



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 130

2007

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 3 of 2007: Financial Intelligence Act, 2007.

Act No. 3, 2007**FINANCIAL INTELLIGENCE ACT, 2007****ACT**

To provide for the combating of money laundering and to establish an Anti-Money Laundering Advisory Council; to provide the Bank of Namibia with the necessary powers to collect, assess and analyse financial intelligence data, which may lead or relate to money laundering; to impose certain duties on institutions which, and other persons who, may be used for money laundering; and to provide for incidental matters.

(Signed by the President on 5 July 2007)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

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Act No. 3, 2007**FINANCIAL INTELLIGENCE ACT, 2007****PART 1
PRELIMINARY****Definitions**

1. (1) In this Act, unless the context indicates otherwise -

“accountable institution” means a person or institution referred to in Schedule 1, including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution;

“authorised officer” means any member of-

- (a) the Namibian Police Force authorised by the Inspector General of the Namibian Police Force;
- (b) the office of the Prosecutor General authorised by the Prosecutor General; or
- (c) the intelligence service authorised by the Director General of the Namibian Central Intelligence Service;
- (d) the Bank authorised by the Governor,

to act under this Act;

“Bank” means the Bank of Namibia established by the Bank of Namibia Act, 1997 (Act No. 15 of 1997);

“business relationship” means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis;

“cash” means -

- (a) coin and paper money of Namibia or of another country which coin or paper money is designated as legal tender and which circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
- (b) travelers’ cheques; or
- (c) cheques, but only in respect of payments made by a person who carries on the business of a casino, gambling institution or totalisator betting service; or
- (d) payment instrument, but only in respect of stored value.

‘client’ means a person who has entered into a business relationship or a single transaction with an Accountable institution;

“Council” means the Anti-Money Laundering Advisory Council established by section 9;

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“determinations” mean a determination made by the Bank under this Act and published by notice in the *Gazette* and “determine” has a corresponding meaning;

“forfeiture” means the official transfer of property to the state;

“Fund” means the Criminal Assets Recovery Fund established by section 74 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

“Governor” means the Governor as referred to in section 1 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997);

“intelligence service” means the Namibia Central Intelligence Service established under the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997);

“Investigating Authority” means an authority that in terms of legislation may investigate unlawful activities;

“Minister” means the Minister responsible for finance;

“money laundering” or “money laundering activity” means -

- (a) the act of a person who -
 - (i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
 - (ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or
 - (iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;

where -

- (aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
 - (bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity; and
- (b) any activity which constitutes an offence as defined in section 4, 5 or 6 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

“payment instrument” has the meaning attributed to that term in section 1 of the Payment System Management Act, 2003 (Act No. 18 of 2003);

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“prescribed” means prescribed by the Minister by regulation made in terms of section 48;

“Prevention of Organised Crime Act” means the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

“proceeds of unlawful activities” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

“property” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

“prospective client” means a person seeking to conclude a business relationship or a single transaction with an Accountable institution;

“single transaction” means a transaction other than a transaction concluded in the course of a business relationship;

“supervisory body” means a functionary or institution referred to in Schedule 2;

“transaction” means a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution;

“this Act” includes a regulations and determinations made in terms of sections 5 and 48 respectively; and

“unlawful activity” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004).

PART II**APPLICATION AND ADMINISTRATION OF ACT****Application of Act to the Bank**

2. (1) Subject to any general or specific policy directives which the Minister may issue, the Bank is responsible for administering this Act.
- (2) This Act does not apply to the Bank, except insofar as it -
 - (a) confers on the Bank the power to perform the functions contained in this Act; or
 - (b) in terms of section 4, imposes on the Bank the responsibilities and duties to monitor and ensure that accountable institutions comply with this Act.

Application of Act to Accountable institutions

3. (1) This Act applies to all accountable institutions as listed under Schedule 1:

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- (2) The Minister may, by notice in the *Gazette*, amend the list of accountable institutions in Schedule 1 to -
- (a) add to the list any institution or category of institutions if the Minister reasonably believes that institution or category of institutions is used, and is likely to be used in future, for money laundering purposes;
 - (b) delete any Accountable institution or category of Accountable institutions from the list if the Minister reasonably believes that institution or category of institutions is not used, and is not likely to be used in future, for money laundering purposes; or
 - (c) make technical changes to the list.
- (3) Before the Minister amends Schedule 1 in terms of subsection (2)(a) or (b) the Minister must consult the Council and the Bank, and -
- (a) if only an individual institution will be affected by the proposed amendment, give the institution at least 60 days written notice to submit written representations to the Minister; or
 - (b) if a category of institutions will be affected by the proposed amendment, by notice in the *Gazette* give institutions belonging to that category at least 60 days written notice to submit written representations to the Minister.

Application of Act to Supervisory Bodies

4. (1) This Act applies to all Supervisory Bodies.
- (2) The Minister may, by notice in the *Gazette*, amend the list of Supervisory Bodies in Schedule 2 to -
- (a) add to the list any entity or functionary which in terms of legislation performs regulatory functions in relation to any category of accountable institutions;
 - (b) delete any supervisory body, entity or functionary or category of supervisory body, entity or functionary from the list if the Minister reasonably believes there is need to do so; or
 - (c) make technical changes to the list.
- (3) Before the Minister amends Schedule 2 in terms of subsection (2)(a) or (b) the Minister must consult the Council and the Bank, and give the entity or functionary concerned, or the supervisory body concerned, at least 60 days written notice to submit written representations to the Minister.

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5. (1) The principal objective of the Bank under this Act is to combat money laundering activities.
- (2) The functions of the Bank are to -
- (a) collect, process, analyze and assess all reports and information received in terms of this Act or in terms of any law;
 - (b) compile statistics and records, disseminate information within Namibia or elsewhere and make recommendations arising out of any information received;
 - (c) coordinate the activities of the various persons, bodies or institutions involved in the combating of money laundering;
 - (d) inform, advise and cooperate with investigating authorities and the Namibia Central Intelligence Services and make information collected by the Bank available to these investigating authorities for the purpose of administration, intelligence collection and law enforcement;
 - (e) supervise compliance with this Act by accountable institutions and give guidance to Accountable institutions to combat money laundering activities.
- (3) In order to attain its objectives and perform its functions the Bank may -
- (a) call for and obtain further information from persons or bodies that are required to supply or provide information to it in terms of this Act or any law;
 - (b) request for information from any office, ministry, government agency, law enforcement agency and supervisory body, whether listed in Schedule 2 or not, for purposes of this Act;
 - (c) direct any Accountable institution or supervisory body to take such steps as may be appropriate in relation to any information or report received by the Bank, to enforce compliance with this Act or to facilitate any investigation anticipated by the Bank;
 - (d) issue determinations to any supervisory body in terms of which the supervisory body must enforce compliance by an accountable institution regulated by such supervisory body, with the provisions of this Act;
 - (e) in consultation with Supervisory Bodies, issue guidelines, directives, circulars or notices to Accountable institutions to ensure compliance with this Act;

