



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 31 August 2023

No. 8192

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## Government Notice

### MINISTRY OF FINANCE

No. 272

2023

#### REGULATIONS RELATING TO NON-PROFIT ORGANISATIONS: FINANCIAL INTELLIGENCE ACT, 2012

Under section 67 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and after consulting the Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council and the Financial Intelligence Centre, I have made the regulations set out in the Schedule.

**I. SHIMI**  
**MINISTER OF FINANCE AND**  
**PUBLIC ENTERPRISES**

Windhoek, 28 August 2023

### SCHEDULE

#### Definitions

1. In these regulations, a word or an expression to which a meaning has been assigned in the Act bears that meaning, and unless the context otherwise indicates -

“beneficiary” means a person, a group of persons or other entities or bodies entitled, or designated by a non-profit organisation, to benefit from the funds, services, assets or other type of benefits of the non-profit organisation;

“board” means a board of an identified non-profit organisation referred to in regulation 4;

“electronically” means using an electronic portal on the website of the Centre that allows an identified non-profit organisation to register and upload documents as required by these regulations;

“founder” means a person who endows a non-profit organisation with its initial asset;

“identified non-profit organisation” means a non-profit organisation that is likely to be at risk or likely to be abused for the financing of terrorism;

“register” means a register of identified non-profit organisations established, kept and maintained by the Centre in term of regulation 7; and

“the Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012).

### **Details of non-profit organisations to be updated and verified**

**2.** (1) For the purposes of combating the financing of terrorism as contemplated in section 35A of the Act, each non-profit organisation must have the following details updated and verified by its applicable registration or regulatory authority -

- (a) the name and any previous name of the non-profit organisation;
- (b) the registration number of the non-profit organisation, if any;
- (c) the purpose and object of the non-profit organisation;
- (d) the registered address of the non-profit organisation;
- (e) the particulars of the founder of the non-profit organisation, including -
  - (i) the name of the founder;
  - (ii) the contact details of the founder;
  - (iii) the nationality of the founder;
  - (iv) the address of the founder in Namibia or elsewhere;
  - (v) the identity number or passport number of the founder; and
  - (vi) full particulars of any beneficial owner of the founder;
- (f) where a founder of the non-profit organisation is a legal person, trust or other legal arrangement -
  - (i) the name, registration number, registered address and particulars of the directors, shareholders, members, trustees and any beneficial owners of the founder; and

- (ii) information referred to in subparagraphs (i) to (vi) of paragraph (e) in respect of any beneficial owner, where a director, shareholder, member or trustee referred to in subparagraph (i) is a nominee of a beneficial owner;
- (g) the particulars of the members of the board or other governing body of the non-profit organisation, including -
  - (i) the name of the member;
  - (ii) the contact details of the member;
  - (iii) the nationality of the member;
  - (iv) the address of the member in Namibia or elsewhere;
  - (v) the identity number or passport number of the member; and
  - (vi) full particulars of any beneficial owner of the member;
- (h) where a governing body of the non-profit organisation is a legal person, trust or other legal arrangement -
  - (i) the name, registration number, registered address and particulars of the directors, shareholders, members, trustees and any beneficial owners of the governing body; and
  - (ii) information referred to in subparagraphs (i) to (vi) of paragraph (g) in respect of any beneficial owner, where a director, shareholder, member or trustee referred to in subparagraph (i) is a nominee of a beneficial owner;
- (i) the particulars of the beneficiaries of the non-profit organisation, including -
  - (i) the name of the beneficiary;
  - (ii) the contact details of the beneficiary;
  - (iii) the nationality of the beneficiary;
  - (iv) the address of the beneficiary in Namibia or elsewhere;
  - (v) the identity number or passport number of the beneficiary; and
  - (vi) full particulars of any beneficial owner of the beneficiary;
- (j) where a beneficiary of the non-profit organisation is a legal person, trust or other legal arrangement -
  - (i) the name, registration number, registered address and particulars of the directors, shareholders, members, trustees and any beneficial owners of the beneficiary; and
  - (ii) information referred to in subparagraphs (i) to (vi) of paragraph (i) in respect of any beneficial owner, where a director, shareholder, member or trustee referred to in subparagraph (i) is a nominee of a beneficial owner; and

- (k) any other details or information of the non-profit organisation that the registration or regulatory authority may wish to update and verify.

