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GUIDANCE NOTE NO 02 OF 2017

GUIDANCE NOTE ON COMBATTING CROSS BORDER REMITTANCE RISKS RELATED TO IMPORTS

First issued: 18 July 2017

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SECTION A: DEFINITIONS

“AI” refers to Accountable Institutions in terms of the FIA.

“Act” or “FIA” refers to the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended.

“AD” refers to the Authorized Dealer in Foreign Exchange as per Exchange Control Rulings and Regulations. The ADs are Accountable Institutions in terms of the FIA and are thus herein referred to as AIs.

“Bill of Lading or Entry”. Within this document, this is a legal document between the shipper of goods and the carrier detailing the type, quantity and destination of the goods being carried. The bill of lading also serves as a receipt of shipment when the goods are delivered at the predetermined destination. This document must accompany the shipped goods, no matter the form of transportation, and must be signed by an authorized representative from the carrier, shipper and receiver.

“Client and Customer” have their customary meaning and is used interchangeably herein.

“Customer due diligence” means a process which involves establishing the identity of a client, the identity of the client’s beneficial owners in respect of legal persons and monitoring all transactions of the client against the client’s profile.

“Enhanced customer due diligence” means doing more than the conventional customer due diligence measures mentioned above and includes, amongst others, taking measures as prescribed by the Centre to identify, as far as reasonably possible, the source of income and wealth, funds and any other assets of the client or beneficial owners whose activities may pose a risk of ML, TF or PF;

"FATF" refers to the Financial Action Task Force.

“FIC” refers to the Financial Intelligence Centre established by virtue of section 7 of

FIA.

"Free Carrier (FCA)[1]" means that the seller fulfils his obligation to deliver when he has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose within the place or range stipulated where the carrier shall take the goods into his charge. When, according to commercial practice, the seller's assistance is required in making the contract with the carrier (such as in rail or air transport) the seller may act at the buyer's risk and expense.

"Free on Board (FOB)" means that the seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the FCA term should be used.
*On invoices noted by the FIC, for practical commercial purposes, the **Free on Board Value** refers to the price invoiced or quoted by a seller for the goods only. This is total cost of goods excluding costs for moving and handling cargo to its destination such as the costs of shipping, handling, storage etc. This term is used in this document within this context.*

"STRs" refers to the Suspicious Transaction Reports filed with the FIC.

Trade-based money laundering (TBML) is defined[2] as *the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins.* In practice, this can be achieved through the misrepresentation of the price, quantity or quality of imports or exports. Moreover, TBML techniques vary in complexity and are frequently used in combination with other money laundering techniques to further obscure the money trail.

"Transaction" means a transaction concluded between a client and an accountable

[1] As per definition sourced from Incoterms 2000
[2] Financial Action Task Force, Trade Based Money Laundering, 23 June 2006

or reporting institution in accordance with the type of business carried on by that institution, and in the context of this document and the FIA, it includes attempted transactions.

SECTION B: BACKGROUND

1. INTRODUCTION

1.1 Issuing Guidance on FIA Compliance

This guidance note is issued under Section 9(1)(h) of the Financial Intelligence Act, 2012 (Act No.13 of 2012) (The FIA) as amended. Guidance provided by the FIC is the only form of guidance formally recognized in terms of the Act and its complementing regulations.

This Guidance Note is applicable to all Accountable Institutions (AIs) rendering cross border remittance services for goods and services. It has been prepared to help such AIs implement measures to enhance risk mitigation related to the following activities:

- Trade Based Money Laundering (TBML);
- Capital Flight;
- Tax Evasion; and
- Overall FIA compliance.

This Guidance Note is intended to explain, but not to replace the language of the Act and the FIA Regulations issued under the Act. This Guidance is issued to support and give additional context to relevant sections of Directive 01 of 2016 (4.2). The need to mitigate risks which could expose the country to potential Money Laundering (ML), Terrorism Financing (TF), Proliferation Financing (PF) and other significant risks such as the reduction of the country's foreign currency reserves remain the primary objectives of the said Directive and this Guidance document.

The FIC opines that it is much easier to implement relevant cross border remittance controls if an AI understands relevant customs processes for imports.
In an effort to help AIs understand and appreciate the relevant technicalities of customs processes and remittances, the FIC has included a brief summary of trends and typologies noted in the *Modus Operandis* employed to advance cross border remittance related risks. The trends and observations herein are sanitized to the extent possible owing to ongoing investigative reviews.

1.2 Application of this Guidance Note

All AIs rendering cross border remittance services for goods and services are obliged to comply with the guidance contained herein.

The Bank of Namibia[3] as a Regulatory Body listed under Schedule 4 of the FIA is expected to enhance compliance with this Guidance Note by ensuring that institutions under its regulatory ambit are compliant. It is further expected that the Bank of Namibia takes reasonable measures, as per the FIA or other relevant laws, to enhance compliance and therefore mitigate risks stated herein.

1.3 Commencement

This guidance note comes into effect on **18 July 2017**.

[3] Specifically regulators involved in Banking Supervision, Exchange Control and Payments systems (to the extent possible)

SECTION C: UNDERSTANDING THE NATURE OF RISKS

2. BACKGROUND ON OBSERVED RISKS

2.1 Moving money/value through the financial system

There are three main methods by which criminal organisations and terrorist financiers move money for the purpose of disguising its origins and integrating it into the formal economy.

a. The first involves the movement of **value through the financial system** using methods such as cheques and wire transfers;
b. The second involves the **physical movement of banknotes** using methods such as cash couriers and bulk cash smuggling; and
c. The third involves the **movement of value using methods such as the false documentation and declaration** of traded goods and services.

