



Republic of Namibia

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DIRECTIVE NO 02 OF 2018

**DIRECTIVE ON MANAGING OBLIGATIONS UNDER SECTION 42
AND 46 OF THE FINANCIAL INTELLIGENCE ACT, 2012**

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1. INTRODUCTION

The Financial Intelligence Centre (FIC) as part of its continuous effort 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(1)(h) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA).

Accountable and Reporting Institutions (AIs & RIs) are obliged to report Suspicious Transactions/Activities (STRs/SARs) to the FIC, in terms of section 33 of the FIA. This directive is issued to enhance practical challenges that emanate from interpretation of the FIA sections 42 and 46.

2. OBLIGATIONS UNDER SECTION 42

Section 42 of the FIA provides that the FIC may direct an AI or RI, after consultation, to restrict access to funds for a period not exceeding 12 working days.

The section specifically provides that the FIC intervenes if it *“...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; it may direct the accountable or reporting institution in writing not to proceed with the carrying out of that transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period determined by the Centre, which may not be more than 12 working days...”*

The objective is to allow the FIC adequate time to gather data/information and analyse such transaction(s) in question and, if need be, engage an investigating authority or the Office of the Prosecutor General accordingly.

3. CHALLENGES OBSERVED: RATIONALE FOR THE DIRECTIVE

When the FIC instructs an AI or RI to restrict access to funds in an account, the instructions currently are that the client is informed that there is a “regulatory intervention” on such account. The AI or RI may not say anything more than that as they run the risk of committing a Tipping Off offence in terms of section 46. Thus, informing a client that the FIC has restricted access to funds on an account is not permitted. However, the following practical challenges have come to the fore:

- a. client frustrations as they are not informed of which regulator has restricted access to their funds, let alone reasons for such restrictions;
- b. owing to the above, relationships between clients and the AIs/RIs have been negatively affected; and
- c. such clients, if persistent, eventually end up at the Bank of Namibia offices and are referred to the Banking Supervision Department (BSD) as the first point of reference. This naturally brings discomfort to the BSD as they need to guide such clients at the risk of committing the section 46 Tipping Off offence.

4. APPLICATION

This directive applies to all AIs and RIs effective from **30 September 2018**.

5. DIRECTIVE

Section 46 serves to advance the required level of confidentiality and privacy needed to safeguard the integrity of investigations and other efforts of competent authorities such as the FIC, Prosecutor General, law enforcement etc., to combat Money Laundering, Terrorism and Proliferation Financing activities. In this regard Section 46 implicitly prohibits exposing or revealing the identities of authorised officers including FIC staff members involved in processing STRs, or sharing other information which could undermine investigations or other combatting efforts. AIs and RIs should guard against this at all times.

In order to address the practicality challenges cited in section 3 of this Directive, whilst safeguarding the interests of combatting efforts, the FIC directs that:

- a. clients be informed that the FIC has placed such intervention or restriction on the client account for the number of days specified in the formal FIC intervention communication;
- b. only when clients persist should they be given the contact details of the **FIC Help Desk** to facilitate telephonic or electronic communications. Help Desk contact details are on the cover page of this Directive; and
- c. AIs/RIs should inform the FIC beforehand that they are referring a client, and at no point avail names of any FIC staff members.

6. NON-COMPLIANCE WITH THIS DIRECTIVE

Non-compliance with this Directive amounts to non-compliance with the provisions of section 42 and 46 of the FIA.

An AI or RI who contravenes or fails to comply with this Directive commits an offence and is liable to a fine not exceeding NAD 100 million or, where the commission of the offence is attributable to a representative of the Accountable or Reporting Institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

This Directive provides an interpretation of the relevant provisions of the FIA and its accompanying Regulations. It contains statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory mandate.

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

DIRECTOR: FINANCIAL INTELLIGENCE CENTRE