

**31 March 2017**

**TO:**

- Long-Term Insurers/ Re-Insurers**
- Short- Term Insurers/ Re-Insurers**
- Investment Managers**
- Unlisted Investment Managers**
- Stockbrokers**
- Special Purpose Vehicles**
- Unit Trust Management Companies**
- Microlenders**
- Friendly Societies**

**DIRECTIVE: AML/01/2017**

**EFFECTIVE DATE: 1 May 2017**

**SUBJECT: Disqualification and Rehabilitation Criteria for Fitness and Propriety  
for Accountable and Reporting Institutions under the supervision of  
Namibia Financial Institutions Supervisory Authority (NAMFISA)**

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## **1. Introduction**

1.1. Namibia Financial Institutions Supervisory Authority (hereinafter referred to as "NAMFISA") as a designated Supervisory Body in terms of Schedule 2 of the Financial Intelligence Act No.13 of 2012 (hereinafter referred to as "FIA"), issues this Disqualification and Rehabilitation Criteria in terms of Section 35 (15) of the FIA read with the Financial Intelligence Centre's Directive No 03 of 2016 dated October 2016.



## **2. Background and purpose**

- 2.1 Section 35 (15) (a) of the FIA states that NAMFISA, by virtue of being a Supervisory Body, must 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 or Reporting institution. This obligation is derived from the Recommendation 26 and immediate outcome 3 of the Financial Action Task Force (FATF) recommendations and methodology.
- 2.2 The FIA further states that a Supervisory Body is responsible for supervising, monitoring and enforcing compliance with provisions of the FIA or any regulation, order, circular, notice, determination or directive issued in terms of the FIA, in respect of all Accountable and Reporting institutions supervised by it [section 35(2)]. Complying with this section of the FIA for combatting ML/TF and PF risks is the premise of this Criteria.

## **3. Application of this criteria**

- 3.1 The measures set out herein apply to all Accountable and Reporting Institutions under NAMFISA's jurisdiction described in terms of section 35 of the Financial Intelligence Act No. 13 of 2012 ("FIA") read with the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No.3 of 2001)

## **4. Disqualification Criteria**

- 4.1 A key person will be considered not to be fit and proper if it is established through assessment that the key person is not of good character, competent, honest, financially sound, reputable, reliable and/ or does not discharge his or her responsibilities with due care, skill and diligence.



- 4.2 Without prejudice to the fit and proper criteria set in Directive No 03 of 2016 , the following factors constitutes prima facie evidence that the applicant does not qualify, namely that the key person-
- (a) has within a period of ten years preceding the date of application been found guilty in any civil or criminal proceedings by a court of law (whether in Namibia or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;
  - (b) has within a period of ten years preceding the date of application been found guilty by any professional body or financial services industry body (whether in Namibia or elsewhere), of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant;
  - (c) has within a period of ten years preceding the date of application been denied membership of anybody referred to in b) above on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant;
  - (d) has within a period of ten years preceding the date of application-
    - (i) been found guilty by any regulatory or supervisory body (whether in Namibia or elsewhere); or
    - (ii) had its authorisation to carry on business refused, suspended or withdrawn by any such body, on account of an act of dishonesty, negligence, incompetence or mismanagement sufficiently serious to impugn the honesty and integrity of the applicant;
  - (e) has within a period of ten years preceding the date of application, had any license granted to the applicant by any regulatory or supervisory body suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant; or



- (f) has at any time prior to the date of application been disqualified or prohibited by any court of law (whether in Namibia or elsewhere), from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.
- (g) has at any time in their past been declared a habitual criminal or has a criminal record that makes them eligible for such declaration.

4.3 An applicant, must in the application, be candid and accurate and must, of own accord, disclose all facts or information at their disposal and or knowledge, which may be reasonably accessible to the applicant, or which the applicant ought to have reasonably known and which may be relevant for purposes of a decision by NAMFISA as to whether the applicant complies or does not comply with the fit and proper requirements.

## **5. Rehabilitation Criteria**

- 5.1 In the event that a key person has previously been found to be unfit to participate in any NAMFISA regulated and supervised industry, or the financial services industry more broadly, an application to enter or re-enter the industry may be made by that key person after the expiry of up to ten years after such finding or, where substantive and compelling reasons can be shown, a period shorter than ten years. Such a key person will need to be assessed in order to ascertain whether or not the key person has been successfully rehabilitated and thus eligible to participate in the supervised and regulated industry.
- 5.2 The criteria herein is for the purpose of evaluating the rehabilitation of a person in order to determine whether or not the person should be considered fit. The premise of rehabilitation is that key persons are capable of being restored in terms of their reputation and character, thus eventually making meaningful contributions to society. The goal of rehabilitation is to restore a key person's reputation and character.



