



Republic of Namibia
Annotated Statutes

Financial Intelligence Act 13 of 2012

(GG 5096)

brought into force on 21 December 2012 by GN 304/2012 (GG 5104)

as amended by

**Prevention and Combating of Terrorist and Proliferation
Activities Act 4 of 2014** (GG 5490)

brought into force on 1 July 2014 by GN 80/2014 (GG 5497)

Government Notice 339 of 2019 (GG 7049)

under the authority of section 2(2)(a) of the Act;

came into force on date of publication: 15 November 2019

Abolition of Payment by Cheque Act 16 of 2022 (GG 7995)

brought into force on 15 March 2023 by GN 47/2023 (GG 8050)

Financial Intelligence Amendment Act 6 of 2023 (GG 8139)

came into force on date of publication: 21 July 2023

The Act is also amended by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force. Therefore, the amendments made by that Act are not reflected here.

ACT

To provide for the establishment of the Financial Intelligence Centre as the national centre responsible for collecting, requesting, receiving and analysing suspicious transaction reports and suspicious activity reports which may relate to possible money laundering, the financing of terrorism or proliferation; to provide for the objects, powers and functions of the Centre; to provide for the combating of money laundering, the financing of terrorism and proliferation; to provide for the establishment of the Anti-Money Laundering and Combating of the Financing of Terrorism and Proliferation Council, and for its functions; to provide for the registration of accountable and reporting institutions; to provide for the powers and functions of the supervisory bodies; to empower the Minister to appoint an appeal board to hear and decide appeals against decisions of the Centre or supervisory bodies; and to provide for incidental matters.

[The long title is amended by Act 4 of 2014.]

(Signed by the President on 24 December 2012)

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY PROVISIONS

Section

1. Definitions
2. Application of Act to accountable and reporting institutions
3. Application of Act to supervisory and regulatory bodies
- 3A. Application of Act to beneficial owners and prominent influential persons
[Section 3A is inserted by Act 6 of 2023.]
4. Application of Act to Registrar of Companies and Close Corporations
5. Application of Act to Master of High Court
6. Application of Act when in conflict with other laws

PART 2 FINANCIAL INTELLIGENCE CENTRE AND ITS ADMINISTRATION AND STAFF

7. Establishment of Financial Intelligence Centre
8. Objects of Centre
9. Powers and functions of Centre
10. Administrative powers of Centre
11. Appointment and removal of Director
- 11A. Acting Director
[Section 11A is inserted by Act 6 of 2023.]
12. Responsibilities of Director
13. Staff of Centre
14. Funds of Centre
15. Audit
16. Delegation

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

[The heading of PART 3 is amended by Act 4 of 2014 to add the words “and Proliferation” - which have been capitalised here, although the amending Act did not specify this. The heading of PART 3 is further amended by Act 6 of 2023 to add the words “BOARD OF CENTRE AND”.]

- 16A. Establishment of Board
- 16B. Disqualification for appointment as member of Board
- 16C. Meetings of Board
- 16D. Term of office and remuneration
- 16E. Committees of Board
- 16F. Vacation of office by members of Board
- 16G. Conflict of interest and disclosure of interest by members of Board
[Sections 16A-16G are inserted by Act 6 of 2023.]
17. Establishment of Council
18. Constitution, conditions of office and vacation of office
19. Powers and functions of Council
20. Meetings and procedures

PART 4
MONEY LAUNDERING AND FINANCING OF TERRORISM OR PROLIFERATION
CONTROL MEASURES, DUTY TO IDENTIFY CLIENTS, CONDUCT ONGOING
AND ENHANCED DUE DILIGENCE, KEEP RECORDS AND REPORT
SUSPICIOUS TRANSACTIONS AND SUSPICIOUS ACTIVITIES

[The heading of Part 4 is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”; the added words have been capitalised here, although the amending Act did not specify this.]

- 20A. Risk management, risk assessment and risk-based anti-money laundering and combating financing of terrorism and proliferation programs
[Section 20A is inserted by Act 6 of 2023.]
21. Identification when business relationship is established or single transaction is concluded
- 21A. Accountable institutions to identify and verify beneficiaries
[Section 21A is inserted by Act 6 of 2023.]
22. Identification when transaction is concluded in the course of business relationship
23. Risk clients
- 23A. Measures related to prominent influential persons
[Section 23A is inserted by Act 6 of 2023.]
24. On-going and enhanced due diligence
25. Identification and account-opening for cross-border correspondent banking relationships
26. Records to be kept of business relationships and transactions
27. Period for which records must be kept
28. Centralisation of records
29. Records may be kept by third parties
30. Admissibility of records
31. Centre has access to records
32. Cash transactions above prescribed limits
33. Suspicious transactions and suspicious activities
34. Electronic transfers of money to, from and within Namibia
35. Obligations of and reporting by supervisory bodies
- 35A. Powers of Centre in relation to non-profit organisations
- 35B. Application of sections 31, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62 and 65
[Sections 35A-35B are inserted by Act 6 of 2023.]
36. Declaration of cross border movement of cash and bearer negotiable instruments amounting to or exceeding an amount determined by the Centre
37. Powers of officers of Customs and Excise and Post Office in respect of cash and bearer negotiable instruments being conveyed into or out of Namibia
38. Making declarations on cash and bearer negotiable instruments available to the Centre
39. Accountable institutions with foreign branches and subsidiaries
[Section 39, including its heading, is substituted by Act 6 of 2023.]
40. Reporting procedures
41. Continuation of suspicious transactions
42. Intervention by Centre
43. Monitoring orders
44. Reporting duty not affected by confidentiality rules
- 44A. Sharing of information between accountable and reporting institutions
[Section 44A is inserted by Act 6 of 2023.]
45. Protection of persons making reports
46. Tipping off
47. Reports made to Centre not admissible as evidence
[Section 47, including its heading, is substituted by Act 6 of 2023.]
48. Access to information held by Centre
49. Protection of confidential information
50. Protection of providers of information
[The heading of section 50 is substituted by Act 6 of 2023.]

PART 5
COMPLIANCE AND ENFORCEMENT OF ACT

51. Exhausting of other measures before penalties
52. Appointment of inspectors
53. Inspections
54. Directives
55. Enforceable undertakings and enforcement
56. Administrative sanctions
57. Appeal board
58. Appeals
59. Referral of suspected offences to competent authorities or Prosecutor-General
60. Application to court
61. Powers of authorised officers
62. Release of property, record, report or document seized

PART 6
OFFENCES AND PENALTIES

63. Offences in general
64. Jurisdiction of magistrates courts in respect of offences
65. Offences committed by person acting in official capacity

PART 7
MISCELLANEOUS

66. Act not to limit powers of investigation authorities
 67. Regulations
 68. Indemnity
 69. Service of notices
 70. Exemptions
 71. Documents tracking
 72. Repeal of laws
 73. Transitional provisions and savings
 74. Short title and commencement
- SCHEDULE 1 Accountable Institutions
- SCHEDULE 2 Supervisory Bodies
- SCHEDULE 3 Reporting Institutions
- SCHEDULE 4 Regulatory Bodies
- SCHEDULE 5 Categories of Natural Persons Regarded as Beneficial Owners
[Schedule 5 is inserted by Act 6 of 2023.]
- SCHEDULE 6 Prominent Influential Persons
[Schedule 6 is inserted by Act 6 of 2023.]

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

[The Act uses both the typically British spelling “traveller” and the typically American spelling “traveler”, along with the typically American spelling “traveling”. The Act also uses both the typically British spelling “licence” and “practise” (as a verb) and the typically American spelling “license” and “practice” (as a verb), as well as in related words. All spelling is reproduced here as it appears in the *Government Gazette*.

The spacing used in the headings of the Parts is inconsistent, as reproduced below.]

PART 1
PRELIMINARY PROVISIONS**Definitions**

1. (1) In this Act, unless the context indicates otherwise -

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

- (a) branches, associates or subsidiaries outside of that person or institution;
- (b) a person employed or contracted by such person or institution; and
- (c) an agent of such person or institution;

[The definition of “accountable institution” is substituted by Act 6 of 2023.]

“authorised officer” means any member of -

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

(b)

[Paragraph (b) is deleted by Act 6 of 2023.]

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

(d)

[Paragraph (d) is deleted by Act 6 of 2023.]

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

[Paragraph (e) is substituted by Act 6 of 2023.]

(f)

[Paragraph (f) is deleted by Act 6 of 2023.]

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

“Bank” means the Bank of Namibia established by the Bank of Namibia Act, 1997 (Act No. 15 of 1997);

[The Bank of Namibia Act 15 of 1997 has been replaced by the Bank of Namibia Act 1 of 2020.]

“bearer negotiable instrument” for the purposes of this Act, means any instrument that may on demand by the bearer thereof be converted to the currency of Namibia or that of another country and includes, amongst others, cheques, promissory notes and money orders;

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

Financial Intelligence Act 13 of 2012

- (a) for the purposes of this Act, ultimately owns or controls -
 - (i) a client or natural person; or
 - (ii) a natural person on whose behalf a transaction is being concluded; or
- (b) exercises ultimate effective ownership or control over -
 - (i) a legal person;
 - (ii) a trust or other legal arrangement;
 - (iii) the proceeds of a life insurance policy or other related investment policy when an insured event occurred; or
 - (iv) a partnership,

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

[The definition of “beneficial owner” is substituted by Act 6 of 2023.]

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

[The definition of “Board” is inserted by Act 6 of 2023.]

“business relationship” means an arrangement between a client and an accountable or reporting institution for the purpose of concluding transactions on a regular basis;

“cash” means -

- (a) coin and paper money of Namibia or of another country which coin or paper money is designated as legal tender and which circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
- (b) travelers’ cheques; or
- (c)

[Paragraph (c) is deleted by Act 16 of 2022.]

- (d) payment instrument, but only in respect of stored value;

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

“client” means a person who has entered into a business relationship or a single transaction with an accountable or reporting institution, and the word “customer” has a corresponding meaning;

“close associate”, when used in relation to a prominent influential person, means an individual who is closely connected to the prominent influential person, either socially or professionally, and includes, but is not limited to, an individual who has a close business relationship with the prominent influential person such as the -

- (a) business partner of the prominent influential person; or

- (b) owner or beneficial owner of a legal person, trust, partnership or other legal arrangement which is associated with the prominent influential person;

[The definition of “close associate” is inserted by Act 6 f 2023.]

“competent authority” means any supervisory body, the Namibian Police Force, the Anti-Corruption Commission, the Namibia 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;

[The definition of “competent authority” is substituted by Act 6 of 2023.]

“correspondent banking” means the provision of banking, payment and other services by one bank “the correspondent bank” to another bank “the respondent bank” to enable the latter to provide services and products to its clients or persons with similar relationships;

[The definition of “correspondent banking” is substituted by Act 6 of 2023.]

“Council” means the Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council established by section 17;

[The definition of “Council” is amended by Act 4 of 2014 to add the words “and Proliferation”.]

“customer due diligence” means a process which involves establishing the identity of a client, the identity of the client’s beneficial owners, understanding the ownership and control structure of a client in respect of legal persons, trusts, partnerships and other legal arrangements and obtaining information on the purpose and intended nature of the business relationship of the client against the knowledge of the client;

[The definition of “customer due diligence” is substituted by Act 6 of 2023.]

“Customs and Excise” means a division in the Ministry responsible for finance that is entrusted with customs and excise responsibilities as envisaged by the Customs and Excise Act, 1989 (Act No. 20 of 1998);

[The Act referred to above should be “the Customs and Excise Act, 1998” (not 1989).]

“determination” means a determination made under this Act and published by notice in the *Gazette*;

“Director”, when used in relation to the Centre, means the Director of the Centre appointed in terms of section 11;

[The definition of “Director” is inserted by Act 6 of 2023.]

“electronic transfer” means any transaction carried out on behalf of an originator person, both natural and legal, through an accountable or reporting institution in Namibia or an accountable or reporting institution in a foreign country by way of electronic means with a view to making an amount of money available to a beneficiary person at the same or another institution (the originator and the beneficiary may be the same person), and excludes debit orders and stop orders for payment of instalments and premiums;

“establish identity” means a two tier process consisting of ascertainment or collecting of certain identification information, and verification of some of the information against reliable documentation or information;

Financial Intelligence Act 13 of 2012

“family member”, when used in relation to a prominent influential person, means an individual who is related to the prominent influential person, either directly or through marriage or other form of relationship or partnership including, but is not limited to –

[The word “is” in the phrase “but is not limited to” is superfluous.]

- (a) a spouse or partner of the prominent influential person;
- (b) a sibling, including a step-sibling of the prominent influential person and sibling’s spouse or partner;

[The word “the” appears to have been omitted before the word “sibling’s”.]

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

[The definition of “family member” is inserted by Act 6 of 2023.]

