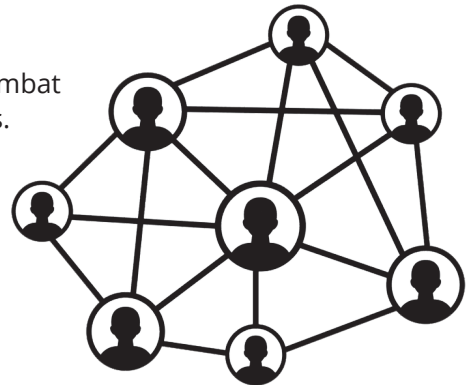




Prevention of Organised Crime Act 29 of 2004

What does the law do?

This law (often abbreviated as “POCA”) provides measures to combat organised crime, money laundering and criminal gang activities. It also provides procedures to take away money or property used to commit a wide range of serious crimes (such as a vehicle used to transport stolen goods or a house where illegal drugs are stored), as well as the proceeds of unlawful activities (the benefits gained from committing the crime).



What is the purpose of the law?

The law helps Namibia fulfil its duties under the United Nations Convention against Transnational Crime. It is also an important tool in combating serious criminal activity in Namibia by making sure that “crime does not pay”.

When did the law come into force?

5 May 2009. This law originally included provisions on trafficking in persons, but these were repealed and replaced in 2019 by the *Combating of Trafficking in Persons Act 1 of 2018*.

What is organised crime?

In general, organised crime refers to groups of individuals who engage in criminal activities on an ongoing basis. It has also been described as networks of individuals who collaborate over time to commit crime. Organised crime groups often use corruption, violence and threats of harm to protect their illegal activities. They may seek to obtain power and influence as well as money.



Organised crime often involves serious crimes and large sums of money, and often operates across national borders. Some of the kinds of crimes committed are money laundering, illegal gambling, wildlife poaching, the sale of counterfeit goods, smuggling of goods such as cigarettes and alcohol to evade customs duties, cybercrime and trafficking in drugs, firearms or people. Organised crime is a threat to national and international security and economic stability.

What are criminal gangs?

Organised crime groups are referred to by different names, such as crime “syndicates”, “enterprises”, “mafias”, “firms” or “gangs”.

The Namibian statute refers to “criminal gangs”. It defines a criminal gang as any formal or informal organisation, association or group of two or more persons that come together on an ongoing basis to commit crimes.

It is a crime to be a member of a criminal gang. Even if you do not admit to membership in a gang, your membership can be proved by –

- being identified as a member of a criminal gang by a parent, guardian or relative
- living or spending time in a gang’s area of operation, adopting their style (in terms of clothing, hand signs, language or tattoos) and associating with other members
- having been arrested more than once in the company of other gang members for crimes that are consistent with criminal gang activities
- being identified as a member by physical evidence such as photographs or other documentation.

Whether or not you are a gang member, it is a crime to provide direct and indirect assistance to a criminal gang or its activities. For instance, it is a crime to do any of these things:

- promote or contribute towards a pattern of criminal gang activity
- aid, advise or encourage anyone to take part in a pattern of criminal gang activity
- encourage, recruit or advise another person to join a criminal gang.



What is racketeering?

Racketeering means engaging in an illegal scheme. (A “racket” is a slang term for a dishonest scheme where someone seeks to profit by misleading people or by doing something illegal.) Organised crime groups are often involved in racketeering.

Racketeering typically involves illegal acts such as prostitution, human trafficking, drug trafficking, illegal weapons trade, wildlife crime, counterfeiting or dealing in child pornography. It might also involve schemes such as these:

- *Cyber extortion*: blocking information on computers and demanding money to restore access
- *Protection rackets*: threatening to harm individuals or businesses unless they pay a protection fee
- *Kidnapping for ransom*: holding an individual captive and demanding a ransom to set them free
- *Fencing*: buying stolen goods from thieves at low rates and then reselling them at a profit to unsuspecting buyers.

These are just a few examples. There are many variations.

The law makes it a crime to be involved in racketeering or to knowingly deal in the proceeds of racketeering.



What is money laundering?

Money laundering is the process of dealing with the proceeds of a criminal activity to disguise their illegal source. Organised crime groups 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”.