Each of these methods involves the movement of enormous volumes of funds and can operate at a domestic or international level. *The primary focus of this Guidance is Trade-Based Money Laundering (TBML) involving the international exchange of goods.*

2.2 Vulnerabilities: The international trade system

The international trade system is subject to a wide range of risks and vulnerabilities, which provide criminal organisations with the opportunity to launder the proceeds of crime and provide funding to terrorist organisations, with a relatively low risk of detection. The relative attractiveness of the international trade system is associated with:

a. The **enormous volume of trade flows**, which obscures individual transactions and provides abundant opportunity for criminal organisations to transfer value across borders;
b. The **complexity** associated with (often multiple) foreign exchange transactions and recourse to diverse financing arrangements;

c. The **additional complexity** that can arise from the practice of co-mingling illicit funds with the cash flows of legitimate businesses;
d. The **limited recourse** to verification procedures or programs to exchange customs data between countries and within financial institutions. The limited resources that most customs agencies have available to detect illegal trade transactions is regarded as a significant vulnerability in Namibia and the world over.

On this last point, research suggests that most customs agencies **inspect less than 5 percent** of all cargo shipments entering or leaving their jurisdictions (FATF, 2006). In addition, most customs agencies are able to direct relatively limited analytical resources to improved targeting and identification of suspicious trade transactions.

2.3 Basic understanding of major risks linked to Money Laundering (ML)

2.3.1 Tax Evasion emanating from Transfer Pricing

Generally, this is described as the impact that differing tax rates have on the incentives of corporations to shift taxable income from jurisdictions with relatively high tax rates to jurisdictions with relatively low tax rates in order to minimise income tax payments. For example, a foreign parent could use internal “transfer prices” to overstate the value of the goods and services that it provides to its foreign affiliate in order to shift taxable income from the operations of the affiliate in a high-tax jurisdiction to its operations in a low-tax jurisdiction.

Locally, the FIC has observed transactions that may suggest tax evasion in the following ways:

- Under-declaration of goods to be imported into Namibia (under valued Free on Board values on which taxes and duties are based;
- Given the huge irregular remittances, entities involved in such under declaration of imported goods tend to under declare their annual incomes in an effort to pay reduced income taxes.

The above are closely related to Capital flight explained herein below.

2.3.2 Capital Flight

As cited by FATF (2006), a number of authors, including Cuddington (1986), Gulati (1987), Lessard and Williamson (1984), Kahn (1991), Anthony and Hallet (1992), Wood and Moll (1994), Fatehi (1994), Baker (2005) and de Boyrie, Pak and Zdanowicz (2005), have shown that companies and individuals also shift money from one country to another to diversify risk and protect their wealth against the impact of financial or political crises. Several of these studies also show that a common technique used to circumvent currency restrictions is to over-invoice imports or under invoice exports.

An example cited by FATF (2006) refers to an International Monetary Fund (IMF) study conducted which examined the impact of controls imposed by South Africa in the 1970s and 1980s. It found that the primary method used to evade these controls was the falsification of import and export invoices. By comparing discrepancies between the value of exports reported by South Africa and the value of imports reported by key trading partners, the study concluded that at least USD 20 billion had been transferred out of South Africa through the use of the international trade system.

Locally, the FIC is of the view that some entities trading locally could be making cross border remittances on inflated invoices for goods and services. This enables the illicit cross border remittance of funds either for goods worth much lesser (in financial value) or in some instances, there are no goods that are actually imported to Namibia at all.

2.3.3 Trade-Based Money Laundering (TBML)

Unlike tax evasion and capital flight which usually involves cross-border movements of legitimately earned funds, TBML involves the proceeds of crime, which are more difficult to track.

Often, this exposes the financial system to abuse through fraudulent money transmission instruments including wire transfers. Basic TBML techniques include (FATF 2006):

a. Over- and under-invoicing of goods and services;
b. Multiple invoicing of goods and services;
c. Over- and under-shipments of goods and services; and
d. False descriptions of goods and services.

When an institution evades taxes or commits a predicate offence in terms of local laws including, the Customs and Excise Act, or the VAT Act, in order to advance illicit cross-border remittances, such proceeds so transferred can be regarded as proceeds of crime (as such were not subjected to the taxes/duties etc). Equally, where goods imported into the country are not subjected to the appropriate duties and taxes, such goods are deemed to be proceeds of crime. Consequently, this undermines legitimate trade and generates unfair competition in the relevant industries.

2.3.4 Terrorist Financing (TF) and Proliferation Financing (PF) risks

Despite the FIC not having made observations on possible TF and PF related to cross-border remittances for imports, the risk that such funds remitted may be utilised to advance terrorism and proliferation financing activities is real and significant. Although, this guidance is not directly addressing TF and PF activities, it should be noted that mitigating the illicit cross border import remittances, coupled with monitoring as per FIA Regulation 1, read with Regulation 15(5) and section 25 of the Prevention and Combatting of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 pf 2014), remains key combatting mechanisms.

SECTION D: NOTABLE TRENDS/TYPOLOGIES

3. MAJOR OBSERVATIONS

The FIC has noted two typologies employed by entities to advance activities suspected of exposing AIs to abuse for potential TBML, capital flight and tax evasion related risks. This section avails a summarised version of notable trends in such typologies. In this document, trends have been sanitized to the extent possible to prevent compromising on-going investigations. If the need arises, the FIC will consider revising this document to enhance its Guidance.

3.1 Typology 1: Importers remitting funds through a Customs Clearing Agent (CCA)

The following are the FIC's observations on the Modus Operandi employed to advance the said typology:

a. Invoices presented by the CCA to the AI for remittance purposes **do not appear to be legitimate**. They lack the basic characteristics of a tax invoice such as addresses and contact details;

b. On Invoices reviewed, the norm is this: **over 95% of the total invoice amount is allocated to non-taxable/dutiable** line items such as Insurance, Transport, Handling Fees, Cartage and Storage costs etc, which do not attract Import VAT, Duties etc. Usually, only about 5 – 10% of the total invoice value is indicated as Free on Board (FOB). The reduced FOB value is the actual value of goods, on which import VAT, Duties etc., are levied as per the questionable invoices observed. *For example: Total invoice value is USD 849,205.34, while the FOB value was only USD 20,975.84. This means the difference of USD 828,229.50 was allocated to Freight, Haulage, Storage, Handling, Cartage costs, and was therefore not subjected to customs duties and relevant taxes*;

