



Republic of Namibia
Annotated Statutes

Inspection of Financial Institutions Act 38 of 1984 (RSA)

(RSA GG 9155)

came into force in South Africa and South West Africa
on date of publication: 4 April 1984
(see section 10 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 10 states “This Act and any amendment thereof also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel.”

TRANSFER TO SOUTH WEST AFRICA: There is no indication that the administration of this Act was transferred to South West Africa, meaning that amendments to the Act in South Africa continued to be automatically applicable to South West Africa until Namibian independence.

as amended by

Building Societies Act 2 of 1986 (OG 5189)

came into force on 1 April 1986 (section 80 of Act 2 of 1986);
repeals the Act insofar as it relates to building societies

Building Societies Act 82 of 1986 (RSA) (RSA GG 10401)

brought into force on 29 August 1986 by RSA Proc. R.152/1986 (RSA GG 10406);
the amendments made by this Act were irrelevant to South West Africa since the Act was already repealed in South West Africa insofar as it relates to building societies by Act 2 of 1986 –
furthermore, the portions of the Act amended by Act 82 of 1986 were repealed by Act 6 of 1987

Financial Institutions Amendment Act 6 of 1987 (RSA) (RSA GG 10645)

brought into force in relevant part (section 13) on 24 April 1987
by RSA Proc. 62/1987 (RSA GG 10703)

Financial Institutions Amendment Act 51 of 1988 (RSA) (RSA GG 11313)

came into force in relevant part (section 22) on date of publication: 20 May 1988

Trust Property Control Act 57 of 1988 (RSA) (RSA GG 11357)

brought into force on 31 March 1989 by RSA Proc. R.35/1989 (RSA GG 11792)

Accountants' and Auditors' and Financial Institutions

Amendment Act 92 of 1988 (RSA) (RSA GG 11414)

came into force on date of publication: 15 July 1988

Financial Institutions Second Amendment

Act 54 of 1989 (RSA) (RSA GG 11893)

brought into force in relevant part (sections 23-24)
on 30 June 1989 by RSA Proc. R.99/1989 (RSA GG 11977)

Banking Institutions Act 2 of 1998 (GG 1808)

brought into force on 1 April 1998 by GN 63/1998 (GG 1827)

Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (GG 2529)

brought into force on 14 May 2001 by GN 85/2001 (GG 2528)

Inspection of Financial Institutions Amendment Act 6 of 2011 (GG 4753)

came into force on date of publication: 13 July 2011

Inspection of Financial Institutions Act 38 of 1984 (RSA)

The Building Societies Act 2 of 1986 repeals this Act insofar as it relates to building societies.

This Act will be repealed in its entirety by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force. Note, however, that Act 2 of 2021 provides for the continued enforcement of this Act to a certain extent, in respect of matters occurring during the period three years before the date on which the relevant provisions of Act 2 of 2021 are brought into force:

“Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.” (Schedule 3, item 6)

ACT

To consolidate the laws relating to the inspection of the affairs of financial institutions and to provide for matters incidental thereto.

*(Afrikaans text signed by the State President)
(Assented to 20 March 1984)*

ARRANGEMENT OF SECTIONS

1. Definitions
2. Appointment of inspectors
3. Inspection of the affairs of a financial institution
4. Powers of the registrar and inspectors
5. Report on inspection
6. Inspection of affairs of person, partnership or company not registered as a financial institution
7. Expenses of inspection
8. Observance of secrecy
9. Offences and penalties
10. Application to South West Africa
11. Repeal and amendment of laws
12. Short title

Schedule: LAWS REPEALED OR AMENDED

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:-

Definitions

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

“auditor”, in relation to a financial institution, means the person appointed as auditor of that institution under the Act concerned;

Inspection of Financial Institutions Act 38 of 1984 (RSA)

“company” includes a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);

[The definition of “company” is inserted by Act 51 of 1988. Close corporations in Namibia are currently governed by the Close Corporations Act 26 of 1988.]

