



Republic of Namibia

Financial Intelligence Centre

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DIRECTIVE NO 01 OF 2017

**DIRECTIVE TO THE REAL ESTATE INDUSTRY ON MANDATORY
CASH TRANSACTION REPORTING**

JANUARY 2017

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 this 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 places a Cash Transaction Reporting obligation on all accountable and reporting institutions (AIs & RIs). It requires that all “cash received” or “cash paid out” by an AI or RI above the prescribed threshold amount of N\$ 99,999.99 must be reported to the FIC.
- 1.3 It came to the attention of the FIC that:
 - a) Not all Estate Agents/Estate Agencies comply with the Cash Transaction Reporting obligation;
 - b) There is a general misunderstanding that the term “cash received” means only cash received outside of the financial system i.e. physical cash received in hand and does not cover cash deposits into the bank accounts held by Estate Agents/Estate Agencies at commercial banks. This resulted in non-reporting of cash in excess of the threshold amount being deposited into bank accounts held by these Estate Agents/Estate Agencies;
 - c) The majority of Estate Agents/Estate Agencies do not have measures in place to keep record of cash transactions in excess of the threshold amount as required in terms of Section 26(1)(j) of FIA;
 - d) The majority of Estate Agents/Estate Agencies do not have measures in place to report cash transactions in excess of the threshold amount as required in terms of Section 32 of FIA and its complimentary Regulation 23; and

- e) The majority of Estate Agents/Estate Agencies are not registered with the FIC. This creates difficulties in reporting and undermines overall FIC supervision in the sector.

2 PURPOSE

The purpose of this Directive is to, firstly, provide clarity to the Real Estate Industry on the Cash Transaction Reporting obligation as outlined in paragraph 1.2 above, and secondly, to direct Estate Agents/Agencies and their stakeholders e.g. commercial banks and conveyancing attorneys to comply with this obligation.

3 CLARIFICATION ON THE TERM “CASH RECEIVED”

3.3 The FIC herewith clarifies that:

3.3.1 The term “cash received” in section 32 of FIA refers to an amount of cash in excess of N\$ 99 999.99 received outside the banking system (as cash at hand), as well as in the form of cash and cheque deposits into a bank account;

3.3.2 The cash transaction reporting obligation applies to the AI or RI, and as such, an Estate Agent/Agency may not rely on a third party (such as commercial banks) 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.

4 DIRECTIVE

All Estate Agents/Estate Agencies are herewith directed as follows:

4.1 To understand the term “cash received” as referring to cash above the threshold amount of N\$ 99 999.99 received outside the banking system, as cash in hand as well as in the form of deposits into bank accounts.

- 4.2 To ensure that their prescribed particulars are registered with the FIC in terms of Regulation 25 of the FIA. An Agent/Agency that is not registered with the FIC will not be able to report the cash threshold transaction electronically, via an internet portal, as required by Regulation 23(3).
- 4.3 To report to the FIC within five (5) working days, as from the date of conducting the cash transaction, all cash transactions in excess of N\$ 99 999.99 as a result of:
- 4.3.1 cash paid by the Estate Agent/Estate Agency 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
- 4.3.2 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.
- 4.4 To have appropriate measures in place in order to report cash transactions above N\$ 99 999.99 under the “CTR” report type on the FIC’s goAML electronic system.
- 4.5 To have appropriate measures in place in order to keep a record of all cash transactions reports above N\$ 99 999.99 which were reported to the FIC.

5 NON-COMPLIANCE WITH THE PROVISIONS OF THIS DIRECTIVE

- 5.1 Non-compliance with this Directive amounts to a failure to implement Sections 26 and 32, read with regulations 23 and 25 of the FIA.
- 5.2 Any non-compliance with the directions and specifications contained in this Directive is an offence in terms of section 63 of the FIA. As such, non-compliance will inevitably also be met with administrative sanctions and penalties in terms of section 56 of the FIA.

5.3. It should also be noted that an AI or RI that contravenes this Directive, contravenes Sections 26 and 32 of FIA, thereby committing 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 AI or RI, to such fine 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 only to provide a summary and a general overview on these matters and is not intended to 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: **January 2017**

Director: Financial Intelligence Centre