



CIRCULAR 1/2024

ADDRESSED TO: **ALL ACCOUNTABLE INSTITUTIONS (NON-BANKING FINANCIAL SERVICES PROVIDERS)**

SUBJECT: **NOTIFICATION AND DIRECTIVE TO CONDUCT ENHANCED DUE DILIGENCE WHEN TRANSACTING WITH HIGH-RISK JURISDICTIONS (KENYA AND NAMIBIA) AS IDENTIFIED BY THE FATF**

EFFECTIVE DATE: **MARCH 2024**

STATUTORY REFERENCE: **SECTION 18 (5) AND 35 bis OF THE MONEY LAUNDERING AND FINANCING OF TERRORIST (PREVENTION) ACT OF 2011 AS AMENDED 2016**

1. LEGISLATIVE REFERENCE

- 1.1. This Circular is issued in terms of Section 35 of the Money Laundering and Financing of Terrorism (Prevention) Act of 2011 (as amended). **Section 35 (1)** of the Act provides that *“the enforcement of compliance with and implementation of the provisions of this Act by accountable institutions shall be the responsibility of a supervisory authority with respect to the accountable institutions under their supervision and the SFIU with respect to all other accountable institutions”*.
- 1.2. **Section 35bis** further provides that a supervisory Authority may impose administrative sanctions to an accountable institution or person who fails to comply with the provisions of the Act or any regulation, guideline, order, determination or directive issued in terms of the Act.
- 1.3. This Circular is therefore enforceable in terms of the Act, and accountable institutions are enjoined to comply with the Circular.

2. BACKGROUND

- 2.1. The Financial Action Task Force (FATF) is an inter-governmental body that sets global anti-money laundering (AML) and terrorist financing (CFT) standards and has made a call for action on Namibia and Kenya.
- 2.2. On the 23rd of February 2024 the FATF identified, as being high-risk jurisdictions and having significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, proliferation financing, the following:
 - 2.2.1. **Kenya**
 - 2.2.2. **Namibia**
- 2.3. The FATF and FATF-styled regional bodies (FSRBs) continue to work with Kenya and Namibia as they report on the progress achieved in addressing the strategic deficiencies and has called on these jurisdictions to complete their action plans expeditiously and within the agreed timeframes. Accountable institutions must therefore apply enhanced due diligence in their dealings with Kenya and Namibia.

3. APPLICABLE LAW

- 3.1. Section 18(5) of the ML/TFP Act 2011 as amended 2016 places a duty on accountable institutions to pay special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations and, where these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, and the findings reduced in writing, and be made available to competent authorities.

4. CALL FOR ENHANCED DUE DILIGENCE ON – NAMIBIA, KENYA AND ALL OTHER HIGH-RISK JURISDICTIONS

- 4.1. Accountable institutions are therefore required to exercise enhanced due diligence measures in the event they have relationships or wish to establish relationships with the specified Kenya and Namibia and other high-risk jurisdictions that have since been listed by the FATF.
- 4.2. Accountable institutions are further directed to monitor the FATF list for additional information jurisdictions that have either been listed and/or removed from the enhanced measures.

5. LIST OF HIGH-RISK JURISDICTIONS

Accountable institutions are thus requested to click on the link below at least once a month, for ascertaining which countries have been grey listed with the objective of conducting enhanced due diligence on the identified jurisdictions, should they have relationships or wish to establish same in those jurisdictions:

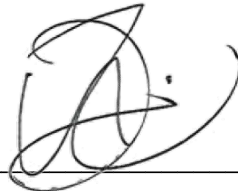
<https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2024.html>

6. NOTIFICATION AND DIRECTIVE

Therefore, by issuing this Circular the Authority notifies Accountable institutions of these high-risk jurisdictions and further directs all Accountable Institutions to conduct enhanced due diligence measures in the event that they have or wish to establish relationships with **Namibia and Kenya** as well as all other grey listed jurisdictions as per the link above.

7. COMPLIANCE

Section 35 bis provides that a supervisory Authority may impose administrative sanction to any accountable institution or person who fails to comply with the provisions of the Act or any regulation, guideline, order, determination or directive issued in terms of the Act. In that regard, the Authority advises all entities regulated by it that failure to implement adequate enhanced due diligence measures will not only expose the service providers to a high risk of money laundering and financing of terrorism, but it will also attract administrative penalties in terms of Section 35bis of the MLTFP Act as amended 2016.



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