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

[The definition of “Financial Action Task Force” is inserted by Act 6 of 2023.]

“financing of proliferation” means the provision of funds, assets or financial services which are used, in whole or in part, for proliferation, and “funding of proliferation” or “funding of proliferation activities” has the same meaning;

[The definition of “financing of proliferation” is inserted by Act 4 of 2014.]

“financing of terrorism” means the provision of funds, assets or financial services which are used, in whole or in part, for any terrorist activity defined in section 1 of the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014) and “funding of terrorism” or “funding of terrorist activities” has the same meaning;

[The definition of “financing of terrorism” is substituted by Act 4 of 2014.]

“forfeiture” means the official transfer of property to the State;

“Fund” means the Criminal Assets Recovery Fund established by section 74 of the Prevention of Organised Crime Act;

“Government” means the Government of the Republic of Namibia;

“Governor” means the Governor as referred to in section 1 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997);

[The Bank of Namibia Act 15 of 1997 has been replaced by the Bank of Namibia Act 1 of 2020.]

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

[The definition of “initial token offering” is inserted by Act 6 of 2023.]

“inspector” means a person appointed in terms of section 53 to conduct inspections in terms of this Act;

“Intelligence Service” means the Namibia Central Intelligence Service established under the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997);

“investigating authority” means an authority that in terms of legislation may investigate unlawful activities;

“Minister” means the Minister responsible for finance;

“money laundering” or “money laundering activity” means -

- (a) the act of a person who -
 - (i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
 - (ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or
 - (iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;

where -

- (aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
 - (bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity; and
- (b) any activity which constitutes an offence as defined in section 4, 5 or 6 of the Prevention of Organised Crime Act;

“monitoring” means -

- (a) the monitoring by an accountable institution of a transaction or an activity carried out by a client to ensure that such transaction or activity is consistent with the knowledge that the accountable institution has of the client and risk profile of the client, including, where necessary, the source of funds;
- (b) the enhanced monitoring by an accountable institution of a transaction or an activity of an identified high-risk client in order to timeously identify a suspicious transaction or activity; or
- (c) the screening by an accountable or a reporting institution of the name of a client or potential client and any name involved in a transaction against any sanction list issued by the United

Nations Security Council under Chapter VII of the United Nations Charter, for purposes of combating money laundering and the financing of terrorism or proliferation activities;

[The definition of “monitoring” is inserted by Act 6 of 2023.]

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

[The definition of “Namibia Revenue Agency” is inserted by Act 6 of 2023.]

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

**[The definition of “non-profit organisation” is inserted by Act 6 of 2023.
The phrase “other type of good works” should be either “other types of good works” or
“another type of good works” to be grammatically correct.]**

“payment instrument” has the meaning attributed to that term in section 1 of the Payment System Management Act, 2003 (Act No. 18 of 2003);

**[The Payment System Management Act 18 of 2003 has been replaced by the
Payment System Management Act 14 of 2023.]**

“person” means a natural or legal person;

“prescribed” means prescribed by regulation;

“Prevention of Organised Crime Act” means the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

“proceeds of unlawful activities” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act;

“proliferation” means the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling, supply, sale or use of nuclear, ballistic, chemical, radiological or biological weapons or any other weapon capable of causing mass destruction, and their means of delivery and related materials, including both technologies and dual-use goods used for non-legitimate purposes, including technology, goods, software, services or expertise, in contravention of the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014) or, where applicable, international obligations;

[The definition of “proliferation” is inserted by Act 4 of 2014.]

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

[The word “is” in the phrase “but is not limited to” is superfluous.]

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

[The definition of “prominent influential person” is inserted by Act 6 of 2023.]

“property” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act;

“prospective client” means a person seeking to conclude a business relationship or a single transaction with an Accountable institution;

[The word “Accountable” should not be capitalised.]

“records” means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

“Registrar of Companies and Close Corporations” means the Registrar of Companies as defined in the Companies Act, 2004 (Act No. 28 of 2004) and the Registrar of Close Corporations as defined in the Close Corporation Act, 1988 (Act No. 26 of 1988);

[The title of the Act should be “Close Corporations Act, 1988”, with “Corporations” being plural.]

“regulation” means a regulation made under section 68;

“regulatory body” means a functionary or institution set out in Schedule 4;

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

[The definition of “religious leader” is inserted by Act 6 of 2023.]

“reporting institutions” means a person or institution set out in Schedule 3;

“risk clients” means any person, natural or legal whose activities pose a risk for money laundering or financing of terrorism or proliferation activities;

[The definition of “risk clients” is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”.]

“risk management systems” means policies, procedures and controls that enables an accountable institution to establish the risk indicators used to characterise clients, products and services to different categories of risk (low, medium or high risk) with the aim of applying proportionate mitigating measures in relation to the potential risk of money laundering or financing of terrorism or proliferation in each category of risk established;

[The definition of “risk management systems” is amended by Act 4 of 2014. The verb “enables” should be “enable” to accord with the subject “policies, procedures and controls”.]

“senior management” with respect to a legal person or trust, includes a director, controlling officer, partner or any person who is concerned with the management of its affairs;

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

[The definition of “shell bank” is inserted by Act 6 of 2023.]

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

[The definition of “single transaction” is substituted by Act 6 of 2023.]

“supervisory body” means a functionary or institution set out in Schedule 2;

“transaction” means a transaction concluded between a client and an accountable or reporting institution in accordance with the type of business carried on by that institution, and includes attempted transactions;

“this Act” includes regulations and determinations;

“unlawful activity” has the meaning assigned to it in section 1 of the Prevention of Organised Crime Act;

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

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

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

[The definition of “virtual asset” is inserted by Act 6 of 2023.]

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

- (a) initial token offering;
- (b) exchanging one virtual asset for another virtual asset;
- (c) exchanging virtual asset for fiat currencies or fiat currencies for virtual assets;

[The noun “virtual asset” should be “virtual assets” to be grammatically correct.]

- (d) transfer of virtual assets;
- (e) operating a virtual asset exchange;
- (f) safekeeping of virtual assets or instruments enabling control over virtual assets;
- (g) administration of virtual assets or instruments enabling control over virtual assets;
- (h) participation in and provision of financial services related to a token issuer’s offer and sale of virtual assets or the token issuers offer or sale of virtual asset; or

**[To be grammatically correct, the closing phrase of paragraph (h) should read
“...the token issuer's offer or sale of virtual assets; or”.]**

- (i) any other activities that may be determined or prescribed by the Minister under any law regulating virtual assets.

[The definition of “virtual asset service provider” is inserted by Act 6 of 2023.]

Application of Act to accountable and reporting institutions

2. (1) This Act applies to all accountable and reporting institutions set out in Schedule 1 and Schedule 3, respectively.

(2) The Minister, by notice in the *Gazette*, may amend the list of accountable or reporting institutions in Schedule 1 or Schedule 3 to -

- (a) add to the list any institution or category of institutions if the Minister reasonably believes that institution or category of institutions is used, and is likely to be used in future, for money laundering or financing of terrorism or proliferation purposes;
- (b) delete any institution or category of institutions from the list if the Minister reasonably believes that institution or category of institutions is not used, and is not likely to be used in future, for money laundering or financing of terrorism or proliferation; or
- (c) make technical changes to the list.

[Subsection (2) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism” throughout.]

(3) Before the Minister amends Schedule 1 or Schedule 3 under subsection (2)(a) or (b), the Minister must consult the Council and the Centre, and -

- (a) if only an individual institution will be affected by the proposed amendment, give the institution at least 60 days written notice to submit written representations to the Minister; or
- (b) if a category of institutions will be affected by the proposed amendment, by notice in the *Gazette* give institutions belonging to that category at least 60 days written notice to submit written representations to the Minister.

Application of Act to supervisory and regulatory bodies

3. (1) This Act applies to all supervisory bodies set out in Schedule 2, but applies only to the regulatory bodies set out in Schedule 4 to a limited extent, and does not impose the same obligations to the regulatory bodies as it impose to the supervisory bodies.

[The verb “impose” in the last phrase in subsection (1) should be “imposes” to be grammatically correct. Correct phrasing would be to impose obligations “on” supervisory bodies rather than “to” supervisory bodies.]

(2) The Minister may, by notice in the *Gazette*, amend the list of supervisory or regulatory bodies in Schedule 2 or Schedule 4, respectively, to -

- (a) add to the list any supervisory or regulatory body which in terms of legislation performs supervisory or regulatory functions in relation to any category of accountable institutions;

- (b) delete any supervisory or regulatory body or category of supervisory or regulatory body from the list if the Minister reasonably believes there is need to do so; or
- (c) make technical changes to the list.

(3) Before the Minister amends Schedule 2 or Schedule 4 under subsection (2)(a) or (b), the Minister must consult the Council and the Centre, and give the Council, Centre and the supervisory or regulatory body concerned, at least 60 days written notice to submit written representations to the Minister.

Application of Act to beneficial owners and prominent influential persons

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

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

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

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

[Section 3A is inserted by Act 6 of 2023.]

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.

[Subsections (2)-(7) are deleted by Act 6 of 2023.]

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.

[Subsections (2)-(8) are deleted by Act 6 of 2023.]

Application of Act when in conflict with other laws

6. If any conflict relating to the matters dealt with in this Act arises between this Act and any other law, a provision of this Act prevails.

PART 2

ESTABLISHMENT OF FINANCIAL INTELLIGENCE CENTRE AND APPOINTMENT OF DIRECTOR AND STAFF OF CENTRE

Establishment of Financial Intelligence Centre

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

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

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

[Section 7 is substituted by Act 6 of 2023.]

Objects of Centre

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

[Section 8 is amended by Act 4 of 2014 and substituted by Act 6 of 2023.]

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 by a law enforcement agency or a financial intelligence unit of any country based on information in its possession or information received from another source;

- (c) to disseminate information to which it has access to competent authorities and foreign agencies with powers and duties similar to that of the Centre using dedicated and secure channels for such dissemination;
- (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 requests for assistance made or received by supervisory or regulatory bodies relating to money laundering and its predicate offences and financing of terrorism or proliferation and outcomes of such requests;
- (f) to coordinate, at an operational and strategic level, the activities of the various persons, bodies or institutions involved in the combating of money laundering and the financing of terrorism or proliferation;
- (g) to inform, advise and cooperate with competent authorities and exchange information, available to the Centre, with these authorities for the purpose of administration, intelligence collection, capacity development and training, law enforcement and prosecution;
- (h) to supervise, monitor and enforce compliance with this Act, or any regulations, directives, determinations, notices or circulars issued in terms of the Act, by accountable and reporting institutions and give guidance to 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;
- (j) to monitor and supervise non-profit organisations identified in terms of this Act for compliance with measures to combat the financing of terrorism; and
- (k) to apply consolidated group supervision to all aspects of business conducted by a group of institutions of which an accountable or reporting institution forms part of, as may be determined by the Centre.

[The word “of” after the word “part” is superfluous.]

[Subsection (1) is amended by Act 4 of 2014 and substituted by Act 6 of 2023.]

Financial Intelligence Act 13 of 2012

- (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) consult a foreign financial intelligence unit, a competent authority or a reporting institution in order to provide or receive feedback on the effectiveness of information sharing arrangement and the quality of information exchanged;

[Paragraph (d) is substituted by Act 6 of 2023. The word “arrangement” should be “arrangements” to be grammatically correct.]

- (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;

[Paragraph (f) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism” throughout.]

- (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.

Administrative powers of Centre

10. The Centre 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 Board;

- (b) appoint employees and receive seconded personnel to posts on its staff establishment in accordance with staff policies and procedure of the Centre;
- (c) obtain the services of any person by agreement, including any state department, functionary or institution, to perform any specific act or function;
- (d) engage in any lawful activity, whether alone or together with any other organisation in Namibia or elsewhere, aimed at promoting its objects;
- (e) establish and implement procedures for the secure and proper management of confidential information, including procedures for accessing, handling, storage, disseminating and protection of confidential information; and
- (f) establish secure facilities for the Centre with access to the secured facilities and information being limited to the Director, the staff members of the Centre and persons authorised by the Director.

[Section 10 is substituted by Act 6 of 2023.]

Appointment and removal of Director

11. (1) The Minister, upon recommendation of the Board, must appoint a suitably qualified, fit and proper person as the Director.

(2) A person appointed as Director holds office -

- (a) for a term of five years, which term may be renewed; and
- (b) on terms and conditions set out in a written employment contract.

(3) A person may not be appointed as the Director, unless -

- (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997); and
- (b) the Minister, after evaluating the gathered information, is satisfied that the person may be so appointed without the possibility that such person may pose a security risk or that such person may act in any manner prejudicial to the objects of this Act or the functions of the Centre.

