

FINANCIAL INSTITUTIONS

Inspection of Financial Institutions Act 38 of 1984, as amended in South Africa prior to Namibian independence  

Summary: This Act ([RSA GG 9155](#)) provides for inspection of the affairs of insurers, pension fund organisations, friendly societies, medical schemes and unit trust schemes. It repeals the *Inspection of Financial Institutions Act 68 of 1962*, as amended. This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force.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 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

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during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Applicability to SWA: Section 10 states “This Act and any amendment thereof also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Amendments: The Building Societies Act 2 of 1986 ([OG 5189](#)) repeals the portions of this Act relating to building societies.

The following pre-independence South African amendments were applicable to SWA –

- *Building Societies Act 82 of 1986* ([RSA GG 10401](#)) (brought into force on 29 August 1986 by RSA Proc. R.152/1986 ([RSA GG 10406](#)); note that the amendments made by this Act are irrelevant since the Act was already repealed insofar as it relates to building societies by Act 2 of 1986, and furthermore, the portions of the Act amended by Act 82 of 1986 were repealed by Act 6 of 1987)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 GG 10645](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#))
- *Trust Property Control Act 57 of 1988* ([RSA GG 11357](#))
- *Accountants’ and Auditors’ and Financial Institutions Amendment Act 92 of 1988* ([RSA GG 11414](#))
- *Financial Institutions Second Amendment Act 54 of 1989* ([RSA GG 11893](#)).

The Banking Institutions Act 2 of 1998 ([GG 1808](#)) repeals section 11(1).

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)) amends sections 1 and 2.

Act 6/2011 ([GG 4753](#)) amends section 6.

Regulations: Section 11(2) is a savings clause which states:

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.

However, since this Act makes no provision for regulations, any regulations made under the repealed Act would not survive.

Cases: *Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2014 (2) NR 425 (HC); overturned on appeal 2016 (3) NR 747 (SC).

Financial Institutions (Investment of Funds) Act 39 of 1984, as amended in South Africa prior to Namibian independence

Summary: This Act ([RSA GG 9156](#)) governs the administration of funds and trust property by financial institutions. It repeals the *Financial Institutions (Investment of Funds) Act 56 of 1964*, as amended.

Applicability to SWA: Section 10 states “This Act and any amendment thereof shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Amendments: The following pre-independence South African amendments were applicable to SWA:

- *Financial Institutions Amendment Act 6 of 1987* ([RSA GG 10645](#))
- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#)).

The Act was amended in South Africa by section 38 of the *Financial Markets Control Act 55 of 1989* ([RSA GG 11894](#)). This amending Act, which amended the definitions of “financial institution” and “registrar”, was gazetted prior to Namibian independence, on 26 May 1989 – but it was brought into force in relevant part on 10 August 1990, by RSA Proc. 133/1990 ([RSA GG 12690](#)), after the date of Namibian independence. (That Proclamation brought sections 2, 3 and 18 of *Act 55 of 1989* into force with effect from 7 August 1989, prior to Namibian independence, but the amendments to *Act 39 of 1984* were effected by section 38.) Therefore, the amendments made by *Act 55 of 1989* were not applicable to South West Africa.

The Act is amended by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force.

Regulations: Section 11(2) is a savings clause which states:

Anything done or deemed to have been done under any provision of a law repealed 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.

However, since this Act makes no provision for regulations, any regulations made under the repealed Act would not survive.

Cases:

Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shield Namibia Ltd 2005 NR 151 (HC)

Chief Executive Officer of Namibia Financial Institutions Supervisory Authority & Another v FIS Life Assurance Co Ltd & Others 2013 (2) NR 532 (HC)(section 6(1)).

Building Societies Act 2 of 1986

Summary: This Act ([OG 5189](#)), which came into force on 1 April 1986 pursuant to section 80 of the Act, regulates the registration, management and dissolution of building societies. It repeals the *Building Societies Act 24 of 1965* (initially promulgated in [RSA GG 1066](#)), which applied explicitly to SWA (by virtue of section 52) and which in turn repealed the *Building Societies Act 62 of 1934*.⁵⁶

Amendments: Prior to independence, this Act was amended by Act 15/1987 ([OG 5413](#)).

Act 25/1990 ([GG 124](#)) amends sections 1, 2 and 49 and substitutes certain words and expressions.

Act 8/1992 ([GG 392](#)) amends section 38 so as to remove the prescribed limitation on the amount which may be advanced by a building society on immovable property used for residential purposes.

⁵⁶ In South Africa, the *Building Societies Act 24 of 1965* was replaced by the *Building Societies Act 82 of 1986*.

Act 25/1994 ([GG 967](#)) substitutes the title of Chapter VII and adds a new section 52A.

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)), which was brought into force on 15 July 1996 by GN 154/1996 ([GG 1340](#)), substitutes section 62.

The Deposit Guarantee Act 16 of 2018 ([GG 6806](#)), which was brought into force in relevant part on 20 May 2019 by GN 122/2019 ([GG 6904](#)), amends section 10.

Regulations: Regulations are authorised by section 78 of the Act. In terms of section 79(2) of the Act: Any regulation made or anything else done under any law repealed by subsection (1), shall, in so far as it is not contrary to or inconsistent with this Act, be deemed to have been made or done under the corresponding provisions of this Act.

Pre-independence regulations issued in terms of the *Building Societies Act 24 of 1965* appear to remain in force pursuant to this savings clause. That Act was applicable to South West Africa by virtue of section 85. It was administered by the South African Minister of Finance, and the administration does not seem to have been transferred to SWA in terms of any of the transfer proclamations.

