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POLITICALLY EXPOSED PERSONS (PEPs)

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1. BACKGROUND

The Financial Intelligence Centre (FIC) as part of its continuous effort to assist the Government of the Republic of Namibia in combatting Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF), hereby issues a Directive in terms of Sections 9(2)(e) & (g) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA). Globally, Politically Exposed Persons (“PEPs”) have always been recognised and accepted as high risk clients, with the FATF Recommendation 12 leading guidance on the level of due diligence that ought to apply to PEPs.

“RECOMMENDATION 12 - POLITICALLY EXPOSED PERSONS (PEPS)”

12.1 In relation to foreign PEPs, in addition to performing the CDD measures required under Recommendation 10, financial institutions should be required to:

- a) put in place risk management systems to determine whether a customer or the beneficial owner is a PEP;*
- b) obtain senior management approval before establishing (or continuing, for existing customers) such business relationships;*
- c) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and*
- d) conduct enhanced ongoing monitoring on that relationship.*

12.2 In relation to domestic PEPs or persons who have been entrusted with a prominent function by an international organisation, in addition to performing the CDD measures required under Recommendation 10, financial institutions should be required to: (a) take reasonable measures to determine whether a customer or the beneficial owner is such a person; and (b) in cases when there is higher risk business relationship with such a person, adopt the measures in criterion 12.1 (b) to (d).

12.3 Financial institutions should be required to apply the relevant requirements of criteria 12.1 and 12.2 to family members or close associates of all types of PEPs.

12.4 In relation to life insurance policies, financial institutions should be required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout. Where higher risks are identified, financial institutions should be required to inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and to consider making a suspicious transaction report.”

Section 23, read with Sections 1, 24(1) and Regulation 1 and 15 of the FIA requires Accountable Institutions (AIs) to implement appropriate risk management and monitoring systems to identify clients and beneficial owners who may pose a ML, TF or PF risk to the institution, and put appropriate measures in place to mitigate the identified high risk clients. These provisions are in line with Financial Action Task Force (FATF) Recommendation 12.

2. PURPOSE

This directive is issued to address the requirements related to the treatment of PEPs, in line with section 23 read with section 24(1) and Regulations 1, 6, 12 and 15 of the FIA, and must be read in conjunction with Guidance Note No 01 of 2019 on PEPs.

3. DEFINITION OF A POLITICALLY EXPOSED PERSON

A PEP is defined by the Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function. Due to their position and influence, it is recognised that many PEPs are in positions that can be abused for the purpose of committing Money Laundering (ML) offences and related predicate offences, including corruption and bribery. The risk also includes propensity to advance activities related to Terrorist Financing (TF) and Proliferation Financing (PF). A PEP is meant to have the same meaning as the words “persons in prominent public positions or functions” including persons who previously occupied prominent public positions but have since vacated such positions or functions.

4. PEPs WITHIN THE CONTEXT OF THE CURRENT FIA

4.1 Enhanced Due Diligence (EDD)

PEPs inherently¹ present a high risk for ML/TF and PF activities. To address these risks, the FIA, amongst others, requires Accountable Institutions (AIs) to implement measures that prevent the misuse of the financial systems by PEPs. In summary, the various FIA sections and regulations listed in this section require (a) institutions to have measures to identify PEPs (b) evaluate the risks presented by such PEP (c) obtain management approval before establishing any business relationship with such PEPs (d) subjecting such PEPs to the right level of due diligence (EDD) and (e) timely detecting potential suspicious transactions that need to be reported to the FIC without delay.

In terms of Section 1 of the FIA - *“risk clients” means any person, natural or legal whose activities pose a risk for money laundering or financing of terrorism or proliferation activities*. PEPs, given their stated high risk meet this definition and should thus be subjected to EDD.

