



DIRECTIVE: AML/01/2020

**TO: FRIENDLY SOCIETIES
INVESTMENT MANAGERS
MICRO-LENDERS
LONG-TERM INSURERS/REINSURERS
SHORT-TERM INSURERS/REINSURERS
SPECIAL PURPOSE VEHICLES
STOCKBROKERS
UNIT TRUST MANAGEMENT COMPANIES
UNLISTED INVESTMENT MANAGERS**

**NOTICE: THIS DIRECTIVE SUPERSEDES THE DISQUALIFICATION AND
REHABILITATION DIRECTIVE: AML/01/2017, ISSUED ON 31 MARCH
2017**

SUBJECT: DISQUALIFICATION AND REHABILITATION CRITERIA

1. INTRODUCTION

The 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 "the FIA"), issues this Disqualification and Rehabilitation Directive in terms of section 35(15) of the FIA.

2. BACKGROUND

- 2.1 Section 35(15)(a) of the FIA confers the mandate upon NAMFISA to 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 under its supervision.
- 2.2 Section 35(15) further requires NAMFISA, in terms of any applicable Act, to take into account any involvement of key persons, directly or indirectly, in non-compliance with the FIA or any regulation, order, circular, notice, determination or directive issued in terms of the FIA or any involvement in any money laundering activity or any terrorist or financing of terrorist and proliferation activities.
- 2.3 It is in respect of the above that NAMFISA issues this Directive to Accountable and Reporting Institutions under its supervision to act accordingly.

3. PURPOSE OF THIS DIRECTIVE

The purpose of this Directive is to –

- 3.1 direct Accountable and Reporting Institutions under the supervision of NAMFISA to provide prescribed information to enable NAMFISA to conduct a fitness and propriety assessment of key persons;
- 3.2 set out disqualification criteria; and
- 3.3 set out rehabilitation criteria.

4. DEFINITIONS AND ACRONYMS

In this Directive, unless the context indicates otherwise –

“Accountable and Reporting Institutions” refers to institutions that carry on the activities as described under Schedule 1 and 3 of the FIA;

“beneficial owner” refers to a natural person who owns or exercises effective control over an Accountable or Reporting Institution, and a natural person is deemed to own or effectively control an Accountable or Reporting Institution when the person –

- (a) owns or controls, directly or indirectly, including through trusts or bearer share holdings for any entity, 20% or more of the shares or voting rights of the Accountable or Reporting Institution;
- (b) together with a connected person¹ owns or controls, directly or indirectly, including through trusts or bearer share holdings for any entity, 20% or more of the shares or voting rights of the Accountable or Reporting Institution;
- (c) despite a less than 20% shareholding or voting rights, receives a large percentage of the Accountable or Reporting Institution’s declared dividends; or
- (d) otherwise exercises control over the management of the Accountable or Reporting Institution in his/her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner;

“CEO” refers to the person appointed in terms of section 5 of the NAMFISA Act as the chief executive officer of NAMFISA;

“Disqualification” declaring a person unfit and improper for an activity or position, and registering the particulars of such person on the debarment register;

“entity” refers to a corporate body, any other legal person, a trust, partnership, fund, association, joint venture and any other unincorporated organisation;

“FIA” refers to the Financial Intelligence Act, No.13 of 2012, as amended;

“FIC” refers to the Financial Intelligence Centre established in terms of section 7(1) of the FIA;

¹ A person is connected with an individual if that person is the individual’s wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual’s wife or husband; and an entity is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

“FIC Directive” refers to the Directive No. 3 of 2016 on Fit and Proper expectations for Accountable and Reporting Institutions under the supervision of NAMFISA;

“fiduciary duties” refers to the legal obligation of a person to act in the best interest of another person, to display reasonable care and skill in carrying out ones office;

“fitness and propriety” has the same meaning as fit and proper;

“fitness and propriety assessment” means an assessment of the key person based on fitness and propriety criteria, which include, but is not limited to, the following components:

- (a) identification;
- (b) honesty and integrity;
- (c) competence;
- (d) operational ability; and
- (e) financial soundness;

“key person” refers to a beneficial owner, including a Principal Officer and Branch Manager;

“NAMFISA” refers to the Namibia Financial Institutions Supervisory Authority established in terms of section 2 of the NAMFISA Act;

“NAMFISA Act” refers to Namibia Financial Institutions Supervisory Authority Act, No. 3 of 2001, as amended;

“PACOTPA” refers to the Prevention and Combating of Terrorist and Proliferation Activities Act, No. 4 of 2014, as amended;

“POCA” refers to the Prevention of Organized Crime Act, No. 29 of 2004, as amended;

“rehabilitation” refers to the restoration of a key person, who was previously disqualified in terms of paragraph 8, or who would have been disqualified in terms of paragraph 8 had a fitness and propriety assessment been done, to fitness and propriety, thus enabling the key person to participate in any regulated industry under the supervision of NAMFISA.

5. APPLICATION OF THIS DIRECTIVE

This Directive applies to all Accountable and Reporting Institutions supervised by NAMFISA in terms of section 35(2) of the FIA, read with the NAMFISA Act.

6. DISCLOSURE

6.1. In terms of the FIC Directive, Accountable and Reporting Institutions under the supervision of NAMFISA are required to avail information requested by NAMFISA to enable NAMFISA to conduct the fitness and propriety assessment.

6.2. In light of the above, a key person must be candid and accurate and must, of own accord, disclose all facts –

- (a) at his/her disposal;
- (b) within his/her knowledge;
- (c) which may be reasonably accessible to the key person;
- (d) which the key person ought to have reasonably known; and
- (e) which may be relevant,

for purposes of an assessment by NAMFISA to establish whether he/she is fit and proper in terms of the fitness and propriety requirements.

7. INFORMATION AND DOCUMENTS REQUIRED FOR FITNESS AND PROPRIETY ASSESSMENT

Unless otherwise requested, the following information and documents must be submitted to NAMFISA in order to assess the fitness and propriety of a key person:

- 7.1. certified copy of the identification document/passport;
- 7.2. updated, detailed, signed Curriculum Vitae, inclusive of details relating to qualifications and experience;
- 7.3. certified copy of a valid Police Clearance Certificate or Certificate of Conduct from the Namibian Police Force as per section 2 of Police Act, 19 of 1990 or from a comparable authority of the relevant jurisdiction in the case of a foreigner or Namibian who lived in a foreign country (the Certificate of Conduct must not be older than 12 months);

- 7.4. certified copies of character references from independent third parties, such as current employer, business partner, etc.; and
- 7.5. any relevant information or documents requested by NAMFISA in terms of Annexure FAP1 hereto attached.

8. DISQUALIFICATION CRITERIA

- 8.1. A key person may be considered to be unfit and improper if it is established, through a fitness and propriety assessment, that the key person is not of good character, competent, honest, financially sound or does not discharge his/her responsibilities with due care, skill and diligence.
- 8.2. In assessing the fitness and propriety of a key person, the CEO will consider if the key person has, whether in Namibia or elsewhere, –
 - 8.2.1 within a period of ten (10) years preceding the date of application –
 - a) been found guilty in any civil or criminal proceedings by a court of law or employer of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;
 - b) been found guilty by any professional body or financial services industry body of an act of dishonesty, negligence, incompetence or mismanagement, unprofessional or unworthy conduct sufficiently serious to impugn the honesty and integrity of the key person;
 - c) been denied membership of any professional body or financial services industry body on account of dishonesty, negligence, incompetence or mismanagement, unprofessional or unworthy conduct sufficiently serious to impugn the honesty and integrity of the key person;
 - d) been subject to a pending investigation or disciplinary proceeding by a regulatory or supervisory authority or professional body or financial services industry body or government body/agency, including the Namibian Police, or employer relating to having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty sufficiently serious to impugn the honesty and integrity of the key person;