Regulations were issued in terms of that Act by RSA GN R. 1039/1980 ([RSA GG 7029](#)).⁵⁷ These regulations, which do not seem to have been amended, were repealed in South Africa by new regulations contained in RSA GN R.1761/1986, which were also issued in terms of the *Building Societies Act 24 of 1965*. However, these regulations were dated 29 August 1986 ([RSA GG 10409](#)) and so came into force *after* the Building Societies Act 2 of 1986 came into force in SWA on 1 April 1986. Thus, the regulations in RSA GN R.1039/1980 appear to remain in force in Namibia.

No post-independence regulations have been promulgated.

Application of law: The application of the Act is affected by GN 61/1990 (role of the Central Bank), GN 63/1990 (approval to undertake certain business), GN 64/1990 (approval of certain shares and loans as securities), GN 54/1993 and GN 187/1999 (liquid assets).

Related international agreements:

Convention Establishing the Multilateral Investment Guarantee Agency (MIGA), 1985.

Banking Institutions Act 2 of 1998

Summary: This Act ([GG 1808](#)) consolidates and amends the laws relating to banking institutions. It repeals the *Banks Act 23 of 1965*. The Act was brought into force on 1 April 1998 by GN 63/1998 ([GG 1827](#)).

Amendments: Act 14/2010 ([GG 4598](#)) makes extensive amendments to the Act.

GN 34/2011 ([GG 4679](#)) amends section 2 to remove the Post Office Savings Bank from the list of exemptions in section 2(2), under the authority of section 2(3) of the Act; the effect is to make the Act applicable to the Post Office Savings Bank from 1 April 2011.

The Deposit Guarantee Act 16 of 2018 ([GG 6806](#)), which was brought into force in relevant part on 20 May 2019 by GN 122/2019 ([GG 6904](#)), amends sections 11, 15 and 19A.

⁵⁷ These regulations repealed the regulations in RSA GN R.70/1965 (RSA GG 1005, republished in OG 260) which were issued under the previous *Building Societies Act 62 of 1934*.

The Act is also amended by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force.

Application of law: GN 34/2011 ([GG 4679](#)) removes the Post Office Savings Bank from the coverage of section 2(2) of the Act with effect from 1 April 2011. Section 2(2) contains a list of institutions that the Act does *not* apply to; thus, the removal of the Post Office Savings Bank from the coverage of section 2(2) means that the Act *does* apply to the Post Office Savings Bank.⁵⁸

Regulations: Regulations made in terms of the previous *Banks Act 23 of 1965* survive in terms of section 74(2) of this Act:

Any regulation made or in force, or any banking institution or controlling company registered as such for the purpose of conducting banking business, under any provision of any law repealed by subsection (1) shall be deemed to have been made or to be in force, or to have been authorised to conduct banking business, under the corresponding provision of this Act.

Surviving regulations made under the *Banks Act 23 of 1965* are contained in RSA GN R.2747/1986 ([RSA GG 10564](#)), as amended by RSA GN R.1458/1988 ([RSA GG 11428](#)), and as amended after independence by GN 75/1998 ([GG 1831](#)). The remaining portions of these regulations primarily cover forms for financial returns and statements and maximum credit balances on savings accounts.⁵⁹

The following regulations were issued in terms of the current Act:

Regulations pertaining to fees made under this Act are contained in GN 234/2009 ([GG 4386](#)), as amended by GN 323/2017 ([GG 6490](#)).⁶⁰

Regulations relating to restrictions on loan-to-value ratios are contained in GN 334/2019 ([GG 7044](#)).⁶¹

Regulations relating to qualifications, terms and conditions for appointment as members of Appeal Board and conducting of appeals are contained in GN 359/2019 ([GG 7057](#)).

Regulations relating to unfair terms in transactions or contracts between banking institutions and customers or the general public are contained in GN 296/2020 ([GG 7395](#)).

Determinations: A number of “Banking Institutions Determinations” have been issued in terms of the Act:

Determination on the Appointment, Duties and Responsibilities of Directors, Principal Officers, and Executive Officers of Banking Institutions and Controlling Companies (BID-1)

General Notice 398/2020 ([GG 7339](#)),
which replaced General Notice 21/2017 ([GG 6221](#)),
which replaced General Notice 119/1998 ([GG 1899](#))
(Note that GG 6220 contains a different General Notice numbered GN 21/2017.)

Asset Classification, Suspension of Interest and Provisioning (BID-2)

General Notice 278/2003 ([GG 3078](#)),
which replaced General Notice 120/1998 ([GG 1899](#))

⁵⁸ See *Negonga v Nampost Ltd* 2018 (3) NR 704 (HC), para 16.

⁵⁹ These regulations repeal the regulations contained in RSA GN R.1859/1978 (RSA GG 6155), as amended by RSA GN R.2142/1984 (RSA GG 9437), which in turn repealed the regulations contained in RSA GN R.1886/1972 (RSA GG 3683), which in turn repealed the regulations contained in RSA GN R.950/1965 (RSA GG 1158).

⁶⁰ Previous regulations on fees were contained in GN 75/1998 ([GG 1831](#)), repealed by GN 234/2009 ([GG 4386](#)).

⁶¹ These regulations replace the regulations in GN 229/2016 ([GG 6130](#)).

BID-3 (General Notice 120/1998, [GG 1899](#)), was replaced by the Financial Intelligence Act 3 of 2007 and associated regulations. (See GN 71/2009, [GG 4256](#).) The Financial Intelligence Act 3 of 2007 was subsequently replaced by the Financial Intelligence Act 13 of 2012.

