



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 202 2004

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 11 of 2004: Bank of Namibia Amendment Act, 2004.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To **amend the Bank of Namibia Act, 1997, so as to enhance transparency, accountability and efficiency in the policies and operations of the Bank of Namibia; to provide for the clarification of the financial relationship between the Government and the Bank; and to provide for incidental matters.**

(Signed by the President on 31 August 2004)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

Amendment of section 1 of Act No. 15 of 1997

1. Section 1 of the Bank of Namibia Act, 1997 (hereinafter referred to as the principal Act), is amended by the substitution -

(a) for the definition of “affiliate” of the following definition:

“‘affiliate’**[, in respect of a banking institution,]** means **[any corporate body or unincorporated association of persons, in which -**

(i) **twenty per cent or more of any class of voting shares or other voting participation is directly or indirectly owned or controlled by such banking institution, or is held by it with power to vote; or**

(ii) **the election of the majority of directors is controlled in any manner by such banking institution]**

an affiliate as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);”; and

(b) for the definition of “banking institution” of the following definition:

“‘banking institution’ means a banking institution **[registered as a banking institution under the laws governing banking institutions]** as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);”.

Insertion of sections 3A and 3B in Act No. 15 of 1997

2. The following sections are inserted in the principal Act after section 3:

“Mission statement of Bank

3A. The Bank shall have a mission statement spelling out clearly the main purpose and vision of the Bank based on its objects as provided in section 3.

Bank to perform its functions independently

3B. Subject to section 49 and regular consultations with the Minister, the Bank, in pursuit of its objects, shall perform its functions independently.”.

Amendment of section 4 of Act No. 15 of 1997

3. Section 4 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) There shall be a Board of the Bank in which the powers, duties and functions of the Bank shall be vested and which shall, subject to the provisions of this Act, be responsible for the policy, internal controls, risk management and general administration of the Bank.”.

Amendment of section 5 of Act No. 15 of 1997

4. Section 5 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to section 7, the Governor and Deputy Governor shall be appointed[-

(a)] for a fixed term of five years, but shall on the expiration of that term be eligible for reappointment]; **and**

(b) (i) **on such terms and conditions of service; and**

(ii) **be paid from the funds of the Bank such remuneration and allowances,**

as the President may determine in consultation with the Minister].”; and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The terms and conditions of service of the Governor and the Deputy Governor, and their remunerations and allowances which shall be paid from the funds of the Bank, shall be determined in accordance with the following provisions -

(a) upon appointment, the initial terms and conditions of service and the starting remunerations and allowances of the Governor and the Deputy Governor shall be determined by the President on recommendation of the Minister after consultation with the Board;

(b) all subsequent changes and adjustments in the terms and conditions of service and the remunerations and allowance of the Governor and the Deputy Governor, after any determination contemplated in paragraph (a), shall be determined by the Board in consultation with the Minister; and”

- (c) the Governor and the Deputy Governor must not be present during any deliberations of the Board, or take part in any decision of the Board, relating to the determination of the terms and conditions of service or remuneration or allowances of the Governor or Deputy Governor.”

Amendment of section 8 of Act No. 15 of 1997

5. Section 8 of the principal Act is amended by the substitution for subsection (5) of the following subsection:

“(5) The Governor and the Deputy Governor shall devote the whole of their professional services to the Bank and neither of them shall, without the prior written approval of the Minister acting in consultation with the Board -

- (a) receive remuneration from any source other than the Bank; or
- (b) occupy any other office or position of employment, whether remunerated or not, except as nominee of the Bank.”.

Amendment of section 9 of Act No. 15 of 1997

6. Section 9 of the principal Act is amended by the insertion after subsection (3) of the following subsection:

“(3A) The Board, upon a proposal circulated in any manner to all the members, may take a decision without a meeting of the Board having been convened, and such decision is valid as if it was taken at a meeting of the Board, but only if all members have assented to it in writing.”.

Substitution of section 17 of Act No. 15 of 1997

7. The following section is substituted for section 17 of the principal Act:

“Monetary unit and symbols

17. [The President may by proclamation in the *Gazette* determine the monetary units and the symbols to be used for such units which shall, with effect from the date specified in such proclamation, be the currency of Namibia] The monetary units of the currency of the Republic of Namibia are the Namibia Dollar (abbreviated as N\$) and the cent (abbreviated as c), which is one-hundredth part of the Namibia Dollar, and the effective date remains 15 September 1993 as determined by the President by the Proclamation repealed by section 13.”.

