



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.60

WINDHOEK - 7 May 2009

No. 4256

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General Notices

BANK OF NAMIBIA

No. 68

2009

DETERMINATION UNDER THE FINANCIAL INTELLIGENCE ACT, 2007 (ACT NO. 3 OF 2007): DETERMINATION ON PERIOD WITHIN WHICH AN ACCOUNTABLE INSTITUTION MAY NOT PROCEED WITH THE CARRYING OUT OF A TRANSACTION

In my capacity as Governor of the Bank of Namibia, and under the powers vested in the Bank by virtue of section 28(1) of the Financial Intelligence Act, 2007 (Act No. 3 of 2007) I hereby issue the Determination on Period within Which an Accountable Institution May not Proceed with the Carrying Out of a Transaction (FICD 1), which Determination shall become effective on 7 May 2009.

T.K. ALWEENDO
GOVERNOR

DETERMINATION NO. FICD 1
PERIOD WITHIN WHICH AN ACCOUNTABLE INSTITUTION MAY NOT PROCEED
WITH THE CARRYING OUT OF A TRANSACTION

Arrangements of Paragraphs

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1. Short title
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PART 1: PRELIMINARY

1. Short Title

Period within Which an Accountable Institution May not Proceed with the Carrying Out of a Transaction.

2. Authorization

Authority for the Bank of Namibia to issue this Determination is provided in section 28(1) of the Financial Intelligence Act, 2007 (Act No. 3 of 2007).

3. Application and Determination

This Determination applies to all accountable institutions as listed in Schedule I of the Financial Intelligence Act, 2007 (Act No. 3 of 2007).

4. Definitions

- 4.1 Terms used within this Determination are as defined in the Act.
- 4.2 “Act” means the Financial Intelligence Act, 2007 (Act No. 3 of 2007) and Regulations issued thereunder.
- 4.2 “Management” means the owner, board of directors, managing partners or trustees of Accountable Institutions as listed in Schedule I of the Act.

PART II: STATEMENT OF POLICY

5. Purpose

- 5.1 The purpose of this Determination is to determine under section 28(1) of the Act that an accountable institution may not proceed with the carrying out of any transaction for a period of five days, if directed in writing by the Financial Intelligence Centre, Bank of Namibia, where such transaction;
- 5.1.1 may involve the proceeds of unlawful activities or may constitute money laundering; and
- 5.1.2 would jeopardize any significant law enforcement or regulatory interest under Namibian law, including, but not limited to, forfeiture of the proceeds of crime under the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004), where such proceeds would be put beyond the reach of Namibian authorities, if the transaction were carried out.
- 5.2 The requirement in item 5.1 that an accountable institution may not proceed with carrying out the transaction for a period of five days after being so directed by the Financial Intelligence Centre, Bank of Namibia is necessary in order to allow the Financial Intelligence Centre, Bank of Namibia:
- 5.2.1 to make the necessary inquiries concerning the transaction; and
- 5.2.2 if the Financial Intelligence Centre, Bank of Namibia deems it appropriate, to inform and advise an investigating authority or the Prosecutor-General.

6. Scope

- 6.1 This Determination applies to all accountable institutions as listed under Schedule I of the Act.

7. Responsibility

- 7.1 The management of each accountable institution shall be responsible for establishing policies and procedures to ensure that implementation requirements relating to this Determination are met and adhered to.

PART III: OVERVIEW AND IMPLEMENTATION

8. Overview

- 8.1 The Bank of Namibia in enforcing its statutory mandate under the Act wants to ensure that no transaction is carried out that would jeopardize any significant law enforcement

or regulatory interest under Namibian law, including, but not limited to, forfeiture of the proceeds of crime under the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004), where such proceeds would be put beyond the reach of Namibian authorities,

- 8.2 As such, in order to achieve the objective as stated in Item 8.1, the Bank of Namibia hereby determines that, once its Financial Intelligence Centre directs an accountable institution in writing under Section 28 (1) of the Act not to proceed with carrying out any transaction described in item 5.1, such accountable institution may not, for a period of five days, carry out any transaction pertaining to such suspicious transaction.

9. Implementation Requirements

- 9.1 All accountable institutions as listed in Schedule I of the Act, shall adhere to the following minimum requirements of this Determination:
- 9.2 No accountable institution shall upon being directed in writing under Section 28(1) of the Act by the Financial Intelligence Centre, Bank of Namibia, conduct any transaction described in item 5.1 pertaining to a suspicious transaction for a period of five days as from the date of such written direction; and
- 9.3 No accountable institution shall during such five day period, in any form or manner, advise any client involved in such transaction, that it has been directed by the Financial Intelligence Centre, Bank of Namibia, not to proceed with the transaction under the procedures set forth in Section 28 (1) of the Act.

