

TO :

- INVESTMENT MANAGERS**
- LINKED INVESTMENT SERVICE PROVIDERS**
- STOCK-BROKERS**
- UNIT TRUST MANAGEMENT COMPANIES**
- UNLISTED INVESTMENT MANAGERS**

DIRECTIVE NO.: AML/01/2022

DATE : 05 JULY 2022

SUBJECT : APPLICATION OF MEASURES TO MITIGATE ML/TF/PF RISKS ASSOCIATED WITH THIRD-PARTY PAYMENT AND PERFORMANCE OF ACTS NECESSARY TO MEET OBLIGATIONS IMPOSED BY THE FINANCIAL INTELLIGENCE ACT, 2012 (ACT NO.13 OF 2012)

1. INTRODUCTION

1.1 NAMFISA is a Supervisory Body in terms of Schedule 2 of the Financial Intelligence Act, 2002 (the FIA). In terms of section 35(2) of the FIA, a Supervisory Body is responsible for supervising, monitoring, and enforcing compliance with the 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.

1.2 In terms of section 54(2) of the FIA:

... a supervisory body may in writing, over and above any directive contemplated in subsection (1), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom this Act applies, to -

(a) provide the Centre or that supervisory body, as the case may be -

- (i) with the information, reports or statistical returns specified in the directive, at the time or at the intervals specified in the directive; or*
- (ii) with any document in its possession or custody or under its control, within the period specified in the directive;*
- (b) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;*
- (c) perform acts necessary to remedy any non-compliance with this Act; or*
- (d) perform acts necessary to meet obligations imposed by this Act.*

1.3 Accordingly, NAMFISA as part of its continuing effort to combatting Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF) activities, issues this directive in terms of section 54(2) of the FIA.

2. BACKGROUND

2.1 NAMFISA noted a trend of third-party payments being processed in respect of redeemed investment funds in the securities market sector. The aforementioned trend involves payment of redeemed investment funds into third parties' bank accounts, which are different from investors' bank accounts nominated at the on-boarding stage.

2.2 Under rare circumstances, third-party payments may also include redemptions that occur in the form of transfer of funds between different client investment accounts such as, but not limited to:

- i. Where an investor manages two or more separate investment accounts and makes transfers between such accounts, for example, an individual investment account and a Family Trust or Close Corporation investment account;
- ii. Where transfers occur between investment accounts of spouses or related persons, for example, gifts;

- iii. Where parents manage their children's investment accounts and make transfers to/from their children's investment accounts; and
- iv. Where groups of companies make intercompany transfers between subsidiaries or related parties' investment accounts.

2.3 While the above-mentioned delivery channels appear to offer convenience to investors who intend to use their investments to acquire items of value directly from the suppliers, settle debts or transfer investment funds between different client investment accounts, NAMFISA deems these delivery channels susceptible to abuse for ML/TF/PF activities.

2.4 Additionally, this delivery channel exposes AIs in the securities sector to the risk of falling prey to fraudsters through hacking and identity theft, particularly where non-face-to-face platforms are used in the course of business relationships.

2.5 Therefore, effective application of AML/CFT/CPF measures that are commensurate with ML/TF/PF risks associated with third-party payments, as described under paragraphs 3.1 and 3.2 above, is essential to ensure that AIs meet their obligations imposed by the FIA.

3. APPLICATION

3.1 This Directive takes effect on the date of issue and applies to all AIs in the securities sector as listed below:

- Stock-brokers as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- Unit trust management companies registered under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);
- Investment managers approved under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- Linked investment service providers approved under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); and

- Unlisted investment managers registered under the regulations made under the Pension Funds Act, 1956 (Act No. 24 of 1956).

4. DIRECTIVE

4.1 All AIs listed in paragraph 4 of this Directive are thus directed to perform acts necessary to adequately mitigate the risks of ML/TF/PF associated with third-party payments and to ensure that they meet the obligations imposed upon them by the FIA, and in particular, to apply the following measures:

- a) Assess the risks of ML/TF/PF associated with every third-party payment before conducting any such third-party payment on behalf of their clients;
- b) Apply enhanced due diligence measures such as –
 - i) obtain and verify identification information in relation to a third party;
 - ii) verify whether investment redemption/withdrawal instructions are indeed from the investor. In the event that non-face-to-face platforms are used for purposes of investment redemption, assurance should be solicited from the investor using other reliable platforms for verification;
 - iii) verify information/documentation using independent data sources; and
or
 - iv) if a person is acting on behalf of the investor, obtain and verify identification information of the person acting on behalf of the investor. AIs must also verify the authority to act on behalf of the investor by requesting confirmation from the investor through reliable platforms;
- c) Monitor third-party transactions to detect unusual/suspicious transactions for purposes of reporting to the FIC;

- d) Conduct, as envisaged in section 39(8) and 39(5)(c) of the FIA, read with Regulation 24(5) of the regulations made under FIA, an independent audit on internal controls to gain assurance that the controls adopted are adequate and effective so as to mitigate ML/TF/PF risks; **OR**
- e) Cease or refrain from engaging in the practice of third-party payments if the above risk mitigating measures cannot be effectively applied so as to mitigate ML/TF/PF risks.

5. NON-COMPLIANCE WITH THIS DIRECTIVE

5.1 In terms of section 54(5) of the FIA, an AI or person that fails to comply with this Directive 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 AI, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

ISSUED BY:

DATE: 05 JULY 2022

KENNETH S. MATOMOLA
CHIEF EXECUTIVE OFFICER

DEFINITIONS AND ACRONYMS

AI	Accountable Institution as described under Schedule 1 of FIA.
AML	Anti-Money Laundering.
Business relationship	An arrangement between a client and an accountable or reporting institution for the purpose of concluding transactions on a regular basis.
CEO	Chief Executive Officer appointed in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).
CFT	Combating the Financing of Terrorism.
Client	A person (Natural or legal) who has entered into a business relationship or a single transaction with an AI, and the words “customer” and “investor” have a corresponding meaning.
CPF	Combating Proliferation Financing.
FIA	Financial Intelligence Act, 2012 (Act No.13 of 2012).
FIC	Financial Intelligence Centre established in terms of the FIA.
ML	Money Laundering.
NAMFISA	Namibia Financial Institutions Supervisory Authority established in terms of the Namibia Financial

Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).

Person	A natural or legal person.
PF	Proliferation Financing.
Single transaction	A transaction other than a transaction concluded in the course of a business relationship.
Transaction	A transaction concluded between a client and an AI in accordance with the type of business carried on by that AI and includes attempted transactions.
Third party	A third party is any natural or legal person other than the client.
Third-party payment	Third-party payment is a payment of investment funds by an AI to a natural or legal person other than the client.
TF	Terrorism Financing.

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