c. In appearance, all such **invoices appear to have striking similarities**. Almost rare given that each such invoice should have been produced and

issued by various suppliers. *For example: The design used, the fonts used are the same, they all do not have company logos etc.;*

d. There are **two different invoices for every import transaction**, whereas there should only be one. One invoice that supports the Customs declaration and another significantly inflated invoice for the same goods from a different supplier supports the payment application to the bank. However, both sets of documents are linked by the same customs declaration document, the SAD500;

e. There was **no reasonable assurance that the SAD500 documents were assessed by Customs Authorities**. There was no customs stamp on most of the SAD500 documents attached. Neither were assessment numbers one the forms. The exit notes and/release orders were not attached at all times;

f. **Container sized did not match product description and volumes:** The fact that very big shipping containers are used (as can be seen on the SAD500 documents), which may seem inconsistent with the significantly lower value of goods declared (FOB value);

g. **Importers make large cash deposits** (especially in foreign currency) into the bank account of the CCA and such funds are immediately remitted by the CCA;

h. An analysis of direct remittances/imports[4] found that there were instances where **supporting documents were used several times** to support a payment by both the importer and again for a duplicate transaction by CCA.

i. The total **amounts remitted are usually not the total invoice amounts**. *For example, Invoice amount was USD 805,223.95; the amount remitted is USD 800,000.00 only;*

j. The CCA appears to be dealing in **financial values that are much higher than the average values of other CCAs**. For example, one such CCA

[4] Direct remittances is our reference to the process that each importer arranged to import and pay for an import themselves as opposed to through an agent

facilitated the remittances of payments for imports exceeding **USD 84,000,000.00** in one calendar year only. Overall, FIC reviews indicate that the said CCA received **over USD 500 million** over the last eight years in its bank account from various importers.

3.2 Typology 2: Suspected overpayments by a Motor vehicle dealer (importer)

The following are the FIC's observations on the *Modus Operandi* employed to advance the said typology:

a. The norm is that actual payments for invoices **are always more than the sum of all invoices attached.** Below are two real examples:
   - Total amount remitted was **USD 184,860.00**, while the total invoices add up to only **USD 92,360.00**. The SAD 500 documents were missing but the Bill of Lading/Entry documents were attached;
   - Total amount remitted was **USD 199,290.00**, while the total invoices add up to **USD 67,500.00**. Again, it appears as if the invoice numbers were reused by the same supplier;

b. The **importer did not remit funds through the clearing agent**. It appears the CCAs (different from the one in Typology 1) were only entrusted with customs declarations and not the actual cross border remittances. The importer, through its own foreign currency or CFC bank account was directly remitting funds from its account held at a local AI to a supplier in Asia;

c. Some of the **invoice numbers appear to have been used on more than one transaction/remittance**. For example, an invoice number was used in 2014 and in 2015 again

d. **Absence of the SAD500 document:** For most cross border remittances reviewed, only the following documents were attached:
   - Draft Bill of Lading/Entry; and
   - Invoices

For over 90% of this importer's transactions reviewed, the AI was only availed with Bill of Lading documents and Invoices. There were hardly any SAD500 documents attached. This importer transacted over 60 times, through one AI in one calendar year, but it does not appear that the AI requested for SAD500 documents for prior remittances.

e. The company remitted over **USD 90,000,000.00 in one calendar year only**. This was spread over 60 transactions in a given calendar year.

SECTION E: GUIDANCE ON RISK MITIGATION MEASURES

4. RECOMMENDED GUIDANCE

The FIC, through the Revised Directive 01 of 2016 directs AIs, in terms of section 9(2)(c) of the FIA 2012 to ensure measures are in place to mitigate TBML, capital flight, illegal foreign remittances and tax evasion risks. Amongst others, the Directive speaks to measures that the Guidance per this section (4) expands on.

4.1 The Context of Exchange Control Rulings

Section B4(c)(ii) (d)(i) of the Exchange Control Rulings, relates to the Evidence of importation. It regulates the need for importers to provide evidence of importation to Authorised Dealers (ADs or AIs). According to this Ruling, the ADs must insist upon the presentation of the Bill of Lading/Entry (to them), bearing an original customs stamp, as evidence that goods in respect of which funds transfers have been effected in terms of imports, have been cleared by the Directorate of Customs and Excise. Currently, the norm in practice is that such documentation must be presented to the ADs within six months from the time such funds transfer has taken place and not necessarily at the time when transfer is made at an AD.

Similarly, the FIA and its complimenting Regulations requires AIs to properly identify their clients (see section 21 or 22; regulations 6, 7, 8, 9, 10, 11, 12, 13 and 14) and to monitor the client's transactions against that client's commercial and risk profile (see section 24; regulation 15). The objective, amongst others is to gain reasonable assurance that AIs' services are not vulnerable to exploitation in the advancement of TBML, capital flight and tax evasion.

4.2 FATF Recommendation 16: Wire transfers

Directive 01 of 2016 explains the context within which relevant FIA obligations should be understood for purposes of mitigating risks stated herein. This section gives a brief background on the relevant FATF Recommendation that guides our expectations in this matter.

In simple terms, it is expected that relevant financial institutions include the required and accurate originator information; beneficiary information on wire transfers and related messages; as well as ensuring that the information remains with the wire transfer or related message throughout the payment chain.

The recommendation further states that it is expected of us as a country to ensure that financial institutions monitor wire transfers for the purpose of detecting those which lack required originator and/or beneficiary information, and take appropriate measures.

Additionally, it is expected that AIs have measures in place to enable the freezing of assets and prohibiting the conduct of transactions with designated persons and entities, as per the obligations set out in the relevant United Nations Security Council (UNSC) Resolutions, such as Resolution 1267 (1999) and its successor resolutions. Amongst others, this includes Resolution 1373 (2001) and others relating to the prevention and suppression of terrorism, terrorist financing and Proliferation Financing (PF) activities.

