



Republic of Namibia

Financial Intelligence Centre

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DIRECTIVE NO. 01 OF 2019

**REGISTRATION OF TRUSTS BY THE MASTER OF THE HIGH COURT
(Proof of Registration with the FIC)**

MARCH 2019

1. INTRODUCTION

- 1.1 The Financial Intelligence Centre (FIC) as part of its continuous efforts to assist the Government of the Republic of Namibia in combatting Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF), hereby issues this Directive in terms of Sections 9(1)(f) and 9(2)(g) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA).
- 1.2 In terms of Section 5 of the FIA and its complimenting Regulation 3 (read with FIC Directive 3 of 2017¹ and Directive 2 of 2018²) the Master of High Court is required to register all testamentary and *inter vivos* trusts in the prescribed manner and form, as well as collect and keep up-to-date information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts. The Master of High Court may not register any trust without the aforementioned information being availed to him/her.
- 1.3 It has come to the attention of the FIC that the recently launched online trust registration system utilised by the Master's Office requires a proof of registration with the FIC from **all** applicants before the registration process can be completed.

2. PURPOSE

The purpose of this Directive is to highlight the fact that only Accountable and Reporting Institutions as designated on Schedules 1 and 3³ to the FIA is required to register with the FIC, as per section 39(2) of the FIA:

¹ Directive 3 of 2017 - Registration of Discretionary Trusts.

² Directive 2 of 2018 - Registration of Dividend Access Trusts - Established For Giving Access To Namibian Shareholders To Dividends Declared By Companies With Publicly Listed Shares.

³ Schedules 1 and 3 to the FIA is attached hereto as Annex A and Annex B

Obligations of accountable and reporting institutions

39. (1) *An accountable institution,*

(2) *Accountable and reporting institutions not supervised or regulated by a supervisory body or regulatory body must register their prescribed particulars with the Centre for purposes of supervising compliance with this Act or any regulation, notice, order, circular, determination or directive issued in terms of this Act."*

3. BACKGROUND INFORMATION TO THIS DIRECTIVE

- 3.1 The FIC has been inundated with requests for registration with the FIC from persons (natural and legal) who are in the process of registering a trust with the Office of the Master of the High Court, but who is **NOT** subject to the FIA at all.
- 3.2 The FIC, upon enquiry, was informed that the recently launched online trust registration system used by the Master's Office requires, amongst others, proof of registration with the FIC before the registration process can be completed.
- 3.3 The FIC has no objection to the issuance of letters of registration to Accountable and Reporting Institutions who fall within the ambit of above-mentioned schedules of the FIA, but same cannot be done for those persons and institutions that are **NOT** falling within the ambit of Accountable or Reporting Institutions as per Schedules 1 and 3 to the FIA.
- 3.4 The FIC has, until thus far, been able to issue letters to **non**-Accountable and **non**-Reporting Institutions confirming that they are **NOT** required to be registered with the FIC. However, this exercise is becoming resource intensive and is not sustainable anymore; given the FIC's extremely small human resource infrastructure.

4. DIRECTIVE

The Master of High Court is hereby directed to:

4.1 Refrain from requiring persons or institutions, that are **NOT** designated Accountable or Reporting Institutions as envisaged by the FIA, to produce a letter of registration from the FIC before their trust registration process can be completed.

Application of this Directive:

4.2 This Directive applies to the Office of the Master of the High Court in respect of persons or entities who wishes to register a trust with the Master's Office, but who is not a designated Accountable or Reporting Institution as per FIA Schedule 1 or 3.

5 NON-COMPLIANCE WITH THE PROVISIONS OF THIS DIRECTIVE

5.1 Any non-compliance with the directions and specifications contained in this Directive is a criminal offence in terms of section 63 (f) of the FIA.

5.2 The criminal penalty for the above-mentioned offence, upon conviction, is a fine not exceeding N\$100 million or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

The information contained in this document is intended to provide only a summary and a general overview on these matters and may not be comprehensive.

This document may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions.

The Directive can be accessed at www.fic.na.

Date issued: **08 March 2019**

Director: Financial Intelligence Centre