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

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

- (a) on the grounds of misconduct, incapacity or incompetence;
- (b) based on the outcome of a security screening investigation referred to in subsection (4); or
- (c) for any other duly justified reason,

in line with the procedures contemplated in this section.

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

- (a) the outcome of any enquiry, in accordance with this section, as to whether grounds of misconduct, incapacity or incompetence or any other duly justified reason exist; or
- (b) the outcome of a security screening investigation referred to in subsection (4).

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

(8) The committee must -

- (a) consist of not less than three and not more than five persons, and at least one of the members of the committee must be a legal practitioner with more than 15 years of experience or a retired judge;
- (b) be chaired by the legal practitioner or the retired judge referred to in paragraph (a); and
- (c) enquire into the matter and report on the matter to the Minister.

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

(10) The Director vacates office if the Director -

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

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

[Section 11 is substituted by Act 6 of 2023.]

Acting Director

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

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

[Section 11A is inserted by Act 6 of 2023.]

Responsibilities of Director

12. The Director is responsible for -

- (a) the performance of the functions assigned or conferred on the Centre by or under this Act;

[The word “to” should appear after the word “assigned” to make paragraph (a) grammatically correct.]

- (b) implementation and administration of applicable provisions of this Act;
- (c) reporting to the Board, subject to the provisions of this Act;
- (d) preparing and submitting the annual report to the Board;
- (e) the management of the staff, resources and administration of the Centre, including the allocation of resources for carrying out the functions of the Centre and making arrangements for the secure management of the information received and held by the Centre;
- (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;
- (h) providing advice and guidance to assist accountable institutions, reporting institutions and supervisory bodies to comply with their obligations under this Act;
- (i) advising the Council on aligning the National Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation framework with international Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation standards and best practices;
- (j) the implementation of general policies of the Centre; and
- (k) negotiating and signing contracts on behalf of the Centre in line with the rules for good governance of the Centre and the conduct of its business.

[Section 12 is amended by Act 4 of 2014 and substituted by Act 6 of 2023.]

Staff of Centre

13. (1) For the purposes of assisting the Director in the performance of the functions of the Centre, the Director, in accordance with the staff establishment approved by the Board, may appoint persons as staff members of the Centre.

(2) The Director may 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.

Financial Intelligence Act 13 of 2012

(4) A person who is to perform functions on behalf of the Centre, and the performance of such functions requires the person to have access to sensitive and confidential information of the Centre may not be appointed or seconded to perform such functions of the Centre unless -

[The introductory phrase should read as follows to be grammatically correct: "A person who is to perform functions on behalf of the Centre, where the performance of such functions requires the person to have access to sensitive and confidential information of the Centre, may not be appointed or seconded to perform such 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 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, be subjected to a further security screening investigation as contemplated in subsection (4)(a).

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

- (a) trained and understands his or her responsibilities in handling and disseminating of sensitive and confidential information; and
- (b) granted the appropriate security clearance in accordance with the nature of his or her functions, where applicable.

[Section 13 is substituted by Act 6 of 2023.]

Funds of Centre

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

- (a) money appropriated annually by Parliament for the purposes of the Centre;
- (b) any Government grants made to the Centre;
- (c) money made available to the Centre from the Fund; and
- (d) any other money legally acquired by the Centre.

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

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

[Subsection (3) is substituted by Act 6 of 2023.]

Audit

15. All the financial matters of the Centre relating to the Centre's exercising of its powers and performance of its functions in terms of this Act must be kept separate from that of the Bank and must be audited separately.

Delegation

16. (1) The Director may delegate, in writing, any of the powers entrusted to the Centre in terms of this Act to any employee of the Centre, or assign an employee of the Centre to perform any of the functions imposed on the Centre in terms of this Act.

(2) A delegation or instruction in terms of subsection (1) -

- (a) is subject to the limitations or conditions that the Director may impose; and
- (b) does not divest the Director of the responsibility concerning the exercise of the delegated power or the performance of the assigned function.

(3) The Director may confirm, vary or revoke any decision taken by an employee in consequence of a delegation or instruction in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

PART 3

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

[The heading of PART 3 is amended by Act 4 of 2014 to add the words "and Proliferation" - which have been capitalised here, although the amending Act did not specify this. The heading of PART 3 is further amended by Act 6 of 2023 to add the words "BOARD OF CENTRE AND".]

Establishment of Board

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

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

[The word "field" in paragraph (c) appears to be superfluous.]

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

(3) For the purposes of appointment of persons as members of the Board in terms of this section, the Minister must, in at least two daily newspapers widely circulating throughout Namibia

or in any other manner, invite interested persons who comply with subsection (1) and who are fit and proper persons to be considered for appointment as members of the Board.

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

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

(6) The Board is responsible for -

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

[Section 16A is inserted by Act 6 of 2023.]

Disqualification for appointment as member of Board

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

- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence;
- (b) is a member of the National Assembly, National Council, local authority council or regional council, unless the person resigns as a member of the National Assembly, National Council, local authority council or regional council;
- (c) during the period of three months preceding the date of the proposed appointment as a member of the Board, has been a director, officer, employee or owner of, or a shareholder in, an accountable or a reporting institution or an identified non-profit organisation or provides professional services to the Centre;
- (d) has been disqualified under any law dealing with companies to hold a position of a director of a company;
- (e) fails to disclose prior to his or her appointment that he or she has been convicted of any offence in terms of any laws dealing with companies or insolvency;
- (f) has not attained the age of 21 years;

- (g) is an unrehabilitated insolvent;
- (h) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine;
- (i) has been convicted of an offence involving dishonesty in Namibia or elsewhere;
- (j) has been disqualified or suspended from practicing a profession on the ground of unprofessional conduct or dismissed from a position of trust due to misconduct;
- (k) has under any law been declared by a competent court to be mentally ill; or
- (l) is a member of the Council.

[Section 16B is inserted by Act 6 of 2023.]

Meetings of Board

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

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

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

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

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

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

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

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

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

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

[Section 16C is inserted by Act 6 of 2023.]

Term of office and remuneration

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

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

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

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

[The reference to “such remuneration” is unclear, as it is not tied to anything further in subsection (4).]

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

[Section 16D is inserted by Act 6 of 2023.]

Committees of Board

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

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

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

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

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

(6) The Board may at any time -

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

(b) dissolve or reconstitute a committee.

[Section 16E is inserted by Act 6 of 2023.]

Vacation of office by members of Board

- 16F.** (1) The office of a member of the Board becomes vacant if the member -
- (a) becomes subject to any of the disqualifications referred to in section 16B;
 - (b) resigns from office, after giving the Minister 30 days written notice of his or her intention to resign;
 - (c) has been absent from three consecutive meetings of the Board without leave of the Board; or
 - (d) is removed from office under subsection (2).

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

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

[Section 16F is inserted by Act 6 of 2023.]

Conflict of interest and disclosure of interest by members of Board

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

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

[The singular word “function” may have been intended to be the plural word “functions”, as in subsection 3(a) below.]

(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 accordance with section 16F(2).

- (8) For the purposes of this section, a “close relative” means -
- (a) a spouse or partner of a board member;
 - (b) a child, step-child or adopted child of a board member and the child’s spouse or partner;
 - (c) a sibling, including a step-sibling of the board member and sibling’s spouse or partner; or

[The word “the” appears to have been omitted before the word “sibling’s”.]

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

[The word “step-parent” appears without a hyphen in the Government Gazette, as reproduced above.]

[Section 16G is inserted by Act 6 of 2023.]

Establishment

17. There is established an Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council.

[Section 17 is amended by Act 4 of 2014 to add the words “and Proliferation”.]

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 of the Ministry responsible for finance;
- (c) the Inspector-General of the Namibian Police Force;
- (d) the Executive Director of the Ministry responsible for trade;
- (e) the Executive Director of the Ministry responsible for justice;
- (f) the Executive Director of the Ministry responsible for safety and security;
- (g) the Director-General of the Namibian Central Intelligence Service;
- (h) the Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority;
- (i) the Director-General of the Anti-Corruption Commission;
- (j) the chairperson of the Bankers Association;
- (k) one or more persons representing associations representing categories of accountable or reporting institutions requested by the Minister to nominate representatives;
- (l) one person representing supervisory bodies requested by the Minister to nominate representatives;
- (m) the Executive Director of the Ministry responsible for international relations and cooperation;
- (n) the Prosecutor-General;
- (o) the Commissioner of the Namibia Revenue Agency;
- (p) the Chief Executive Officer of the Business and Intellectual Property Authority; and
- (q) the Master of the High Court.

[Subsection (1) is substituted by Act 6 of 2023.]

(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 representation on the matter to the Minister or to any other person designated by the Minister for that purpose; and

[Paragraph (b) is substituted by Act 6 of 2023.]

- (c) consider any representation made.

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

[Subparagraph (i) is amended by Act 4 of 2014 to add the words "or proliferation" after "terrorism".]

- (ii) the exercise by the Minister of the powers entrusted to the Minister related to policy and coordination under this Act;

[Subparagraph (ii) is substituted by Act 6 of 2023 to add the words "related to policy and coordination".]

- (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;

[Paragraphs (c)-(f) are deleted by Act 6 of 2023.]

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

Meetings and procedures

20. (1) The chairperson of the Council, or in his or her absence, the deputy Chairperson, presides at meetings of the Council, or if both the chairperson and the deputy chairperson are absent from the meeting, or are unable to preside at the meeting, the members present must elect one member from among their number to preside at the meeting.

(2) The Council -

- (a) must, at a time and place determined by the chairperson of the Council, hold a meeting of the Council at least three times in a year;
- (b) may determine its own procedures at meetings; and
- (c) may appoint committees from its members to assist it in the performance of its functions or the exercise of its powers.

(3) Any person who is not a member of the Council may be co-opted to serve on the committees mentioned in subsection (2)(c).

(4) When a provision of this Act requires consultation with the Council on any specific matter before a decision may be taken on that matter and it is not feasible to call a meeting of the Council, that provision is satisfied if -

- (a) a proposed decision on that matter is circulated to the members of the Council; and
- (b) an opportunity is given to them individually to comment in writing on the proposed decision within a reasonable time.

(5) Despite subsection (2)(a), the chairperson of the Council or, in his or her absence, the deputy chairperson of the Council -

- (a) may convene a special meeting of the Council;
- (b) must, at the written request of the Minister or of at least three members of the Council, convene a special meeting of the Council.

(6) The majority of all the members of the Council constitute a quorum for any meeting of the Council.

(7) A decision of a majority of members of the Council present at a meeting is the decision of the Council and, if there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his or her ordinary vote.

PART 4

MONEY LAUNDERING AND FINANCING OF TERRORISM OR PROLIFERATION CONTROL MEASURES DUTY TO IDENTIFY CLIENTS, CONDUCT ONGOING AND ENHANCED DUE DILIGENCE, KEEP RECORDS AND REPORT SUSPICIOUS TRANSACTION AND SUSPICIOUS ACTIVITIES

[The heading of Part 4 is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”; the added words have been capitalised here, although the amending Act did not specify this.

The heading of Part 4 is otherwise reproduced above as it appears in the original *Government*

Gazette. There appears to be a comma missing after the word “MEASURES”, and the word “TRANSACTION” should be plural to be grammatically correct. The heading of Part 4 in the ARRANGEMENT OF SECTIONS corrects these two issues.]

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

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

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

(3) An accountable and a reporting institution must register prescribed particulars with the Centre for purposes of supervising compliance with this Act or any regulation, notice, order, circular, determination or directive issued in terms of this Act.

(4) An accountable institution must develop, adopt and implement a customer acceptance policy, internal rules, programmes, policies, procedures and controls as prescribed to effectively manage and mitigate risks of money laundering and financing of terrorism or proliferation activities.

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

- (a) approved by senior management of an accountable institution;
- (b) consistent with the national requirements and guidance; and
- (c) able to protect the systems of an accountable institution against any money laundering and financing of terrorism or proliferation activities, taking into account the results of -
 - (i) any risk assessment conducted under subsections (1) and (2); and
 - (ii) the national or sectoral money laundering and financing of terrorism or proliferation risk assessment.
- (6) The programmes referred to in subsection (4) must, amongst others, include -
 - (a) the establishment of procedures by an accountable institution to ensure high integrity standards of its employees and a system to evaluate the personal, employment and financial history of the employees;
 - (b) on-going employee training programmes, such as “Know Your Customer” programmes and instructing employees with regard to responsibilities under this Act;
 - (c) an independent audit function to check compliance with the programmes;

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

[The phrase “non-face-to-clients” may have been intended to be “non-face-to-face clients”.]

(7) An accountable institution must designate a compliance officer, at management level, where applicable, who -

- (a) is ordinarily resident in Namibia; and
- (b) must be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.

(8) An accountable institution must implement compliance programmes under subsection (4) at its branches and subsidiaries within or outside Namibia as provided for in section 39.

