



FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO.13 OF 2012) AS AMENDED

STATISTICAL FEEDBACK REPORT

LEGAL PRACTITIONERS SECTOR

Date: April 2024

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Table of Contents

1. Introduction	3
2. Summary of analysis and observations.....	4
2.1 STRs and SARs	4
Chart 1: STRs received from reporting sectors per annum.....	4
Chart 2: SARs received from reporting sectors annually.....	6
2.2 Level of prioritization of reports from the LP Sector.....	7
Chart 3: Categorization of STRs received from the LP Sector per annum.....	7
Chart 4: Categorization of STRs reported by the Legal Practitioners Sector per Entity	8
Table 1: Categorization of SARs from the LP Sector per annum.....	8
Chart 5: Categorization of SARs from the LP Sector per Entity	9
2.3 Other reports received from the Legal Practitioners Sector	9
Table 2. Total AIFs, CBMCRs, CTRs, EFTs and IFTs filed by the LP Sector.....	10
3. Potential indicators from cases under FIC	10
4. Summary of matters worth noting	11
5. Conclusion	12

1. Introduction

The Financial Intelligence Act, 2012 (Act No.13 of 2012) as amended (FIA) classifies Legal Practitioners (LP) as Accountable Institutions under Schedule 1. Consequently, the FIA requires these institutions to implement control measures aimed at Combatting Money Laundering, Terrorism Financing and Proliferation Financing (ML/TF/PF) activities. These controls include measures to enable timely detection of transactions/activities that may be suspicious and timely reporting such to the Financial Intelligence Centre (FIC). These reports are primarily Suspicious Transaction Reports (STRs), Suspicious Activity Reports (SARs) and Additional Information Files (AIFs). FIC analysis of such reports results in the production of value-adding intelligence which is shared with Law Enforcement Agencies (LEAs) and other relevant authorities in the ML/TF/PF combatting value chain.

The FIA also requires institutions to submit mandatory reports which may not necessarily be suspicious. Such reports include Cash Transaction Reports (CTRs), International Funds Transfers (IFTs) and Electronic Funds Transfers (EFTs). These reports form part of the FIC's database. This database is used by the FIC and various other relevant authorities to enhance ML/TF/PF combating efforts. The quality of reports filed can shape the outcomes of ML/TF/PF cases within the domains of the Namibia Revenue Agency (NAMRA), FIC, LEAs and the Office of the Prosecutor General (OPG). As a country, the finalization of ML/TF/PF cases (be it through asset forfeitures and/or criminal sanctions) is an essential element in demonstrating the level of Namibia's AML/CFT/CPF overall effectiveness. As such, all efforts should be made to enhance the quality of STRs/SARs reported to the FIC. It is therefore in furtherance of such national effectiveness objectives that the FIC avails this feedback to enable a reflection on areas that may need improvement.

The results of this analysis, as documented herein, should be used by Legal Practitioners to guide the implementation of measures necessary to enhance reporting behavior.