(2) A registration or regulatory authority must update and verify the information and details referred to in subregulation (1) using a title deed, municipal water account, lease agreement, national identity card or passport or any other document that the registration or regulatory authority may use to update and verify the information and details provided by a non-profit organisation.

### **Registration of identified non-profit organisations**

3. (1) After a non-profit organisation has been identified as a non-profit organisation that is likely to be at risk or likely to be abused for the financing of terrorism as contemplated in section 35A of the Act, the identified non-profit organisation must, within a period stated in the notice referred to in subsection (6) of that section, electronically register with the Centre as an identified non-profit organisation and electronically provide the Centre with the following particulars and documents -

- (a) the details, information and documents referred to in regulation 2;
- (b) the country where the identified non-profit organisation is established or registered;
- (c) the source of funding for the identified non-profit organisation;
- (d) any branch of the identified non-profit organisation inside or outside Namibia, and if an organisation is claiming to be a branch or subsidiary of another organisation, provide proof as the branch or subsidiary to that organisation;
- (e) a copy of the charter, constitution, memorandum of association or articles or other governing documents of the identified non-profit organisation; and
- (f) any other details or information as the Centre may determine and communicate to the identified non-profit organisation in accordance with the provisions of the Act.

(2) If any of the particulars registered with the Centre have changed, an identified non-profit organisation must electronically notify the Centre within a period of 14 days of such changes and the Director must enter such changes into the register.

### **Governing bodies of identified non-profit organisations**

4. (1) An identified non-profit organisation must have a board or other governing body of the identified non-profit organisation which administers the property and affairs of the organisation and carries out the objects of the organisation.

(2) Members of the board or other governing body of an identified non-profit organisation must -

- (a) conduct the affairs of the identified non-profit organisation in accordance with its charter, constitution, memorandum of association or articles or other governing documents;
- (b) generally supervise the management and conducts of the identified non-profit organisation;
- (c) act honestly and in good faith with a view to promote the best interests of the identified non-profit organisation; and

- (d) exercise the care, diligence and skill that a reasonably prudent person would exercise in similar circumstances.

(3) A board or other governing body of an identified non-profit organisation must appoint such persons as may be necessary to effectively discharge obligations imposed on the organisation by or under the Act or these regulations.

(4) A person appointed in terms of subsection (3) must be under the supervision of the board or other governing body of the identified non-profit organisation and must act in accordance with the lawful instructions of the board or governing body.

(5) A person may not be appointed as a member of the board or other governing body of an identified non-profit organisation if the person -

- (a) is under the age of 21 years;
- (b) is an unrehabilitated insolvent;
- (c) has under any law been declared by a competent court to be mentally ill;
- (d) has been prohibited to be a director of a company in terms of any law or by an order of a court;
- (e) has been removed from an office of trust on the grounds of misconduct involving dishonesty; or
- (f) has been convicted of an offence involving theft, fraud, forgery, perjury, money laundering, financing of terrorism or proliferation or any other offence involving misrepresentation or dishonesty under any law.

(6) If before the commencement of these regulations an identified non-profit organisation has appointed a person as a member of the board or other governing body of the identified non-profit organisation and who after the commencement of these regulations would no longer qualify to be a member in terms of subregulation (5), the identified non-profit organisation must, within a period of 60 days after the commencement of these regulations, remove the person as a member of the board or governing body.

