



PRESENTED BY  
Stephanus Nambili

# FIA Update

DATE: 07 Dec 2021

# WHO WE ARE

The Southern African Institute for Business Accountants NPC is the #1 Professional Body for Accountants and Finance Executives in Africa. With more than 9000 members working as employed or self-employed accountants in all industries we are making business better from Cape Town to Cairo



Business Accountant (SA)  
BA (SA)  
Ideal for:  
Bookkeepers  
Accounting technicians  
Finance administrators  
Government finance clerk  
R138 / Per month



Certified Business Accountant (SA)  
CBA (SA)  
Ideal for:  
Financial managers  
Senior accountants  
Controllers  
Government finance director  
R323/ Per month



Business Accountant (SA)  
BA (SA)  
Ideal for:  
Bookkeepers  
Accounting technicians  
Finance administrators  
Government finance clerk  
R138 / Per month



Business Accountant in Practice (SA)  
BAP (SA)  
Ideal for:  
Accountants in practice  
Accounting officers  
Tax practitioners  
Accountants seeking specialist licences  
R323 / Per month

# ABOUT THE PRESENTER



Stephanus is a Legal/forensics Professional with over 16 postgraduate experience in litigation, compliance management, forensic investigations, fraud audits, legal research and corporate governance. Before founding forensic and risk advisory firm, ProNam Forensic Services in 2019, he was a senior forensics manager at Deloitte and Touche. During 2020, he led forensic investigations into the incorporation and managing of Fishcor related companies. His qualifications and designations include: A Masters degree in Commercial Law (UCT); LLB, Bjuris (UNAM); Certified Fraud Examiner; Certificate in Compliance Management (UCT); and various forensic related certifications.

# CPD CERTIFICATE

To obtain your CPD certificate complete the questions in the Quiz section. A CPD certificate will automatically be issued when you obtain above 75% within 3 attempts

**Queries regarding your CPD can be send**

**[cpd@saiba.org.na](mailto:cpd@saiba.org.na)**



- Overview of Money Laundering Regulation
- What is Money Laundering;
- Role of the Financial Action Task Force;
- FIA Regulation in a Nutshell;
- Financial Intelligence Act;
- Application Criteria;
- Customer Due Diligence (CDD);
- CDD Compliance Obligations;
- Ascertainment of Identities of Customers/Clients;
- Know-Your-Customer Requirements
- Obligations of Accountable/Reporting Institutions
- Reporting by Accountable/Reporting Institutions
- Recent FIA Directives, Circulars, Notices
- Developing your CRMP
- Closing remarks



# 1. OVERVIEW

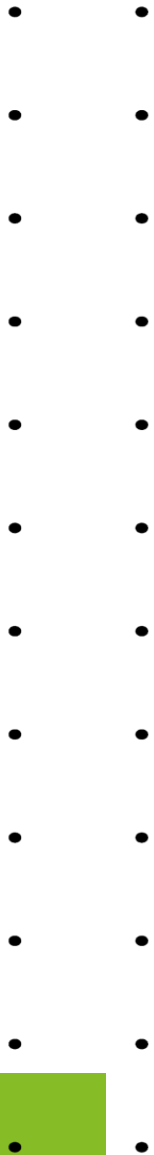
Internationally, the leakage of the Panama Papers on 03 April 2016, detailed how a staggering 214 488 offshore shell companies may have been used for amongst others tax evasion, fraud and other irregularities. Locally, the alleged offshore accounts belonging to accused persons in Namibia's biggest fraud and corruption scandal (Fishrot) allegedly containing millions derived from alleged illegal activities demonstrates the ever-increasing scale of the money laundering problem not only in Namibia but internationally.

Money Laundering (ML) is not figment of imagination of Regulators, it is real problem in Namibia. It is therefore not surprising that tackling the ML is a priority of Regulators and Law enforcement in Namibia. The Financial Intelligence Act was promulgated with one key objective, the proactive prevention, detection and monitoring of Money Laundering Activities.



# 1. OVERVIEW

This FIA Update session will amongst others, examine FIA as the primary Anti-Money Laundering Legislation in Namibia, the role of the Financial Action Task Force, Application criteria of FIA, How to implement Customer Due Diligence (CDD); Enhanced CDD, Know Your Customer requirements, Obligations of Accountable/Reporting Institutions; how to report suspected money laundering, terrorist financing, and the sanctions and penalties that can be imposed for money laundering. Recent FIA Directives, Circulars and Notices; How to develop your Compliance Risk Management Plan.



# 1. OVERVIEW – How Much Is Laundered?

According to the London Stock Exchange's **Chartered Institute of Securities and Investments (CISI)**

The clandestine nature of money laundering makes it difficult to produce an accurate estimate of the total amount of money being laundered each year. Estimates suggest that in excess of a staggering US \$1 trillion per year is being laundered by financial criminals, drug dealers and arms traffickers worldwide.

This figure is broadly in line with United Nations Office on Drugs and Crime (UNODC) with estimates suggesting that between US \$800 billion and USD2 trillion is laundered globally each year. In the UK alone, the National Crime Agency (NCA) estimates the scale of the problem to be in the hundreds of billions of pounds annually.





# 1. OVERVIEW – How Much Is Laundered?

Increasingly, AML provisions are being seen as the front line against drug dealing, organised crime and the financing of terrorism. Much police activity is directed towards making the disposal of criminal assets more difficult and monitoring the movement of money.



# 1. WHAT IS MONEY LAUNDERING?

Money laundering (ML) is the process of turning dirty money (money derived from criminal activities) into money which appears to be from legitimate origins. Dirty money is difficult to invest or spend, and carries the risk of being used as evidence of the initial crime. Laundered money can more easily be invested and spent without risk of incrimination.



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## 2. THREE STAGES OF A ML OPERATION

### Stage 1

Placement – introduction of the money into the financial system; typically, this involves placing the criminally derived cash into a bank or building society account, a bureau de change or any other type of enterprise which can accept cash, such as a casino.

### Stage 2

Layering – involves moving the money around in order to make it difficult for the authorities to link the placed funds with the ultimate beneficiary of the money. This may involve buying and selling international currencies, shares or bonds in rapid succession; investing in CISs; insurance-based investment products, as well as high-value physical items such as cars or jewellery; or moving the money from one country to another.



## 2. THREE STAGES OF A ML OPERATION

### Stage 3

Integration – at this final stage, the layering has been successful and the ultimate beneficiary appears to be holding legitimate funds and/or assets (clean money rather than dirty money). The money is regarded as integrated into the legitimate financial system.



### 3. ROLE OF FINANCIAL ACTION TASK FORCE

Most countries including Namibia have implemented Anti-Money laundering legislation. In the majority of cases, this has been developed following the standards established by the 40 Recommendations produced by the **Financial Action Task Force** (FATF), an inter-governmental body established in Paris in 1989.

The FATF Recommendations set out a comprehensive and consistent framework of measures which countries such as Namibia should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction.