2. Summary of analysis and observations

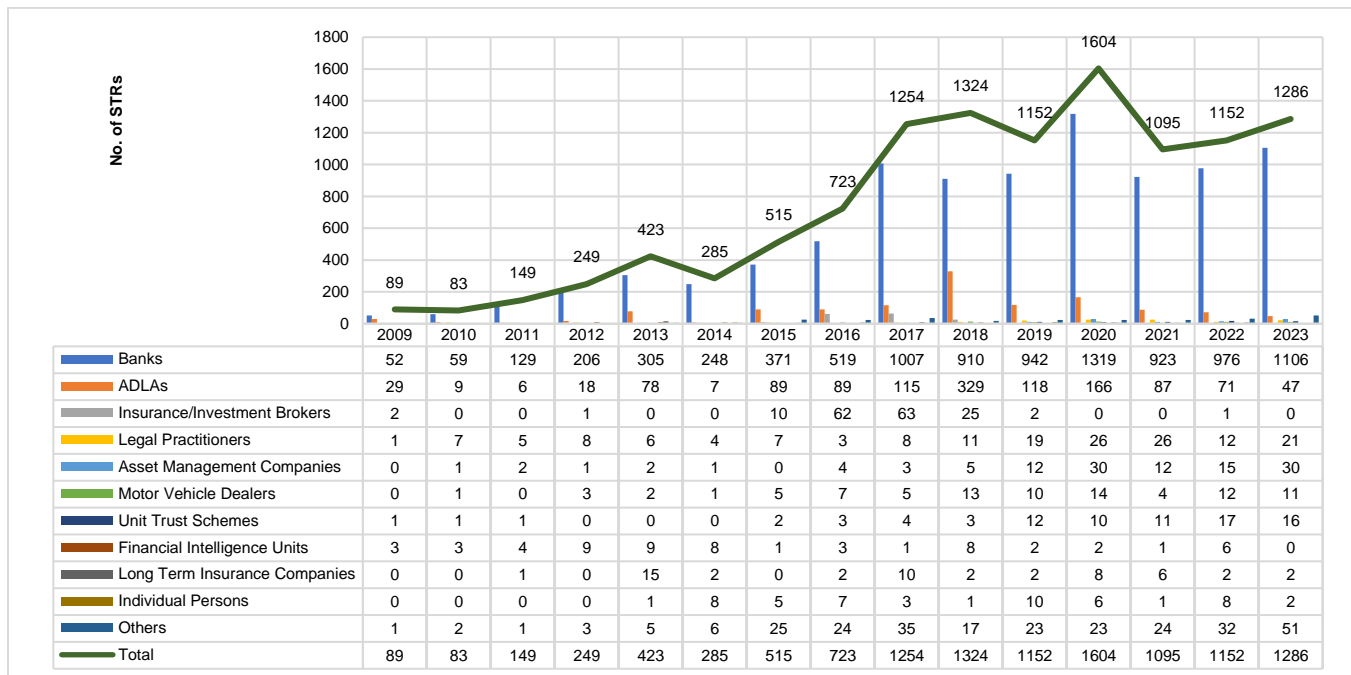
2.1 STRs and SARs

A suspicious transaction arises when an institution has knowledge of any suspicious transactions concluded by it or suspects that it has received or is about to receive the proceeds of unlawful activities or has been used or is about to be used in any other way for ML, TF or PF purposes. Importantly, an institution should report such a transaction to the FIC without delay, upon noticing such suspicion. Depending on the factors at hand, the institution may file a Suspicious Transaction Report.

A Suspicious Activity Report is different from a Suspicious Transaction Report described above in that a suspicious activity is not a transaction per se, but activities that may escalate to a future transaction or activities that give rise to reportable/suspicious matters.

The chart below presents a record of STRs received by the FIC from various reporting sectors since the FIA came into operation up to 31 December 2023.

Chart 1: STRs received from reporting sectors per annum¹



¹ The "Others" category in the chart above comprises of the following sectors: Foreign Financial Intelligence Units; Casinos; Short Term Insurance Firms; Accountants; Supervisory and Regulatory Bodies; Dealers in precious metals and stones; Unit Trust Scheme Companies; Unit Trust Scheme Companies; Financial Intelligence Units; Public Prosecutors; Regional Governments; Asset Management Companies; Law Enforcement Agencies; Money and Value Transfers Service Providers; Auctioneers; Life Insurance Broker or Agents; Real Estate Agencies/Agent; Long Term Insurance Firms; Lending Institutions; Trust and Loan Companies; Pension Fund Administrators; Local Authorities; Individual Reporting Entities and Non-Profit Organizations.

The banking sector submitted the most reports in the period under review, filing 80% (or 9,073 reports) followed by the ADLAs filing 11% (or 1,258 reports) and then Insurance and Investment Brokers with 2% (or 166 reports). The Legal Practitioners also filed a substantial number of STRs representing about 1% (164) of all reports. In terms of reporting periods, the highest number of STRs were received in the year 2020, a record high of 1,604 STRs.

Even though various potential predicate offences have been reported to the FIC, tax-related offences featured as the leading predicate offence from all sectors. While ADLAs submitted the second highest number of reports to the FIC, 99% of their reports were accorded “low priority” status due to various reasons such as lack of ML/TF and/or PF indicators in the reports, insignificant amounts involved and poorly articulated reasons for suspicion in reports filed, amongst others.