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- (f) conduct research into trends and developments in the area of money laundering and improved ways of detecting, preventing and deterring money laundering;
 - (g) exercise any other power or do any other thing not inconsistent with this Act, which is necessary or expedient to ensure the achievement of the objectives of this Act; and
 - (h) exercise any power or perform any functions conferred to or imposed on it by any law.
- (4) The Bank may from time to time consult with the Council on issues of mutual interest with regard to the Bank's functions and responsibilities under this Act.
- (5) Subject to section 2, a person must not unduly influence or interfere with the Bank in exercising its functions, responsibilities and making decisions as authorised in terms of this Act.
- (6) Any person who contravenes subsection (5) commits an offence and is on conviction liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Funds of Bank

6. (1) For the purpose of exercising its powers and performing its functions under this Act the Bank must utilize funds available from -
- (a) money appropriated annually by Parliament for the purposes of the Bank;
 - (b) any government grants made to it;
 - (c) money made available to it from the Fund; and
 - (d) any other money legally acquired by it.
- (2) The Bank may accept financial or other contributions from official organisations but only with the approval of the Minister.

Audit

7. (1) All the financial matters of the Bank relating to the Bank's performance of its duties and functions in terms of this Act are governed by Part VIII of the Bank of Namibia Act, 1997 (Act No. 15 of 1997).
- (2) Notwithstanding subsection (1), the Bank must keep its financial matters under this Act separately from its financial matters under the Bank of Namibia Act, 1997 (Act No. 15 of 1997).

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8. (1) The Governor may delegate, in writing, any of the powers entrusted to the Bank in terms of this Act to an officer or officers of the Bank, or instruct an officer or employee of the Bank to perform any of the functions assigned to the Bank in terms of this Act.
- (2) A delegation or instruction in terms of subsection (1) -
- (a) is subject to the limitations or conditions that the Bank may impose; and
 - (b) does not divest the Bank of the responsibility concerning the exercise of the delegated power or the performance of the assigned function.
- (3) The Bank may confirm, vary or revoke any decision taken by an officer or employee in consequence of a delegation or instruction in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (4) A ministry, an agency or office as defined in the Public Service Act, 1995 (Act No. 13 of 1995) may, after consultation with the Bank, second a staff member of the Public Service to the Bank for the purposes of carrying out the Bank's functions under this Act.
- (5) A person seconded to the Bank in terms subsection (4) is for the purpose of this section is to be regarded as an officer or employee of the Bank.

PART III
ANTI-MONEY LAUNDERING ADVISORY COUNCIL

Establishment

9. An Anti-Money Laundering Advisory Council is hereby established.

Composition, conditions of office and vacation of office

10. (1) The Minister must appoint members of the Council which consists of the Governor or his or her delegate and of each of the following -
- (a) the Permanent Secretary of the Ministry responsible for finance;
 - (b) the Inspector General of the Namibian Police Force;
 - (c) the Permanent Secretary of the Ministry responsible for trade and industry;
 - (d) the Permanent Secretary of the Ministry responsible for Justice;
 - (e) the Director of the Namibian Central Intelligence Service;

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- (f) the Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority;
 - (g) the Director of the Anti-Corruption Commission;
 - (h) the President of the Bankers Association;
 - (i) one person representing associations representing a category of Accountable institutions requested by the Minister to nominate representatives;
 - (j) one person representing Supervisory Bodies requested by the Minister to nominate representatives; and
 - (k) one person representing an institution or body requested by the Minister to nominate a representative.
- (2) The Governor is the chairperson of the Council, and the members of the Council must elect a deputy chairperson at the first meeting of the Council.
- (3) Any vacancy in the Council must, subject to subsection (1), be filled by the appointment of a new member for the unexpired portion of the term of office of the member who has vacated the office.
- (4) A member of the Council who is in the employment of the State may be paid such allowances for traveling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, out of the funds of the Bank, as the Minister may determine.
- (5) A member of the Council, who is not in the employment of the State, may be paid such remuneration, including allowances, for traveling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, out of the funds of the Bank, as the Minister determines.
- (6) The office of a member of the Council becomes vacant if that member -
- (a) through a written notice addressed to the Minister, resigns from office;
 - (b) is removed from office by the Minister for inability to perform his or her duties due to ill health; or
 - (c) is for any other reasonable cause removed from office by the Minister.
- (7) Before removing a member from office in terms of subsection (6)(c), the Minister must -
- (a) in writing, notify the member concerned of the grounds on which the member is to be removed from membership of the Council;

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- (b) give that member an opportunity to make an oral or a written representation on the matter to the Minister or to any other person designated by the Minister for that purpose; and
- (c) consider any representation made.

Functions

- 11.** (1) The functions of the Council are to -
- (a) on the Minister's request or at its own initiative, advise the Minister on -
 - (i) policies and measures to combat money laundering activities; and
 - (ii) the exercise by the Minister of the powers entrusted to the Minister in terms of this Act;
 - (b) maintain a forum at least twice a year in which the Bank, associations representing categories of accountable institutions, office, ministry or government agency, supervisory bodies and any other person, institution, body or association, as the Council may determine, can consult one another.
- (2) The Bank must provide administrative support for the Council to function effectively.

Meetings and procedure

- 12.** (1) The chairperson of the Council, or in his or her absence, the deputy Chairperson, presides at meetings of the Council, or if both the chairperson and the deputy chairperson are absent from the meeting, or are unable to preside at the meeting, the members present must elect one member from among their number to preside at the meeting.
- (2) The Council -
- (a) must, at a time and place determined by the chairperson of the Council, hold a meeting of the Council at least twice every year;
 - (b) may determine its own procedures at meetings; and
 - (c) may appoint committees from its members to assist it in the performance of its functions or the exercise of its powers.
- (3) Any person who is not a member of the Council may be co-opted to serve on the committees mentioned in subsection (2)(c).
- (4) When a provision of this Act requires consultation with the Council on any specific matter before a decision may be taken on that matter and it is not feasible to call a meeting of the Council, that provision is satisfied if -

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- (a) a proposed decision on that matter is circulated to the members of the Council; and
 - (b) an opportunity is given to them individually to comment in writing on the proposed decision within a reasonable time.
- (5) Notwithstanding subsection (2)(a), the chairperson of the Council or, in his or her absence, the deputy chairperson of the Council must, at the written request of the Minister or of at least three members of the Council, convene a special meeting of the Council.
- (6) Six members of the Council constitute a quorum for a meeting of the Council.
- (7) A decision of a majority of members of the Council present at a meeting is the decision of the Council and, if there is an equality of votes, the person presiding at the meeting has a casting vote in addition to that person's ordinary vote.