### 3. ROLE OF FINANCIAL ACTION TASK FORCE



Following a review and updates, FATF Recommendations were reissued in February 2012. As part of this review, the nine recommendations on terrorist financing were integrated into the revised set of 40 Recommendations

#### **The key aspects of the revised FATF Recommendations are:**

- Global recognition of the risk-based approach to AML and terrorist finance.
- Further focus on ultimate beneficial ownership of companies and other entities.
- Inclusion of compliance with international sanctions and counter-proliferation measures as global standards.



### 3. ROLE OF FINANCIAL ACTION TASK FORCE

- Revised definition of PEPs (Politically-exposed Persons) to include domestic PEPs (the previous definition only included foreign PEPs\*).
- Inclusion of tax crimes as predicate offences of money laundering.
- Prevention of abuse of non-profit organisations

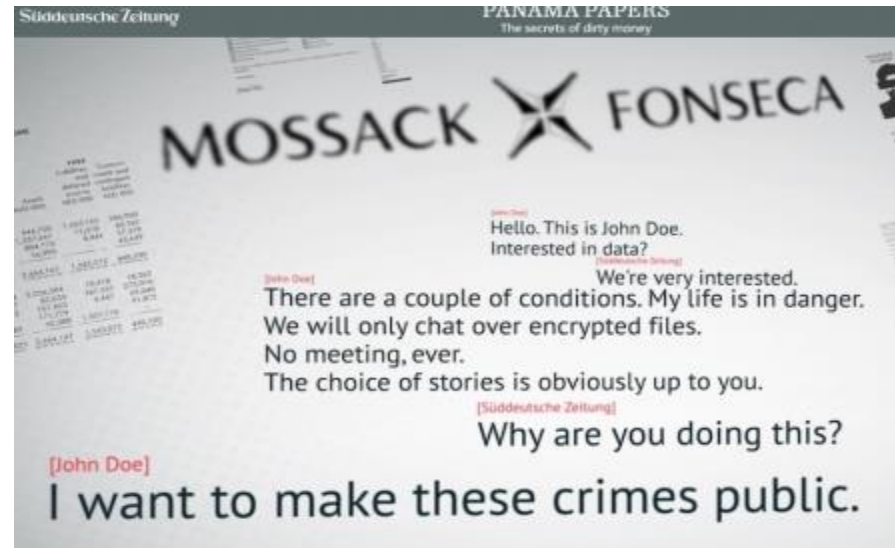
The aforementioned recommendations culminated into the repeal of the whole FIA No 3 of 2007 by the FIA No 13 of 2012.

Some FATF recommendations have been implemented through Directives, Circulars issued in terms of the FIA by the Financial Intelligence Centre (FIC)



# 4. FIA IN A NUTSHELL

Internationally why was the Panama-based Law firm Mossack Fonseca used to create 214 488 offshore entities? Nationally, why do you think did some Fishrot accused persons receive alleged corruption tainted millions in offshore accounts?





# 4. FIA IN A NUTSHELL

The proceeds of frauds, bribery, corruption and insider dealing often involve the use and abuse of private limited companies and trusts set up in jurisdictions well away from the scenes of these crimes.

In this way, fraudulent officials and criminals seek to **distance** the criminality from which they wish to avoid detection by arrangements designed to disguise the true ownership of those vehicles.

In a nutshell, FIA and international Anti-Money Laundering Laws are aimed at identifying personal customers and the ultimate beneficial ownership of corporate customers, monitoring transactions, keeping good records and reporting suspicions to the authorities



# 5. Financial Intelligence Act No 13 of 2012

The **Preamble** of the Financial Intelligence Act No 13 of 2012 describes the objectives/rationale of the Act amongst others as to

*'to provide for the combating of money laundering and financing of terrorism activities; to provide for the establishment of the Anti-Money Laundering and Combating of the Financing of Terrorism Council, and for its functions; to provide for the registration of accountable and reporting institutions'*



# 5. Financial Intelligence Act No 13 of 2012

Based on the above, we can therefore draw an inference that the primary objective of the FIA is to combat (Money Laundering) ML and FT (Financing of Terrorism).

I recommend that you always associate FIA with global Anti-Money Laundering/Terrorism Financing initiatives that became the new normal after the 11 September 2001 Attacks in the USA.

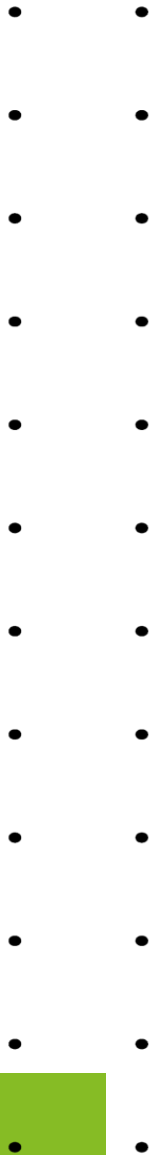
A good understanding of AML regulations, will greatly enhance your understanding and review of FIA.



# 5. Financial Intelligence Act No 13 of 2012

## FIA Comprises of –

- Financial Intelligence Act No 13 of 2012
- Financial Intelligence Act Regulations
- Directives
- Notices
- Circulars



# 5. Financial Intelligence Act No 13 of 2012

## Comply or Else Statutory Regime

Namibia following FATF recommendations has chosen to codify a significant part of FIA compliance obligations. This statutory regime is known as '**comply or else**'. In other words, there are legal sanctions for non-compliance – **Imprisonment** or **monetary fines** or both.

There is an important argument against the 'comply or else' regime: a 'one size fits all' approach cannot logically be suitable because the types of business carried out by companies vary to such a large degree.

The cost of compliance is burdensome, measured both in terms of time and direct cost. (NamCode Page 2)



## 6. FIA Application Criteria

FIA provisions apply to a wide range of organisations, in the financial services community, including authorised firms, estate agents, bureaux de change, consumer credit institutions, law firms, casino operators, accountants, high-end auctioneers and insolvency practitioners.

