



Republic of Namibia
Annotated Statutes

Bank of Namibia Act 1 of 2020

(GG 7109)

brought into force on 15 June 2020 by GN 135/2020 (GG 7241)

ACT

To provide for a central bank of Namibia to serve as the State's principal instrument to control money supply, currency and institutions of finance in Namibia; to provide for the functions of the central bank and to provide for its management; to regulate the issue of banknotes and coins; to provide for matters relating to banking, currencies and monetary policy; to manage foreign exchange reserves; to promote financial stability; and to provide for incidental matters.

(Signed by the President on 16 January 2020)

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[The word "title" is misspelt in the *Government Gazette*, as reproduced above.]

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates -

“affiliate” means an affiliate as defined in section 1 of the Banking Institutions Act, and “affiliated” has a corresponding meaning;

“account holder” means a juristic person, incorporated in Namibia, that directly participates in the trading of the Government debt securities, stock, treasury bills, bonds and other similar instruments issued by the Government, the Bank or by any other Government institution;

“authorised dealer” -

- (a) in respect of a transaction in gold, means a person authorised by the Treasury to deal in gold; and
- (b) in respect of a transaction in foreign exchange, means a person authorised by the Treasury to deal in foreign exchange, under the Currency and Exchanges Act;

“Bank” means the Bank of Namibia referred to in section 2;

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“banking institution” means a banking institution as defined in section 1 of the Banking Institutions Act

“Banking Institutions Act” means the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“Board” means the board of the Bank established in terms of section 9;

“bullion” means gold or silver that is in its raw and pure form, be it as a bar, ingot, cord or wire;

“close relative” in relation to a person, means -

- (a) the spouse of the person;
- (b) a child, step-child, adopted child, brother, sister, step-brother, step-sister, parent or step-parent of the person; or
- (c) the spouse of any person referred to in paragraph (b);

“common monetary area” means the area in which exchange and monetary arrangements are coordinated in accordance with the Multilateral Monetary Agreement concluded on 6 February 1992 between Namibia, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Swaziland;

[The Kingdom of Swaziland was renamed as the Kingdom of Eswatini in April 2018.]

“controlling company” means the controlling company as defined in section 1 of the Banking Institutions Act;

“counterfeiting” means the counterfeiting as defined in section 80;

“counterfeit banknote” means the counterfeit banknote as defined in section 80;

“counterfeit coin” means the counterfeit coin as defined in section 80;

“currency” means a note or coin issued by the Bank and includes any note or coin which is legal tender in Namibia;

“Currency and Exchanges Act” means the Currency and Exchanges Act, 1933 (Act No. 9 of 1933);

“Deputy Governor” means a Deputy Governor of the Bank appointed under Article 32(4)(b)(bb) of the Namibian Constitution;

“determination” means a determination made by the Bank under section 83;

“Executive Director of the Ministry” means a person appointed as the Executive Director of the Ministry in terms of section 19 of the Public Service Act, 1995 (Act No. 13 of 1995);

[The closing bracket is missing after the phrase “Act No. 13 of 1995”.]

“fit and proper” means all the attributes to be taken into account in determining the suitability of a person, including the general probity, competence and soundness of judgment for the fulfilment of the responsibilities of office of the person and the diligence with which the person is likely to fulfil his or her responsibilities;

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“financial institution” means -

- (a) a pension fund registered under the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (b) a licensed stock exchange licensed under, or stock broker as defined in section 1 of, the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- (c) a friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956);
- (d) a registered insurer or registered reinsurer registered under the Short-term Insurance Act, 1998 (Act No. 4 of 1998);
- (e) a registered insurer or registered reinsurer registered under the Long-term Insurance Act, 1998 (Act No. 5 of 1998);
- (f) a registered fund registered under the Medical Aid Funds Act, 1995 (Act No. 23 of 1995);
- (g) an insurance agent, an insurance broker or a reinsurance broker registered in terms of Part VII of the Short-term Insurance Act, 1998 (Act No. 4 of 1998);
- (h) an insurance agent, an insurance broker or a reinsurance broker registered in terms of Part VII of the Long-term Insurance Act, 1998 (Act No. 5 of 1998); or
- (i) any other person or entity declared by the Minister under subsection (2) to be a financial institution;

“financial system stability committee” means the financial system stability committee established in terms of section 32;

“general policies” means the administrative policies and other policies of the Bank, excluding the monetary policy;

“Governor” means the Governor of the Bank appointed under Article 32(4)(b)(bb) of the Namibian Constitution;

“international financial reporting standards” means the accounting standards as reflected in the most recent international accounting standards issued by the International Accounting Standards Board;

“Minister” means the Minister responsible for finance;

“Ministry” means the Ministry administering matters relating to finance;

“monetary policy” means a monetary policy made by the monetary policy committee to influence the quantity of money or the rate of interest with a view to achieve stable prices and support economic objectives;

“monetary policy committee” means the monetary policy committee established under section 27;

“monetary policy operations” means actions taken by the Bank to implement monetary policy;

“mutilated currency” means a mutilated currency as defined in section 44;

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“NAMFISA” means Namibia Financial Institutions Supervisory Authority referred to in section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001);

“non-executive member of Board” means a member of the Board other than the Governor, a Deputy Governor or the Executive Director of the Ministry;

“open market operation” means an open market operation as defined in section 30;

“Payment System Management Act” means the Payment System Management Act, 2003 (Act No. 18 of 2003);

“produce” or “reproduce” includes the production or reproduction of banknotes or coins by means of printing, photography, photocopying or any other forms of copying, enlargement, drawing or computer techniques or the publishing of the banknotes or coins or any part of the banknotes or coins so produced or reproduced or the making of any tooling, process method, metals or things, that would be used in the production or reproduction of banknotes and coins or any part of the banknote or coin;

“Public Accountants’ and Auditors’ Act” means the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

“revaluation reserve account” means a reserve account created to accommodate any net gains or losses in any financial year of the Bank arising from any change in the book value or realised or unrealised value of the Bank’s assets or liabilities denominated in currencies or units of account, other than the domestic currency, such as gold, special drawing rights and foreign currencies;

“risk to financial stability” means a risk to financial stability as defined in section 35;

“special drawing right” means a unit of an international reserve asset provided for in the Articles of Agreement of the International Monetary Fund;

“spouse” means -

- (a) a partner in a marriage solemnised in terms of the law of Namibia or of any foreign country;
- (b) a common law partner in a union recognised in common law as a life-time cohabitation arrangement;
- (c) a partner in a customary union according to customary law or custom; or
- (d) a partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

“staff member” means a staff member of the Bank and includes a person employed by the Bank on a temporary basis; and

“Treasury” means the Treasury as defined in section 1 of the State Finance Act, 1991 (Act No. 31 of 1991).

(2) The Minister may, for the purposes of paragraph (i) of the definition of “financial institution”, by notice in the *Gazette*, declare any person or entity to be a financial institution.

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Continuation of Bank as central bank of Namibia

2. (1) Despite the repeal of the Bank of Namibia Act, 1997 (Act No. 15 of 1997) by this Act, the Bank of Namibia referred to in section 2 of that Act continues to exist as a juristic person under that name and as the central bank of Namibia.

(2) The head office of the Bank must be in Windhoek and the Board may, with approval of the Minister -

- (a) establish subsidiaries and branches of the Bank; and
- (b) de-establish subsidiaries and close branches of the Bank.

(3) The Bank is capable of suing and being sued in its own name and subject to this Act, the Bank exercises powers and performs acts that a juristic person may lawfully perform.

Mission and vision of Bank

3. The Bank must have a mission statement clearly stating the main purpose and vision of the Bank based on its object referred to in section 4.

Object and functions of Bank

4. (1) The object of the Bank is to promote monetary stability and to contribute towards financial stability conducive to the sustainable economic development of Namibia.

(2) The functions of the Bank are -

- (a) to implement monetary policy of Namibia;
- (b) to issue currency in Namibia;
- (c) to regulate and supervise banking institutions, affiliates or associates of the banking institutions under the Banking Institutions Act;
- (d) to oversee money and foreign exchange markets;
- (e) to perform such functions and exercise such powers as assigned to or conferred on the Bank in terms of the Payment System Management Act;
- (f) to promote a sound, progressive and inclusive banking system;
- (g) to hold and manage foreign reserves of Namibia;
- (h) to promote an exchange rate regime which is consistent with the economy of Namibia;
- (i) to foster monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Namibia;
- (j) to provide fiscal advice, depository services and fiscal agencies services to the Government;
- (k) to contribute towards financial stability;

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- (l) to have a macro-prudential oversight over the financial system and to co-ordinate activities involved in the safeguarding of financial stability in order to maintain and enhance a stable financial system in Namibia;
- (m) to promote price stability;
- (n) to exercise and perform such other powers and functions as may be assigned to or conferred on the Bank by this Act; and
- (o) to exercise and perform such powers and functions as may assigned to or conferred on the Bank by any other law.

[The word “be” has been omitted between “may” and “assigned”.]

(3) The Bank has the incidental or ancillary powers and functions necessary to give effect to the object of the Bank.

(4) In giving effect to the object of the Bank and in the exercise and performance of its powers and functions under this Act, the Bank must have regard to the national interest of Namibia.

Independence of Bank

5. (1) In pursuing its object and in the exercise and performance of its powers and functions under this Act, the Bank must be independent and must act without improper or undue influence and without fear, favour, prejudice or direction from any person or authority.

(2) A person or an authority may not seek to influence a member of the Board, a member of a committee established under this Act or a staff member in the exercise or performance of powers or functions under this Act.

