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**BANK OF NAMIBIA**  
**FINANCIAL INTELLIGENCE CENTRE**

**GUIDANCE NOTE No.3 OF 2009 ON**  
**THE TERM 'TRANSACTION' AS APPLIED TO**  
**FINANCIAL INSTITUTIONS, OTHER THAN BANKS AND**  
**PERSONS CARRYING ON A BUSINESS**

**MARCH 2009**

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## 1. INTRODUCTION

This Guidance note is intended for Financial Institutions that are providing non-banking financial services and products, including those that are regulated by NAMFISA, and persons carrying on a business

### 1.1 General

The Financial Intelligence Act, 2007 (No. 3 of 2007) (Act) empowers the Centre to provide guidance in relation to a number of matters. This Guidance Note provides general guidelines which the relevant accountable institutions may apply in order to interpret the term "transaction" in relation to each institution's obligations to identify and verify the identities of its clients.

It is not the purpose of this Guidance Note to provide a complete definition of the term which could be applied rigidly across all sectors of the financial services industry. This Guidance Note is not legal advice and is not intended to replace the Act and the Regulations issued under the Act.

### 1.2 Commencement

This guidance note shall come into effect on .....

### 1.3 Definitions

“**Act**” refers to the Financial Intelligence Act, 2007 (Act No 3 of 2007);

“**FIC**” means the Financial Intelligence Centre, Bank of Namibia;

“**POCA**” refers to the Prevention of Organized Crime Act, 2004 (Act No.29 of 2004), as amended;

“**Regulations**” refer to the regulations made under the provisions of section 48 of the Act and published by Government Notice No..... of 2009 promulgated in Government Gazette No... dated .....2009;

#### **1.4 Application of this Guidance Note**

The FIC has prepared this Guidance Note to assist accountable institutions, other than banks, and any other person or entity, to meet their obligations as described in sections 13, 14, 15, 21, 25 and any other section applicable to these sections of the Act, in meeting their obligations under the Act. It provides general guidance on what must be regarded as a transaction in the course of your business as a financial institution.

Guidance provided by the FIC is the only form of guidance formally recognized in terms of the Act and its Regulations. Viewed from this perspective, guidance emanating from industry associations or other organizations, except Supervisory Bodies, does not necessarily have a bearing on assessing compliance with the obligations imposed by the Act or the interpretation of its provisions.

## **2. THE FINANCIAL INTELLIGENCE CENTRE**

### **2.1 Functions of the FIC**

The FIC is Namibia’s specialized institution created to collect, analyze and disclose financial information and intelligence on suspected money laundering, and to enforce compliance with the provisions of the Act. Created in 2006, the FIC is situated in the Bank of Namibia and is an integral part of Namibia’s efforts to prevent and combat money laundering.

The Centre was created to detect and deter money laundering by providing critical information to support the investigation or prosecution of money

laundering offences.

More specifically, the FIC's function is to:

- receive reports on suspicious transactions (sections 21 and 23(1) of the Act);
- receive reports on cash transactions in excess of prescribed amounts (section 20 of the Act);
- receive reports on electronic transfers of money in excess of prescribed amounts to or from Namibia (section 22 of the Act);
- receive reports on the conveyances of cash in excess of prescribed amounts to or from Namibia (section 24 of the Act);
- receive other information as appropriate (section 5 of the Act);
- analyze and assess the information it receives (section 5 of the Act);
- provide law enforcement agencies with high quality financial intelligence that would be relevant to the investigation or prosecution of money laundering offences and, if such intelligence is relevant to the national security of Namibia, to disclose such intelligence to the Namibia Central Intelligence Service (sections 5 and 34 of the Act);
- ensure compliance by Accountable Institutions and Supervisory Bodies with their obligations under the Act and regulations (section 5 of the Act);

### **3. MONEY LAUNDERING ACTIVITIES**

#### **3.1 Criminalization of Money Laundering**

The relevant legal statute that criminalizes money laundering is the Prevention of Organized Crime Act, 2004 (Act No. 29 of 2004) (POCA). Under the provisions of POCA, the scope of criminalization of Money laundering are wide and it entails

the following:

- the disguising of unlawful origin of property;
- assisting another person to benefit from proceeds of unlawful activities; and
- acquisition, possession or use of proceeds of unlawful activities.