“financial institution” means -

- (a) an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943), and includes an agent for brokers or underwriters at Lloyds, or any other person in respect of whom section 20*bis* of that Act or a regulation made under section 23A of that Act applies;

[The Insurance Act 27 of 1943 has been replaced by the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]

- (b) a pension fund organization registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) a friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or a person carrying on the business of the control and administration of the affairs of such a friendly society;

(d)

[paragraph (d) deleted by Act 6 of 1987]

(e)

[paragraph (e) amended by Act 82 of 1986 and deleted by Act 6 of 1987]

- (f) a medical scheme registered in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967);

[The Medical Schemes Act 72 of 1967 has been replaced by the Medical Aid Funds Act 23 of 1995.]

- (g) a management company registered in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or a unit trust scheme as defined in that Act;

“inspector” means a person appointed as an inspector or temporary inspector under section 2;

“local auditor”, in relation to a financial institution, means the person appointed as local auditor of that institution under the Act concerned;

“Minister” means the Minister of Finance;

“registered”, in relation to a financial institution, includes provisionally registered;

“registrar” means the person appointed in terms of section 5 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as the chief executive officer of the Namibia Financial Institutions Supervisory Authority;

[The definition of “registrar” is amended by Act 82 of 1986 and by Act 6 of 1987, and substituted by Act 3 of 2001. The Namibia Financial Institutions Supervisory Authority Act is Act 3 of 2001.]

Inspection of Financial Institutions Act 38 of 1984 (RSA)

“the Act concerned” means the Act under which the financial institution concerned is registered or deemed to be registered or under which it is required to render returns or statements to the registrar, and includes the regulations framed thereunder;

“valuator”, in relation to a financial institution registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943), the Pension Funds Act, 1956 (Act No. 24 of 1956), or the Friendly Societies Act, 1956 (Act No. 25 of 1956), respectively, bears the meaning assigned thereto in the Act concerned.

**[The Insurance Act 27 of 1943 has been replaced by
the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]**

Appointment of inspectors

2. (1) The registrar may appoint inspectors under this Act.

[subsection (1) substituted by Act 3 of 2001]

(2) When he or she considers it necessary, the registrar may appoint a person who is not in the fulltime employment of the State or of the Namibia Financial Institutions Supervisory Authority established by section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as a temporary inspector to assist the registrar or an inspector referred to in subsection (1) with an inspection under this Act of the affairs or any part of the affairs of a financial institution, or of any person, partnership or company not registered as a financial institution, or to undertake such an inspection.

**[Subsection (2) is amended by Act 54 of 1989 and substituted by Act 3 of 2001.
The Namibia Financial Institutions Supervisory Authority Act is Act 3 of 2001.]**

(3) Before the registrar appoints a temporary inspector under subsection (2), he shall take all reasonable steps to ensure that the person he appoints will be able to report objectively and impartially on the affairs of the financial institution, person, partnership or company concerned.

(4) A temporary inspector appointed under subsection (2) has for the purpose of an inspection for which he has been appointed all the powers and duties of an inspector under this Act.

(5) Every inspector and every temporary inspector so appointed shall be furnished with a certificate signed by the registrar stating that he has been appointed as an inspector or temporary inspector under this Act.

Inspection of the affairs of a financial institution

3. (1) The registrar may at any time inspect the affairs or any part of the affairs of a financial institution or instruct an inspector to carry out such an inspection and may in particular carry out such an inspection or cause such an inspection to be carried out -

- (a) if the financial institution has failed to render a return or statement prescribed by or under the Act concerned within the period prescribed by or under that Act;
- (b) if the financial institution, after having rendered an incorrect or incomplete return or statement prescribed by or under the Act concerned, has not corrected or completed that return or statement within a period of 30 days from the date upon

Inspection of Financial Institutions Act 38 of 1984 (RSA)

which the registrar called upon it in writing to correct or complete that return or statement;