- (3) A person or an authority who -
 - (a) interferes with the independence of the Bank; or
 - (b) contravenes subsection (2),

commits an offence and on conviction is liable to a fine not exceeding N\$2 000 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

CHAPTER 3 PROHIBITED ACTIVITIES, SECURITIES, SHARE CAPITAL AND OWNERSHIP OF BANK

Prohibited activities

- 6. (1) Except as otherwise provided for in this Act, the Bank may not -
 - (a) engage in trade, acquire or purchase shares in a banking institution or any body, whether incorporate or unincorporated, or otherwise have ownership interest in any other business undertakings, except that nothing in this section prevents the Bank, subject to the approval of the Minister, from -
 - (i) acquiring shares or otherwise acquiring ownership interests in any international bank or international financial organisation or any associated or affiliated bank or financial organisation of such international bank or

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international financial organisation of which Namibia or the Bank is a member; or

- (ii) establishing, acquiring, holding or selling shares in companies or other body corporates for the purpose of section 73(1)(b);
- (b) accept shares as eligible security;
- (c) acquire immovable properties other than in the course of its ordinary business;
- (d) grant unsecured loans and advances, except loans and advances granted in terms of section 26(3)(b) or section 73(1)(c);
- (e) enter into insurance contracts, except in the ordinary course of its business; or
- (f) guarantee loans, advances or debts of the Government or Government controlled institutions or any other institutions, except for guarantee, surety or collateral given in terms of section 26(3)(c).

(2) Nothing in this section prevents the Bank from acquiring interests or rights referred to in subsection (1) in respect of any debts owed to the Bank but any interests or rights so acquired must, subject to the approval of the Board, be disposed of by the Bank at the earliest suitable opportunity.

(3) In the course of ensuring financial stability, nothing in this section prevents the Bank from acquiring or purchasing shares in banking institutions or controlling companies of banking institutions or otherwise have ownership interest in such other business undertakings, but interests or rights so acquired must, subject to the approval of the Board, be disposed of by the Bank at the earliest suitable opportunity.

Authority to borrow, issue securities and own securities

7. (1) The Bank may, with the approval of the Minister -
- (a) buy, sell or otherwise deal in securities with members of the public and issue securities in its own name and for its own account; or
 - (b) make arrangement or enter into an agreement with -
 - (i) the Government, a banking institution or other financial institution; or
 - (ii) any banking institution or other financial institution in a foreign country,

in order to borrow money in such a manner, at such rate of interest and subject to such other terms and conditions as the Board may approve.

(2) The Bank may, with the approval of the Minister, further borrow, issue securities and own securities which are not contrary to the object of the Bank.

Authorised share capital and ownership of Bank

8. (1) The -
- (a) authorised share capital of the Bank is N\$500 000 000; and

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(b) minimum paid-up share capital of the Bank is N\$40 000 000.

(2) Despite subsection (1) -

(a) the Bank may increase the authorised share capital referred to in subsection (1)(a) by an amount and in a manner recommended by the Board and approved by the Minister; or

(b) the Board may, with the approval of the Minister, increase the minimum paid-up share capital referred to in subsection (1)(b) by transfers from the general reserve account.

(3) The Government is the sole holder of the capital of the Bank and the holding of such capital is not transferable in whole or in part or may not be subjected to any encumbrance.

(4) The authorised share capital or the paid-up share capital of the Bank may not be reduced by the Bank or the Government, except by an amendment to this Act.

(5) Despite any other provision of this Act, if the Board is of the view that the assets of the Bank are less than the liabilities of the Bank and the paid-up share capital of the Bank, the Board must propose that the Minister, from moneys appropriated by Parliament for that purpose, cause funds to be transferred to the Bank in such amounts as are necessary to preserve the paid-up share capital of the Bank.

CHAPTER 4 INSTITUTIONAL ARRANGEMENTS

Part 1 Board of Bank

Constitution of Board

9. (1) In accordance with Article 128 of the Namibian Constitution, there is established a Board of the Bank consisting of -

(a) the Governor, who is the chairperson of the Board;

(b) the Deputy Governors;

(c) the Executive Director of the Ministry; and

(d) not less than five but not more than six non-executive members of the Board appointed in accordance with subsection (2).

(2) For purposes of appointing persons referred to in subsection (1)(d), the Bank must, in at least two daily newspapers circulating widely throughout Namibia or in any other form of advertisement, invite interested persons who are -

(a) fit and proper persons;

(b) of proven knowledge and experience in the field of central banking, economics, banking, finance, law, business or commerce or other disciplines relevant to the operation of the Bank; and

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- (c) not disqualified from being appointed as members of the Board in terms of section 16,

to apply to be considered for appointment as members of the Board.

- (3) An application referred to in subsection (2) must be -

- (a) made in writing; and
- (b) submitted to the Bank within a period specified in the invitation referred to in that subsection.

(4) The Bank must evaluate the applications submitted under subsection (3) and shortlist applicants to be interviewed by the interviewing committee constituted pursuant to subsection (5), but the Bank must only shortlist applicants who comply with subsection (2).

(5) The Bank must submit to the Minister the list of the shortlisted applicants and the Minister must, on receipt of the shortlisted applicants, constitute an interviewing committee consisting of -

- (a) the Governor;
- (b) Deputy Governors;
- (c) the Executive Director of the Ministry; and
- (d) other four persons having knowledge and experience in matters relating to central banking, economics, banking, finance, law, business or commerce or other disciplines relevant to the operation of Bank identified by the Minister,

to interview applicants for purposes of being considered for appointment as members of the Board.

- (6) After interviewing the applicants, the interviewing committee must -

- (a) select a number of applicants who had passed the interview and who in the opinion of the interviewing committee comply with subsection (2); and
- (b) submit the names of the applicants selected under paragraph (a) to the Minister.

(7) On receipt of the names of selected applicants in terms of subsection (6), the Minister must recommend to the President the names of applicants selected under that subsection and the President must, from the list of the applicants recommended to him or her, appoint persons as members of the Board.

(8) The President must, by Proclamation in the *Gazette*, announce the names of persons appointed as members of the Board.

Functions and powers of Board

10. (1) Subject to this Act, the Board must determine the general policies of the Bank and is responsible for internal controls, risk management, general administration of the Bank and any other functions as may be assigned to or conferred on the Board by this Act or any other law.

- (2) Without derogating from the generality of subsection (1), the Board must -

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- (a) approve the determinations issued by the Bank;
- (b) approve the budget of the Bank;
- (c) approve the annual report of the Bank;
- (d) determine the strategic direction of the Bank and its ultimate performance;
- (e) determine and ensure that an effective risk management structure is established within the Bank; and
- (f) make rules for the good governance of the Bank and the conduct of its business in line with the best practices.

Meetings of Board

11. (1) The Board must meet as often as the business of the Bank requires but at least once in every three months during each financial year.

(2) The Governor may at any time and must at the written request of at least four other members of the Board convene a special meeting of the Board and the request must clearly state the purpose for which the meeting is to be convened.

(3) The Governor must cause reasonable prior notice of every meeting of the Board to be given to the members of the Board, except in urgent matters where a meeting of the Board may be convened without a prior notice.

(4) The Board may take a decision on a proposal circulated in any manner to all the members of the Board without a meeting of the Board having been convened and the decision so taken is valid as if it was taken at a meeting of the Board, but only if two thirds of all the members of the Board have agreed to it in writing.

(5) A proposal circulated and a decision taken in accordance with subsection (4) must be reported and recorded in the minutes of the next meeting of the Board.

(6) In exceptional circumstances, the Board may conduct meetings and voting by teleconferencing or other electronic means of communication in accordance with rules made by the Board.

(7) The Governor presides at the meetings of the Board and if the Governor is absent or unable to preside, one of the Deputy Governors nominated by the Governor must preside at the meeting, and where both the Governor and Deputy Governors are absent from a meeting of the Board, the Executive Director of the Ministry must preside at the meeting.

(8) The simple majority of all members of the Board present at a meeting of the Board forms a quorum at the meeting, but at least three non-executive members of the Board must be present at the meeting.

(9) A decision made by the simple majority of the members of the Board present and voting at a meeting of the Board constitutes a decision of the Board but in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

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(10) Subject to subsection (8), a decision by the Board or an act performed on the authority of the Board is not invalid merely by reason of -

- (a) a vacancy in the membership of the Board; or
- (b) the fact that a person who is not entitled to attend a meeting of the Board was in attendance when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the required majority of the members of the Board present and entitled to sit and vote as members of the Board.

(11) The Board must cause accurate minutes of the proceedings of the meetings of the Board to be kept.

Conflict of interest and disclosure of interest by members of Board

12. (1) A member of the Board may not act as a representative of a commercial, financial, industrial entity or any other entity or accept directions from such commercial, financial, industrial entity or other entity in respect of a power or function exercised or performed by the Board under this Act.

(2) A member of the Board may not personally or on behalf of a close relative or any other person accept a gift from any person if the acceptance of the gift may potentially affect the impartiality of the member of the Board in the exercise or performance of his or her powers or function under this Act.

(3) A member of the Board must fully disclose to the Board any direct or indirect personal, pecuniary, commercial, agricultural, industrial or other interests that the member or his or her close relative may have in a matter to be deliberated on by the Board and which interest may potentially -

- (a) conflict with the interests of the Bank; or
- (b) affect the impartiality of the member of the Board in exercise or performance of his or her powers or functions under this Act.

(4) A disclosure referred to under subsection (3) must be made -

- (a) as soon as possible after the relevant facts have come to the knowledge of the member of the Board; or
- (b) before the Board commences with any deliberation on the matter in respect of which the disclosure is made.

(5) Unless the Board determines otherwise, the member disclosing the interest in terms of subsection (4) must leave the meeting of the Board and may not take part in the deliberation and voting on such matter.

(6) Despite subsection (4), a member of the Board is considered to have made due and sufficient disclosure of his or her interest or that of his or her close relative in a matter, if the member -

- (a) gives a written notice at the meeting of the Board that he or she is a member of a specified body corporate, organisation, association or other entity and is to be considered as interested in any contract or arrangement that may be concluded or

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entered into by the Board with such body corporate, organisation, association or entity; or

- (b) takes reasonable steps to ensure that the disclosure is made by a written notice which is conveyed and considered at a meeting of the Board, even if such member does not physically attend that meeting to make the disclosure himself or herself.

(7) A disclosure of interest made under this section must be recorded in the minutes of the meeting of the Board at which such disclosure is made.