Money laundering has been criminalized in sections 4, 5 and 6 of POCA. As such, a money laundering offence may be described as the performing of any act that may result in concealing the nature of the proceeds of crime or enabling a person to avoid prosecution or in the diminishing of the proceeds of crime. A money laundering offence may also extend to property or proceeds derived from illegal activities that took place outside Namibia.

On the other hand, the Financial Intelligence Act defines “money laundering” or “money laundering activity” as follows:

- (a) the act of a person who -
- (i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
  - (ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or
  - (iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;

where -

- (aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
  - (bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity; and
- (b) any activity which constitutes an offence as defined in section 4, 5 or 6 of the POCA.

Apart from criminalizing the activities constituting money laundering, the Act also contains a number of control measures aimed at facilitating the detection and investigation of money laundering. These control measures, as contained in the Act, are based on three basic principles of money laundering detection and investigation, namely:

- intermediaries in the financial system must know with whom they are doing business;
  - the paper trail of transactions through the financial system must be preserved;
- possible money laundering transactions must be brought to the attention of the FIC.

The control measures introduced by the Act include requirements for institutions to establish the identities of their customers, to keep certain records, to report certain information, and to implement measures that will assist them in complying with the Act. The Act has provided the FIC with the necessary powers to collect,

analyze and interpret information which may lead or relate to money laundering and if necessary to disseminate such information to law enforcement agencies in Namibia.

### **3.2 Process of Money Laundering**

Money laundering is the process used to disguise the source of money or assets derived from criminal activity. Profit-motivated crimes span a variety of illegal activities from drug trafficking and smuggling to fraud, extortion and corruption. Money laundering facilitates corruption and can destabilize the economies of susceptible countries. It also compromises the integrity of legitimate financial systems and institutions, and gives organized crime the funds it needs to conduct further criminal activities. It is a global phenomenon, and the techniques used are numerous and can be very sophisticated. Technological advances in e-commerce, the global diversification of financial markets and new financial product developments provide further opportunities to launder illegal profit and obscure the money trail leading back to the underlying crime.

While the techniques for laundering funds vary considerably and are often highly intricate, there are generally three stages in the process:

- Placement: involves placing the proceeds of crime in the financial system;
- Layering: involves converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the audit trail and the source and ownership of funds (e.g., the buying and selling of stocks, commodities or property); and,
- Integration: involves placing the laundered proceeds back in the economy under a veil of legitimacy.

## **4. WHAT IS MEANT WITH 'TRANSACTION'**

### **4.1 Meaning of "transaction" in relation to client identification duties**

Accountable institutions are prevented by section 13 of the Act from concluding certain transactions unless they have established the identities of their clients.

The term "transaction" is defined in the Act as follows:

*"transaction' means a transaction concluded between a client and an accountable Institution in accordance with the type of business carried on by that institution;".*

While this definition does not attribute a particular meaning to the term "transaction", it conveys the concept that the term may have different meanings depending on the type of business undertaken by different accountable institutions and would be applied differently among them. In short, the term must be applied in each instance in accordance with the nature of the business carried on by the accountable institution in question.

This definition also indicates that the term refers to activities which take place between an accountable institution and a client. The dictionary meaning of the term "transaction", as taken from the Concise Oxford Dictionary, includes "management of business" and "piece of especially commercial business done". Applying this definition, a transaction can therefore generally be described as an instance of commercial activity between two or more parties. Transactions are concluded on the basis of agreements between the parties to a transaction.

Following the definition of the term "transaction" in the Act, as well as the dictionary meaning of the term, these agreements must be aimed at a piece of business done between an accountable institution and a client, in accordance

with the nature of the business carried on by the institution concerned. A basic guideline, which can be inferred from this, is that any instruction or request by a client to an accountable institution to perform some act to give effect to the business relationship between them can be regarded as a transaction.