10. Remedial Measures

- 10.1 If an accountable institution as listed under Schedule I of the Act, fails to comply with this Determination, the Financial Intelligence Centre, Bank of Namibia, may pursue any remedial measures as provided under the Act, or any relevant legislation, in the interest of combating money laundering in Namibia.

PART V: EFFECTIVE DATE

11. Effective date.
- 11.1 This Determination shall come into effect on 7 May 2009.

PART VI: GENERAL AND ENQUIRIES

12. General

- 12.1 This Determination is not exhaustive and may be supplemented and/or amended from time to time.
- 12.2 Accountable institutions that are uncertain of the contents of this Determination should initiate discussion with the Financial Intelligence Centre, Bank of Namibia, to clarify the matter.

13. Enquiries

All enquiries related to this determination shall be forwarded to:

The Director:
Financial Intelligence Centre

Bank of Namibia
P.O. Box 2882, Windhoek
71 Robert Mugabe Avenue

Tel: +264-61-2835100
Fax: +264-61-2835259
Email: fichelpdesk@bon.com.na

BANK OF NAMIBIA

No. 69

2009

DETERMINATION UNDER THE FINANCIAL INTELLIGENCE ACT, 2007 (ACT NO. 3 OF 2007): DETERMINATION ON PERIOD FOR ESTABLISHMENT OF IDENTITY OF EXISTING CLIENTS BY ACCOUNTABLE INSTITUTIONS

In my capacity as Governor of the Bank of Namibia, and under the powers vested in the Bank by virtue of section 14(1) of the Financial Intelligence Act, 2007 (Act No. 3 of 2007) I hereby issue the Determination on Period for Establishment of Identity of Existing Clients by Accountable Institutions (FICD 2), which Determination shall become effective on 7 May 2009.

T.K. ALWEENDO
GOVERNOR

DETERMINATION NO. FICD 2

PERIOD FOR ESTABLISHMENT OF IDENTITY OF EXISTING CLIENTS BY ACCOUNTABLE INSTITUTIONS

Arrangements of Paragraphs

PART 1: PRELIMINARY

1. Short title
2. Authorization
3. Application
4. Definitions

PART II: STATEMENT OF POLICY

5. Purpose
6. Scope
7. Responsibility

PART III: OVERVIEW AND IMPLEMENTATION REQUIREMENTS

8. Overview
9. Implementation Requirements

PART IV: REMEDIAL MEASURES

10. Remedial Measures

PART V: EFFECTIVE DATE

11. Effective Date

PART VI: GENERAL AND ENQUIRIES

12. General
13. Enquiries

PART 1: PRELIMINARY**1. Short Title**

Period for Establishing of Identity of Existing Clients by Accountable Institutions.

2. Authorization

Authority for the Bank of Namibia to issue this Determination is provided in section 14(1) of the Financial Intelligence Act, 2007 (Act No. 3 of 2007).

3. Application and Determination

This Determination applies to all accountable institutions as listed in Schedule I of the Financial Intelligence Act, 2007 (Act No. 3 of 2007).

4. Definitions

4.1 Terms used within this Determination are as defined in the Act.

4.2 "Act" means the Financial Intelligence Act, 2007 (Act No. 3 of 2007) and Regulations issued thereunder.

4.3 "Management" means the owner, board of directors, managing partners or trustees of accountable institutions as listed in Schedule I of the Act.

PART II: STATEMENT OF POLICY**5. Purpose**

5.1 The purpose of this Determination is to ensure that all accountable institutions listed under Schedule I of the Act, which have established a business relationship with any client before the Act was commenced, establish the identity of any such client according to the requirements set forth in sections 13 and 14 of the Act, and the regulations issued therefore, within a period of three years as from date of commencement of the Act.

6. Scope

6.1 This Determination applies to all accountable institutions as listed under Schedule I of the Act.

7. Responsibility

7.1 The management of each accountable institution shall be responsible for establishing policies and procedures to ensure that implementation requirements relating to this Determination are met and adhered to.

PART III: OVERVIEW AND IMPLEMENTATION**8. Overview**

- 8.1 The Financial Intelligence Centre, Bank of Namibia, wishes to ensure that no accountable institution listed in Schedule I of the Act continues to maintain a business relationship established before the Act was commenced with clients whose identity has not been established according to the requirements set forth in sections 13 and 14 of the Act. Therefore the Bank of Namibia hereby determines that Accountable Institutions must within the period of three years establish the identify of such clients according to the Act from the date of commencement of the Act.