Limits on Exposures to Single Borrowers, Large Exposures and Concentration Risk (BID-4)

General Notice 48/2019 ([GG 6855](#))
which replaced General Notice 290/2009 ([GG 4373](#)),
which replaced General Notice 279/2003 ([GG 3078](#)),
which replaced General Notice 122/1998 ([GG 1899](#))

Measurement and Calculation of Capital Charges for Credit Risk, Operational Risk and Market Risk (BID-5)

General Notice 291/2009 ([GG 4373](#)),
which replaced General Notice 280/2003 ([GG 3078](#)),
which replaced General Notice 123/1998 ([GG 1899](#))

Measurement and Calculation of Capital Charges for Credit Risk, Operational Risk and Market Risk for Domestic Systemically Important Banks (BID-5A)

General Notice 496/2018 ([GG 6686](#))

Liquidity Risk Management (BID-6)

General Notice 320/2019 ([GG 6981](#)),
which replaced General Notice 441/2014 ([GG 5634](#)),
which replaced General Notice 292/2009 ([GG 4373](#)),
which replaced General Notice 198/2007 ([GG 3879](#)),
which replaced General Notice 281/2003 ([GG 3078](#)),
which replaced General Notice 90/1999 ([GG 2105](#))

Minimum Local Assets (BID-7)

General Notice 199/2007 ([GG 3879](#)),
which replaced General Notice 125/1998 ([GG 1899](#))

Fees payable in terms of section 64(6) (BID-8)

General Notice 126/1998 ([GG 1899](#))

Fraud and Other Economic Crime (BID-9)

General Notice 16/1999 ([GG 2026](#))

Appointment, Duties and Responsibilities of Independent Auditors (BID-10)

General Notice 407/2017 ([GG 6437](#)),
which replaced General Notice 427/2012 ([GG 5089](#)),
which replaced General Notice 280/1999 ([GG 2190](#))

No record of BID-11

Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12)

General Notice 17/1999 ([GG 2026](#))

Disclosure of Bank Charges, Fees and Commissions (BID-13)

General Notice 18/1999 ([GG 2026](#))
General Notice 463/2020 ([GG 7384](#))

General Notice 463/2020 comes into force on 1 March 2021 and seems to replace General Notice 18/1999 ([GG 2026](#)) since both are labelled as “BID-13”; however, General Notice 463/2020 makes no explicit reference to General Notice 18/1999.

Minimum Insurance for
Banking Institutions (BID-14)

General Notice 89/1999 ([GG 2105](#))

Limits on Inter-Bank Placements (BID-15)

General Notice 282/2003 ([GG 3078](#))

BID-16 has been repealed.

BID-16 was initially contained in General Notice 283/2003 ([GG 3078](#)). It was repealed by General Notice 80/2010 ([GG 4447](#)) with effect from 10 March 2010. Note that there are two versions of this *Government Gazette*. The correct citation for the repeal is General Notice 80/2010 and not General Notice 86/2010 as stated in the erroneous *Government Gazette* which was replaced by the correct one. (General Notice 86/2010 is the Establishment of the township Omuti: Municipality of Okahandja in [GG 4451](#).)

Country Risk Management (BID-17)

General Notice 100/2007 ([GG 3840](#))

Public Disclosures for Banking Institutions (BID-18)

General Notice 293/2009 ([GG 4373](#))

Localization of Core Banking Systems (BID-19)

General Notice 272/2008 ([GG 4109](#))

Internal Capital Adequacy Assessment Process (BID-20)

General Notice 294/2009 ([GG 4373](#))

Interest Rate Risk in the Banking Book (BID-21)

General Notice 295/2009 ([GG 4373](#))

Branches of Foreign Banking Institutions (BID-22)

General Notice 450/2012 ([GG 5102](#)),
which replaced General Notice 169/2012 ([GG 4988](#))

Fit and Proper Test for Substantial and Prospective
Substantial Shareholders of Banking Institutions and
Controlling Companies (BID-23)

General Notice 240/2020 ([GG 7246](#))

Consolidated Supervision (BID-24)

General Notice 107/2012 ([GG 4933](#))

Imposition of Administrative Fines (BID-25)

General Notice 284/2013 ([GG 5244](#))

Priority of Claims in the event of winding-up
of a Banking Institution or Controlling Company (BID-26)

General Notice 158/2017 ([GG 6332](#))

Application for Registration
as a Controlling Company (BID-27)

General Notice 442/2014 ([GG 5635](#))

No record of BID-28 or BID-29.

Information Security (BID-30)

General Notice 425/2017 ([GG 6448](#))

No record of BID-31.

Determination on Securitization Schemes (BID-32)

General Notice 493/2019 ([GG 7066](#))

Determination on policy changes in response to economic and financial stability challenges as a result of the Covid-19 Pandemic (BID-33)

General Notice 590/2021 ([GG 7665](#)), which replaced General Notice 127/2020 ([GG 7166](#)).

Notices: See General Notice 100/2009 ([GG 4284](#)) for a declaration of conduct which constitutes “receiving of funds from the public” under section 1(d) for the purpose of ascertaining if a person is conducting banking business.

GN 378/2019 ([GG 7069](#)) concerns an exemption from the definition of “receiving funds from the public” in section 1 of the Act.

GN 159/2020 ([GG 7286](#)) provides that multi-level marketing business practices are not considered pyramid schemes under section 55A of the Act.

Specific authorisations to conduct banking business are not listed here.

Related law: Note that the Financial Intelligence Act 13 of 2012 ([GG 5096](#)) places certain additional duties on persons who carry on “banking business” or are “receiving funds from the public”, as defined in section 1 of the Act.