**Section 2(1)** of FIA defines and identifies the "*Accountable and Reporting institutions*" as Regulated Entities (RE) that are subject to the Act by stating that - *This Act applies to all accountable and reporting institutions set out in Schedule 1 and Schedule 3, respectively.*



# 6. FIA APPLICATION CRITERIA

## Accountable Institutions

Schedule 1 identifies **16 institutions/persons** as Accountable Institutions these includes –

*(1) A person in his or her capacity as either a legal practitioner as defined in the Legal Practitioners Act, 1995 (Act No.15 of 1995) and who is in private practice, or an estate agent as defined in the Estate Agents Act, 1976 (Act No. 112 of 1976), or an Accountant or Auditor, or in any other capacity, who accepts instructions from a client to prepare for or carry out a transaction for the client in respect of one or more of the following activities: (a) Buying and selling of real estate for cash or otherwise; (b) Managing of client money, securities, bank or securities accounts or other assets; (c) Facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements;*



# 5. FIA APPLICATION CRITERIA

## Accountable Institutions - Continued

*(d) Creation, operation or management of legal persons or legal and commercial arrangements; (e) Buying and selling of business entities, or parts thereof; and (f) Buying and selling of legal rights.*

*(2) Any other person or entity that, as part of their normal business activities, buys and/or sells real estate for cash;*

*(3) Trust and Company Service Providers when they prepare for and carry out transactions for their client in relation to the following activities;*





# 5. FIA APPLICATION CRITERIA

## Accountable Institutions - Continued

(4) A person or institution that carries on “banking business” or who is “receiving funds from the public”

(5) A person that carries on the business of a casino;

(14) Any person or entity regulated by the Namibia Financial Institutions Supervisory Authority (NAMFISA)



# 5. FIA APPLICATION CRITERIA

## Supervisory and Regulatory Bodies

**Section 3(1)** of FIA identifies the Supervisory and Regulatory bodies to whom the Act applies by stating that - *This Act applies to all supervisory bodies set out in Schedule 2, but applies only to the regulatory bodies set out in Schedule 4 to a limited extent, and does not impose the same obligations to the regulatory bodies as it impose to the supervisory bodies.*

Schedule 2 identifies NAMFISA as an example of Supervisory Bodies to which the Act applies.



# 5. FIA APPLICATION CRITERIA

## Reporting Institutions

Reporting Institutions are identified in Schedule 3 as including

1. A person or institution that carries on the business of a motor vehicle dealership.
2. A person that carries on the business of second hand goods.
3. A person that carries on the business of a gambling house, a totalisator or bookmaker.
4. A person or entity that carries on the business of trading in jewellery, antiques or art.
5. Any person or entity regulated by the Namibia Financial Institutions Supervisory Authority (NAMFISA) who conducts as a business one or more of the following activities

-(a) Short term insurer.



# 5. FIA APPLICATION CRITERIA

## Regulatory Bodies

Regulatory Bodies are identified in Schedule 4 as including 1. The Bank of Namibia as defined in the Bank of Namibia Act, 1997 (Act No. 15 of 1997) to the extent that the Bank exercises its powers and fulfils its regulatory functions under the Banking Institutions Act, 1998. The Law Society established in terms of the Legal Practitioners Act, 1995 (Act No. 15 of 1995). 3. The Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act No. 112 of 1976). 4. The Public Accountants' and Auditors' Board established in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951). 5. The Namibia Stock Exchange established in terms of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985). 6. The Casino Board established by the Casinos and Gambling Houses Act, 1994 (Act No. 32 of 1994)

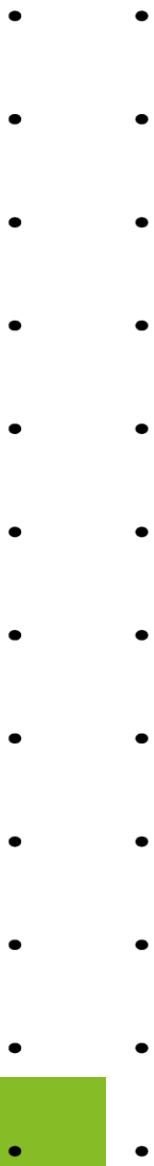


# 7. CUSTOMER DUE DILIGENCE

Customer due diligence (CDD) forms the backbone of many efforts to combat Money laundering and other financial crime by Regulated Entities (RE). FIA provides a comprehensive regime of CDD that RE are obliged to comply with.

FIA amongst others, prohibits Regulated Entities from keeping anonymous accounts) or accounts in fictitious names (**s21(4)**).

Regulated entities are also required to undertake customer due diligence (CDD) measures when:



# 7. CUSTOMER DUE DILIGENCE

- 1 Commencing business relations (**s21**) or continuing business relationships (**s22**)
- 2. carrying out cash transactions:
  - above the applicable designated threshold of N\$99 999 for RE except Casinos - (Reg 23(1) or
  - above the applicable designated threshold of N\$24 999 for Casinos - (Reg 23(2)
- 3. there is a suspicion of money laundering or terrorist financing (s21(1)d) or
- 4. the RE has doubts about the veracity or adequacy of previously obtained customer identification data.



# 7. CUSTOMER DUE DILIGENCE

## Risk of Non- Compliance

RE in the form of accountable or reporting institution which contravenes or fails to comply with Section 21 commits an offence and is liable to a fine not exceeding N\$100 million representative of the accountable or reporting institution, to such fine or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment – **S21(5)**



# 7. CDD COMPLIANCE OBLIGATIONS

A RE is required to establish a systematic procedure for identifying and verifying its customers and, where applicable, any person acting on their behalf and any beneficial owner(s). Generally, a RE should not establish any relationship, or carry out any transactions, until the identity of the customer has been satisfactorily established and verified in accordance with **Section 21; 22** and **Reg 4;5**.

To be consistent with the FIA requirements, the procedures adopted by the RE should include the taking of reasonable measures to verify the identity of the beneficial owner of corporate and trust clients (**s21(3)**). When dealing with a representative of the customer it is important that the institution should verify that any person acting on behalf of the customer is so authorised, and should also verify the identity of that person (**s21(2)**).





# 8. CDD COMPLIANCE OBLIGATIONS

## Customer Identity Requirements

The identity of customers, beneficial owners and persons acting on their behalf, should be verified by using reliable, independent source documents, data or information. When relying on documents, an RE should be aware that the best documents for the verification of identity are those documents that are most difficult to obtain illicitly or to counterfeit such as passports and driving licences.

When relying on sources other than such documents, the FI must ensure that the methods (which may include checking references with other RE and obtaining financial statements) and sources of information are appropriate, and in accordance with the RE's policies and procedures and risk profile of the customer.



# 9. HOW DO ASCERTAIN IDENTITIES?

## Natural Persons -

**Reg 6(1)** For the purpose of compliance with these regulations and the Act, where an accountable or reporting institution seeks to ascertain the identity of a natural person, such accountable or reporting institution must obtain the following in relation to such person -

(a) full name;

(b) previous names, if any;

(c) nationality;

(d) if the person is a citizen or resident of Namibia, one of the following, listed in the

order of preference -

(i) national identity number;

(ii) passport number; or

(iii) date of birth, in case of a minor; or



# 9. HOW DO ASCERTAIN IDENTITIES?

## Companies and Close Corporations

**FIA Reg 7(2)** - Where an accountable or reporting institution seeks to ascertain the identity of a Namibian or foreign company or close corporation wishing to enter into a business relationship or a single transaction above the determined threshold amount with an accountable or reporting institution, it must ascertain -

(a) its registered name;

(b) the name under which it conducts business in the country in which it is incorporated;



# 9. HOW DO ASCERTAIN IDENTITIES?

## Companies and Close Corporations Continued

if the company or close corporation is incorporated outside Namibia and conducts business in Namibia using a name other than the name specified under paragraph (a) or (b), the name used in Namibia;

(d) its registration number;

(e) the registered address from which it operates in the country where it is incorporated

or if it operates from multiple addresses in that country the address of its principal place of business or registered office;

(g) ownership and control structure.