9. Implementation Requirements

All accountable institutions shall adhere to the following minimum requirements of this Determination:

- 9.1 Establish the identity in accordance with the Act of all clients with whom they had a business relationship before the Act commenced and with whom the business relationship continued as of the commencement of the Act within a period of three years from date of such commencement.
- 9.2 Consult the Financial Intelligence Centre, Bank of Namibia, with any difficulties they might encounter in the administration of the provisions of this Determination;
- 9.3 Apply to the Minister of Finance for an extension of the three year period, if an accountable institution has a reasonable excuse for not being able to comply with such period.

PART IV: REMEDIAL MEASURES**10. Remedial measures**

- 10.1 If an accountable institution as listed under Schedule I of the Act, fails to comply with this Determination, the Financial Intelligence Centre, Bank of Namibia, may pursue any remedial measures as provided under the Act or any relevant legislation, in the interest of combating money laundering in Namibia.

PART V: EFFECTIVE DATE**11. Effective date**

- 11.1 This Determination shall come into effect on 7 May 2009.

PART VI: GENERAL AND ENQUIRIES**12. General**

- 12.1 This Determination is not exhaustive and may be supplemented and/or amended from time to time.
- 12.2 Accountable institutions that are uncertain of the contents of this Determination, should initiate discussion with the Financial Intelligence Centre, Bank of Namibia, to clarify the matter.

13. Enquiries

All enquiries related to this Determination shall be forwarded to:

The Director:
Financial Intelligence Centre
Bank of Namibia
P.O. Box 2882, Windhoek
71 Robert Mugabe Avenue

Tel: +264-61-2835100
Fax: +264-61-2835259
Email: fihelpdesk@bon.com.na

BANK OF NAMIBIA

No. 70

2009

DETERMINATION UNDER THE FINANCIAL INTELLIGENCE ACT, 2007 (ACT NO. 3 OF 2007): (1) AMOUNT OF TRANSACTION ABOVE WHICH ACCOUNTABLE INSTITUTIONS MUST ESTABLISH IDENTITY OF CLIENTS; AND (2) PERIOD DURING WHICH MULTIPLE TRANSACTIONS MUST BE CONSIDERED A SINGLE TRANSACTION

In my capacity as Governor of the Bank of Namibia and under the powers vested in the Bank by virtue of section 13(1) of the Financial Intelligence Act, 2007 (Act No. 3 of 2007), I hereby issue the Determination on: (1) Amount of Transaction above Which Accountable Institutions Must Establish Identity of Clients; and (2) Period during Which Multiple Transactions Must Be Considered a Single Transaction, (FICD 3), which Determination shall become effective on 7 May 2009.

T.K. ALWEENDO
GOVERNOR

DETERMINATION NO. FICD 3

(1) AMOUNT OF TRANSACTION ABOVE WHICH ACCOUNTABLE INSTITUTIONS MUST ESTABLISH IDENTITY OF CLIENTS; AND (2) PERIOD DURING WHICH MULTIPLE TRANSACTIONS MUST BE CONSIDERED A SINGLE TRANSACTION

Arrangement of Paragraphs**PART I: PRELIMINARY****PARAGRAPH**

1. Short title
2. Authorization
3. Application of the Determination
4. Definitions

PART II: STATEMENT OF POLICY

5. Purpose

6. Scope
7. Responsibility.

PART III: IMPLEMENTATION

8. Amount of Transaction above which Accountable Institutions must Establish Identity Of Clients;
9. Period During Which Multiple Transactions Must Be Considered A Single Transaction.

PART IV: REMEDIAL MEASURES

10. Remedial Measures

PART V: EFFECTIVE DATE

11. Effective Date

PART VI: GENERAL & ENQUIRIES

12. General
13. Enquiries

PART 1: PRELIMINARY

1. Short Title

Amount of Transaction above Which Accountable Institutions Must Establish Identity of Clients and Period during Which Multiple Transactions Must Be Considered a Single Transaction.

2. Authorization

Authority for the Bank to issue this Determination is provided in section 13(1) of the Financial Intelligence Act, 2007 (Act No. 3 of 2007) and part 2.1 of the GENERAL EXEMPTION ORDER: FINANCIAL INTELLIGENCE ACT, 2007, issued 5 May 2009.