(9) An accountable institution must develop an audit function to evaluate any policies, procedures and controls developed under this section in order to test compliance with the measures taken by the accountable institution and the effectiveness of those measures.

(10) The internal rules referred to in subsection (4) must, amongst others, include -

- (a) the establishment and verification of the identity of persons whom an accountable institution must identify in terms of this Part;
- (b) the information of which records must be kept in terms of this Part;
- (c) identification of reportable transactions; and
- (d) the training of employees of an accountable institution to identify and handle suspected money laundering and financing of terrorism or proliferation activities.

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

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

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

[Section 20A is inserted by Act 6 of 2023.]

Identification when business relationship is established or single transaction is concluded

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

[Paragraph (b) is substituted by Act 6 of 2023.]

- (c) if another person is purporting to act on behalf of the prospective client, also -
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client.

[Paragraph (c) is substituted by Act 6 of 2023.]

- (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.

[Paragraph (d) is amended by Act 4 of 2014 to add the words "or proliferation" after "terrorism".]

(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; and

[Paragraph (c) is substituted by Act 6 of 2023.]

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

[Paragraph (d) is inserted by Act 6 of 2023.]

(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.

[The word “an” appears to have been accidentally omitted before “incorrect name”; the phrase should be “in an 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.

Accountable institutions to identify and verify beneficiaries

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

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

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

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

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

- (a) obtain approval of senior management of the accountable institution before it pays out any amount under the insurance policy and other investment related insurance policy;
- (b) conduct enhanced scrutiny on the whole business relationship with the policyholder; and
- (c) consider reporting a suspicious transaction in accordance with section 33.

(5) In determining whether enhanced customer due diligence measures are applicable, an accountable institution must include the beneficiary of a life insurance policy and other investment related insurance policy as a relevant factor, and if the accountable institution

determines that a beneficiary is a legal person, trust, partnership or other legal arrangement which presents a higher risk, the accountable institution must take enhanced measures, including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of pay-out of the policy.

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

[Section 21A is inserted by Act 6 of 2023.]

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 such reasonable steps in the prescribed form and manner -

- (a) to establish the identity of the client, by obtaining and verifying identification and any further information;
- (b) if the client is acting on behalf of another person, to establish also -
 - (i) the identity of that other person;
 - (ii) the client's authority to conclude that transaction on behalf of that other person; and
 - (iii) obtain or verify further information about that other person; and
- (c) if another person is acting in the transaction in question on behalf of the client, to establish 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; and
- (d) to trace, on such conditions and period as the Centre may determine, all accounts at that accountable or reporting institution that are involved in transactions concluded in the course of that business relationship.

(2) 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 subsection (1), it may not conclude any further transaction in the course of that business relationship and must immediately file a suspicious activity report.

(3) When the identity of the person referred to in subsection (2) 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) 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.

Risk clients

23. (1) Accountable institutions must have appropriate risk management and monitoring systems in place to identify clients or beneficial owners whose activities may pose a risk of money laundering, financing of terrorism or proliferation, or both.

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

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

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

- (a) obtaining approval from the 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 senior management of that accountable institution to continue the business relationship with the client; and

[The word “obtain” should be “obtaining” to make subsection (a) grammatically correct.]

- (b) taking measures to identify, as far as reasonably possible, the source of wealth and funds 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.

[Section 23 is amended by Act 4 of 2014 and substituted by Act 6 of 2023.]

Measures related to prominent influential persons

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

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

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

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

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

[Section 23A is inserted by Act 6 of 2023.]

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 and apply enhanced due diligence measures proportionate to the risk to business relations and transactions with persons, including legal persons and trusts, from or in countries identified by -
 - (i) risk assessment of the accountable institution;

- (ii) the national risk assessment; or
- (iii) the Financial Action Task Force,

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

- (c) examine as far as possible the background and purpose of transactions under paragraphs (a) and (b) and set forth in writing their findings;
- (d) keep the findings made in terms of paragraph (c) available for competent authorities and company auditors for at least five years, or longer if specifically so requested by a competent authority before the expiration of the 5 years period;

[The word “years” in the phrase “5 years period” should be “year”.]

- (e) take enhanced measures as contemplated in section 23(2) or such specific measures as may be prescribed from time to time by the Minister to counter the risks with respect to business relations and transactions specified under paragraph (b); and
- (f) conduct enhanced monitoring and due diligence when -
 - (i) any doubts arise about the veracity or adequacy of previously obtained customer identification data; or
 - (ii) there is a suspicion of money laundering or financing of terrorism or proliferation;

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

[Subsection (2) is amended by Act 4 of 2014 and substituted by Act 6 of 2023.]

(3) 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.

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;

[The verb “conduct” should be “conducts” to be grammatically correct.]

- (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 evaluating whether the respondent institution has been subject to any investigation or regulatory action on money laundering or financing of terrorism or proliferation activities;

[Paragraph (c) is substituted by Act 6 of 2023.]

- (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;

[Paragraph (e) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”.]

- (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;

[Paragraph (f) is amended by Act 4 of 2014 and substituted by Act 6 of 2023.]

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

[Paragraph (g) is substituted by Act 6 of 2023.]

- (h) not enter into, or continue with, a correspondent banking relationship with a shell bank and the employees of the accountable institution must satisfy themselves that a correspondent banking institution does not permit its accounts to be used by a shell bank.

[Paragraph (h) is inserted by Act 6 of 2023.]

(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.

Records to be kept of business relationships and transactions

26. (1) Whenever an accountable or reporting institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable or reporting institution has with the client, the accountable or reporting institution must keep records in the prescribed form and manner of -

- (a) the identity of the client;
- (b) if the client is acting on behalf of another person -
 - (i) the identity of the person on whose behalf the client is acting; and
 - (ii) the client’s authority to establish that business relationship or to conclude that single transaction on behalf of that other person;
- (c) if another person is acting on behalf of the client -
 - (i) the identity of that other person; and

- (ii) that other person's authority to act on behalf of the client;
- (d) the manner in which the identity of a person referred to in paragraph (a), (b) or (c) was established;
- (e) the nature of that business relationship or transaction;
- (f) all accounts at that accountable or reporting institution that are involved in -
 - (i) transactions concluded in the course of that business relationship; or
 - (ii) a single transaction;
- (g) in the case of a transaction -
 - (i) the amount involved; and
 - (ii) the parties to that transaction;
- (h) client or transaction files and business correspondence;
- (i) enhanced due diligence findings referred to in section 24 (2)(c) and (d);
- (j) copies of all reports filed with the Centre pursuant to sections 32, 33 and 34 and supporting documents;
- (k) the name of the person who obtained the information referred to in paragraphs (a) to (g) on behalf of the accountable or reporting institution;

[Paragraph (k) is substituted by Act 6 of 2023.]

- (kA) the results of any analysis undertaken in the course of the business relationship; and

[Paragraph (kA) is inserted by Act 6 of 2023.]

- (l) any document or copy of a document obtained by the accountable or reporting institution in order to verify a person's identity in terms of sections 21 and 22.
- (2) Records kept in terms of subsection (1) may be kept in electronic form.
- (3) The records referred to in subsection (1) must include records as may be determined by the Centre.

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

(5) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Period for which record must be kept

27. (1) An accountable or reporting institution must keep the records referred to in section 26 which relate to -

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

[Paragraph (a) is substituted by Act 6 of 2023. The word “years” in the phrase “5 years period” should be “year”, as in paragraphs (b) and (c) below.]

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

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

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

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

Centralisation of records

28. (1) The duty imposed by section 26 on an accountable or reporting institution to keep records of the matters specified in that section may, in the case of two or more accountable or reporting institutions belonging to the same group, be centralised, as prescribed and be deemed to be performed by an accountable or reporting institution within the same group on behalf of those accountable or reporting institutions, provided that such accountable or reporting institutions have free and easy access to the records.

(2) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Records may be kept by third parties

29. (1) The duties imposed by section 26 on an accountable or reporting institution to keep record of the matters specified in that section may be performed by a third party on behalf

of the accountable or reporting institution as long as the accountable or reporting institution has unrestricted access to the records.

[The word “record” should be the plural word “records” or the phrase “a record” to be grammatically correct.]

(2) If a third party referred to in subsection (1) fails to properly comply with the requirements of section 26 on behalf of the accountable or reporting institution concerned, the accountable or reporting institution is liable for that failure.

(3) If an accountable or reporting institution appoints a third party to perform the duties imposed on it by section 26, the accountable or reporting institution must provide the Centre with the prescribed particulars regarding the third party.

(4) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Admissibility of records

30. (1) A record kept in terms of sections 26 and 48, or a certified extract of that record, or a certified printout of an electronic record of which direct oral evidence of its contents may be given, is on its mere production in a court admissible as evidence in a matter before the court.

(2) Any record of an investigation conducted under this Act, any property, report or document produced or any statement is, notwithstanding any law to the contrary, admissible as evidence in any proceedings in any court for, or in relation to, an offence or any other matter under this Act or any other offence under any other law, regardless whether such proceedings are against the person who was examined, or who produced the property, record, report or document, or who made the written statement on oath or affirmation, or against any other person.

Centre has access to records

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

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

[Paragraph (a) is amended by Act 4 of 2014 and substituted by Act 6 of 2023. However, it appears that Act 6 of 2023 intended to refer to the substitution of the introductory phrase of paragraph (a) rather than the substitution of paragraph (a) in its entirety. The substitution here has been actioned on the basis of that assumption.]

- (i) an accountable institution;
- (ii) a reporting institution;
- (iii) a supervisory body;
- (iv) a regulatory body;
- (v) a law enforcement agency;

- (vi) any other person or institution that holds relevant records or information, including information on a commercially held database;
 - (vii) any office, ministry or agency within the Government; and
- (b) may examine, make extracts from or copies of those records.

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

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

Cash transactions above prescribed limits

32. (1) An accountable and reporting institution must, within the prescribed period, report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount -

- (a) is paid by the accountable or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
- (b) is received by the accountable or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

[The Act defines “accountable institution” and “reporting institution” as separate entities. Therefore, the phrase “An accountable and reporting institution” immediately following the number “(1)” should probably be “An accountable or reporting institution”, as in paragraphs (a) and (b) of subsection (1) and in subsection (2) below.]

(2) An accountable or reporting 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 or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

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

Financial Intelligence Act 13 of 2012

laundering or financing of terrorism or proliferation purposes, must, promptly after the suspicion or belief was formed, as the case may be, report to the Centre, irrespective of the size of the transaction -

**[The hanging phrase above is substituted by Act 6 of 2023.
The verb “suspect” should be “suspected” to be grammatically correct:
“...reasonably ought to have known or suspected that...”.]**

- (i) the grounds for the suspicion or belief; and
- (ii) the prescribed particulars concerning the transaction or suspicious activity.

[Subsection (1) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”.]

(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 after the suspicion or belief was formed, report to the Centre -

**[The introductory phrase of subsection (2) is
amended by Act 4 of 2014 and substituted by Act 6 of 2023.]**

- (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 -

**[The word “is” appears to have been omitted in the phrase “is or to be made” in subsection (3);
it appears that the phrase may have been intended to be “is or is to be made”,
as in subsection (4) below.]**

- (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)

[Paragraph (c) is deleted by Act 6 of 2023.]

- (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)

[Paragraph (c) is deleted by Act 6 of 2023.]

(d) in terms of an order of a court.

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

[Subsection (4A) is inserted by Act 6 of 2023.]

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

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

Electronic transfers of money to, from and within Namibia

34. (1) If an accountable 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 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 institution acts as an intermediary in a chain of electronic transfers, it must transmit all the information it receives with that electronic transfer, to the recipient institution, and the accountable institution must have risk-based policies and procedures in place to determine -

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

(4) If an accountable 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 institution is not able to obtain the prescribed originator information, it must file a suspicious transaction report.

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

[Section 34 is substituted by Act 6 of 2023.]

Obligations of and reporting by supervisory bodies

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

[Subsection (1) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”.]

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

[The word “the” appears to have been omitted before the word “date”.]

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

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

[Subsection (2A) is inserted by Act 6 of 2023. The word “of” after the word “part” is superfluous.]

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

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

[Subsection (4) is substituted by Act 6 of 2023. The plural word “subsections” should be singular to accord with the conjunction “or”; alternatively, the conjunction “or” should be “and”.]

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

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

[The introductory phrase of subsection (6) is substituted by Act 6 of 2023.]

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

[Subparagraph (ii) is substituted by Act 6 of 2023.]

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

[Paragraph (d) is inserted by Act 6 of 2023.]

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

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

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

(10) The Centre may issue an administrative notice, penalising a supervisory body by imposing an appropriate, prescribed fine without recourse to a Court, if that body has, without

reasonable excuse failed to comply in whole or in part with any obligations under this Part, or any regulation, order, notice, circular, determination or directive issued in terms of this Act.

