UNCAC: REQUEST FOR INFORMATION - RESOLUTION 9/7 - ENHANCING THE USE OF BENEFICIAL OWNERSHIP INFORMATION TO FACILITATE THE IDENTIFICATION, RECOVERY AND RETURN OF PROCEEDS OF CRIME

Contact information:

1. Definition of beneficial ownership and mechanisms for obtaining beneficial ownership information.

1.1 Beneficial ownership\(^1\) refers to the natural person(s) who effectively control a client, including the natural persons on whose behalf a transaction is concluded. Determination of beneficial ownership is done by virtue of identifying the individuals (s) that satisfies any one element, or any combination of the following three elements:
   
   (a) Owns 20% or more of the legal person;
   
   (b) Those with effective control of the same legal person, effective control refers to when a person owns or controls, directly or indirectly, including through trusts or bearer shareholding for any legal person, 20% or more of the shares or voting rights of the entity; the ability to control the customer and/ or those individuals holding more than 20% of the customer's voting rights, or who hold senior management positions, e.g. CEO's; and

\(^1\) The definition of Beneficial Ownership has been provided for in the Industry Guidance Note No. 1 of 2015, On identification and Verification of Beneficial Ownership Information, published in August 2015, by the Financial Intelligence Centre, in the Republic of Namibia.
(c) Persons on whose behalf a transaction is concluded.

The applicable legal entities include companies, close corporations, trusts, partnerships as well as their entities/associations/organisations and societies.

Importantly the Financial Intelligence Centre (FIC) is responsible for the administration of the Financial Intelligence Act, 2012 as amended (Act No. 13 of 2012) also known as FIA. The FIC\(^2\) aims to combat money laundering, financing of terrorism, proliferation funding, supervising and monitoring compliance of accountable institutions. All Institutions are thus required to consider their customer acceptance policies and overall FIA compliance, to avoid any fines and penalties for non-compliance with the provisions of the FIA.

2. Access to basic information on legal persons.

2.1 Regulated business or professions, such as lawyers, notaries or trust and company service providers are required to form, register or administer a legal entity or legal arrangement. At incorporation, all companies are required to provide information on shareholding, beneficial ownership and directorship. Section 181 of the Companies Act\(^3\), further provides that every company not later than one month after the end of its financial year lodges with the register the Annual return. The Annual Return is lodged with the Registrar as per CM23 form. The CM 23 form has recently been amended to include a new section (Part C) wherein shareholders or nominee shareholders and or beneficial ownership is provided. Previously such information was not adequately provided and thus there are many companies whose records at BIPA \(^4\)are incomplete. The information that is now requested includes: full names; identification number; residential, business and postal address; contact details (telephone number, mobile number and email address) as well as the type of shares, number of shares and the nominal value of shares.

2.2 Furthermore section 120 (2) of the Companies Act provides that any person may apply to a company for a copy of an extract from the register of members and the

\(^2\) The Financial Intelligence Centre
\(^3\) Act 28 of 2004
\(^4\) Business and intellectual Property Authority
company must either, furnish that copy or extract to the application at a cost or any lesser amount which the company may determine for every page of the required copy or extract. With regard to a close Corporation, at registration, a Founding Statement (CC1) containing information on the members and membership interest, their contact details and information of the Accounting Officer is lodged with BIPA. Any changes that are made to the status of the Corporation including change in membership and membership interest are made with the Registrar by lodging an amended founding statement (CC2) form, With Close Corporations, most required data is thus with the BIPA.

2.3 The Republic of Namibia in its endeavour to provide basic information on legal persons makes provision for a company registry available publicly and online\(^5\). In an effort to improve service delivery and ensure the effective administration of business and intellectual property rights (IPR’s), the Business and Intellectual Property Authority (BIPA) has been established as the focal point for the registration of business and industrial property. BIPA has been established as a juristic person, in terms of section 3 of the BIPA Act, 2016 (Act No.8 of 2016) and is a Public Enterprise as defined in the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019). BIPA serves as a one-stop-centre for all business Intellectual Property Rights (IPR’s) and related matters on behalf of the government.

