



Financial Intelligence Act 13 of 2012

What does the law do?

This law addresses suspicious financial activities that may relate to money laundering or terrorism, by giving certain persons and businesses a duty to report on certain transactions.



What is the purpose of the law?

The law is intended to fight money laundering and the financing of terrorism, which are often intertwined with corruption. This helps to protect the integrity and stability of the Namibian financial system. The law also helps Namibia to fulfil its duties under the United Nations Convention against Transnational Organised Crime.

When did the law come into force?

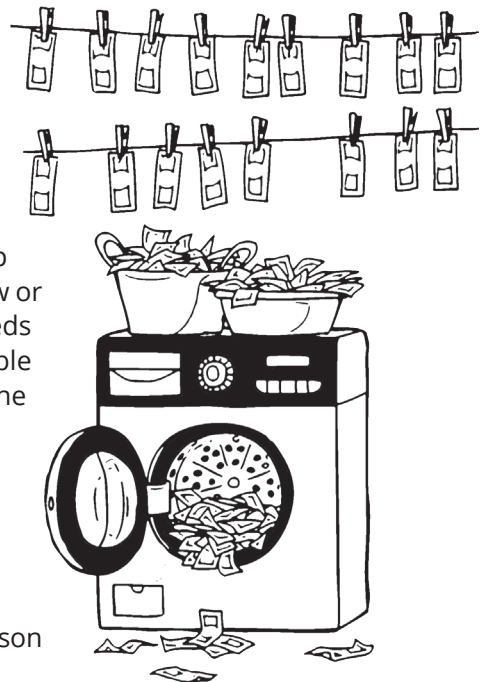
21 December 2012. It replaced a similar law, the *Financial Intelligence Act 3 of 2007*.

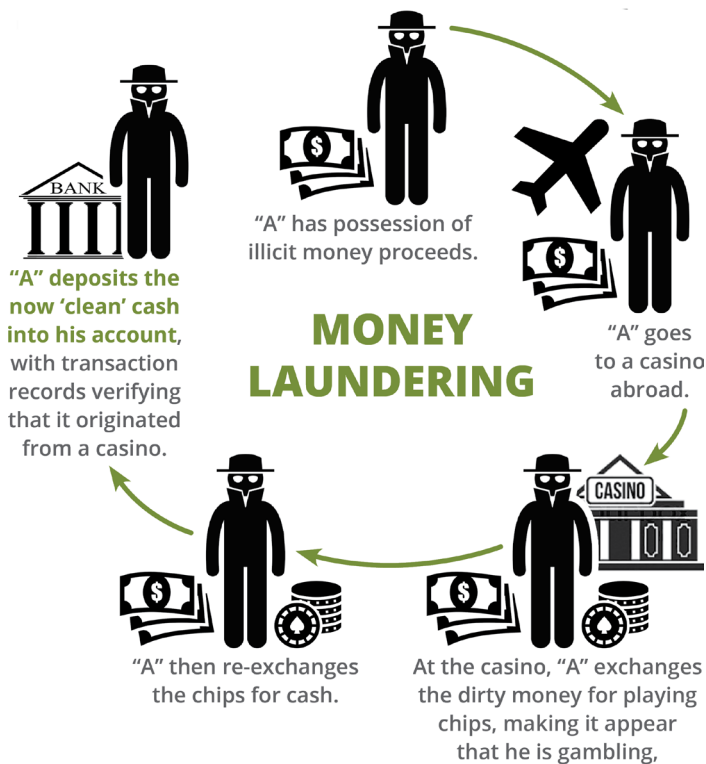
What is money laundering?

Money laundering is the process of dealing with the proceeds of a criminal activity to disguise their illegal source. Criminals do this to keep government authorities from discovering the crime that produced the profit. Money laundering is common in crimes that produce large profits, such as illegal trading in weapons and drug trafficking. It often involves moving funds to a different country or taking steps to make them appear to be the profits of a legitimate business. The goal of the process is to make “dirty” money resulting from crimes look like “clean” money from an honest enterprise – which is why it is called “money laundering”.