The 2023 National Risk Assessment (NRA), an update to the 2020 NRA indicates that Close Corporations (CCs) are most vulnerable to ML and TF abuse. The use of CCs to advance financial crimes is common in Namibia. According to the reports analyzed, the same trend continues to show overwhelming findings that suggest CCs as the most preferred vehicles employed in the advancement of ML and TF. As per the information provided by the Business and Intellectual Property Authority (BIPA), 85% of the involved CCs (reported to the FIC) are locally owned. Importantly, 76% of directors/beneficiaries of involved entities are Namibian nationals. Chinese nationals are the second highest beneficiaries at 7% followed by Indian nationals at 5% and then Zimbabweans at 3%.

The FIC has noted with concern some challenges associated with the analysis of reports filed by sectors. In some reports, there was no information provided for the involved subjects such as names, nationalities, professions and others. Neither potential ML/TF predicate offenses were indicated on some occasions. Such information could assist analysts in coming up with identifiable trends and typologies that would be helpful to sectors.

Chart 2: SARs received from reporting sectors per annum

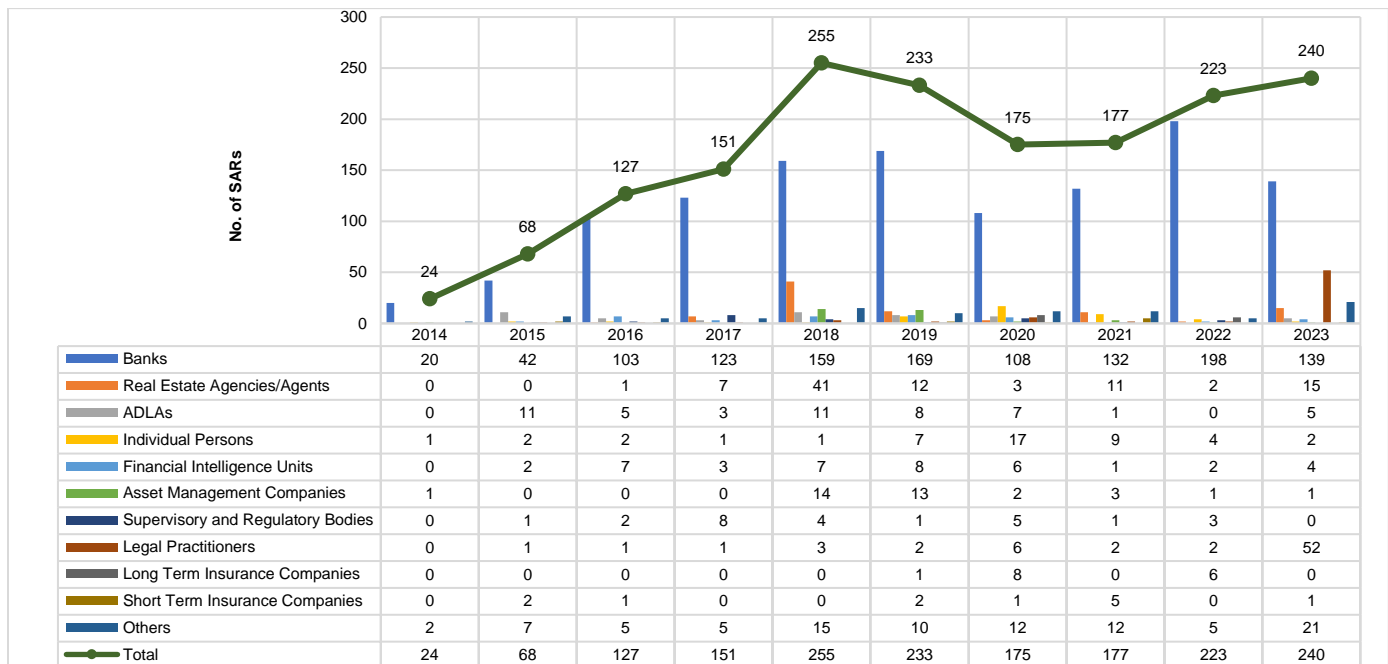


Chart 2 above shows that the number of SARs filed by the reporting entities since the reporting obligation commenced totaled 1,673 reports at the end of the 2023 calendar year. It further shows that the banking sector collectively submitted a total of 1,193 SARs (71%), followed by Real Estate Agencies and then ADLAs in third position. The Legal Practitioners filed a total of 70 SARs (4%) during the period under review.