The Functions of BIPA are:

- To be the central focal point for registration, administration and protection of businesses, commercial and industrial property rights, and

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\(^5\) BIPA Head Office
7 Golden Street, Prosperita
P. O BOX 185
TEL: +264 61 299 4400
FAX: +264 61 401 061
EMAIL: info@bipa.na
Website: www.bipa.na
Registrar of Companies and Close Corporations
Ministry of Trade and Industry
Black B, Brendan Simbwaye Square, Goethe Street
Private Bag 13340
Windhoek, Namibia
Tel: +264 61 283 7239/40/25/71
Fax: +264 61 222 576
Website: www.mti.gov.na
• To be the legal depository of information, documents and data required to be lodged under the applicable legislations and

• Provision of general advisory services and information dissemination on business registration and IPR’s.

**Access to basic information on legal persons in Namibia can be accessed at the following addresses:**

**BIPA Head Office**

7 Golden Street, Prosperita

P. O BOX 185

TEL: +264 61 299 4400

FAX: +264 61 401 061

EMAIL: info@bipa.na

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**Registrar of Companies and Close Corporations**

**Ministry of Trade and Industry**

Black B, Brendan Simbwaye Square, Goethe Street

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Fax: +264 61 222 576

Website: [www.mti.gov.na](http://www.mti.gov.na)

3. Access to beneficial ownership information of legal persons
3.16 The point of departure is whether accurate, adequate and current beneficial ownership information can be accessed in a timely manner by supervised entities and competent authorities. Verification of the beneficial ownership is not expected because the information within BIPA is not adequate and the information cannot be accessed by competent authorities or stake in a timely manner, BIPA is currently undertaking a data cleansing exercise where information is being captured from physical files onto their system. However, the transfer of shares or change of shareholders and or beneficial ownership is done by the company secretarial service providers of companies. BIPA is only informed on any changes that has taken place in that particular financial year of the company at the end of that financial year. It has been observed that not all companies are complying with section 181 of the Companies Act and lodging their annual returns (despite the amended CC7 and CM 23 forms that should enable obtaining of such relevant data).

The lack of accurate and adequate beneficial ownership information is due to historical shortcomings. Previously, there was no legal requirement that companies submit certain files with and forms to provide BIPA with information on shareholding and beneficial ownership. The current BIPA access system is also a challenge in that it is not programmed in such a way that it accepts updates on the shareholding and beneficial ownership information. This then also has a direct impact on the time it takes BIPA to provide information. This then also has a direct impact on the time it takes for BIPA to provide information to supervised entities and competent authorities as physical files of companies need to be requested from the archives and copies thereof are provided instead of running a report on the system.

In short, owing to historical shortcomings, inadequate beneficial ownership information was requested or collected by BIPA. Whilst changes have been made to ensure missing data is availed to BIPA, the response rate is poor and BIPA is unable to build a more accurate and complete database of such information. While the automated system implemented to avail stakeholders viewing access for verification, the system falls short as it doesn’t not accept updates on the shareholding and beneficial

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6 Competent authorities such as law enforcement, police, financial intelligence unit and tax agencies can access beneficial ownership information, through a company registry, by approaching the relevant authorities (see paragraph 3.2) however as indicated in paragraph 3.1, there are shortcomings in accessing beneficial information.
ownership. The above factors all suggest that legal frameworks (laws and regulations) are in place to enable relevant authorities (BIPA and the Master) to collect much-needed beneficial information and avail such in a timely manner to entities concerned.

3.2 Access to beneficial information on legal persons in Namibia can be accessed at the following addresses:

BIPA Head Office

7 Golden Street, Prosperita

P. O BOX 185

TEL: +264 61 299 4400

FAX: +264 61 401 061

EMAIL: info@bipa.na

Website: www.bipa.na

Registrar of Companies and Close Corporations

Ministry of Trade and Industry

Black B, Brendan Simbwaye Square, Goethe Street

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Windhoek, Namibia

Tel: +264 61 283 7239/40/25/71

Fax: +264 61 222 576

Website: www.mti.gov.na

3.3 Yes, foreign legal persons, foreign (express) trusts or foreign legal arrangements are allowed to operate in/own assets and or register in the Republic of Namibia,
The Republic of Namibia welcomes foreign investments, all business activities are open to foreign investors. Namibia introduced the Foreign Investment Act\textsuperscript{7} which affords protection to foreign investments and introduced an Investment Centre within the Ministry of Trade and Industry, to streamline and encourage foreign investment. Foreign nationals are protected by this legislation which guarantees the repatriation of funds and interest invested in Namibia.

