



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 293

2008

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 10 of 2008: Prevention of Organised Crime Amendment Act, 2008.

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## Act No. 10, 2008 PREVENTION OF ORGANISED CRIME AMENDMENT ACT, 2008

## EXPLANATORY NOTE:

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

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**ACT**

To **amend the Prevention of Organised Crime Act, 2004, so as to construe any reference in that Act to the Criminal Procedure Act, 2004 and the Companies Act, 2004 as a reference to the Criminal Procedure Act, 1977 and the Companies Act, 1973, respectively; to provide for the reporting of suspicion regarding proceeds of unlawful activities to be made in terms of section 21 of the Financial Intelligence Act, 2007; to provide as a possible defence to any person who is charged with negligently committing an offence under section 2(1), (2) or (3), or section 4, 5 or 6, to raise the fact that he or she had reported a suspicion or knowledge in terms of section 21 of the Financial Intelligence Act, 2007; and to provide for incidental matters.**

*(Signed by the President on 14 December 2008)*

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

**Amendment of section 1 of Act No. 29 of 2004**

1. Section 1 of the Prevention of Organised Crime Act, 2004 (*hereinafter referred to as the principal Act*) is amended by the addition after subsection (5) of the following subsection:

- “(6) A reference in any provision of this Act -
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| <p>(a) to the Criminal Procedure Act, 2004 (Act No. 25 of 2004) is construed as a reference to the corresponding provision in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), until the Criminal Procedure Act, 2004 comes into operation; or</p> <p>(b) to the Companies Act, 2004 (Act No. 28 of 2004) is construed as a reference to the corresponding provision in the Companies Act, 1973 (Act No. 61 of 1973), until the Companies Act, 2004 comes into operation.”.</p> |
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**Substitution of section 9 of Act No. 29 of 2004**

2. The following section is substituted for section 9 of the principal Act:

“**Reporting of suspicion regarding proceeds of unlawful activities**

9. Any person who knows or ought reasonably to have known or suspected that -

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- (a) any property which comes into his or her possession or the possession of the business undertaking is, or forms part of, the proceeds of unlawful activities;
- (b) a transaction to which he or she or the business undertaking is a party will facilitate the transfer of the proceeds of unlawful activities; or
- (c) a transaction to which he or she or the business undertaking is a party and which is discontinued -
  - (i) may have brought the proceeds of unlawful activities into possession of the person or business undertaking; or
  - (ii) may have facilitated the transfer of the proceeds of unlawful activities,

had the transaction been concluded,

must report his or her suspicion or knowledge in terms of section 21 of the Financial Intelligence Act, 2007 (Act No. 3 of 2007).”

**Substitution of section 10 of Act No. 29 of 2004**

3. The following section is substituted for section 10 of the principal Act:

**“Defence**

**10.** (1) If a person is charged with negligently committing an offence under section 2(1), (2) or (3), or section 4, 5 or 6, that person may raise as a defence the fact that he or she had reported a suspicion or knowledge in terms of section 21 of the Financial Intelligence Act, 2007.

(2) If a person who is a director, or employee of an accountable institution as defined in the Financial Intelligence Act, 2007, is charged with committing an offence under section 2(1), (2) or (3), or section 4, 5 or 6, that person may also raise as a defence the fact that he or she had -

- (a) complied with the applicable obligations in terms of the internal rules relating to the reporting of suspicious transactions of the accountable institution;
- (b) reported the matter to the person charged with the responsibility of ensuring compliance by the accountable institution with its duties under that Act; or
- (c) reported a suspicion or knowledge to his or her superior, if any, if -

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- (i) the accountable institution had not adopted internal rules in terms of section 25(1) of the Financial Intelligence Act, 2007 or designated such a person in terms of section 25(3) of that Act;
- (ii) the accountable institution had not complied with its obligations in terms of section 25(7) of the Financial Intelligence Act, 2007 in respect of that person.”

**Amendment of section 11 of Act No. 29 of 2004**

4. Section 11 of the principal Act is amended by the deletion of subsection (2).

**Amendment of section 77 of Act No. 29 of 2004**

5. Section 77 of the principal Act is amended -

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

“(2) the Committee consists of -

- (a) the Minister, who is the chairperson of the Committee;
- (b) the Minister responsible for [Home Affairs] policing;
- (c) the Minister responsible for finance;
- (d) the Attorney-General; and
- (e) if necessary, [**one other person**] not more than seven persons designated by the Minister to deliberate on any relevant matter.”; and

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

“(3) the members of the Committee may designate their Deputies or staff members to attend a meeting of the Committee in their place.”.

**Amendment of section 100 of Act No. 29 of 2004**

6. Section 100 of the principal Act is amended by the deletion of paragraph (b) of subsection (1).

**Short title**

7. This Act is called the Prevention of Organised Crime Amendment Act, 2008.
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