



**Financial Intelligence Centre
Republic of Namibia**

Trust and Company Service Providers (TCSP)'s Financial Intelligence Act Obligations



FOCUS OF THE PRESENTATION

- 1. Abbreviations and definition of Money Laundering**
- 2. TCSPs inclusion as Accountable Institution as per Schedule 1 of the FIA**
- 3. Why TCSPs need to register with FIC**
- 4. Obligations of Accountable Institutions in terms of the FIA**
- 5. Sanctions for not registering and non-compliance**



ABBREVIATIONS

- **ML** – Money Laundering
- **TF** – Terrorist Financing
- **PF** – Proliferation Financing
- **FIA** – Financial Intelligence Act
- **The Centre or the FIC** – The Financial Intelligence Centre
- **AI** – Accountable Institution
- **POCA** – Prevention of Organized Crime Act
- **PACOTPAA** – Prevention and Combating of Terrorism Activities Act
- **FATF** – Financial Action Task Force
- **KYC** – Know Your Client
- **CDD** – Customer Due Diligence
- **CAP** – Customer Acceptance Policy
- **AMLCO** – Anti-Money Laundering Compliance Officer
- **STR** – Suspicious Transaction Report



DEFINITION OF MONEY LAUNDERING

Money Laundering is process by which proceeds of crime are converted into assets that appear to have a legitimate/legal origin – **IT'S A CRIMINAL ACTIVITY!**

In terms of **The FIA**, “Money Laundering” means :-

(a) the act of a person who –

- (i) **engages, directly or indirectly**, in a transaction that involves proceeds of any unlawful activity;
- (ii) **acquires, possesses or uses or removes** from or brings into Namibia proceeds of any unlawful activity; or
- (iii) **conceals, disguises or impedes the establishment** of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;



THE MONEY LAUNDERING PROCESS

A. Placement

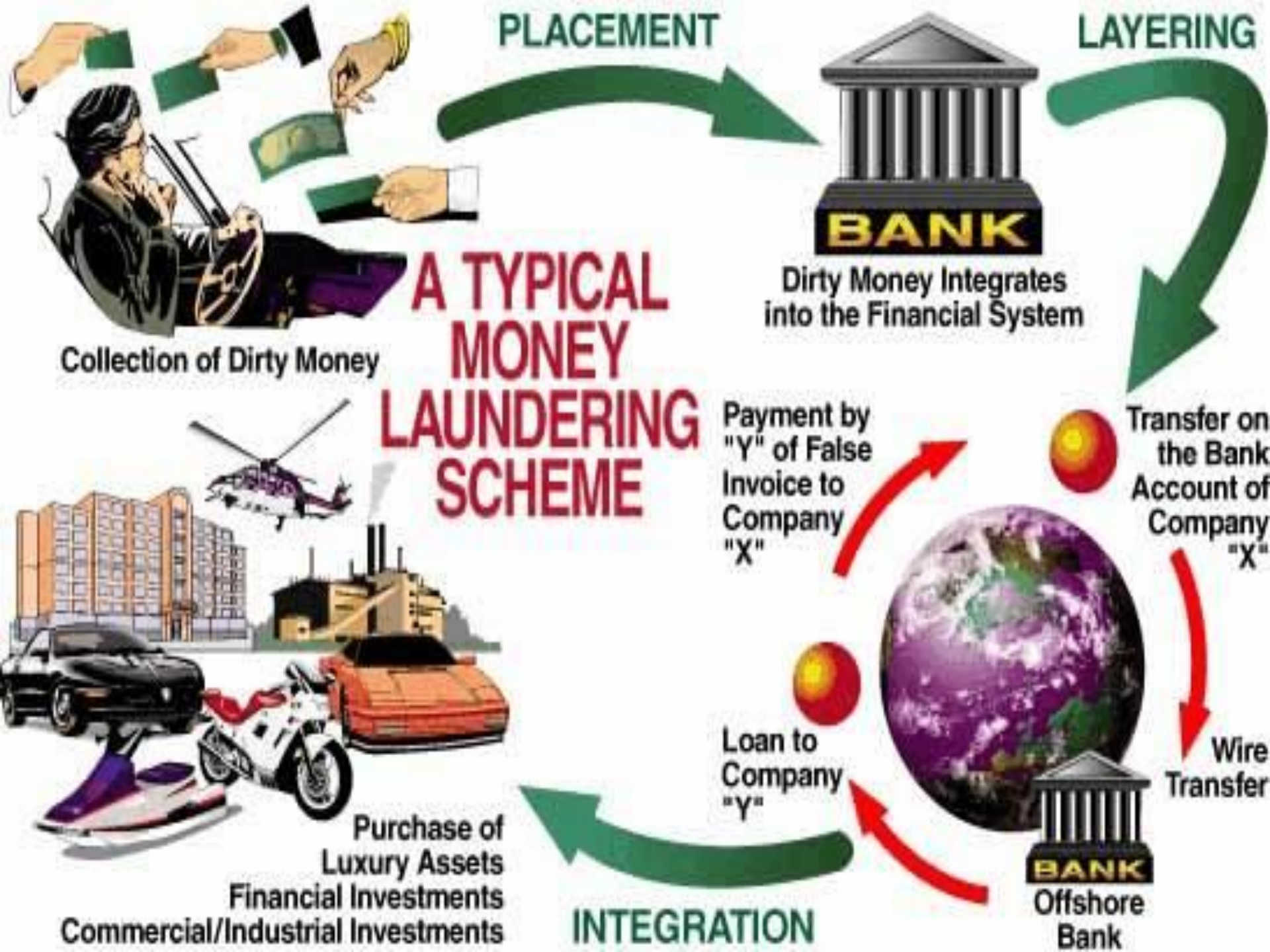
Involves placing the proceeds of crime in the financial system. For example, buying a legitimate business with proceeds of crime or with the intention of using the books/accounts of such legitimate business to move proceeds of crime or introduce such in the financial system. Shelf /Shell companies, Tax crimes etc