PART IV
MONEY LAUNDERING CONTROL MEASURES
DUTY TO IDENTIFY CLIENTS, KEEP RECORDS
AND REPORT TRANSACTIONS

Identification when business relationships are established or single transactions concluded

- 13.** (1) For the purposes of this Part, multiple cash transactions in the domestic or foreign currency which, in aggregate, exceed the amount specified by the Bank must be treated as a single transaction if they are undertaken by or on behalf of any person during any day or such period as the Bank may specify.
- (2) An accountable institution may not establish a business relationship or conclude a single transaction with a prospective client, unless the accountable institution has taken such reasonable steps in the prescribed form and manner to establish -
- (a) the identity of the prospective client, and obtain or verify further information;
 - (b) if the prospective client is acting on behalf of another person, also -
 - (i) the identity of that other person;
 - (ii) the prospective client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
 - (iii) obtain or verify further information about that other person; and
 - (c) if another person is acting on behalf of the prospective client, also -
 - (i) the identity of that other person;

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- (ii) that other person's authority to act on behalf of the client; and
 - (iii) obtain or verify further information about that other person.
- (3) Without limiting the generality of subsection (2)(a) and (b), if a prospective client is a legal entity, an accountable institution must take reasonable steps to establish its legal existence and structure, including verification of-
- (a) the name of the legal entity, its legal form, address and directors;
 - (b) the principal owners and beneficiaries;
 - (c) provisions regulating the power to bind the entity, and to verify that any person purporting to act on behalf of the legal entity is so authorised, and identify those persons.
- (4) An accountable institution must maintain the accounts in the name of the account holder; and must not open, operate or maintain any anonymous account or any account which is fictitious, false or in incorrect name.
- (5) An accountable institution which contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Identification when transaction is concluded in the course of a business relationship

- 14.** (1) If an accountable institution established a business relationship with a client before this Act took effect, it must, within a period determined by the Bank, take such reasonable steps in the prescribed form and manner -
- (a) to establish the identity of the client, and obtain or verify further information;
 - (b) if the client is acting on behalf of another person, to establish also -
 - (i) the identity of that other person;
 - (ii) the client's authority to conclude that transaction on behalf of that other person; and
 - (iii) obtain or verify further information about that other person; and
 - (c) if another person is acting in the transaction in question on behalf of the client, to establish also -
 - (i) the identity of that other person;

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- (ii) that other person's authority to act on behalf of the client; and
 - (iii) obtain or verify further information about that other person; and
 - (d) to trace, on such conditions and period as the Bank may determine, all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship.
- (2) If an accountable institution is unable within a reasonable period to establish to its reasonable satisfaction the identity of any person as required by subsection (1), it must not conclude any further transaction in the course of that business relationship and must immediately inform the Bank.
- (3) When the identity of the person referred to in subsection (2) is subsequently established, further transactions may only be concluded after the Bank has been informed of the identity of that person.
- (4) Subsection (1) does not apply in respect of a business relationship which an accountable institution knows or reasonably believes to have ended prior to the commencement of this Act.
- (5) If, after this Act took effect, an accountable institution recommenced a business relationship with a client or a business relationship referred to in subsection (4), the accountable institution must not conclude a transaction in the course of that business relationship unless the accountable institution has taken such reasonable steps referred to in subsection (1).
- (6) An accountable institution which contravenes or fails to comply with subsection (1), (2) or (5) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Record to be kept of business relationships and transactions

15. (1) Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, the accountable institution must keep records in the prescribed form and manner of -

- (a) the identity of the client;
- (b) if the client is acting on behalf of another person -
 - (i) the identity of the person on whose behalf the client is acting; and

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- (ii) the client's authority to establish that business relationship or to conclude that single transaction on behalf of that other person;
 - (c) if another person is acting on behalf of the client -
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client;
 - (d) the manner in which the identity of a person referred to in paragraph (a), (b) or (c) was established;
 - (e) the nature of that business relationship or transaction;
 - (f) all accounts at that accountable institution that are involved in -
 - (i) transactions concluded in the course of that business relationship; or
 - (ii) a single transaction;
 - (g) the name of the person who obtained the information referred to in paragraph (a) to (f) on behalf of the accountable institution.
- (2) Records kept in terms of subsection (1) may be kept in electronic form.
- (3) The record referred to in subsection (1) may include the following information for each transaction -
- (a) the identity and address of the beneficiary or the person on whose behalf the transaction is concluded, where applicable;
 - (b) the identity and address of the person in whose name the transaction is conducted,
 - (c) the identity of the accounts affected by the transaction, if any;
 - (d) the type of transaction involved, such as deposit, withdrawal, exchange of currency, cheque cashing, purchase of cashier's cheques or money orders or other payment or transfer by, through, or to that accountable institution;
 - (e) the identity of the accountable institution where the transaction occurred;
 - (f) the date, time and amount of the transaction; and
 - (g) any other information which the Bank may specify in writing.
- (4) An accountable institution which contravenes or fails to comply with this section (1) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years, or to both such fine and imprisonment.

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- (5) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

Period for which records must be kept

- 16.** (1) An accountable institution must keep the records referred to in section 15 which relate to -
- (a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated; and
 - (b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded.
- (2) An accountable institution must also maintain records to enable the reconstruction of any transaction in excess of such amount as the Bank may specify, for a period of not less than six years from the date the transaction has been completed or terminated.
- (3) An accountable institution which contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Centralisation of records

- 17.** (1) The duty imposed by section 15 on an accountable institution to keep records of the matters specified in that section may, in the case of two or more accountable institutions being supervised by the same supervisory body, be centralised, as prescribed and be deemed to be performed by an accountable institution within the same supervised group on behalf of those accountable institutions, provided that such accountable institutions have free and easy access to the records through their supervisory body.
- (2) A person who destroys or tampers with any records kept under this section commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Admissibility of records

- 18.** (1) A record kept in terms of sections 15 and 33, or a certified extract of that record, or a certified printout of an electronic record of which direct oral evidence of its contents may be given, is on its mere production in a court admissible as evidence in a matter before the court.
- (2) Any record of an investigation conducted under this Act, any property, report or document produced or any statement shall, notwithstanding any law to the contrary, be admissible as evidence in any proceedings

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in any court for, or in relation to, an offence or any other matter under this Act or any other offence under any other law, regardless whether such proceedings are against the person who was examined, or who produced the property, record, report or document, or who made the written statement on oath or affirmation, or against any other person.

