

EXPLANATORY NOTE:

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

BILL

To amend the Financial Intelligence Act, 2012 by providing for a definition as well as preventative and combating measures specifically related to Prominent Influential Persons, to amend the definition of “competent authority”, to provide for a definition of “correspondent banking”, to provide for a definition of “monitoring”, to provide for the definition of “promptly” as it relates to the filing of suspicious transaction and activity reports, to provide for definitions of “shell banks”, “virtual assets” and “virtual assets service providers”, to secure the operational independence of the Financial Intelligence Centre and matters incidental thereto, provide for the establishment of a Board for the Centre, to amend the functions of the Council and to revise the preventative measures to be implemented by accountable institutions

(Introduced by the Minister of Finance)

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

Amendment of Section 1 of Act No 13 of 2012

1. By amendment of the definition of accountable institution by replacing it 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 independent agents;

2. By amendment of the definition of authorised officer by replacing it 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 Intelligence Service authorised by the Director-General of the Namibian Central Intelligence Service;
- (c) the Anti-Corruption Commission authorised by the Director of the Anti-Corruption Commission; or
- (d) an investigating authority that may, in terms of any law, investigate unlawful activities who may act under this Act.

3. By substitution of the current definition of “beneficial owner” with the following definition:

“beneficial owner” means -

- (a) a natural person who ultimately, directly or indirectly, owns or controls a legal person or a trust or similar legal arrangement, or
 - (b) a natural person who exercises ultimate effective control over a legal person or trust, or
 - (c) any other way in which ownership or control is exercised,
- as determined by the Centre from time to time or as per Schedule 5 of the Act.”

4. 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 ~~trust legal arrangement~~ which is associated with a PIP.

5. 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.

6. By the substitution of the definition of “Correspondent Banking” of 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.

7. 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 trusts, obtaining information on the purpose and intended nature of the business relationship [and monitoring all transactions] of the client against the knowledge of the client [client’s profile].[in respect of legal persons and monitoring transactions of the client against the client’s profile]

8. By insertion after the definition of “determination” of the following definition:

‘Day’ means all days of the week excluding Saturdays, Sundays and public holidays.

9. 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.”

~~10. 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;~~

11. By the 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).”

12. By the 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.”

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

“Prominent Influential Person” means a person in a prominent public position or function 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. This also includes persons who are or have been entrusted with a prominent function by an international organization.

~~14. 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.~~

15. 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.

16. 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 ~~specified by the Centre and may be based on:~~

- i. ~~receives~~ donations or remittances from one or more higher risk jurisdictions; ~~and or~~
- ii. ~~has remitted~~, remittance 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; ~~or~~
- iii. ~~the findings of a sectoral or national risk assessments, trend or typology report.~~

17. by the insertions 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.

18. 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 ~~or otherwise~~ 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.

Amendment of Section 4 of the Act No 13 of 2012

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

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.]~~

Amendment of Section 5 of the Act No 13 of 2012

20. 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.]~~

Amendment of Section 7 of the Act No 13 of 2012

21. 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.

Amendment of Section 8 of the Act No 13 of 2012

22. 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.

Amendment of Section 9 of the Act No 13 of 2012

23. 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.

Amendment of Section 10 of the Act No 13 of 2012

24. The Principal Act is amended by the substitution of Section 10 with the following section:

“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.

Amendment of Section 11 of the Act No 13 of 2012

25. The Principal Act is amended by the substitution of section 11 with the following provision:

Appointment and Removal of Director

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).]~~

Amendment of Section 11 of the Act No 13 of 2012

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

Acting Director

11A. (1) 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.

(2) During a vacancy in the office of Director, the Minister may appoint an Acting Director of the Centre.

Amendment of Section 12 of the Act No 13 of 2012

27. The Principal Act is amended by the substitution of Section 12 with the following section:

Responsibilities of Director

12. (1) The Director is responsible for -

- (a) the performance by the Centre of its functions;
- (b) implementation and administration of applicable provisions of this Act;
- (c) reporting administratively to the Board ~~[Governor]~~;
- (d) reporting functionally to Parliament ~~[Council]~~;
- (e) 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;
- (f) dissemination of intelligence involving suspected proceeds of crime, money laundering, associated unlawful activity, terrorist property or financing of terrorism or proliferation, to competent authorities and foreign agencies with powers and duties similar to that of the Centre;
- (g) providing relevant advice to the Board ~~[Council]~~;

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

Amendment of Section 13 of the Act No 13 of 2012

28. The Principal Act is amended by the substitution of Section 13 with the following section:

Staff of Centre

13. (1) For the purposes of assisting the Director in the performance of the functions of the Centre, the Director, ~~[with the concurrence of the Governor]~~, 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.