3. Application

This Determination applies to all accountable institutions as listed in Schedule I of the Financial Intelligence Act, 2007 (Act No. 3 of 2007).

4. Definitions

- 4.1 Terms used within this Determination are as defined in the Act and Regulations.
- 4.2 "Act" means Financial Intelligence Act, 2007 (Act No 3 of 2007) and Regulations issued thereunder.
- 4.3 "Management" means the owner, board of directors, managing partners or trustees of accountable institutions as listed in Schedule I of the Act.

PART II: STATEMENT OF POLICY

5. Purpose

The purpose of this Determination is to:

- 5.1 Specify five thousand Namibian dollars as the amount under section 13(1) of the Act and part 2.1 of the GENERAL EXEMPTION ORDER: FINANCIAL INTELLIGENCE ACT, 2007, issued 5 May 2009 for any accountable institution under Schedule 1 of the Act, except an accountable institution under item 8, namely, a person who carries on the business of a casino or gambling institution;
- 5.2 Specify twenty-five thousand Namibian dollars as the amount under section 13(1) of the Act and part 2.1 of the GENERAL EXEMPTION ORDER: FINANCIAL INTELLIGENCE ACT, 2007, issued 5 May 2009 for any accountable institution under item 8 of Schedule 1 of the Act, namely, any person who carries on the business of a casino or gambling institution; and
- 5.3 Specify the period where multiple transactions must be treated as a single transaction under section 13(1) of the Act, as such period where the facts and circumstances of the particular situation would reasonably indicate that the multiple transactions would have been handled as a single transaction.

6. Scope

This Determination applies to all accountable institutions as listed under Schedule I of the Act.

7. Responsibility

The management of each accountable institution shall be responsible for establishing policies and procedures to ensure that implementation requirements relating to this Determination are met and adhered to.

PART III: OVERVIEW AND IMPLEMENTATION REQUIREMENTS

8. Overview

- 8.1 Establishing client Identity is considered necessary by the Financial Intelligence Centre, Bank of Namibia, as it allows the Bank of Namibia to fulfil its statutory duties under the Act, namely, to combat money laundering. The ability of the Bank of Namibia to combat money laundering, depends on all accountable institutions, listed in Schedule I of the Act, knowing their clients by conducting thorough client due diligence, in terms of sections 13 and 14 of the Act, on clients with whom they have an existing business relationship, they wish to enter into a business relationship, or they wish to engage in a transaction without a business relationship.
- 8.2 With the implementation of the provisions of sections 13 and 14 of the Act, it was realized that accountable institutions might be faced with situations where they will be dealing with clients with whom they do not have a business relationship, or with whom they do not contemplate entering into a business relationship, but with whom they are contemplating conducting only a single transaction. The Bank of Namibia realized that it will be unnecessarily burdensome and costly to require accountable institutions to demonstrate full compliance with the provisions of sections 13 and 14 of the Act for such type of client for any transaction no matter the amount. Thus, in accordance with part 2.1 of the GENERAL EXEMPTION ORDER: FINANCIAL INTELLIGENCE ACT, 2007, issued 5 May 2009, to ensure that the customer due diligence provisions in the Act are kept realistic and are not unnecessary burdensome or costly in its application, the Bank of Namibia through this Determination introduces an amount, above which accountable institutions must adhere to the provisions of sections 13 and 14 of the Act, namely, five thousand Namibian dollars, for

any accountable institution under Schedule 1 of the Act, except an accountable institution under item 8, namely, a person who carries on the business of a casino or gambling institution, and twenty-five thousand Namibian dollars for any accountable institution under item 8 of Schedule 1 of the Act, namely, any person who carries on the business of a casino or gambling institution.

8.3 The Bank is alerted to the fact that the framework of exemption and determination set forth in paragraph 8.2 might be abused by money launderers in practice. As such, whenever an accountable institution deals with a client with whom they do not have a business relationship and with whom they do not contemplate entering into a business relationship, they must guard against this client abusing this framework. Thus, whenever an accountable institution realizes that a client, with whom it does not have an existing business relationship and with whom it does not contemplate entering into a business relationship, engages in multiple transactions, it must establish the identity of any such client according to the requirements set forth in sections 13 and 14 of the Act under the following circumstances:

8.3.1 the multiple transactions, when taken alone, equal or fall below five thousand Namibian dollars for any accountable institution under Schedule 1 of the Act, except an accountable institution under item 8, namely, a person who carries on the business of a casino or gambling institution; and twenty-five thousand Namibian dollars for any accountable institution under item 8 of Schedule 1 of the Act, namely, any person who carries on the business of a casino or gambling institution;

8.3.2 the multiple transactions, when taken together, exceed the amount specified in subparagraph 8.3.1; and

8.3.3 the multiple transactions are conducted within such a period of time where the facts and circumstances of the particular situation would reasonably indicate that the multiple transactions would have been handled as a single transaction but for the framework established in paragraph 8.2.