4.3 Responding to the stated typologies

4.3.1 Ensure all relevant documents are availed by the CCA or importer

It is the FIC's observations from current investigative reviews that most importers declare imports prior to arrival to enable immediate release of such goods by both Customs and port authorities. It therefore goes without saying that advance payments made by importers without declaring such to Customs authorities is not necessarily the norm. Such imports are not in minority. Having said the above, the FIC guides that AIs should ensure measures are in place to ensure all cross border remittances for imports are supported by the legitimate import supporting documents which, at a minimum, must include the:

a. Tax or Commercial Invoices;
b. the Bill of Lading/Entry; and

c. SAD500 documents and their corresponding Exit Notes and/or Release Orders.

These documentation should be obtained by the AI prior to facilitating such cross border remittances to the extent possible. Such documents should equally be reviewed by the AI to gain reasonable assurance that the proposed cross border remittance does not expose the AI to abuse for TBML, capital flight and tax evasion purposes.

In cases where a document such as the SAD500 cannot be availed prior to transacting, the AI should ensure that measures are in place to obtain such document(s) within six months from the time such transaction was processed (more on this in section 4.1.3 below). In mitigating TBML, capital flight and tax evasion risks, the SAD500 is the primary document attested by Customs authority, which can help avail such reasonable assurance as it carries much more information than a Bill of Lading and Tax or Commercial Invoice.

4.3.2 Additional measures to gain reasonable assurance

There are many due diligence measures that AIs can employ to gain reasonable assurance that transactions they are facilitating do not expose their services to abuse for TBML, capital flight and tax evasion.

The FIC guides that reasonable assurance can be enhanced when AIs understand the contents of documents presented by importers. This section presents some key features of the following documents that can help AIs determine the level of assurance to place on documents presented.

a. The SAD500 Document

Unlike the Bill of Lading documents, the SAD500 document is Namibia's official customs declaration document, issued by or certified by Customs Authorities and contains information on relative financial values involved such as taxes/duties payable and the Free on Board Value of imported goods etc.

The information on the SAD500 document can be cross-checked with relevant information on the Bill of Lading, Tax Invoice, Release Orders, Exit Notes etc. *For example, the "C number" or registration number should be the same on the SAD500 document and on the attached Release Orders/Exit Notes. Usually, SAD500 documents also have assessment numbers on such forms that can only be generated if the import was declared to Customs and subsequently assessed by Customs authorities.*

b. The Release Order

The Release Order is issued by the customs official who finalizes the assessment process (usually upon declaration) to give assurance that he/she is satisfied with what has been presented/declared and gives an order for the release of such goods (upon arrival in Namibia).

For importers without an import account, after the assessment process is done, the transaction is escalated on the Asycuda system to the Cashiers/Tellers for payment. No Release Orders and Exit Notes are produced by the Asycuda systems until the importer settles the duties and taxes payable. It is only after such payment that the customs assessment process is completed and such transaction is released – meaning the Release Order or Exit Note are produced and availed to the importer or declarant. Below are some features of the Release Order:

i. It is printed in the same format as the SAD500;
ii. It carries the Registration (C number) and Assessment number (A Number) which should be corresponding to the one on the SAD500 document;
iii. It carries a Registration date and an Assessment date that should be corresponding to the dates on the SAD500 document. The date next to the C number is the registration date and the date next to the A number is the assessment date;
iv. It has container numbers and commodity numbers that can be cross checked with the numbers on the SAD500 document. It also has a basic description of the goods imported;

v. The Release Order shows amounts paid in taxes/duties or such amounts deferred to the Import VAT account (if any);
vi. The Release Order usually has a Customs date stamp.

c. The Exit Note

The Exit Note is issued when the goods are due to be released right there and then, **at the point of entry**. Therefore, the truck driver's details and details of the truck removing such goods are recorded on the Exit Note (they are however not shown on the Exit Note print out but appear on the system). It gives confirmation that imported goods were removed from Customs and by whom, at the time such Exit Note was produced. Below are some features of the Exit Note:

i. It is printed in the same format as the SAD500;
ii. It carries the Registration (C number) and Assessment number (A Number) which should be corresponding to the one on the SAD500 document;
iii. It carries a Registration date and an Assessment date which should be corresponding to the dates on the SAD500 document. The date next to the C number is the registration date and the date next to the A number is the assessment date;
iv. It has container numbers and commodity numbers which can be cross checked with the numbers on the SAD500 document. Description of goods and volumes are also listed on the Exit Note;

4.3.3 Additional measures to reduce risk exposure

The client still has the responsibility to avail such documents to the AI. Where a **client fails to provide** the relevant abovementioned documents within the given six months, enhanced due diligence measures should be conducted so that AIs have reasonable assurance that funds transfers for such imports were indeed legitimate and accurate.

The FIC strongly advises that if an importer fails to avail the AI with relevant documents for import transactions previously facilitated by the AI, such AI must take all reasonable measures to obtain assurance on the previous cross border

remittances before continuing to facilitate more such transactions, in an effort to reduce further exposure from such importers. In mitigating risks, each AI may adopt measures that are suitable for internal risk mitigation. However, such measures must at a minimum, include the following:

a. ensuring all advance payments for imports lacking such supporting documents should be recorded on a **register/log**. Such register/log should, at a minimum, record the **Amounts remitted per transaction, Exporter/Payee name, Company/Importer name, Company/Importer registration number and the Names of Shareholders;**
b. periodically subjecting such register/log to **Managerial or Supervisory review** in order to identify transactions that may need to be subjected to EDD (in an effort to obtain more information or missing documents). The **level of risk exposure** should guide such management reviews (extensiveness and frequency of such reviews);
c. ensure such register or another platform has a **record of steps/actions taken**, for each such import transaction, to obtain such reasonable assurance or missing documentation;
d. where documents such as the SAD500 **were received after the transaction was concluded**, the contents of the relevant supporting documents are scrutinised in order to validate the transaction. The AI should record actions taken to gain reasonable assurance that such documentation supports the relevant transaction (its nature and purpose) and the AI has assurance that its services were not abused for potential abuse for TBML, capital flight and tax evasion purposes. If this assurance is not obtained, the AI must consider filing a Suspicious Transaction Report (STR) with the FIC.