# 9. HOW DO ASCERTAIN IDENTITIES?

## Associations and Other Entities

An accountable or reporting institution must ascertain in respect of an entity such as an association, a government department, a representative office of a government, a nongovernmental organisation, an international organisation, an intergovernmental organisation as well as a legal person other than a Namibian or foreign company or close corporation -

- (a) the registered name of the entity, if so registered;
- (b) the office or place of business, if any, from which it operates;



# 9. HOW DO ASCERTAIN IDENTITIES?

## Associations and Other Entities Continues

the registration number, if any;

(d) its principal activities;

(e) the full name and one of the following, listed in the order of preference:

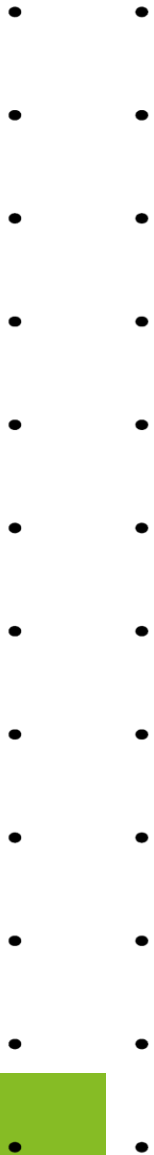
(i) the national identity number;

(ii) the national social security number;

(ii) the passport number; or

(iii) date of birth,

of the natural person purporting to be authorised to establish a business relationship or to enter into a single transaction above the determined threshold amount with the



# 9. HOW DO ASCERTAIN IDENTITIES?

## Associations and Other Entities Continues

of the natural person purporting to be authorised to establish a business relationship or to enter into a single transaction above the determined threshold amount with the accountable or reporting institution on behalf of the entity and of each beneficial owner; and

(f) the authority of each natural person purporting to be authorised to establish a business relationship or to enter into a single transaction above the determined threshold amount with the accountable or reporting institution on behalf of the entity



# 9. HOW DO ASCERTAIN IDENTITIES?

## Partnerships Continues

**FIA Reg 9** - An accountable or reporting institution must ascertain in respect of a partnership -

- (a) its name or where applicable its registered name;
- (b) its office or place of business, if any, or where applicable, its registered address;
- (c) where applicable, its registration number; and
- (d) the full name and one of the following, listed in the order of preference:
  - (i) the national identity number;
  - (ii) the passport number; or





# 9. HOW DO ASCERTAIN IDENTITIES?

## Partnerships Continues

(iii) date of birth,

of each partner, including silent partners and partners en commandite, beneficial owner and any other natural person who purports to be authorised to establish a business relationship or to enter into a single transaction above the determined threshold amount with the accountable or reporting institution on behalf of the partnership; and

(e) the authority of each natural person purporting to be authorised to establish a business relationship or to enter into a single transaction above the determined threshold amount with the accountable or reporting institution on behalf of the partnership.



# 9. HOW DO ASCERTAIN IDENTITIES?

## Trusts

**FIA Reg 10** - sets the criteria Ascertainment of information concerning trusts

10(1) An accountable or reporting institution must ascertain in respect of a trust -

(a) its full name or where applicable its registered name;

(b) the registration number, if any;

(c) the country where it was set up if the trust was set up in a country other than Namibia;

(d) the management company of the trust, if any;



# 9. HOW DO ASCERTAIN IDENTITIES?

## Trusts continues

(g) the full name and one of the following, listed in the order of preference -

(i) national identity number;

(ii) passport number; or

(iii) date of birth;

of -

(aa) each trustee of the trust;

(bb) each beneficiary of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created;

(cc) the founder of the trust;

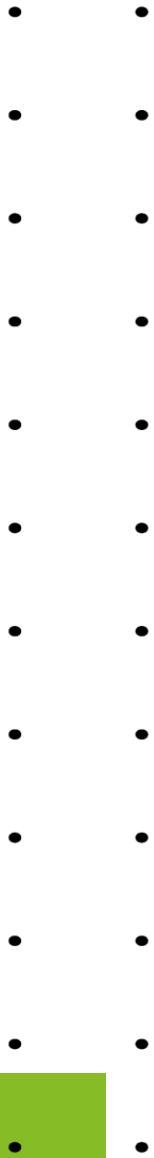
(dd) each beneficial owner of the trust; and

(ff) any class of beneficiaries



# 9. CDD OUTCOMES

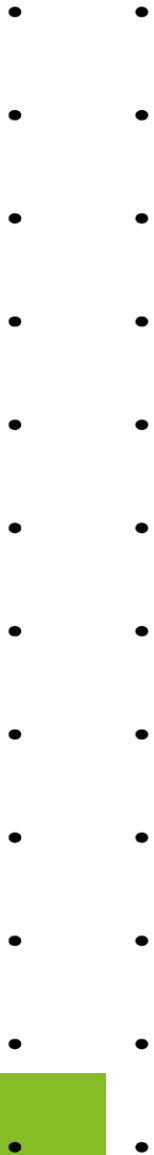
Using CDD information, an RE should be able to identify transactions that do not appear to make **economic sense**, that involve large cash deposits or that are **not consistent** with the customer's normal and expected transactions.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

Know your customer (KYC) is part of CDD required in terms of Section 24 and is a process by which Accountable Institutions (AIs) obtain information about the identity and activities of customers. This process helps to ensure that AI's services are not misused.

The KYC procedure must be completed by the AIs while opening accounts and should also periodically update the same. KYC involves verification of identity and residence.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Risk Management

The adoption of effective KYC standards is an essential part of any AI's risk management practices. AIs with inadequate KYC risk management programmes may be subject to significant risks, including legal and reputational risk.

Sound KYC policies and procedures not only contribute to a AI's overall safety and soundness; they also protect the integrity of the Namibian financial system by reducing the likelihood of AIs becoming vehicles for money laundering, terrorist financing and other unlawful activities. Recent initiatives to reinforce actions against terrorism in particular have underlined the importance of firms' ability to monitor their customers wherever they conduct business.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## KYC Requirements

In terms of **s24(1)(a)**, a AI must conduct ongoing exercise on-going due diligence in respect of all its business relationships, which at minimum includes

(a) current and up to date info records relating to clients

(b) monitoring the transactions carried out by the client in order to ensure that such transactions are consistent with the accountable or reporting institution's knowledge of the client, the client's commercial or personal activities and risk profile;

(c) ensuring the obligations relating to high risk clients, as prescribed in section 23, and correspondent banking relationships are fulfilled



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## KYC Requirements Continued

**S24(2)(a)** AI must pay special attention to all complex, unusual large transactions and all unusual patterns of transactions

(b) at the direction of the Minister, pay special attention to business relations and transactions with persons, including legal persons and trusts, from or in countries that do not or insufficiently apply the relevant international standards to combat money laundering and the financing of terrorism





# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## KYC Requirements Continued

(c) examine as far as possible the background and purpose of transactions under paragraphs (a) and (b)

(d) keep the findings made in terms of paragraph (c) available for competent authorities and company auditors for at least five years, or longer if specifically so requested by a competent authority



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## KYC Outcomes

KYC is primary tool to establish the identity of the client. This covers identifying the customer and verifying their identity by using reliable, independent source documents, data and information. For individuals, firms should obtain data to verify the identity of the customer, their address/ location and also a recent photograph. This should also be done for the joint holders and mandate holders.