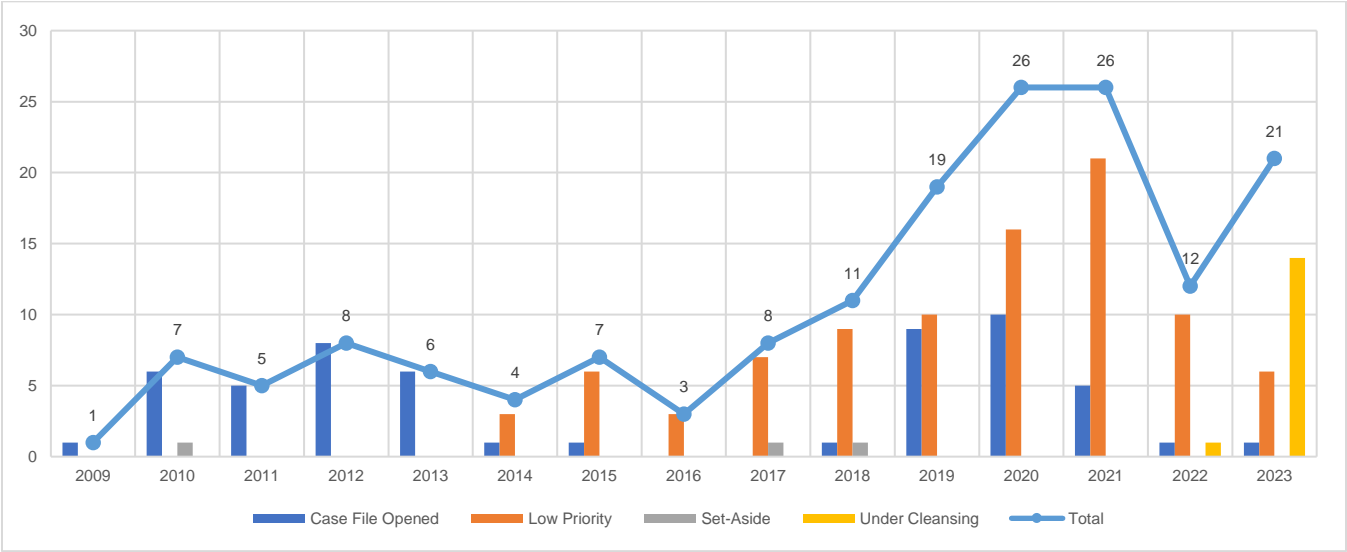
According to the typology report issued by the FIC on the vulnerability/rate of abuse of different types of legal persons and arrangements in the advancement of money laundering, the highest volume of SARs (reported to the FIC) involves Individual Persons at 65%, followed by Proprietary Limited Companies at 23% and then Trusts at 8%.

While the nature of AML/CFT/CPF is that there is no yardstick for indicating the volume of suspicious reports that should be detected and reported, the FIC is generally concerned about the low reporting behavior of some entities and sectors. Legal Practitioners could be reporting more than they are currently reporting as reflected in FIC compliance assessment observations around poor ability to detect. It could thus be helpful for AML Compliance Officers to indicate any challenges experienced as far as identifying and filing various reports is concerned. If need be, interventions from the FIC's side can be considered to enhance reporting behavior. The challenges highlighted in chart 1 above also applied to SARs filed.

2.2 Level of prioritization of reports from the Legal Practitioners Sector

When reports are received, they go through a cleansing process which results in their prioritization. The FIC applies a risk-based approach in determining the prioritization level assigned to reports from all stakeholders. The cleansing due diligence entails an assessment of reports which results in assigning priority levels. Reports which are accorded a “low priority status” are not attended to immediately. Due to resource constraints and the risk-based approach (especially consideration of potential impacts), only reports which are accorded a “high priority status” are investigated and analyzed (case files opened). Amongst other factors, a report could be classified as low priority when the observed suspicion does not fall within law enforcement’s priority areas of investigation. At times, the financial values involved could be negligible (or insignificant) in comparison to values in other reports. On the other hand, a report that meets certain requirements could eventually result in a case file being opened and escalated for further analysis/investigation within the FIC².