Cases: The following cases concern this Act -

Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (2) 2018 (1) NR 183 (HC) (provisional order re: insolvency under section 1 read with section 58; compliance with section 28(4)); *Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (3)* 2018 (1) NR 193 (HC) (final order for winding up due to insolvency under section 1 read with section 58; compliance with section 58(5)(c)); ruling on compliance with section 58(5)(c) upheld on appeal in *Metropolitan Bank of Zimbabwe Ltd & Another v Bank of Namibia* 2018 (4) NR 155 (SC).

The following case concerns section 30 of the previous legislation, the *Banks Act 23 of 1965* – *Grobler v Commercial Bank of Namibia Ltd* 2010 (1) NR 313 (SC).

The following case makes suggestions for self-regulation of mortgages by banks to remedy Namibia’s “debtor-unfriendly” laws:

First National Bank of Namibia Ltd v Musheti 2018 (1) NR 144 (HC)

Our law is still debtor-unfriendly: it entitles the creditor like in the present matter, a bank to whom an immovable property was mortgaged, to contractually refuse late payment of home loan instalments; only payment of the full outstanding accelerated amounts, not just the arrears, would save a mortgagor's property. I see no reason in principle why the banks in Namibia cannot adopt a self-regulating system in the absence of legislation to negotiate and agree on the terms of reinstatement of bond agreements. Such reinstatement will offer the mortgagor a lifeline. It spares the mortgagor who is faced with a sale in execution of his or her primary home. Such approach will contribute to and advance socio-economic welfare for the Namibian people which will in turn create a stable and conducive business environment by facilitating home ownership. Then when default on loan repayment occurs, like in the present matter, to accommodate and be prepared to renegotiate new terms of the loan. (para 37, per Angula DJP).

Commentary: Frederico Links & Clement Daniels, “Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia”, Institute for Public Policy Research, 2011, available [here](#).

Namibia Financial Institutions Supervisory Authority Act 3 of 2001

Summary: This Act ([GG 2529](#)) establishes an authority to exercise supervision over the business of financial institutions and services, often referred to by its acronym NAMFISA. The Act was brought into force on 14 May 2001 by GN 85/2001 ([GG 2528](#)). It will be repealed by the Namibia Financial Institutions Supervisory Authority Act 3 of 2021 ([GG 7646](#)), which will be brought into force on a date set by the Minister in the *Government Gazette*.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 5, 10, 13, 14 and 16, substitutes section 7 and deletes section 12.

Regulations: Appeal Regulations are contained in GN 160/2006 ([GG 3705](#)).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on the Namibia Financial Institutions Supervisory Authority and on some of the financial institutions and businesses it regulates.

Notices: Irregular or undesirable practices pertaining to registered medical aid funds are declared in GN 121/2002 ([GG 2774](#)).

The Road Fund Administration is designated as an institution which may issue loan stock in General Notice 202/2002 ([GG 2796](#)).

Provisions pertaining to levies on financial institutions were initially contained in GN 82/2002 ([GG 2746](#)) as amended by GN 154/2002 ([GG 2804](#)). However, this notice was replaced by GN 78/2003 ([GG 2947](#)), as amended by GN 64/2004 ([GG 3181](#)), GN 160/2004 ([GG 3254](#)), GN 161/2004 ([GG 3254](#)) and GN 24/2011 ([GG 4666](#)). GN 78/2003 is replaced in turn by GN 265/2017 ([GG 6438](#)) with effect from 1 November 2017.

GN 265/2017 ([GG 6438](#)) withdraws GN 78/2003 ([GG 2947](#)) and GN 64/2004 ([GG 3181](#)), but makes no mention of GN 160/2004 ([GG 3254](#)), GN 161/2004 ([GG 3254](#)) or GN 24/2011 ([GG 4666](#)). Note that GN 160/2004 and GN 161/2004 in [GG 3254](#) are identical.

A notice on cessation of over-the-counter payments to NAMFISA was issued in GN 331/2012 ([GG 5041](#)), requiring that all future payments of fees be made via direct deposit or electronic funds transfers.

Notices pertaining to specific financial agents, brokers and institutions have not been recorded here.

Appointments: Members of the Board are announced in GN 124/2001 ([GG 2552](#)), GN 78/2005 ([GG 3460](#)), GN 119/2009 ([GG 4270](#)), GN 282/2010 ([GG 4637](#)), GN 181/2010 (GG 4544), GN 212/2017 ([GG 6384](#)) and GN 212/2021 ([GG 7647](#)).

Cases: *Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others* 2006 (1) NR 275 (HC); *Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2014 (2) NR 425 (HC); overturned on appeal 2016 (3) NR 747 (SC).

Payment System Management Act 18 of 2003

Summary: This Act ([GG 3115](#)) provides for the management, administration, operation, regulation, oversight and supervision of payment, clearing and settlement systems in Namibia. It was brought into

force on 15 May 2004 by GN 111/2004 ([GG 3207](#)).

Amendments: Act 6/2010 ([GG 4479](#)) amends sections 1 and 2, inserts sections 16A and 16B and substitutes section 17.

Regulations: The Act makes no provision for regulations.

Directives: The following “Payment System Directive” has been issued in terms of the Act –

Conduct within the National Payment System in Namibia (PSDIR-1)

General Notice 183/2007 ([GG 3872](#))

Determinations: A number of “Payment System Determinations” have been issued in terms of the Act –

Issuing of a payment instrument (PSD-1)

General Notice 184/2007 ([GG 3872](#))

Reduction of the Item Limit for Domestic Cheque Payments within the Namibian National Payment System (PSD-2)

Note: This Determination is referred to variously in GG 6492 as “Reduction of the Item limit for Domestic Cheque Payments within the Namibian National Payment System” (text of General Notice), “Reduction of the Item Limit for Cheque Payments within the Namibian National Payment System” (title of determination) and “Reduction of the domestic cheque item limit to N\$ 100,000” (“Short title”).