8.4 Reference is thus hereby made to Section 2.1 of the GENERAL EXEMPTION ORDER: FINANCIAL INTELLIGENCE ACT, 2007, issued 5 May 2009 which provides: "For purposes of regulation 2(3) of the Regulations, an accountable institution is exempt from establishing the identity of a client concluding a single cash transaction, subject to the condition that such single cash transaction is less than or equal to the amount determined by the Financial Intelligence Centre under section 13(1) of the Act."

It is hereby determined that such amount is five thousand Namibian dollars for any accountable institution under Schedule 1 of the Act, except an accountable institution under item 8, namely, a person who carries on the business of a casino or gambling institution, and twenty-five thousand Namibian dollars for any accountable institution under item 8 of Schedule 1 of the Act, namely, any person who carries on the business of a casino or gambling institution.

8.5 For the purpose of considering multiple cash transactions which taken alone equal or fall below the amount specified in item 8.4, the Bank of Namibia under section 13(1) of the Act, hereby specifies that the period where such multiple transactions must be treated as a single transaction under section 13(1) of the Act as such period, where the facts and circumstances of the particular situation would reasonably indicate, that the multiple transactions would have been handled as a single transaction but for the exemption and determination framework described in paragraph 8.2.

9. Implementation Requirements

All Accountable institutions shall, unless exempted, adhere to the following minimum requirements of this Determination:

- 9.1 Conduct customer due diligence on any transaction that exceeds the amount specified in item 8.4, where such transaction is a single transaction and is conducted by a person with whom the accountable institution does not have a business relationship, or with whom the accountable institution does not contemplate entering into a business relationship
- 9.2 Regard all multiple transactions as a single transaction, where such multiple transactions-
- 9.2.1 taken alone, equal or fall below the amount specified in item 8.4
- 9.2.2 taken together, exceed the amount specified in item 8.4; and
- 9.2.3 are undertaken by or on behalf of any person during any day or such period where the facts and circumstances of the particular situation would reasonably indicate that the multiple transactions would have been handled as a single transaction but for the exemption and determination framework described in paragraph 8.2.

PART IV: REMEDIAL MEASURES**10. Remedial measures**

- 10.1 If an accountable Institution as listed under Schedule I of the Act, unless otherwise exempted, fails to comply with this Determination, the Bank may pursue any remedial measures as provided under the Act or any relevant legislation in the interest of combating money laundering in Namibia.

PART V: EFFECTIVE DATE**11. Effective date**

- 11.1 This Determination shall come into effect on 7 May 2009.

PART VI: GENERAL AND ENQUIRIES**12. General**

- 12.1 This Determination is not exhaustive and may be supplemented and/or amended from time to time.
- 12.2 Accountable institutions that are uncertain of the contents of this Determination, should initiate discussion with the Financial Intelligence Centre, Bank of Namibia, to clarify the matter.

13. Enquiries

All enquiries related to this determination shall be forwarded to:

The Director:
Financial Intelligence Centre
Bank of Namibia
P.O. Box 2882, Windhoek
71 Robert Mugabe Avenue

Tel: +264-61-2835100
Fax: +264-61-2835259
Email: fichelpdesk@bon.com.na

BANK OF NAMIBIA

No. 71

2009

**REPEAL OF DETERMINATIONS UNDER THE BANKING INSTITUTIONS ACT,
1998 (ACT NO. 2 OF 1998)**

In my capacity as Governor of the Bank of Namibia (The Bank), and under the powers vested in the Bank by virtue of section 71(3) of the Banking Institutions Act, 1998 (Act No. 2 of 1998), I hereby repeal with effect from 5 May 2009 the Determinations on Money Laundering and “Know your Customer Policy” (BID-3) that was published as General Notice No. 121 in the Government Gazette of 2 June 1998. The repeal of these Determinations is necessitated by the coming into effect of the Financial Intelligence Act (FIA), 2007 (Act No. 3 of 2007) on 5 May 2009, which places similar obligations on banking institutions, including the obligation to report certain transactions as prescribed by the FIA directly to the Financial Intelligence Centre in the Bank of Namibia.

T.K. ALWEENDO
GOVERNOR

Windhoek, 5 May 2009