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

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

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

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

(15) The relevant supervisory body of an accountable or reporting institution or such other person as the relevant supervisory body may think fit must -

- (a) adopt the necessary measures to prevent or avoid having any person who is not fit and proper from controlling, or participating, directly or indirectly, in the directorship, management or operation of an accountable or reporting institution;
- (b) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in an accountable or reporting institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any regulation, order, notice, circular, determination or directive made in terms of this Act, or any involvement in -
 - (i) any money laundering activity; or
 - (ii) any terrorist or proliferation activity or financing of terrorism or proliferation related activity.

[Subparagraph (ii) is substituted by Act 4 of 2014.]

- (c) supervise accountable and reporting institutions, and regulate and verify, through regular examinations, that an accountable or reporting institution adopts and implements compliance measures consistent with this Act,
- (d) issue guidelines to assist accountable and reporting institutions in detecting suspicious patterns of behaviour in their clients and these guidelines shall be developed taking in to account modern and secure techniques of money management and will serve as an educational tool for accountable and reporting institutions' personnel; and

[The two words "in to" before the word "account" should be the single word "into".]

- (e) co-operate with other enforcement agencies and lend technical assistance in any investigation, proceedings relating to any unlawful activity or offence under this Act.

[The word “or” appears to have been omitted
between the words “investigation” and “proceedings”.]

(16) The supervisory body or regulatory body of an accountable or reporting institution, upon recommendation of the Centre, may revoke or suspend the licence of the accountable or reporting institution or cause the institution not to carry on such business -

- (a) if the accountable or reporting institution has been convicted of an offence under this Act; or
- (b) if the accountable or reporting institution consistently failed or refused to adhere to any or all of its obligations under this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act.

(17) The supervisory body or regulatory body must report promptly to the Centre any information received from any accountable or reporting institution related to transactions or activities that could be treated as an offence under this Act.

(18) A supervisory body which contravenes or fails to comply with subsection (1), (2), (7), (8), (15), (16) or (17) commits an offence and is liable to a fine not exceeding N\$10 million or, where the commission of the offence is attributable to a representative of the supervisory body, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

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

Powers of Centre in relation to non-profit organisations

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

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

- (a) within a period of 60 days after the commencement of this provision, cause its applicable registration or regulatory authority to update and verify its registration details and applicable requirements to ensure that the non-profit organisation remains registered for the purpose for which it was initially registered; and
- (b) before the non-profit organisation updates its registration details and applicable requirements in terms of paragraph (a), obtain a clearance certificate from the Centre after it has assessed whether the non-profit organisation is likely to be at any risk or likely to be abused for the financing of terrorism.

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

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

[The word “for” after the word “request” is superfluous.]

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

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

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

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

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

- (a) the nature of threats posed by terrorist entities to non-profit organisations that are likely to be at risk or likely to be abused for financing of terrorism;

- (b) the findings of a risk assessment, trend or typology report identifying that due to the activity or characteristic of a non-profit organisation it is likely to be at risk or likely to be abused for financing of terrorism;

- (c) the type of donations received, or remittance made, by a non-profit organisation;

- (d) an activity or a characteristic of a non-profit organisation that is likely to be at risk or likely to be abused for financing of terrorism;

- (e) a non-profit organisation that is, amongst others, involved in -

- (i) the cross-border movement of funds;

- (ii) complex international transactions or structures;

- (iii) cash fund-raising from anonymous sources; or

- (iv) transferring or disbursing funds to entities not associated with its programmes or activities; or

- (f) any other matter making a non-profit organisation likely to be at risk or likely to be abused for financing of terrorism.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A non-profit organisation or an identified non-profit organisation that contravenes or fails to comply with subsection (2) or (6) commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the organisation, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

[Section 35A is inserted by Act 6 of 2023.]

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

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

[Section 35B is inserted by Act 6 of 2023.]

Declaration of cross border movement of cash and bearer negotiable instruments amounting to or exceeding amount determined by Centre

36. (1) Every person entering into or departing from Namibia who is carrying or transporting cash, bearer negotiable instruments, or both, equal to or exceeding an amount

determined by the Centre, must declare such cash or instrument, to an officer of the Customs and Excise at the port of entry into or departure from Namibia.

(2) Every person importing into or exporting out of Namibia, through containerized cargo, cash or bearer negotiable instruments equal to or exceeding an amount determined by the Centre, must declare such cash or bearer negotiable instruments to an officer of the Customs and Excise at the port of entry into or departure from Namibia.

(3) Every person mailing or conveying any post whether by mail, telegram or courier entering or departing Namibia that contains cash or bearer negotiable instruments equal to or exceeding an amount determined by the Centre, must declare such cash or bearer negotiable instruments to a designated officer at the relevant Post Office or an officer of the Customs and Excise at the port of entry into or departure from Namibia.

(4) The declaration referred to in subsections (1), (2) or (3) must be made on a prescribed form and be presented to an officer of the Customs and Excise at that port of entry into or departure from Namibia, or to a designated officer at the relevant Post Office.

(5) Once a declaration is made in terms of subsections (1), (2) or (3), an officer of the Customs and Excise or Post Office to whom the declaration is made, must issue an acknowledgement as prescribed by the Centre to the person making the declaration.

(6) Any person that is required to make a declaration in terms of subsections (1), (2) or (3) of cash or bearer negotiable instruments, or both, and who fails to make such declaration, or makes a false declaration, 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.

(7) Any cash or bearer negotiable instrument that is not declared as aforesaid, or that is falsely declared, is liable for seizure and forfeiture to the State, in the form and manner as prescribed.

Powers of officers of Customs and Excise in respect of cash or bearer negotiable instruments being conveyed in or out of Namibia

37. (1) For the purposes of ascertaining any matter referred to in section 36 or exercising any powers under section 36, an officer of the Customs and Excise or Post Office may require any person referred to in section 36(1), (2) or (3) to -

- (a) answer questions that the officer of the Customs and Excise or Post Office may put to that person which are relevant to any issue referred to in section 36;
- (b) make and sign a cash or bearer negotiable instrument declaration form;
- (c) provide information concerning the origin of the cash or bearer negotiable instrument and its intended purpose, in the event of a false declaration or a failure to make a declaration; and
- (d) answer any other question to ensure compliance with section 36.

(2) An officer of the Customs and Excise or Post Office may -

- (a) seize and detain cash or bearer negotiable instruments when such officer reasonably suspects that such cash or bearer negotiable instruments -

- (i) are proceeds of crime;
- (ii) may be used to commit the offence of money laundering;
- (iii) may be used to commit the offence of terrorism or financing of terrorism or proliferation;

[Subparagraph (iii) is substituted by Act 4 of 2014.]

Act 4 of 2014 additionally directs that the words “or proliferation” be inserted after the word “terrorism” throughout the Act, but it amends paragraph (iii) by way of a substitution with amendment markings.

The substitution on its own reads:

- “(iii) may be used to commit the offence of terrorism or financing of terrorism or proliferation;”

If the words “or proliferation” are inserted after terrorism, in line with the general directive contained in Act 4 of 2014, then paragraph (iii) would read as follows:

- (iii) may be used to commit the offence of terrorism or proliferation or financing of terrorism or proliferation;

The other substitutions made by Act 4 of 2014 incorporate the words “or proliferation” after the word “terrorism” in the substitution, without actioning the global insertion of those words in the substituted provisions. It is not clear what wording was intended in subparagraph (iii).]

- (iv) is connected to terrorist or proliferation activities or financing of terrorism or proliferation;

[Subparagraph (iv) is substituted by Act 4 of 2014.]

- (b) seize and detain cash or bearer negotiable instruments when such officer reasonably suspects -
 - (i) the person concerned has failed to make a declaration in terms of subsections 36(1), (2) or (3); or
 - (ii) the person concerned has made a false declaration.

(3) An officer of the Customs and Excise or Post Office may seize and detain any cash, bearer negotiable instrument, article, book or document including any container or package, which, in his or her opinion, may afford evidence relating to the commission of, or an attempt to commit a money laundering or financing of terrorism or proliferation offence, or any matter incidental thereto.

[Subsection (3) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”.]

(4) An officer of the Customs and Excise may board any ship or aeroplane within the territory, the territorial sea or the exclusive economic zone of Namibia, or may stop and board any vehicle entering or leaving Namibia, and may search any such ship, aeroplane or vehicle or any person found therein or thereon, for undeclared or falsely declared cash or bearer negotiable instruments.

(5) If any container, cargo, vehicle, cabin, place, safe, or package is locked and the keys thereof are not produced to the officer of the Customs and Excise or Post Office on demand, the officer may, for any purpose under this section, open or enter such container, vehicle, cabin, place, safe, or package in any manner he or she thinks appropriate.

(6) All officers of the Customs and Excise or Post Office must cooperate with other law enforcement agencies on any matter concerning investigations of money laundering activities, financing of terrorist activities or both.

(7) An officer of the Customs and Excise or Post Office may detain and hand over to the police any person who has committed an offence under this section to be arrested without a warrant of arrest.

(8) Any cash or bearer negotiable instruments seized and detained by an officer of the Customs and Excise or Post Office in terms of subsection 2(a) must be handed over to the Namibian Police for purposes of criminal investigations and prosecutions.

(9) Any cash or bearer negotiable instruments seized and detained by an officer of the Customs and Excise or Post Office in terms of subsection 2(b) must be handed over to the Centre for purposes of forfeiture as envisaged in subsection 36(7).

Making declarations on cash or bearer negotiable instruments available to Centre

38. (1) The Commissioner of Customs and Excise or the Post Master must within a prescribed period and in the prescribed form and manner make all declarations made in terms of subsections 36(1), (2) or (3) to an officer of the Customs and Excise or Post Office, respectively, available to the Centre.

(2) An officer of the Customs and Excise or Post Office who wilfully fails to electronically register and make information referred to in section 36 available to the Commissioner of Customs and Excise or the Post Master for onward submission to the Centre, 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.

[The phrase “commits an offence” should be “commits an offence”.
Section 26 and section 39(11) of the Namibia Revenue Agency Act 12 of 2017 both provide that a reference in any law to the Commissioner of Customs and Excise must now be construed as a reference to the Commissioner of the Revenue Agency.]

Accountable institutions with foreign branches and subsidiaries

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

[The verb “are” should be “is” to accord with the subject “programme”.]

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

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

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

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

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

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

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

[Section 39 is substituted by Act 6 of 2023.]

Reporting procedures

40. (1) A report required to be made in terms of this Act must be made in the prescribed manner.

(2) The Centre, or an investigating authority acting with the permission of the Centre or under the authority of a competent authority may request an accountable institution, reporting institution, supervisory body, regulatory body or person that has made a report in terms of this Act to furnish the Centre or that investigating authority without delay with any additional information concerning the report which the Centre or the investigating authority may reasonably require and which that accountable institution, reporting institution, supervisory body, regulatory body or person has.

[There should be a comma after the phrase “or an investigating authority acting with the permission of the Centre or under the authority of a competent authority” to offset that phrase properly.]

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

(4) A person who fails to comply with a request made under subsection (2) 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.

Continuation of suspicious transactions

41. An accountable or reporting institution that has made a report to the Centre in terms of section 32, 33 or 34 concerning a transaction, may continue with and carry out the transaction unless the Centre directs the accountable or reporting institution in terms of section 42 not to proceed with the transaction.

Intervention by Centre

42. (1) If the Centre has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or may constitute money laundering or the financing of terrorism or proliferation, it may direct an accountable or a reporting institution in writing not to proceed with the carrying out of that transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period determined by the Centre, which may not be more than 18 working days, in order to allow the Centre -

[The introductory phrase of subsection (1) is amended by Act 4 of 2014 and substituted by Act 6 of 2023.]

- (a) to make the necessary inquiries concerning the transaction; and
- (b) if the Centre thinks it appropriate, to inform and advise an investigating authority or the Prosecutor-General.

(2) An accountable or reporting institution which fails to comply with a direction made under 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 or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Monitoring orders

43. (1) A judge in chambers may, on written application by the Centre, order an accountable or reporting institution to report to the Centre, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specific person with the Accountable or reporting institution or all transactions conducted in respect of a specific account or facility at the accountable or reporting institution, if there are reasonable grounds to suspect that -

[The word "Accountable" should not be capitalised.]

- (a) that person is using the accountable or reporting institution for money laundering or financing of terrorism or proliferation purposes;
- (b) that account or other facility is being used for the purposes of money laundering or financing of terrorism or proliferation;

[Subsection (1) is amended by Act 4 of 2014 to add the words "or proliferation" after "terrorism" throughout.]

(2) An order in terms of subsection (1) lapses after three months unless extended in terms of subsection (3).