Foreign ownership of agricultural land is also regulated. The governments land reform policy is shaped by two key pieces of legislation: the Agricultural (Commercial) Land Reform Act\textsuperscript{8} and the Communal Land reform Act\textsuperscript{9}. Recently a Land Bill was published which attempts to consolidate the two existing acts. The Land Bill (when passed as legislation) will have a major effect on foreigners investing in agricultural land in the Republic of Namibia\textsuperscript{10}. It is also important to note that the Republic of Namibia has no inherent restrictions on the ownership of shares in Namibian entities by foreign nationals, a business can be managed and property purchases through companies, closed corporations and/or business trust. However, Companies, close corporations and external companies (branches of foreign companies) must be registered with the Registrar of Companies in Windhoek. Trustees of business trusts do not need any authorisation before they can commence their duties, the regulations of trusts are minimal, a trust deed must however be approved by the Master of the High Court, who must approve the trustees\textsuperscript{11}.

4. Access to basic information and beneficial ownership of (express) trusts and similar legal arrangements.

4.1- 4.3 Yes, the Republic of Namibia does recognize (express) trusts or other similar arrangements. Namibia has ascribed certain responsibilities in section 5 of the FIA, to the Master of the High Court. The Master must register all testamentary and \textit{inte vivos} trusts in the prescribed manner and form and ensure to keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary owner of all registered testamentary and \textit{inte vivos} trusts. In doing so, the Master is

\textsuperscript{7} Act 27 of 1990
\textsuperscript{8} Act 6 of 1995
\textsuperscript{9} Act 5 of 2002
\textsuperscript{10} www.koep.com.na
\textsuperscript{11} See paragraph 4.1 on the detailed registration of trusts in The Republic of Namibia.
placed in a position to avail founder, trustee, trust beneficiary and trust beneficial ownership information of all registered testamentary and _inte vivos_ trusts to competent authorities upon request.

The FIA explicitly states that the Master may not register any trust without the information referred to above. The question of trusts registered before the FIA 2012 has remained a challenge since the Master has struggled to obtain all relevant information despite being empowered to take reasonable steps (including initiating efforts to result in sanctions) to obtain information referred. If a trust was registered with the Master of the High Court before section 5 of the FIA came into effect, the Master of the High Court must, within a period determined by the Centre, take reasonable steps to obtain the information referred to. The FIC, in terms of section 5 has issued a determination accordingly. The, collection of all outstanding information for trusts (registered before the FIA 2012) has not happened at the required speed and some information is still outstanding within the office of the Master. The FIA amendments stretch as far as regulating the Master’s relationship with institutions that engage or deal with trusts, to mitigate potential _ML/TF/PF_ risks. In empowering the Master, the FIA provides that the Master is entitled to request such information from a relevant accountable or reporting institution and the institution must provide the Master with such information relating to trust banking accounts for purposes of monitoring or investigating the transaction activities or operations of any trust. Furthermore, accountable or reporting institutions which have business relationship with any trust are required to inform the Master and the FIC if such a trust is not registered with the Master. All these are measures aimed at ensuring that the Master has at its disposal, adequate information that can be used by reporting entities to conduct adequate _CDD_.

Such information is also essential to _LEA’s_ in _ML/TF/PF_ investigation.

Despite the comprehensive legal framework laid by the FIA section 5, the two main challenges noted with trusts are the lack of adequate information for trusts registered before the FIA 2012 and the lack of an automated system which can enable timely access to trust related information within the custody of the Master. _CDD_ requires

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12 Customer Due Diligence
timely access to data sources so that effective monitoring can be executed without undue delays.