   The essence of recording actions taken is to be in a position to demonstrate to Regulators and other competent authorities how such assurance was gained.

Where the AI is unable to gain such reasonable assurance owing to missing documentation or other information, the AI has to review the relationships with all such

importers/CCAs/Client (with outstanding import supporting documents) and inform the FIC in writing of:

i. such transacting behaviour by client (specifying the number of such remittances and financial values, missing support documents etc);
ii. the measures taken for each such importer/CCA/Client;
iii. the way forward with regards to the business relationship with such importer/CCAs/clients; and
iv. foreseeable or potential impact on the business relationship given the actions to be taken by the AI.

ADs should at all times guard against undue additional risk exposure by continuing to avail such remittance services in the absence of effective ML/TF/PF controls.

5. SANCTIONS SCREENING

In cases seen by the FIC, it was noted that when import related payments are made via a customs clearing agent, the funds are remitted to the agent (sometimes through cash deposits) by the importer, who then transacts on the importer's behalf. There is therefore the expectation that the involved parties screened by the AIs are possibly only the customs clearing agent and the exporting entity or receiver of such funds to be remitted. The risk is that the actual importing client may not be subjected to screening mechanisms.

It is strictly required that the details of the principal importer (and not only the clearing agent) are subjected to the relevant sanctions screening mechanisms. The details of the importer would ideally be on the Tax Invoice and SAD 500 documents (amongst others) presented by the clearing agent.

As per FIA Regulation 1[5], read with Regulation 15(5)[6] and section 25 of the Prevention and Combatting of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 pf 2014), the AI is expected to screen its clients or potential clients involved in transactions, against the relevant sanctions lists issued by the UNSC, for purposes of combating TF and PF activities and to prevent potential sanctions violations.

It is important that AIs are able to demonstrate to Regulators how they gain reasonable assurance that screening does indeed take place and all relevant parties are screened.

6. GENERAL

The contents of this Guidance Note shall be reviewed from time to time, when the need arises. Accountable and Reporting Institutions will be notified of any aspect herein that may necessitate revoking or amending. If you have any comments or suggestions to help improve this Guidance Note, please avail such inputs to the FIC.

This document may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions. This Guidance Note is issued without prejudice to the FIA and its complementing Regulations.

The Guidance Note can be accessed at **www.fic.na**.

[5] Regulation 1 of the FIA Regulations: "monitoring" for purposes of Section 23, 24 and 25 of the Act includes - (a) the monitoring of transactions and activities carried out by the client to ensure that such transactions and activities are consistent with the knowledge that the accountable institution has of the client, the commercial or personal activities and risk profile of the client; (b) the enhanced monitoring of transactions and activities of identified high risk clients in order to timeously identify suspicious transactions and activities; and (c) the screening of the name of a client or potential client, and the names involved in transactions, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter; for purposes of combating money laundering, the financing of terrorism and the funding of proliferation activities.

[6] Accountable institution to conduct on-going and enhanced customer due diligence: (5) An accountable institution must also, in the process of monitoring, screen - (a) names of prospective clients, before acceptance of such a client; (b) names of existing clients, during the course of the business relationship; and (c) all the names involved in any transaction, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter for purposes of combating the financing of terrorism and the funding of proliferation activities.

DATE ISSUED: 18 JULY 2017

DIRECTOR: FINANCIAL INTELLIGENCE CENTRE

7. FREQUENTLY ASKED QUESTIONS

7.1 Relevance of the Bill of Lading and SAD500 documents: Relevant Exchange Control Rulings only require ADs to obtain the Bill of Lading and does not require ADs to obtain the SAD500 document. Why must the SAD500 document be obtained?

Without the SAD500 document or similar document, AIs might not have adequate information at hand to mitigate ML/TF/PF risks.

The Bill of Lading document is a document issued by private entities involved in the shipment/logistics of imports. It primarily has information such as the date of cargo departure, arrival, basic description of goods, container size and quantities etc. It does not speak to any financial values involved such as Free on Board Values, costs of freight/insurance, duties paid/payable (if any) etc. The information which relates to financial values pertaining to imports is only found on the SAD500 declaration document (or invoice). Unlike the Bill of Lading documents, the SAD500 declaration document is a country's official customs declaration document, issued by or certified by the Ministry of Finance (or their agents) and contains information on relative financial values involved such as duties payable and the Free on Board Value of imported goods.

The FIC observation across the sector is that some institutions were only obtaining the Bill of Entry documents, without the SAD500 declaration documents issued by the Ministry of Finance also being obtained.

FIC reiterates that there is a distinction between the two sets of documents, given the contents they carry. In the context of Directive 01 of 2016, it is thus imperative to obtain both sets of documents before honouring any instruction for outward remittance of any funds. FIC reiterates that in mitigating ML, TF, PF and undue foreign currency reduction risks, both sets of documents are critical and ought to be obtained for each import transaction to, amongst others, gain reasonable assurance that:

a) *an Import has indeed occurred (or will take place – advance payments). Caution must be applied to prevent the use of falsified Bills of Lading, incomplete SAD500 documentation etc;*

b) *the said import values remitted are reasonable (especially in light of the container size used, the insurance paid for the Free On Board Value of the goods reflected on the Invoice, as well as other line items such as cartage, haulage, storage etc reflected on the invoice) and are as declared at Customs; and*

c) *The risks of ML, TF and PF are mitigated to the furthest extent possible.*

7.2 Does the statement in Directive 01 of 2016 – "including its complementing regulations" include the Exchange Control Regulations?

Yes, the Exchange Control Regulations are included to the extent that such Regulations are deemed adequate and effective to mitigate relevant ML/TF/PF risks.

The directive did not serve to replace the Exchange Control Regulations. The crux of the matter is as follows:

a) *Exchange control risks need to be mitigated and compliance with the said Regulations, Rulings and relevant Orders enhance such risk mitigation;* ***however***

b) *The TBML, capital flight and tax evasion risks can only be mitigated with due consideration of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) (FIA) as amended and its complementing Regulations and directives issued in terms of the Act.*

7.3 In case of bonded warehouses in Oshikango that acts as agents, paid in cash for imports, please confirm what is deemed reasonable assurance of the true source and purpose of funds?