Money laundering may involve a long chain of transactions in different places, to make the money harder to track. Every step of the process is money laundering if the persons involved knew or had reason to believe that the transactions involved the proceeds of an unlawful activity (“dirty money”), or failed to take reasonable action to find out if this was the case. The steps involved in the money laundering might include:

- taking part, directly or indirectly, in a transaction that involves dirty money
- receiving, possessing or using dirty money
- moving dirty money into or out of Namibia
- concealing or disguising any aspects of dirty money
- entering into agreement with another person to help that person benefit from dirty money.





This is an example of a simple method of money laundering. The process often involves much more complex transactions with many steps.

How are money laundering and corruption connected?

These two kinds of wrongs are linked on a two-way street. On the one hand, corruption offences such as bribery or theft of public goods generate large amounts of proceeds. These proceeds need to be "cleaned" so that this money can enter the financial system without detection of the corruption. On the other hand, corruption makes money laundering easier because corrupt officials can help money launderers bypass controls and sanctions. This toxic relationship means that money laundering must be fought as an essential part of fighting corruption.

"Proliferation" means making or dealing in weapons that can cause mass destruction, such as nuclear weapons and biological weapons, or materials related to these kinds of weapons.

What new bodies are created by the law?

The law establishes the **Financial Intelligence Centre** to collect and assess information about suspicious financial transactions, and to coordinate with law enforcement officials, other Namibian institutions and international bodies involved in similar work. The Centre does not have investigative powers of its own, but it provides and analyses information for criminal investigations by law enforcement agencies such as the Namibian Police and the Anti-Corruption Commission. It also researches international trends and developments with a view to improving Namibia's approaches to the detection and prevention of money laundering and terrorism financing.

The Minister responsible for finance appoints the **Director** of the Centre for a term of five years. The Director appoints the staff of the Centre, with the agreement of the Governor of the Bank of Namibia.

The law also establishes the **Anti-Money Laundering and Combating of the Financing of Terrorism and Proliferation Council**, which gives policy advice to the Minister and the Director of the Financial Intelligence Centre. The members of the Council include:

- the Governor of the Bank of Namibia
- the Executive Directors of the ministries responsible for finance, trade, justice, and safety and security
- the Inspector-General of the Namibian Police Force
- the Director of the Namibian Central Intelligence Service
- the Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority
- the Director of the Anti-Corruption Commission
- the President of the Bankers Association
- two persons appointed by the Minister to represent the different categories of institutions that have reporting duties under the law.

Who must collect information and make reports to the Financial Intelligence Centre?

The law imposes duties on certain persons and institutions to collect and maintain accurate information related to financial matters that are covered by the law.

Certain transactions must be reported by legal practitioners, estate agents, accountants, auditors, banks, casinos, persons who trade in minerals or petroleum, person who deal in foreign exchange or securities, investment advisers and brokers, auctioneers, long-term insurers, various people involved with imports and exports, non-profit organisations and many others. These are called “*accountable institutions*”. Another category of persons and bodies that must collect and report information includes motor vehicle dealers, second-hand goods dealers, people who run gambling houses or other betting businesses, persons or businesses that trade in jewellery, antiques or art, and short-term insurers. These are called “*reporting institutions*”.

Certain “*supervisory*” and “*regulatory*” bodies also have duties under the law. These include the Namibia Financial Institutions Supervisory Authority, the Bank of Namibia, the Law Society of Namibia, the Namibia Estate Agents Board, the Public Accountants’ and Auditors’ Board, the Namibia Stock Exchange and the Casino Board. Duties to collect and report information also apply to the Registrar of Companies and Close Corporations and the Master of the High Court. These bodies help the Financial Intelligence Centre make sure that the accountable institutions and the reporting institutions carry out their duties.