5. Sanctions

5.1-5.2 The Financial Intelligence Centre (FIC) is responsible for the administrating the Financial Intelligence Act, 2012 as amended (Act No. 13 of 2002) (FIA). The FIC as highlighted earlier aims to Combat Money Laundering (ML), the Financing of Terrorism (TF) and Proliferation Funding (PF) Activities and supervise and monitor compliance of Accountable Institutions and Reporting Institutions with the FIA and its complementing regulations. All Institutions are thus hereby requested to consider their guidelines in reviewing Customer Acceptance Policies (CAP) and overall FIA Compliance program to ensure alignment with the FIA and to avoid any fines and penalties for non-compliance with the provisions of FIA.

1. Prevention of Organized Crime Act:¹³

In terms of section 7 of the POCA, the liability of persons under sections 4, 5 or 6 is extended to a director, managers, secretaries or other similar office holders of corporations. As usual, in cases of money laundering, severe penalties are imposed. Namibia is no exception to this rule. For instance, section 3 of POCA imposes a fine not exceeding N$1 billion, or imprisonment for a period not exceeding 100 years, or both the fine and imprisonment. Section 7 therefore means that, a court of law can pierce the corporate veil of a corporation in order to attribute liability to those individuals concerned.

2. Financial Intelligence Act:¹⁴

The Financial Intelligence Act (FIA) was enacted to combat money laundering in Namibia, the process by which proceeds of a criminal activity are disguised to conceal their illegal origins. In its simplest form, it is "dirty" money that was gained illegally and then used in numerous legal transactions to make it appear "clean".

¹³ Prevention of Organized Crime Act, No.29 of 2004 (as amended)
¹⁴ Financial Intelligence Act, No. 13 of 2012
In terms of section 25, accounting institutions, i.e. banks, must adopt, develop and implement a customer acceptance policy, internal rules, programmes, policies, procedures and controls as prescribed to protect its systems against any money laundering activities.

An accounting institution must designate compliance officers at management level who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and the reporting of suspicious transactions.

It is to be noted that section 26 of the FIA imposes reporting obligations on accountable and reporting institutions as well as ‘reporting procedures’ which as far as supervisory bodies are concerned may attract on non-compliance, a fine not exceeding N$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Furthermore, it must be noted that an accountable institution that has made a report to the Bank of Namibia concerning a suspicious transaction, may continue with and carry out the transaction in terms of section 27, unless the Bank of Namibia directs such an accountable institution in terms of section 28 not to proceed with the transaction. The Bank of Namibia, in turn, is afforded the right in terms of section 28 to direct the accountable institution in writing, not to proceed with the carrying out of a suspicious transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction, for a period determined by the Financial Intelligence Centre under the Bank of Namibia, in order to allow the Centre to make the necessary inquiries concerning the transaction. If the Centre deems it appropriate, to inform and advise an investigating authority and the Prosecutor-General.

3. Prevention and Combating of Terrorist and Proliferation Activities Act:15

The PACOTPAA provides for measures to prevent and combat terrorist and proliferation activities, measures to give effect to the international conventions,

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15 Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act, No. 4 of 2014)
Security Council Resolutions, instruments and best practices concerning measures to combat terrorist and proliferation activities.

The PACOTPAA further provides for measures to prevent and combat the funding of terrorist and proliferation activities, and for the investigative measures concerning terrorist and proliferation activities. The Act also covers issues relating to measures to proscribing persons and organisations that conduct terrorist and proliferation activities.

More particularly, the PACOTPAA is very important to the crime of money laundering for it makes it an offence in sections 2, 3 and 23 to deal with, enter into or facilitate any transaction or perform any other act in connection with funds connected with or owned by individuals, entities and other groups associated with individuals or/and entities listed by the United Nation (UN). The prohibitions further establish an effective freeze over the funds connected with or owned by the said individuals, entities and other groups as contained in the lists to ensure that no transaction or any other act is performed in connection with such funds. This means that (PACOTPAA) is very much linked to the POCA and the FIA under the general anti-money laundering regime of the Namibia.

The PACOTPAA does not deal directly with money laundering but seems to have an underlying assumption that money can be laundered in order to sponsor terrorism. That is the primary target of the PACOTPAA, to stop or curb the use of money for illegal activity. Thus, any money from Namibia should not be used for the sponsorship or proliferation of terrorist activities.