The FIC notes the challenge in this scenario, given that the actual source of funds information and true purpose of transacting lies with the importing entity and not necessarily the clearing agent, who is responsible for facilitating the importation of goods and actual remittance of funds for payment. In cases where the importing client (as noted from the invoices and import supporting documents) is a client of the Authorized Dealer in Foreign Exchange (AD), the obvious expectation is that the necessary client due diligence measures as per the FIA 2012 should be adhered to. Meaning, the AI should gain reasonable assurance that such transactions are within the expected norms of that importer who is also the AI's client.

For importers who are not the AI/AD's clients, the AI/AD has to do with what is at hand where the risk is deemed minimal[7], but must still ensure full and effective compliance with the FIA 2012. Meaning, if the information presented does not avail reasonable assurance, the AD should engage the person (agent) representing such importer to avail the required information.
Note that non face-to-face clients present an inherently higher risk and each scenario should be assessed and subjected to the necessary enhanced due diligence.

As an Accountable Institution in terms of the FIA 2012, the AD has an obligation to mitigate risks such as TBML, capital flight and tax evasion. To do that, the most effective mitigating control, as contained in the Directive, is to:

a) Ensure that legitimate and reliable supporting documentation are timely obtained from the person (agent) facilitating such import remittance at all times; and

b) The necessary due diligence measures are taken when risk exposure is regarded as intolerable or high. The following are indications reflecting intolerable risk exposure:

[7] There must be convincing grounds which demonstrate that the risk was assessed by AI to be minimal.

i. *Invoices or other import supporting documents which appear irregular or fraudulent (such as possible under declarations or overpayments on stated value of goods imported; re-use of invoice numbers previously submitted, forged Bills of Lading, incomplete SAD500s not bearing Custom Stamps etc); and*

ii. *Late or non-submission of import documents (especially after the six month period has lapsed for advance payments).*

Given the current operational relationship of importers, ADs and clearing agents, the ADs can only work with what is at hand, as explained above. The FIC observations in the sector are that import remittances with obvious irregularities are not subjected to the necessary due diligence measures as prescribed by the FIA 2012, nor is complementing corrective action taken to prevent an abuse of the National Financial System for purposes stated above. This is extremely alarming and the Directive was aimed at mitigating the risks materializing from the observed poor controls.

ANNEXURE 1: RELEVANT STEPS IN THE IMPORT PROCESS

CONSIDERATIONS IN THE IMPORT PROCESS RELEVANT TO ML/TF & PF RISKS

1. INTRODUCTION

Note that some entities make use of registered customs clearing agents whist some importers are registered as agents themselves. Customs clearing agents are registered by the Ministry of Finance in terms of the Act and have access to the Asycuda *(Automated Systems for Customs Data)* system used to record/report import transactions.

Usually, the goods to be exported to Namibia are loaded by the Shipping Line prior to the wheels being set in motion in the receiving country being Namibia. It is only from this stand-point that a Bill of Lading is availed to the receiving country (country receiving the import of goods). The date the goods are loaded is the date used as the exchange date for calculating VAT and duties payable in local currency.

The following documents are used as reliable supporting documents for shipped goods, in various transporting mediums:

Airway bill – Flight (usually for air cargo);
Tax Invoice – Determining the duties and taxes payable;
Manifest – Land (entities such as FP Du Toit moving goods on land would usually make use of this). Trip manifests are however mostly used at the following four entry points:

- *Hosea Kutako International Airport;*
- *Eros Airport;*
- *Walvis Bay Regional Office (Customs); and*
- *Walvis Bay Airport (Customs)*

It is also worth noting that **EXIT NOTES** are thus only produced at the above-mentioned points of entry. All other points of entry only produce **RELEASE ORDERS** and **cannot produce EXIT NOTES** as there are no trip manifests in use.

1.1 BRIEF CONSIDERATIONS ON THE SAD500 DOCUMENT

It is called a Single Administration Document (SAD) as it is a single document which can be used for various purposes including imports and exports. **IM** on the document would represent an **Import** and **EX** would represent an **Export**. **Box Number 1** (Centre of the document), is usually where this is indicated. You would sometimes see reference to **IM 4**. **IM 4** stands for **"Direct import for Home Use"**. This refers to goods which are shipped to Namibia for immediate use in Namibia.

Below are some examples of other common Import codes worth noting, which could appear in the SAD500 Box 1:

IM 5: *Temporary import of goods and the importing person will leave the country with his goods intact (without having sold them locally);*
IM 7: *Goods which were imported but they are bonded in a warehoused until such time that they are released for local consumption. These goods are not yet ready for the Namibian market. Note that goods can be kept in a warehouse for up to 5 years;*
IM 8: *Goods in Transit. These are goods that would never be sold in Namibia. For example, entering Walvis Bay as the point of entry and leaving via Oshikango as the point of exit;*
IM 6: *Re-Importation of goods that were earlier exported from Namibia.*

Below are some examples of other common Export codes worth noting, which could appear in the SAD500 Box 1:

EX 1: Direct export from Namibia;
EX 2: Temporary exports that would need to be exported back (out of Namibia) (Examples are travelling with your laptop and returning with same and this is also the same code for goods exported for repair/maintenance and later re-imported back to Namibia);
EX 3: Re-exportation of goods that were imported.

For exports, the **E** number replaces the **C** number used in imports. For receipts (issued in terms of payments), there is usually an **R** number associated with such.

1.2 Other issues worth keeping in mind

1.2.1 Export Processing Zones (EPZ)

The EPZ status is accorded to persons **importing raw materials into Namibia** for use in local production. This carries certain tax benefits. Imports from abroad to an EPZ area, no duties and taxes are payable but if it is from an EPZ to local market/consumption, then the taxes and duties are payable.

1.2.2 Asycuda Plus Plus and Asycuda World

Asycuda is a United Nations system is use in over 90 countries. Namibia started using it in 1996.

