

## **Executive Summary**

### **Introduction**

4. This Report on the Observance of Standards and Codes for the FATF Forty recommendations (2003) on Anti-Money Laundering and the Nine Special Recommendations (2001 and 2004) on Terrorist Financing (FATF 40 + 9) was prepared by a team composed of staff and consultant of the World Bank, using the 2004 AML/CFT Methodology.

5. This Report provides a summary of the level of compliance with the FATF 40+9, and provides recommendations to improve compliance with the prevailing context of Namibia. The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the Government of Namibia or the Boards of the International Monetary Fund (IMF) and the World Bank.

### **Information and methodology used for the assessment**

6. In preparing the detailed assessment, World Bank staff reviewed the institutional framework, the laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examined the capacity, the implementation and the effectiveness of all these systems. This Report contains a summary of the AML/CFT measures in effect in Namibia on April 21, 2006.

### **Main Findings**

7. The Prevention of Organized Crime Act, which criminalizes money laundering, was passed in parliament in December 2004, but has not been put into effect by the Ministry of Justice. The Financial Intelligence Bill that will establish the Financial Intelligence Unit was tabled in parliament in February 2006.<sup>1</sup> Given the absence of an AML/CFT framework, the Bank of Namibia (BoN) has exercised its powers under the Banking Institutions Act (BIA) to issue general anti-money laundering related determinations and circulars to address aspects of money laundering, but with limited success. Nevertheless, they fall short of compliance with the international standards and are not sufficient to ensure industry compliance. Meanwhile, all South African owned banks and larger insurance companies have adopted home office AML/CFT policies to some degree.

8. With respect to combating the financing of terrorism (FT), Namibia has neither criminalized FT nor provided for the legislative, regulatory framework and institutional mechanism for the freezing, seizing and confiscation of terrorism related funds pursuant to the UN Security Council Resolutions 1267 and 1373.

### **General**

#### **General Situation of Money Laundering and Financing of Terrorism**

9. Criminal activities have a regional as well as domestic dimension to them. However, with respect to the regional dimension law enforcement authorities advise that Namibia is mainly used as a transit point.

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<sup>1</sup> The Bill was only enacted into law as the Financial Intelligence Act, 2007 on July 5, 2007. However, for it to become operational it will have to be gazetted by the Ministry of Finance. Additionally, the authorities have taken administrative steps to begin setting up the FIU housed in the Bank of Namibia.

10. Those with a regional dimension relate to falsification of identity documents or illegally obtained identity documents as well as customs forms with false information, including falsified invoices; theft of motor vehicles mainly from South Africa and brought into Namibia to be resold again on the market. Criminal syndicates are believed by the Namibia law enforcement agencies to operate this organized activity using Namibia as a transit point to support operations in South Africa, Angola and international networks transiting through Dubai.

11. There seem to be a clear route for hard drugs that come from South America and Asia into Southern Africa. Some of the hard drugs destined for Europe from these regions come through South Africa for re-routing to the European region and sometimes to Canada. Some of the drugs are routed to South Africa through Luanda and Dar Es Salaam. Namibia is more a transit country than a consumption one, except at a low level for ecstasy and cocaine, and is not a production zone. There have been seizures of cocaine at the Namibian International Airport, which was being smuggled from Brazil and destined for Angola. West African syndicates have been identified in some cases as coordinating part of these activities.

12. On the domestic front the real estate sector is a concern. Possible fraudulent investments in game resorts and lodges were identified by law enforcement agents as vehicles for money laundering patterns. Furthermore, there are various informal activities in some small businesses like shebeens, such as gambling and remittances which are vulnerable to abuse by money launderers.

13. With respect to the diamond industry, despite a strict legal and enforcement framework, authorities advised that there are diamonds or precious stones smuggling activities at a small scale.

14. The authorities assess that there is a low risk of terrorist activity occurring within Namibia particularly with the ending of civil war in Angola.