Chart 3: Categorization of STRs received from the Legal Practitioners’ Sector per annum



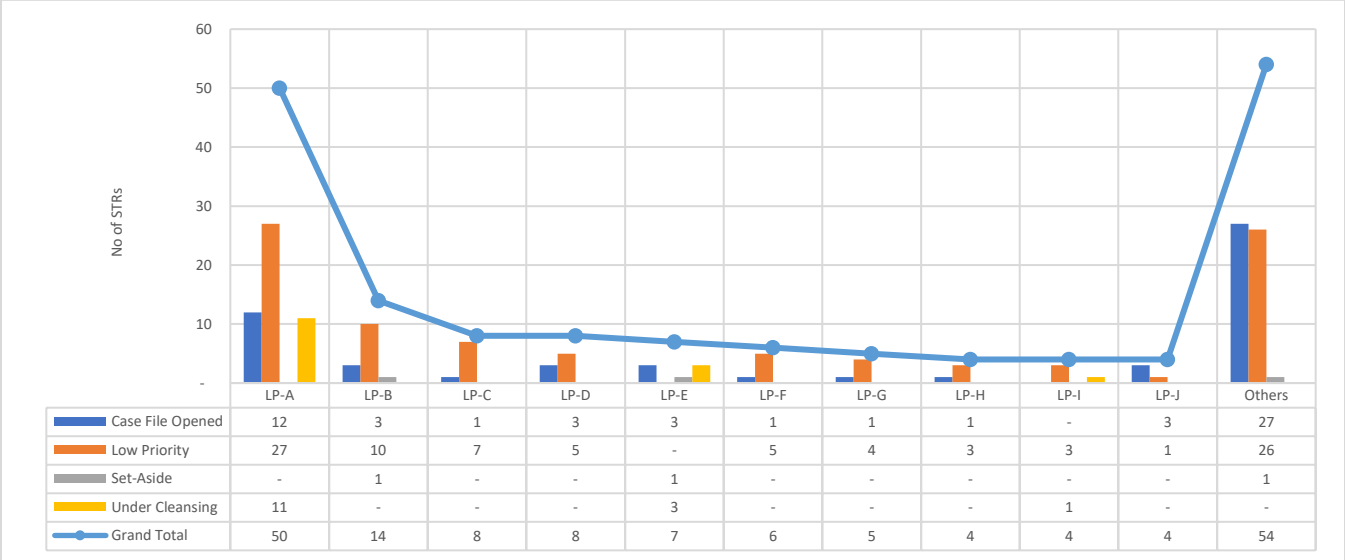
² In summary, factors which collectively inform prioritization levels include, but are not limited to:

- a. known ML, TF and/or PF indicators;
- b. sanctions and watch lists [e.g. lists of high risk persons];;
- c. prior reports on same subject/entity;
- d. geographic risk areas involved;
- e. duplicate/erroneous filing (which could result in the STR/SAR being set-aside);
- f. risk of funds being placed out of reach of law enforcement;
- g. human resource constraints within FIC’s Financial Investigations and Analyses Division; and
- h. consideration of the monetary, asset and other values or impacts associated with such report.

Worth noting is that 34% (or 55) reports from the Legal Practitioners were accorded a 'high priority' status and escalated for further analysis. Such STRs were forwarded to relevant Law Enforcement Agencies and Investigating Authorities for further investigation.

A total of 91 STRs (or 55%) reported were accorded a "low priority" status. Most of the STRs were accorded a "low priority" status primarily because of the insignificant amounts of money involved, human resource constraints within FIC's Financial Investigations and Analyses Division and lack of ML/TF and/or PF indicators in the reports filed, amongst other factors.

Chart 4: Categorization of STRs reported by the Legal Practitioners Sector per Entity