B. Layering

Involves converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the audit trail and the source and ownership of funds. The aim is usually to create as much distance as possible between the illicit activity/criminal and the illegal proceeds. For example, directors or shareholders of an existing business dubiously receive proceeds of crime and use such to invest in markets or other instruments, on behalf of a business, and later withdraw such to present same withdrawals or proceeds from legitimate investments.

C. Integration

Usually the last stage of the ML process. Integration is at times similar to, or part of the layering process. The aim is to place the laundered proceeds back in the financial system under a veil of legitimacy.





HOW ARE TCSPS INCLUDED AS ACCOUNTABLE INSTITUTIONS AS PER SCHEDULE 1 AND 2 OF THE FIA

- 1. Item 3 of Schedule 1 of the FIA: An institution becomes a Trust and Company Service Provider (TCSP) as per Item 3 of Schedule 1 of the FIA when/if it prepares for and carries out transactions for a client in relation to the following activities:**
 - a) acting as a formation agent of legal persons;
 - b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - c) providing a registered office; business address or office accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal or commercial arrangement;
 - d) acting as (or arranging for another person to act as) a trustee of a trust; and
 - e) acting as (or arranging for another person to act as) a nominee shareholder for another person.



HOW ARE TCSPS INCLUDED AS ACCOUNTABLE INSTITUTIONS AS PER SCHEDULE 1 AND 2 OF THE FIA

2. Item 1 of Schedule 1 , as per Item 1 of Schedule 1 (sub-items c – f) : Financial institutions, Accountants and Legal Practitioners also avail TCSS, when they render the following services:

- “Facilitating or sourcing contributions for the creation, operation or management of legal persons or arrangements;
- Creation, operation or management of legal persons or legal and commercial arrangements;
- Buying and selling of business entities, or parts thereof; and
- Buying and selling of legal rights.”



WHY TCSPs NEED TO REGISTER WITH FIC

- **TCSPs are categorized in the FATF Methodology , Recommendation 24 as DNFBPs. Countries are required to ensure that TCSPs are subject to effective systems for monitoring and are compliant with AML/CFT measures. Legally compel TCSPs implement AML/CFT/CPF controls and to comply with the FIA (Namibia at risk of Grey Listing by FATF)**

Compliance Monitoring and Supervision purposes;

- **Communication; onsite, offsite SRA, etc**
- **Important on Combating Terrorism Financing as the FIC distributes sanctions lists directly to registered AI's**
- **Enable TCSPs to obtain log in credentials to access the GoAML's reporting portal to log CTRs, CTRs, SARs, STRs SNMA etc obligations (Section 32)**



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

1. Risk Assessment, Management & Monitoring System (*Section 23 of FIA*). TCSPs are expected to implement the RBA in managing & mitigating ML/TF/PF risks faced by the entities. *Section 39 (1)*

Identify and Assess the ML/TF/PF risks that are relevant to the business.

- Customers i.e Natural, legal entity, PEPs....? (*Directive No 02 Of 2020 Politically Exposed Persons (Peps)*);
- Products & Services;
- Geographical Location; and
- Payment Methods.

NB!!!

GUIDANCE NOTE NO. 06 of 2023: Guidance on the implementation of risk- based controls and reporting suspicions; and

GUIDANCE Note 05 of 2023: Guidance on risk assessments and ML/TF/PF indicators.



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

- **Design and implement controls** to manage and mitigate these risks;
- **Monitor** the effective operation of these **controls** and;
- **Record** appropriately what has **been done and why**.