- (8) A member who -
 - (a) fails to disclose his or her interest or that of his or her close relative in a matter before the Board; or
 - (b) without leave of the Board, takes part in the deliberations of the Board on a matter in which he or she or his or her close relative has a direct or indirect interest,

commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Audit committee and remuneration committee

13. (1) The Board must establish -

- (a) an audit committee; and
- (b) a remuneration committee,

consisting of at least two non-executive members of the Board and the committees may consult external and independent experts on any matter being considered by the committee.

(2) At least one of the members of the audit committee must be an accountant or an auditor registered as such in terms of the Public Accountants' and Auditors' Act.

(3) The functions of the audit committee established in terms of subsection (1) is to assist the Board to oversee -

[The verb "is" should be "are" to be grammatically correct ("functions...are").]

- (a) the integrity of the accounts and financial statements of the Bank and liaise with the external auditors;
- (b) the effectiveness of the internal control system of the Bank;
- (c) the establishment and the performance of the internal audit function of the Bank;
- (d) the compliance by the Bank with legal and regulatory requirements; and
- (e) the information technology governance and any other function allocated to the committee by the Board.

(4) The internal audit function as contemplated in subsection (3)(c) must be headed by the head of the internal audit department of the Bank who must report functionally to the Board and administratively to the Governor.

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(5) The remuneration committee assists and advises the Board on matters relating to remuneration within the Bank.

Other committees of Board

14. (1) The Board may establish one or more committees -

- (a) to assist the Board in the exercising or performing of its powers and functions under this Act; and
- (b) consisting of members of the Board and staff members.

(2) A committee must elect its own chairperson.

(3) A committee must exercise its powers and perform its functions in accordance with such directions as the Board may determine.

(4) A function performed or a power exercised by a committee is considered to have been performed or exercised by the Board.

(5) The Board may at any time -

- (a) amend, substitute or set aside a decision of a committee; or
- (b) dissolve or reconstitute a committee.

Remuneration and expenses of members of Board

15. (1) The remuneration, allowances and other terms and conditions of service of the non-executive members of the Board must be determined by the Minister on the recommendation of the Governor.

(2) The Governor, Deputy Governor, a staff member serving as a member of a committee of the Board or any member of the Board who is in the full-time employment of the State may be paid such allowances for travelling and subsistence expenses incurred by him or her in the exercise and performance of his or her powers and functions in terms of this Act.

(3) A member of the Board, other than a member referred to in subsection (2), may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the exercise and performance of his or her powers and functions in terms of this Act.

(4) The remuneration and allowances contemplated in subsection (1) may not be reduced during the term of office of a member of the Board.

(5) The remuneration and allowances of the members of the Board must be disclosed in the annual report of the Bank.

Part 2**Non-executive members of Board****Disqualification for appointment as non-executive member of Board**

16. A person may not be appointed as a non-executive member of the Board, if the person -

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- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence;
- (b) is a member of the National Assembly, National Council, local authority council or regional council, unless the person resigns as a member of the National Assembly, National Council, local authority council or regional council;
- (c) during the period of three months preceding the date of the proposed appointment as a member of the Board, has been a director, officer, employee or owner of, or a shareholder in, an institution regulated or supervised by the Bank or which provides professional services to the Bank;
- (d) has been disqualified under any law dealing with companies to hold a position of a director of a company;
- (e) fails to disclose prior to his or her appointment that he or she has been convicted of any offence in terms of any laws dealing with companies or insolvency;
- (f) has not attained the age of 21 years;
- (g) is an unrehabilitated insolvent;
- (h) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine;
- (i) has been convicted of an offence involving dishonesty in Namibia or elsewhere;
- (j) has been disqualified or suspended from practising a profession on the ground of unprofessional conduct or dismissed from a position of trust due to misconduct; or
- (k) has under any law been declared by a competent court to be mentally ill.

Term of office of non-executive members of Board

17. (1) A non-executive member of the Board holds office for a period of five years and may be re-appointed after the expiration of his or her term of office.

(2) Despite subsection (1), a non-executive member of the Board may not serve as a member of the Board for a period of more than 15 years, but remains in office until a new member of the Board is appointed.

Vacation of office by non-executive members of Board

- 18.** (1) A non-executive member of the Board vacates office, if the member -
- (a) becomes subject to any of the disqualification referred to in section 16;
 - (b) resigns from office after giving three months written notice to the President of his or her intention to resign;
 - (c) has been absent from three consecutive meetings of the Board without leave of the Board; or
 - (d) is removed from office under subsection (2).

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(2) A non-executive member of the Board may be removed from office before the expiry of his or her term of office by the President on the recommendation of the Minister, which recommendation must only be made after the Minister has consulted the Board.

(3) A non-executive member of the Board may only be removed from office on the ground of incapacity or for gross misconduct and in accordance with this section.

(4) If the Minister on his or her own accord or if the Board recommends that a non-executive member be removed from office on any of the grounds referred to in subsection (3), the Minister must establish a tribunal in accordance with subsection (5) to inquire into the matter.

(5) The tribunal must -

- (a) consist of not less than three and not more than five persons and at least one of the members must be a legal practitioner with more than 10 years of experience or a retired judge;
- (b) be chaired by the legal practitioner or the retired judge referred to in paragraph (a); and
- (c) enquire into the matter contemplated in subsection (4) and report on the matter to the Minister.

(6) The Minister must consider the report referred to in subsection (5)(c) and after due deliberation with the Board, the Minister may recommend that the President removes the non-executive member of the Board from office, and the President must remove the member from office.

(7) The Minister may, after consultation with the Board, recommend to the President to suspend the non-executive member of the Board from office pending the outcome of an inquiry contemplated in subsection (4), and the President must suspend the member.

(8) If a non-executive member of the Board vacates his or her office as contemplated in subsection (1), a new non-executive member must be appointed in accordance with section 9.

(9) The Board may impose restrictions on the non-executive member of the Board not to take up employment or directorship in a banking institution, a controlling company of a banking institution or a subsidiary of a banking institution -

- (a) for a period not exceeding three months; and
- (b) on such other terms and conditions as the Board may determine, when -
 - (i) the member vacates his or her office in accordance with subsection (1); or
 - (ii) the term of office of the member has come to an end, unless the member is re-appointed.

Part 3

Appointment of Governor, Deputy Governors, staff members, agents and correspondents

Appointment of Governor and Deputy Governors

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19. (1) The Governor and the Deputy Governors are appointed by the President in terms of Article 32(4)(b)(bb) of the Namibian Constitution on the recommendation of the Public Service Commission.

- (2) The Governor and the Deputy Governors are appointed on such terms and conditions as the President determines.
- (3) When the Public Service Commission makes its recommendation to the President as contemplated in subsection (1), such recommendation must be made after the Public Service Commission has consulted the Minister and the Board.
- (4) The Governor and a Deputy Governor must be -
 - (a) fit and proper persons; and
 - (b) of recognised professional standing and experience in the field of economics, banking, finance, law or other fields relevant to central banking.

Disqualification for appointment as Governor and Deputy Governors

- 20.** A person may not be appointed as a Governor or Deputy Governor, if the person -
- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence;
 - (b) is a member of the National Assembly, National Council, local authority council or regional council, unless the person resigns as a member of the National Assembly, National Council, local authority council or regional council;
 - (c) during the period of three months preceding the date of the proposed appointment as a member of the Board, has been a director, officer, employee or owner of, or a shareholder in, an institution regulated or supervised by the Bank or provides professional services to the Bank;
 - (d) has been disqualified under any law dealing with companies to hold a position of a director of a company;
 - (e) fails to disclose prior to his or her appointment that he or she has been convicted in terms of any laws dealing with companies or insolvency;
 - (f) has not attained the age of 21 years;
 - (g) is an unrehabilitated insolvent;
 - (h) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine;
 - (i) has been convicted of an offence involving dishonesty in Namibia or elsewhere;
 - (j) has been disqualified or suspended from practising a profession on the ground of unprofessional conduct or dismissed from a position of trust due to misconduct; or
 - (k) has under any law been declared by a competent court to be mentally ill.

Term of office of Governor and Deputy Governors

21. The Governor or a Deputy Governor is appointed for a term of five years and may be re-appointed after the expiry of his or her term of office.

Vacation of office by Governor and Deputy Governors

22. (1) The Governor or a Deputy Governor vacates office, if he or she -

- (a) becomes subject to any of the disqualification referred to in section 20;
- (b) resigns from office after giving three months written notice to the President of his or her intention to resign or by giving a shorter written notice with the approval of the President; or
- (c) is removed from office under subsection (2).

(2) The Governor or a Deputy Governor may be removed from office before the expiry of his or her term of office by the President on the recommendation of the Public Service Commission, which recommendation must only be made after the Public Service Commission has consulted the Minister and the Board.

(3) The Governor or a Deputy Governor may only be removed from office on the ground of incapacity or for gross misconduct and in accordance with this section.

(4) If the Public Service Commission on its own accord or if the Board recommends that the Governor or a Deputy Governor be removed from office on any of the grounds referred to in subsection (3), the Public Service Commission must establish a tribunal in accordance with subsection (5) to inquire into the matter.

(5) The tribunal must -

- (a) consist of not less than three and not more than five persons and at least one of the members must be a legal practitioner with more than 10 years of experience or a retired judge;
- (b) be chaired by the legal practitioner or the retired judge referred to in paragraph (a); and
- (c) enquire into the matter contemplated in subsection (4) and report on the matter to the Public Service Commission.

(6) The Public Service Commission must consider the report referred to in subsection (5)(c) and after due deliberation with the Board and the Minister, the Public Service Commission may recommend that the President removes the Governor or the Deputy Governor from office, and the President must remove the Governor or the Deputy Governor.

(7) The Public Service Commission may, after consultation with the Board, recommend to the President to suspend the Governor or the Deputy Governor from office pending the outcome of the inquiry contemplated in subsection (4), and the President must suspend the Governor or the Deputy Governor from office.