- (c) if the registrar has required the financial institution to furnish him with information which he was entitled under the Act concerned to require it to furnish, and the institution has not within the period determined by the registrar (which shall not be less than 30 days from the date upon which he required it in writing to furnish the information) fully and satisfactorily furnished that information;
- (d) if a return furnished by the financial institution to the registrar shows that the financial institution has failed to comply with a material provision of the Act concerned;
- (e) if the registrar has reason to believe that the financial institution has contravened a provision of section 20*bis* of the Insurance Act, 1943 (Act No. 27 of 1943), or of a regulation made under section 23A of that Act;

[The Insurance Act 27 of 1943 has been replaced by the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]

- (f) if the registrar considers it desirable to ascertain whether a person has or had any interest, direct or indirect, in or in the business of the financial institution;
- (g) if the auditor, local auditor or valuator of the financial institution reports to the registrar in terms of the Act concerned that an irregularity or undesirable practice in the conduct of the financial institution's business was reported to the financial institution and was not corrected within the period prescribed by or under that Act or, if such a period is not so prescribed, within a period of 30 days from the date upon which the irregularity or undesirable practice was reported to the institution by the auditor, local auditor or valuator;
- (h) if a person has applied for such an inspection and has supported his application by such evidence as the registrar may require in order to show that the applicant has good reason for requiring the inspection.

(2) All expenses necessarily incurred by and the remuneration of any temporary inspector who may be appointed under section 2(2) shall be defrayed by -

- (a) a person who has applied for an inspection of a financial institution or any person, partnership or company not registered as a financial institution, and the registrar may require such person to furnish such security as the registrar may deem satisfactory and sufficient to defray such expenses and remuneration; or
- (b) the financial institution, or any person, partnership or company not registered as a financial institution, being inspected if the registrar after having considered the inspection report so decides and notwithstanding the provisions of paragraph (a).

[subsection (2) amended by Act 54 of 1989]

Powers of the registrar and inspectors

4. (1) In order to carry out an inspection under section 3 the registrar or an inspector may -

Inspection of Financial Institutions Act 38 of 1984 (RSA)

- (a) at any time during normal office hours without previous notice enter any premises occupied by a financial institution and require the production to him of any or all of the financial institution's securities, books, records, accounts or documents;
- (b) search any premises occupied by a financial institution for any moneys, securities, books, records, accounts or documents;
- (c) open or cause to be opened any strongroom, safe or other container in which he suspects any moneys, securities, books, records, accounts or documents of a financial institution are kept;
- (d) examine and make extracts from and copies of all securities, books, records, accounts and documents of a financial institution or, against a full receipt issued by him for such securities, books, records, accounts or documents, remove them temporarily from the premises of the financial institution for that purpose;
- (e) require an explanation of any entries in the books, records, accounts or documents of a financial institution;
- (f) against a full receipt issued by him, seize any securities, books, records, accounts or documents of a financial institution which in his opinion may afford evidence of an offence or irregularity;
- (g) retain any such seized securities, books, records, accounts or documents for as long as they may be required for any criminal or other proceedings.

(2) In carrying out an inspection under section 3 the registrar or an inspector may examine under oath in relation to the business of a financial institution any person who is or formerly was a director, auditor, local auditor, attorney, valuator, agent, servant, employee, member, debtor, creditor, policy-holder or shareholder of the financial institution and he may administer an oath or affirmation to that person for the purpose of such an examination: Provided that the person examined, whether under oath or not, may have his legal adviser present at the examination.

(3) A person contemplated in subsection (2) shall, when he is requested by the registrar or an inspector to do so, produce to the registrar or the inspector every security, book, record, account or document of the financial institution to which he has access, and shall give the registrar or the inspector, at his request, any information at his disposal relating to the affairs of the financial institution.

