



Republic of Namibia

Financial Intelligence Centre

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DIRECTIVE NO 02 OF 2016

**DIRECTIVE TO LEGAL PRACTITIONERS ON MANDATORY CASH
TRANSACTIONS REPORTING**

OCTOBER 2016

1. INTRODUCTION

- 1.1 The Financial Intelligence Centre (FIC) as part of its continuing efforts 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 Section 9(2)(c) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA).
- 1.2 Section 32 of the FIA requires that accountable and reporting institutions must, within the prescribed period, [i.e. five (5) working days prescribed by FIA regulation 23(1)], report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount [i.e. N\$99 999.99 prescribed by FIA regulation 23(1)] –
- (a) is paid by the accountable or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
 - (b) is received by the accountable or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

2. PURPOSE

The purpose of this Directive is to provide clarity to law firms and legal practitioners on the Cash Transaction Reporting obligation as outlined in paragraph 1.2 above, and direct them to comply with this obligation.

3. APPLICATION

This Directive applies to all law firms and all legal practitioners, and takes force and effect on the date of issue.

4. OBSERVATIONS

4.1 It came to the attention of the FIC that:

4.1.1 Not all law firms and legal practitioners comply with the Cash Transaction Reporting obligation; in that “cash received” is incorrectly construed by some legal practitioners to mean only cash received outside of the financial system (i.e. physical cash received at the law firm and not as a deposit into the trust account held by the law firm at a commercial bank). This forms the basis for reluctance by some law firms and legal practitioners to report all cash received above the threshold amount; be it cash at hand or cash deposited into their trust account.

4.1.2 Some law firms and legal practitioners are of the opinion that it is the obligation of the commercial bank where their trust account is held to report any cash deposit into the account which in excess of the threshold amount.

4.2 The FIC herewith clarify that:

4.2.1 The term “cash received” applies to an amount of cash in excess of N\$ 99 999.99 received from outside the banking system, as well as in the form of deposits into a bank account.

4.2.2 The cash transaction reporting obligation befalls all accountable and reporting institutions, who may not rely on a third party to comply with the obligation on their behalf. The fact that two different accountable or reporting institutions file a cash transaction report in respect of the same transaction has both analytical and supervisory value to the FIC.

5. DIRECTIVE

All law firms and legal practitioners are directed as follows:

- 5.1 To interpret the term “cash received” as applying to cash above the amount of N\$ 99 999.99 received from outside the banking system, as well as in the form of deposits into a bank account (i.e. trust account) held in the name of the law firm.

- 5.2 To report to the FIC within five (5) working days all cash transactions in excess of N\$ 99 999.99 as a result of:
 - 5.2.1 cash paid by the legal practitioner/law firm to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or

 - 5.2.2 cash received from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

- 5.3 To have appropriate measures in place in order to report cash transactions above N\$ 99 999.99.

6. NON-COMPLIANCE WITH THE PROVISIONS OF THIS DIRECTIVE

- 6.1 Non-compliance with this Directive amounts to a failure to implement Section 32, read with regulation 23 of the FIA.

 - 6.2 Non-Compliance may also expose the legal fraternity to abuse by Money Launderers and Financiers of Terrorist and Proliferation Activities.

 - 6.3 Any law firm which contravenes this Directive, and ultimately Section 32 of FIA, commits an offence and can upon conviction, be liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the law firm, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.
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The information contained herein is intended to provide a general overview.

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

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

Date issued: **October 2016**

Director: Financial Intelligence Centre