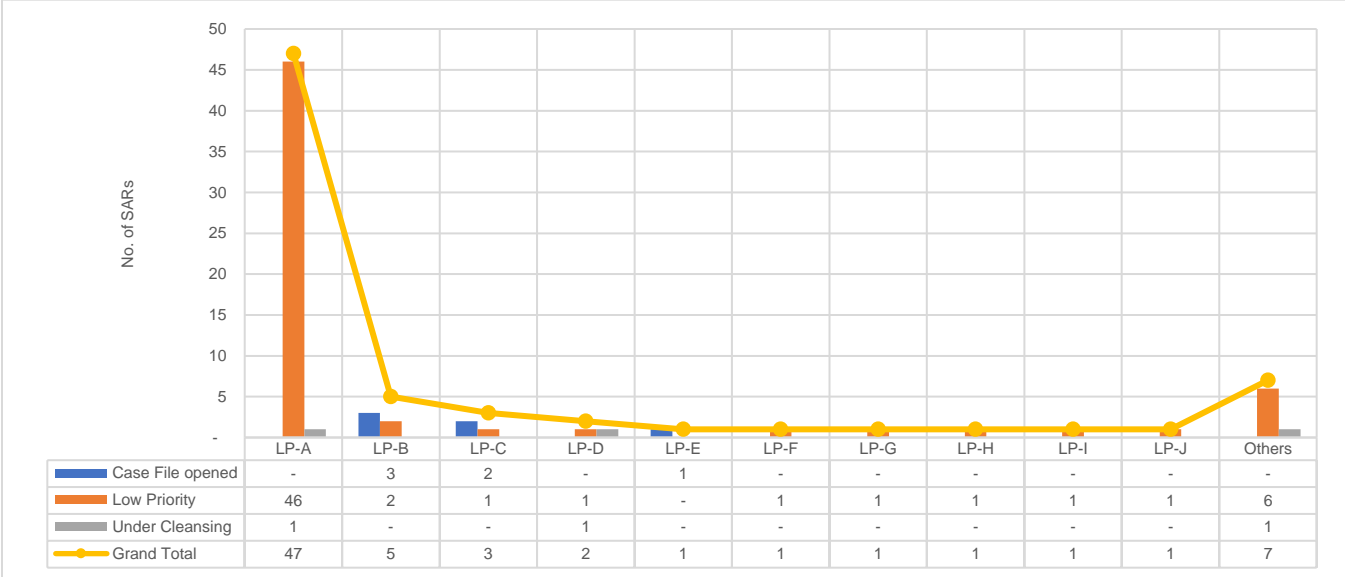
In the period under review, LP-A filed the majority of STRs (a total of 50 STRs or 30%) from the sector. This was followed by LP-B with 14 STRs (or 9%) and then LP-C filing 8 STRs (or 5%). It is however important to indicate that some LP's have filed a relatively very low number of STRs during the period under review and such low filing is below expectations.

Table 1: Categorization of SARs from the Legal Practitioners Sector per annum

	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Case File Opened	1	-	-	1	-	4	-	-	-	6
Low Priority	-	1	1	2	2	2	2	2	49	61
Under Cleansing	-	-	-	-	-	-	-	-	3	3
Total	1	1	1	3	2	6	2	2	52	70

In the period under review, only 9% of SARs filed from the sector were accorded a 'high priority' status and escalated for further analysis. Further, 87% of the reports were accorded a "low priority" status.


Chart 5: Categorization of SARs from the Legal Practitioners Sector per Entity



The Sector has submitted a total 70 reports. LP-A filled the majority of SARs (67% of the sector).

2.3 Other reports received from the Legal Practitioners Sector

- ✚ **Additional Information File (AIF):** Refers to the filing of new or additional information related to a STR or SAR previously filed with the FIC;
- ✚ **Cash Transaction Report (CTR):** These are mandatory reports to be submitted to the FIC on all cash transactions above the threshold/limit of NAD 99,999.99, within five (5) working days of their occurrence;
- ✚ **Electronic Funds Transfers (EFT):** Refers to the movement of money from one account to another electronically;
- ✚ **International Funds Transfers (IFT):** Refers to the inward and outward remittance of funds electronically from one jurisdiction to another; and

 **Cross Border Movement of Cash Report (CBMCR):** Refers to any in-bound or out-bound physical transportation of currency or bearer negotiable instruments (BNIs) from one country to another.

The table below shows the number of other reports that Legal Practitioners filed in the period under review.