What kind of information must be reported?

One duty on accounting and reporting institutions is to know their clients. They must record information about their customers and business relationships. Accounting and reporting institutions may not allow anonymous accounts or allow people to open accounts with false identification. They must monitor transactions for unusual activity or suspiciously large transactions that do not seem to have a lawful purpose, and report any suspicious activity to the Centre without alerting the people involved. There are also special duties in respect of cross-border financial transactions.

Accounting and reporting institutions must set up monitoring systems to identify situations that pose a special risk of money laundering or terrorism financing. Once a client has been identified as posing a risk, the institution must not establish or continue to have a relationship with that client unless this is approved by the institution’s senior management. In addition, the institution must take steps to identify the source of that client’s funds and property.

Failure to comply with the information collection and reporting duties under the law is a crime. However, there are other less drastic remedies that must be attempted before resorting to criminal charges – such as issuing a directive about compliance, accepting a written undertaking with details about future implementation of the duties under the law or making the institution pay an administrative fine (a fine that can be imposed without a criminal trial).

It is also a crime for anyone to destroy or tamper with the records that must be kept by institutions for reporting to the Centre, or to make false entries in those records.

The Centre can undertake inspections of places, documents and computer systems to make sure that the information-collecting and reporting duties are being followed.

The reporting duties under this law take priority over confidentiality rules in any other laws or agreements, with the exception of some aspects of attorney-client privilege. Any person or institution that makes a report under this law in good faith is protected against civil or criminal lawsuits in respect of that reporting.

Monitoring specific persons

Where there is a reasonable suspicion of wrongdoing connected to money laundering and terrorism financing, the Financial Intelligence Centre can apply to a judge in private for an order to monitor all transactions with a specific person or all transactions involving a specific account.

How do these duties combat money laundering and terrorism financing?

The first step in combating money laundering and terrorism financing is to find them. These activities are intended to be hidden. That is why the law focuses on documenting and auditing business relationships and financial transactions, to uncover inconsistencies that could signal wrongdoing. The duty to identify all clients and customers makes it harder for people to engage in hidden financial transactions.



What happens if the Financial Intelligence Centre receives information that points to illegal activity?

The Financial Intelligence Centre collects and analyses data, but it does not have investigative powers. If it receives information that may point to illegal activities, it refers the matter to law enforcement agencies such as the Namibian Police or the Anti-Corruption Commission for investigation and action.

Tipping off the criminals

It is a serious crime to warn someone about an investigation into the issues covered by the law, or to share information about a disclosure that was made in connection with such an investigation. The penalty is fine of up to N\$100 million or prison for up to 30 years.

Other interference with the work of the Centre

It is a crime to obstruct the work of the Financial Intelligence Centre or any other institution that is carrying out duties under this law. It is also a crime to try to unduly influence or interfere with the Centre's work. The penalty for these crimes is a fine of up to N\$100 million or prison for up to 30 years.

Protection for informers

People who provide information to the Financial Intelligence Centre are provided with some protection under this law, but more comprehensive protection is provided by the *Whistleblower Protection Act 10 of 2017* and the *Witness Protection Act 11 of 2017*. See the separate summaries on these laws for more details.

Links with crimes under other laws

This law focuses mainly on information-gathering about financial transactions. The underlying wrongs of corruption, money laundering, terrorism and proliferation and the financing of terrorism and proliferation are criminalised under other laws: *Anti-Corruption Act 8 of 2003*, *Prevention of Organised Crime Act 29 of 2004*, and *Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014*. There are separate summaries of each of these laws.

Future directions

The Financial Intelligence Centre is considering legal changes to add unexplained wealth orders to its toolkit for detecting money laundering. This would make it

possible to investigate situations where a person's lifestyle does not seem to fit their legal income. In such cases, the idea is to make it possible to issue an order requiring persons who appear to be living beyond their means to prove to a court that their wealth was acquired through legal channels.