Asycuda Plus Plus is the old Asycuda system which has been phased out. It is currently **only in use by FP Du ToiT for their South African based clients (This is only found at their offices in Prosperita, Windhoek).** All other points of entry as at the time of issuing this Guidance have migrated to Asycuda World.

Considerations are being made to ensure that system storage can enable scanning of invoices into the Asycuda system. The scanning capability is within the system but the storage space is needed.

1.2.3 Searching for a record on the Asycuda system (to test its customs declaration status)

It was noted that to adequately and accurately search for a record, one needs the following four keys:

Key 1: *Office code (e.g Aria would stand for Ariamsvlei – always coded in four letters);*
Key 2: *Customs reference code e.g C39616 29/12/2016 (the C number or Registration number and date). This number on its won could be re-allocated at different offices, in*

different years but not in the same office, in the same year;

Key 3: *Declarant reference number. Each declarant, being a customs clearing agent or importer has a unique reference number; and*

Key 4: *Declarant (e.g NCA001 for Namibia Clearing Agents) a reference linked to the declarant.*

1.2.4 Modes of Transport

As reflected on the SAD 500 form:

Number 1 *– Sea Transport*
Number 2 *– Rail Transport*
Number 3 *– Road Transport*
Number 4 *– Air transport*

For imports coming through the Walvis Bay harbour, the mode of transport indicated should ideally only be number 1.

With the above considerations in mind, the following section presents an overview on key elements in the import/customs processes which have an impact on ML/TF & PF risk mitigation in financial systems.

1.3 STEP 1: REPORTING AN IMPORT TO THE MINISTRY

Keep in mind: On the Asycuda system, the blank SAD500 forms are in soft copy and can be accessed and completed by authorised agents (customs clearing agents), for the Ministry to access and assess.

When a clearing agent receives instructions to facilitate the importing of goods or services, he or she takes the following steps:

a. With an **Invoice and usually all other relevant documents such as Bill of Lading** in hand, the customs clearing agent/importer logs onto the Asycuda system (using his or her registration code);

b. **Captures the import or report** to the Ministry that an import is expected. Amongst others, the following are important aspects of each import transaction that are captured for each transaction:

*i. Details of the **declarant or agent**;*
*ii. The **details of entity transporting goods** to Namibia (often referred to as the Shipping line). Companies such as Maersk Darlington etc;*
*iii. **The exporter, consignor**: Together with his or her address and contract details;*
*iv. **The importer, Consignee**: The entity instructing clearing agent to facilitate an import;*
*v. The **CIF value** of goods: The total value of the import including Cost, Insurance and Freight values. This is normally not used by Customs for duties and taxes determination. It is merely recorded for Statistical purposes for the SACU pool;*
*vi. The **FOB value of goods**: The actual Free on Board value on which determinations are made on taxes and duties payable;*
*vii. **Description of goods** which helps ensure correct commodity categorisation on Asycuda (according to commodity odes).*

c. Note that when this capturing takes place, the captured or purported import which is reported via the Asycuda systems can be accessed by the Ministry of Finance **but is usually not processed nor assessed in the absence of supporting documents** including the Tax Invoice and the Bill of Lading;

d. When the capturing as cited above is complete, the system always asks the agent if he or she wants to register the recorded import transaction. If the agent indicates NO, then the customs declaration is incomplete. If the agent indicates yes, the following important steps takes place:

*i. A **unique registration number** is allocated to that transaction which will appear on the document; and*
*ii. The **registration date is allocated** to that transaction (usually the same date it is registered)*

e. The following amounts are also worth understanding in our context of reviewing a submitted SAD500 documents to gain reasonable assurance that it has been assessed:

i. ***The CIF value of goods:*** *The total value of the import including Cost, Insurance and Freight values. This is normally not used by Customs for duties and taxes determination;*
ii. ***The FOB value of goods:*** *The actual Free on Board value on which determinations are made on taxes and duties payable;*
iii. ***Freight:*** *Transport costs or costs of shipment/delivery;*
iv. ***Customs value:*** *Value for customs duty. Some goods/items attract customs duties, some only VAT and some both;*
v. ***Statistical value:*** *Is the sum of both CIF and FOB values;*
vi. ***Guarantee value:*** *Total duties and taxes for all goods or items paid/payable;*
vii. ***ICD:*** *Import customs duty;*
viii. ***ADV:*** *Ad valorem charges levied on some goods. (Latin for "according to value") This is a tax whose amount is based on the value of a transaction or of property. It is typically imposed at the time of a transaction, as in the case of a sales tax or value-added tax (VAT);*
ix. ***ADD:*** *Additional duties;*
x. ***RIB:*** *Removal in Bond*

Keep in mind: It was noted that agents sometimes simply frame the SAD500 entry and do not submit same to the Ministry for assessing. This is a key consideration for an agent who may want to commit capital flight and use unprocessed documents at unsuspecting financial institutions to enable cross border remittances. At times, even if the captured SAD500 is reported to the Ministry, the agents do not present the necessary supporting documents to enable the assessments. The FIC has also seen that at times, importers/agents are prepared to under-declare and still pay the minimal taxes/duties whilst remitting the bulk of the funds.

1.4 STEP 2: PRESENTING DOCUMENTS TO SUPPORT REPORTED IMPORT

For the Ministry of Finance to assess the import, determine the taxes and duties payable by importer, the agent has a duty to present the necessary documents to the Ministry for

processing, after capturing the import on the Asycuda system. These documents include:

*a. The correct and complete supplier **Tax Invoice** (issued in terms of the VAT Act);*
*b. The **Bill of Lading Documents; and***
c. any other documents which may be deemed necessary by the receiver (but the above two are usually sufficient)

These documents **should be originals**. The FIC has noted that the Agent would normally present these with the print out of the SAD500 document he captured on the Asycuda system. It does not however mean that the SAD500 presented will be the same one on which finalization by the Ministry is done, as it does not have the registration date and number yet.

