



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 1 March 2017

No. 6253

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FINANCIAL INTELLIGENCE CENTRE (FIC)

No. 62

2017

DETERMINATION UNDER THE FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO. 13 OF 2012): THE PERIOD WITHIN WHICH THE MASTER OF THE HIGH COURT MUST OBTAIN AND KEEP UP-TO-DATE PRESCRIBED INFORMATION IN RESPECT OF THE FOUNDER, EACH TRUSTEE, EACH INCOME BENEFICIARY AND EACH BENEFICIAL OWNER OF ALL REGISTERED TESTAMENTARY AND INTER VIVOS TRUSTS

In my capacity as Director of the Financial Intelligence Centre (FIC) and under the powers vested in the FIC by virtue of section 5(4) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), I hereby issue the Determination on: The period within which the Master of the High Court must obtain and keep up-to-date prescribed information in respect of the founder, each trustee, each

income beneficiary and each beneficial owner of all registered testamentary and inter vivos Trusts (Determination No. 01 of 2016), which Determination became effective on 19 July 2016.

L. DUNN
DIRECTOR

DETERMINATION NO. 01 OF 2016

THE PERIOD WITHIN WHICH THE MASTER OF THE HIGH COURT MUST OBTAIN AND KEEP UP-TO-DATE PRESCRIBED INFORMATION IN RESPECT OF THE FOUNDER, EACH TRUSTEE, EACH INCOME BENEFICIARY AND EACH BENEFICIAL OWNER OF ALL REGISTERED TESTAMENTARY AND INTER VIVOS TRUSTS

1. PURPOSE

- 1.1 This Determination is issued in terms of Section 5(4) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended.
- 1.2 The purpose of this determination is to determine the period within which the Master of the High Court must obtain and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all testamentary and *inter vivos* trusts registered before the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended came into effect.

2. DEFINITIONS AND ACRONYMS

Terms used in this Determination are as defined in the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended and ancillary regulations, the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) as well as the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014).

- 2.1 **“AML/CFT/CFP”** – means Anti-Money Laundering and the Combating of Financing of Terrorist and Proliferation Activities;
- 2.2 **“accountable institution”** means a person or institution referred to in Schedule 1, including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution;
- 2.3 **“beneficial owner”** as defined under Section 1 of the FIA means -
- a) a natural person who owns or effectively controls a client, including the natural person on whose behalf a transaction is conducted; or
 - b) a natural person who exercises effective control over a legal person or trust, and a natural person is deemed to own or effectively control a trust when the person -
 - (i) owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
 - (ii) together with a connected person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;
 - (iii) despite a less than 20% shareholding or voting rights, receives a large percentage of the trust’s declared dividends; or

- (iv) otherwise exercises control over the management of the trust in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner.

- 2.4 **“Centre”** means the Financial Intelligence Centre established by section 7 of FIA;
- 2.5 **“determination”** means a determination made under FIA;
- 2.6 **“FIA”** - means the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended, and Regulations issued thereto;
- 2.7 **“Fund”** means the Criminal Assets Recovery Fund established by section 74 of the Prevention of Organised Crime Act; 2004 (Act No. 29 of 2004) (POCA);
- 2.8 **“funding of proliferation”** means the provision of funds, assets or financial services which are used, in whole or in part, for proliferation activity; and “financing of proliferation” has a corresponding meaning;
- 2.9 **“funding of terrorism”** means the provision of funds, assets or financial services which are used, in whole or in part, for terrorist activity as defined in the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014);
- 2.10 **“money laundering”** as defined in FIA and any activity which constitutes an offence as defined in section 4, 5 or 6 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) as amended;
- 2.11 **“records”** means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device.

3. APPLICATION

This determination applies to the Master of the High Court, and affects Trusts that are registered before the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended came into effect, and the obligations therein are fully effective and should be fully complied with.

4. STATEMENT OF POLICY/DETERMINATION

The Master of the High Court must within **three (3) months from the date of issue of this determination** obtain and keep up-to-date prescribed information in terms of the FIA supplementary regulation three (3) in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts which were registered before the FIA came into effect.

5. RESPONSIBILITY

- 5.1 The Master of the High Court to ensure that prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all testamentary and *inter vivos* trusts registered before FIA came into effect, is obtained and retained.
- 5.2 The Master of the High Court is entitled to request from a relevant accountable or reporting institution and the institution must provide the Master with information relating to Trust banking accounts for purposes of monitoring or investigating the transaction activities or operations of any trust.

- 5.3 The Master of the High Court is also expected to avail founder, trustee, trust beneficiary and trust beneficial ownership information of all registered testamentary and *inter vivos* trusts to competent authorities upon request.

6. OVERVIEW AND IMPLEMENTATION REQUIREMENTS

- 6.1 Obtaining and keeping up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts is the key process to mitigate the risk of Money Laundering and the Financing of Terrorist and Proliferation Activities manifesting through possible abuse of Trusts.
- 6.2 Identification of founders, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts places the AML/CFT/CFP regime in a better position to curb the abuse of Trusts by criminals to hide/conceal their ill-gotten assets, as well as generating funds to finance Terrorist and Proliferation Activities.