Amendment of section 26 of Act No. 15 of 1997

8. Section 26 of the principal Act is amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Notes **[and]** or coins issued by the South African Reserve Bank and serving as legal tender in the Republic of South Africa shall continue to serve as legal tender within Namibia until a date or dates to be determined by the Minister by notice in the *Gazette*: Provided that a person who continues

to hold such notes or coins after the date determined by the Minister may, within two years from that date, or within such longer period as the Minister may determine and specify in the notice, exchange such notes or coins for notes or coins issued by the Bank at such rates as the Bank may determine.”; and

- (b) by the deletion of subsections (2) and (3).

Amendment of section 35 of Act No. 15 of 1997

9. Section 35 of the principal Act is amended by the substitution for subsection (7) of the following subsection:

“(7) Irrespective of whether criminal proceedings in terms of subsection (5) have been or may be instituted against a banking institution in respect of any failure or inability to comply with subsection (2), the Bank may, subject to any condonation granted under subsection (6), by way of a written notice impose upon that banking institution, in respect of such failure or inability, a fine not exceeding **[one-tenth of one] half** a per cent of the amount of the shortfall for each day on which such failure or inability continues.”.

Amendment of section 46 of Act No. 15 of 1997

10. Section 46 of the principal Act is amended by the deletion of subsections (4) and (5).

Substitution for section 54 of Act No. 15 of 1997

11. The following section is substituted for section 54 of the principal Act -

“Prohibited activities

54. (1) Except as otherwise provided in this Act, the Bank shall not -

- (a) engage in trade, purchase, or otherwise acquire shares in any banking institution or any corporation or company, or otherwise have ownership interest in any financial, commercial, agricultural, industrial, or other business undertaking: Provided that nothing in this section shall prevent the Bank, subject to the approval of the Minister, from acquiring shares or otherwise obtaining ownership interest in any international bank or international financial organisation, or any associated or affiliated bank or financial organisation thereof, of which Namibia or the Bank is a member;
- (b) acquire by purchase, lease, or otherwise any real right in or to immovable property, except if the Board considers such acquisition necessary or expedient -
- (i) for the purpose of providing premises for the conduct of the Bank’s business;
- (ii) for the purpose of providing housing for the Governor, Deputy Governor, officers, employees, or consultants of the Bank; or
- (iii) for any other purpose incidental to the performance of the Bank’s functions under this Act;

- (c) make secured or unsecured advances or accept shares as security[.];
- (d) enter into an insurance risk contract otherwise than in the furtherance of its own interests;
- (e) guarantee any loan, advance, or debt of the Government or a Government controlled or any other institution.

[4] (2) Nothing in this section shall prevent the acquisition by the Bank in the course of satisfaction of debts due to it, of any interest or right referred to in subsection (1), but any interest or right so acquired shall be disposed of by the Bank at the earliest suitable opportunity.”.

Amendment of section 56 of Act No. 15 of 1997

12. Section 56 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Bank may in writing direct any person -

- (a) to furnish the Bank periodically or otherwise, and before the date or within the period specified in the direction, with such information as may be available to such person and as the Board may consider necessary for the Bank to perform effectively its functions under this Act; **[or]**
- (b) subject to any other law, to submit to the Bank within the period specified in the direction of any register, book or document in the possession or custody or under the control of any such person which contains or is believed to contain any such information; or
- (c) who, in the opinion of the Bank, has in his or her possession or under his or her custody or control, or has within his or her capacity to obtain, compile or submit, any information, statistics or document relating to the record of balance of payments -
 - (i) to submit such information, statistics or document to the Bank within such period or at such intervals or in such manner or form as the Bank may specify; or
 - (ii) to attend before an officer of the Bank to answer any enquiries in relation to such information, statistics or document.”.

Repeal of laws

13. The Determination of the Monetary Units and Symbols of the Currency of Namibia Proclamation, 1993 (Proclamation No. 19 of 1993) is repealed.

Short title

14. This Act is called the Bank of Namibia Amendment Act, 2004.