For non-individuals, RE will obtain identification data to verify: the legal status of the entity; identity of the authorised signatories; and identity of the beneficial owners/controllers of the account.

KYC process must ensure that sufficient information is obtained on the nature of employment/business that the customer does/expects to undertake and the purpose of the account opening.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Enhanced Customer Due Diligence

The essential outcomes of the system of ongoing monitoring in terms of s24 are that RE:

- flags up transactions and/or activities for further examination
- reports are reviewed promptly by the right person(s) and
- appropriate action is taken on the findings of any further examination.

Monitoring can be either:

- in real time, in that transactions and/or activities can be reviewed as they take place or are about to take place or
- after the event, through some independent review of the transactions and/or activities that a customer has undertaken.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Enhanced Customer Due Diligence

In either case, unusual transactions or activities will be flagged for further examination. Monitoring may be by reference to specific types of transactions, to the profile of the customer, or by comparing their activity or profile with that of a similar, peer group of customers, or through a combination of these approaches.

Effective and real time monitoring is primarily systems based on a considered identification of transaction characteristics, such as:



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Enhanced Customer Due Diligence

the unusual nature of a transaction – eg, abnormal size or frequency for that customer or peer group

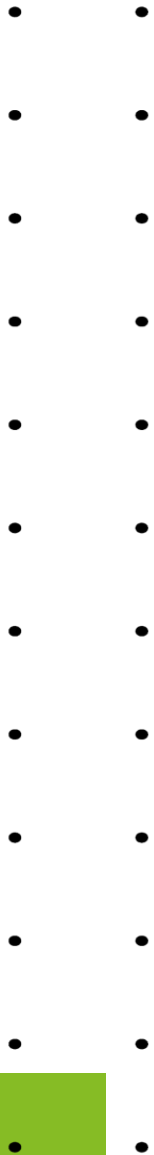
- the early surrender of an insurance policy
- the nature of a series of transactions – eg, a number of cash credits
- the geographic destination or origin of a payment – eg, to or from a high-risk country and
- the parties concerned – eg, a request to make a payment to or from a person on a sanctions list.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Enhanced Customer Due Diligence

Under **Reg 15**, AIs must conduct ongoing monitoring of the business relationships with their customers. This is a separate and independent, but related, obligation from the requirement to apply CDD measures.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Enhanced Customer Due Diligence

**Reg 15(2)** An accountable institution must take reasonable steps, taking into account any **guidance notes, circulars, notices, determinations or directives** which may apply to such institution, in respect of an existing business relationship and which compels such accountable institution to maintain correct, up-to-date and relevant information in respect of particulars which are susceptible to change by undertaking continuous reviews of existing records, particularly for higher risk categories of customers.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Enhanced Customer Due Diligence Outcomes

AIs need to carry out CDD, and monitoring, for two broad reasons:

1. to help the firm, at the time due diligence is carried out, to be reasonably satisfied that customers are who they say they are, to know whether they are acting on behalf of another, and that there is no legal barrier (eg, sanctions) to providing them with the product or service requested and
2. to enable the firm to assist law enforcement, by providing available information on customers or activities being investigated.

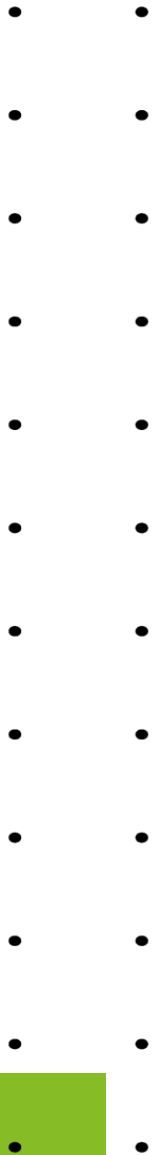




# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face CCD

Account opening using a non-face-to-face approach refers to a situation where the customer is not interviewed and the signing of account opening documentation and sighting of identity documents of the customer is not conducted in the presence of an employee of a regulated entity, eg, where the account is opened via the internet or by post or telephone.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face CCD

The FIA prescribe three specific types of relationship in respect of which EDD measures must be applied. These are:

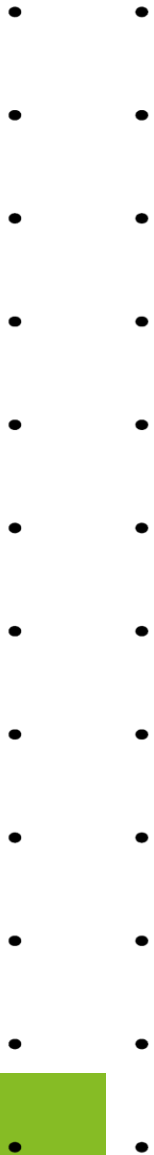
1. where the customer has not been physically present for identification purposes (non-face-to-face) – **Reg 14**
2. in respect of a correspondent banking relationship and
3. in respect of a business relationship or occasional transaction with a PEP.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face CCD

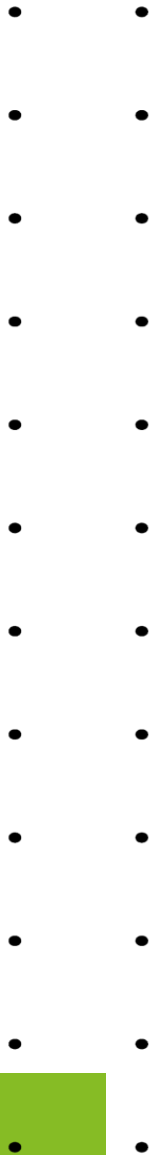
The extent of verification in respect of non-face-to-face customers basically depends on the nature and characteristics of the product or service requested and the assessed money laundering risk presented by the customer. A firm should take account of such cases in developing their systems and procedures.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face CCD