(4) An inspector may, with the written authority of the registrar, also inspect the securities, books, records, accounts or documents of any person, partnership or company -

- (a) if the registrar has reason to believe that the financial institution the affairs of which are being inspected, has or had a direct or indirect interest in or in the business of that person, partnership or company;
- (b) if the registrar has reason to believe that such person, partnership or company has or had a direct or indirect interest in or in the business of the financial institution;
- (c) if the registrar considers it necessary for a proper inspection of the affairs of the financial institution that those securities, books, records, accounts or documents be inspected,

Inspection of Financial Institutions Act 38 of 1984 (RSA)

and the provisions of subsections (1), (2) and (3) apply *mutatis mutandis* in respect of such an inspection: Provided that for the purposes of paragraph (b) a person who holds shares as a nominee or in trust on behalf of another person in a financial institution, is deemed to have an interest in the financial institution, and shall upon request of the inspector disclose the name of that other person.

(5) An inspector shall on demand produce the certificate of his appointment as an inspector or temporary inspector furnished to him by the registrar under section 2(5) or the written authority granted to him by the registrar under subsection (4) of this section.

(6) The financial institution of which the securities, books, records, accounts or documents have been seized under subsection (1)(f) or its lawful representative is entitled to examine, make entries in and make extracts from them during office hours under such supervision as the registrar or an inspector may determine.

Report on inspection

5. When an inspector has completed his inspection, he shall prepare a report thereon which he shall submit to the registrar, and if the inspection was carried out by the registrar, he shall likewise prepare a report thereon, and the registrar shall transmit a copy of every such report to the financial institution concerned.

Inspection of affairs of person, partnership or company not registered as a financial institution

6. (1) If the Minister has reason to suspect that a person, partnership or company which is not registered as a financial institution, is carrying on the business of a financial institution, he may direct the registrar to inspect or cause to be inspected the affairs or any part of the affairs of that person, partnership or company in order to establish whether or not the business of a financial institution is being carried on by that person, partnership or company.

(1A) Despite subsection (1), if the registrar has reason to suspect that a person, partnership or company which is not registered as a financial institution is carrying on the business of a financial institution, the registrar may inspect, or direct any person to carry out an inspection of, the affairs or any part of the affairs of that person, partnership or company to establish whether or not the business of a financial institution is being carried on by that person, partnership or company.

[subsection (1A) inserted by Act 6 of 2011]

(2) The provisions of sections 4, 5 and 8 apply *mutatis mutandis* in respect of such an inspection.

[subsection (2) amended by Act 92 of 1988]

Expenses of inspection

7. The remuneration of, and all expenses necessarily incurred by, a temporary inspector appointed under section 2(2) in connection with an inspection of the affairs of a financial institution, person, partnership or company carried out by him shall be borne by the State: Provided that the Minister may in his discretion recover such remuneration and expenses in whole or in part from that financial institution, person, partnership or company if the inspection proved to have been necessary, or, if the inspection proved to have been unnecessary, in whole or in part from the person who applied for the inspection.

Inspection of Financial Institutions Act 38 of 1984 (RSA)

Observance of secrecy

8. (1) A person carrying out an inspection under this Act shall preserve, or aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his duties and shall not communicate any such matter to any person save to the registrar or the financial institution, person, partnership or company concerned or its lawful representative or by order of a court of law: Provided that -

- (a) any information obtained by the registrar in the course of an inspection under this Act or from a report by an inspector -
 - (i) may be used by the registrar or his staff in connection with any financial institution, person, partnership or company; and
 - (ii) may at the discretion of the registrar be conveyed to the Master of the Supreme Court;

[paragraph (a) amended by Act 57 of 1988 and Act 92 of 1988]

- (b) if the registrar has reason to believe that an offence or irregularity affecting any department of State has been committed, he may convey information regarding that offence or irregularity to the department concerned; and

[paragraph (b) amended by Act 92 of 1988]