Bank's access to records

- 19.** (1) The Bank or an authorised representative of the Bank -
- (a) has access during ordinary working hours to any record kept in terms of this Act or relating to suspicious money laundering activities by or on behalf of -
 - (i) an accountable institution; and
 - (ii) a supervisory body; and
 - (b) may examine, make extracts from or copies of those records.
- (2) The Minister must prescribe the relevant particulars concerning the examination of records referred to in subsection (1).
- (3) In addition to the powers and duties conferred on the Bank by this Act, the Bank has, for the purposes of the performance of its duties and functions in terms of this Act, the powers and duties in all respects corresponding to the powers and duties conferred on a registrar by the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984).
- (4) An accountable institution or a supervisory body must without delay give all reasonable assistance to an authorised representative of the Bank necessary to enable that representative to exercise the powers mentioned in subsection (1) or (3).
- (5) An accountable institution or supervisory body which contravenes or fails to comply with subsection (4) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution or body which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Cash transactions above prescribed limits

- 20.** (1) An accountable institution must, within the prescribed period, report to the Bank the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount -
- (a) is paid by the accountable institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
 - (b) is received by the accountable institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

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- (2) An accountable institution which contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Suspicious transactions

21. (1) Any person who carries on any business or the business of an accountable institution, or is in charge of, or manages a business undertaking, or a business undertaking of an accountable institution, or who is a director of, secretary to the board of, employed or contracted by any business, or the business of an accountable institution, and who knows or ought reasonably to have known or suspect that, as a result of a transaction concluded by it, it has received or is about to receive the proceeds of unlawful activities or has been used or is about to be used in any other way for money laundering purposes, must, within the prescribed period after the suspicion or belief arose, as the case may be, report to the Bank -

(a) the grounds for the suspicion or belief; and

(b) the prescribed particulars concerning the transaction.

- (2) If an accountable institution or business suspects or believes there are reasonable grounds to suspect that, as a result of a transaction which it is asked to conclude or about which enquiries are made, it may receive the proceeds of unlawful activities or in any other way be used for money laundering purposes should the transaction be concluded, it must, within the prescribed period after the suspicion or belief arose, as the case maybe, report to the Bank -

(a) the grounds for the suspicion or belief, and

(b) the prescribed particulars concerning the transaction.

- (3) An accountable institution or business which made or is to make a report in terms of this section must not disclose that fact or any information regarding the contents of that report, to any other person, including the person in respect of whom the report is or to be made, otherwise than -

(a) within the scope of the powers and duties of the accountable institution or business in terms of any legislation;

(b) for the purpose of carrying out this Act;

(c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or

(d) in terms of an order of court.

- (4) A person who knows or suspects that a report has been or is to be made in terms of this section must not disclose that knowledge or suspicion or any information regarding the contents or suspected contents of that report to any other person, including the person in respect of whom the report is or is to be made otherwise than -

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- (a) within the scope of that person's powers and duties in terms of any legislation;
 - (b) for the purpose of carrying out this Act;
 - (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
 - (d) in terms of an order of a court.
- (5) An accountable institution or business which contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.
- (6) A person who contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

Electronic transfers of money to or from Namibia

22. (1) If an accountable institution through electronic transfer -
- (a) sends money in excess of a prescribed amount out of Namibia; or
 - (b) receives money in excess of a prescribed amount from outside Namibia,

on behalf, or on the instruction, of another person, it must, within the prescribed period after the money was transferred, report the transfer together with the prescribed particulars concerning the transfer to the Bank.

- (2) An accountable institution which contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Obligations of and reporting by Supervisory Bodies

23. (1) If a supervisory body suspects that an accountable institution has, as a result of a transaction concluded by the institution, knowingly or unknowingly received or is about to receive the proceeds of unlawful activities or has in any other way been used for money laundering purposes, it must -
- (a) within the prescribed period, report to the Bank -
 - (i) the grounds for the suspicion; and
 - (ii) the prescribed particulars concerning the transaction; and

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- (b) retain the records held by it which relate to that report, for such period as the Bank may reasonably require.
- (2) A supervisory body must take all reasonable steps to ensure an accountable institution's compliance with its obligations under this Part.
- (3) The Bank may issue a directive, penalising a supervisory body by imposing an appropriate, prescribed fine without recourse to a Court, if that body has, without reasonable excuse failed to comply in whole or in part with any obligations under this Part.
- (4) If the Bank is satisfied that a supervisory body has failed without reasonable excuse to comply in whole or in part with any obligations in this Act it may apply to the High Court for an order compelling any or all the officers or employees of that supervisory body to comply with those obligations.
- (5) If the High Court is satisfied that a supervisory body has failed without reasonable excuse to comply in whole or in part with any obligation imposed by this Act it may issue the order applied for in terms of subsection (4).
- (6) Notwithstanding subsection (4) and (5) the Bank may enter into an agreement with any supervisory body that has without reasonable excuse failed to comply in whole or in part with any obligations in this Part to implement any action plan to ensure compliance with its obligations under this Part.
- (7) Any person who contravenes subsection (2) or fails to comply with a directive under subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding N\$50 000 or to imprisonment for a term not exceeding three years or to both, and, in the case of a continuing offence, to a further fine not exceeding N\$10 000 for each day during which the offence continues after conviction.
- (8) The relevant supervisory body of an accountable institution or such other person as the relevant supervisory body may deem fit must-
- (a) adopt the necessary measures to prevent or avoid having any person who is not fit and proper from controlling, or participating, directly or indirectly, in the directorship, management or operation of an accountable institution,
- (b) examine and supervise accountable institutions, and regulate and verify, through regular examinations, that an accountable institution adopts and implements compliance programmes,
- (c) issue guidelines to assist accountable institutions in detecting suspicious patterns of behaviour in their clients and these guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for reporting institutions' personnel; and

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- (d) co-operate with other enforcement agencies and lend technical assistance in any investigation, proceedings relating to any unlawful activity or offence under this Act.
- (9) The supervisory body of an accountable institution must on the recommendation of the Bank, revoke or suspend the accountable institution's license or cause that accountable institution not to carry on such business, if it has been convicted of an offence under this Act.
- (10) The supervisory body must report promptly to the Bank any information received from any accountable institution related to transactions or activities that could be treated as an unlawful activity or offence under this Act.
- (11) A supervisory body which contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Conveyance of cash to or from Namibia

- 24.** (1) A person intending to convey an amount of cash in excess of a prescribed amount to or from Namibia must, before that person conveys the cash into or out of Namibia, report the prescribed particulars concerning that conveyance to a person authorised by the Bank for this purpose.
- (2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment, and in the case of a continuing offence, to a further fine not exceeding N\$50 000 for each day during which the offence continues after conviction.