The PACOTPAA is further connected to the FIA, because the FIA is the major law governing money laundering in Namibia and the PACOTPAA combats the funding of terrorist and proliferation activities.

4. International Co-operation in Criminal Matters Act:16

Namibia is a signatory to the United Nations Convention against Transnational Organised Crime. In this context there is need for international cooperation in combating money laundering. The Act thus provides for facilitation of the

16 International Co-operation In Criminal Matters Act, 2000 (Act, No. 9 of 2000)
provision of evidence, the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between Namibia and other countries.

This Act was passed on the basis of the dualistic nature of the Namibian law as mentioned above. It has to be reiterated that dualist systems are subject to one constraint. International and domestic laws exist separately and most often function independently of one another. In contrast to monist systems, where a State with a dualist system binds itself to an international treaty, the treaty does not automatically have the authority of national law.

Accordingly, national legislative action is required for incorporation in order to give the treaty its full effect. The Act aims to facilitate the provision of evidence, the execution of sentences in criminal cases and the confiscation and transfer of proceeds of crime between Namibia and foreign States. Schedule 1 lists the foreign States in respect of which Act No. 9 of 2000 applies.

The Act specifically provides for the mutual provision of evidence; the mutual execution of sentences and compensatory orders; the confiscation and transfer of proceeds of crime. The concept of confiscation seizure and forfeiture is covered below.

Part VI provides for the confiscation and transfer of proceeds of crime. This part is relevant to money laundering as it shows that even if the criminal got the proceeds of money laundering from outside the country, such proceeds can still be forfeited, as it was noted by Prosecutor-General v Uuyuni17. One may say that this Act represents the culmination of a protracted process of law reform, which has sought to give effect to Namibia’s international obligation, to ensure that criminals do not benefit from their crimes. The Act uses two mechanisms to ensure that property derived from crime or used in the commission of crime is forfeited to the State. These mechanisms are set forth in Part IV of the Act. The provisions are very complementary to those of the POCA as already mentioned above. Where property has been suspected to be derived from some crime, the act provides for mutual assistance in granting a restraint order. In terms of section 23, where the High Court makes a restraint order, the High Court may, on application made to it, issue a letter of request in which assistance from a foreign

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17 Prosecutor-General v Uuyuni 2015 (3) NR 886 (SC)
State is sought in enforcing such order in that foreign State, if it appears to the High Court that the person against whom such order has been made, holds property in that foreign State.

The Act is also linked to the POCA, for example, once a foreign order is registered and has the effect of a domestic order, it is for the purposes of the POCA to register it, this makes an order effective, where the restraint order itself is not enough, or requires that the property be seized. It might also be necessary that some other kind of ancillary order for example, the interdictory order in this case be granted, that the court considers appropriate for the proper, fair and effective execution. So, if registration of a foreign restraint order gives it the effect of a local judgment, it then empowers the court to grant ancillary orders that render the registration more effective. This will help in curbing money laundering. There have been no prosecutions in the Namibian courts under this Act.

5. The Criminal Procedure Act:\(^\text{18}\)

The purpose of criminal procedure is to prescribe the technical and procedural aspects of criminal law. This Act precisely covers this area of the law and in context it determines what can be done procedurally in apprehending and prosecuting accused persons of the crime of money laundering. Therefore, the Act covers both pre-trial and trial aspects related to money laundering and other crimes in general. The CPA also lays down the procedure with regard to searching and seizure.

Money laundering is treated as a serious crime under Schedule 1 of the CPA. An important point to note here is that the CPA, just like other statutes, contains provisions linked to certain offences which are not expressly identified in such provisions, but are merely described as offences listed in Schedule 1 to the CPA. These Schedule 1 offences carry heavy penalties and are closely linked to others; hence one can be a competent verdict for the other. One should note, however, that the considerations relevant to sentencing may overlap with those governing the imposition of an administrative penalty since both are designed to prevent statutorily prohibited conduct.

\(^{18}\) Criminal Procedure Act, 1977 (Act, No. 51 of 1977)
6. The Customs and Excise Act:

Since money laundering and its associated activities can be transnational as pointed above, there is an imperative to stop it from crossing the borders. This is obviously not possible in absolute terms, thus, there are pieces of legislation such as the Customs and Excise Act, 1998. This Act was passed in order to provide for the levying, imposition, payment and collection of customs and excise duties, of a surcharge and of a fuel levy; to prohibit and control the import, export or manufacture of certain goods; and to provide for matters incidental thereto.

