TO:	**INVESTMENT MANAGERS** **LINKED INVESTMENT SERVICE PROVIDERS** **STOCK-BROKERS** **UNIT TRUST MANAGEMENT COMPANIES** **UNLISTED INVESTMENT MANAGERS** **LONG-TERM INSURANCE COMPANIES** **MICROLENDERS**
GUIDELINES NO.:	**AML/03/2023**
DATE:	**18 JULY 2023**
SUBJECT:	**GUIDELINES ON THE TREATMENT OF SOUTH AFRICA AND CLIENTS OF SOUTH AFRICAN ORIGIN FOLLOWING THE GREY LISTING OF SOUTH AFRICA**

1. DEFINITIONS AND ACRONYMS

“AIs” Accountable Institution**,** which means a person or entity listed in Schedule 1 of the Financial Intelligence Act, No. 13 of 2012 (“FIA”).

"FATF" means the Financial Action Task Force.

“FIA” refers to the Financial Intelligence Act, 2012 (Act No. 13 of 2012).

“ML” means Money Laundering.

“Monitoring” as defined in the FIA.

“NAMFISA” Namibia Financial Institutions Supervisory Authority

“PF” means proliferation financing.

“RBA” refers to the Risk Based Approach. An approach for managing risks based on prioritization of such risks as per the occurrence/frequency/probability and potential impacts/consequences of each identified risk.

“TF” means Terrorist Financing.

2. BACKGROUND

2.1 NAMFISA, in terms of schedule 2 of FIA read with section 35(2) of FIA has a statutory obligation to supervise, monitor, and enforce compliance with the provisions of FIA or any regulation, order, circular, notice, determination or directive issued in terms of FIA, in respect of all AIs supervised by it.

2.2 Furthermore, section 35(15) (d) of FIA confers the mandate upon NAMFISA to, *"issue guidelines to assist accountable and reporting institutions in detecting suspicious patterns of behaviour in their clients and these guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for accountable and reporting institutions' personnel".*

2.3 In light of the above, NAMFISA issues these guidelines to AIs under its purview on **-.**

2.3.1 the treatment of South Africa and clients of South African origin following the grey listing of South Africa by the FATF; and

2.3.2 identification of suspicious patterns of behavior in respect of clients of South African origin.

2.4 This will assist AIs to mitigate ML/TF/PF risks posed by South Africa as a country, and clients of South African origin using a risk-based approach.

2.5 Whilst noting that there are other countries grey listed by the FATF that are members of Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), and other FATF-Style Regional Bodies (FSRBs), these guidelines are issued particularly in view of the close ties between South Africa and Namibia.

2.6 The above-mentioned close ties are in terms of the inter-connectedness of the financial systems of the two countries, and trade relations. However, the guidelines are not only limited to the treatment of South Africa and clients of South African origin, but relevant when dealing with other grey listed countries.

3. SOUTH AFRICA GREY LISTING

3.1. South Africa was grey listed by FATF on 24 February 2023 for failure to fully comply with international standards on combating ML/TF/PF activities. The areas of strategic deficiencies relate to the recommended actions listed below, to be implemented over a period of 2 years, starting from 24 February 2023:

3.1.1. South Africa to demonstrate a sustained increase in outbound Mutual Legal Assistance requests that help facilitate ML/TF investigations and confiscations of different types of assets in line with its risk profile;

3.1.2. Improve risk-based supervision of Designated Non-Financial Businesses and Professions (DNFBPs) and demonstrate that all AML/CFT supervisors apply proportionate and effective sanctions for non-compliance;

3.1.3. Ensure that competent authorities have timely access to accurate and up-to-date Beneficial Ownership (BO) information on legal persons and arrangements, and applying sanctions for breaches by legal persons relating to BO obligations;

3.1.4. Demonstrate a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre in terms of ML/TF investigations;

3.1.5. Demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of terrorist financing activities in line with its risk profile;

3.1.6. Enhance its identification, seizure, and confiscation of proceeds and instrumentalities of a wider range of predicate offences, in line with its risk profile;

3.1.7. Update its terrorist financing risk assessment to inform the implementation of a comprehensive national counter-financing of terrorism strategy; and

3.1.8. Ensure the effective implementation of targeted financial sanctions and demonstrate an effective mechanism to identify individuals and entities that meet the criteria for domestic designation.