(3) A judge in chambers may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if -

- (a) the reasonable grounds for the suspicion on which the order is based still exist; and
- (b) the judge is satisfied that the interest of justice is best served by investigating the suspicion in the manner provided for in this section.

(4) An application referred to in subsection (1) must be heard and an order must be issued without notice to or hearing the person or persons involved in the suspected money laundering or financing of terrorism or proliferation activities.

[Subsection (4) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”.]

(5) An accountable or reporting institution which fails to comply with an order made under 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 or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Reporting duty not affected by confidentiality rules

44. (1) No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance with a provision of this Act.

(2) Subsection (1) does not apply if the obligation of secrecy or other restriction is based on the common law right to professional privilege between a legal practitioner and his or her client in respect of information communicated to the legal practitioner so as to enable him or her to -

- (a) provide advice to the client;
- (b) defend the client; or
- (c) render other legal assistance to the client in connection with an offence under any law in respect of which -
 - (i) the client is charged;
 - (ii) the client has been arrested or summoned to appear in court; or
 - (iii) an investigation with a view to institute criminal proceedings is being conducted against the client.

Sharing of information between accountable and reporting institutions

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

[The Banking Institutions Act 2 of 1998 has been replaced by the Banking Institutions Act 13 of 2023. The second line in subsection (1) should read “law prohibiting the sharing of information of a confidential or secret nature” to be grammatically correct, and the singular word “effort” should be the plural word “efforts”.]

- (2) The sharing of information under subsection (1) must be for purposes of -
 - (a) investigation and reporting of any suspicious transaction in terms of this Act;
 - (b) establishing the identity of a client or beneficial owner in terms of this Act;

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

[The singular word “transfer” should be the plural word “transfers” in both of its appearances in paragraph (e) to be grammatically correct.]

[Section 44A is inserted by Act 6 of 2023.]

Protection of persons making reports

45. (1) No action, whether criminal or civil, lies against an accountable or reporting institution, supervisory body or person complying in good faith with a provision of this Part, including any director, employee or other person acting on behalf of that accountable or reporting institution, supervisory or regulatory body or person.

(2) A person who has made, initiated or contributed to a report in terms of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

(3) No evidence concerning the identity of a person who made a report in terms of this Part or the contents of that report, or the grounds for that report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

(4) No evidence concerning the identity of a person who initiated or contributed to a report in terms of this Part is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

Tipping off

46. A person who -

- (a) knows or has reason to suspect that an authorised officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and who discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reason to suspect that a disclosure has been made to an authorised officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be concluded following the disclosure,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a term not exceeding 30 years, or to both such fine and such imprisonment.

Reports made to Centre not admissible as evidence

47. For the purposes of this Act -

- (a) information reported to the Centre or shared by the Centre; or

- (b) intelligence shared with the Centre or shared by the Centre,

is not admissible as evidence in a matter before court.

[Section 47 is substituted by Act 6 of 2023.]

Access to information held by Centre

48. (1) If the Centre, on the basis of its analysis and assessment under section 9 has reasonable grounds to suspect that information would be relevant to the national security or economic stability of Namibia, the Centre must disclose that information to an investigating authority inside Namibia, relevant Supervisory Bodies, relevant regulators and to the Namibia Central Intelligence Service.

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

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

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

[Paragraph (a) is substituted by Act 6 of 2023.]

- (b) the name and address of the place of business where the transaction occurred or the address of the port of entry into Namibia where the importation or exportation occurred and the date when the transaction, importation or exportation occurred;

- (c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;

- (d) in the case of a transaction, the transaction number and the account number, if any; and

- (e) any other similar identifying information that may be prescribed for the purposes of this section.

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

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

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

[Paragraph (a) is amended by Act 4 of 2014 to add the words “or proliferation” after “terrorism”.]

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

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

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

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

[The word "the" before the phrase "powers and duties" is superfluous.]

- (a) for protecting the confidentiality of any information communicated to it;
- (b) for controlling the use that will be made of the information, including an undertaking that it will not be used as evidence in any proceedings; and
- (c) that the information is to be used solely for the purpose for which it has been requested and provided unless the Centre has given consent to the foreign institution or agency to use the information for any other purpose.

[Subsection (8) is substituted by Act 6 of 2023.]

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

[Subsection (9) is amended by Act 4 of 2014 to add the words "or proliferation" after "terrorism". The superfluous word "agencies" appears twice in subsection (9) ("foreign agencies agency" and "foreign agencies agency's").]

- (10) In making inquiries as provided for in subsection (9), the Centre may -
- (a) search its own databases, including information related to reports of suspicious transactions and suspicious activities, requests for information and other databases to which the Centre has direct or indirect access, including law enforcement databases, public databases, administrative databases and commercial databases;
 - (b) obtain from accountable institutions or reporting institutions, or from any other person holding records or information on behalf of such accountable or reporting institutions, information that is relevant in connection with such request;
 - (c) obtain from competent authorities information that is relevant in connection with such request; and
 - (d) take any other action in support of the request of the foreign agencies that is consistent with the authority of the Centre.

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

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

[The verbs “is” and “has” in the final phrase of subsection (12) should be “are” and “have” to accord with the subject “institutions”.]

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

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)

[Paragraph (d) is deleted by Act ,6 of 2023.]

- (e) in terms of an order of a court.

(2) A person who has obtained information from the Centre under this Act may not, when he or she is no longer authorised to keep the information under this Act, make a record of the information, disclose or communicate the information in any circumstances.

(3) A person who contravenes 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.

Protection of providers of information

[The heading of section 50 is substituted by Act 6 of 2023.]

50. (1) Where a person discloses to the Centre information in terms of section 33, that any proceeds of unlawful activities is used in connection with or derived from money laundering, or financing of terrorism or proliferation or any matter on which that information is based -

[Subsection (1) is amended by Act 4 of 2014. This amendment appears to substitute only the *introductory phrase* of subsection (1) and not subsection (1) *in its entirety* as indicated in the amending Act. The verb “is” should be “are” to accord with the subject “proceeds”.]

- (a) if he or she does any act in contravention of the provisions of this Act and the disclosure relates to the arrangement concerned he or she does not commit an offence if the disclosure is made -
 - (i) before he or she does the act concerned, being an act done with the consent of the Centre; or

- (ii) after he or she does the act, but the disclosure is made on his or her initiative and as soon as it is reasonable for him or her to make it;
- (b) despite any other written law or the common law the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and
- (c) he or she is not liable for any damages for any loss arising out of -
 - (i) the disclosure; or
 - (ii) any act done or committed to be done in relation to the property in consequence of the disclosure

[There is no full stop at the end of subsection (1) in the *Government Gazette*.
There is no additional text in the *Government Gazette*.]

(2) Where any information relating to an offence under this Act is received by an authorized officer the information and identity of the person giving the information must be confidential between the authorized officer and that person and everything contained in such information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, may not be disclosed except for the purposes of assisting the Centre to carry out its functions as stated under this Act.

(3) A person who obstructs, hinders or threatens another person in the performance of their duties in terms of this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act 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.

PART 5 COMPLIANCE AND ENFORCEMENT OF ACT

Exhausting of other measures before penalties

51. (1) For purposes of sections 54 and 55, the Centre must perform its functions and exercise its powers after consultation with the relevant supervisory body of an accountable or reporting institution.

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

[Subsection (2) is substituted by Act 6 of 2023]

Appointment of inspectors

52. (1) The Director or the head of a supervisory, as the case may be, may appoint any person in the service of the Centre or supervisory body or any other suitable person as an inspector for the purposes of determining compliance with this Act or any regulation, notice, order, circular, determination or directive issued in terms of this Act.

[The word “body” appears to have been omitted after the word “supervisory” in its first use in subsection (1).]

(2) The Director or the head of a supervisory body may determine the remuneration to be paid to a person who is appointed in terms of subsection (1) that is not in the full-time service of the Centre or supervisory body.

[The word “body” appears to have been omitted after the word “supervisory” in its first use in subsection (2).]

(3) The Director or the head of a supervisory body must issue an inspector appointed in subsection (1) with a certificate of appointment signed by the Director or the head of the supervisory body.

(4) A certificate of appointment issued under subsection 3 must have -

- (a) the full name of the person so appointed;
- (b) his or her identity number;
- (c) his or her signature;
- (d) his or her photograph;
- (e) a description of the capacity in which he or she is appointed; and
- (f) the extent of his or her powers to inspect.

(5) Where the head of a supervisory body is authorised by any other Act to appoint inspectors, he or she may extend the appointment and functions of inspectors under that Act to include the undertaking of inspections under this Act.

(6) In undertaking inspections under this Act, an inspector whose appointment or functions have been extended under subsection (5), may, in addition to the functions imposed upon such inspector under the Act contemplated in subsection (5), perform any of the functions imposed in terms of this Act.

(7) Any extended appointment contemplated in subsection (5) must be reflected in any certificate or appointment document issued by the head of the supervisory body to an inspector under the Act contemplated in that subsection.

(8) When an inspector undertakes an inspection in terms of this Act, the inspector must -

- (a) be in possession of a certificate of appointment; and
- (b) on request, show that certificate to any person who is -
 - (i) directly affected by the performance of the functions of the inspector; or
 - (ii) is in charge of any premises to be inspected.

Inspections

53. (1) For the purposes of determining compliance with this Act or any regulation, notice, order, circular, determination or directive issued in terms of this Act, an inspector may at any time and on notice, enter and inspect any premises at which the Centre the supervisory body

or regulatory body reasonably believes the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted.

[It appears that a comma has been omitted between the phrase “the Centre” and the phrase “the supervisory body”.]

- (2) An inspector, in conducting an inspection, may -
- (a) in writing direct a person to appear for questioning before the inspector on a date, time and place determined by the inspector;
 - (b) order any person who has or had any document in his or her or its possession or under his or her or its control relating to the affairs of the accountable institution, reporting institution or person:
 - (i) to produce that document; or
 - (ii) to furnish the inspector at the place and in the manner determined by the inspector with information in respect of that document;
 - (c) open any strong room, safe or other container, or order any person to open any strong room, safe or other container, in which the inspector suspects any document relevant to the inspection is kept;
 - (d) use any computer system or equipment on the premises or require reasonable assistance from any person on the premises to use that computer system to -
 - (i) access any data contained in or available on that computer system; and
 - (ii) reproduce any document from data stored on that computer system;
 - (e) examine or make extracts from or copy any document in the possession of an accountable institution, reporting institution or person and against the issue of a receipt, remove that document temporarily for that purpose; and
 - (f) against the issue of a receipt, seize any document obtained in terms of paragraphs (c) to (e) which in the opinion of the inspector may constitute evidence of non-compliance with a provision of this Act or any regulation, order, determination or directive issued in terms of this Act.

(3) An accountable institution, reporting institution or other person to whom this Act applies, must without delay provide reasonable assistance to an inspector acting in terms of subsection (2).

(4) An inspector may not disclose to any person not in the service of the Centre or supervisory body any information obtained in the performance of functions under this Act, accept -

[The word “except” is misspelt as “accept” in the *Government Gazette*, as reproduced above.]

- (a) for the purpose of enforcing compliance with this Act or any regulation, order, determination or directive issued in terms of this Act;
- (b) when required to do so by a court order; or

- (c) if the Centre or supervisory body is satisfied that it is in the public interest to release such information.
- (5) A person who -
 - (a) obstructs, hinders or threatens an inspector;
 - (b) who fails to appear for questioning;
 - (c) who gives false information to the inspector; or
 - (d) who fails to comply with a reasonable request or order by an inspector in the performance of his or her duties or the exercise of his or her powers in terms of this Act,

commits an offence and is liable to a fine not exceeding N\$10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Directives

54. (1) The Centre, after consultation with the relevant supervisory body may by notice in the Gazette issue a directive to all institutions, or any category of institutions, or other category of persons to whom this Act applies, regarding the application of this Act.

[The word “Gazette” is not italicised in this provision in the *Government Gazette*.]

(2) The Centre or a supervisory body may in writing, over and above any directive contemplated in subsection (1), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom this Act applies, to -

- (a) provide the Centre or that supervisory body, as the case may be -
 - (i) with the information, reports or statistical returns specified in the directive, at the time or at the intervals specified in the directive; or
 - (ii) with any document in its possession or custody or under its control, within the period specified in the directive;
- (b) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;
- (c) perform acts necessary to remedy any non-compliance with this Act; or
- (d) perform acts necessary to meet obligations imposed by this Act.

(3) The Centre or supervisory body may examine a document submitted to it in terms of subsection (2)(a)(ii) or make a copy thereof or part hereof.

(4) The costs incurred in complying with a directive must be borne by the accountable institution, reporting institution or person concerned.

(5) An accountable institution or a reporting institution or person that fails to comply with a directive issued in terms of this section 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.