The Act is administered by the Ministry of Finance, under the department of customs and excise. This department is entrusted with customs and excise responsibilities as envisaged by the Act. Under this Act, if any activity across the borders is suspicious, it can be investigated, leading to arrest of the criminals involved. In addition, if any consignment is found on any vehicle, and such is not declared as per the requirement of the Act, such action can also lead to an arrest and conviction. In an Unreported case in March 2016, two truck drivers were found guilty of contravening Section 14 (a) read with Sections 1 and 91 of the Act for non-declaration of goods upon entering Namibia as well as contravening Section 6 (c) read with Sections 1, 10 and 11 (1) of the Prevention of Organised Crime Act, 29 of 2014 involving money laundering.

7. The Anti-Corruption Act:

The Anti-Corruption Commission was established under the Constitution. This Act is an enabling piece of legislation which provides for the prevention and punishment of corruption; and to make provision for matters connected therewith. The Act therefore is relevant in the context of money laundering as it covers some ancillary or associated crimes.

The broad definition of corruption however has been a source of contestation in the courts of Namibia. Particularly, the ACA was challenged as unconstitutional in the Teckla Lameck v The Prosecutor General of Namibia. The constitutional

19 Customs and Excise Act, 1998 (Act, No. 20 of 1998)
20 Anti-Corruption Act, 2003 Act, No. 8 of 2003)
21 Teckla Kandjila Lameck Another v President of the Republic of Namibia and others (Unreported)
challenge to ACA, related to the definitions of ‘corruptly’ and ‘gratification.’ The applicants in this case argued that these terms violated the Constitution because they were too broad and vague and did not adhere to the principle of legality which was entrenched in the Constitution. The court held that the definition of ‘corruptly’ was unduly vague and did not meet the test of indicating with reasonable certainty what was hit by it to those who were bound by it, as was required by the principle of legality. Thus accordingly, the court held that this definition should, in its current form, be struck down. In regard to the definition of ‘gratification’, the court held that although wide, it was not unduly vague. It explained that the concept of gratification in the context of corruption would doubtless take on many varying forms; the definition would of necessity be wide, but that did not translate itself into impermissible vagueness in the sense referred to it. In all, therefore it was held that the applicant had not established that the definition of corruption was impermissibly vague under the constitution. On appeal of the Lameck case, judgment was delivered in February 20, 2012 court held that “corruptly” should remain intact in the Anti-Corruption Act, 2003 (Act No. 8 of 2003) and be given its ordinary meaning. Therefore, the Appeal court reversed the High court decision and gave guidance on how the definition of “corruptly” should be presented.

6. International Cooperation, asset recovery and challenges

6.1 The International Cooperation in Criminal Matters Act 2000 (ICCMA) provides the legal framework mutual legal assistance (MLA). Namibia does not require a treaty for Mutual legal assistance and can provide assistance by designation/proclamation, on the basis of reciprocity and on the basis of the Convention. In practice direct communication and cooperation between designated central authorities is possible and accepted. Requests are frequently received through INTERPOL and are required to be in English. Namibia can share information spontaneously and has done so in the past.

6.2 In addition the Namibia’s law enforcement authorities cooperate through a variety of networks and informal channels. Namibia participates in regional and international for a such as INTERPOL and the Southern African Regional Police Chiefs Commission (SARPCCO), as well as in regional for a dealing with AML/CFT issues.

22 IPPR Anti-Corruption Research Programme by Frederico Links.
such as the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) and the Financial Action Task Force on Money laundering and Terrorism Financing (FATF). Nampol participates in the STAR INTERPOL focal points network. Namibia also cooperates through the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA) and generates informal contacts through the Southern African Forum against Corruption (SAFAC). Nampol is also part of the steering committee for the establishment of the African Police Cooperation Organisation (AFRIPOL). Nampol has entered into several bilateral agreements with other police forces and services within and outside the SADC region to cooperate in the fight against crime.