5.3 The rehabilitation criteria will be used by NAMFISA to assess all key persons who were previously found to be unfit and are seeking to enter or re-enter the regulated industry. The criteria will be as follows:

<b>Misconduct</b>	<b>Rehabilitation Standard</b>
(a) Guilty of a Financial Crime	<p>(i) The passage of a minimum ten year period since the most recent conviction or where a custodial sentence has been served; the passage of a minimum five year period since the end of the custodial sentence. This requirement has precedence over the requirement relating to custodial sentence below.</p> <p>(ii) A longer period may be required if there is a history of acts or conduct substantially related to the functions or duties of a key person.</p>
(b) Guilty of any unlawful activity as defined in the Prevention of Organised Crime Act 29 of 2004	<p>(i) The passage of a minimum five year period since the most recent criminal conviction and/or;</p> <p>(ii) The passage of a minimum ten year period since the most recent terrorist or proliferation conviction.</p> <p>(iii) Where a custodial sentence has been served; the passage of a minimum two year period since the end of the custodial sentence.</p>
(c) Where a key person was under a corrective measure by NAMFISA	(i) The passage of a minimum probationary period of ten years

	without having committed similar conduct.
(d) Where a key person was denied or refused admission to a professional body; Or denied membership for any other unprofessional or dishonourable conduct otherwise not specifically mentioned	(i) The passage of a minimum period of ten years.
(e) Where an entity was found to have inadequate capital. This includes the natural persons involved.	(i) The passage of a minimum period of five years; and (ii) Adequate capitalization.
(f) Where an entity was placed under judicial management.	(i) The passage of a minimum period of five years after exiting judicial management
(g) Where an entity was placed under judicial management pursuant to the inefficiency or incompetency of a natural person.	(i) The passage of a minimum period of five years after exiting judicial management
(h) Where a license was cancelled pursuant to the inefficiency or incompetency of a legal/natural person	(i) The passage of a minimum period of ten years.
(i) Where any key person was involved in the management of a business that was declared insolvent or was liquidated, as a result of the conduct of key person.	(i) The passage of a minimum period of ten years.

(j) Where a key person was refused from any position for reasons of dishonesty, lack of integrity or failure to fulfill fiduciary duties	(i) The passage of a minimum period of ten years.
(k) Where a key person has an unfavourable credit performance information on Financial Credit Bureau	(i) the passage of a minimum period of five year from the date of listing on a Financial Credit Bureau.

## 5.1 Rehabilitative Steps

- 5.1.1 In the event a key person has been previously declared unfit to participate in the regulated and supervised industry or the financial services industry more broadly, an application to re-enter the industry may be made by that key person two years after such ineligibility.
- 5.1.2 In addition to applying the above standards, NAMFISA will assess whether a key person has undertaken any positive rehabilitative steps after having been found to be unfit. Failure to take appropriate rehabilitative steps may mean that a key person remains unfit to enter or re-enter and participate in the regulated and supervised industry. NAMFISA will therefore also consider whether:
- (a) The key person has made restitution to anyone who has suffered financial loss through related acts or omissions of the key person.
  - (b) Passage of ten years after the last criminal conviction of the key person has occurred.
  - (c) Successful completion or early discharge from probation or parole has occurred.



- (d) The payment of any fine or other monetary penalty imposed in connection with a criminal conviction, civil or administrative judgment.
- (e) The key person has completed, or has enrolled in formal educational or training for self-improvement related to the position the key person seeks to hold.
- (f) Discharge of or bona fide effort toward discharging, debts or monetary obligations to others has occurred.
- (g) Correction of improper business practices which caused prejudice or injury to others, or had the potential to cause such prejudice or injury, has occurred.
- (h) The key person has had significant involvement in community, religious or privately-sponsored programs designed to provide social benefits or to improve social problems.
- (i) A change in attitude from that which existed at the time of the misconduct in question has occurred, as evidenced by any or all of the following:
  - (j) Testimony under oath of the key person.
  - (k) Character evidence from persons familiar with the key person's previous conduct and with the key person's subsequent attitudes and behavioural patterns.
  - (l) Evidence from probation or parole officers or law enforcement officials competent to testify as to the person's social adjustments and reformation.
- (m) Absence of subsequent criminal activity or other misconduct that would indicate an inability to conform to societal rules when considered in light of the conduct in question.





5.1.3 Unless otherwise requested, the following documents should be submitted to NAMFISA in order to assess the fitness and propriety of persons:

- (a) Identification documents;
- (b) An updated, detailed, signed curriculum vitae;
- (c) A Police Clearance Certificate from the Namibian Police Service or from a comparable authority of the relevant jurisdiction in the case of foreign persons;
- (d) Letter of good standing from a professional body and or regulator;
- (e) Details on professional and work conduct (dismissal, disciplinary actions, litigation, etc.);
- (f) Character references;
- (g) Any other document requested by NAMFISA.

5.1.4 In the case of corporate entities, the following documents should be submitted:

- (a) A copy of the company's Memorandum of Association or Articles;
- (b) Incorporation and Tax Clearance Certificate;
- (c) Copies of audited financial statements of the company, for three consecutive years immediately preceding its application or for each year it has been in operation, if less than three years;
- (d) Any other document as set out by the registration requirements; and
- (e) Any other document requested by NAMFISA.

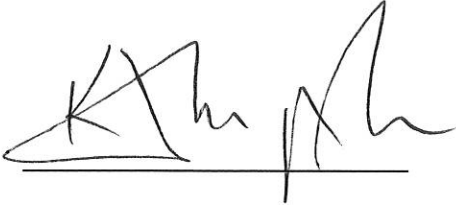


## 6. Comments

- 6.1 This Criteria shall be reviewed from time to time depending on the global developments in the fight against Money Laundering, the Financing of Terrorism and Proliferation Activities.

ISSUED BY:

DATE: 31 March 2017

A handwritten signature in black ink, appearing to read 'K. Matomola', written over a horizontal line.

**Kenneth S. Matomola**  
**CHIEF EXECUTIVE OFFICER**