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DIRECTIVE TO STRENGTHEN CONTROLS ON CROSS BORDER REMITTANCES

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1. SECTION A: INTRODUCTION

1.1 Background Information

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 herewith issues this Directive in terms of Sections 9(1)(h) and 9(2)(c) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), as amended (FIA).

The FIC has noted that Accountable Institutions (AIs) that are Authorized Dealers in Foreign Exchange (ADs) and Authorized Dealers in Foreign Exchange with Limited Authority (ADLA) do not have adequate and effective controls in place to ensure that the inherent risk of ML/TF/PF in the provision of international fund transfer (remittance) services is mitigated. The FIC is specifically concerned with **Single Discretionary Allowances (SDAs)** (especially those related to “Gifts”) and **Payments for Imports** as the most vulnerable to abuse and therefore directs all ADs and ADLAs to:

- a) Treat all the above-mentioned services as inherently high risk and apply enhanced due diligence measures as provided for by various relevant sections of the FIA and the Regulations, where ML/TF/PF risk exposure¹ are not reduced to tolerable levels by existing controls. Specifically, ADs and ADLAs should ensure applying sections 24, 23 of the FIA and Regulations 12 and 15 to mitigate relevant ML/TF/PF risks; and
- b) Implement the specific Directives contained herein to mitigate the risks inherent in transactions related to “Single Discretionary Allowances”, relevant inward remittances to individuals and “Payments for imports”.

1.2 Summary of Revised Matters

1.2.1 Single Discretionary Allowances (SDAs): SDAs as per Exchange Control Ruling B.7 includes various other sub items. The Directive previously only referred to “Gifts” as the SDA sub item covered, thus excluding other sub items

¹ Especially such risks or threats emanating from client behaviour and other relevant factors

included under SDAs as per such Ruling. The revised Directive applies to all SDA sub items. Practically, Accountable Institutions are therefore expected to apply the specific directives herein to all SDA sub items. **Annexure C** of this Directive lists such other sub items under SDAs, for ease of reference.

1.2.2 Gifts category is broad: In terms of the *Exchange Control Business and Technical Specifications, Section C.3*, the Gifts' category, under BoPCUS reporting category 501 is broad. It includes various other types of cross border remittances other than conventional "Gifts". Such other line items are listed in **Annexure C** of this Directive, for ease of reference. This therefore means that all transactions recorded under category 501 are covered by this Directive in the same vein as conventional "Gift" remittance transactions.

1.2.3 Cross border outward and inward remittances: The Directive previously focused on outward remittances only, with specific directives for clients exceeding the NAD 100,000.00 and NAD 500,000.00 thresholds. This revision sets the threshold for SDAs at NAD 99,999.99, quarterly. Equally, this Directive now includes inward remittances, with specific directives for clients receiving over NAD 499,999.99 in a quarter. All ADs and ADLAs should ensure that the due diligence as specified herein applies accordingly. Additionally, reporting should be made on both inward and SDA remittances, that exceed the respective thresholds quarterly.

1.2.4 Reporting: Annually, all ADs and ADLAs were previously expected to report remittances exceeding the given threshold by 30 September annually². For the current period, ADs and ADLAs must still escalate such reportable transactions by 30 September 2017. However, beyond 30 September 2017, the revised Directive sets reporting intervals quarterly, with the first reporting quarter **commencing on 01 January 2018**. Equally, reporting in terms of this Directive will also be done via GoAML (including 30 September 2017 reports) and no manual submissions will be accommodated.

² For reportable transactions in the previous 12 months leading up to 30 September

1.2.5 High risk: The Directive previously stated that all cross border remittances are *high risk*. The revised Directive contextualises this to refer to “*inherently high risk*”³, as opposed to “*high risk*”.

1.3 Application

This Directive is directed to all ADs and ADLAs and comes into effect on **13 June 2017, except for the specific directives related to:**

- a. **all inward remittances**⁴;
- b. **quarterly monitoring and reporting for SDAs exceeding NAD 99,999.00;**
- c. the aligning of AI’s registers/logs for recording **import advance remittances without required documentation** – to include, at a minimum, the Amounts remitted per transaction, Exporter/Payee name, Company/Importer name, Company/Importer registration number and Name of Shareholders.