6.3 - 6.4 The Minister of Justice has wide discretion to grant or refuse requests including, including on the grounds set forth in article 6 of the SADC Protocol on Mutual Legal assistance in Criminal Matters. However, these grounds are not spelled out in ICCMA. There is no domestic legislation on confidentiality of information received spontaneously. Namibia's legislation does not allow for videoconferencing. The customary length of time to respond to MLA request is not expected to exceed 3 months. There are reported domestic coordination problems and limited capacity in responding to requests. In addition, Namibia has not used the Convention as a basis for direct law enforcement cooperation, but could in principle do so. While Namibia does cooperate with other state parties to enhance the effectiveness of law enforcement, the arrangements often appear to be ad hoc and informal.

PARTICULARS OF THE CENTRAL AUTHORITY FOR EXTRADITION AND MUTUAL LEGAL ASSISTENCE IN NAMIBIA:

The Ministry of Justice of the Republic of Namibia performs the functions of the Central Authority and all incoming and outgoing requests for extradition and/or mutual legal assistance are handled by the Executive Director of the Ministry of Justice.

The contact details are as follows:

The Executive Director

Ministry of Justice
Private Bag 13302
Windhoek
Justitia Building
Independence Avenue
Room 101, 1st Floor
Windhoek
Tel: +264 61 280 5369
Fax: +264 61 254 054
Contact person: Mr. DML. Lamek
Email: Lameck.Donald@moj.gov.na
Directorate of Legal Services, Ministry of Justice

6.5 Case Study

The need for mandatory beneficial ownership law:

To effectively capture and unveil deceitful activities, the Namibian government should enact legislation for the mandatory disclosure of beneficial ownership information, according to the Tax Justice Network Africa.\(^\text{23}\)

Once this is done Namibia would than know publicly where illicit funds are moving and who is moving it. An Example Namibia has been rocked by the Fish rot corruption scandal in the fishing industry, and claims are that it was given room to thrive by financial secrecy in countries the implicated persons decided to move money to and through. Financial secrecy, though good for purposes of confidentiality, has been exploited over the years and has been a key tool in facilitating illicit financial flows, according to Tax Justice Network in Africa.

The consequences of this is not only a keen to Namibia but is visible in many countries, where illicit financial flows dwarf developmental assistance and erode the sovereignty of nations in raising revenues domestically for public expenditure and investment. This is made possible by the masterly exploitation between multiple jurisdictions with varying degrees of Financial secrecy. The Namibian fish rot scandal has countries such as Mauritius, Cyprus and Dubai known for their secrecy as some places where individuals implicated have pushed money through. Accordingly, African government lose enormous amounts of money due to the existence of these illicit flows, which ultimately pose a heavy burden on citizens and future generations.

In the endeavour to stop this outflow of resources, its is of out most importance for African countries to develop beneficial ownership laws which require the ultimate physical person benefitting from the company to be known. Illicit financial flows thrive through corporate and financial secrecy revealing the real owners behind companies is one way to address this problem. There should be a clear definition of who the beneficial owners are, a low threshold of ownership as a requisite for disclosure and ensuring that information disclosed is accurate and verified. Regulations must consider all legal vehicles, including companies, trusts, partnerships and foundations. In general, public registries containing this information are considered as the most efficient way to ensure an effective disclosure. In conclusion identifying, registering and disclosing the people who ultimately own or control legal vehicles is a key policy for promoting and protecting domestic revenue mobilisation that may otherwise be eroded by illicit cross-border financial transactions including money laundering, tax evasion and avoidance, corruption and terrorist financing.

Question 7

7.1 No specific good practise relating to Beneficial Ownership Transparency have been implemented, in Namibia. The Financial Intelligence Act, lays the foundations for the governance of matters pertaining to natural persons who control legal persons and arrangements, such as companies and trusts, or otherwise play an important role in a legal person arrangement in Namibia, and the conditions that need to be met to be able to access such information.
Question 8

8.1 Apart from what has been already provided above and the mechanisms currently in place regarding the taking of appropriate measures to enhance beneficial ownership transparency, the status quo remains the same, as Namibia has a long way to go before the implementation of mandatory beneficial laws, as stipulated under paragraph 6.5.