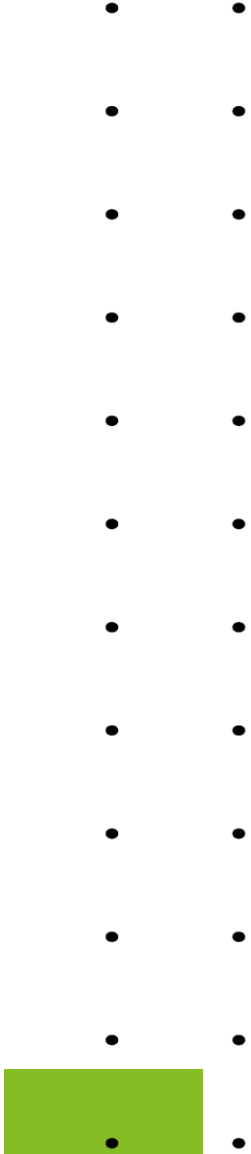
If a customer approaches a firm remotely (by post, telephone or over the internet), the firm should carry out non face-to-face verification, either electronically, or by reference to documents. The organisation should consider taking additional measures that include assessing the possibility that the customer is deliberately avoiding face-to-face contact. It is therefore important to be clear on the appropriate approach in these circumstances.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face Identification Procedures

Non face-to-face identification and verification carries an inherent risk of impersonation fraud, and firms should apply additional verification checks to manage the risk of impersonation fraud. The additional check may consist of robust anti-fraud checks that the RE routinely undertakes as part of its existing procedures, or may include:



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face Identification Procedures

- requiring the first payment to be carried out through an account in the customer's name with a Namibian regulated credit institution or one from an equivalent jurisdiction
- verifying additional aspects of the customer's identity, or of their electronic footprint
- telephone contact with the customer prior to opening the account on a home or business number which has been verified (electronically or otherwise), or a welcome call to the customer before transactions are permitted, using it to verify additional aspects of personal identity information that have been previously provided during the setting up of the account



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face Identification Procedures

- requiring the first payment to be carried out through an account in the customer's name with a Namibian regulated credit institution or one from an equivalent jurisdiction
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# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Non Face to Face Identification Procedures

- communicating with the customer at an address that has been verified (such communication may take the form of a direct mailing of account opening documentation to him, which, in full or in part, may be required to be returned completed or acknowledged without alteration)
- internet sign-on following verification procedures where the customer uses security codes, tokens, and/or other passwords which have been set up during account opening and provided by mail (or secure delivery) to the named individual at an independently verified address
- other card or account activation procedures and
- requiring copy documents to be certified by an appropriate person.



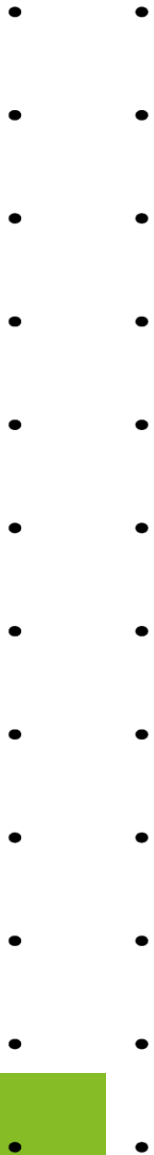


# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Correspondent Banking

**Section 1(1)(d)** of FIA defines correspondent banking as:

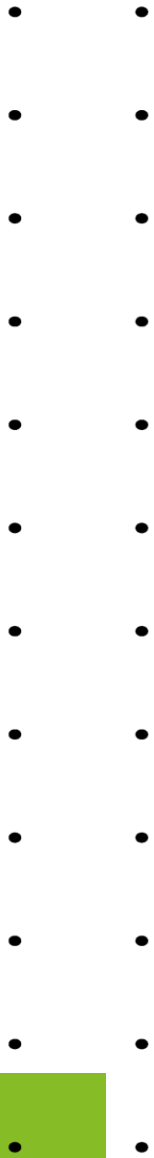
“correspondent banking” means the provision of banking, payment and other services by one bank “the correspondent bank” to another bank “the respondent bank” to enable the latter to provide services and products to its clients;



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Correspondent Banking

Correspondent banking relationships are vulnerable to money laundering and terrorist financing because they involve a bank carrying out transactions on behalf of another bank's customers where information on those customers is very limited. **S25** provide that all cross border correspondent banking relationships with respondents must be subject to an enhanced CDD and ongoing monitoring which should as a minimum meets the requirements that are laid down in FIA and Regulations.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Correspondent Banking

FIA regards 'correspondent banks' as 'high risk' and in S25 obliges that AI should be required, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal customer due diligence measures, to:

- ❑ gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Correspondent Banking

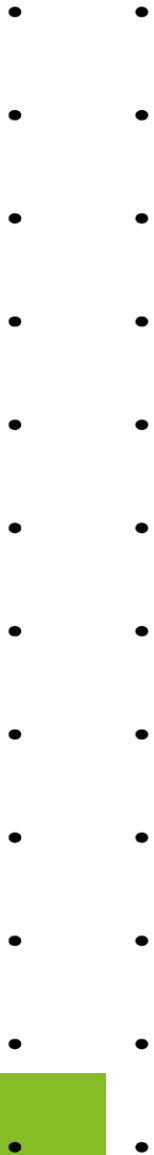
- ❑ assess the respondent institution's AML/CFT controls
- ❑ obtain approval from senior management before establishing new correspondent relationships
- ❑ clearly understand the respective responsibilities of each institution and
- ❑ with respect to payable-through accounts, be satisfied that the respondent bank has conducted CDD on the customers having direct access to accounts of the correspondent bank, and that it is able to provide relevant CDD information upon request to the correspondent bank.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Correspondent Banking Risks

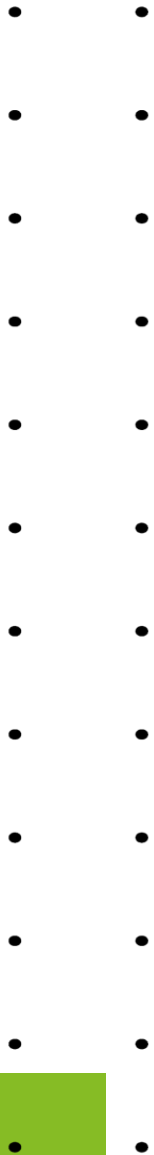
Geographic risks – correspondent banking activity deals with transactions all around the globe, therefore, transactions may originate from, terminate in or pass through high-risk jurisdictions. In some cases multiple high-risk jurisdictions may be involved. Some jurisdictions have inadequate AML standards, insufficient regulatory supervision, greater risk for crime, corruption, drug trafficking or terrorist financing. There is also a potential risk of inadvertently dealing with a shell bank. Transactions with shell banks and anonymous accounts beneficiaries are prohibited under FIA and global AML laws.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Correspondent Banking

Risks are also posed by payable-through accounts; as foreign correspondent banking transactions can potentially facilitate and be conduits for financing or laundering the proceeds of different international crimes including terrorist financing, drug trafficking and other underlying offences. Similarly there is potentially a risk of sanctions violations in correspondent banking relationships with banks located in irresponsible countries that do not honour sanctions.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Correspondent Banking

A correspondent bank's risk profile should, therefore, be developed that is based on the location, ownership, management structure, customer base, AML policies and strength of the AML enforcement systems. The challenges of identification of the bank's customers and a full picture of transactions needs to be dealt with when dealing with a respondent.