NB!! Managing and mitigating **HIGH Risk clients and transactions e,g (e.g. PEPs, cash, Foreign exchange)** involves: [Revised Guidance Note 01 of 2019 on PEPs Due Dilligence.pdf](#)

- **Carrying out appropriate enhanced due diligence;**
- **Monitoring of customer transactions and activities;**
- **Having appropriate systems in place to identify and review unusual transactions to determine whether there are reasonable grounds for knowing or suspecting money laundering or terrorist financing may be taking place;**
- **Senior management approval to continue business relationship;**
- **Periodic review and updating of information (Current and up to date information);**
- **Verification of documents;**



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

Draft and Implement a FIA/AML/CFT/CPF Compliance program. (Sect 39(7)) See attached Guide on drafting a Compliance Program

- ❖ **Adopt & implement CAP, procedures, internal rules and procedures to effectively manage and mitigate risks of money laundering and financing of terrorist activities [Section 39 (3 & 4)]**
 - Establish procedures to ensure that **high standards of integrity** of its **employees** have been evaluated;
 - Procedures to address **risks of non face-to-face** clients, NPOs etc.

Must be accordingly signed off by Senior Management or the Board



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

3. Identification (Section 4 page 6 to section 15 page 16 of FIA regulations)

3.1 Natural Persons

Identification when a business relationship is established, or a single transaction (**5k and Up**) is concluded (KYC) (*Section 21 of FIA*)

Ascertainment of information concerning natural persons:

- full name
- nationality,
- If citizen – national ID no./ passport no./date of birth
- Non-citizen – passport no./national ID no./date of birth
- Namibia residential address for citizens OR if non-citizen, residential address in his/her country or physical address in Namibia, if any
- Contact particulars
- **Occupation or source of income**
- **Nature & location of business activities, if applicable**
- **Source of funds involved in transaction**



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

3.2 Ascertainment of information concerning Companies & Close corporations:

- a) its **registered name**;
- b) the **name under which it conducts business** in the country in which it is incorporated;
- c) if the company or close corporation is incorporated outside of Namibia and conducts business in Namibia using a name other than the name specified under paragraph (a) or (b), **the name used in Namibia**;
- d) its **registration number**;
- e) the **registered address** from which it operates in the country where it is incorporated, or if it operates from multiple addresses in that country the address of its head office;



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

f) the **identification particulars for natural persons** as referred to in part 3.1 concerning:

Ultimate Beneficial Owners (UBOs): Natural persons who exercise effective control of the company or CC:

- i. the executive manager/s chief executive officer and beneficial owners of the company or, in the case of a close corporation, each executive manager/s, each member who individually or collectively holds a controlling interest and the beneficial owners;
- ii. each natural person who purports to be authorized to establish a business relationship or to enter into a transaction with the accountable or reporting institution on behalf of the company or close corporation; and
- iii. the identity of shareholders and their percentage ownership: from such, each natural person holding 20% or more of the voting rights at a general meeting of the company concerned or acting or purporting to act on behalf of such holder of such voting rights.

The obligation to identify beneficial ownership does not end with identifying the first level of ownership but requires reasonable steps to be taken to identify the ownership at each level of the corporate structure until an ultimate beneficial owner is identified.

- A TCSPs' AML/CFT/CPF policies and procedures must outline all such deliberate measures aimed at identifying the UBOs
- TCSPs need to deliberately make efforts to identify any other persons, other than the stated members, who may be exercising effective control or 'directing affairs' of the CC in the background.
- The risk is lower when such persons are recorded on relevant company or CC documents.



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

3.3 Ascertainment of information concerning associations and other entities

3.4 Ascertainment of information concerning trusts

NB!!!

- (aa) each trustee of the trust;*
- (bb) each beneficiary or class of beneficiaries of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created;*
- (cc) the founder of the trust;*
- (dd) each person authorised to act on behalf of the trust; and*
- (ee) each person exercising ultimate effective control over the trust/each beneficial owner*

If the beneficiaries of the trust are not referred to by name in the trust deed or founding instrument in terms of which the trust is created, the accountable institution must follow the natural person identification procedure stated earlier to ascertain the names of the beneficiaries and document the method of determining such beneficiaries.



**Financial Intelligence Centre
Republic of Namibia**

OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

3.5. Ascertainment of information concerning partnerships and other related legal arrangements.

NB!!! Follow the same method of identifying the legal entity and further obtaining KYC information for UBO i.e Partners, Directors, Shareholders, Individuals who exercises ultimate control of the entity or holds /owns or control 20% of voting rights

Refer to FIA Regulations



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

4. Targeted Financial Sanctions (Directive

For purposes of combatting the financing of Terrorism and the funding of Proliferation activities as per FIA section 24, FIA Regulations 1, 15 and section 25 of the PACOTPAA.