Enforceable undertakings and enforcement

55. (1) The Director, after consultation with any relevant supervisory body, may accept any of the following undertakings from a person authorised to act on behalf of either an accountable or reporting institution -

- (a) a written undertaking that the accountable or reporting institution will, in order to comply with this Act, its regulations, orders, notices, circulars, determinations or directives made in terms of this Acts, take specified action;

[The phrase "this Acts" should be "this Act".]

- (b) a written undertaking that the accountable or reporting institution will, in order to comply with this Act, or any regulations, orders, notices, circulars, determinations or directives issued in terms of this Act, refrain from taking specified action;
- (c) a written undertaking that the accountable or reporting institution will take specified action directed towards ensuring that the accountable or reporting institution does not contravene this Act, or any regulations, order, notice, circular, determination or directive issued in terms of this Act, or that it is unlikely for the accountable or reporting institution to contravene this Act, or any regulations, order, notice, circular, determination or directive issued in terms of this Act, in the future.

(2) The person may withdraw or vary the undertaking only with the consent of the Director.

(3) The Director may, after consultation with any relevant supervisory body by written notice given to the person, cancel the undertaking.

(4) The Director may publish a copy of the undertaking or make available to any interested person a copy of the undertaking.

(5) The Director, before making available such undertaking, must delete information that the Director is satisfied is -

- (a) confidential information with commercial value; or
- (b) information that may not be released as it is against the public interest to do so; or
- (c) information that consists of personal details of an individual.

(6) If the Director has reason to believe that any person who has given an undertaking in terms of this section has breached such undertaking, the Director may apply to the High Court for an order in terms of subsection (7).

(7) If the High Court is satisfied that the person has breached the undertaking, the Court may make -

- (a) an order directing the person to comply with the undertaking;

- (b) an order directing the person to pay to the Fund, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any other order the Court thinks appropriate.

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, amongst others, the following factors -

[The introductory phrase of subsection (2) is substituted by Act 6 of 2023.]

- (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 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.

[Subsection (3) is substituted by Act 6 of 2023.]

- (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 may impose an administrative sanction the Centre or supervisory body considers appropriate.

[Subsection (6) is substituted by Act 6 of 2023.]

- (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 for the decision; and

[Paragraph (a) is substituted by Act 6 of 2023.]

- (b) the right to appeal against the decision in accordance with section 58.

- (8)

[Subsection (8) is deleted by Act 6 of 2023.]

- (9) Any financial penalty imposed must be paid into an account specified in the notice given to the accountable or reporting institution or person, within the period and in the manner as may be specified in the relevant notice.

[Subsection (9) is substituted by Act 6 of 2023.]

(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.

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

[Paragraph (b) is substituted by Act 6 of 2023.]

Appeal board

57. (1) Upon receipt of a notice of appeal by an institution or person made under section 58 against the decision of the Centre or a supervisory body, the Minister, on recommendation of the Council, must appoint an appeal board to hear and decide the appeal.

(2) The Appeal board consists of -

[The word "appeal" should not be capitalised.]

- (a) one person who has a qualification in law and with at least 10 years' experience, who is the chairperson; and
- (b) two other persons who have experience and extensive knowledge of financial institutions or financial services provision or financial services regulation.

(3) The Minister may prescribe additional qualifications, terms and conditions and other requirements for appointment as members of the appeal board.

(4) If before or during the consideration of any appeal it transpires that any member of the appeal board has any direct or indirect personal interest in the outcome of that appeal, the member must declare his or her interest and recuse himself or herself and must be replaced by another person.

(5) A member of the appeal board may be paid such remuneration and allowances as the Minister may determine.

(6) The Centre is responsible for the expenditure of and administrative support for the appeal board.

Appeals

58. (1) Any institution or person may appeal to the appeal board against a decision of the Centre or a supervisory body made in terms of this Act.

(2) An appeal must be lodged within 30 days of the delivery of the decision of the Centre or a supervisory body, in the manner, and on payment of the fees prescribed by the Minister.

(3) An appeal under subsection (1) takes place on the date, at the place and time determined by the appeal board.

(4) An appeal is decided on the affidavits and supporting documents presented to the appeal board by the parties to the appeal.

(5) Despite the provisions of subsection (4) the appeal board may -

- (a) summon any person who, in its opinion, may be able to give information for the purposes of deciding the appeal or who it believes has in his, her or its possession, custody or control any document which has any bearing upon the decision under appeal, to appear before it on a date, time and place specified in the summons, to be questioned or to produce any relevant document and retain for examination any document so produced;
- (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and
- (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control.

(6) The chairperson of the appeal board may determine any other procedural matters relating to an appeal.

(7) An applicant or respondent to an appeal is entitled to be represented at an appeal by a legal practitioner or any person of his or her choice.

(8) The appeal board may -

- (a) confirm, set aside or vary a decision of the Centre or supervisory body; or
- (b) refer a matter back for consideration or reconsideration by the Centre or the supervisory body concerned in accordance with the directions of the appeal board.

(9) The decision of a majority of the members of the appeal board constitutes the decision of that Board.

(10) The decision of the appeal board must be in writing, and a copy thereof must be made available to the appellant, the Centre and the supervisory body.

(11) If the appeal board sets aside any decision of the Centre or supervisory body, the fees contemplated in subsection (2) paid by the appellant in respect of the appeal in question must be refunded to the appellant.

(12) If the appeal board varies any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.

(13) Subject to subsection (14), a decision of the appeal board may be taken on appeal to the High Court as if it were a decision of a magistrate in a civil matter.

(14) The launching of appeal proceedings in terms of subsection (13) does not suspend the operation or execution of a decision, unless the Centre or supervisory body directs otherwise.

Referral of suspected offences to competent authorities or Prosecutor-General or other public bodies

59. Despite sections 54, 55 and 56, if the Centre in the performance of its functions has reasonable grounds to suspect that an accountable or reporting institution, or any other person who is subject to this Act, has contravened or failed to comply with any provision of this Act or any regulation, order, rule, circular, notice, directive, determination, undertaking or guideline applicable to that accountable or reporting institution or person, it may, if it considers it appropriate to do so, refer the matter to a relevant competent authority, together with any recommendation the Centre considers appropriate.

Application to court

60. (1) The Centre or any supervisory body, after consultation with each other, may institute proceedings in the High Court against any accountable institution, reporting institution or person to whom this Act applies, to -

- (a) discharge any obligation imposed by the Centre or supervisory body in terms of this Act;
- (b) compel the institution or person to comply with any provision of this Act;
- (c) cease contravening a provision or provisions of this Act;
- (d) compel the institution or person to comply with a directive issued by the Centre or supervisory body under this Act; or
- (e) obtain a declaratory order against the institution or person on any point of law relating to any provision of this Act or any regulation, order, notice, circular, determination or directive made in terms of this Act.

(2) If the Centre or a supervisory body has reason to believe that an institution or person is not complying with this Act or any regulation, order, notice, circular, determination or directive made in terms of this Act, it may, if it appears that prejudice has occurred or might occur as a result of such non-compliance, apply to a court having jurisdiction for -

- (a) an order restraining the institution or person from continuing business pending an application to court by the Centre or supervisory body as contemplated in subsection (1); or
- (b) any other order the Court may think appropriate.

(3) If an accountable or reporting institution or person, to whom this Act applies, fails to comply with an order of court as contemplated in subsection (1), the Centre or supervisory body may, after consultation with each other, refer the matter for investigation or prosecution as contemplated in section 59.

Powers of authorised officers

61. (1) Where an authorised officer is satisfied, or has reason to suspect, that a person has committed an offence under this Act or the Prevention of Organized Crime Act, he or she may, without a search warrant -

- (a) enter any premises belonging to or in the possession or control of the person or his or her employee, and in the case of a body corporate, its director or manager;
- (b) search the premises for any property, electronic information and devices, record, report or document;
- (c) inspect, make copies of or take extracts from any record, report or document so seized and detained;
- (d) seize, take possession of, and detain for such duration as he or she thinks necessary, any property, electronic information and devices, record, report or document produced before him or her in the course of the investigation of or found on the person who is being searched by him or her.

(2) An authorized officer in the course of his or her investigation or search must -

- (a) prepare and sign a list of every property, electronic information and devices, record, report or document seized; and
- (b) state in the list the location in which, or the person on whom, the property, record, report or document is found.

(3) When conducting his or her duties in terms of this section an authorised officer may call on any other authorised officer or competent authority to assist him or her.

(4) Any person who -

- (a) refuses any authorized officer access to any premises, or fails to submit to the search of his or her person;
- (b) assaults, obstructs, hinders or delays an authorized officer in effecting any entrance which he or she is entitled to effect;
- (c) fails to comply with any lawful demands of any authorized officer in the execution of his or her duties under this Act;
- (d) refuses to give to an authorized officer any property, document or information which may reasonably be required of him or her and which he has in his power to give;
- (e) fails to produce to, or conceal or attempt to conceal from, an authorised officer, any property, record, report or document, which the authorized officer requires;

[The phrase “conceal or attempt to conceal from” should be “conceals or attempts to conceal from” to fit with the introductory phrase of subsection (4).]

- (f) rescues or attempts to rescue anything which has been seized;
- (g) furnishes to an authorised officer as true any information which he or she knows or has reason to believe is false; or
- (h) before or after any search or seizure, breaks or otherwise destroys anything to prevent its seizure, or the securing of the property, record, report or document,

commits an offence and is liable to a fine not exceeding N\$10 million or to imprisonment for a term not exceeding 10 years, or to both such fine and such imprisonment, and in a case of a continuing offence, to a further fine not exceeding N\$50 000 for each day during which the offence continues after conviction.

(5) An authorized officer may, by a notice in writing require any person to deliver to him or her any property, record, report or document which he or she has reason to suspect has been used in the commission of an offence under this Act or is able to assist in the investigation of an offence under this Act that is in the possession or custody of, or under the control of, that person or within the power of that person to furnish.

Release of property, record, report or document seized

- 62.** (1) An authorized officer, unless otherwise ordered by a court, must -
- (a) at the close of an investigation or any proceedings arising from the investigation; or
 - (b) with the prior written consent of the Centre or investigating authority, at any time before the close of an investigation,

release any property, record, report or document seized, detained or removed by him or her or any other authorized officer, to such person as he or she determines to be lawfully entitled to the property, record, or document if he or she is satisfied that it is not required for the purpose of any prosecution, freezing or forfeiture of proceeds of crime or property of corresponding value under the Prevention of Organized Crime Act, 2004, or proceedings under this Act, or for the purpose of any prosecution under any other law.

(2) An authorised officer effecting the release under subsection (1) must record in writing the circumstances of and the reason for such release.

(3) Where the authorized officer is unable to determine the person who is lawfully entitled to the property, record, report or document or where there is more than one claimant to the property, record, report or document, or where the authorised officer is unable to locate the person under subsection (1) who is lawfully entitled to the property, record or document, the authorised officer must report the matter to a magistrate who must then deal with the property, record, report or document in terms of the relevant law dealing with such matters.

PART 6 OFFENCES AND PENALTIES

Offences in general

- 63.** A person who -

- (a) knowing or suspecting information is held by the Centre directly or indirectly brings, otherwise than in the course of discharging an obligation under this Act, that information or the fact that that information is held to the attention of another person;
- (b) destroys or in any other way tampers with information kept by the Centre for the purposes of this Act;
- (c) knowing or suspecting that information has been disclosed to the Centre, directly or indirectly brings information which is likely to prejudice an investigation resulting from that disclosure to the attention of another person;
- (d) unduly influences, obstructs, hinders, interferes with or threatens or attempts to unduly influence, obstruct, hinders, interferes with or threaten an official or representative of the Centre in the performance of their duties or the exercise of their powers in terms of this Act;

[The verbs “hinders” and “interferes” should be “hinder” and “interfere” the second time that they appear in paragraph (d) to be grammatically correct: “attempts to unduly influence, obstruct, hinder, interfere with or threaten an official...”.]

- (e) with intent to defraud, in respect of a document to be produced or submitted under any provision of this Act, makes or causes to be made a false entry or omits to make, or causes to be omitted any entry;
- (f) fails to comply with the provisions of any regulation, guideline, circular, notice, directive, determination or undertaking issued in terms of this Act,

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.

Jurisdiction of magistrates’ courts in respect of offences

64. (1) Despite anything to the contrary in any other law contained, a magistrate’s court has jurisdiction to impose any penalty provided for in this Act, even though that penalty may, either alone or together with any additional penalty imposed by that court, exceed the punitive jurisdiction of that court.

(2) Where an act, course of conduct or omission which constitutes an offence under this Act is or was -

- (a) done by a national of Namibia within Namibia or elsewhere;
- (b) done by any person on a vehicle, ship or other seafaring vessel or aircraft traveling through Namibia, putting into port in Namibia or landing on a landing strip or airport in Namibia; or
- (c) done by a person outside Namibia and other acts, courses of conduct or omissions forming part of the offence are done or to be done in Namibia;

[The word “courses” appears in the *Government Gazette* with the last letter struck through. However, it should be plural to be grammatically correct.]