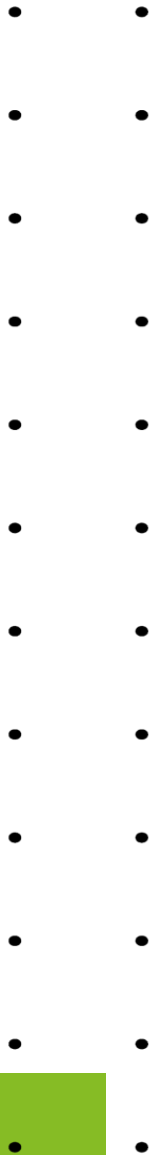
Transactions involving high-risk corridors (from one or more high-risk countries to another high-risk country) need to be examined very carefully. For example, transactions originating from countries with high corruption indices to tax havens or transactions from a drug consumption jurisdiction to drug production jurisdiction are high risk and must be monitored for suspicious activity.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Politically Exposed Persons (PEPs)

Individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk to firms as their position may make them vulnerable to corruption. This risk also extends to members of their immediate families and to their known close associates. PEP status itself does not incriminate individuals or entities. It does, however, put the customer, or the beneficial owner, into a higher risk category.





# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Politically Exposed Persons (PEPs)

FIA Directive No 2 of 2020 requires RE to have appropriate risk-based procedures to determine whether a customer is a PEP; obtain appropriate senior management approval for establishing a business relationship with such a customer; take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction; and conduct enhanced ongoing monitoring of the business relationship.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Politically Exposed Persons (PEPs)

RE should, in any case, take adequate and meaningful measures to establish the source of funds and source of wealth. Firms should note that not all declarations are publicly available and that a PEP customer may have legitimate reasons for not providing a copy.

If RE need to carry out specific checks, they may be able to rely on an internet search engine, or consult relevant reports and databases on corruption risk published by specialised organisations such as the Transparency International Corruption Perceptions Index/UNSC lists. If there is a need to conduct more thorough checks, or if there is a high likelihood of a firm having PEPs for customers, subscription to a specialist PEP database may be an adequate risk mitigation tool.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## FIA Directives on Dealing with PEPs

FIC Directives recommend, Additional Measures for Specific Customers and Activities with respect to PEPs requires that FIs should, in relation to foreign PEPs (whether as customer or as beneficial owners), in addition to performing normal CDD measures take further steps such as:

a. have appropriate risk-management systems to determine whether the customer or the beneficial owner is a PEP

b. obtain senior management approval for establishing (or continuing, for existing customers) such

business relationships

c. take reasonable measures to establish the source of wealth and source of funds and

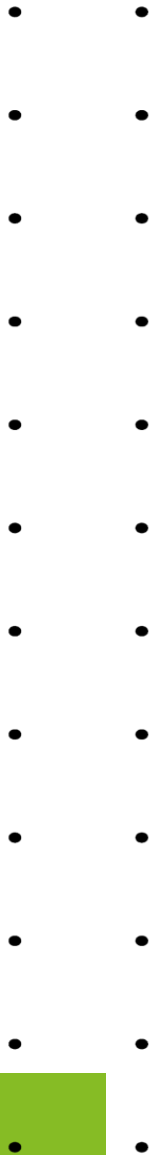
d. conduct enhanced ongoing monitoring of the business relationship.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## FIA Directives on Dealing with PEPs

Financial institutions should also take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation. In cases of a higher risk business relationship with such persons, RE should be required to apply the measures referred to in the FIA Directive



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Outsourcing CDD and KYC

The obligation to keep records can be delegated to third party in terms of **29 of FIA**, which provides as follows:

“(1) The duties imposed by section 26 on an accountable or reporting institution to keep record of the matters specified in that section may be performed by a third party on behalf of the accountable or reporting institution as long as the accountable or reporting institution has unrestricted access to the records.



# 10. FIA – KNOW YOUR CUSTOMER (KYC)

## Outsourcing CDD and KYC

If a third party referred to in subsection (1) fails to properly comply with the requirements of section 26 on behalf of the accountable or reporting institution concerned, the accountable or reporting institution is liable for that failure”

Section 29 expressly permits a RE to rely on another person to apply any or all of the s26 record keeping obligations. The relying firm, however, retains responsibility for any failure to comply with a s26 requirements, as this responsibility cannot be delegated.



# 11. Obligations of Accountable/Reporting Institutions

**S39** imposes a number of compliance obligations on Accountable and Reporting Institutions

- ❑ An accountable institution, on a regular basis, must conduct money laundering and financing of terrorism activities risk assessments - **39(1)**
- ❑ Accountable and reporting institutions not supervised or regulated by a supervisory body or regulatory body must register their prescribed particulars with the Centre - **S39(2)**



# 11. Obligations of Accountable/Reporting Institutions

In addition hereto:

- ❑ Accountable and reporting institutions must develop, adopt and implement a customer acceptance policy, internal rules, programmes, policies, procedures and controls to mitigate risks of money laundering/terrorism financing – **S39(3)**
  
- ❑ The customer acceptance policy, internal rules, programmes, policies, procedures must be approved by directors, partners, or senior management of accountable or reporting institution and must be consistent with national requirements and guidance – **S39(4)**





# 11. Obligations of Accountable/Reporting Institutions

The Programmes **S39(5)** to mitigate risks of money laundering/terrorism financing may include

- Procedures to ensure high ethical standards and perform background checks on employees;
- on-going employee training programmes, such as “Know Your Customer”
- Independent Audit function
- policies and procedures to prevent the misuse of technological developments
- policies and procedures to address the specific risks associated with non-face-to-clients or transactions



# 11. Obligations of Accountable/Reporting Institutions

Accountable and reporting institutions must designate compliance officers at management level, where applicable, who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions. – **S39(6)**

Accountable and reporting institutions must develop internal rules that include

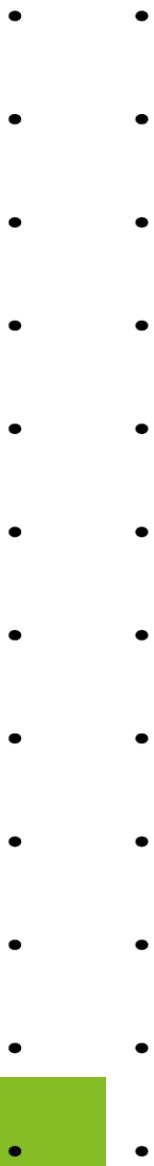
- establishment and verification of the identity of persons
- the information of which record must be kept
- identification of reportable transactions
- the training of employees of the institution to recognise and handle suspected money laundering and financing of terrorism activities



# 11. Obligations of Accountable/Reporting Institutions

## Risk of Non Compliance

Any accountable or reporting institution that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or fine or imprisonment for a period not exceeding 30 years, or to both – **S39(12)**



## 12. Reporting Procedures

A report required to be made in terms of this Act must be made in the **prescribed manner – S40(1)**