(8) The Board may impose restrictions on the Governor or a Deputy Governor not to take up employment or directorship in a banking institution, a controlling company of a banking institution or a subsidiary of a banking institution -

- (a) for a period not exceeding six months; and

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- (b) on such other terms and conditions as the Board may determine, when -
 - (i) the Governor or the Deputy Governor vacates his or her office in accordance with subsection (1); or
 - (ii) the term of office of the Governor or a Deputy Governor has come to an end, unless the Governor or the Deputy Governor is re-appointed.
- (9) If the -
 - (a) office of Governor becomes vacant; or
 - (b) Board decides on reasonable grounds that the Governor is incapacitated, the Board, after consultation with the Minister and with the approval of the President, must designate a Deputy Governor to act as the Governor.
- (10) If the -
 - (a) offices of a Deputy Governor becomes vacant; or
 - (b) Board decides on reasonable grounds that a Deputy Governor is incapacitated,

the Board, after consultation with the Minister and with the approval of the President, may designate a senior staff member to act as a Deputy Governor.

Powers and functions of Governor and Deputy Governors

23. (1) The Governor, in addition to the powers and functions conferred or imposed on him or her under this Act -

- (a) is the chief executive officer of the Bank and accountable to the Board for the management of the Bank and the implementation of the general policies of the Bank;
 - (b) negotiates and signs contracts, documents and instruments on behalf of the Bank in line with the rules for good governance of the Bank and the conduct of its business; and
 - (c) represents the Bank in its relations and transactions with the Government and other institutions.
- (2) A Deputy Governor -
- (a) assists the Governor in the performance and exercising of powers and functions in terms of this Act; and
 - (b) exercises and performs powers and functions as may be delegated or assigned to him or her by the Governor.

(3) If the Governor is absent to exercise or perform his or her powers or functions, the Governor may designate a Deputy Governor or if a Deputy Governor is absent, a senior staff member, to exercise or perform the powers or the functions of the Governor during the absence from office.

Condition of service of Governor and Deputy Governors

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24. The remuneration, allowances and terms and condition of service of the Governor and Deputy Governors are paid from the funds of the Bank and are determined as follows -

- (a) on appointment, the initial terms and conditions of services and the starting remuneration and allowances of the Governor and Deputy Governors is determined by the President on the recommendation of the Minister after the Minister has consulted with the Board;

[The verb “is” should be “are” to be grammatically correct.]

- (b) any subsequent changes and adjustments in the terms and conditions of service and the remuneration and allowances of the Governor and Deputy Governors, after the determination contemplated in paragraph (a), is determined by the Board with the concurrence of the Minister; and
- (c) the Governor and Deputy Governors may not be present during any deliberations of the Board or take part in any decision of the Board relating to the determination of remuneration, allowances and other terms and conditions of service of the Governor or Deputy Governors.

Conflict of interest by Governor and Deputy Governors

25. (1) The Governor or a Deputy Governor -

- (a) must dedicate his or her professional service to the Bank; and
- (b) may not, without the written approval of the Minister -
- (i) receive remuneration from any source other than the Bank; or
- (ii) occupy other office or position of employment, whether remunerated or not, except as a nominee of the Bank.

(2) Subsection (1) may not be construed as prohibiting the Governor or a Deputy Governor from -

- (a) serving on a board, committee or commission established under any law; or
- (b) holding an office in any international financial organisation or other body of which Namibia or the Bank is a member,

with the approval of the Minister.

(3) The Governor or a Deputy Governor who contravenes this section commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or imprisonment for a term not exceeding five years or to both such fine and such imprisonment.

Appointment of staff members, agents and correspondents

26. (1) The Governor may -

- (a) in accordance with the organisational structure of the Bank as approved by the Board, appoint persons as staff members to assist the Bank in the performance or exercise of its powers and functions; or

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- (b) appoint agents and correspondents of the Bank, within Namibia or outside Namibia, as the Governor may consider necessary for the efficient functioning of the Bank and in line with rules for the good governance of the Bank and the conduct of its business.

(2) The Board, on the recommendation of the Governor, must determine the terms and conditions of employment, including conditions relating to remuneration and service benefits of staff members.

- (3) Subject to such terms and conditions as the Board determines, the Bank may -

- (a) establish a pension or provident fund for the staff members subject to any law governing provident or pension funds;
- (b) grant secured or unsecured loans and advances to the Governor, Deputy Governors or staff members for such purpose and in such amounts as approved by the Board; or
- (c) guarantee any loan, advance or debt for purposes of providing housing for the Governor, Deputy Governors or staff members.

(4) A salary, remuneration, an allowance or any other benefit payable by the Bank to a staff member or any other person performing functions on behalf of the Bank may not be computed by reference to the net income, net profit or other revenues of the Bank.

CHAPTER 5 MONETARY POLICY COMMITTEE

Monetary policy committee

- 27.** (1) There is established a monetary policy committee in the Bank.
- (2) The monetary policy committee is responsible for the formulation of -
 - (a) the monetary policy;
 - (b) the policies for the conduct of monetary policy operation of Namibia; and
 - (c) the rules of procedure to be followed at its meetings, including the quorum for a meeting, frequency of meetings and the manner of decision-making.

Composition of monetary policy committee

- 28.** (1) The monetary policy committee consists of -
- (a) the Governor, who is the chairperson of the committee;
 - (b) the Deputy Governors; and
 - (c) not less than three but not more than six other persons appointed in accordance with subsection (2).

(2) The persons referred to in subsection (1)(c) must be persons with knowledge and experience on matters relating to monetary policy and must be -

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- (a) appointed by the Governor from the staff members and from any other persons who are not staff members identified and appointed by the Governor, with the approval of the Board; and
- (b) persons of probity, competence and of sound judgment.
- (3) A person appointed in terms of subsection (1)(c) is appointed for a period of three years and is eligible for re-appointment.
- (4) A person may not be appointed as a member of the monetary policy committee or remain a member of the committee, if the person -
 - (a) is a member of the National Assembly, National Council, local authority council or regional council;
 - (b) is an employee of an entity under the supervision of the Bank;
 - (c) has been convicted of an offence involving dishonesty;
 - (d) has been convicted of an offence and sentenced to imprisonment without an option of a fine; or
 - (e) is involved in any activity which may interfere with the exercise or performance of his or her powers or functions.

Publication of monetary policy statement and minutes of meetings of monetary policy committee

29. (1) After each meeting of the monetary policy committee, the committee must publish on the website of the Bank -

- (a) the monetary policy statement made by the committee at the meeting; and
- (b) the minutes of the previous meeting of the committee,

in a manner which the Bank considers appropriate.

(2) In addition to the publication referred to in subsection (1), the monetary policy committee must every year publish in the annual report of the Bank the monetary policy review of Namibia.

Monetary policy operation

30. (1) For the purposes of this section, “open market operation” means operation of a monetary policy tool used by the Bank to increase or decrease money supply by buying and selling investment instruments in the open market.

(2) The monetary policy committee must establish general guidelines and terms and conditions for the monetary policy operation carried out by the Bank under this section.

- (3) The Bank -
 - (a) must from time to time determine and announce the rates chargeable by the Bank for discounts and rediscounts on securities and advances; and

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- (b) may determine different rates and ceilings for different classes of transactions or maturities.
- (4) For the purpose of conducting monetary policy operation, the Bank -
 - (a) may conduct an open market operation to control liquidity levels of an entire system;
 - (b) may buy or sell, lend or borrow marketable or non-marketable financial assets or foreign exchange with any financial institution or any other entities in the markets denominated in any currency;
 - (c) may buy or sell on spot or forward basis either outright or under repurchase agreement;
 - (d) may issue securities denominated in domestic or foreign currencies; or
 - (e) may hold a portfolio of the government securities including securities or assets denominated in foreign currency.
- (5) The Bank must acquire the securities referred to in subsection (4)(e) from secondary markets.

CHAPTER 6 FINANCIAL STABILITY

Macro-prudential oversight and financial stability

31. (1) In order to maintain and enhance a stable financial system in Namibia, the Bank is responsible for macro-prudential oversight as well as the coordination of activities involved in safeguarding financial stability.

- (2) The Bank has the power -
 - (a) through the financial system stability committee, to carry out periodic assessment for the identification of vulnerabilities, monitoring and mitigation of systemic risks to financial stability;
 - (b) to issue directives after consultation with NAMFISA regarding macroprudential matters and the co-ordination of activities involved in the safeguarding of financial stability and to ensure compliance with the directives;
 - (c) to manage events of system-wide financial crisis jointly with the Minister and NAMFISA with the aim of stabilising and restoring confidence in the financial system; and
 - (d) to regularly brief the Minister, Cabinet or the relevant standing committee of the National Assembly regarding the status of financial system stability in Namibia particularly in the event of crisis resolution and recommend the action to be taken.

Establishment of financial system stability committee

- 32.** (1) There is established a financial system stability committee in the Bank.
- (2) The financial system stability committee is responsible for -

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- (a) assisting the Bank in monitoring the financial system against risks, weaknesses, disruptions or developments that may harm or threaten financial stability of Namibia;

[The word “the” should follow the word “threaten” for the sentence to be grammatically correct.]

- (b) advising the Bank on any necessary action to be taken in order to mitigate or remedy the risks, weaknesses or disruptions developments referred to in paragraph (a);

[The word “or” is misplaced in the phrase “risks, weaknesses or disruptions developments”; it should read “risks, weaknesses, disruptions or developments” as in paragraph (a).]

- (c) making recommendations to the Bank on which financial institutions must be considered as systemically important financial institutions for purposes of financial stability;
- (d) drafting the annual financial stability report in order to assist the Bank in assessing the stability of the financial system; and
- (e) promoting coordination of information exchange and sharing among members of the committee and the Bank.

(3) For the purposes of subsection (2)(c), a financial institution, includes a banking institution.

[The comma after “financial institution” is superfluous.]

Composition of financial system stability committee

33. (1) The financial system stability committee consists of -

- (a) the Governor, who is the chairperson;
- (b) the Deputy Governors;
- (c) the chief executive officer of NAMFISA, who is the deputy chairperson;
- (d) a representative of the Ministry nominated by the Minister;
- (e) not more than two persons nominated by the Governor from the staff members; and
- (f) not more than three persons nominated by the chief executive officer of NAMFISA from the staff members of NAMFISA, of whom at least one of such staff members must be a senior staff member.

