



Republic of Namibia

Financial Intelligence Centre

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DIRECTIVE NO 03 OF 2016

**DIRECTIVE ON FIT AND PROPER EXPECTATIONS FOR
ACCOUNTABLE AND REPORTING INSTITUTIONS UNDER THE
SUPERVISION OF THE
NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY
(NAMFISA)**

OCTOBER 2016

1. INTRODUCTION

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) activities, issues this directive in terms of Sections 9(1)(h) read with 9(2)(c) and (e) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA).

2. BACKGROUND AND PURPOSE

Corporate vehicles such as micro-lending institutions, asset management companies, and other types of legal persons and arrangements—conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that corporate vehicles play in the global and domestic economy, there are risks that they may, under certain conditions, be misused for illicit purposes including ML, TF, PF, Bribery and Corruption, Insider Dealings, Tax Fraud, and other illegal activities.

The FIC has noted that control weaknesses do exist which may be susceptible for potential misuse. This communication directs relevant Accountable and Reporting institutions to take necessary action to adequately and effectively mitigate the misuse of corporate vehicles for ML, TF and PF purposes.

Section 39(5) of the FIA states that the Anti-Money Laundering (AML), Combatting the Financing of Terrorism (CFT) and Combatting Financing of Proliferation (CFP) activities' customer acceptance policies, internal rules, programmes and procedures may, amongst others, include the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of those employees.

In addition, Section 35 (15) (a) of the FIA states that the relevant Supervisory Body must adopt the necessary measures to prevent or avoid having any person who is not fit and proper from controlling, or participating, directly or indirectly, in the directorship,

management or operation of an Accountable or Reporting institution. Complying with the latter section of the FIA for combatting ML/TF and PF risks is the premise of this Directive.

3. SCOPE

This directive is directed at all Accountable and Reporting institutions supervised by the Namibia Financial Institutions Supervisory Authority (NAMFISA), as established in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).

NAMFISA is a Supervisory Body in terms of Schedule 2 of the FIA. By virtue of being a Supervisory Body, the FIA, amongst others, places an obligation on NAMFISA to ensure that beneficial owners, management and key personnel of the accountable and reporting institutions it supervises and regulates are fit and proper to contribute to ML/TF and PF combatting and risk mitigation.

The FIA further states that a Supervisory Body is responsible for supervising, monitoring and enforcing compliance with provisions of the FIA or any regulation, order, circular, notice, determination or directive issued in terms of the FIA, in respect of all Accountable and Reporting institutions supervised by it [section 35(2)].

4. FIT AND PROPER ASSESSMENT

Neither the FIA nor the Regulations define the terms “fit and proper”. It is however generally accepted that fitness and propriety (“fit and proper”) has 5 (five) main components:

- i. Identification
- ii. Honesty and Integrity
- iii. Competence
- iv. Operational ability
- v. Financial Soundness

Therefore, NAMFISA is entitled to consider the above factors in determining whether or not a person is fit and proper. Therefore, NAMFISA is entitled to request and insist that it be provided with relevant supporting documentation to satisfy itself as to the fitness and propriety of a person or otherwise.

The FIC hereby directs all Accountable and Reporting institutions supervised by NAMFISA to avail any information so requested in furtherance of the objectives stated herein.

5. ISSUE DATE AND COMMENCEMENT

This directive is issued on 31 October 2016 and comes into effect on the said date.

6. NON-COMPLIANCE WITH THE PROVISIONS OF THIS DIRECTIVE

This directive uses plain language to explain the obligations under the FIA, as well as the related Regulations. It is intended to explain, but not replace, the language of the FIA and Regulations.

An Accountable or Reporting institution which contravenes or fails to comply with the relevant provisions of the FIA as explained herein commits an offence and is liable to a fine not exceeding N\$ 10 million or, where the commission of the offence is attributable to a representative of accountable or reporting institution to such fine or imprisonment for a period not exceeding 10 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 FIC's administration of the legislation in carrying out its statutory functions.

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

Director: Financial Intelligence Centre