Table 2. Total AIFs, CBMCRs, CTRs, EFTs and IFTs filed by the Legal Practitioners Sector

	AIFs	CBMCRs	CTRs	EFTs	IFTs
No. of Reports	1	3	741	691	3
No. of Transactions	1	3	875	761	3
Amounts Involved	656,805	1,432,443	1,775,112,332	3,883,888,401	3,430,160

3. Potential indicators from cases under FIC

There are various predicate offenses of Money Laundering. For supervised institutions to be in a position to identify such activities, the essential foundation is having an effective Anti-Money Laundering policy and procedures, as per section 39 of the Financial Intelligence Act 2012. Based on reports from the sectors, the following have been identified as some of the most common potential indicators: tax related offences, fraud, theft, wildlife crimes and corruption amongst others. When each indicator is viewed in isolation, it may not readily point to potentially suspicious ML, TF or PF activity or transaction, however when viewed with other indicators and relevant factors, it may highlight the presence of reportable suspicions. Importantly, Legal Practitioners are advised to familiarize themselves with **Guidance Notes³ and Directives** which explain high risk scenarios of ML/TF/PF plus guidance on risk mitigation within various sectors. Equally, Legal Practitioners are urged to familiarize themselves with indicators highlighted in such guidance notes⁴.

³ <https://www.fic.na/index.php?page=2023-guidance-notes>

⁴ <https://www.fic.na/index.php?page=publications>

Table 5: Summary of suspected predicate offenses, recipient agency and amounts

Recipient	Potential Predicate Offense	Total Disclosures
Anti-Corruption Commission of Namibia	Corruption	20
Namibian Police	Money Laundering	12
	Theft	1
	Unknown source of funds	1
	Fraud	10
	Pyramid Scheme	1
	Tax Related Offense	3
NamRa	Unknown source of funds	9
	Tax Related Offense	18
Angolan FIU	Unknown source of funds	3
Marshall Islands Domestic FIU	Unknown source of funds	1
Namibia Central Intelligence Service	Money Laundering	1
Total		80

In the period under review, a total of 80 spontaneous disclosures were disseminated to Law Enforcement Agencies as a result of STRs and SARs received from the Legal Practitioners. The Namibian Police, specifically the Criminal Investigations Division received the highest number of disclosures, followed by the Namibia Revenue Agency. “Tax Related Offences” featured as the leading reason which informed the suspected potential offense with 28 such potential offenses recorded. This is followed by Corruption with 26 such potential offenses and “Unknown source of funds⁵” with 20 potential offenses.

4. Summary of matters worth noting

Below is an overall summary of major irregularities observed in the quality of reports filed by reporting institutions in general including Legal Practitioners:

- a. **Lack of ML/TF and/or PF indicators in the reports:** It is helpful that upon reporting, such information is availed. If the internal risk assessment, Customer Due Diligence (CDD) and ongoing monitoring measures are effective, such should expose indicators that may inform the suspicion. AML Compliance Officers are encouraged to reach out to the FIC when uncertain of suspicions or their indicators;

⁵ the source of the funds could not be determined; not in line with the subject’s profile or the subject is unwilling to disclose the source of funds

- b. **Poorly articulated “Reasons for Suspicion” in STRs/SARs:** Usually, when adequate CDD has been undertaken, it is easier to explain grounds for suspicion when making an analysis of flagged transactions. Regardless, attempts should be made to adequately explain why we find transactions or activities suspicious as such helps with FIC analysis of reports;
- c. **Duplicate and erroneous filing of reports:** More care needs to be taken, especially by AML Compliance Officers to reduce erroneous and duplicate reporting. The initial cleansing processes of each report take from the valuable time that FIC analysis resources could deploy to other activities; and
- d. **Filing of incomplete STRs/SARs:** More could be done to ensure the completeness of information shared in STRs/SARs. It helps with value addition from such reports. If the internal risk assessment, CDD and ongoing monitoring measures are effective, such should expose indicators that inform the suspicion. AML Compliance Officers are encouraged to reach out to the FIC when uncertain.

The above shortcomings were also observed in other sectors. Legal Practitioners are urged to consider the said shortcomings and device means to enhance CDD, monitoring and detection controls accordingly. The findings herein support the overall observations in the periodic FIA compliance assessment reports which point to a greater need to enhance activities that improve overall reporting behavior.

5. Conclusion

The FIC appreciates the Legal Practitioners’ continuous efforts geared towards ML/TF/PF prevention and combatting. Such helps to safeguard the national and international financial system’s integrity. Whilst encouraging that more be done to enhance reporting volumes, the FIC equally encourages that more be done to enhance overall reporting quality. Such can only happen if other controls such as CDD and transaction monitoring are operating as expected. This can lead to effective investigations, prosecutions, asset forfeitures and asset/tax recoveries for the combatting framework.



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