General Notice 504/2017 ([GG 6492](#)), which replaces General Notice 4/2016 ([GG 5940](#)) (as corrected by General Notice 57/2016 ([GG 5962](#))), which in turn replaced General Notice 255/2009 ([GG 4364](#))

Issuing of Electronic Money in Namibia (PSD-3)

General Notice 492/2019 ([GG 7064](#)), which replaces General Notice 667/2018 ([GG 6768](#)), which replaced General Notice 66/2012 ([GG 4909](#))

Conduct of card transactions (PSD-4)

General Notice 448/2012 ([GG 5098](#))

Standards for a Basic Bank Account and Cash Deposit Fees (PSD-5)

General Notice 516/2019 ([GG 7079](#)), which repeals and replaces General Notice 295/2014 ([GG 5544](#)). General Notice 159/2014 ([GG 5485](#)) and General Notice 295/2014 ([GG 5544](#)) both purport to repeal and replace General Notice 130/2013 ([GG 5187](#)) with effect from 31 March 2015. General Notice 295/2014 makes no reference to General Notice 159/2014, but it repeats General Notice 159/2014 with only minor changes to punctuation, etc.

Criteria for Authorisation of Participants in the Clearing and Settlement Systems (PSD-6)

General Notice 103/2013 ([GG 5164](#))

Efficiency of the National Payment System (PSD-7)

General Notice 472/2013 ([GG 5355](#))

No record of PSD 8 and PSD 9

Standards for Fees and Charges for Payment System Services within the National Payment System (PSD-10)

Determination on Card Interchange and ATM Surcharging (PSD-11)

General Notice 181/2022 ([GG 7798](#)), which repeals and replaces the card interchange rates contained in Schedule “5C” of the Payments Association of Namibia’s Payment Clearing House Card Schedule

Exemptions: Every “payment instrument issuer” is exempted from the application of section 7(1) by GN 136/2013 ([GG 5211](#)); a “payment instrument issuer” is defined as a person who issues a payment instrument registered in terms of section 5(1)(a) of the Act, and who complies with the Determination on Issuing Electronic Money [PSD-3] published in General Notice 66/2012 ([GG 4909](#)).

Service providers registered as contemplated in section 3(6) of the Act are exempted from compliance with section 7(1) of the Act by GN 14/2018 ([GG 6524](#)).

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)).

Financial Intelligence Act 13 of 2012

Summary: This Act ([GG 5096](#)) establishes the Financial Intelligence Centre and the Anti-Money Laundering and Combating of the Financing of Terrorism and Proliferation Council, to address suspicious financial activities and transactions which may relate to money laundering, or terrorism or proliferation. It also places certain duties on persons and institutions identified as accountable and reporting institutions, supervisory and regulatory bodies, the Registrar of Companies and Close Corporations and the Master of the High Court. It repeals the Financial Intelligence Act 3 of 2007 ([GG 3880](#)).⁶² The Act was brought into force on 21 December 2012 by GN 304/2012 ([GG 5104](#)).

Amendments: The Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 ([GG 5490](#)), which was brought into force on 1 July 2014 by GN 80/2014 ([GG 5497](#)), amends the long title and sections 1,9, 35, 37 and 50 and substitutes certain expressions.

Schedule 1 of the Act is amended by GN 339/2019 ([GG 7049](#)).

Proposed amendments to Schedule 1 of the Act were published, after consultation with the Anti-Money Laundering and Combating the Financing of Terrorism Council and the Financial Intelligence Centre, in GN 66/2018 ([GG 6568](#)) and in GN 85/2018 ([GG 6595](#)).

The Act is also amended by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force.

Regulations: Regulations made under the repealed Act survive in terms of section 73(2):

Any regulation made or any exemption, notice, circular, determination or guidance issued or any other thing done under the Act repealed by section 72 is deemed to have been made, issued or done under the corresponding provision of this Act.

Regulations under the previous Act were contained in GN 74/2009 ([GG 4253](#)). However, all the regulations made under the previous Act and their amendments are repealed by the **Financial Intelligence Regulations** issued under the current law and contained in GN 3/2015 ([GG 5658](#)), as amended by GN 48/2021 ([GG 7484](#)).

⁶² The previous Financial Intelligence Act 3 of 2007 was brought into force on 5 May 2009 by GN 73/2009 ([GG 4253](#)).

Determinations: Determinations made under the repealed Act survive in terms of this legislation.

A Determination on the Period within Which an Accountable Institution May Not Proceed with the Carrying Out of a Transaction (FICD 1) is contained in General Notice 68/2009 ([GG 4256](#)).

A Determination on the Period for Establishment of Identity of Existing Clients by Accountable Institutions (FICD 2) is contained in General Notice 69/2009 ([GG 4256](#)). An exemption for certain accountable institutions made in terms of FICD 2 is extended by GN 159/2012 ([GG 4977](#)).

A Determination on (1) the Amount of Transaction above Which Accountable Institutions Must Establish Identity of Clients; and (2) the Period during Which Multiple Transactions Must Be Considered a Single Transaction (FICD 3) is contained in General Notice 70/2009 ([GG 4256](#)).