(2) The persons referred to in subsection (1)(d), (e) and (f) must -

- (a) have expertise and experience relevant to the functions of the financial system stability committee; and
- (b) be persons of probity, competence and of sound judgment.

(3) The persons referred to in subsection (1)(d), (e) and (f) are appointed for a period of three years and are eligible for re-appointment.

(4) A person may not be appointed as a member of the financial system stability committee or remain a member of the committee, if the person -

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- (a) is a member of National Assembly, National Council, local authority council or regional council;
- (b) is an employee of any entity under the supervision of the Bank;
- (c) has been convicted of an offence involving dishonesty;
- (d) has been convicted of an offence and sentenced to imprisonment without an option of a fine; or
- (e) is involved in any activity which may interfere with the exercise or performance of his or her powers or functions as a member of the committee.

Meetings of financial system stability committee

34. (1) The financial system stability committee must meet as often as the business of the committee requires but at least once in every three months during each financial year.

(2) A simple majority of all members of the financial system stability committee present at a meeting of the committee forms a quorum at the meeting, but -

- (a) the Governor or a Deputy Governor; and
- (b) at least one representative from NAMFISA, must be present at each meeting of the committee.

(3) A representative of the Ministry nominated under section 33(1)(d) may participate in the deliberation of the meetings of the financial system stability committee, but has no voting rights.

(4) A decision made by the simple majority of the members of the financial system stability committee present and entitled to vote at a meeting of the committee constitutes a decision of the committee, but in the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.

(5) The financial system stability committee must determine the procedure to be followed at its meetings.

Power to request and provide information

35. (1) For purposes of this section, “risk to financial stability” means a risk which disrupts or is likely to disrupt the financial intermediation process including the orderly functioning of the money market, capital market and foreign exchange market or which affects or is likely to affect public confidence in the financial or payment system or the stability of the financial or payment system.

(2) In order to fulfil its object of financial stability, the Bank may request any office, ministry or agency of the Government, a regulatory authority, a supervisory authority or any other institution which is overseeing an entity referred to in subsection (3) to submit to the Bank any information or document relating to an activity, financing, accounts, transactions, accounts of customers or any other information of persons which the Bank considers necessary to give effect to financial stability.

- (3) For the purposes of subsection (2), the entities are -

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- (a) banking institutions;
- (b) financial institutions;
- (c) system participants or providers of clearing or settlement as defined in the Payment System Management Act;
- (d) an association of a person referred to in paragraphs (a) to (c); or
- (e) any other person or institution that the Minister may, by notice in the *Gazette*, declare as the person or the institution that must submit to the Bank information or documents contemplated in that subsection for purposes of financial stability.

(4) If an office, ministry or agency of the Government, a regulatory authority or supervisory authority or any other institution is not overseeing an entity referred to in subsection (3), the Bank may, by way of a determination, require the entity to submit the information or document required under subsection (2).

(5) Despite the Banking Institutions Act or any other law, the Bank may provide information to, or request information from, other financial regulators, in Namibia or elsewhere, which is required to fulfil the objects of financial stability.

Arrangements with other supervisory authorities

36. (1) For the purposes of contributing to financial stability, the Bank may -

- (a) enter into arrangements to co-operate with other financial institutions, supervisory authorities and co-ordinate financial stability measures with such authorities or institutions whether in Namibia or elsewhere;
- (b) obtain any information or document from any other financial institutions or supervisory authorities, if the Bank considers it necessary that the information or document be obtained; or
- (c) share any information or document with any other financial institutions or supervisory authorities, if the Bank considers it necessary that the information or document be shared.

(2) If the Bank shares any information or document as contemplated in subsection (1)(c) -

- (a) with a financial institution or supervisory authority in Namibia, the financial institution or supervisory authority may not disclose the information or document to a person without the written consent of the Bank; or
- (b) with a financial institution or supervisory authority outside Namibia, the financial institution or supervisory authority must -
 - (i) give an undertaking to protect the confidentiality of such information or document; and
 - (ii) specify the purposes for which the information or document is to be used.

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MONETARY UNITS AND BANKNOTES AND COINS

Monetary units

- 37.** (1) The monetary units of the currency of Namibia are -
- (a) the Namibia Dollar, abbreviated as N\$; and
 - (b) the cent, abbreviated as C, which is one-hundredth part of the Namibia Dollar.
- (2) The Namibia Dollar is the legal tender of Namibia.

Authority to issue banknotes and coins

38. (1) The Bank is the sole issuer of banknotes and coins in Namibia and only such banknotes and coins issued by the Bank are legal tender in Namibia, subject to section 45.

(2) In criminal proceedings under this Act or any other law where the genuineness of a banknote or coin is in issue, a certificate issued by the Governor or by a staff member duly authorised by the Governor stating that the banknote or coin -

- (a) is a banknote or coin issued by the Bank; or
- (b) is not a banknote or coin issued by the Bank,

is admissible in evidence as *prima facie* proof of the facts stated in the certificate.

Legal tender

39. Banknotes and coins issued as legal tender by the Bank and not withdrawn from circulation -

- (a) must be accepted, at their face value, in payment of all public and private debts in Namibia; and
- (b) are valid -
 - (i) in the case of banknotes, for the payment of any amount; and
 - (ii) in the case of coins, for the payment of an amount not exceeding 50 times the face value of the coin concerned.

Currency features

40. (1) The Board must, with the approval of the Minister, determine the denominations, measures, weights, designs, features and other characteristics of the banknotes and coins to be issued by the Bank.

(2) The Governor must, prior to the issuing of the banknotes and coins referred to in subsection (1), cause the characteristics of the banknotes or coins to be published in the *Gazette*.

Currency production, safekeeping and currency reserve inventory

- 41.** (1) The Bank -

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- (a) may make arrangements for the -
 - (i) printing of banknotes and the minting of coins;
 - (ii) security and safekeeping of unissued banknotes and coins;
 - (iii) custody and destruction of banknotes and coins that are withdrawn from circulation or rejected by the Bank; and
 - (iv) custody and destruction of plates and dyes used in the manufacture of the banknotes or coins, if necessary; or
- (b) may itself exercise or perform the powers or functions contemplated in paragraph (a).

(2) The Bank must directly administer the currency reserve inventory and must ensure the regular supply of banknotes and coins into the Namibian market in order to meet the currency requirement of the economy of Namibia.

Accounting of currency issued

42. (1) The aggregate amount of circulating banknotes and coins issued by the Bank must be noted in the accounts of the Bank as a liability of the Bank and the liability may not include banknotes and coins in the currency reserve inventory.

(2) The cost of printing banknotes and minting coins must be amortised over the period that the banknotes and coins are issued and that period may not exceed five years.

Withdrawal of banknotes and coins from circulation

43. (1) The Bank may withdraw banknotes or coins from circulation and may issue banknotes or coins of an equivalent amount in exchange for the banknotes and coins that has been withdrawn from circulation.

[The verb “has” should be “have” to be grammatically correct.]

(2) For the purposes of withdrawing banknotes or coins from circulation, the Governor must, with the approval of the Board, by notice in the *Gazette*, specify -

- (a) the date on which the notice comes into operation;
- (b) the banknotes or coins that are to be withdrawn from circulation;
- (c) the period during which the banknotes or coins to be withdrawn from circulation may be exchanged as legal tender;
- (d) the reason for the withdrawal of the banknotes or coins; and
- (e) the offices of the Bank or its agents at which the banknotes or coins to be withdrawn from circulation are to be surrendered.

(3) The banknotes or coins withdrawn from circulation under this section cease to be legal tender in Namibia with effect from the date immediately following the expiry of the period contemplated in subsection (2)(c).

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(4) Despite subsection (3), the Bank may, after the expiry of the period contemplated in subsection (2)(c), continue to exchange withdrawn banknotes or coins as legal tender for such period and at such value as the Governor, with the approval of the Board, may determine by notice in the *Gazette*.

Exchange of banknotes and coins

44. (1) For the purposes of this section, “mutilated currency” means currency that is damaged or that has lost its security features, and includes currency that is soiled, defaced, illegible, perforated or mutilated in any other way.

(2) Subject to subsection (3), a person may surrender a mutilated currency to the Bank or to its agent and the Bank or its agent may on demand by, and without any charge to, the person exchange the banknote or coin with a banknote or coin of equivalent value.

[The word “a” before the phrase “mutilated currency” is superfluous.]

(3) The Bank or its agent is not obliged to exchange any banknote or coin that has been perforated, cut, clipped, broken or that has been privately marked or that shows signs of non-monetary use or the design of which is not distinguishable.

(4) The Bank or its agent may not compensate a person for a banknote or coin that is lost or stolen, unless -

- (a) in respect of matters in which the Bank has expressly undertaken liability; or
- (b) the Bank, its staff members or any other person exercising or performing any power or function in terms of the Act acted negligently.

South African Rand to continue as legal tender

45. (1) Despite sections 37 and 38, the banknotes and coins issued by the South African Reserve Bank and serving as legal tender in the Republic of South Africa continue to serve as legal tender in Namibia until a date to be determined by the Minister by notice in the *Gazette*.

(2) Despite subsection (1), a person who continues to hold the banknotes or coins referred to in that subsection after the date determined by the Minister under that subsection may, within two years from that date or within such longer period as the Minister may determine and specify in the notice in the *Gazette*, exchange such banknotes or coins for banknotes or coins issued by the Bank at such rate as the Bank may determine.

(3) For the purposes of subsection (1), the banknotes and coins referred to in that subsection are, until the date determined under that subsection, considered to be banknotes and coins of the Bank.

(4) The Minister may after consultation with the Bank take such measures as he or she may consider appropriate in respect of the continued participation of Namibia in the arrangements of the common monetary area.

CHAPTER 8
RELATIONSHIP WITH GOVERNMENT

Fiscal advisor to Government

46. (1) The Bank is the fiscal advisor to the Government.

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- (2) The Bank must furnish the Minister with reports on -
- (a) any economic or financial matter within the competence of the Bank which the Minister may refer to the Bank for investigation or advice; and
 - (b) any matter which in the view of the Board is likely to affect the achievement of its objects or the performance of its functions under this Act.