3.2. The grey listing entails placing South Africa under increased monitoring in order for South Africa to actively and swiftly work with the FATF to address strategic deficiencies in its regime on countering ML/TF/PF.

3.3. Being on the grey list means that South Africa committed to resolve swiftly the identified strategic deficiencies within agreed timeframes.

3.4. The FATF does not call for the application of enhanced due diligence measures to be applied to a grey listed jurisdiction. Similarly, the FATF Standards do not envisage de-risking, or cutting-off entire classes of customers, but call for the application of a risk-based approach.

3.5. Therefore, the FATF encourages its members and all jurisdictions to consider grey listing information when conducting their risk assessments.

4. TREATMENT OF SOUTH AFRICA AND CLIENTS OF SOUTH AFRICAN ORIGIN

4.1 Considering the FATF position on grey listing outlined under paragraph 3 above, AIs are encouraged to consider the grey listing information when assessing the risks of ML/TF/PF in respect of the clients and geographical risk factors.

4.2 The extent of the application of AML/CFT/CPF measures should be guided by the outcome of the institutional risk assessments. In other words, a risk-based approach should be applied.

4.3 Furthermore, the proposed amendments to the FIA (section 24 (2) (b) require AIs to pay special attention to enhanced due diligence measures that are commensurate with ML/TF/PF risks emerging from business relations and transactions with persons, including legal persons and trusts from or in countries that do not sufficiently apply the relevant international standards to combat ML/TF/PF. It is important to highlight that these proposed FIA amendments support FATF's position regarding the treatment of grey listed countries.

5. APPLICATION OF A RISK-BASED APPROACH

5.1. The application of a Risk-based approach is premised on the AI's understanding of ML/TF/PF risks emerging from the nature of business it conducts, the type of clients it serves, the channel used for product offering or delivery of a financial service, the geographical nature of its business and origin of its clients and their businesses.

5.2. The aforementioned understanding forms the basis of the AI's internal policy, procedures and controls, and the extent of application thereof to mitigate ML/TF/PF risks identified.

5.3. The application of a risk-based approach is preceded by risk identification and assessment to determine the extent of the exposure (risk levels) and the consequences should the identified risks materialize.

5.4. The process of identification and assessment of the risks is followed by the application of internal AML/CFT/CPF measures commensurate with the level of the risk exposure. This is what is called a risk-based approach, and it is central to the effective application of AML/CFT/CPF measures designed to mitigate ML/TF/PF risks so identified. These measures are universally harmonized to avoid arbitrage across jurisdictions.

5.5. Every risk assessment should be based on a particular risk assessment methodology. There is no single (universal) risk assessment methodology. However, any risk assessment methodology that leads to identification of risk events, threats and consequences is a satisfactory methodology.

5.6. Therefore, a risk assessment methodology adopted by the AI ought to be approved by senior management of that AI before the AI commences with the identification and assessment of ML/TF/PF risks.

5.7. Similarly, the findings of the ML/TF/PF risk assessment are to be documented and approved by senior management of the AI. Risks are not static; therefore, the risk assessment is to be conducted periodically to take into account all new developments.

6. APPLICATION OF MEASURES ON A RISK SENSITIVE BASIS

The AML/CFT/CPF measures should be applied as outlined in the NAMFISA guidelines **No AML/02/2023,** particularly under paragraphs 4 and 5.

7. General

These guidelines are issued without prejudice to the FIA and its complementing Regulations. The information contained in this document is intended to guide AIs on the matters highlighted herein and may not be exhaustive.

The Guidelines can be accessed at: www.namfisa.com.na

____

KENNETH S. MATOMOLA
CHIEF EXECUTIVE OFFICER

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
amlinspections@namfisa.com.na; or info@namfisa.com.na;