The following determinations are made in terms of this Act, with each, after being corrected, coming into force on 1 March 2017:

Determination No. 01 of 2016: The period within which the Master of the High Court must obtain and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and inter vivos trusts. General Notice 62/2017 ([GG 6253](#)), as corrected by General Notice 226/2018 ([GG 6622](#)).

The correction notice states that it substitutes the words “effective date 19 July 2016” and the words “the date of issue” with the words “date of publication”. However, the words “effective date 19 July 2016” do not appear in the original General Notice.

Determination No. 02 of 2016: The period within which the Registrar of Companies and Close Corporations collects information in respect of each member, director, shareholder and beneficial owner of companies and close corporations registered before the Financial Intelligence Act 13 of 2012 came into force, General Notice 63/2017 ([GG 6253](#)), as corrected by General Notice 227/2018 ([GG 6622](#)).

Determination No. 03 of 2016: The amount of cash and value of a bearer negotiable instrument to be declared at the point of entry into or departure from Namibia, General Notice 63/2017 ([GG 6253](#)), as corrected by General Notice 228/2018 ([GG 6622](#)).

GN 49/2021 ([GG 7484](#)) contains an unnumbered determination made in terms of section 57(5) of the Act setting out remuneration and allowances to be paid to members of the Appeal Board appointed in terms of section 57(1).

Notices: Exemptions, notices, circulars or guidances made under the repealed Act survive in terms of this legislation.

Exemption orders in terms of section 51 of the previous Act were issued in GN 75/2009 ([GG 4253](#)) and GN 76/2009 ([GG 4253](#)), but these were both withdrawn by GN 220/2021 ([GG 7657](#)).

An exemption order in terms of section 51, applicable to all accountable institutions in respect of e-money accounts, is contained in GN 160/2012 ([GG 4977](#)).

Related laws: See the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014 (TERRORISM) and the Prevention of Organised Crime Act 29 of 2004 (CRIMINAL LAW AND PROCEDURE).

Cases:

Pinto v First National Bank of Namibia Ltd & Another 2013 (1) NR 175 (HC) (dealing with the preceding Financial Intelligence Act 3 of 2007)

Atlantic Ocean Management Group (Pty) Ltd & Another v Prosecutor-General 2017 (4) NR 939 (HC), confirmed on appeal in *Atlantic Ocean Management Group (Pty) Ltd v Prosecutor-General* 2019 (4) NR 1031 (SC).

Commentary: Frederico Links & Clement Daniels, “Towards a National Integrity System: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia”, Institute for Public Policy Research, 2011, available [here](#) (on the Financial Intelligence Act 3 of 2007).

Microlending Act 7 of 2018

Summary: This Act ([GG 6664](#)) regulates the microlending business in Namibia, to promote responsible borrowing and lending. It was brought into force on 15 October 2018 by GN 261/2018 ([GG 6736](#)).

Regulations: Regulations relating to the maximum penalty interest chargeable by microlenders in the event of default by borrowers are contained in GN 263/2018 ([GG 6736](#)).

Regulations relating to penalties for non-compliance with the Act are contained in GN 320/2020 ([GG 7425](#)).

Standards: Microlending Standard ML.S.1 is issued in General Notice 598/2018 ([GG 6745](#)).

Microlending Standards ML.S.2, ML.S.3, ML.S.4 and ML.S.5 were initially issued in General Notice 599/2018 ([GG 6745](#)). Microlending Standards ML.S.1 and ML.S.2 are re-issued in General Notice 362/2019 ([GG 6994](#)), which makes no reference to the fact that standards with these titles were previously issued. Microlending Standards ML.S.3, ML.S.4 and ML.S.5 are re-issued in General Notice 74/2020 ([GG 7130](#)), which again makes no reference to the fact that standards with these titles were previously issued.

Microlending Standard ML.S.6 is issued in General Notice 176/2021 ([GG 7531](#)).⁶³

Deposit Guarantee Act 16 of 2018

Summary: This Act ([GG 6806](#)) establishes the Namibia Deposit Guarantee Authority, the Deposit Guarantee Scheme and the Deposit Guarantee Fund for the purpose of providing compensation to depositors if their deposits in member institutions become unavailable. Parts 1, 2, 3, 9 (excluding sections 47, 48 and 49) and 10 of the Act were brought into force by GN 122/2019 ([GG 6904](#)). The remainder of the Act was brought into force with effect from 1 February 2020 by GN 23/2020 ([GG 7117](#)).

The correct name of the Act is the “Deposit Guarantee Act”, according to section 62(1) of the Act. However, the table of contents and header of *Government Gazette* 6806 erroneously refer to the “Namibia Deposit Guarantee Act”.

Regulations: Regulations relating to maximum coverage limits for guaranteed deposits are contained in GN 24/2020 ([GG 7117](#)); they set the maximum coverage limit at N\$25 000 per depositor.

The listing for GN 24/2020 in the table of contents in GG 7117 refers to the “Guarantee Act, 2018”, while it should read “Deposit Guarantee Act, 2018”.

Determinations: The Namibia Deposit Guarantee Authority issued a “Determination of premiums payable per risk category and interest rates payable by member institution” in terms of section 57(1)(b) of the Act read with section 34(1) and (2), in GN 100/2020 ([GG 7163](#)).

⁶³ A draft of this standard was published in General Notice 41/2021 ([GG 7448](#)).

A number of “Deposit Guarantee Determinations” have been issued by the Namibia Deposit Guarantee Authority in terms of section 57 of the Act:

No record of DGD-1 (unless GN 100/2020 was intended to be DGD-1)

Determination on the manner of payment of premiums (DGD-2)

General Notice 143/2020 ([GG 7179](#))

Determination on the manner of payment of financial penalties (DGD-3)

General Notice 144/2020 ([GG 7179](#))

Determination on the proof of entitlement to payment of compensation (DGD-4)

General Notice 145/2020 ([GG 7179](#))

Determination on the format and manner in which information must be kept (DGD-5)

General Notice 146/2020 ([GG 7179](#)).

