



## Financial Intelligence Centre Republic of Namibia

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### **GUIDANCE NOTE NO 4 OF 2017**

## **GUIDANCE NOTE ON THE 15-DAY REPORTING PERIOD OF SUSPICIOUS TRANSACTIONS AND ACTIVITIES**

**First issued: August 2017**

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## 1. Background

This Guidance Note is issued in terms of Section 9(1)(h) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA), and contains guidelines on the 15-day reporting period of suspicious transactions and activities in terms of section 33 read with regulation 22 of the FIA.

## 2. Objective of this guidance

The guidelines contained herein:

- a) reflect on the purpose of the prescribed reporting period;
- b) avail guidance to Accountable and Reporting Institutions (AIs & RIs) on when the 15-day reporting period commences, to ensure the timeous reporting of suspicious transactions and activities to the FIC; and
- c) highlight the urgent reporting requirements contained in section 42 read with regulation 22(2) of the FIA, to avoid placement of proceeds of crime beyond the reach of Namibian Authorities.

## 3. Definitions and Acronyms

Terms used in this Guidance are as defined in the FIA and ancillary regulations as well as the Prevention of Organized Crime Act, 2004 (Act No. 29 of 2004) as amended (hereinafter referred to as POCA), and the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014), hereinafter referred to as PACOTPA.

- 3.1 **“accountable institution”** means a person or institution referred to in Schedule 1 of the FIA, including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution;
- 3.2 **“FIA”** means the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended;

- 3.3 **“FIC”** means the Financial Intelligence Centre established in terms of section 7 of the FIA;
- 3.4 **“financing of terrorism”** or **“funding of terrorism”** has the meaning as defined in terms of section 1 of PACOTPAA: the provision of funds, assets or financial services which are used, in whole or in part, for terrorist activity;
- 3.5 **“money laundering”** has the meaning as defined in FIA, and includes any activity which constitutes an offence as defined in sections 4, 5 or 6 of the POCA;
- 3.6 **“proceeds of unlawful activities”** has the meaning as defined in section 1 of the POCA;
- 3.7 **“records”** means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;
- 3.8 **“reporting institutions”** means a person or institution set out in Schedule 3 of the FIA;
- 3.9 **“transaction”** in terms of FIA means a transaction concluded between a client and an accountable or reporting institution in accordance with the type of business carried on by that institution, and includes attempted transactions. Further clarity on the term transaction is provided under paragraph 4 of the FIC guidance Note No. 4 of 2015;
- 3.10 **“unlawful activity”** has the meaning assigned to it in section 1 of the POCA;
- 3.11 **“proliferation activity”** has the meaning ascribed to it by PACOTPAA: the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling, supply, sale or use of nuclear, ballistic, chemical, radiological or biological weapons or any other weapon capable of causing mass destruction, and their means, of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), including technology, goods, software, services or expertise, in contravention of the Prevention and Combating of Terrorist and Proliferation

Activities Act, 2014 (Act No. 04 of 2014) or international obligations derived from relevant Security Council Resolutions;

#### **4. The 15-day reporting period**

Timely reporting of suspicious transactions and activities is a response measure to mitigate the risks of money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. It places the competent authorities in a better position to prevent proceeds of unlawful activities to be channeled through the financial system, as well as to timely trace proceeds of unlawful activities that are channeled through the financial system.

This implies that the untimely reporting of suspicious transactions and activities renders the financial system vulnerable to abuse for money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

It is against this background that time is factored in the reporting process, not only to ensure timely reporting, but also to guard against:

- a) criminals abusing the national and international financial system;
- b) affording criminals opportunities to place ill-gotten wealth beyond the reach of competent authorities;
- c) affording criminals and sympathizers of terrorist groups to fund terrorism;
- d) affording opportunities to fund proliferation of weapons of mass destruction; and
- e) negatively impeding any action competent authorities could have taken to isolate identified transactions and/or assets and/or wealth for asset preservation and forfeiture purposes.

A sizeable number of AIs and RIs deployed or may deploy advanced technologies to assist them in the effective detection of suspicious transactions and activities. The systems at most times enable electronic flagging of suspicious transactions and activities,

followed by human intervention to ascertain the suspicion, and report suspicious transactions and activities to the Financial Intelligence Centre (FIC) within the 15-day reporting period as prescribed in FIA regulation 22(1).

