



Republic of Namibia

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POLITICALLY EXPOSED PERSONS (PEPs)

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1. INTRODUCTION AND 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”) has always been recognised and accepted as high risk clients, hence FATF Recommendation 12:

“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 PEP.

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)(3) 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 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.

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;

“Risk clients

23. (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, 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.”

In terms of Regulation 1 of the FIA - “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.

On-going and enhanced due diligence

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 or reporting 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.

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)(3) and Regulations 1, 6, 12 and 15 of the FIA, and **must** be read in conjunction with the Guidance Note No 01 of 2019 on the Treatment of Politically Exposed Persons.

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 potentially can be abused for the purpose of committing Money Laundering (ML) offences and related predicate offences, including corruption and bribery, as well as conducting 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.

The above can be simplified in simple terms to include the following, amongst others:

- a) heads of state, heads of government, ministers and deputy, assistant ministers or senior politicians;
- b) members of parliament or of similar legislative bodies;
- c) members of the governing bodies of political parties;
- d) significant or important political party officials;
- e) Local and Regional Authority Councillors
- f) senior executives of state-owned corporations;
- g) 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;
- h) members of courts of auditors or of the boards of central banks;
- i) ambassadors and high-ranking officers in the armed forces;
- j) members of the administrative, management or supervisory bodies of state-owned enterprises; and

- k) directors, deputy directors and members of the board or equivalent function of an international organisation.

In particular, the following definitions, which do not cover middle ranking or junior staff in public functions, applies to 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; and
- v) Close associates: individuals who are closely connected to a PEP, either socially or professionally.

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

4. APPLICATION

This directive applies to all AIs and RIs and is effective on the date of issue.

5. DIRECTIVE

The FIC hereby directs that:

- a) AIs **must** regard foreign and domestic PEP's as high risk clients, and implement appropriate risk-management procedures in order to manage the inherently high risks arising from having a business relationship or concluding a single transaction with such customer, in line with global standards;

- b) RIs **must** regard foreign and domestic PEP's as high risk clients, and implement appropriate procedures for enhanced CDD in order to manage the inherently high risks arising from having a business relationship or concluding a single transaction with such customer, in line with global standards;
- c) Business relationships or single transactions with the family members and known close associates of a PEP should also be subjected to enhanced scrutiny/CDD;
- d) AIs must understand the nature of their relationships with their high-risk clients/PEPs and determine the extent of the potential risk exposure. This means that when conducting transactions or business with PEPs, AIs/RIs should take a proportionate, risk-based and differentiated approach based on the individual risks presented by PEPs, as well as persons / entities affiliated to a PEP.
- e) PEPs, their family members and close associates that pose a lower risk should be subjected to less due diligence or less scrutiny than those who present a higher risk.
- f) AIs and RIs must, when entering into a business relationship or conducting a single transaction with a PEPs:
 - i) have approval from senior management for establishing or continuing business relationships with such persons;
 - ii) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons; and
 - iii) conduct enhanced, ongoing monitoring of those business relationships. Such could entail keeping an eye on the transacting behaviour of all high-risk clients/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.

6. 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 or Reporting 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.

DIRECTOR: FINANCIAL INTELLIGENCE CENTRE