(3) The Bank may on its own initiative or as the Minister may request express its views on the preparation of the budget of the Government.

Official depository to Government

47. (1) The Bank is the official depository of the funds of the Government and receives, disburses money and keeps accounts on behalf of the Government.

(2) Despite subsection (1), the Government may maintain accounts with, and use the services of, any other banking institution and the arrangements for maintaining such accounts and the use of such services may be made by the Bank on the request of the Minister.

(3) The terms and conditions for the maintenance of accounts at the Bank or at other banking institutions must be agreed on between the Minister and the Governor.

Fiscal agent

- 48.** The Bank -
- (a) is the fiscal agent for the Government; and
 - (b) if designated in writing by the Minister, may serve as a depository or financial intermediary for any international financial institution of which Namibia is a member.

Lending to Government

49. Subject to section 50, the Bank may grant loans to the Government on such terms and conditions as the Board and the Minister may agree on, including loans for the purposes of paying subscriptions fees or any other fees or other financial obligations of the Government arising from or incidental to -

- (a) the membership of Namibia in any of the international banks or international financial organisations;
- (b) the participation of Namibia in any of the international banks or international financial organisations; or
- (c) any transaction or operation in connection with the international banks or international financial organisations,

but such loan must be repaid by the Government to the Bank within six months from the date on which the loan is granted.

Limitations on lending to Government

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50. (1) For the purposes of this section, “revenue” includes loans, grants or other forms of economic aid obtained or received by the Government.

(2) The Bank may not -

(a) lend loans to the Government, except in accordance with section 49; or
[The redundant phrase “lend loans” was perhaps intended to be “make loans” or “lend funds”.]

(b) acquire securities from the Government, except -

(i) in accordance with section 52, 58 or 64(3); or

(ii) in the course of satisfaction of debts due to the Bank by the Government.

(3) The -

(a) total outstanding loans from the Bank to the Government in terms of section 49; and

(b) holding of securities purchased or acquired under section 52 or 63(1)(c) by the Bank,

may not exceed five percent of the average annual ordinary revenue of the Government for the three financial years immediately preceding, but if the State accounts for the latest completed financial year are not yet available, the official estimates of ordinary revenue of the Government for that year may be used in the computation of the average.

(4) Despite subsection (3) but subject to section 49, the Board may, in exceptional circumstances, authorise the Bank to allow the total of outstanding loans referred to in that subsection to increase to an amount not exceeding 10 percent of the average annual ordinary revenue contemplated in that subsection.

(5) If the Bank is of the view that the lending limitation referred to in subsection (3) is about to be exceeded, the Bank must submit to the Minister a report containing -

(a) the outstanding loans, credit facilities and securities of the Government held by the Bank;

(b) the cause that may lead to the limitation to be exceeded; and

(c) the recommendations the Bank considers appropriate to contain or otherwise remedy the situation.

(6) If the limitation referred to in subsection (3) is exceeded up to the 10 percent under subsection (4), the Bank must continue to make such reports and recommendations to the Minister, as the Board may consider appropriate in order to remedy the situation and avoid its recurrence in the following financial year.

Foreign borrowing by Government and statutory bodies or institutions

51. (1) If the Government, a statutory body or an institution established by or under any law intends to borrow from any source in a foreign country, the Government, statutory body or institution must -

(a) before entering into any commitment to borrow any foreign currency from such source, consult the Bank regarding the terms and conditions and financial expediency of the intended borrowing; and

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- (b) after entering into such commitment to borrow, promptly in writing notify the Bank of the terms and conditions of such borrowing.

(2) If the Bank is of the view that the intended borrowing is financially or economically inappropriate or inexpedient for the prevailing economic conditions after being consulted in terms of subsection (1)(a), the Bank -

- (a) must report the matter to the Minister; and
- (b) may recommend to the Minister such measures as the Bank may consider necessary to remedy the situation.

Acquisition of securities issued or guaranteed by Government

52. (1) In the implementation of monetary policy or the development of financial markets, the Bank may operate in the open market by purchasing and selling debt securities issued or guaranteed by the Government.

(2) The Bank may purchase, for its own account, debt securities issued by the Government other than in accordance with subsection (1), but such purchases must be treated as Bank advances to the Government and is subject to the limits contemplated in section 50.

Management and issuance of public debts

53. (1) If authorised by the Minister or by any law and on such terms and conditions as may be agreed on between the Minister and the Board, the Bank acts -

- (a) as an agent for the Government in the payment of interest, principal debt and any debt related expenses in respect of the issue and management of the public debt of Namibia; and
- (b) as an agent for the issuing of public debt securities in local and international markets with such agents as the Minister may authorise.

(2) When authorised by the Minister, the Bank may take any action necessary to develop and deepen the public debt securities market, including securities issued by other government entities.

Agent for administration of exchange control

54. (1) The Bank acts as agent for the Government in exercising and performing the powers and functions relating to any exchange control that the Minister may assign or delegate to the Bank under the Currency and Exchanges Act.

(2) The Bank, with the approval of the Minister, may delegate or assign any of the powers or functions referred to in subsection (1) to an authorised dealer for operational purposes and in accordance with such conditions as the Bank may impose.

Consultation and exchange of information

55. (1) Without prejudice to the powers of the Bank to formulate and implement monetary policy, the Bank and the Minister must consult each other regularly in order to ensure co-ordination between monetary and fiscal policies.

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(2) Any office, ministry or agency of the Government, any Government institution or any person doing business in Namibia must furnish the Bank with any financial or economic information or documentation as the Bank may request for the purpose of exercising or performing its powers or functions under this Act.

(3) A person who contravenes or fails to comply with that subsection, commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or both to such fine and such imprisonment.

CHAPTER 9
RELATIONSHIP WITH BANKING INSTITUTIONS
AND OTHER FINANCIAL INSTITUTIONS

Lender of last resort

56. The Bank may, if the Board considers it necessary for the purposes of maintaining a sound financial system, act as a lender of last resort to the account holders on such terms and conditions as the Board may determine.

Banker to banking institutions and other account holders

57. (1) The Bank may -

- (a) open bank accounts, other than bank accounts referred to in section 59, for; and
- (b) accept deposits in local and foreign currency from,

banking institutions and other account holders doing business in Namibia on such terms and conditions as the Bank may determine.

(2) The Bank may not open a bank account for a person, body or institution not registered as a banking institution, without the approval of the Minister.

Accommodation of account holders

58. (1) The Bank may, subject to such terms and conditions as the Board may determine, purchase from, sell to, discount or rediscount for the account holders -

- (a) bills of exchange or promissory notes which -
 - (i) are drawn for a bona fide commercial purpose;
 - (ii) bear two or more authorised signatures of which at least one is that of a banking institution; and
 - (iii) mature within 183 days from the date of acquisition of the bills of exchange or promissory notes by the Bank;
- (b) treasury bills or other securities issued or guaranteed by the Government which form part of a public issue;
- (c) securities issued by the Bank under section 7; and
- (d) such negotiable instruments, security bonds or debentures as the Board may, with the approval of the Minister, determine and designate by notice in the *Gazette*.

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(2) The Bank may, on such terms and conditions as the Board may determine, grant to the account holders advances that are secured by an instrument referred to in subsection (1) for a period not exceeding six months.

(3) Despite subsection (2), the Bank may, on such terms and conditions as the Board may determine, grant to an account holder a loan which is secured by assets other than those referred to in that subsection, if in the view of the Board the loan is necessary to meet the liquidity requirements of that account holder.

Minimum reserve requirement for banking institutions

59. (1) Every banking institution must maintain an account with the Bank in which the banking institution must maintain a minimum reserve balance for purposes of marginal required reserves against deposits and other similar liabilities of the banking institutions that may be specified in a determination.

(2) The minimum reserve balance referred to in subsection (1) must be determined by the Bank by way of a determination.

(3) The required minimum reserve referred to in subsection (1) is maintained by a banking institution by -

- (a) way of cash holding by a banking institution in an account referred to in that subsection;
- (b) way of deposit or electronic transfer to the minimum reserve held by the Bank in an account referred to in that subsection; or
- (c) such other manner or proportion as the Bank may specify in the determination.

(4) The Bank may, in the determination referred to in subsection (2), specify the minimum reserve ratio based on the average total deposits or liabilities held by a banking institution and may specify the method of computation of the ratio, except that -

- (a) the minimum reserve ratio must be uniform for all banking institutions in the same class but the ratio may differ between different classes of banking institutions; and
- (b) any change in the required minimum reserve ratio is effective only after reasonable notice has been communicated to a banking institution.

(5) The minimum required reserves held by the Bank may be used by a banking institution to settle balances among banking institutions as may be facilitated by the Bank, except that the usage of the minimum required reserve must be repaid by the banking institution within the period specified by the Bank.

(6) The Bank may impose on a banking institution that fails to maintain the minimum required reserves in the required reserve ratio a penalty rate specified in the determination on the amount of the shortfall.

CHAPTER 10
EXCHANGE RATE REGIME, MAINTENANCE OF INTERNATIONAL RESERVES
AND REVALUATION RESERVE ACCOUNT

Exchange rate regime

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60. (1) Without prejudice to the provisions of this Act, the exchange rate regime must be formulated by the Government after consultation with the Bank with due regard to any obligations arising under any international monetary agreement which is binding on Namibia.

(2) The Bank is responsible for the implementation of the exchange rate regime in co-operation with the Government and any other relevant agencies.

Maintenance of official international reserves

61. The Bank -

- (a) must hold the official international reserve in any currency or instrument that is approved by the Board;
- (b) must manage the official international reserve of Namibia prudently; and
- (c) is the sole depository of official international reserve but the Bank may designate an agent that may hold the reserves.

Adequacy of official international reserves

62. (1) The Bank must use its best endeavour to maintain -

- (a) the official international reserves of Namibia at a level that is, in the view of the Board, adequate for the external obligations of Namibia; and
- (b) the confidence among investors and rating agencies of Namibia.

(2) If the official international reserves referred to in subsection (1) are at such a level that the Board considers it to be inadequate, the Board must determine measures in order to grow the international reserves.