- (c) if the registrar has reason to believe that any person who acted in the capacity of auditor to a financial institution did not comply with the provisions of subsection (3) of section 26 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), the registrar may send a copy of the report by an inspector who inspected the affairs of such institution as well as any other information with regard to the affairs of such financial institution obtained by him as a result of the application of this Act, to the Accountants' and Auditors' Board established by section 2 of the Public Accountants' and Auditors' Act, 1951;

[paragraph (c) inserted by Act 92 of 1988]

- (d) if the registrar is of the opinion that a report of an inspector who inspected the affairs of a financial institution, or that any information obtained by the registrar as a result of the application of this Act, may assist the liquidator of such institution to carry out his duties, to perform his functions or to exercise his powers with regard to the liquidation of such institution, he may submit to that liquidator a copy of such report or such information.

[paragraph (d) inserted by Act 92 of 1988]

(2) Subject to the provisions of subsection (1) every member of the staff of the registrar shall preserve, or aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his official duties from any report by the registrar or an inspector.

Offences and penalties

9. (1) A person who -
- (a) when requested by the registrar or an inspector to take an oath or to make an affirmation, refuses to do so;

Inspection of Financial Institutions Act 38 of 1984 (RSA)

- (b) without lawful excuse refuses or fails to answer to the best of his ability a question put to him by the registrar or an inspector in the exercise of his powers or the performance of his duties and relating to the affairs of a financial institution, person, partnership or company, even though the answer may tend to incriminate that person;
- (c) wilfully gives any false information to the registrar or an inspector;
- (d) refuses or fails to comply to the best of his ability with any reasonable request made to him by the registrar or an inspector in the exercise of his powers or the performance of his duties;
- (e) wilfully hinders the registrar or an inspector in the exercise of his powers or the performance of his duties;
- (f) contravenes section 8,

is guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding two years or to both that fine and that imprisonment.

(2) A person who, having taken an oath or made an affirmation before the registrar or an inspector, knowingly makes a false statement in relation to the matter which is the subject of the inspection, is deemed to be guilty of perjury.

Application to South West Africa

10. This Act and any amendment thereof also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel.

Repeal and amendment of laws

11. (1)

[subsection (1) deleted by Act 2 of 1998]

(2) Anything done or deemed to have been done under any provision of a law repealed or amended by subsection (1) and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

Short title

12. This Act is called the Inspection of Financial Institutions Act, 1984.

Schedule

LAWS REPEALED OR AMENDED

[Section 11(1) regarding the repeals and amendments in the Schedule is deleted by Act 2 of 1998. The Schedule is, however, still relevant to the application of section 11(2).]

Number and year of law	Short title	Extent of repeal or amendment
Act No. 68 of 1962.....	Inspection of Financial Institutions Act, 1962	The repeal of the whole

Inspection of Financial Institutions Act 38 of 1984 (RSA)

Act No. 23 of 1965.....	Banks Act, 1965.....	The amendment of the Schedule by the deletion of the entries relating to the Inspection of Financial Institutions Act, 1962
Act No. 24 of 1965.....	Building Societies Act, 1965.....	The amendment of the Schedule by the deletion of the entries relating to the Inspection of Financial Institutions Act, 1962
Act No. 43 of 1975.....	Medical Schemes Amendment Act, 1975	The repeal of section 33
Act No. 101 of 1976.....	Financial Institutions Amendment Act, 1976.....	The repeal of section 32
Act No. 94 of 1977.....	Financial Institutions Amendment Act, 1977.....	The repeal of sections 15 and 16
Act No. 80 of 1978.....	Financial Institutions Amendment Act, 1978.....	The repeal of sections 15 and 16
Act No. 54 of 1981.....	Unit Trusts Control Act, 1981.....	The amendment of the Schedule by the deletion of the entries relating to the Inspection of Financial Institutions Act, 1962
Act No. 82 of 1982.....	Financial Institutions Amendment Act, 1982.....	The repeal of section 15