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CIRCULAR 01 OF 2024

NOTIFICATION OF TARGETED COMPLIANCE ASSESSMENTS ON BENEFICIAL OWNERSHIP RISK MANAGEMENT MEASURES

DATED: 21 SEPTEMBER 2024

1. PURPOSE AND INTRODUCTION

- 1.1 It is common cause that the national Anti-Money Laundering, Combatting the Financing of Terrorism and Proliferation Financing (AML/CFT/CPF) framework has shortcomings related to the identification of Beneficial Owners.
- 1.2 This Circular builds on prior communications regarding enhancing Beneficial Ownership (BO) related risk management frameworks within Accountable and Reporting Institutions. It is issued in terms of section 9(2)(e) of the Financial Intelligence Act 13 of 2012, as amended, herein referred to as the FIA.
- 1.3 The obligation to identify clients, as part of conventional *Know Your Customer* requirements, finds expression in sections 21¹ to 23 of the FIA. In essence, the said sections provide that an Accountable or Reporting Institution may not establish a business relationship or conclude a single transaction with a prospective client, unless the institution has taken such reasonable steps in the prescribed form and manner to establish the client's identify.
- 1.4 The Business and Intellectual Property Authority (BIPA) and the Master of the High Court (MoHC) are collecting such BO information as part of national remediation efforts in view of existing laws and Namibia's placement on the list of countries under the FATF's Enhanced Monitoring. In the midst of this however, the obligation to comply with BO requirements as part of conventional *Know Your Customer* requirements in line with the FIA remains and cannot be paused.
- 1.5 Apart from BIPA and MoHC's efforts, the FATF Joint Group's recommendations for Namibia, in particular Immediate Outcome 4, Action Item 4(a), requires the FIC, as the AML/CFT/CPF supervisory authority to demonstrate effective risk management on BO by May 2025. Given this position, the FIC will enhance ongoing supervisory activities and:

¹ Section 19 of the 2023 FIA amendments specifically builds on the Beneficial Ownership related KYC requirements as per FIA 2012 Regulations 7 – 11.

- a. Conduct targeted compliance assessments, based on risk considerations in the months starting **01 November 2024**;
- b. Depending on the nature of observations, undertake remediation measures including enforcement considerations; and
- c. Perform follow-up reviews thereafter to gain assurance that necessary enhancements have been undertaken and record same before end of January 2025. Namibia's country report to the FATF for May 2025 is due for submission in March 2025.

2. MEASURES TO SAFEGUARD THE INTEGRITY OF THE NATIONAL AML/CFT/CPF FRAMEWORK AND FINANCIAL SYSTEM

2.1 Attached hereto is a list from BIPA and the MoHC listing entities and trusts who are not compliant with their BO obligations.

2.2 All Accountable and Reporting Institutions are requested to:

2.2.1 review and compare the attached lists to their client database(s);

2.2.2 if an institution identifies their clients on such list, undertake risk management activities to reduce Money Laundering, Terrorism and Proliferation Financing (ML, TF and PF) risk exposure. Amongst others, the institution has to undertake the following risk management activities:

Part A: Verifications with BIPA, MOHC and other reasonable sources:

- i. **Firstly**, engage the client/entity to demonstrate that it has submitted BO information to BIPA or MOHC duly;
- ii. If possible, **directly obtain such confirmation from BIPA or the MOHC**; and
- iii. The identity of any beneficial owner of the client by **taking reasonable measures to verify the identity of the beneficial owner**² using relevant information or data obtained from a reliable source such that the institution is satisfied that it knows who the beneficial owner is.

² As per the amended FIA section 21(2)(b).

PART B: BO speaks to both legal ownership and those exercising effective control of an entity or trust

- iv. **Beneficial ownership (BO) goes beyond Legal Ownership (LO)³.** BO refers to the natural person(s) exercising effective control⁴, including Executives and Directors. This means institutions should as a first step duly identify the legal owner and additionally take actions to identify persons managing or running the affairs of the business. Ultimate beneficial owner(s)⁵ might not always be the legal owners reflected on entity or trust's founding/incorporation documents while they exercise effective control or derive benefits from proceeds or such similar outputs associated with the business/transaction. Such natural persons need to be identified. In practice, an institution's customer take-on records/forms must deliberately seek to establish this additional information beyond legal ownership; and
- v. If all CDD activities fail, the ML, TF and PF risk exposure has to be minimised by, amongst others, **restricting or ceasing all withdrawals and outward transactions/transfers of funds/assets in the custody of the institution until client demonstrates compliance thereof, as per FIA section 21(2)⁶.**

2.3 Given delays that may arise in processing, after submitting to BIPA or MoHC, such restrictions may be waived if a client or entity presents proof that they have submitted the relevant BO information to BIPA⁷ and MoHC duly, even if such submission has yet to be finalised/processed.

³ LO refers to the owners as stated on the incorporation or founding documents of the entity or trust.

⁴ Those who direct the affairs of the business, or can hire and fire the executives of the firm etc. In terms of shareholding, those who hold interest/stake/voting rights of 25% or more are also said to exercise effective control.

⁵ This speaks to deliberately asking the persons representing the entity to indicate if the legal owners are not mere representatives of true owners who do not appear on the incorporation or founding documents of the entity/trust.

⁶ Amongst a host of sections within the FIA, section 21(2) provides that institutions should not establish client relationships or facilitate occasional transactions with clients unless client identification as per such section is duly completed.

⁷ This must be a BIPA stamped copy of the submission made indicating the date of submission.

3. CONCLUSION

All correspondence relating to this matter should be directed to the FIC as per the contact details on the front page.

**B EISEB
DIRECTOR**