1.5 STEP 3: ASSESSMENT OF REPORTED IMPORT

When the Ministry is satisfied with what has been presented by the agent, the following steps are taken:

*a. A Checking Officer (CO) normally **verifies that all required documents are duly completed and attached for assessment**;*
*b. The Checking Officer, if satisfied then **hands them over to the Assessor** (On the old Asycuda system, the Checking Officer would write an Inspection Act, before the process moves over for assessment. On the new system, this is done by the Assessor);*
c. The Assessor (knowing that all documents are in order), does the assessment which entails, amongst others, the following:
i. That the registration number is correct;
*ii. That the **described goods are correctly categorised and assigned the correct commodity number** (note that the various commodities have different tax rates and expectations). This is very important; and*
*iii. That the **taxes and duties payable** are correctly determined on the SAD500.*

1.5.1 Some tips on the above

a. Issuing an Exit Note

The above is done on the systems and if the assessor is happy with the above, and amounts payable are settled or deferred to the relevant accounts, only then can the assessor process the reported transaction to generate a **release order and/or an exit note** from the Asycuda system. Both the Release Order and the Exit note are usually a one or two-page document, produced in the same format as the SAD500 form/documents and attached along to that form. The presence of these documents gives clearance that the registration of the import and its assessment was done correctly and the dues payable are either deferred to the import tax account of primary importer, or paid in cash accordingly.

The **Exit Note is issued** when the goods are due to be released right there and then, at the point of entry. Therefore, the truck driver's details and those of the truck removing such goods are recorded on the Exit Note (they are however not shown on the print out but appear on the system). It gives confirmation that goods are being taken and by whom, at the time such Exit Note is produced.

b. Generating a Release Order

The Release Order is issued by the customs official who **finalizes the assessment process (usually upon declaration)** to give assurance that he is satisfied with what has been presented/declared and **gives an order for the release** of such goods.

For importers without an import account, after the assessment process is done, the transaction is escalated on the Asycuda system to the Cashiers/Tellers for payment. **no release order and exit note** are produced until the importer settles the duties and taxes payable before such transaction is released and provided to the importer.

Identifying registered (import account holders at the Ministry) and non-registered importers: On the SAD500 document, there is a **TIN number**, on the first page. If the last two digits of the TIN number ends with a **"16"**, then the importer has an Import VAT account with the Ministry and if the number ends with a **"15"**, then such importer is a registered VAT account holder but does not have an Import VAT account with the Ministry.

Below is a summary:

*i. **TIN Number “15”** – have to pay the import VAT on the spot or prior to goods being released at harbour when they arrive;*

*ii. **TIN Number “16”** – the payable import VAT can be deferred to the 21st of the next month. Will be billed to the import VAT account.*

The following are key features to watch out for, in gaining reasonable assurance that the import has been registered accordingly:

***a.** The RELEASE ORDER attached to the SAD500 form **(check for corresponding C numbers on the SAD500 form)**;*

***b.** The EXIT NOTE attached to the form **(check for corresponding C numbers on the SAD500 form)**;*

***c.** The presence of an **assessment date and assessment number** on the completed SAD500 form, which are corresponding is vital; and*

***d.** The form usually has **a date stamp of the Ministry of Finance**, normally stamped around the area containing the **N$ 1.00 revenue stamp** on the front page of the SAD500 document.*

1.6 STEP 4: PRESENTING A COMPLETE SET OF DOCUMENTS TO FINANCIAL INSTITUTIONS FOR IMPORT PAYMENT

Once the assessment is complete (as per above), the agent or importer presents the following set of documents to the financial institution to commence the process of payment for remittances:

a. Completed and assessed SAD500, as per above, with the Release Order and/or Exit Note attached to it (Ensure that C/E/A numbers correspond in all such documents);
b. Complete Bill of Lading/Entry documents; and
c. The correct and complete supplier tax invoice (as per the VAT Act).

Some importers normally present such documents to the AIs and conduct cross border remittances themselves directly, without the assistance of customs clearing agents.

1.6.1 UNDERSTANDING SOME FIELDS ON THE SAD500 DOCUMENTS

Exporter/consignor details. *The norm is that exact address and contact details are provided. Specific physical or postal addresses should be availed. Query when the field simply states "Windhoek"*

TIN Number *indicates the tax type (15 or 16);*

Registration number *(e.g C51002) and Registration date;*

Assessment Number and Date: *Must usually be provided on the forms, can be cross checked with the numbers on the Receipt, Assessment Notice, Release Orders or Exit Notes etc. Sometimes handwritten as the SAD500 form could have been printed prior to the assessments and presented to Customs;*

Declarant reference number: *Usually indicates the Ministry of Finance registration details of person who is declaring the import (agent). All declarants are registered;*

Importer/Consignee details *(Should indicate the importer details): See comments for Exporter or consignor details above;*

Declarant details *such as physical address should be stated here (Usually the clearing agent);*
Currency and total FOB value: *The total FOB value on which taxes were levied;*

Identification, date and nationality Transport at Frontier: *Usually indicates the Shipping line or entity responsible for shipping the cargo;*

Container numbers: *Can be cross checked with the numbers on the Bill of Lading;*

ICD: *refers to the Import Customs Duty. This is found under the subsection where the import VAT and duties are calculated;*

VAT: *The Value Added Tax levied on the import of goods. This is also found under the subsection where the import VAT and duties are calculated;*

Guarantee amount: *The guarantee amount for total duties and taxes for all goods or items paid/payable for the import;*

Total payable: *The total amount that needs to be paid per the import (including duties and taxes);*

Revenue stamp: *Usually a N$ 1.00 revenue stamp placed on the bottom right hand corner on the first page of the SAD500 document. The norm on most legitimate documents is that the Ministry of Finance's date stamp is usually stamped over or on top of the revenue stamp;*

Declaration: *By the entity (clearing agent) declaring the import. This is usually at the bottom section of the first page on the SAD500;*

Statistical value: *Is the sum of both CIF and FOB values.*

1.7 STEP 5: ARRIVAL OF IMPORTED GOODS IN NAMIBIA

When goods arrive, they are bonded and cannot be released from the harbour until the importer or usually the customs clearing agent presents the required documents such as the Bill of Ladings, SAD500 and Release Orders/Exit note documents.