The FIA Regulated Populace has identified a need for the FIC to issue guidance, thereby availing clarity as to when does the 15-day period begin. In light of this identified need, the FIC herewith guides AIs and RIs to consider the following when addressing the question as to when the 15-day period commences:

- section 33(1) read with regulation 22(1) of the FIA, mandates that suspicious transactions and activities must be reported to the FIC within the prescribed period after the suspicion or belief that the transaction or activity is suspicious, arose, unless the FIC in writing approves the filing of such report(s) after the expiry of the prescribed period;
- flagging of suspicious transactions and activities by deployed technologies, requires human intervention to ascertain the suspicion. It is thus an amalgam approach to detect, ascertain and report the suspicious transactions to the FIC within the 15 working days. AIs & RIs that have not deployed technologies employed the manual method of detection which does not involve flagging; and
- the amalgam approach as described above, covers the period from the date when the transaction is flagged up to when the suspicious transaction or activity is reported to the FIC. The manual method of detection also covers the period from the date of detection to when the suspicious transaction or activity is reported to the FIC.

In the scope of the above consideration, **the 15-day reporting period begins from the date when the suspicion or believe arises and not necessarily from the date the suspicion is ascertained, and entails 15 working days.**

The intention of the legislator to avail 15 working days is to accord AIs & RIs sufficient time to ascertain the suspicion by gathering further details, conduct analysis, and report the STR or SAR to the FIC without due delay.

The above proposition is further supported by consideration of the below scenario: -

***“assume the transaction was electronically flagged on 03 April 2017, thereafter the suspicion was only ascertained on 05 May 2017, and the AI or RI only started counting the 15-day period from 05 May 2017 which is the date the suspicion was ascertained. The AI then filed the STR on the 15<sup>th</sup> day of the reporting period i.e. the 15<sup>th</sup> day from 05 May 2017. In this scenario, the reporting period stretched from 03 April 2017 to 25 May 2017, a total of 38 working days”.***

In respect of the above scenario, the period from 03 April 2017 to 03 May 2017 remains uncounted for if counting of the reporting period only starts on the date the suspicion was ascertained. In this scenario the AI or RI will find it extremely difficult to persuade the FIC that reporting done in this fashion is timely because it is inconceivable that it amounts to timely reporting.

The 38 working day period in above scenario will render the financial system vulnerable to abuse for money laundering, terrorist financing and the financing of weapons of mass destruction. As such, the FIC herewith reiterates that the period from when –

- a) the transaction is electronically flagged, and the suspicion is ascertained through human intervention, to the filing of a report (STR or SAR) with the FIC,

is 15 working days as prescribed.

It is also advisable that AIs and RIs must not wait until the last day of the reporting period to file an STR or SAR, but as soon as it is practicably possible within the reporting period. As such, the gathering of information pertaining to the suspicion should not be prolonged.

## **5. Reporting in terms of section 42 read with regulation 22(2) of the FIA:**

This section mandates the FIC to direct the accountable or reporting institution in writing not to proceed with the carrying out of a transaction or proposed transaction for a period not exceeding 12 working days, if the FIC has reasonable grounds to suspect that a transaction or a proposed transaction, may involve the proceeds of unlawful activities or may constitute money laundering or the financing of terrorism or proliferation activities.

It is within the scope of the above provision that the AIs and RIs must, **as soon as reasonably possible, contact the Director of the FIC or his or her authorized representative**, especially if the carrying out of that transaction, activity or other related transactions or activities, will jeopardize any significant law enforcement or regulatory interest under Namibian law, more particularly when such proceeds will be put beyond the reach of Namibian Authorities.

This implies that reporting in this regard must be done as soon as possible, and AIs & RIs must not wait for the 15<sup>th</sup> day of the reporting period referred to above, before they contact the FIC in this regard.

In above regard, reporting should be done on an urgent basis to ensure that Intervention Orders are issued and complied with as emphasized under Directive 01 of 2015.

## **6. Commencement**

This Guidance Note shall come into force on the date of issue.

## **7. Penalties for non-compliance**

The AI or RI which contravenes or fails to comply with the FIA sections highlighted herein, commits an offence and can be liable on conviction to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment. The AI and RI can additionally further be subjected to administrative action as envisaged under section 56 of the FIA.

## **8. General**

This Guidance Note:

- a) uses plain language to explain the obligations under the Act, as well as related Regulations;
- b) is intended to explain, but not replace, the language of the Act and Regulations;

c) is issued without prejudice to other existing guidance or work in the identified area;  
and

d) shall be reviewed from time to time.

## **9. How to contact the FIC**

All Correspondence and enquiries must be directed to:

The Director

Financial Intelligence Centre

P.O. Box 2882

No.71 Robert Mugabe Avenue

**[www.fichelpdesk.na](http://www.fichelpdesk.na)**