### **Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBPs)**

15. Namibia has one of the most highly developed financial systems in Africa. The system consists of four private commercial banks, about 30 insurance companies, 500 pension funds, a stock exchange, a number of asset management and unit trust management companies, several specialized lending institutions, and a large number and variety of micro-lending institutions. Most of these institutions are private with strong ownership links to South African institutions.

16. The DNFBP sector includes accountants, lawyers, real estate agents and casinos but does not cover dealers in precious stones and metals as accountable institutions. There are approximately 14 accounting firms operating in Namibia. With respect to lawyers, there are currently 88 private law firms in Namibia; 390 licensed practitioners out of which 190 are in private practice. About 70% of the law firms are sole practitioners.

17. Namibia is one of the leading producers of diamonds in the world, with the diamond industry contributing significantly to the GDP. A number of diamond companies operate in Namibia. The market leaders are Namdeb Diamond Corporation (Pty) Ltd, a joint venture between the Namibian Government and De Beers of South Africa; and Namibia Minerals Corporation (NAMCO), in which the Namibian government holds some shares. There are numerous other smaller operators holding mining licenses that authorize them to carry out mining operations. Namibia being a signatory to and participant in the Kimberly Certification Process of rough diamonds has ensured that the security of the diamonds is of international standards.

18. There are currently four casinos in Namibia with a total of 600 machines. They are all in hotels as under the existing regulatory regime casinos can only be operated in a rated hotel with specified rooms. In this regard, for Windhoek the capital city, the required rating is a 4 star with at least 100 rooms, while hotels outside Windhoek require a 3 star rating with at least 50 rooms. There are licensed by the Casino Board under the Ministry of Environment and Tourism. Nevertheless, informal and then unmonitored gambling activities have been described by our counterparts. A new regulation for casinos and gambling activities that would have a larger coverage is currently being drafted by the Board.

### **Legal System and Related Institutional Measures**

19. Criminalization of money laundering is dealt with in the Prevention of Organized Crime Act, 2004 (POCA) passed by parliament in December 2004. It will be the primary legislation that criminalizes money laundering. When the POCA comes into effect, money laundering will be criminalized under Chapter 3 of the POCA. The offence of ML is defined in a manner which is generally consistent with the Vienna and Palermo Conventions although Namibia has not ratified the Vienna Convention. Namibia adopts a list and threshold approach to define the predicate offences, which includes any offence punishable by more than 12 months. The authorities advise that the offence of ML as currently provided in POCA applies to persons who commit a predicate offence and can be prosecuted for laundering of one's own illicit funds. There are penal and financial sanctions available for the ML offence, which are applicable to both natural and legal persons and proportionate and dissuasive.

20. Namibia has not criminalized FT and none of the provisions of the POCA cover FT. Moreover, Namibia has signed but not ratified the UN International Convention for the Suppression of the Financing of Terrorism. There is an Anti-Terrorism Activities Bill with no time frame as to when it will be tabled before parliament for debate and passage. The Bill does not however, provide for liability for legal persons which are used to facilitate terrorist financing or terrorist activities. Furthermore, there is no legislative, regulatory or institutional framework for freezing and seizing terrorist funds or other assets of persons.

21. The legal provisions for the identification, tracing and evaluating property subject to confiscation, seizing and freezing, confiscation and forfeiture of property are provided for in the POCA and are comprehensive. Under the POCA, confiscation refers to a criminal based process dependent on the conviction of an accused person, while forfeiture refers to a civil based process regardless of whether an accused person is prosecuted. However, in the absence of the coming into effect of the POCA, the legal framework for the confiscation, freezing and seizing of the proceeds of crime are governed by the Criminal Procedure Act, 1977 and soon by the Criminal Procedure Act, 2004 which will replace the 1977 statute.

22. There is no Financial Intelligence Unit in Namibia. The version of the Financial Intelligence Bill provided to the assessors confers on the BoN the power to perform the functions of an FIU in Section 5. The interpretative note related to FATF Recommendation 26 requires independence of the FIU. It is not clear how this will be addressed in a department within the BoN. Financing of terrorism does not come within the scope of the BoN's jurisdiction. Otherwise, as defined in the current draft the functions and powers are consistent with the international standards.

