



# **FINANCIAL INTELLIGENCE CENTRE**

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**DIRECTIVE NO 03 OF 2021**

**DIRECTIVE TO THE MASTER OF THE HIGH COURT TO DE-REGISTER  
TRUSTS WHO ARE IN NON-COMPLIANCE WITH THE FINANCIAL  
INTELLIGENCE ACT, 2012 (ACT NO. 13 OF 2012) AS AMENDED**

**SEPTEMBER 2021**

## 1. Introduction

The Financial Intelligence Centre (FIC) as part of its continued efforts to assist the Government of the Republic of Namibia in preventing and combatting Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF), hereby issue this Directive in terms of section 9(1)(e), read with sections 9(2)(f) and 9(2)(g) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA).

In terms of Section 5 of the FIA and its complimentary Regulation 3, the Master of High Court is, amongst others, required to:

- register all testamentary and *inter vivos* trusts in the prescribed manner and form;
- collect and *keep up-to-date* information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts; and
- not register any trust without the aforementioned information being availed to him/her.

Registration as envisaged in section 5 of the FIA, requires the Master to open and keep a register of prescribed up-to-date information on all trusts for purposes of identifying all natural and legal persons that are associated with that trust. The rationale behind this section stems from the fact that trusts (or legal arrangements as they are called in other jurisdictions) have been identified internationally as a popular vehicle for ML/TF/PF activities. As such, for purposes of effectively preventing trusts from being abused for ML/TF/PF purposes, it is important to identify and keep up-to-date records of any natural or legal person that is connected to or stands to benefit from that registered trust.

## 2. PURPOSE

The purpose of this Directive is to enable compliance with and enforcement of sections 5(1)(b) and 5(4)<sup>1</sup> of the FIA.

### ***“Application of Act to Master of High Court***

*5(1) For the purposes of this Act, the Master of the High Court must –*

*(b) collect and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and inter vivos trusts.*

*(4) If a trust was registered with the Master of the High Court before this section came into effect, the Master of the High Court must, within a period determined by the Centre, take reasonable steps to obtain the information referred to in subsection (1)(b).”*

## 3. DIRECTIVE

The Master of the High Court is hereby directed to cause any trust to be de-registered, in the manner set out below, if the Master has been unable to obtain the information required in terms of Section 5(4), read with Regulation 3, of the FIA.

Before de-registration is effected, the Master must give all natural or legal person associated with the trust, reasonable notice in writing:

- of the non-compliance with the requirements of the FIA;
- of the intention to de-register the trust and the consequences thereof; and
- that the person may, in writing, within a period specified in the notice, make representations as to why the de-registration should not take place.

After considering any representations made, the Master may decide either to:

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<sup>1</sup> Read with Determination No 01 of 2016 as published in Government Notice No. 62 of 1 March 2017: Government Gazette No.6253 of 1 March 2017

- de-register the trust; or
- not de-register a trust, on condition that the information required under the FIA is provided with immediate effect.

Upon a decision to de-register the trust, the Master must immediately, in writing:

- notify the relevant person of the decision and the reasons therefore;
- inform identified financial service providers such as the commercial bank(s) where the trust holds a bank account(s) or asset managers where the trust invested funds, of such de-registration; and
- notify the FIC and the Namibian Police for purposes of Section 5(5) of the FIA to take effect.

***“Application of Act to Master of High Court***

*5. (5) If a trust refuses or fails to register in terms of subsection (1)(a) or to provide the information referred to in subsection (1)(b), within the period determined under subsection (4), the trust commits an offence and is liable to a fine not exceeding N\$10 million, or where the commission of the offence is attributable to a representative of the trust, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment.”*

**4. Non-compliance with the provisions of this Directive**

In terms of section 63(f) of the FIA, non-compliance with this Directive and specifications contained thereunder, constitutes a criminal offence. Upon conviction, an offender may be imposed a fine not exceeding one hundred million Namibian dollar (NAD100,000,000), or to imprisonment for a period not exceeding thirty (30) years, or to both such fine and such imprisonment.

**5. General**

This Directive may contain statements of policy which reflect the FIC’s administration of the national AML/CFT/CPF legislation in carrying out its statutory mandate. This Directive

is issued without prejudice to the FIA and its complementing Regulations. The information contained in this Directive is intended to provide a summary on the matters contained herein and is not intended to be comprehensive.

This Directive can be accessed at [www.fic.na](http://www.fic.na)

**DATE ISSUED: 22 SEPTEMBER 2021**

**DIRECTOR: FINANCIAL INTELLIGENCE CENTRE**