Amendment of Section 14 of the Act No 13 of 2012

29. Section 14 of the Principal Acts is hereby amended by -

(a) the substitution for subsection (2) of the following subsection:

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

(b) the substitution for subsection (3) of the following subsection:

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

Amendment to Part 3 of the Act No 13 of 2012

30. 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

Amendment of Section 16 of the Act No 13 of 2012

31. The Principal Act is amended by the insertion of section 16A after Section 16, but in Part 3 of the Act:

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 must be of proven knowledge and experience in the field of financial services, economics, finance, law, business or commerce or other disciplines relevant to the operation of the Centre who shall be Governor of the Bank,; and
- (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 150 years, and
- (c) two five 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, human resources, audit and accounting or technology.

(2) The Chairperson and members of the Board ~~shall must~~ be ~~fit and proper persons and 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 Minister must, by notice in the Gazette, announce the names of persons appointed as members of the Board.

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

(6) 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 ~~the~~ committees established in terms of 16D;
- (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.

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

(8) 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.

(9) Subject to subsections (5) to (8), the Board shall determine its own procedure in line with national good governance principles.

Disqualification for appointment as member of Board

16B. (1) A person may not be appointed as a member of the Board, if the person -

- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence;
- (b) is a member of the National Assembly, National Council, local authority council or regional council, unless the person resigns as a member of the National Assembly, National Council, local authority council or regional council;
- (c) during the period of three months preceding the date of the proposed appointment as a member of the Board, has been a director, officer, employee or owner of, or a shareholder in, an Accountable

Institution, Reporting Institution or Specified Non-Profit Organisation or provides professional services to the Centre;

(d) has been disqualified under any law dealing with companies to hold a position of a director of a company;

(e) fails to disclose prior to his or her appointment that he or she has been convicted of any offence in terms of any laws dealing with companies or insolvency;

(f) has not attained the age of 21 years;

(g) is an unrehabilitated insolvent;

(h) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine;

(i) has been convicted of an offence involving dishonesty in Namibia or elsewhere;

(j) has been disqualified or suspended from practising a profession on the ground of unprofessional conduct or dismissed from a position of trust due to misconduct; or

(k) has under any law been declared by a competent court to be mentally ill.

Meetings of Board

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

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

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

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

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

Term of Office and Remuneration

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

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

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

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

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

Committees of the Board

16D (1) The Board may establish one or more committees -

- (a) to assist the Board in the exercising or performing of its powers and functions under this Act; and
- (b) consisting of members of the Board.

(2) A committee must elect its own chairperson.

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

(4) The committee may invite persons who may have special knowledge or skills in any relevant field or discipline to attend its meetings and advise the committee.

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

(6) The Board may at any time -

- (a) amend, substitute or set aside a decision of a committee; or
- (b) dissolve or reconstitute a committee.

Vacation of office by members of Board

16E (1) A member of the Board vacates office, if the member -

- (a) becomes subject to any of the disqualifying criteria outlined in section 16B;
- (b) resigns from office after giving three months written notice to the Minister of his or her intention to resign;
- (c) has been absent from three consecutive meetings of the Board without leave of the Board; or
- (d) is removed from office under subsection (2).

(2) A member of the Board may be removed from office before the expiry of his or her term of office by the Minister on his own accord or on recommendation from the Board for duly justified reasons.

(3) If the Minister on his or her own accord or if the Board recommends that a member be removed in terms of (2), the Minister must establish a tribunal in accordance with subsection (4) to inquire into the matter.

(4) The tribunal must -

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

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

(c) enquire into the matter contemplated in subsection (3) and report on the matter to the Minister.

(5) The Minister must consider the report referred to in subsection (4)(c) and after due deliberation with the Board, the Minister may remove the member of the Board from office.

(6) The Minister may, after consultation with the Board, suspend the member of the Board from office pending the outcome of an inquiry contemplated in subsection (4).

(7) If a member of the Board vacates his or her office as contemplated in subsection (1), a new member must be appointed in accordance with section 16A(2).

(8) The Minister may impose restrictions on the members of the Board not to take up employment or directorship in an Accountable Institution, Reporting Institution or Specified Non-Profit Organisation, a controlling company of an Accountable Institution, Reporting Institution or Specified Non-Profit Organisation or a subsidiary of an Accountable Institution, Reporting Institution or Specified Non-Profit Organisation or if such an entity provides professional services to the Centre -

(a) for a period not exceeding three months; and

(b) on such other terms and conditions as the Board may determine, when –

(i) the member vacates his or her office in accordance with subsection (1);

or

(ii) the term of office of the member has come to an end, unless the member is re-appointed.

Conflict of interest and disclosure of interest by members of Board

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

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

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

(a) conflict with the interests of the Centre; or

(b) affect the impartiality of the member of the Board in exercise or performance of his or her powers or functions under this Act.