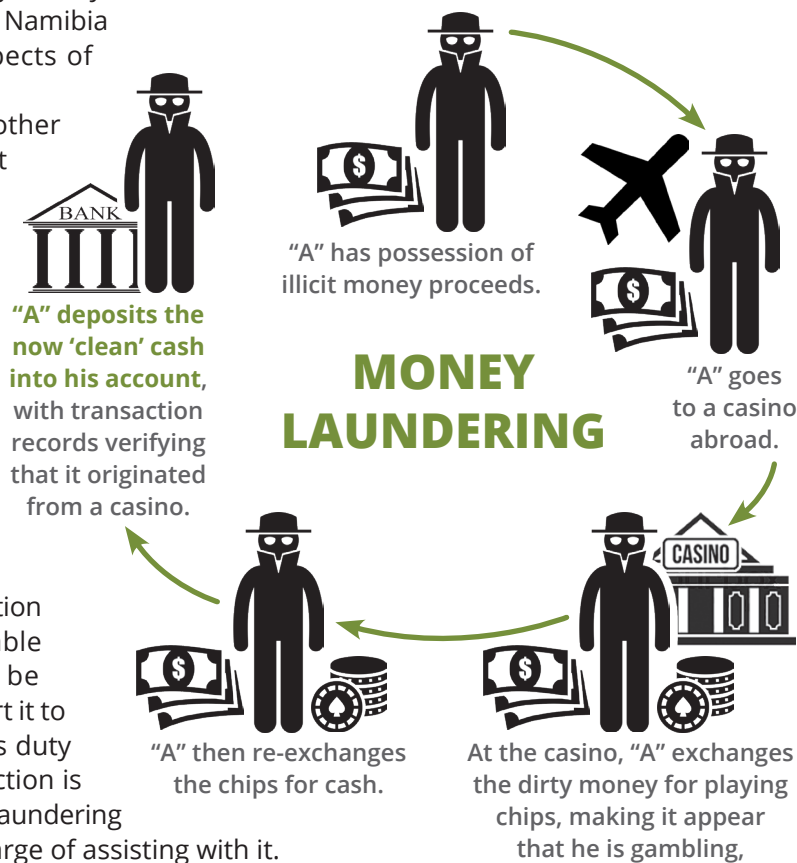


Money laundering may involve a long chain of transactions in different places, to make the money harder to track. Every step of the process is money laundering if the persons involved knew or had reason to believe that the transactions involved the proceeds of an unlawful activity ("dirty money"), or 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.

The law makes it a crime to be involved in various ways with money laundering. If a company or any other group of persons assists with money laundering, anyone who acted in an official capacity for that company or group can be found guilty of the crime as an individual.

Anyone who is approached in connection with a transaction that any reasonable person would know or suspect to be money laundering has a duty to report it to the Financial Intelligence Centre. This duty applies even if the suspicious transaction is not completed. Reporting the money laundering transaction can be a defence to a charge of assisting with it.



The Financial Intelligence Centre is an information-gathering body set up by the *Financial Intelligence Act 13 of 2012*. There is a separate summary of that law if you want to know more.

Severe penalties

The kinds of crimes covered by this law are usually serious crimes that can produce large profits. So the possible penalties for criminal gang activities, racketeering and money laundering can be very high fines (up to N\$1 billion in some cases) or very long prison sentences.

Assets associated with criminal activity

The law sets out several different procedures for taking away money or property that was used to commit a serious crime, as well as the proceeds of unlawful activities. Courts can also make various temporary orders to prevent money or property from disappearing while proceedings are pending. Some of these orders can be made only against someone who has been convicted of a crime, but others apply even if there is no prosecution or even where the accused was not convicted – as long as the property can be connected to unlawful activities. The idea is that taking away the profits from crime will remove incentives for committing crime.



To prevent unfairness, there are procedures for releasing sufficient assets to provide for reasonable living expenses for the affected person and anyone they are legally liable to support, as well as for reasonable legal expenses to allow for a fair defence in court.

There are also safeguards for innocent third parties who have good faith interests in the property, where they had no reason to suspect that it was tied to crime.

The assets that are handed over to the State go into a Criminal Assets Recovery Fund that is used to finance law enforcement agencies, witness protection programmes and assistance to crime victims. People who have suffered loss or injury from criminal activity can apply for compensation from the funds that are turned over to the State.

Criminal Assets Recovery Committee

The law also sets up a Criminal Assets Recovery Committee with the task of advising Cabinet on confiscation and forfeiture of property associated with criminal activity, and on how these assets should be used after they are handed over. The Committee consists of:

- the Minister responsible for justice
- the Minister responsible for policing
- the Minister responsible for finance
- the Attorney-General
- up to seven persons designated by the Minister to help consider a specific matter.

Why is it important to combat organised crime?

As stated in Parliament, organised crime has become a corrupting power because it taints normal economic activities with the investment of illegal profits.¹ In addition, criminal gangs that become very powerful can control communities with fear. It is important to make sure that the law remains supreme in Namibia, and that criminal groups are not able to act in violation of the law without consequences.



¹ Hansard (record of discussions of the National Assembly), 30 September 2004.