7. REMEDIAL MEASURES

If a trust refuses or fails to register in the prescribed manner and form or fails to provide the prescribed information to the Master of the High Court within the **three (3) months period** as determined by the Centre in terms of Section 5(4) of the FIA, such trust commits an offence and is liable to a fine not exceeding N\$10 million, or where the commission of the offence is attributable to a representative of the trust, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment.

8. EFFECTIVE DATE

This determination shall come into effect on the date of issue.

9. GENERAL AND ENQUIRIES

- 9.1 This determination may not be exhaustive and can be supplemented and/or amended when need be.
- 9.2 All enquiries related to this determination shall be forwarded to:

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

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

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

Date issued: **19 July 2016**

Director: Financial Intelligence Centre

FINANCIAL INTELLIGENCE CENTRE (FIC)

No. 63

2017

DETERMINATION UNDER THE FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO. 13 OF 2012): THE PERIOD WITHIN WHICH THE REGISTRAR OF COMPANIES AND CLOSE CORPORATIONS MUST COLLECT INFORMATION IN RESPECT OF EACH MEMBER, DIRECTOR, SHAREHOLDER AND BENEFICIAL OWNER OF COMPANIES AND CLOSE CORPORATIONS, REGISTERED BEFORE THE FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO. 13 OF 2012) CAME INTO FORCE

In my capacity as Director of the Financial Intelligence Centre (FIC) and under the powers vested in the FIC by virtue of section 4(4) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), I hereby issue the Determination on: the period within which the Registrar of Companies and Close Corporations collects information in respect of each member, director, shareholder and beneficial owner of companies and close corporations, registered before the Financial Intelligence Act, 2012 (Act No. 13 of 2012) came into force (Determination No. 02 of 2016), which Determination became effective on 01 September 2016.

**L. DUNN
DIRECTOR**

DETERMINATION NO. 02 OF 2016

THE PERIOD WITHIN WHICH THE REGISTRAR OF COMPANIES AND CLOSE CORPORATIONS COLLECTS INFORMATION IN RESPECT OF EACH MEMBER, DIRECTOR, SHAREHOLDER AND BENEFICIAL OWNER OF COMPANIES AND CLOSE CORPORATIONS, REGISTERED BEFORE THE FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO. 13 OF 2012) CAME INTO FORCE

1. Introduction

This Determination is issued under Section 4 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) hereinafter referred to as the FIA, on the period within which the Registrar of companies and close corporations must collect information in respect of each member, director, shareholder and beneficial owner of companies or close corporations incorporated before the FIA became effective.

Authority for the Financial Intelligence Centre (FIC) to enhance effective implementation of the FIA, through issuing of determinations is derived from Section 4(4) of the FIA.

This determination applies to the Registrar of companies and close corporations as well as companies and close corporations incorporated before the FIA became effective.

2. Overview

Collecting and keeping up-to-date information pertaining to members, directors and beneficial owners of companies and close corporations is essential to enable accountable and reporting institutions as well as competent authorities to access and verify such data. This enhances the effectiveness of Namibia's prevention and combatting measures of money laundering, the financing of terrorist and proliferation activities.

In order to understand the required identification and other relevant information, responsible parties are expected to familiarise themselves with the '*Industry Guidance Note No.1 of 2015 on Identification and Verification of Beneficial Ownership Information*', which can be accessed on the FIC website.

3. Purpose

The purpose of this determination is to specify the period in which the Registrar of companies and close corporations must collect information in respect of each member, director, shareholder and beneficial owner of companies or close corporations incorporated before the FIA came into effect, which period is determined to be **“within three months as at the end of such companies and close corporations’ respective financial year end, effective 1 September 2016”**.

4. Responsibility

The Registrar of companies and close corporations to ensure that information in respect of each member, director, shareholder and beneficial owner of all companies and close corporations incorporated before the FIA became effective is obtained within three months as at the end of such companies and close corporations’ respective financial year end, effective 1 September 2016.

The Registrar to ensure that all companies and close corporations that failed to furnish information required within the above-cited period are de-registered forthwith.

The functionaries of respective companies and close corporations are responsible for ensuring that information in respect of each member, director, shareholder and beneficial owner is furnished to the Registrar of companies and close corporations within the period cited in this determination.

5. Remedial measures

Should there be companies and close corporations incorporated before the coming in force of the FIA, that failed to furnish information so required within the period specified herein, the Registrar may de-register such companies and close corporations.

It should also be noted that if the company or close corporation refuses or fails to provide the said information at the end of the period so determined, it commits an offence and is liable to a fine not exceeding N\$10 million, or where the commission of the offence is attributed to a representative of the company, to such fine or imprisonment not exceeding a period of 10 years or to both such fine and such imprisonment.

6. General

This determination may not be exhaustive and can be supplemented and/or amended when need be.