4.2 Section 23: Due diligence for “Risk Clients”

- 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.*
- 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 –*
 - a. *obtain approval from the directors, partners or 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 directors,*

¹ Refers to the risk that a person or client presents before consideration of all relevant factors which might reduce or further escalate his or her risk profile. Residual risk level on the other hand is the final risk position after relevant control measures have been considered and implemented.

partners or senior management of that accountable institution to continue the business relationship with the client; and

- b. take measures as prescribed by the Centre to identify, as far as reasonably possible, the source of wealth, funds and any other assets 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.”*

4.3 In terms of Regulation 1 of the FIA

Regulation 1 refers to “monitoring” for purposes of Section 23, 24 and 25 of the Act includes –

- a) the monitoring of transactions and activities carried out by the client to ensure that such transactions and activities are consistent with the knowledge that the accountable institution has of the client, the commercial or personal activities and risk profile of the client;*
- b) the enhanced monitoring of transactions and activities of identified high risk clients in order to timeously identify suspicious transactions and activities; and*
- c) the screening of the name of a client or potential client, and the names involved in transactions, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter; for purposes of combating money laundering, the financing of terrorism and the funding of proliferation activities.*

4.4 On-going and enhanced due diligence

Section 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 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.*

Note that the above provisions are to be revised should the proposed FIA amendments be passed in Parliament.

5. ADDRESSING DOMESTIC DEFICIENCIES IN THE DEFINITION OF A PEP

At the time of revising this Directive (April 2023), the FIA is undergoing amendments which will include defining Prominent Influential Persons (PIPs)². PEPs will fall under the broader category of such PIPs. To enhance risk management in practice, the revision of this Directive (and Revised Guidance Note 01 of 2019) expands the PEP definition to incorporate considerations from Namibia's Mutual Evaluation³ observations.

With the April 2023 Revision of this Directive and Guidance Note 01 of 2019, the list of PEPs has been enhanced and below is the updated list of persons who meet the definition of PEPs (amongst others):

- a) heads of state, heads of government, ministers and deputies, assistant ministers or senior politicians;
- b) members of parliament or of similar legislative bodies;
- c) secretary to cabinet or those holding such similar position;
- d) members of the governing bodies of political parties;
- e) significant, senior or important political party officials;
- f) executive directors and their deputies (former Permanent Secretaries);

² Means a person in a prominent public position or function domestically or in a foreign country, including persons who previously occupied prominent public positions but have since vacated such positions or functions. This also includes persons who are or have been entrusted with a prominent function by an international organization.

³ See Namibia's Mutual Evaluation Report adopted in September 2022. Paragraph 319, page 99.

- g) directors and their deputies in line ministries;
- h) regional authority councillors as well as directors and their deputies;
- i) local authority councillors as well as the executive management of local authorities;
- j) senior executives of state-owned entities;
- k) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
- l) members of the boards of domestic, international banks and central banks;
- m) ambassadors and members of management of embassies or similar bodies;
- n) high-ranking officers in the armed forces and law enforcement, including prosecutorial services;
- o) members of the management of supervisory bodies; and
- p) directors, deputy directors and members of boards or equivalent function of an international organisation.

In particular, the following definitions, which do not cover middle ranking or junior staff in public functions, apply as per this Directive:

- i. **Foreign PEPs:** individuals who are or have been entrusted with prominent public functions by a foreign country;
- ii. **Domestic PEPs:** individuals who are or have been entrusted domestically with prominent public functions;
- iii. **International organisation PEPs:** persons who are or have been entrusted with a prominent function by an international organisation;
- iv. **Family members:** individuals who are related to a PEP either directly or through marriage or similar (civil) forms of partnership. Family members of a PEP include the following:
 - a *spouse or partner* of the PEP: 'spouse' means by civil or customary marriage concluded in Namibia or elsewhere. On the other hand, 'partner' means by civil partnership in Namibia or elsewhere, or in a cohabitating relationship;
 - *children* of the PEP and their spouses or partners: 'children' means both biological and lawfully adopted sons and daughters, or step-sons and step-daughters (of any age); and

- *parents* of the PEP: 'parent' means the biological or adoptive mother or father, stepfather or stepmother.
- v. **Close associates**⁴: individuals who are closely connected to a PEP, either socially or professionally. Known close associates of a PEP include but are not limited to the following: a) individuals known to have joint beneficial ownership of a legal entity or a legal arrangement or any other close business relationship with a PEP. For example, a PEP's business partners; b) individuals who have sole beneficial ownership of a legal entity or a legal arrangement which is known to have been set up for the benefit of a PEP; and d) Known close friends of the PEP.

The difference between a foreign PEP and a domestic PEP is the country which has entrusted the individual with a prominent public function.