23. Currently, the Ministry of Finance (MoF), the Ministry of Justice (MoJ) and the BoN are the lead institutions responsible for developing the AML/CFT policy, legislation, and agenda and will oversee its implementation. The Ministry of Justice championed the POCA and is responsible for preparing the regulations which will bring this Act into operation. The Ministry of Finance is sponsoring the Financial Intelligence Bill and will be responsible for tabling it before parliament. With regard to the BoN, the authorities have made a decision to house the Financial Intelligence Unit in the BoN.

24. The Prosecutor General, the Namibian Police and the Namibia Revenue Authority under the Customs and Excise Department will be involved in conducting money laundering investigations. However, in discussions with these agencies it was evident that these agencies suffer from both human and logistical constraints and require training in conducting financial crime investigations.

25. The Customs and Excise Act, 1998 (Customs Act) establishes a declaration and disclosure framework for the physical transportation of all goods including cash or other monetary instruments which is imported or exported out of Namibia. In Namibia, the authorities advise that the reason why cash has to be declared or disclosed if requested to do so by a customs officer is not only that this is required under existing Exchange Control regulations, but under the Customs Act, money in whatever form is deemed to be goods for customs declaration purposes. The declaration or disclosure is required of all persons regardless of country of citizenship. There is no threshold amount that is prescribed when bringing in currency into Namibia. On the other hand, there is a threshold amount of N\$160,000 for individuals and N\$750 million for corporate entities for taking currency out of Namibia.

26. Mechanisms for the collection of AML/CFT related statistics have not been developed due to the lack of implementation of the POCA.

#### **Preventive Measures – Financial Institutions**

27. Absent an appropriate AML/CFT framework, the BoN has exercised its powers under the Banking Institutions Act, 1998 (BIA) to issue general anti-money laundering related Determinations and Circulars to address aspects of money laundering until such time as the POCA is brought into effect or the Anti-Terrorism Activities Bill and Financial Intelligence Bill are enacted and brought into effect. In this regard, the BoN issued in June 1998, Determinations on Money Laundering and “Know Your Customer Policy” BID-3 (BID-3), which requires banking institutions to keep records relating to their customers. A complementary Circular, BIA 2/02 was issued by the BoN in June 2002. This 2002 Circular is an attempt to provide guidance regarding the prevention, detection and control of possible money laundering activities. However, the specific authority under the BIA and the Determination and Circular issued do not meet international standards for AML/CFT.

28. But in the absence of the POCA, the Determination and Circular have a weak legal basis to the extent that there are issued under the BIA which does not explicitly cover AML/CFT. The likelihood of this power being challenged in a court of law is high and for this reason the authorities indicated in discussions with the assessment team that no attempt has been made to enforce these directives or integrate them in the conduct of their annual examinations of banking institutions. Furthermore, in view of the sophistication and developed nature of the financial system of Namibia, a strong and robust legal and institutional AML/CFT framework is an imperative.

29. The non-bank financial institutions sector is supervised by the Namibia Financial Institutions Supervisory Authority (NAMFISA). NAMFISA was created in 2001 to regulate the NBFIS sector. Entities covered by NAMFISA include pension funds, insurance companies, asset managers, the capital markets, micro-lenders, public accountants and auditors, friendly societies, unit trusts and trust companies. NAMFISA has not issued any AML/CFT rules, guidelines, circulars or requirements to its supervised institutions. Currently there are no AML/CFT requirements for the non-bank financial sector to comply with international standards. Some institutions, such as larger insurance companies, have adopted parent company AML/CFT safeguards as a part of group policies.