(4) A disclosure referred to under subsection (3) must be made -

(a) as soon as possible after the relevant facts have come to the knowledge of the member of the Board; or

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

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

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

(7) A member who -

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

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

may be removed from office in terms of section 16E(2).

Amendment of Section 18 of the Act No 13 of 2012

32. The Principal Acts is amended by 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;
 - (k) the Prosecutor General;
 - (l) The Commissioner of the Namibia Revenue Authority;
 - (m) The Chief Executive Officer of the Business and Intellectual Property Authority;
 - (n) The Master of the High Court;
 - (o) The Director of the Centre;
 - (p) ~~[(4)]~~ one or more persons representing associations representing a category of accountable or reporting institutions requested by the Minister to nominate representatives; and
 - (q) ~~[(4)]~~ one person representing supervisory bodies requested by the Minister to nominate representatives.
- (2) The Council may invite persons who may have special knowledge or skills in any relevant field or discipline to attend its meetings and advise the Council but such persons have no voting right.
- (3) The members of the Council must elect a deputy chairperson at the first meeting of the Council.
- (4) Any vacancy in the Council must, subject to subsection (1), be filled by the appointment of a new member.
- (5) A member of the Council who is in the employment of the State may be paid such allowances for traveling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, out of the funds of the Centre, as the Minister may determine.

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

(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.

Amendment of Section 19 of the Act No 13 of 2012

33. The Principal Act is amended by the substitution of Section 19 with the following section:

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 related to policy and coordination 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."

Amendment of Section 21 of the Act No 13 of 2012

34. The Principal Act is amended by the substitution of Section 21 with the following sections:

[Obligations of Accountable and Reporting Institutions] Risk Management, Risk Assessment and Risk-Based Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Programs

21. (1) An accountable institution ~~[and reporting 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 the accountable ~~for reporting~~ institution and must be consistent with national requirements and guidance, and should be able to protect the accountable ~~for 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 ~~for reporting~~ institution.

(11) The Centre may determine the type and extent of measures accountable ~~for 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 ~~for reporting~~ institution that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment."

Amendment of Section 21 of the Act No 13 of 2012

35. 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 the ultimate beneficial owner is, 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."

Amendment of Section 21 of the Act No 13 of 2012

36. The Principal Act is amended by the insertion of Section 21B after 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 trust legal arrangement – by taking the name of the person or trust arrangement; or

(b) for a beneficiary that is designated by characteristics or by class or by other means – **by** 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 **trust 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.

Amendment of Section 22 of Act No 13 of 2012

37. 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."

Amendment of Section 23 of Act No 13 of 2012

38. 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.”

Amendment of Section 23 of Act No 13 of 2012

39. 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 Close Associates of a Prominent Influential Persons

(4) The Director of the Centre may determine the handling of a Prominent Influential Person who is no longer entrusted with a prominent public position or function domestically or in a foreign country, or a prominent function by an international organization, or their close associate or family member.

(5) 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.”

Amendment of Section 24 of Act No 13 of 2012

40. 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 countries for which this is called for by the Financial Action Task Force 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);

~~[(e)]~~ **(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 ~~[(e)]~~ **(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 enhanced measures as may be~~ prescribed in terms of section 23(2) ~~from time to time by the Minister~~ to counter the risks with respect to business relations and transactions specified under paragraph (b) ~~or (c);~~ **[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)** (g) 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."

Amendment of Section 25 of Act No 13 of 2012

41. 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 money laundering or terrorist financing 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."

Amendment of section 26 of Act No 13 of 2012

42. Section 26 of the Principal Act is hereby amended -

(a) by the insertion after paragraph (k) of the following paragraph:

(kk) the results of any analysis undertaken in the course of that business relationship.

Amendment of section 27 of Act No 13 of 2012

43. Section 27 of the Principal Act is herewith amended -

(a) by the substitution of section 27 (1)(a) of the following paragraph:

(a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated, or longer, if specifically so requested by competent authorities before the expiration of the 5 year period; ~~[and]~~

Amendment of section 31 of Act No 13 of 2012

44. Section 31 of the Principal Act is herewith amended -

(a) by the substitution of section 31(1) (a) of the following paragraph:

(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 -

Amendment of Section 33 of Act No 13 of 2012

45. 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, irrespective of the size of the transaction -

(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) For purposes of this section –

'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 days after the suspicion was formed.

[5](6) 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."

Amendment of section 34 of the Act No 13 of 2012

46. The Principal Act is amended by the substitution of section 34 with the following provision:

"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.”