6. UNTIL WHEN DOES A PEP REMAIN PROMINENT AND INFLUENTIAL?

There is no single position or answer that would speak to all potential circumstances of PEPs. Some PEPs still maintain influence or beneficial relationships with their former offices and/or acquaintances. It is not uncommon that patronage networks largely remain in existence, especially in as far as corruption is concerned. It is also notable that some PEPs cease to have any such influence when they are out of office almost immediately while others possibly lose such influence gradually or over time. It would therefore not be prudent to set a fixed period (e.g 3 years) for reduced risk for all PEPs after vacating influential positions. As part of an AI's internal risk management framework, as per sections 21 to 24 and 39, controls have to be designed to assess each PEP on their individual merits. Using open source information which may speak to the influence or prominence of such PEP is a helpful exercise. Considering the PEP's involvement in business activities, directly or indirectly could also help understand changes in the risk profile of a PEP after vacating office. Socio-economic activities or position of the PEP's

⁴ Refer to Paragraph 3.6

associates and/or family members can also shed light on the risk profile of the PEP, emanating from their possible influence.

7. TARGETED FINANCIAL SANCTIONS (TFS)

Accountable and Reporting Institutions need to ensure all PEPs, like all other clients are duly subjected to TFS measures as per the FIA and PACOTPAA. Guidance Note 07 of 2023 avails guidance on practical implementation of TFS.

8. REPORTING INSTITUTIONS (RIs)

To the extent possible, RIs need to have certain measures in place to mitigate abuse from high risk circumstances. This section gives context to such.

Section 39(3) requires of RIs (similar to Accountable Institutions) to develop, adopt and implement customer acceptance policies, internal rules, programmes, policies, procedures and controls as prescribed to effectively manage and mitigate risks of ML, TF and PF activities. Although Sections 23 and 24 do not explicitly refer to RIs, section 39(3) requires RIs' policies and risk management frameworks to identify and duly mitigate or respond to high risk clients and circumstances as they may arise. It is in this same vein that RIs are required to detect risks that PEPs may present and thus adopt effective risk mitigation measures.

The object of the law is to not overburden RIs but still require of them to understand when a high risk client or situation arises (given its individual risk exposure) in order to contribute to national combatting measures (detect and report same to the FIC). It is for this reason that RIs are equally required to comply with FIA section 33. The FIC will therefore at all times need to gain assurance that RIs have demonstrable measures that can identify and enable effective responses to high risks as per FIA section 39(3), at an individual entity level.

9. APPLICATION

This directive primarily applies to all Accountable Institutions and to a lesser extent, Reporting Institutions as explained in section 8 above.

10. DIRECTIVE

The FIC hereby directs that AIs and RIs:

- a) implement mechanisms to identify domestic and foreign PEPs. Known close associates and family members of PEPs should also be identified. This should apply to both attempts to create business relationships or conduct single transactions;
- b) regard foreign and domestic PEP's as inherently high risk clients, and implement appropriate EDD measures to reduce their residual risk levels to acceptable levels as provided for herein and explained in Revised Guidance Note 01 of 2019;
- c) The extent and nature of EDD should be premised on the level of risk exposure each PEP presents;
- d) when entering into a business relationship or conducting a single transaction with a PEP:
 - have *approval from senior management* for establishing or continuing business relationships with such PEP;
 - take adequate *measures to establish the source of wealth and source of funds* that are involved in business relationships or single transactions with such persons; and
 - *conduct enhanced, ongoing monitoring of those business relationships*. Such could entail keeping an eye on the transacting behaviour of all high-risk clients including PEPs. If any transacting behaviour is not in line with the expected norm, such should be reviewed in order to determine if it is suspicious. Suspicions should be reported to the FIC promptly and without delay.

11. COMMENCEMENT

This Revised Directive comes into effect on **17 April 2023**.

12. NON-COMPLIANCE WITH THIS DIRECTIVE

Non-compliance with this Directive amounts to non-compliance with the provisions of section 63 (f) of the FIA. An AI or RI who contravenes or fails to comply with this Directive commits an offence and is liable to a fine not exceeding NAD 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.

This Directive provides an interpretation of the relevant provisions of the FIA and its accompanying Regulations. It contains statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory mandate. The Directive can be accessed at www.fic.na

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