



Republic of Namibia  

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Financial Intelligence Centre

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## **DETERMINATION NO. 01 OF 2016**

**DETERMINATION OF THE PERIOD WITHIN WHICH THE MASTER OF THE HIGH COURT MUST OBTAIN 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 IN TERMS OF SECTION 5 OF THE FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO.13 OF 2012) AS AMENDED**

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**JULY 2016**

## 1. PURPOSE

- 1.1 This Determination is issued in terms of Section 5(4) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended.
- 1.2 The purpose of this determination is to determine the period within which the Master of the High Court must obtain and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all testamentary and *inter vivos* trusts registered before the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended came into effect.

## 2. DEFINITIONS AND ACRONYMS

Terms used in this Determination are as defined in the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended and ancillary regulations as well as the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014).

- 2.1 “**AML/CFT/CFP**” – means Anti-Money Laundering and the Combating of Financing of Terrorist and Proliferation Activities;
- 2.2 “**accountable institution**” means a person or institution referred to in Schedule 1, including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution;
- 2.3 “**beneficial owner**” as defined under Section 1 of the FIA means -
- a) a natural person who owns or effectively controls a client, including the natural person on whose behalf a transaction is conducted; or

- b) a natural person who exercises effective control over a legal person or trust, and a natural person is deemed to own or effectively control a trust when the person -
- (i) owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
  - (ii) together with a connected person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
  - (iii) despite a less than 20% shareholding or voting rights, receives a large percentage of the trust's declared dividends; or
  - (iv) otherwise exercises control over the management of the trust in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner.

2.4 **“Centre”** means the Financial Intelligence Centre established by section 7 of FIA;

2.5 **“determination”** means a determination made under FIA

2.6 **“FIA”** - means the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended, and Regulations issued thereto;

2.7 **“Fund”** means the Criminal Assets Recovery Fund established by section 74 of the Prevention of Organised Crime Act; 2004 (Act No. 29 of 2004) (POCA)

- 2.8 **“funding of proliferation”** means the provision of funds, assets or financial services which are used, in whole or in part, for proliferation activity; and “financing of proliferation” has a corresponding meaning;
- 2.9 **“funding of terrorism”** means the provision of funds, assets or financial services which are used, in whole or in part, for terrorist activity as defined in the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014);
- 2.10 **“money laundering”** as defined in FIA and any activity which constitutes an offence as defined in section 4, 5 or 6 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) as amended;
- 2.11 **“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;

### **3. APPLICATION**

- 3.1 This determination applies to the Master of the High Court, and affects Trusts that are registered before the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended came into effect, and the obligations therein are fully effective and should be fully complied with.

### **4. STATEMENT OF POLICY/DETERMINATION**

- 4.1 The Master of the High Court must within **three (3) months from the date of issue of this determination** obtain and keep up-to-date prescribed information in terms of the FIA supplementary regulation three (3) in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts which were registered before the FIA came into effect.

## **5. RESPONSIBILITY**

- 5.1 The Master of the High Court to ensure that prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all testamentary and *inter vivos* trusts registered before FIA came into effect, is obtained and retained.
- 5.2 The Master of the High Court is entitled to request from a relevant accountable or reporting institution and the institution must provide the Master with information relating to Trust banking accounts for purposes of monitoring or investigating the transaction activities or operations of any trust.
- 5.3 The Master of the High Court is also expected to avail founder, trustee, trust beneficiary and trust beneficial ownership information of all registered testamentary and *inter vivos* trusts to competent authorities upon request.

## **6. OVERVIEW AND IMPLEMENTATION REQUIREMENTS**

- 6.1 Obtaining and keeping 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 is the key process to mitigate the risk of Money Laundering and the Financing of Terrorist and Proliferation Activities manifesting through possible abuse of Trusts.
- 6.2 Identification of founders, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts places the AML/CFT/CFP regime in a better position to curb the abuse of Trusts by criminals to hide/conceal their ill-gotten assets, as well as generating funds to finance Terrorist and Proliferation Activities.

## **7. REMEDIAL MEASURES**

- 7.1 If a trust refuses or fails to register in the prescribed manner and form or fails to provide the prescribed information to the Master of the High Court within the

**three (3) months period** as determined by the Centre in terms of Section 5(4) of the FIA, such trust commits an offence and is liable to a fine not exceeding N\$10 million, or where the commission of the offence is attributable to a representative of the trust, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment.

## **8. EFFECTIVE DATE**

8.1 This determination shall come into effect on the date of issue.

## **9. GENERAL AND ENQUIRIES**

9.1 This determination may not be exhaustive and can be supplemented and/or amended when need be.

9.2 All enquiries related to this determination shall be forwarded to:

The Director:  
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The Directive can be accessed at [www.fic.na](http://www.fic.na).

Date issued: **19 July 2016**

**Director: Financial Intelligence Centre**