NB! Directive No. 01 of 2023 Mandatory Implementation Of Targeted Financial Sanctions (TFS)

❖ **UNSC sanctions screening**

- ✓ **To prevent potential sanctions violations TCSP must screen all clients and Beneficial owners and potential clients against the United Nations Security Council (UNSC) sanctions lists before any services are availed; and when such lists are updated;**
- ❖ **Name matches must be reported ton GoAML via the SNMA report, immediately and without delay;**
- ❖ **Deploy asset freezing measure without delay; and Prohibit funds or other assets or services, directly or indirectly, available for the benefit of sanctioned individuals, entities, or groups.**



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

5. Ongoing and enhanced due diligence (*Section 24 ,FIA*).

Maintain adequate **current and up-to-date information and records** relating to client.

6. Record Keeping (*Section 26 ,FIA*)

Identification records

Transactional records

Any Suspicious Transaction Records submitted to the FIC

Duration for keeping such records

An Accountable Institution should keep records at least for **5 years** from the date that the transaction is concluded, or a business relationship is terminated.



OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

7. Cash Transaction Reports (section 32, FIA) above NAD 99 999.99 within 5 days

8. Suspicious Transaction Reporting and Activities (STRs sect 33)

TCSPs who knows or ought reasonably to have known or suspect, that it has received or is about to receive the proceeds of unlawful activities or is to be used for money laundering purposes must within **15 days** (excluding Saturdays, Sundays and Public holidays) report to the FIC: **(Period about to be amended to, Promptly, within 3 days.)**

- ❖ The **grounds for the suspicion or belief**;
- ❖ The prescribed particulars concerning the transaction; and
- ❖ **Copies of IDs or other transactional documents** available.



Financial Intelligence Centre
Republic of Namibia

OBLIGATIONS OF ACCOUNTABLE INSTITUTIONS

10. Ongoing employee training programmes such as KYC programmes;



OBLIGATIONS OF ACCOUNTABLE INSTITUTION

11. Independent Audit Reviews

- ❖ TCSP must **periodically subject their AML/CFT/CPF frameworks including internal rules and processes to independent audit review** (*Section 39(8)*)
- ❖ FIA requires AI's to establish an **independent audit function to regularly test the effectiveness of the designed AML/CFT/CPF framework**, in order to **identify significant weaknesses in its system** to combat ML.



OBLIGATIONS OF ACCOUNTABLE INSTITUTION

12. Must **designate Compliance Officers** at management level
Section 39(6)

- An **Anti- Money Laundering Compliance Officer** must be a skilled and independent individual within the entity charged with ensuring the day to day execution of the AML system.

(See Guidance Note 05 of 2023 on the expectations and duties of the AMLCO)



OBLIGATIONS OF ACCOUNTABLE INSTITUTION

13. Tipping off is a criminal offence & attracts heavy penalties – a fine not exceeding **N\$ 100 million** or to **an imprisonment for a term not exceeding 30 years.**



Financial Intelligence Centre
Republic of Namibia

APPLICATION OF ACT WHEN IN CONFLICT WITH OTHER LAWS

14. If any conflict relating to the matters dealt with in this Act arises, between this Act and any other law, a provision of this Act prevails.

(Section 6 of the FIA).



OBLIGATIONS OF ACCOUNTABLE INSTITUTION

15. Registrations

❖ All AI's must register their prescribed particulars with the Centre Section 39(2) **Directive 03 of 2020 Requirement to Register With The FIC in terms of the FIA**. TCPs can contact the FIC for assistance at register@fic.na or at 061 – 283 5225 / 5236 / 5100.

❖ **Minimum Requirements:**

- 1) Fully completed Registration Form
- 2) FIA/AML/CFT/CPF Program
- 3) ID of the FIA/AML/CFT/CPF Compliance Officer
- 4) Legal Entity's registration documents



NON-COMPLIANCE

Non-compliance by AI's

1. Administrative Sanctions (Section 56)

Based on non-compliance with FIA obligations including FIC's Directives. Sanctions may include:

- a) a caution not to repeat the conduct which led to the non-compliance;
- b) a reprimand;
- c) a directive to take remedial action or to make specific arrangements;
- d) the restriction or suspension of certain identified business activities;
- e) suspension of licence to carry on business activities; or
- f) a financial penalty, not exceeding N\$10 million, as determined by the Centre, after consultation with the relevant supervisory or regulatory bodies.

2. Criminal Sanctions POCA (Section 4,5,6)

After guilty conviction in a court of law. Penalties generally does not exceed N\$100 million or 30 years imprisonment or both.



**Financial Intelligence Centre
Republic of Namibia**

Questions???



**Financial Intelligence Centre
Republic of Namibia**

Safeguarding Financial Integrity

Thank you.