(7) An identified non-profit organisation, a member of the board or other governing body of an identified non-profit organisation or any other person who contravenes or fails to comply with subregulation (1), (2), (3), (5) or (6) 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 organisation, to such fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

#### **Governing documents for identified non-profit organisations**

5. (1) An identified non-profit organisation must have in place a charter, constitution, memorandum of association or other governing documents specifying -

- (a) the name of the identified non-profit organisation;
- (b) the registration number of the identified non-profit organisation, if any;
- (c) the purpose and object of the identified non-profit organisation;

- (d) the registered address of the identified non-profit organisation;
- (e) full particulars of the -
  - (i) founder of the identified non-profit organisation referred to in regulation 2(1)(e) or (f);
  - (ii) members of the board or other governing body of the identified non-profit organisation referred to in regulation 2(1)(g) or (h); and
  - (iii) beneficiaries of the identified non-profit organisation referred to in regulation 2(1)(i) or (j);
- (f) other particulars of control structure, governance, management, administration and operation of the identified non-profit organisation, including the procedure for the identification or appointment and removal of the beneficiaries and members of board or other governing body of the identified non-profit organisation;
- (g) the functions and powers of the board or other governing body of the identified non-profit organisation;
- (h) particulars of any property endowed to the identified non-profit organisation;
- (i) the period which the identified non-profit organisation has been in existence; and
- (j) any other matter as the Centre may determine and communicate to the identified non-profit organisation in accordance with the provisions of the Act.

(2) An identified non-profit organisation that contravenes or fails to comply with this regulation 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 organisation, to such fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

### **Obligations of identified non-profit organisations**

**6.** (1) An identified non-profit organisation must be physically present in Namibia and must have a registered office in Namibia where all communications and notices are sent for the purposes of the Act and these regulations.

- (2) An identified non-profit organisation must keep proper records of -
  - (a) all money received and expended by the identified non-profit organisation and the purpose for the receipt and expenditure of the money;
  - (b) sales and purchases made by the identified non-profit organisation;
  - (c) any report on the financial position of the identified non-profit organisation;
  - (d) assets and liabilities of the identified non-profit organisation;
  - (e) any audit report and books of accounts of the identified non-profit organisation;
  - (f) any donation made by a donor to an identified non-profit organisation, and in respect of the donor -

- (i) identify the donor, including the identity of any regular donor and keep record of such donor;
  - (ii) keep record of the mode of payment by the donor whether by cash, direct credit or virtual currency;
  - (iii) keep record of the amount received from the donor, whether in Namibia or outside Namibia, irrespective of the amount donated;
  - (iv) keep record of categories of donations received whether domestic or foreign;
  - (v) disclose to the Centre funds received from any anonymous donor;
  - (vi) identify any beneficiary of the donation, whether domestic or foreign, and keep a record of such beneficiary;
  - (vii) conduct due diligence on the donor and its members, directors, shareholders and beneficial owners; and
  - (viii) assess whether a donor creates any expectation for the identified non-profit organisation which may render the organisation to be likely to be at risk or likely to be abused for the financing of terrorism; and
- (g) full particulars of the -
- (i) founder of the identified non-profit organisation referred to in regulation 2(1)(e) or (f);
  - (ii) members of the board or other governing body of the identified non-profit organisation referred to in regulation 2(1)(g) or (h); and
  - (iii) beneficiaries of the identified non-profit organisation referred to in regulation 2(1)(i) or (j).
- (3) An identified non-profit organisation must -
- (a) manage the resources and funds of the identified non-profit organisation by establishing strong financial controls and procedures subject to the oversight by the board or other governing body of the identified non-profit organisation;
  - (b) clearly state programme goals when collecting funds of the identified non-profit organisation and ensure that funds are used by the organisation as intended;
  - (c) ensure that information about the activities carried out by the identified non-profit organisation is publicly available;
  - (d) record the sources of its income and establish criteria for determining whether a donation must be accepted or refused;
  - (e) ensure that the sources of funds, including details regarding the main contributor, both in public and private, as well as the amount contributed are recorded; and