Obligations of Accountable Institutions

- 25.** (1) An accountable institution must adopt, develop and implement a customer acceptance policy, internal rules, programmes, policies, procedures and controls as prescribed to protect its systems against any money laundering activities.
- (2) The programmes in subsection (1) may include -
- (a) the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of those employees;
 - (b) on-going employee training programmes, such as "Know Your Customer" programmes, and instructing employees with regard to responsibilities under this Act; and
 - (c) an independent audit function to check compliance with those programmes.

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- (3) An accountable institution must designate compliance officers at management level who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.
- (4) An accountable institution must implement compliance programmes under subsection (1) at its branches and subsidiaries within or outside Namibia.
- (5) An accountable institution must develop audit functions to evaluate any policies, procedures and controls developed under this section to test compliance with the measures taken by the accountable institution to comply with this Act and the effectiveness of those measures.
- (6) The internal rules referred to in subsection (1) must include -
 - (a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part IV of this Act;
 - (b) the information of which record must be kept in terms of Part IV of this Act;
 - (c) identification of reportable transactions; and
 - (d) the training of employees of the institution to recognise and handle suspected money laundering activities.
- (7) Internal rules made under this section must comply with the prescribed requirements and be available to each employee of an accountable institution.

Reporting procedures

- 26.** (1) Any report required to be made in terms of this Act must be made in the prescribed manner.
- (2) The Bank, or an investigating authority acting with the permission of the Bank or under the authority of an authorised officer may request an accountable institution, supervisory body or person that has made a report in terms of this Act to furnish the Bank or that investigating authority without delay with any additional information concerning the report which the Bank or the investigating authority may reasonably require and which that accountable institution, supervisory body or person has.
- (3) An accountable institution or a supervisory authority which fails to comply with a request made under subsection (2) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

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- (4) A person who fails to comply with a request made under subsection (2) commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Continuation of suspicious transactions

27. An accountable institution that has made a report to the Bank in terms of section 20, 21 or 22 concerning a transaction, may continue with and carry out the transaction unless the Bank directs the accountable institution in terms of section 28 not to proceed with the transaction.

Intervention by Bank

28. (1) If the Bank, after consulting an accountable institution, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or may constitute money laundering; it may direct the accountable institution in writing not to proceed with the carrying out of that transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period determined by the Bank, which may not be more than five working days, in order to allow the Bank -

- (a) to make the necessary inquiries concerning the transaction; and
- (b) if the Bank deems it appropriate, to inform and advise an investigating authority and the Prosecutor-General.
- (2) An accountable institution which fails to comply with a direction made under subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Monitoring orders

29. (1) A judge in chambers may, on written application by the Bank, order an accountable institution to report to the Bank, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specific person with the Accountable institution or all transactions conducted in respect of a specific account or facility at the accountable institution, if there are reasonable grounds to suspect that -

- (a) that person is using the accountable institution for money laundering purposes;
- (b) that account or other facility is being used for the purposes of money laundering;
- (2) An order in terms of subsection (1) lapses after three months unless extended in terms of subsection (3).
- (3) A judge in chambers may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if -

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- (a) the reasonable grounds for the suspicion on which the order is based still exist; and
 - (b) the judge is satisfied that the interest of justice is best served by investigating the suspicion in the manner provided for in this section.
- (4) An application referred to in subsection (1) must be heard and an order must be issued without notice to or hearing the person or persons involved in the suspected money laundering activities.
- (5) An accountable institution which fails to comply with an order made under subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Reporting duty not affected by confidentiality rules

30. (1) No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance with a provision of this Act.

(2) Subsection (1) does not apply if the obligation of secrecy or other restriction is based on the common law right to professional privilege between a legal practitioner and his or her client in respect of information communicated to the legal practitioner so as to enable him or her to -

- (a) provide advice to the client;
- (b) defend the client; or
- (c) render other legal assistance to the client,

in connection with an offence under any law in respect of which -

- (i) the client is charged;
- (ii) the client has been arrested or summoned to appear in court; or
- (iii) in respect of which an investigation with a view to institute criminal proceedings is being conducted against the client.

Protection of persons making reports

31. (1) No action, whether criminal or civil, lies against an accountable institution, supervisory body or person complying in good faith with a provision of this Part, including any director, employee or other person acting on behalf of that accountable institution, supervisory body or person.

(2) A person who has made, initiated or contributed to a report in terms of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

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- (3) No evidence concerning the identity of a person who made a report in terms of this Part or the contents of that report, or the grounds for that report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.
- (4) No evidence concerning the identity of a person who initiated or contributed to a report in terms of this Part is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

Tipping-Off

- 32.** (1) Any person who-
- (a) knows or has reason to suspect that an authorised officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and who discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
 - (b) knows or has reason to suspect that a disclosure has been made to an authorised officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be concluded following the disclosure,

commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.

Admissibility as evidence of reports made to the Bank

- 33.** A certificate issued by an official of the Bank that information specified in the certificate was reported to the Bank in terms of this Part, is, subject to section 31(3) and (4), on its mere production in a court admissible as evidence in a matter before that court.

Access to information held by Bank

- 34.** (1) If the Bank, on the basis of its analysis and assessment under section 5 has reasonable grounds to suspect that information would be relevant to the national security of Namibia, the Bank must disclose that information to an investigating authority inside Namibia and to the Namibia Central Intelligence Service.
- (2) The Bank must record in writing the reasons for all decisions to disclose information made under subsection (1).
 - (3) For the purposes of subsection (1), “information” includes in respect of a financial transaction or an importation or exportation of currency or monetary instruments-
 - (a) the name of the client or of the importer or exporter, or any person or entity acting on their behalf;

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- (b) the name and address of the place of business where the transaction occurred or the address of the port of entry into Namibia where the importation or exportation occurred, and the date of the transaction, importation or exportation occurred;
 - (c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;
 - (d) in the case of a transaction, the transaction number and the account number, if any; and
 - (e) any other similar identifying information that may be prescribed for the purposes of this section.
- (4) The Bank may disclose any information to an institution or agency in a foreign state that has powers and duties similar to those of the Bank under this Act on such terms and conditions as are set out in an agreement, sanctioned by the Council, between the Bank and that foreign agency regarding the exchange of that information.
- (5) Without limiting the generality of subsection (4), an agreement entered into under that subsection may -
- (a) restrict the use of information to purposes relevant to investigating or prosecuting an unlawful activity or money laundering, or an offence that is substantially similar to either offence; and
 - (b) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the Bank.
- (6) The Bank may in writing authorise an investigating authority to have access to such information as the Bank may specify for the purposes of performing the investigating authority's functions.
- (7) The Bank may, in writing, authorise the Prosecutor-General or his designated officer to have access to such information as the Bank may specify for the purpose of dealing with a foreign state's request to mutual assistance in criminal matters.
- (8) Notwithstanding anything to the contrary in subsection (4) the Bank may disclose any information to an institution or agency in a foreign state that has the powers and duties to those of the Bank under this Act if the Bank is satisfied that that corresponding institution has given appropriate written undertakings-
- (a) for protecting the confidentiality of any information communicated to it; and
 - (b) for controlling the use that will be made of the information, including an undertaking that it will be used as evidence in any proceedings.