The specific directives relating to the three exceptions above (a-c) will come into effect on **01 January 2018**.

2. SECTION B: SPECIFIC DIRECTIVES

2.1 SINGLE DISCRETIONARY ALLOWANCES (SDAS) AND INWARD REMITTANCES

It should be noted that in terms of the Exchange Control Rulings, SDAs **only applies to outward remittances for natural persons**⁵.

Accountable Institutions are to regard international funds transfers (cross border remittances) by individuals as inherently high risk, unless existing controls reduce such risks to acceptable levels. This applies to both inward and outward cross border remittances. All inward remittances and SDAs (outward remittances), in which inherent risks are not reduced to acceptable levels should be subjected to the necessary level

³ Within the context of this Directive, an AD or ADLA must be able to demonstrate, for example: the rationale which informed relevant risk ratings with due consideration to client behaviour, profile, risk carried by the specific service/transactions etc.

⁴ Single Discretionary Allowances

⁵ Residents who are 18 years and older

of enhanced due diligence measures, as directed herein and provided for in the FIA and its complimenting Regulations⁶.

2.1.1 FIC observations

FIC observations are that there is an abuse of the Balance of Payment (BoP) category for Gifts (501). For example:

- a. Transactions which appear to be trade related are permitted under the “Gift” category (501) without conducting the necessary due diligence such as:
 - i. understanding the true source of funds;
 - ii. nature of such transactions;
 - iii. if need be – obtaining relevant supporting documents; and
- b. Persons remitting amounts that appear to be beyond their stated and/or known sources of income, without the necessary due diligence being conducted by ADs and ADLAs.

2.2 Directives: SDAs and Inward Remittances

All ADs and ADLAs are directed as follows:

2.2.1 Ensure management review/approval

- a. **SDAs (Outward Remittances Quarterly):** Implement a monitoring mechanism to ensure that all individuals remitting funds **out of** Namibia in excess of **NAD 99,999.99 quarterly** are identified in terms of the FIA and that approval is obtained from senior management for transactions in excess of this threshold. Amongst others, senior management should ensure the due diligence includes;
 - i. understanding the client’s financial profile;
 - ii. gaining reasonable assurance on the true source of funds;
 - iii. ensuring such source(s) of funds are within the client’s financial profile;

⁶ Specifically, ADs and ADLAs should ensure applying sections 24, 23 of the FIA and Regulations 12 and 15 to mitigate relevant ML/TF/PF risks, amongst others.

- iv. nature/purpose of such remittance(s) and possible relations with receiving parties (are established);
 - v. ensuring effective screening against relevant United Nations Security Council (UNSC) sanctions lists; and
 - vi. reporting such transactions to the FIC quarterly, via GoAML.
- b. **Inward Remittances Quarterly: Annexure D** of this Directive reiterates the position of FATF⁷ and the FIA 2012 on Correspondent relationships, in the context of inward remittances. With due consideration to each institution's obligations in a Correspondent (banking) relationship, senior management is hereby directed to ensure implementation of a monitoring mechanism that will **highlight all individuals⁸ receiving funds in excess of NAD 499,999.99 quarterly**. Additionally, such clients must be subjected to the necessary level of due diligence to give management reasonable assurance on ML/TF/PF risk management. In gaining such reasonable assurance, ADs and ADLAs must, at a minimum, ensure to obtain the following information in an effort to mitigate risks:
- i. understand the source of funds involved in such transactions;
 - ii. identify the sender(s), including their financial profiles or source(s) of income information;
 - iii. understand the relationship between the sending and receiving parties;
 - iv. understand the nature/purpose of such remittance(s);
 - v. ensure effective screening against relevant UNSC sanctions lists; and
 - vi. report same to the FIC, via GoAML quarterly.
- c. **Structuring or smurfing:** Management should ensure that there are measures to mitigate risks of *structuring or smurfing*⁹ aimed at undermining the above-mentioned control objectives. Management is directed to ensure that the necessary level of due diligence measures (as provided for herein and the FIA) are applied in obtaining reasonable assurance towards ML/TF/PF risk mitigation, at all times;

⁷ Financial Action Task Force (FATF)

⁸ This therefore excludes legal persons

⁹ Structuring is the act of altering a financial transaction with the aim of avoiding a reporting requirement. Smurfing is the act of using runners to perform multiple financial transactions to avoid currency reporting requirements.

