FINANCIAL INTELLIGENCE CENTRE

DIRECTIVE NO. 02 OF 2023

SIMPLIFIED DUE DILIGENCE MEASURES FOR LOW-RISK SECTORS:

- **SHORT TERM INSURANCE SERVICE PROVIDERS;**
- **DEALERS IN JEWELLERY, ARTS & ANTIQUES; AND**
- **DEALERS IN SECOND HAND GOODS.**

First Issued: 14 April 2023

1. BACKGROUND

The Financial Intelligence Centre (FIC) issues this Directive in terms of Sections 54(1) and 9(2)(e) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) (FIA). The Directive serves to create emphasise the application of simplified due diligence in view of observed lower risks for Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF) activities.

2. OBJECTIVE OF THIS DIRECTIVE

Short Term Insurance Service Providers; Dealers in Jewellery, Arts and Antiques as well as Dealers in Second Hand Goods were found to have a very low risk exposure to ML/TF/PF, as per the Cabinet Approved 2020 National Risk Assessment (NRA). These are all Reporting Institutions (RIs) as per Schedule 3 of the FIA.

In terms of the Risk Based Approach (RBA), sectors and institutions are expected to apply Customer Due Diligence (CDD) measures to the extent of their risk exposure. Given the low risk observed within these sectors, the said sectors may apply Simplified Due Diligence measures, as per the FIA and expanded on herein. The overall object of simplified CDD is reduced compliance activities which, if duly applied, will not undermine financial inclusion activities.

3. SPECIFIC DIRECTIVES

The above-mentioned low risk sectors are only required to comply with the following provisions of the FIA:

3.1 **Identification when business relationship is established or single transaction is concluded** (section 21 of the FIA). This should be simplified due diligence as per FIA Regulations 4 - 11;

3.2 **Identification** when a transaction is concluded **in the course of a business relationship** (section 22 of FIA). This should also be simplified due diligence as per FIA Regulations 4 – 11;

3.3 **Record keeping** (sections 26 to 29 of FIA): Records to be kept are as follows:

3.3.1 all transactional records;

3.3.2 all client identification records; and

3.3.3 all suspicions transactions or activities reports filed with the FIC and any supporting information.

Records should be kept in a such a manner to enable reconstruction of identification and transactions or reports filed with the FIC.

3.4 Reporting **cash transactions above NAD 99,999.99** (section 32 of FIA);

3.5 **Reporting any ML, TF and PF Suspicious Transactions and Activities** (section 33 of FIA). Reporting of Suspicions Transaction Reports (STRs) and Suspicions Activities Reports (SARs) remains an obligation for all persons nationally, especially Accountable and Reporting Institutions;

3.6 Other compliance obligations as per FIA section 39, summarised below:

3.6.1 ensure **registration with the FIC** [section 39(2)];

3.6.2 **develop and implement Anti-Money Laundering, Combatting the Financing of terrorism and Proliferation (AML/CFT/CPF) Policy/program** as per section 39(3) and (4) which should be:

a. aligned to the RI's risk exposure; and

b. approved by relevant senior management.

3.6.3 Designate an **Anti-Money Laundering Compliance Officer** as per section 39(6) of the FIA. Such must be registered with the FIC as per section 39(2).

4. TARGETED FINANCIAL SANCTIONS AND SANCTIONS SCREENING

Screening clients and their associates against sanctions lists is one of the earlier steps in the broader implementation of Targeted Financial Sanctions (TFS). TFS primarily has two components being: (1) **asset freezing without delay** and (2) **prohibition** from making funds or other assets or services, directly or indirectly, available for the benefit of sanctioned individuals, entities, or groups. The PACOTPAA, as per sections 23, 25 and 45 amongst others, regulate the freezing and prohibition obligations.

The object of the law is not to overburden RIs but still require of them to contribute to national and international TF/PF combatting measures duly. In furtherance of same, the entire sections 23, 24 and 25 of the FIA do not[1] apply to RIs. However, sanctions screening obligations as per PACOTPAA[2] apply to RIs, as per FIA section 24(2)(c) and the PACOTPAA.

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. As mentioned above, while sections 23 and 24 do not explicitly include RIs, FIA 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 mitigate against TF and PF risks and thus adopt effective risk mitigation measures, primarily client screening as per section 24(2)(c) and 45(2) of the PACOTPAA. The level of identification which is required for effective sanctions screening, e.g efforts to establish ultimate beneficial ownership could, depending on circumstances, go beyond RIs' conventional CDD obligations as per FIA sections 21 and 22.

[1] Note that the definition of 'Monitoring' as per the FIA includes sanctions screening and without the proper context may imply that RIs are not required to comply with sanctions screening and TFS measures.
[2] Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014).

It is for the above reasons that RIs are equally required to comply with reporting requirements as per FIA section 33 and all other TFS measures detailed in the FIA and PACOTPAA. Such are further expanded on in Directive 01 of 2023 as well as Guidance Note 07 of 2023. The FIC will therefore at all times need to gain reasonable assurance that RIs have demonstrable TF and PF combatting and preventative measures as per the FIA and PACOTPAA.

5. PROPOSED AMENDMENTS TO THE FINANCIAL INTELIGENCE ACT, 2012

The compliance obligations as captured in part 3 above speaks to the minimal responsibilities RIs are expected to comply with. Sections 23 and 24, amongst others, are for example excluded herein, as per exclusion in the FIA (for RIs). The proposed FIA amendments are expected to clearly limit the obligations of RIs by expanding on this directive. The FIC may consider revising this directive when the FIA amendments are passed, depending on the need thereof.

If passed, the proposed FIA amendments will exclude Short Term Insurance Service providers from Schedule 3 of the FIA. In such case, the sector will thus be completely excluded from general FIA compliance as RIs.

6. COMMENCEMENT

This Directive shall come into force on **17 April 2023**.

7. NON-COMPLIANCE WITH THE PROVISIONS OF THIS DIRECTIVE

The consequences of failure adhere to required simplified due diligence is escalation of compliance measures which may unintentionally undermine financial inclusion objectives. This is an essential object of the risk based approach. Such failure not only hampers the effective functioning of the entire AML/CFT/CPF framework but may also result in non-adhering institutions being subjected to sanctions as per the FIA.

8. GENERAL

This document may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions. This directive is issued without prejudice to the FIA and its complementing Regulations. The information contained in this document is intended only to provide a summary on these matters and is not intended to be comprehensive. The Directive shall be reviewed as and when the FIC sees fit.

The Directive can be accessed at www.fic.na

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