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- (9) A person who obtains information from the Bank must use that information only within the scope of that person's powers and duties and for the purposes authorised by this Act.
- (10) A person who uses information obtained from the Bank otherwise than in accordance with this section commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Protection of confidential information

- 35.** (1) A person must not disclose confidential information held by or obtained from the Bank except -
- (a) within the scope of that person's powers and duties in terms of any legislation;
 - (b) for the purpose of carrying out this Act;
 - (c) with the permission of the Bank;
 - (d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
 - (e) in terms of an order of a court.
- (2) A person who has obtained information from the Bank under this Act must not, when he or she is no longer authorised to keep the information under this Act, make a record of the information, disclose or communicate the information in any circumstances.
- (3) A person who discloses confidential information contrary to subsection (1) commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

Protection of informers and information

- 36.** (1) Where a person discloses to the Bank information in terms of section 21, that any proceeds of unlawful activities is used in connection with or derived from money laundering or any matter on which that information is based -
- (a) if he does any act in contravention of the provisions of this Act and the disclosure relates to the arrangement concerned, he does not commit an offence if the disclosure is made-
 - (i) before he does the act concerned, being an act done with the consent of the Bank; or
 - (ii) after he does the act, but the disclosure is made on his initiative and as soon as it is reasonable for him to make it;

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- (b) notwithstanding any other written law or the common law, the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and
 - (c) he shall not be liable for any damages for any loss arising out of -
 - (i) the disclosure; or
 - (ii) any act done or committed to be done in relation to the property in consequence of the disclosure
- (2) Where any information relating to an offence under this Act is received by an authorized officer the information and identity of the person giving the information must be confidential between the authorized officer and that person and everything contained in such information, the identity of that person and all other circumstances relating to the information, including the place where it was given, shall not be disclosed except for the purposes of assisting the Bank to carry its functions as stated under this Act.

PART V**ENFORCEMENT OF ACT AND ADMINISTRATIVE PROCEEDINGS****Administrative inquiries**

- 37.** (1) Before instituting an inquiry contemplated in this section, the Bank must consult the Inspector General of the Namibian Police Force who after investigation must refer the matter to the Prosecutor-General who may, within 30 days of the commencement of the consultation, direct that the interests of justice merit a criminal prosecution.
- (2) If the Prosecutor-General directs that the interests of justice merit a criminal prosecution, the Bank -
 - (a) must not institute an inquiry contemplated in this section; and
 - (b) must refer the evidence in its possession which relates to the prosecution to the Prosecutor-General.
 - (3) If the Bank has reasonable grounds to suspect that an accountable institution has committed an act or an omission which may constitute an offence in terms of this Act, it must, institute an inquiry to establish whether an offence has been committed if -
 - (a) the institution agrees to submit itself to the inquiry and to abide by any findings made in terms of section 40; and
 - (b) the institution -
 - (i) deposits with the Bank an amount determined by the Bank, not exceeding the maximum fine which may be imposed by a court for the alleged offence; or

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- (ii) makes such other arrangements or complies with such conditions with regard to securing payment of an appropriate penalty as the Bank may determine.
- (4) An accountable institution which submits itself to an inquiry, and which subsequently complies with subsection (3)(b) and abides by any finding and order made in terms of section 40, is exempted from criminal prosecution in respect of the act or acts for which the inquiry is established.
- (5) The Bank or any other official of the Bank or other person designated by the Bank may, on behalf of the Bank, conduct the inquiry contemplated in this section.
- (6) Any other person designated by the Bank to conduct an inquiry in terms of subsection (5) is subject to the direction and control of the Bank of Namibia which has authorised that person to act on its behalf.
- (7) If an accountable institution admits that it has committed an offence of which it is charged and the Bank and the accountable institution agree on the terms of an appropriate penalty against the institution, the person conducting an inquiry against that institution in terms of subsection (3) may, without hearing any evidence or any further evidence -
 - (a) make a finding in terms of section 40 that the institution has committed an offence as charged; and
 - (b) sanction the agreed penalty and make it an order in terms of section 40.
- (8) If an accountable institution -
 - (a) refuses to submit itself to an inquiry or to abide by any findings and an order made in terms of section 40;
 - (b) having been given a reasonable opportunity to do so -
 - (i) fails to respond to a request to submit itself to an inquiry and to abide by any findings made in terms of section 40; or
 - (ii) fails to comply with subsection (3)(b),

the Bank must refer its suspicion and the evidence in its possession on which that suspicion is based to the Prosecutor-General.

- (9) A person who intentionally disrupts proceedings conducted in terms of this section commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Act No. 3, 2007**FINANCIAL INTELLIGENCE ACT, 2007****Inquiry procedures**

- 38.** (1) The proceedings at an inquiry held in terms of section 37 are civil in nature and, except insofar as may otherwise be prescribed, they must be conducted in the same manner that civil proceedings are conducted in the magistrates court.
- (2) Subject to subsection (1), a person conducting an inquiry in terms of section 37 determines the inquiry procedure, subject to the other provisions of this Act.
- (3) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court applies to the questioning of a person in the course of an inquiry.

