond; or

(iii) another principal.

[18. A non-profit organisation -

(a) incorporated, as a non-profit association, under section 21 of the Companies Act, 2004 (Act No. 28 of 2004);

(b) whether or not established under any law, that primarily engages in raising or disbursing funds for purposes of -

(i) charity, religion, culture, education, social activities or fraternity; or

(ii) any other type of welfare activity.]

18. A person that carries on the business of a Virtual Asset Service Provider.