- (f) conduct due diligence and monitor donors, beneficiaries or any other persons the identified non-profit organisation associates itself with, where such donors, beneficiaries or persons have connections to countries with high risk or vulnerability to financing of terrorism, and implement commensurate controls to effectively mitigate the financing of terrorism.
- (4) An identified non-profit organisation must keep accounting records with sufficient details that -
- (a) show and explain the transactions of the identified non-profit organisation;
  - (b) disclose with reasonable accuracy the financial position of the identified non-profit organisation at any time; and
  - (c) allow financial statements for the identified non-profit to be prepared.
- (5) For the purposes of combating the financing of terrorism as contemplated in section 35A of the Act, the Centre may direct that the accounting records of an identified non-profit organisation be audited, at the cost of the identified non-profit organisation, by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).
- (6) An identified non-profit organisation must keep at its registered office -
- (a) a file containing accurate records and copies of all documents filed with the Centre, including accurate copy of its charter, constitution, memorandum of association or articles or other governing documents of the identified non-profit;
  - (b) the minutes of the meetings of the board or other governing body of the identified non-profit organisation; and
  - (c) a register containing full particulars of the -
    - (i) founder of the identified non-profit organisation referred to in regulation 2(1)(e) or (f);
    - (ii) members of the board or other governing body of the identified non-profit organisation referred to in regulation 2(1)(g) or (h); and
    - (iii) beneficiaries of the identified non-profit organisation referred to in regulation 2(1)(i) or (j).
- (7) The records and copies of documents required to be kept by an identified non-profit organisation in terms of these regulations may be inspected by the Centre, authorised officer, competent authority, investigating authority or supervisory body during business hours of the organisation.
- (8) An identified non-profit organisation must have adequate systems in place to combat the financing of terrorism and must, amongst others -
- (a) establish internal controls and monitoring systems to ensure that funds and services are being used as intended by, amongst others, clearly defining the purpose and scope of activities;
  - (b) identify beneficiaries and beneficiary groups for the identified non-profit



organisation and consider the risk of financing of terrorism and risk mitigation measures before undertaking any project;

- (c) maintain detailed budget for each project and generate regular reports on purchase and expense by establishing procedures to trace funds, services and equipment, and carry out transactions through the banking system to maintain transparency of funds and mitigate the risk of financing of terrorism;
- (d) monitor project performance on a regular basis by verifying the existence of beneficiaries and receipt of funds; and
- (e) based on the risks, take appropriate measures to account for funds and service delivered.

(9) An identified non-profit organisation that contravenes or fails to comply with this regulation 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 organisation, to such fine or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

### **Register of identified non-profit organisations**

7. (1) The Director must establish, keep and maintain a register of identified non-profit organisations.

(2) After an identified non-profit organisation has registered as required in terms of regulation 3, the Director must -

- (a) enter the particulars of the identified non-profit organisation in the register; and
- (b) assign a unique number to the registered identified non-profit organisation.

(3) The Director must keep the register in such a manner as the Director may determine, and the register may be kept wholly or partly in an electronic format in a way that records or stores information electronically or by any other means.

(4) Unless otherwise ordered by a court of law and subject to the provisions of the Act, the Director or the Centre is not required to -

- (a) produce the register for inspection by any person;
- (b) produce evidence of the entry of particulars into the register or submit document submitted by an identified non-profit organisation in terms of these regulations; or
- (c) disclose any information relating to an identified non-profit organisation other than in accordance with the Act or these regulations.

### **Removal of identified non-profit organisations from register**

8. (1) An identified non-profit organisation may be removed from the register if, after a risk assessment conducted by the Centre on the identified non-profit organisation, the Director is satisfied that the identified non-profit organisation is no longer likely to be at any risk or likely to be abused for the financing of terrorism.

(2) If the Director decides to remove an identified non-profit organisation from the register, the Director must, by notice in writing to the identified non-profit organisation, inform the identified non-profit organisation of the decision to remove from the register.

(3) Despite the provisions of this regulation and at any time after an identified non-profit organisation has been removed from the register, the non-profit organisation may, in accordance with section 35A of the Act, be re-identified as the non-profit organisation that is likely to be at risk or likely to be abused for the financing of terrorism and be subjected to the applicable provisions of the Act and these regulations.

### **Annual returns**

**9.** For the purposes of combating the financing of terrorism as contemplated in section 35A of the Act -

- (a) an identified non-profit organisation;
- (b) a financial service provider under the supervision of -
  - (i) the Namibia Financial Institutions Supervisory Authority established by section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001); or
  - (ii) the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020); and
- (c) any other financial service provider rendering a financial service to an identified non-profit organisation,

must annually and on a form provided by the Centre complete an annual return on identified non-profit organisations for the purposes of advancement of risk management objectives.

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