Powers of person conducting inquiry

- 39.** (1) The person conducting an inquiry in terms of section 37 may -
- (a) by written notice summon a person to appear at the inquiry to -
- (i) give evidence; or
- (ii) produce a document available to that person and specified in the summons;
- (b) call a person present at the inquiry, whether summoned or not to -
- (i) give evidence;
- (ii) produce a document in that person's custody;
- (c) administer an oath or solemn affirmation to that person;
- (d) question that person, or have that person questioned; and
- (e) retain for a reasonable period a document produced in terms of paragraph (a)(ii) or (b)(ii).
- (2) A person appearing at an inquiry -
- (a) may at own expense be assisted by a legal representative; and
- (b) is entitled to witness fees payable to state witnesses in criminal proceedings in a court.
- (3) A person who -
- (a) after having been summoned in terms of this section fails without lawful or reasonable excuse -
- (i) to be present at the inquiry at the time and place specified in the summons;

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- (ii) to remain present until excused; or
- (iii) to produce a document specified in the summons; or
- (b) after having been called in terms of this section refuses without lawful or reasonable excuse -
 - (i) to appear;
 - (ii) subject to section 30(2) and 38(3), to answer any question; or
 - (iii) to produce a document in that person's custody,

commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Findings and orders

- 40.** (1) If the person conducting an inquiry in terms of section 37 finds that an accountable institution has committed an offence as charged, that person may order the forfeiture to the State by way of penalty of the whole or a part of the amount deposited or secured by the institution.
- (2) Before the person conducting the inquiry orders forfeiture to the State, that person must take all relevant matters into account, including -
- (a) the seriousness of the offence;
 - (b) any remedial steps taken by the relevant accountable institution to prevent a recurrence of the offence;
 - (c) any steps taken or to be taken against the accountable institution by -
 - (i) a supervisory body to which the accountable institution is subject; or
 - (ii) a voluntary association of which the accountable institution is a member; and
 - (d) any written representations made by the accountable institution.
- (3) A finding made and the amount of any forfeiture ordered in terms of this section must be made public.
- (4) Money forfeited in terms of subsection (1) must be paid into the Fund.

Record of proceedings not admissible in criminal proceedings

41. The record of the proceedings of an inquiry is not admissible in criminal proceedings, except where a person is charged with having committed an offence mentioned in section 45(2).

Act No. 3, 2007**FINANCIAL INTELLIGENCE ACT, 2007****Powers of an authorised officer**

- 42.** (1) Where an authorised officer is satisfied, or has reason to suspect, that a person has committed an offence under this Act, he or she may, without a search warrant-
- (a) enter any premises belonging to or in the possession or control of the person or his or her employee, and in the case of a body corporate, its director or manager;
 - (b) search the premises for any property, record, report or document;
 - (c) inspect, make copies of or take extracts from any record, report or document so seized and detained;
 - (d) seize, take possession of, and detain for such duration as he or she thinks necessary, any property, record, report or document produced before him or her in the course of the investigation of or found on the person who is being searched by him or her.
- (2) An authorized officer in the course of his or her investigation or search must -
- (a) prepare and sign a list of every property, record, report or document seized; and
 - (b) state in the list the location in which, or the person on whom, the property, record, report or document is found.
- (3) When conducting of his or her duties in terms of this section the authorised officer may call on any law enforcement officer to assist him or her.
- (4) Any person who-
- (a) refuses any authorized officer access to any premises, or fails to submit to the search of his person;
 - (b) assaults, obstructs, hinders or delays an authorized officer in effecting any entrance which he is entitled to effect;
 - (c) fails to comply with any lawful demands of any authorized officer in the execution of his duties under this Act;
 - (d) refuses to give to an authorized officer any property, document or information which may reasonably be required of him and which he has in his power to give;
 - (e) fails to produce to, or conceal or attempt to conceal from, an authorised officer, any property, record, report or document, which the authorized officer requires;
 - (f) rescues or attempts to rescue any thing which has been seized;

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- (g) furnishes to an authorized officer as true any information which he knows or has reason to believe to be false; or
- (h) before or after any search or seizure, breaks or otherwise destroys any thing to prevent its seizure, or the securing of the property, record, report or document,

commits an offence and shall on conviction be liable to a fine not exceeding N\$50 000 or to imprisonment for a term not exceeding one year or to both, and in a case of a continuing offence, to a further fine not exceeding N\$10 000 for each day during which the offence continues after conviction.

- (5) An authorized officer may, by a notice in writing require any person to deliver to him any property, record, report or document which he has reason to suspect has been used in the commission of an offence under this Act or is able to assist in the investigation of an offence under this Act that is in the possession or custody of, or under the control of, that person or within the power of that person to furnish.

Release of property, record report or document seized

- 43.** (1) An authorized officer shall, unless otherwise ordered by a court-
- (a) at the close of an investigation or any proceedings arising from the investigation; or
 - (b) with the prior written consent of the Bank or investigating authority, as the case may be, at any time before the close of an investigation,

release any property, record, report or document seized, detained or removed by him or any other authorized officer, to such person as he determines to be lawfully entitled to the property, record, or document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other law.

- (2) The authorized officer effecting the release under subsection (1) shall record in writing the circumstances of, and the reason for, such release.
- (3) Where the authorized officer is unable to determine the person who is lawfully entitled to the property, record, report or document or where there is more than one claimant to the property, record, report or document, or where the authorized officer is unable to locate the person under subsection (1) who is lawfully entitled to the property, record or document, the authorized officer shall report the matter to a magistrate who shall then deal with the property, record, report or document in terms of the relevant law dealing with such matters.

Act No. 3, 2007**FINANCIAL INTELLIGENCE ACT, 2007****PART VI
OFFENCES AND PENALTIES****Offences in general**

44. A person who-

- (a) knowing or suspecting information is held by the Bank directly or indirectly brings, otherwise than in the course of discharging an obligation under this Act, that information or the fact that that information is held to the attention of another person;
- (b) destroys or in any other way tampers with information kept by the Bank for the purposes of this Act;
- (c) knowing or suspecting that information has been disclosed to the Bank, directly or indirectly brings information which is likely to prejudice an investigation resulting from that disclosure to the attention of another person;
- (d) obstructs, hinders or threatens an official or representative of the Bank in the performance of their duties or the exercise of their powers in terms of this Act;
- (e) with intent to defraud, in respect of a document to be produced or submitted under any provision of this Act, makes or causes to be made a false entry or omits to make, or causes to be omitted any entry,

commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Jurisdiction of magistrates courts in respect of offences

45. (1) Notwithstanding anything to the contrary in any other law contained a magistrate's court has jurisdiction to impose any penalty provided for in this Act, even though that penalty may, either alone or together with any additional penalty imposed by that court, exceed the punitive jurisdiction of that court.

- (2) Where an act, course of conduct or omission which constitutes an offence under this Act is or was -
 - (a) done by a national of Namibia within Namibia or elsewhere;
 - (b) done by any person on a vehicle, ship or other seafaring vessel or aircraft traveling through Namibia, putting into port in Namibia or landing on a landing strip or airport in Namibia; or
 - (c) done by a person outside Namibia and other acts, courses of conduct or omissions forming part of the offence are done or to be done in Namibia;

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- (d) done by any person outside Namibia and the effects of the offence are felt in Namibia;

the person concerned may, regardless of anything in any law to the contrary, but subject to this Act, be tried and punished by any court which has jurisdiction over criminal offences in Namibia.