You must therefore be familiar with the FIA Regulations specifically

- Annexure 1 *Suspicious Transaction Report*
- Annexure 2 *Suspicious Activity Report*
- Annexure 3 *Application for granting of Monitoring Order*
- Annexure 4 *Declaration of cross border movement of cash and bearer negotiable instruments*
- Annexure 5 *Acknowledgement of declaration*
- Annexure 6 *Large cash transaction report*
- Annexure 7 *Electronic transfer of money report*

# 12. Recent FIA Directives, Circulars and Notices

## Directives

- ❑ Directive **No 02 of 2020** – Politically Exposed Persons – 30 April 2020
  
- ❑ Directive **No 04 of 2020** - The Directive has a twofold purpose namely: to enable effective FIA compliance by the Non Profit Organisations (NPO) sector; and enabling FIC to conduct effective FIA supervision over the NPO sector. As NPOs commence taking measures to comply with the FIA, the first point of departure in building an effective FIA compliance framework, is to register the NPO with the FIC. The FIC therefore calls on such NPOs to register their particulars with the FIC on or before Friday, 29 January 2021 and implement relevant controls to ensure effective compliance with the FIA.



# 12. Recent FIA Directives, Circulars and Notices

## Directives

- ❑ Directive No **03 of 2020** - As of 08 September 2020, all institutions applying for registration are expected to submit a copy of their AML/CFT/CPF Compliance Programme, which has been duly approved by relevant management, as per sections 39(3) and (4) of the FIA. An AML/CFT/CPF Compliance Programme is a document that outlines how institutions comply with relevant provisions of the FIA;
- ❑ Directive No **02 of 2021** – Compliance Requirements for Virtual Asset Service providers (VASPs). VASPs are expected, in terms of sections 39(3), read with sections 39(4), 39(5) and 39(7) of the FIA, to develop programmes, policies, procedures and controls to effectively mitigate and manage ML/TF/PF risks. These programmes, policies, procedures and controls should be aimed at outlining how the VASP will comply with its obligations as mandated in the FIA.



# 12. Recent FIA Directives, Circulars and Notices



## Circulars

Circular No. **03 of 2020** - Additional obligations for Accountable Institutions (AIs) and Reporting Institutions (RIs) to report Suspicious Transactions (STRs)

Circular No **01 of 2021** – Formal Release of the National Money laundering/Terrorism Financing/ Proliferation Financing Risk Assessment Report – 14 September 2021

## Public Notice

Call on all Customs, Clearing and Forwarding Agents to comply with the Financial Intelligence Act, 2012 – 15 October 2020



## 12. Final Remarks

### Generally Accepted Compliance Practise Standard - CISA

#### Develop your Compliance Framework

The following phases form an integral part of the compliance process:

#### **Phase I:** Compliance risk identification

The compliance function assists management in identifying the compliance obligations that apply to the business.

All the compliance obligations that have been identified together form the regulatory universe of the Church.

The compliance function assists management in analysing the compliance obligations.

#### **Phase II:** Compliance risk assessment

The compliance function assists management to prioritise the compliance obligations by rating each according to their risk.





## 12. Final Remarks

### Develop your Compliance Framework

#### **Phase III:** Compliance risk management

The compliance function assists management to develop control measures that will ensure compliance and facilitate the implementation thereof.

#### **Phase IV:** Compliance risk monitoring

The compliance function monitors the controls that have been implemented to determine the level of compliance and whether the controls are effective.



## 12. Final Remarks

Accountable/Reporting Institutions should develop Compliance Risk Management Plans (CRMPs) to ensure compliance with all pertinent regulatory requirements as recommended by **S39, NamCode, King IV**

CRMP is document setting out -

- what needs to be complied with,
- what has been done
- what must still be done in order to embed compliance into the business operations.

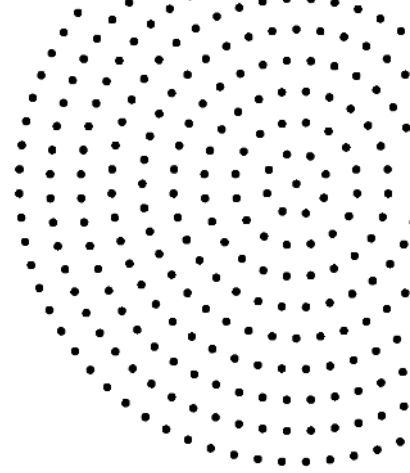
It also reflects the current risk of non-compliance.

You can use COSO or GACP standards to ensure objectivity and consistency.



# CONTACT US

Study presentation Multipurposes



## **Browse**

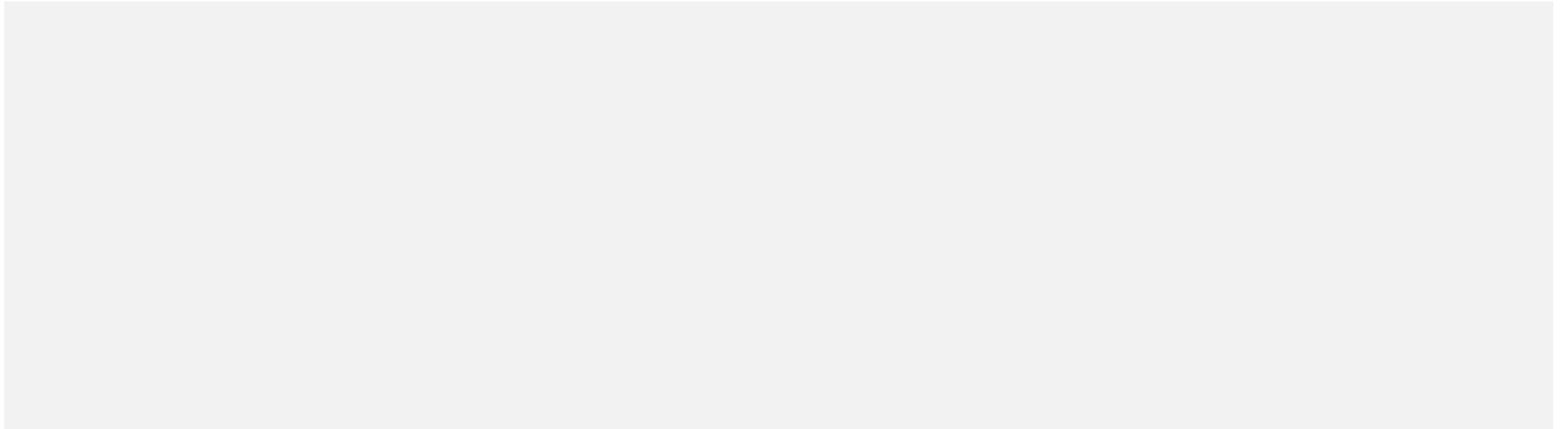
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The Workspace, Cnr Pinaster  
Avenue and, 18th St, Hazelwood,  
Pretoria

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thank you