- d. **Any other measures:** Over and above the specific directives stated above, senior management should consider taking any additional measures deemed necessary to mitigate risks where reasonable assurance on risk mitigation cannot be gained for various reasons.

2.2.2 Monitoring for reporting purposes

- e. The names of all clients remitting more than **NAD 99,999.99 as SDAs and NAD 499,999.99 inwards quarterly**, should be submitted to the FIC **within 15 working days of the end of a quarter**. The FIC further directs as follows:
 - i. Regardless of whether a client exceeded the said thresholds **in a single transaction or cumulatively** (in multiple transactions), details of such client should be submitted to the FIC as per this Directive;
 - ii. AIs may report transactions earlier than the end of a quarter to the FIC;
 - iii. The quarterly monitoring for reportable transactions will commence on **01 January 2018**; and
 - iv. Attached are Annexures (A and B) indicating the required minimum information to be submitted to the FIC quarterly.

2.2.3 Important Considerations: The Risk Based Approach

A. Monetary thresholds in isolation do not determine risk levels

The NAD 99,999.99 and NAD 499,999.99 thresholds stated above seeks to draw management's intervention and indicate reporting thresholds. This does not imply that remittances below the threshold are necessarily low risk. This therefore implies that, amongst others, client profile information and transacting behaviour should have a bearing on AML/CFT/CPF¹⁰ control considerations related to cross border remittances and relevant risk ratings. Escalating threshold-based reports to the FIC as per this Directive does not take away the responsibility to detect and file Suspicious Transactions or Activities reports as per the FIA.

¹⁰ Anti Money Laundering, Combatting the Financing of Terrorism and Proliferation

B. The Risk Based Approach responds to changing variables (e.g prevailing client behaviour)

This Directive does not seek to deviate from the Risk Based Approach, as provided for in the FIA. Rather, in complementing the FIA obligations, this Directive aims to draw the attention of ADs and ADLAs to areas within implemented Risk Based frameworks that were seen to have been exploited in the advancement of fraud, tax evasion, trade based money laundering activities etc. These control weaknesses, if not enhanced adequately and effectively can be further exploited by those advancing such activities. In this regard, the nature of cross border remittances thus requires ADs and ADLAs to ensure that their risk based control frameworks are aligned accordingly.

ADs and ADLAs ought to ensure that the transactional behaviour of clients are in line with the established client profiles. Where relevant implemented controls have satisfactorily reduced the inherent ML/TF/PF risks presented by both such client and his/her transacting behaviour to acceptable levels, the extent or level of due diligence measures applicable should be aligned accordingly.

There is a tendency to devote significant attention and controls to high risk clients, as rightfully advocated for - by the Risk Based Approach. The FIC has however noted that client risk ratings not timely reconciled with relevant or prevailing client behaviour could compromise controls. The nature of cross border remittances are such that prevailing behaviour needs to be Monitored¹¹, timely and effectively. For example, if a low or medium risk rated client transacts in behaviour that is beyond his or her known low risk profile, the AD or ADLA should have measures to timely detect such unexpected behaviour and ensure timely intervention to reduce ML/TF/PF risk exposure from such unexpected behaviour/conduct.

The extent to which additional information may be obtained, as per Regulation 12 should be considered in line with the specific risks presented by a client's transacting behaviour, amongst other relevant factors.

¹¹ Monitoring herein is as per the Definition in the FIA Regulations. See FIA Regulations page 3

2.3 IMPORT REMITTANCES

This section only applies to ADs facilitating cross border remittances for imports.

2.3.1 Undue remittance of funds

Section B4(c)(ii) (d)(i) of the Exchange Control Ruling regulates the need for importers to provide evidence of importation to ADs. According to this Ruling, the ADs must insist upon the presentation to them of copies of Bill of Entry/import, 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, by importers/clients, to the ADs within six months from the time such funds transfer has taken place and not necessarily at the time when funds are transferred at an AD.