- (d) done by any person outside Namibia and the effects of the offence are felt in Namibia,

the person concerned may, regardless of anything in any law to the contrary, but subject to this Act, be tried and punished by any court which has jurisdiction over criminal matters in Namibia.

Offence committed by person acting in official capacity

65. (1) Where an offence is committed by a legal person, trust or an association of persons, a person -

- (a) who is its director, controller, or partner; or
- (b) who is responsible for the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his or her consent or connivance and that he or she exercised such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her function in that capacity and to the circumstances.

(2) Despite the fact that a legal person, trust or association of persons has not been convicted of an offence under subsection (1), an individual may be prosecuted for that offence.

(3) Subsection (1) does not affect the criminal liability of the legal person, trust or association of persons for the offence referred to in that subsection.

(4) Any person who would have committed an offence if any act had been done or omitted to be done by him or her personally commits that offence and is liable to the same penalty if that act had been done or omitted to be done by his or her agent or officer in the course of that agent's business or in the course of that officer's employment, unless he or she proves that the offence was committed without his or her knowledge or consent and that he or she took all reasonable precautions to prevent the doing of, or omission to do that act.

PART 7

MISCELLANEOUS

Act not to limit powers of investigation authorities

66. This Act does not affect a competent authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations.

Regulations

67. (1) The Minister, after consulting the Council and the Centre, may make regulations concerning -

- (a) any matter that may be prescribed in terms of this Act;
- (b) measures to ensure the security of information disclosed to and obtained by the Centre;
- (c) the recognition and handling by accountable or reporting institutions of suspected money laundering or financing of terrorism or proliferation transactions;

[Paragraph (c) is amended by Act 4 of 2014 to add the words "or proliferation" after "terrorism".]

- (d) internal rules to be formulated and implemented in terms of section 20A;

[Paragraph (d) is substituted by Act 6 of 2023.]

- (e) the manner and form in which accountable or reporting institutions are to keep records required by this Act;
- (f) the reasonable steps to be taken by an accountable or reporting institution to establish the identity of an existing client or prospective client;

[Paragraph (f) is substituted by Act 6 of 2023.]

- (g) the procedures to be followed when cash or bearer negotiable instruments are forfeited to the State in terms of subsection 36(7);

[Paragraph (g) is substituted by Act 6 of 2023.]

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

[Paragraph (gA) is inserted by Act 6 of 2023.]

- (h) any other matter which may facilitate the implementation of this Act.
- (2) Regulations in terms of subsection (1) may -
- (a) differ for different accountable or reporting institutions, categories of accountable or reporting institutions and different categories of transactions; and
- (b) be limited to a particular accountable or reporting institution or category of accountable or reporting institutions or a particular category of transactions.
- (3) A regulation made under this section may provide for -
- (a) criminal penalties of a fine not exceeding N\$10 million or imprisonment for a period not exceeding five years, or of both such fine and such imprisonment for any contravention of or failure to comply with such regulation; or
- (b) administrative penalties of a fine not exceeding N\$10 million.

Indemnity

68. The Minister, Council, Centre, an employee or representative of the Centre, a supervisory body or any other person performing a function or exercising a power in terms of this Act is not liable for anything done in good faith in terms of this Act.

Service of notices

69. Any notice, statement or other document which is required to be prepared, executed or served under this Act must be prepared, executed or served in the prescribed manner.

Exemptions

70. (1) The Minister may, on the recommendation of the Council, if he or she considers it consistent with this Act or in the interest of the public, by order published in the

Gazette, exempt a person or class of persons from all or any of the provisions of this Act for such duration and subject to any conditions which the Minister may specify.

(2) The Minister may, after having granted an exemption as referred to in subsection (1), and on recommendation of the Council, by order in the *Gazette*, withdraw such an exemption.

Documents tracking

71. (1) Where the Centre or any other competent authority has reason to believe that a person is committing or is about to commit an offence under this Act, the Centre or the competent authority may order -

- (a) that any document relevant to identifying, locating or quantifying any property necessary for the transfer of the property, belonging to, or in the possession or under the control of that person or any other person, be delivered to it; or
- (b) any person to produce information on any transaction conducted by or for that person with the first-mentioned person.

(2) Any person who does not comply with an order under subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding, or to both such fine and such imprisonment.

[The maximum period of imprisonment appears to have been accidentally omitted.]

Repeal of laws

72. The Financial Intelligence Act, 2007 (Act No. 3 of 2007), and Government Notice No. 235 of 15 December 2011 are repealed.

Transitional provisions and savings

73. (1) With effect from the date of commencement of this Act the current Director and staff of the Centre are deemed to have been appointed in accordance with this Act and on such conditions of service as applied to them at that date.

(2) Any regulation made or any exemption, notice, circular, determination or guidance issued or any other thing done under the Act repealed by section 72 is deemed to have been made, issued or done under the corresponding provision of this Act.

Short title and commencement

74. (1) This Act is called the Financial Intelligence Act, 2012 and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act is construed as a reference to the date determined under subsection (1) in relation to that particular 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.

[Paragraph 2 is substituted by Act 6 of 2023.]

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;

[The semicolon after the phrase “registered office” should be a comma.]

 - (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).

[The Banking Institutions Act 2 of 1998 has been replaced by the Banking Institutions Act 13 of 2023.]

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

Financial Intelligence Act 13 of 2012

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, or doing business in or as -
 - (a) money market instruments;
 - (b) foreign exchange;
 - (c) a currency exchange;
 - (d) exchange, interest rate and index instruments;
 - (e) transferable securities;
 - (f) commodity futures trading; and
 - (g) any other securities services.

[Paragraph 8 is substituted by Act 6 of 2023.]

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, 1998 (Act No. 5 of 1998), including an agent or broker of the insurer;

- (c) Micro lender;
- (d) Friendly society; and
- (e) Unit trust managers.

[Paragraph 14 is substituted by Act 6 of 2023.]

- 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.

[Paragraph 17 is inserted by GN 339/2019.]

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

[Paragraph 18 is inserted by GN 339/2019 and substituted by Act 6 of 2023.]

SCHEDULE 2

SUPERVISORY BODIES (SECTION 3)

Financial Intelligence Act 13 of 2012

1. The Namibia Financial Institutions Supervisory Authority established in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).

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.

[Paragraph 5 is deleted by Act 6 of 2023.]

SCHEDULE 4

REGULATORY BODIES
(SECTION 3)

1. The Bank of Namibia as defined in the Bank of Namibia Act, 1997 (Act No. 15 of 1997) to the extent that the Bank exercises its powers and fulfils its regulatory functions under the Banking Institutions Act, 1998 (Act No. 2 of 1998) as amended, the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), the Prevention of Counterfeiting of Currency Act, 1965 (Act No. 16 of 1965), and the Payment System Management Act, 2003 (Act No. 18 of 2003).

[The Bank of Namibia Act 15 of 1997 has been replaced by the Bank of Namibia Act 1 of 2020. The Banking Institutions Act 2 of 1998 has been replaced by the Banking Institutions Act 13 of 2023. The Payment System Management Act 18 of 2003 has been replaced by the Payment System Management Act 14 of 2023.]

2. The Law Society established in terms of the Legal Practitioners Act, 1995 (Act No. 15 of 1995).
3. The Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act No. 112 of 1976).
4. The Public Accountants' and Auditors' Board established in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).
5. The Namibia Stock Exchange established in terms of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
6. The Casino Board established by the Casinos and Gambling Houses Act, 1994 (Act No. 32 of 1994).

[The word "Gambling" in the title "Casinos and Gambling Houses" is misspelt in the Government Gazette, as reproduced above. The Casinos and Gambling Houses Act 32 of 1994 has been replaced by the Gaming and Entertainment Control Act 13 of 2018.]

SCHEDULE 5

[Schedule 5 is inserted by Act 6 of 2023.]

CATEGORIES OF NATURAL PERSONS REGARDED AS BENEFICIAL OWNERS
(SECTION 3A)

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

1. A natural person on whose behalf a transaction is conducted.
2. In relation to a legal person -
 - (a) a natural person who directly or indirectly or through a trust, other legal person or other legal arrangements holds 25 percent or more of the shares, voting rights or other ownership interest in the legal person, and where -
 - (i) there is doubt as to whether the natural person identified is the beneficial owner or the natural person on whose behalf a transaction is conducted; or
 - (ii) a natural person is not identified as the beneficial owner, the natural person exercising control over the legal person through other means is regarded as the beneficial owner;
 - (b) where a beneficial owner cannot be identified in terms of subparagraph (a), a natural person who holds the position of senior management in the legal person and record that the person has been identified as holding that position;
 - (c) natural persons or through a trust, other legal person or other legal arrangements who jointly exercise direct or indirect control over the legal person;
 - (d) natural person who directly or indirectly controls several legal persons and holds a combination of 25 percent or more of shares, voting rights or ownership interest in the legal persons;

[The word “a” appears to have been omitted before the phrase “natural person”.]

- (e) a natural person who has the right, directly or indirectly, to appoint or remove majority of the board of directors of the legal person;

[The word “a” appears to have been omitted before the word “majority”.]

- (f) a natural person who has the power to materially influence the decision-making or policy of the legal person;
- (g) a natural person who derives substantive economic benefits, including dividend, right to profit, enjoyment of assets of legal person or able to use significant assets of the legal person, even if the person has no other formal link to the legal person; or

[There are several grammatical errors in paragraph (g); it should read as follows:

- (g) a natural person who derives substantive economic benefits, including dividends, rights to profit, enjoyment of assets of the legal person or ability to use significant assets of the legal person, even if the person has no other formal link to the legal person; or.]

- (h) a natural person who has influence or ultimate control over the legal person through any other means.

3. In relations to a trust -

[The phrase “In relations to...” should be “In relation to...”.]

- (a) the settlor;
- (b) a trustee;
- (c) a protector, if any;
- (d) a natural person who is a beneficiary of a trust or a class of beneficiaries if the individuals benefiting from the trust are yet to be determined;
- (e) any other natural person exercising ultimate control over the trust by other means; or
- (f) any other natural person exercising ultimate effective control over a trust by means of direct or indirect ownership or by other means, such that when the person acts alone or jointly with another person or with the consent of another person, the person has ultimate power to -
 - (i) dispose of, advance, lend, invest, pay or apply trust property;
 - (ii) vary or terminate the trust;
 - (iii) add or remove a person as a beneficiary or as a class of beneficiaries of the trust;
 - (iv) appoint or remove a trustee or give another person control over the trust; or
 - (v) direct, withhold consent or overrule the exercise of a power referred to in subparagraphs (i) to (iv).

4. In relation to other legal arrangements, the natural person holding an equivalent or a similar position referred to in paragraph (3).

5. In the case of insurance, the ultimate natural person who is the beneficiary of proceeds of a life insurance policy or other related investment policy when an insured event covered by the policy occurs.

6. In relation to partnership, a natural person who ultimately owns or controls the partnership by -

[The word “a” appears to have been omitted before the word “partnership”.]

- (a) holding 25 percent or more of the ownership interest in the partnership; or
- (b) being able to exercise, directly or indirectly, 25 percent or more of the votes in decision-making on amending the agreement on which the partnership is based or regarding the performance of that agreement otherwise than by acts of management, in so far as in that agreement decision-making by majority of votes is required, and where -

[The word “a” appears to have been omitted before the word “majority”.]

- (i) there is doubt as to whether the natural person identified is the beneficial owner or the natural person on whose behalf a transaction is conducted; or
 - (ii) a natural person cannot be identified as the beneficial owner,
- the person who holds the position of senior management in the partnership and record that the person has been identified as holding that position.

SCHEDULE 6

[Schedule 6 is inserted by Act 6 of 2023.]

PROMINENT INFLUENTIAL PERSONS (SECTION 3A)

1. Heads of state, heads of government, ministers and deputy ministers, assistant ministers, senior politicians and senior government officials.
2. Members of parliament or similar legislative bodies.
3. Members of the governing bodies of political parties.
4. Significant or important political parties officials.

[The phrase “political parties officials” should be “political party officials” or “officials of political parties”.]

5. Members of local authority councils and members of regional councils.
6. Senior management, executives and board members of public-owned enterprises.
7. Judicial officers.
8. Ambassadors and high-ranking officers in the armed forces.
9. Members of the administrative, management or supervisory bodies of public-owned enterprises.
10. Traditional leaders as defined in Section 1 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000).
11. Religious leaders.
12. Senior executives of private entities where the private entities are of such turnover as may be prescribed.
13. Senior executives of international organisations operating in Namibia.