Appointments: The appointment of members of the Board of the Namibia Deposit Guarantee Authority is announced in General Notice 445/2019 ([GG 7034](#)).

Bank of Namibia Act 1 of 2020

Summary: This Act ([GG 7109](#)) provides for the continuation of the Bank of Namibia as the central bank. It defines the relationship between the bank and the government. It also regulates the issue of bank notes and coins, and the monetary system. It repeals the Bank of Namibia Act 15 of 1997 ([GG 1761](#)), which in turn repealed the Bank of Namibia Act 8 of 1990 ([GG 42](#)), which repealed the *South African Reserve Bank Act 90 of 1989* ([RSA GG 11942](#)), which repealed the *South African Reserve Bank Act 29 of 1944* ([SA GG 3342](#)). The current Act was brought into force by GN 135/2020 ([GG 7241](#)) on 15 June 2020.

Savings: Section 87 of this Act states:

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.

Thus, this Act preserves things done in terms of the Bank of Namibia Act 15 of 1997.

Section 60(2) of the Bank of Namibia Act 15 of 1997 ([GG 1761](#)) stated:

Anything done in terms of a provision of the Act repealed by subsection (1) and which may or is required to be done in terms of that Act, shall be deemed to have been done in terms of the corresponding provision of this Act.

Thus, Act 15 of 1997 preserved things done in terms of the Bank of Namibia Act 8 of 1990.

Section 62(2) of the Bank of Namibia Act 8 of 1990 ([GG 42](#)) stated:

Anything done in terms of a provision of the Act repealed by subsection (1) and which may or is required to be done in terms of this Act, shall be deemed to have been done in terms of the corresponding provision of this Act.

Thus, Act 8 of 1990 preserved things done in terms of the *RSA South African Reserve Bank Act 90 of 1989*.

Section 40(2) of the *RSA South African Reserve Bank Act 90 of 1989* ([RSA GG 11942](#)) provides that – any rules and regulations made under sections 22 and 23, respectively, of the said Act [the *South African Reserve Bank Act 29 of 1944*], or which are deemed to have been made thereunder, shall be deemed to have been made under the corresponding provisions 25 of this Act.

Thus, Act 90 of 1989 preserved things done in terms of the *SA South African Reserve Bank Act 29 of 1944* ([SA GG 3342](#)).

This chain of savings clauses makes it possible in theory for regulations and notices issued under any of the repealed laws to remain in force.

Regulations: The savings clauses would appear to apply to regulations, which are authorised by section 85 of this Act.

The following regulations were made under section 23 of the *South African Reserve Bank Act 29 of 1944* ([SA GG 3342](#)) and appear to have survived via the chain of savings clauses.⁶⁴

South African Reserve Bank-Regulations, contained in SA GN 629/1945 ([SA GG 3474](#)), as amended by RSA GN 965/1962 ([RSA GG 265](#)). However, some aspects of these regulations have obviously been superseded by the current Act while others seem to have no current relevance.

The following regulations were made under the Bank of Namibia Act 15 of 1997 and appear to have survived by virtue of the savings clause in the current Act:

Credit Bureau Regulations, contained in GN 103/2014 ([GG 5518](#)), as amended by GN 177/2014 ([GG 5579](#)).

Notices: The savings clauses also apply to notices. However, the pre-independence notices on the design of various coins would appear to have no relevance in independent Namibia and have not been recorded here. Post-independence notices are listed below.

Monetary units and symbols were set forth under the repealed laws in Proc. 19/1993 ([GG 682](#)), General Notice 339/1996 ([GG 1452](#)), General Notice 8/2000 ([GG 2258](#)) (enhanced N\$50 and N\$100 banknotes), General Notice 108/2012 ([GG 4936](#)) (a new series of banknotes with enhanced security features) and General Notice 394/2015 ([GG 5811](#)) (modified N\$10 and N\$20 banknotes). However, Proc. 19/1993 was repealed by Act 11/2004. Characteristics of the modified N\$10.00 banknote being issued by the Bank of Namibia from January 2022 in terms of the current Act are announced in General Notice 1/2022 ([GG 7720](#)) (change in the signature of the Governor of the Bank of Namibia).

Commemorative notes and coins were announced under the repealed laws in General Notice 74/1995 ([GG 1057](#)), General Notice 125/1995 ([GG 1083](#)) General Notice 91/1996 ([GG 1308](#)), General Notice 54/1999 ([GG 2067](#)), General Notice 7/2000 ([GG 2258](#)), General Notice 166/2010 ([GG 4520](#)) and General Notice 131/2020 ([GG 7171](#)).

A **Directive on the Minimum Reserve Requirement** issued pursuant to section 35 of the previous Act is contained in General Notice 101/2005 ([GG 3449](#)).

See also **directives issued under the Payment System Management Act 18 of 2003** ([GG 3115](#)).

A **memorandum of agreement between the Namibian Competition Commission and the Bank of Namibia**, made pursuant to section 67 of the Competition Act 2 of 2003, is published in General Notice 41/2012 ([GG 4888](#)).

⁶⁴ These regulations are listed as being the only ones surviving under the *South African Reserve Bank Act 90 of 1989* in *Juta's Index to the South African Government and Provincial Gazettes* (formerly "The Windex"), 1920-1989 at pages 180-181. No repeals have been located.