## **Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)**

30. There are currently no AML/CFT measures imposed on designated non-financial businesses and professions. Further, a review of the proposed FI Bill while including most DNFBPs as required by international standards does not cover dealers in precious stones and metals as accountable institutions. On the other hand, Namibia has fully participated and cooperated in the Kimberly Process.<sup>2</sup> Namibia underwent a review of its processes in 2005. The feedback from the Kimberly Process assessors was that the systems currently in place are such that they do reduce the risk of illegal peddling of diamonds from Namibia. There has been no record that links Namibia's diamond resources to money laundering or terrorist financing.

31. The authorities have not considered how the DNFBPs will be supervised with regard to their AML/CFT obligations. Some professions such as car dealers or dealers in semi-precious stones do not have any supervisory body. Therefore specific monitoring should be developed. There is no staff expertise on this issue in NAMFISA.

## **Legal Persons and Arrangements and Non-Profit Organizations**

32. The office responsible for the registration of all companies and other business entities in Namibia is the Companies and Patents Registration Office (Registrar of Companies). As part of the registration process, prospective companies through their promoters are required to submit the Memorandum and Articles of Association with the Registrar of Companies. A list of shareholders including their full names, occupation and residential, business and postal address must be submitted together with the documents of incorporation. Every company including a foreign one is required to have a physical and postal address in Namibia. Public companies can issue bearer shares. However, it is not clear from the Companies Act whether private companies can also issue bearer shares. Moreover, there is no mechanism to monitor and control the issuance of bearer shares or ensure that the companies know who the holders of the shares are.

33. The Registrar of Companies is the central authority that registers and maintains all company records. All the records kept by the office are available for inspection subject to a minimal fee.

34. The Registrar of Companies has no mechanism by which to determine who else has beneficial interest in a registered company other than those that are submitted to the office and are indicated on the documents submitted by the company upon incorporation or whenever there are changes in the composition of shareholders, directors or change in location. The authorities advised that the office cannot go beyond any information presented, because information submitted to the office is presumed to be made in good faith.

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<sup>2</sup> “The Kimberley Process is a joint government, international diamond industry and civil society initiative to stem the flow of conflict diamonds - rough diamonds that are used by rebel movements to finance wars against legitimate governments. The trade in these illicit stones has contributed to devastating conflicts in countries such as Angola, Cote d'Ivoire, the Democratic Republic of Congo and Sierra Leone. The Kimberley Process Certification Scheme is an innovative, voluntary system that imposes extensive requirements on Participants to certify that shipments of rough diamonds are free from conflict diamonds. The Kimberley Process is composed of 45 Participants, including the European Community. Kimberley Process Participants account for approximately 99.8% of the global production of rough diamonds.” [See, http://www.kimberleyprocess.com](http://www.kimberleyprocess.com)

### *Non-Profit Organizations (NPOs)*

35. Registration of NPOs in Namibia is mandatory in that all associations seeking to operate as NGOs are required to incorporate their entities under section 21 of the Companies Act, 1973 (the provision will remain the same under the 2004 Act). There are an estimated 480 section 21 companies in Namibia. The Registrar of Companies is responsible for registering NPOs. However, while the Companies Act provides an adequate framework for NPOs, the authorities acknowledged in discussions with the mission team that there is no monitoring mechanism for NPOs. Indeed, no follow up is made by the Registrar to monitor their activities and determine whether they are undertaking activities reflected in the Memorandum of Association submitted to the company registry.

### **National and International Cooperation**

36. Money Laundering is not yet an extraditable offence. In addition, even though Namibia has ratified the Palermo Convention it excluded the application of the Convention as the basis of extradition from applying to Namibia. Further, the provisions of the Vienna and Palermo Conventions have not been fully implemented in domestic law. The Ministries of Finance and Justice are the principal institutions responsible for coordinating the government's AML/CFT policies both domestically and internationally. There is a Task Force on AML/CFT established in 1999 through a Cabinet decision. It was constituted within the framework of Eastern and Southern African Anti-Money Laundering Group's (ESAAMLG's) MOU signed by the government of Namibia. It currently reports to the Ministry of Finance and has been chaired by NAMFISA. However, at the time of the assessment, the authorities advised that the BoN would soon take over the responsibility of chairing the Task Force.