In the same vein, the FIA and its complementing Regulations requires ADs to properly identify their clients (see section 21 and 22; Regulations 6, 7, 8, 9, 10, 11, 12, 13 and 14) and to monitor the client's transactions against the client's commercial and risk profile (see section 24; Regulation 15).

2.3.2 FIC observations

The observation by the FIC is that some importers are not submitting import documents at all, while others are submitting fraudulent importation documents or importation documents written in a foreign language. The following are examples noted:

- a. **invoices used appear to be illegitimate:** Invoices lack supplier address and contact details etc;
- b. **reusing of invoice numbers** by one supplier (e.g exporter) invoicing a local importer for various imports;
- c. **unusual commercial invoicing:** See below examples:

Contents from Invoice A	Contents from Invoice B
Value of Goods imported: USD 20,975.84	Value of Goods imported: USD 5,213.00
Freight: USD 99,525.00	Cartage and Haulage: USD 119,264.00
Haulage: USD 196,914	Total Invoice Value: USD 124,477.00
Storage: USD 189,985.00	
Handling: USD 241,552.00	
Total Invoice Value: USD 849,205.34	

The above may point to possible under declaration of imported values as over 95% of the invoiced amounts is allocated to haulage, cartage and storage costs, which do not attract import VAT and duties. These amounts far exceeds the value of actual goods imported;

- d. **unreasonable or unusual shipment information:** Containers used to ship goods seem inconsistent with the nature/volume/value of goods involved. When significantly large containers are used to import items which are relatively small in size or/and are very few in terms of volumes/quantities. In these cases, it was especially observed that reasonable or economic sense would have necessitated shipping the said consignments in smaller containers (economic) or mixed/combined containers where costs are shared with other importers.

2.3.3 Directives: Import remittances

The FIC, in terms of section 9(2)(c) of the FIA 2012 hereby directs ADs to ensure that:

- a. measures are in place to ensure all funds remittances for imports are supported by the legitimate import supporting documents which, at a minimum, must include:
- i. the Bill of Entry/Lading and relevant Invoice(s) which must be in English as Namibia's official language or which has been translated to English by a court appointed translator and notarized by a Public Notary; and

- ii. SAD500 documents, along with relevant Release Order and/or Exit Notes. Ensure that accompanying Release Orders and/or Exit Notes are for such SAD500 documents.

The relevant SAD500 is a necessity as it provides valuable financial information that is not contained on the Bill of Lading.

- b. contents of the relevant supporting documents are scrutinised in order to validate the transaction;
- c. all advance payments for imports lacking such supporting documents **should be recorded on a register/log** with senior management review occurring periodically. 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**. The level of risk exposure should guide the frequency and extent of such management reviews;
- d. where client fails to provide the relevant abovementioned documents **within the given six months after remittance**, enhanced due diligence measures are conducted so that ADs have reasonable assurance that funds transferred for such imports were indeed legitimate and accurate;
- e. where above-mentioned reasonable assurance cannot be obtained, ADs review their relationships with all clients with outstanding import support documents and inform the FIC in writing of:
 - i. such transacting behaviour by client (specifying the number of such remittances and involved financial values, missing support documents etc);
 - ii. the risk mitigation measures taken for each such client;
 - iii. the way forward with regards to the business relationship with such clients;
 - iv. if any, possible impact(s) of the above mentioned actions taken to mitigate risks; and
 - v. any other information requested by the FIC.

Whilst taking every measure to encourage cross border trade by availing remittances for imports, 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.

3. NON-COMPLIANCE WITH THE PROVISIONS OF THIS DIRECTIVE

The consequence of failure to observe instructions contained in this Directive not only enhances exposure to ML, TF and PF risks, but may undermine trade and negatively impact the country's foreign currency reserves.

As such, all ADs and ADLAs are directed that failure to comply with instructions contained herein amounts to gross negligence and is regarded as inexcusable. Any non-compliance with the directions and specifications contained in this Directive is an offence in terms of section 63 of the FIA. As such, non-compliance will inevitably also be met with administrative sanctions and penalties in terms of section 56 of the FIA.