Amendment of Section 35 of Act No 13 of 2012

47. Section 35 of the Principal Act is hereby amended -

(a) by the substitution of section 35(6)(d) of the following paragraph:

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

Amendment of Section 35 of Act No 13 of 2012

48. The Principal Act is amended by the insertion of Section 35A after section 35(19) with the following section:

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 –

 (aa) all sums of money received, expended and distributed, specifying the purpose of any such receipt, expense and distribution;

 (bb) all sales and purchases made by the organisation;

 (cc) the assets and liabilities of the organisation;

 (dd) the name of the beneficial owner, if any; and

 (ee) 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 the 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, adopted under Chapter VII of the Charter of the United Nations, relating to the prevention,

suppression and disruption of terrorism and proliferation of weapons of mass destruction and the financing thereof. ~~verify and screen potential beneficiaries and partners against the United Nations Security Council Sanctions Lists, issued under Chapter VI of the United Nations Charter.~~

(10) For purposes of this section, "higher risk jurisdictions" means jurisdictions that carries a higher risk for money laundering or terrorist financing or proliferation financing as determined by the Centre.

Amendment of Section 39 of Act No 13 of 2012

49. The Principal Act is amended by the substitution of Section 39 with the following provision:

"Foreign branches, subsidiaries or head office

39 (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 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 and proliferation financing risk management purposes;

(b) the provision, at group-level compliance, audit, and/or anti-money laundering [and] combatting the terrorist financing and proliferation 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 and proliferation 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 and proliferation 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."

Amendment of Section 42 of Act No 13 of 2012

50. Section 42 of the Principal Act is amended –

(a) by substitution of section 42 (1) of the following provision:

- (1) If the Centre, after consulting an accountable or reporting institution, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or may constitute money laundering, [for the] financing of terrorism or proliferation; it may direct the accountable or reporting institution in writing not to proceed with the carrying out of that transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period determined by the Centre, which may not be more than 90 working days, in order to allow the Centre –

Insertion of section 44A of the Act No 13 of 2012

51. The following section is inserted after section 44 of the Principal Act:

“Sharing of Information between Accountable and Reporting Institutions

44A. (1) Notwithstanding the provisions dealing with confidentiality and secrecy in the Banking Institutions Act, (No. 2 of 1998) or any other secrecy provision in similar legislation prohibiting the sharing of information amongst Accountable and Reporting Institutions, the Director may, in furtherance of the objects of this Act, determine the nature of and manner in which, information may be shared between Accountable and Reporting Institutions, to strengthen efforts to combat money laundering, terrorist financing or proliferation financing activities.

(2) The sharing of information in terms of (1) shall be limited to:

- (a) the furtherance of the investigation and reporting of suspicious transactions in terms of this Act;
or
(b) the furtherance of compliance of the establishment of the identity of a client and/or beneficial owner(s) in terms of this Act.”

Amendment of Section 47 of Act No 13 of 2012

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

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

Amendment of Section 48 of Act No 13 of 2012

53. Section 48 of the Principal Act is hereby amended –

(a) by the substitution of Section 48(3)(a) with the following provision:

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

(b) by the substitution of section 48(8) with the following provision:

(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.

Amendment of Section 49 of Act No 13 of 2012

54. The Principal Act is amended by the substitution of Section 49 with the following provision:

Protection of confidential information

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

(a) within the scope of that person's powers and duties in terms of any legislation;

(b) for the purpose of carrying out this Act;

(c) with the permission of the Centre;

~~[(d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
(e) in terms of an order of a court.]~~

Amendment of Section 50 of Act No 13 of 2012

55. The Principal Act is amended by the substitution of the heading of Section 50 with the following heading:

Protection of accountable or reporting institutions or other providers of information

Amendment of Section 56 of Act No 13 of 2012

56. 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.]~~

~~(9) [(9)]~~ Any financial penalty imposed must be paid into ~~[the bank account of the Fund,]~~ an account specified in the relevant notice, 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.

Amendment of Schedules of Act No 13 of 2012

36. The Principal Act is amended by the substitution of Schedule 1 with the following provision:

“SCHEDULE 1

ACCOUNTABLE INSTITUTIONS

(SECTION 2)

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

- (a) Buying and selling of real estate for cash or otherwise;
- (b) Managing of client money, securities, bank or securities accounts or other assets;
- (c) Facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements;
- (d) Creation, operation or management of legal persons or legal and commercial arrangements;
- (e) Buying and selling of business entities, or parts thereof; and
- (f) Buying and selling of legal rights.

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

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

- (a) acting as a formation agent of legal persons;
- (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (c) providing a registered office; business address or office accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal or commercial arrangement;
- (d) acting as (or arranging for another person to act as) a trustee of a trust; and

- (e) acting as (or arranging for another person to act as) a nominee shareholder for another person.
- 4. A person or institution that carries on “banking business” or who is “receiving funds from the public” as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998).
- 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 registered in terms of the Long-Term Insurance Act No. 5 of 1998 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.

Amendment of Schedules of Act No 13 of 2012

37. The Principal Act is amended by the substitution of Schedule 3 with the following provision:

“SCHEDULE 3

REPORTING INSTITUTIONS

(SECTION 2)

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