#### **4.2 Meaning of "transaction" in relation to suspicious transactions**

In view of the framework and scope of the provisions of section 21 of the Act, the concept of transaction as applied in that context has a wider and broad connotation. This includes transactions that are conducted between persons who are not designated as accountable institutions but are carrying on a business and they transact with their clients. See also the definition of transaction in the Regulations.

#### **4.3 Examples of transactions**

For the purpose of the obligation to establish clients' identities as referred to in this guidance note, the term "transaction" is not understood to include activities which happen automatically, or which an intermediary will perform automatically, without instructions from the client. These consequences include, for example, periodic contractual payments by clients to institutions and periodic automatic increases in such payments, as well as further business that accountable institutions may do with others in the course of giving effect to the clients' original mandate.

Examples of what might be regarded as "transactions" for the purposes of client identification in respect of the accountable institutions supervised by NAMFISA follow below. This is not an exhaustive list of "transactions" performed by the relevant accountable institutions, but is intended to provide an indication of the types of activities which might be regarded as transactions.

**(a) Collective Investment Schemes**

- The giving of a mandate to invest in any collective investment scheme;
- Any amendment in the original investment mandate of the client;
- An instruction to transfer or switch the investment to another collective investment scheme;
- The offering of participating interests for repurchase;
- The repayment of participants' interests following the closure of a fund or portfolio.

**(b) Long-Term Insurance**

- The entering into a new long-term insurance policy;
- An amendment or variation of the terms and conditions of a long-term insurance policy, including a change in the beneficiary or policyholder;
- An instruction by the client to the long-term insurer to switch or reinvest the underlying assets of a linked policy with linked investment service providers or investment managers;
- Termination (including the lapsing and surrender), withdrawal, or reinvestment of a long term insurance policy.

The above activities apply both to the intermediary and service provider.

**(c) Investment Managers**

- The entering into a new investment contract;
- Additional amounts invested in terms of an investment mandate with a client;
- An amendment or variation of the terms and conditions of an investment mandate;

- An instruction by the client to switch or reinvest the investment to other linked investment service providers or investment managers;
- An instruction by the client for a partial withdrawal of investment and the subsequent repayment of the investment in any form;
- Termination or withdrawal of an investment mandate and the subsequent repayment of the investments in any form.

***(d) Linked Investment Service Providers (LISP's)***

- The entering into a new investment contract;
- Additional amounts invested in terms of an investment mandate with a client;
- An amendment or variation of the terms and conditions of an investment mandate;
- An instruction by the client to switch or reinvest the investment to other linked investment service providers or investment managers;
- Termination or withdrawal of an investment mandate and the subsequent repayment of the investments in any form;
- An instruction by the client for a partial withdrawal of investment and the subsequent repayment of the investment in any form.

***(e) Brokers trading securities (including derivatives) on the Stock Exchange***

- A trading instruction by a client to buy or sell securities or derivatives;
- An amendment or variation of a trading instruction from a client;
- The receipt from, or payment of money (including a dividend) to, a client in giving effect to a mandate.

**(f) *Brokers trading financial instruments on the Bond Exchange***

- A trading instruction from a client to buy or sell a financial instrument;
- An amendment or variation of a trading instruction from a client;
- The receipt from or payment of money (including a coupon payment) to, a client in giving effect to a mandate.

**5. COMMENTS**

This Guidance Note shall be reviewed from time to time. If you have any comments or suggestions to help improve this Guidance Note, please send your comments to the FIC by using the particulars provided herein below.

**6. HOW TO CONTACT THE FIC**

You can contact the FIC at the following telephone and fax numbers:

**The Director:** 061-2835283 and fax number 061-2835259

**The Deputy Director: Financial Investigations and Analysis:** 061-2835026 and fax number 061-2835259;

**The Deputy Director: Legal and Compliance:** 061-2835037 and fax number 061-2835259

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