4. GENERAL

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

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

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DIRECTOR: FINANCIAL INTELLIGENCE CENTRE

ANNEXURE A

INDICATING THE REQUIRED MINIMUM INFORMATION TO BE REPORTED, VIA GOAML FOR SINGLE DISCRETIONARY ALLOWANCES (OUTWARDS) **ABOVE NAD 99,999.99** PER CLIENT:

Name of Sender	Identification or passport number of sender	Understanding of the source of funds remitted	Total amount remitted (single or cumulative over the period)	Actions taken by AD/ADLA to mitigate ML/TF/PF

ANNEXURE B

INDICATING THE REQUIRED MINIMUM INFORMATION TO BE REPORTED, VIA GOAML FOR **INWARD REMITTANCES ABOVE NAD 499,999.99** PER CLIENT

Name of Receiver	Identification or passport number of Receiver	If any, understanding of the source of funds OR relevant information needed to mitigate ML/TF/PF risks	Total amount received (single or cumulative over the period)	Actions taken by AD/ADLA to mitigate ML/TF/PF risks

**ANNEXURE C: RULING B.7 AND BUSINESS AND TECHNICAL
SPECIFICATIONS**

1. In terms of the Exchange Control Rulings B.7, Single Discretionary Allowance (SDA) items for which persons may remit funds of up to NAD 1 million annually includes the following:

- a. *Donations to Missionaries;*
- b. *Maintenance Transfers;*
- c. *Gifts ; and*
- d. *Travel Allowances.*

2. In terms of the Exchange Control Business and Technical Specifications, Section C.3, the Gift's category, under BoPCUS reporting category 501 is broad. The following items fall under category 501:

- i. *Betting and Gaming Winnings;*
- ii. *Casino Winnings;*
- iii. *Donations (other than to charitable, religious, scientific, cultural, educational organisations);*
- iv. *Gambling and Betting Winnings;*
- v. *Gifts (other than to charitable, religious, scientific, cultural, educational organisations);*
- vi. *Honorarium;*
- vii. *Lottery Winnings;*
- viii. *Lotto Winnings; and*
- ix. *Winnings (Casino, Lottery, etc).*

ANNEXURE D: CORRESPONDING RELATIONSHIP OBLIGATIONS

The FATF Guidance on Correspondent Banking Services, issued in October 2016 clarified the expectations in terms of due diligence obligations between the Correspondent and Respondent Institutions. The following was quoted from such FATF guidance:

“In June 2015, the FATF issued a public statement¹² to clarify that, when establishing correspondent banking relationships, correspondent institutions are required to perform customer due diligence (CDD) on the respondent institution, and gather sufficient information about the respondent institution to understand its business, reputation and the quality of its supervision, including whether it has been subject to a ML/TF investigation or regulatory action, and to assess the respondent institution’s AML/CFT controls. It was clarified that the FATF Recommendations do not require correspondent institutions to perform CDD on the customers of their respondent institutions when establishing correspondent banking relationships or in the course of the relationship.

*The term Know Your Customer’s Customer (KYCC) has created a lot of confusion. To clarify, the FATF Recommendations do not require financial institutions to conduct customer due diligence on the customers of their customer (i.e., each individual customer). In a correspondent banking relationship, the correspondent institution will monitor the respondent institution’s transactions with a view to detecting any changes in the respondent institution’s risk profile or implementation of risk mitigation measures (i.e. compliance with AML/CFT measures and applicable targeted financial sanctions), any unusual activity or transaction on the part of the respondent, or any potential deviations from the agreed terms of the arrangements governing the correspondent relationship. **In practice, where such concerns are detected, the correspondent institution will follow up with the respondent institution by making a request for information (RFI) on any particular transaction(s), possibly leading to more information being requested on a specific customer or customers of the respondent bank. There is no expectation, intention or requirement for the correspondent institution to conduct customer due diligence on its respondent institution’ customers.”***

¹² See FATF(2015), Drivers for “de-risking” go beyond anti-money laundering / terrorist financing www.fatf-gafi.org/publications/fatfrecommendations/documents/derisking-goes-beyond-amlcft.html.