(3) If the measures referred to in subsection (2) require the Government support, the Board must submit the measures to the Minister with recommendations that the Board considers necessary to contain or otherwise remedy the situation.

(4) The Minister and the Board must agree on the measures to be undertaken in order to grow the international reserves and if there is any cost involved on the growing of the international reserves such costs are paid by the Government.

[The phrase “on the growing” was perhaps intended to be “in the growing”.]

(5) Until the official international reserves are, in the view of the Board, adequate for the external obligations of Namibia, the Board must continue to submit reports with recommendation to the Minister on how to contain or remedy the situation at intervals not exceeding one month.

[The word “recommendation” should be “recommendations” (plural).]

(6) For the purposes of covering the costs of building the reserves -

- (a) the Bank must open a reserves account to record costs involved in growing the international reserves based on measures agreed on between the Board and the Minister under subsection (4); and

- (b) the gain or loss on the reserve account referred to in paragraph (a) is charged to the Government.

Authorised transactions in relation to international reserves and limitation on contracting parties

63. (1) Without derogating from the generality of section 62, the Bank may, for purposes of maintaining official international reserves and conducting foreign exchange operations -

- (a) buy, sell or deal in gold coins or bullion or other precious metals;
- (b) buy, sell or deal in foreign exchange using any of the instruments commonly used by central banks;
- (c) purchase and sell securities that have been authorised by the Board;
- (d) open and maintain accounts and act as agent or correspondent for any foreign central bank, monetary authority or any banking institution or other financial institution outside Namibia or any foreign government, agent of such government or any international financial organisation; or
- (e) enter into any other transaction authorised in writing by the Board.

(2) Subject to this Act, the Bank when exercising or performing any power or function under subsection (1) must only deal with -

- (a) the Government or Government institutions;
- (b) banking institutions or other financial institutions in Namibia;
- (c) foreign governments or its agencies;
- (d) international financial organisations;
- (e) central banks or monetary authorities;
- (f) banking institutions or other financial institutions outside Namibia; or
- (g) other institutions or bodies as may be approved by the Board.

Revaluation reserve account

64. (1) At the end of each financial year of the Bank, the Bank must credit the revaluation reserve account with any net gain incurred during that financial year arising from a change in the book value or realised value of assets or liabilities of the Bank denominated in a currency or units of account other than domestic currency, such as gold, special drawing rights and foreign currencies resulting from any change in the value of the currencies or units of account in terms of the Namibian currency.

(2) If the Bank, in any financial year, incurs any net loss arising from the change in value referred to in subsection (1), the net losses are set off against any credit balance in the revaluation reserve account.

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(3) If the balance in the revaluation reserve account is insufficient to cover the net losses referred to in subsection (2), the Government must issue to the Bank nonnegotiable securities to the extent of the deficiency on such terms and conditions as the Minister and the Board may agree on.

(4) In the computation of the annual net profit of the Bank, the Bank may not include in the net profit of the Bank the net gain referred to in subsection (1) or the net loss referred to in subsection (2).

(5) Any credit balance in the revaluation reserve account at the end of each financial year of the Bank may be used to redeem any securities issued and outstanding under subsection (3).

(6) The Bank may not credit or debit the revaluation reserve account, except in accordance with this section.

(7) To comply with the requirements of international financial reporting standards, revaluation gain or loss is charged to the income statement of the Bank and then transferred to the revaluation reserve account, but the distributable profit or loss of the Bank does not include the revaluation gain or loss.

CHAPTER 10 ACCOUNTS AND REPORTING REQUIREMENTS

Financial year

65. The financial year of the Bank begins on 1 January and ends 31 December each year.

Accounts and audit

66. (1) Subject to subsection (2), the Board must appoint a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act to annually audit the books of accounts of the Bank, and the Bank may from time to time appoint a different accountant and auditor to audit the books of accounts of the Bank.

(2) Without prejudice to subsection (1), the Minister may, if there are reasonable grounds to do so, direct that the Auditor-General investigate into and report on the accounts of the Bank or any matter relating to the affairs of the Bank and the Bank must provide the Auditor-General with information or facilities that the Auditor-General may request.

(3) The report of the Auditor-General referred to in subsection (2) must be in accordance with the directives of the Minister and in accordance with accounting practise relevant to central banking and must be submitted to the Minister.

**[The word "practice" (used here in its noun form) is misspelt
in the Government Gazette, as reproduced above.]**

Annual report

67. (1) The Bank must within three months after the end of a financial year -
- (a) submit to the Minister a copy of its annual report, including -
 - (i) a copy of the annual accounts of the Bank certified by the accountants and auditors referred to in section 66;

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- (ii) a report on the operations of the Bank during that financial year; and
 - (iii) a report on the state of the economy and the conduct of monetary policy; and
- (b) publish its annual report in print or electronic format.

(2) The Minister must, within 30 days after receipt of the report, table the annual report of the Bank before the National Assembly if the National Assembly is in ordinary session, or if it is not in ordinary session within 14 days after the commencement of its next ordinary session.

Report to National Assembly

68. The Governor must appear before the relevant standing committee of National Assembly at least once a year and at any other time as the standing committee or the Governor may request to report on the current operations and affairs of the Bank, the state of the economy, the conduct of monetary policy or any other matter.

Monthly returns

69. (1) The Bank must within 15 business days after the last business day of each month -

- (a) prepare and publish in the *Gazette* a return of assets and liabilities of the Bank as at the close of business on that day; and
- (b) deliver a copy of the return referred to in paragraph (a) to the Minister.

(2) The return referred to in subsection (1)(a) must be signed by the Governor and the chief financial officer of the Bank.

CHAPTER 12**DETERMINATION OF NET PROFITS, APPROPRIATION OF NET PROFITS AND RESERVE ACCOUNTS****Determination of net profits**

70. The net profit of the Bank for each financial year must be determined in accordance with the international financial reporting standards relevant for central banks after making provisions for operational expenses of the Bank for that financial year and after providing for -

- (a) bad and doubtful debts and depreciation of assets;
- (b) contributions to funds, gratuities or other pension benefits for the staff members;
- (c) costs of issuing banknotes and coins;
- (d) any gains or losses referred to in section 64(4);
- (e) any realised and unrealised gains or losses resulting from the valuation of financial assets against market prices at the end of the year; and
- (f) with the approval of the Minister, any other items that the Board considers necessary.

Appropriation of net profits

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71. (1) At the end of each financial year, an amount equal to the net gains or losses referred to in section 64 incurred during that financial year as reflected in the income statement of the Bank must be allocated to the revaluation reserve account in accordance with that section.

(2) The Bank must establish an unrealised gains reserve account and the Bank must, at the end of each financial year of the Bank, allocate an amount equal to the unrealised gains referred to in section 70 resulting from the valuation of financial assets against market prices at the end of that financial year as reflected in the income statement of the Bank.

(3) Any unrealised losses resulting from the valuation of financial assets against market prices must remain a direct charge against the net profit of the Bank as determined under this section.

(4) The unrealised gains of a particular financial asset that are credited to the unrealised gains reserve account referred to in subsection (2), are offset against the final selling price of that financial asset.

(5) After the deductions under subsections (1) and (2) are made, the Bank must distribute the balance of the net profit remaining for the financial year as follows -

- (a) if at the close of a financial year the funds in the general reserve account are less than 50 percent of the of the paid up capital of the Bank, the Board must credit -

[The phrase “of the” is repeated in the *Government Gazette*, as reproduced above.]

- (i) not less than 30 percent of the net profits of the Bank for that financial year to the general reserve account; and
- (ii) not less than 25 percent of the net profits of the Bank for that financial year to the State Revenue Fund;
- (b) the Board may, after the credits to the general reserve account and State Revenue Fund are made in accordance with paragraph (a), transfer from the balance of its net profit such amount of money to -
- (i) the general reserve account;
- (ii) any other reserve account established under section 72(2); or
- (iii) the State Revenue Fund, as it may determine after consultation with the Minister; and
- (c) if at the close of a financial year the funds in the general reserve account are more than 50 percent of the paid up capital of the Bank, the Board must credit -
- (i) not less than 25 percent of the net profits of the Bank for that financial year to the general reserve account; and
- (ii) not less than 30 percent of the net profits of the Bank for that financial year to the State Revenue Fund.

(6) The Bank may not distribute any profit if the Board is of the view that the assets of the Bank are or will be less than the sum of its liabilities and paid-up capital after the distribution.

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General reserve account and other reserve accounts

72. (1) The Bank must establish and manage a general reserve account which may only be used to -

- (a) increase the paid-up capital of the Bank;
- (b) offset losses sustained by the Bank during a financial year;
- (c) fund a reserve account established under section 73(1)(a); or
- (d) redeem any securities issued by the Bank pursuant to section 7.

(2) The Board may, with approval of the Minister, establish and manage other reserve accounts for specified purposes.

CHAPTER 13
GENERAL PROVISIONS

Developmental role of Bank

73. (1) Subject to subsection (2) and in order to achieve its object, the Bank may, with the approval of the Minister -

- (a) establish one or more reserve accounts under this Act as may be necessary for the purpose of promoting or financing economic development in Namibia;
- (b) establish, acquire, hold or sell shares in companies or other body corporates set up for the purpose of promoting economic and financial market development in Namibia and in particular for the achievement of an effective money markets, securities markets, financial inclusion, financial stability, consumer credit, industrial credit, venture capital, long-term credit, savings institutions and other financial and investment services institutions; or
- (c) grant advances or loans, with or without security as the Minister may approve, to companies or other body corporates set up for the purpose of promoting economic development in Namibia, including such companies or other body corporates established, acquired or held pursuant to paragraph (b).

(2) The powers referred to in subsection (1) may only be exercised for the development or promotion of projects, institutions or facilities -

- (a) in the financial sector of the economy; and
- (b) in those areas where the Government, Government institutions or the private sector have not adequately met the needs of the financial sector of the economy of Namibia.

Exemption from taxation

74. The Bank is exempted from the payment of any tax on its income or payment of stamp duty, transfer duty and any duty or tax in respect of the importation of the banknotes or coins.