All enquiries related to this determination shall be forwarded to:

The Director: Financial Intelligence Centre

P.O. Box 2882, Windhoek

71 Robert Mugabe Avenue

Tel: +264-61-2835100

Fax: +264-61-2835259

Email: fichelpdesk@fic.na

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FINANCIAL INTELLIGENCE CENTRE (FIC)

No. 64

2017

DETERMINATION UNDER THE FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO. 13 OF 2012): THE AMOUNT OF CASH AND VALUE OF A BEARER NEGOTIABLE INSTRUMENT TO BE DECLARED AT THE POINT OF ENTRY INTO OR DEPARTURE FROM NAMIBIA

In my capacity as Director of the Financial Intelligence Centre (FIC) and under the powers vested in the FIC by virtue of section 36 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), I hereby issue the Determination on: the amount of cash and value of a bearer negotiable instrument to be declared at the point of entry into or departure from Namibia (Determination No. 03 of 2016), which Determination became effective on 1 October 2016.

L. DUNN
DIRECTOR

DETERMINATION NO. 03 OF 2016**THE AMOUNT OF CASH AND VALUE OF A BEARER NEGOTIABLE INSTRUMENT TO BE DECLARED AT THE POINT OF ENTRY INTO OR DEPARTURE FROM NAMIBIA****1. PURPOSE**

To determine the threshold on declaration of cross border movement of cash and BNIs in terms of Section 36 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended and ancillary regulation 31.

2. DEFINITIONS AND ACRONYMS

Terms used in this Determination are as defined in the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended and ancillary regulations as well as the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014).

- 2.1 “**Act**” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and Regulations issued thereunder.
- 2.2 “**Bearer Negotiable Instrument**” for the purpose of this Determination means any instrument that may on demand by the bearer thereof be converted to the currency of Namibia or that of another country and includes, amongst others, cheques, promissory notes and money orders.
- 2.3 “**Cash**” means -
- (a) coin and paper money of Namibia or of another country which coin or paper money is designated as legal tender and which circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
 - (b) travellers’ cheques; or
 - (c) cheques, but only in respect of payments made by a person who carries on the business of a casino, gambling institution or totalisator betting service; or
 - (d) payment instrument, but only in respect of stored value, excluding debit cards and credit cards;
- 2.4 “**Centre**” means the Financial Intelligence Centre established by section 7 of FIA;
- 2.5 “**Customs and Excise**” means a division in the Ministry responsible for finance that is entrusted with customs and excise responsibilities as envisaged by the Customs and Excise Act, 1998 (Act No. 20 of 1998);

- 2.6 **“determination”** means a determination made under FIA
- 2.7 **“BNIs”** Bearer Negotiable Instruments
- 2.8 **“FIA”** - means the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended, and Regulations issued thereto;
- 2.9 **“FIC”** Financial Intelligence Centre

3. APPLICATION

- 3.1 This determination applies to:
- 3.1.1 Every person entering into or departing from Namibia who is carrying or transporting cash, bearer negotiable instruments, or both, equal to or exceeding N\$100 000.00, must declare such cash or instrument, to an officer of the Customs and Excise at the port of entry into or departure from Namibia.
- 3.1.2 Every person importing into or exporting out of Namibia, through containerized cargo, cash or bearer negotiable instruments equal to or exceeding N\$100 000.00 must declare such cash or bearer negotiable instruments to an officer of the Customs and Excise at the port of entry into or departure from Namibia.
- 3.1.3 Every person mailing or conveying any post whether by mail, telegram or courier entering or departing Namibia that contains cash or bearer negotiable instruments equal to or exceeding N\$100 000.00, must declare such cash or bearer negotiable instruments to a designated officer at the relevant Post Office or an officer of the Customs and Excise at the port of entry into or departure from Namibia.

4. STATEMENT OF POLICY

The Centre in terms of Section 36 of FIA determined the declaration threshold in respect of cross border movement of cash and BNIs as N\$100 000.00 and equivalent thereof in foreign currency. Declaration should be done at the port of entry or departure from Namibia on a prescribed form and handed over to a Customs and Excise Officer.

5. RESPONSIBILITY

- 5.1 It is the responsibility of a traveller, importer & exporter in a containerized cargo, and a person mailing or conveying any post whether by mail, telegram or courier to declare cash or BNIs equal to and above N\$100 000.00.
- 5.2 A Customs and Excise Officer has a duty to receive declarations and ensure information so furnished is comprehensive and does not conflict with the amount of cash or value of BNIs being declared, and consequently issue acknowledgement of declaration to the declarants, which serves as proof of declaration.

6. IMPLEMENTATION REQUIREMENTS

Customs and Excise Officer must transmit, on a weekly basis, declarations received to the FIC via an electronic web portal and in the format required by the FIC.

7. REMEDIAL MEASURES

- 7.1 Failure to declare or false declaration is a criminal offence which attracts a fine of 100 million or imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.

7.2 In the event of failure to declare or false declaration, a Customs and Excise Officer has the power in terms of Section 37 of FIA to confiscate such cash or BNIs.

8. EFFECTIVE DATE

This determination shall come into force on **1 October 2016**.

9. GENERAL AND ENQUIRIES

9.1 This determination can be supplemented and/or amended when need be.

9.2 All enquiries related to this determination shall be forwarded to:

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

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

This Determination can be accessed at www.fic.na.

Date issued: **1 October 2016**

Director: Financial Intelligence Centre