In South Africa, these regulations appear to have been replaced in 1991 by the South African Reserve Bank Regulations published in RSA GN R.30/1981 ([RSA GG 12963](#)), which were amended in 2010 by RSA GN 710/2010 ([RSA GG 33457](#)). This set of regulations was then repealed and replaced in South Africa in 2010 by the regulations contained in RSA GN R.808/2010 ([RSA GG 33552](#)).

Appointments: Appointments to the Board under the repealed laws were announced in Proc. 11/1990, Proc. 6/1993, Proc. 4/2002 ([GG 2746](#)), Proc. 6/2007 ([GG 3785](#)), Proc. 16/2008 ([GG 4039](#)), Proc. 39/2008 ([GG 4156](#)), Proc. 4/2012 ([GG 4875](#)), Proc. 22/2012 ([GG 5038](#)), Proc. 20/2013 ([GG 5211](#)) and Proc. 9/2017 ([GG 6333](#)).

Appointments of governors under the repealed laws were announced in Proc. 4/1993 ([GG 581](#)), Proc. 3/1994 ([GG 791](#)), Proc. 10/2010 ([GG 4468](#)), Proc. 11/2012 ([GG 4941](#)) and Proc. 10/2017 ([GG 6333](#)). Appointments of deputy governors under repealed laws were announced in Proc. 5/1993 ([GG 581](#)), Proc. 11/2012 ([GG 4941](#)), Proc. 10/2017 ([GG 6333](#)) and Proc 4/2019 ([GG 6851](#)).

Appointments of governors and deputy governors under the current law are announced in Proc. 54/2020 ([GG 7361](#)) and Proc. 50/2021 ([GG 7716](#)).

Related laws: The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) places certain duties on the Bank of Namibia.

Cases: The following case concerns this Act -

Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (3) 2018 (1) NR 193 (HC) (objectives of Bank as set out in the Act discussed in light of Articles 95 and 98 of the Namibian Constitution).

The following cases concern the Bank of Namibia Act 8 of 1990 which was repealed by the Bank of Namibia Act 15 of 1997 -

S v Kamapoha 1994 NR 322 (HC)

S v Appelgrein 1995 NR 118 (HC)

Dowles Manor Properties Ltd v Bank of Namibia 2005 NR 59 (HC)

S v Candimba & Others 2013 (1) NR 70 (HC) (Exchange Control Regulations, regulation 3).

*Financial Institutions and Markets Act 2 of 2021

Summary: This Act ([GG 7645](#)), often abbreviated as FIMA, consolidates and harmonises the laws regulating financial institutions, financial intermediaries and financial markets in Namibia.

It amends several laws and repeals the following laws in their entirety:

- Pension Funds Act 24 of 1956
- Friendly Societies Act 25 of 1956
- Unit Trusts Control Act 54 of 1981
- Participation Bonds Act 55 of 1981
- Inspection of Financial Institutions Act 38 of 1984
- Stock Exchanges Control Act 1 of 1985
- Short-term Insurance Act 4 of 1998
- Long-term Insurance Act 5 of 1998.

However, item 6 of Schedule 3 provides for the continued application of the repealed laws to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

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.

This Act will be brought into force on a date set by the Minister in the *Government Gazette*.

Savings: Item 2 of Schedule 3 contains a general savings clause in respect of the laws repealed by the Act:

Any subordinate legislation or measure made under a repealed law remains in force unless it is in conflict with this Act and is deemed to be made thereunder until superseded by a subordinate measure made under this Act.

Draft standards: Draft standards are published for comment by NAMFISA under section 409(3) of the Act as follows:

- Standard No. PRE.S.1.1: The “categories of professions and persons of which an expert must be a member for the purposes of the definition of “valuator ” in section 1 of the Act” - General Notice 737/2021 ([GG 7713](#))
- Standard No. INS.S.2.19: Insurance Governance - General Notice 163/2022 ([GG 7784](#)).

Namibia Financial Institutions Supervisory Authority Act 3 of 2021

Summary: This Act ([GG 7646](#)) replaces the Namibia Financial Institutions Supervisory Authority Act 3 of 2001 as the governing legislation for the authority that exercises supervision over the business of financial institutions and services, often referred to by its acronym NAMFISA. It repeals the Namibia Financial Institutions Supervisory Authority Act 3 of 2001 and provides a number of transitional provisions. This Act will be brought into force on a date set by the Minister in the *Government Gazette*.

Savings: Section 62(2) contains a general savings clause:

Any subordinate measure made under the repealed law remains in force, unless if it is in conflict with this Act, and is deemed to be made under this Act until superseded by a subordinate measure made under this Act.

COMMENTARY

Athalia Wallace-McNab & Dunia P Zongwe, “Collateral in Namibia: A plea for Umbrella Regulation” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#)

Iyaloo Hamulungu, “Online Robberies and Privacy Rights: An Appraisal of the Namibia Banking Sector and its Vulnerability to Cybercrimes” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#).

INTERNATIONAL LAW

Agreement Establishing the African Development Bank, 1963

Agreement Establishing the International Fund for Agricultural Development, 1976.

Agreement for the Establishment of the African Export-Import Bank (Afreximbank), 1993

Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 1944

Articles of Agreement of the International Finance Corporation (IFC), 1955

Articles of Agreement of the International Monetary Fund (IMF), 1944

See also Agricultural Bank of Namibia Act 5 of 2003 (**AGRICULTURE**).

See also **FINANCE AND DEVELOPMENT**.

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 and Posts and Telecommunications Act 19 of 1992 with regard to the Post Office Savings Bank (**MEDIA AND COMMUNICATION**).