Restrictions on use of name of Bank

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75. Except with the written consent of the Bank, a banking institution, body corporate or other person may not -

- (a) carry on business; or
- (b) be registered under Companies Act, 2004 (Act No. 28 of 2004) or any law governing banking institutions or any other law, by or under a name -
 - (i) which is identical with the name of the Bank or which corresponds to the name of the Bank in such a way that the name may be misleading; or
 - (ii) which includes in conjunction with the word “bank” or its derivative or translation in any language the word “central”, “government”, “reserve”, “royal” or “state” or any derivative of any such word or any translation of any such word in any language.

Furnishing of information

76. (1) The Bank may, by way of a determination or by way of a directive, require a person to furnish any information or data that the Bank may require in order to exercise or perform its powers and functions under this Act.

(2) The Bank may publish information or data furnished under subsection (1) in aggregate form, for classes of persons and in accordance with the nature of business of the persons, except that information or data may not be published in a way that discloses the affairs of the customer of the person unless the consent of the customer has been given in writing.

Confidentiality

77. (1) The Governor, a Deputy Governor, a member of the Board or committee established under this Act, an agent of the Bank, a staff member or any other person exercising a power or performing a function under this Act may not disclose to a person information or data relating to the affairs of the Bank, except -

- (a) for purpose of exercising a power or performing a function under this Act or any other law;
- (b) for the purposes of complying with an agreement or an understanding between the Bank and other central banks, supervisory authorities or any other person; or
- (c) when required to do so by a court of law or under any law.

(2) Subsection (1) applies to any other person who receives information disclosed under paragraph (a) or (b) of that subsection.

(3) The Bank may share information or data with other central banks and international institutions subject to such conditions as the Bank may impose.

(4) A person who contravenes or fails to comply with subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Immunity from personal liability

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78. The Governor, a Deputy Governor, a member of the Board or committee established under this Act, a staff member or any other person performing a function or exercising a power under this Act is not personally liable for any loss or damage caused in respect of an act or omission done in good faith in the exercise of the power or the performance of the function under this Act, unless it is established that the act or omission was committed in a grossly negligent manner or intentionally.

Delegation of powers and assignment of functions

79. (1) The Minister may, in writing and on such conditions as the Minister may determine, delegate a power or assign a function conferred or imposed on the Minister by or under this Act to a staff member of the Ministry, the Board or to the Governor, other than the power to make regulations under section 85.

(2) The Board, in writing and on such conditions as the Board may determine, may delegate a power or assign a function conferred or imposed on the Board by or under this Act to a committee of the Board or to the Governor, a Deputy Governor or a staff member, other than the power to -

- (a) establish a committee under section 13 or 14;
- (b) determine any subsequent changes and adjustments in the terms and conditions of service and remuneration and allowance of the Governor and Deputy Governors pursuant to section 24.

(3) The Governor, in writing and on such conditions as the Governor may determine, may delegate a power or assign a function conferred or imposed on the Governor by or under this Act to a Deputy Governor or staff member.

Offences relating to currency

80. (1) For the purposes of this section -

- (a) “counterfeiting” includes the illegal reproduction of a banknote or coin or any part of the banknote or coin by means of a computer, a photocopy machine or a photographic technique, minting, stamping, casting or milling or any other process intended to create a reproduction of a banknote or coin or any part of the banknote or coin;
- (b) “counterfeit banknote” means a banknote, other than a banknote of the Bank or the banknote of any other bank of any other country, resembling or which purports to resemble the banknote of the Bank or a banknote of a bank of any other country and -
 - (i) includes a banknote of the Bank and any other bank prepared or altered so as to resemble a banknote of a higher denomination; and
 - (ii) which is illegal to use as legal tender;
- (c) “counterfeit coin” means a coin, other than a coin of the Bank, resembling or which purports to resemble a coin of the Bank and -
 - (i) includes a coin of the Bank prepared or altered so as to resemble a coin of a higher denomination; and
 - (ii) which is illegal to use as legal tender.

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- (2) A person commits an offence, if the person -
- (a) counterfeits or takes part in any process of counterfeiting of a banknote or a coin of the Bank that is legal tender or the currency of any other country;
 - (b) counterfeits or unlawfully alters or issues a banknote or coin of the Bank or anything purporting to be a banknote or coin of the Bank or the currency of any other country;
 - (c) utters, tenders, accepts or have in his or her possession a banknote or coin that has been counterfeited or without the authority of the Bank, altered, issued, produced or reproduced, knowing or reasonably knowingly it to be counterfeited, forged or altered, issued, produced or reproduced;
 - (d) without the authority of the Bank, produces, reproduces, engraves or makes on any material any words, figures, letters, marks, lines or devices the print which resembles any words, figures, letters, marks, lines or devices peculiar to and used in or upon any banknote or coin of the Bank that is legal tender;
 - (e) without the authority of the Bank, uses, makes, mends, obtains or knowingly possesses -
 - (i) any material which has been produced, reproduced, engraved or made any such words, figures, letters, marks, lines or devices; or
 - (ii) any equipment, including any tool, instrument or machinery, capable of being used for the purpose of the commission of any of the offences contemplated in paragraphs (a), (b) or (d);
 - (f) impairs, diminishes or lightens a coin of the Bank with intent that the impaired, diminished or lightened coin may still pass as a coin of the Bank;
 - (g) possesses, without lawful authority or excuse, disposes of or deals with any filing or clipping, or any gold or silver bullion or any other metal or any gold, silver or other metal in dust, solution or other form, produced or obtained by impairing, diminishing or lightening coin of the Bank knowing that it has been so produced or obtained; or
 - (h) produces, utters, tenders, accepts or possesses any counterfeit foreign banknote and coin or something purporting to be a foreign banknote or coin in Namibia,

and on conviction is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and in the case of a second or subsequent conviction, to a fine not exceeding N\$500 000 or imprisonment for a period not more than 25 years or to both such fine and such imprisonment.

- (3) A person commits an offence, if the person -
- (a) wilfully defaces, soils or damages a banknote or coin of the Bank or without a reasonable excuse, possesses any defaced, soiled or damaged banknote or coin of the Bank or without the authority of the Bank, writes or places any drawing on a banknote of the Bank that is legal tender or attaches to it anything in the nature of an advertisement;
 - (b) removes from the premises where banknotes or coins are manufactured under this Act, without lawful authority or excuse, any blank or partially printed banknote

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paper, printing plate, blank metal sheet, ink, matrix, master punch, die, collar, piercing and cutting tool, pattern or mould or any other tool, machine, engine, instrument or thing used or employed in connection with the printing of banknotes, minting of coins or any useful part of those objects or any blank or defective coin of the size, shape and metal composition of any coin of which the coinage is authorised by this Act or any coin or bullion;

- (c) possesses, without lawful authority or excuse, any of the items referred to in paragraph (b);
- (d) gilds, silvers or colours any piece of metal of a size or figure fit to be coined for the purpose of minting it into a counterfeit coin; or
- (e) makes any piece of metal into a size or figure fit to be minted with intent to facilitate the minting of a counterfeit coin or for the purpose of doing so, and on conviction is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(4) A person commits an offence if the person fraudulently inserts or uses a machine that vends merchandise or services or collects fares or tolls or anything that is intended to pass for a banknote, coin or the token of value that the machine is designed to receive in exchange for the merchandise, service, fare or toll and on conviction is liable to a fine not exceeding N\$100 000 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Offences relating to non-disclosure of information and furnishing of false information

81. A banking institution or financial institution or its agent or any other person commits an offence, if the banking institution or financial institution or its agency or any other person -

- (a) supplies false information or fails to furnish information required by the Bank; or
- (b) furnishes false information to the public,

and on conviction is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or both such fine and such imprisonment.

Liquidation, dissolution and winding up of Bank

82. The Bank may not be liquidated, dissolved and wound up other than by or under an Act of Parliament.

Determinations

83. The Bank may by notice in the *Gazette* make determinations not inconsistent with this Act relating to -

- (a) any matter which is required or permitted by this Act to be determined by the Bank; or
- (b) any other matters which the Bank considers necessary or expedient to determine in order to effectively carry out object of the Bank.

[The word “object” should be or “an object” or “objects” (plural).]

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Rules, directives and instructions

84. The Board may make rules, issue directives or give instructions, not inconsistent with this Act, in connection with any matter which the Board considers necessary or expedient for the good governance of the Bank and the conduct of its business.

Regulations

85. (1) The Minister may, on the recommendation of the Bank, make regulations in relation to any matter which the Minister considers necessary or expedient for the effective carrying out of the objects of the Bank or the achievement of the purpose of this Act.

(2) Without derogating from the generality of subsection (1), the Minister may make regulations relating to -

- (a) the power of the Bank in relation to credit bureaus;
- (b) the registration and licensing of credit bureaus;
- (c) the correction of credit performance information;
- (d) the obligation of credit bureaus;
- (e) the obligation of credit performance information providers;
- (f) the rights and protection of data information; or
- (g) in general regulating credit bureaus.

(3) A regulation made under this section may provide a penalty not exceeding N\$50 000 or imprisonment for a period not exceeding three years or both such fine and such imprisonment for any contravention or failure to comply with the regulation.

Repeal of laws

86. The laws set out in the Schedule are repealed.

Savings and transitional provisions

87. A determination, appointment, regulation, guideline, circular, notice, instruction or anything done under a law repealed by section 86 which -

- (a) is in force at the commencement of this Act; and
- (b) could be made, issued or done under a corresponding provision of this Act,

is deemed to have been made, issued or done under a corresponding provision of this Act.

Construction of certain reference

88. A reference in any other law to the South African Reserve Bank, unless the context otherwise indicates, must be construed as a reference to the Bank.

Short title and commencement

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89. (1) This Act is called the Bank of Namibia Act, 2020, and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

SCHEDULE

LAWS REPEALED

(Section 86)

No. and year of law	Short title	Extent of repeal
Act No. 15 of 1997	Bank of Namibia	The Whole
Act No. 11 of 2004	Bank of Namibia Amendment Act	The Whole