Offence committed by person acting in official capacity

46. (1) Where an offence is committed by a body corporate or an association of persons, a person-

- (a) who is its director, controller, officer or partner, or
(b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his or her consent or connivance and that he or she exercised such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her function in that capacity and to the circumstances.

- (2) An individual may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or association of persons has not been convicted of that offence.
- (3) Subsection (1) does not affect the criminal liability of the body corporate or association of persons for the offence referred to in that subsection.
- (4) Any person who would have committed an offence if any act had been done or omitted to be done by him or her personally commits that offence and is on conviction liable to the same penalty if that act had been done or omitted to be done by his or her agent or officer in the course of that agent's business or in the course of that officer's employment as the case may be, unless he or she proves that the offence was committed without his or her knowledge or consent and that he or she took all reasonable precautions to prevent the doing of, or omission to do, that act.

**PART VII
MISCELLANEOUS**

Act not to limit powers of investigating authorities

47. This Act does not affect an investigating authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations.

Regulations

48. (1) The Minister, after consulting the Council and the Bank, may make regulations concerning -

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- (a) any matter that may be prescribed in terms of this Act;
 - (b) measures to ensure the security of information disclosed to and obtained by the Bank;
 - (c) the recognition and handling by accountable institutions of suspected money laundering transactions;
 - (d) internal rules to be formulated and implemented in terms of section 40;
 - (e) the manner and form in which accountable institutions are to keep records required by this Act;
 - (f) the reasonable steps to be taken by an accountable institution to establish the identity of an existing client or prospective client;
 - (g) the determination of the date on which a business relationship is considered to be terminated as contemplated in section 23;
 - (h) the manner in which inquiries in terms of section 41 must be conducted;
 - (i) the form and particulars of a summons in terms of section 42 and the manner in which a summons must be served; and
 - (j) any other matter which may facilitate the application of this Act.
- (2) Regulations in terms of subsection (1) may -
- (a) differ for different accountable institutions, categories of accountable institutions and different categories of transactions;
 - (b) be limited to a particular accountable institution or category of accountable institutions or a particular category of transactions; and
 - (c) for a contravention of or failure to comply with any specific regulation prescribe a fine not exceeding N\$200 000 or imprisonment for a period not exceeding six months.

Indemnity

49. The Minister, the Bank or an employee or representative of the Bank, or any other person performing a function or exercising a power in terms of this Act, is not liable for anything done in good faith in terms of or in furthering the objects of this Act.

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50. Any notice, statement or other document which is required to be prepared, executed or served under this Act must be prepared, executed or served in the prescribed manner.

Exemptions

51. The Minister may, on the recommendation of the Bank, if he considers it consistent with the purposes of this Act or in the interest of the public, by order published in the *Gazette*, exempt a person or class of persons from all or any of the provisions of this Act for such duration and subject to any conditions which the Minister may specify.

Documents tracking

52. (1) Where the Bank or an investigating authority, as the case may be, has reason to believe that a person is committing or is about to commit an offence under this Act, the Bank or the investigating authority, as the case may be, may order-

- (a) that any document relevant to identifying, locating or quantifying any property necessary for the transfer of the property, belonging to, or in the possession or under the control of that person or any other person, be delivered to it, or
- (b) any person to produce information on any transaction conducted by or for that person with the first-mentioned person.

(2) Any person who does not comply with an order under subsection (1) commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a term not exceeding one year or both such fine and imprisonment.

Application of the Prevention of Organised Crime Act to accountable institutions

53. Section 9 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) does not apply to accountable institutions in respect of any act or omission committed by an accountable institution which is reportable in terms of section 26(1) or (2) of this Act.

Short title and commencement

54. This Act is called the Financial Intelligence Act, and it will come into operation on a date fixed by the Minister by notice in the *Gazette*.

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SCHEDULE 1
LIST OF ACCOUNTABLE INSTITUTIONS
(Section 1)

1. Bank of Namibia as defined in the Bank of Namibia Act, 1997 (Act No. 15 of 1997) to the extent that the Bank of Namibia exercises its powers and fulfills its duties under the Bank of Namibia Act, 1997 (Act No. 15 of 1997), the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), the Prevention of Counterfeiting of Currency Act, 1965 (Act No. 16 of 1965), and the Payment System Management Act, 2003 (Act No. 18 of 2003).
2. A legal practitioner as defined in the Legal Practitioners Act, 1995 (Act No. 6 of 1995).
3. A person who carries on the business of a trust or keeps in safe custody trust property, a board of executors or a trust company, including a trustee of a family trust, a settlor of an *inter vivos* or institutional trust.
4. An estate agent as defined in the Estate Agents Act, 1976 (Act No. 112 of 1976).
5. A financial instrument trader.
6. A person who carries on "banking business" or who is "receiving funds from the public" as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998).
7. A person, other than a banking institution, who carries on the business of -
 - (a) collecting money from other persons into an account or a fund; or
 - (b) depositing the money in such an account or fund into a bank account on behalf of the persons from whom that person has collected the money.
8. A person who carries on the business of a casino or gambling institution.
9. A person who carries on the business of a car dealership.
10. A person carries on the business of second hand goods.
11. A person who carries on the business of trading in minerals specified in Schedule 1 of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992, or high value jewelry, antiques or art.
12. A person who carries on the business of dealing in foreign exchange.
13. A person who carries on the business of rendering investment advice or investment brokering services.
14. A person, who issues, sells or redeems travelers' cheques, money orders, or similar payment instruments.
15. The Post Office Savings Bank as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992).

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16. A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
17. A totalisator agency board or a person operating a totalisator betting service.
18. An institution or body designated by the Minister in terms of section 2(2)(p) of the Banking Institutions Act, 1998 (Act No. 2 of 1998).
19. A financial institution as defined in section 1 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).
20. A person who conducts or carries on the business of an auctioneer.

SCHEDULE 2
LIST OF SUPERVISORY BODIES
(Section 1)

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 functions under the Banking Institutions Act, 1998 (Act No. 2 of 1998), or any law.
 2. The Registrar of Companies as defined in the Companies Act, 1973 (Act No. 61 of 1973).
 3. The law society established in terms of the Legal Practitioners Act, 1995 (Act No. 15 of 1995).
 4. The Estate Agents Board established in terms of the Estate Agents Act, 1976 (Act No. 112 of 1976).
 5. The Public Accountants' and Auditors' Board established in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).
 6. The Namibia Financial Institutions Supervisory Authority established in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).
 7. The Namibia Stock Exchange established in terms of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
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