- e) been discharged or dismissed from office on account of misconduct relating to fraud or the misappropriation of money;
 - f) been found guilty by any regulatory or supervisory body or had his/her authorisation or license 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 key person;
 - g) was a member of management of an entity where the entity's authorisation or license, granted to it by a regulatory or supervisory body, was 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 key person;
 - h) been disqualified or prohibited by any court of law from taking part in the management of any entity or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not;
 - i) been declared a habitual criminal or has a criminal record that makes him/her eligible for such declaration;
 - j) been convicted of an offence under the FIA, POCA, PACOTPA or under any similar or comparable laws in another jurisdiction;
 - k) been involved in the management of an entity, when such entity was placed under corrective measure by NAMFISA due to non-compliance with relevant legislation;
 - l) been sequestered or was involved in the management of an entity that was declared insolvent or was liquidated or placed under judicial management;
- or

8.2.2 within a period of five (5) years preceding the date of application been adversely listed on a Credit Bureau.

8.3 If the CEO is on reasonable grounds satisfied that a key person fails to demonstrate fitness and propriety in terms of paragraph 8.2, such key person may be disqualified from controlling or participating, directly or indirectly, in the

directorship, management or operations of any regulated industry under the supervision of NAMFISA for a maximum period of ten (10) years.

- 8.4 Before taking any action pursuant to paragraph 8.3, the CEO must give notice to the key person of his/her intention to take the action, together with reasons therefor, and must give the key person a reasonable opportunity to be heard by specifying a period of not less than 21 calendar days during which the key person may make representations to the CEO about the matter.

9. REHABILITATION CRITERIA

- 9.1 The premise of rehabilitation is that a key person is capable of being restored in terms of his/her reputation and character, thus eventually making meaningful contributions to society and enabling the key person to participate in the regulated industry under the supervision of NAMFISA.
- 9.2 A key person who was previously disqualified in terms of paragraph 8 or would have been disqualified in terms of paragraph 8 had a fitness and propriety assessment done, may be considered to be rehabilitated by the CEO before the expiry of the maximum disqualification period if the key person can demonstrate eligibility in terms of paragraph 9.3.
- 9.3. A key person may be eligible for rehabilitation where the key person is able to demonstrate to the reasonable satisfaction of the CEO eligibility through one or more of the following –
- (a) having made restitution to anyone who has suffered financial loss through related acts or omissions of the key person;
 - (b) having paid any fine or other monetary penalty imposed in connection with a criminal conviction, civil or administrative decision or judgement;
 - (c) discharged debts or monetary obligations for which he/she was liable;
 - (d) absence of subsequent misconduct that would indicate an inability to conform to societal rules when considered in light of the conduct in question;
 - (e) having served a custodial sentence;


- (f) correction of improper business practices which caused prejudice or injury to others, or had the potential to cause such prejudice or injury; or (g) any other reasonable ground that the CEO may deem relevant or appropriate.

9.4 If the CEO is, on reasonable grounds, satisfied that a key person fails to demonstrate eligibility for rehabilitation in terms of paragraph 9.3 or otherwise fails to demonstrate fitness and propriety in terms of this Directive, such key person may, subject to paragraph 8.4, be disqualified from controlling or participating, directly or indirectly, in the directorship, management or operations of any regulated industry under the supervision of NAMFISA for a maximum period of ten (10) years.

10. COMMENTS

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

ISSUED BY:



KENNETH S. MATOMOLA
CHIEF EXECUTIVE OFFICER

DATE: 11/12/2020

HOW TO CONTACT NAMFISA:

All correspondence and enquiries must be directed to:

The CEO
NAMFISA
P.O. Box 21250
51-55 Werner List Street,
Gutenberg Plaza,
Windhoek
Republic of Namibia

Tel: +264 (61) 290 5000
Fax: +264 (61) 290 5194

