



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 148 Promulgation of Banking Institutions Amendment Act, 1991 (Act 22 of 1991), of the National Assembly	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 148

1991

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

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

No. 22 of 1991: Banking Institutions Amendment Act, 1991.

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

EXPLANATORY NOTE:

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Banks Act, 1965, so as to define or further define certain expressions; to replace certain obsolete provisions, expressions and references in the said Act; to increase certain amounts relating to financial requirements, licence duties and penalties; to provide for certain transitional provisions with respect to existing banking institutions; and to provide for incidental matters.

(Signed by the President on 5 December 1991)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 23 of 1965, as amended by section 12 of Act 91 of 1972, section 37 of Act 101 of 1976, section 18 of Act 80 of 1978, section 27 of Act 103 of 1979, section 45 of Act 99 of 1980, section 16 of Act 82 of 1982, section 20 of Act 46 of 1984, section 22 of Act 86 of 1984, section 10 of Act 106 of 1985, section 3 of Act 6 of 1987 and section 2 of Act 96 of 1988.

1. Section 1 of the Banks Act, 1965 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the insertion after the definition of "bank controlling company" of the following definition:

"'Bank of Namibia' means the Bank of Namibia established by section 2 of the Bank of Namibia Act, 1990;";

(b) by the insertion after the definition referred to in paragraph (a) of the following definition:

"'Bank of Namibia Act, 1990' means the Bank of Namibia Act, 1990 (Act 9 of 1990);";

(c) by the insertion after the definition of "financial company" of the following definition:

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

“ ‘First National Development Corporation’ means the First National Development Corporation of South West Africa, Limited, established by section 2 of the First National Development Corporation of South West Africa Proclamation, 1978 (Proclamation AG. 61 of 1978);”;

- (d) by the substitution for the definition of “Land Bank” of the following definition:

“ ‘Land Bank’ means the Land and Agriculture Bank of South West Africa, established by section 3 of the Land Bank Act, 1944 (Act 13 of 1944);”;

- (e) by the substitution for the definition of “liquid assets” of the following definition:

“ ‘liquid assets’ means -

- (a) notes and coins which are legal tender in Namibia, gold coin and bullion;
- (b) credit balances with the Bank of Namibia;
- (c) loans, repayable on demand, with banking institutions other than a subsidiary or fellow subsidiary of the banking institution concerned or of a banking institution by which the banking institution concerned is controlled directly or indirectly;
- (d) Treasury bills of the Government of Namibia;
- (e) stocks issued under section 27 of the State Finance Act, 1982 (Act 1 of 1982), with a maturity, to the last redemption date, of not more than three years;
- (f) debentures and notes with a maturity of not more than three years from the date of commencement of this Act of any institution, body, company, corporation or juristic person established by or under any law, having as its main objective the financing of activities relating to economic development in Namibia, as may be designated by the Minister by notice in the *Gazette*;

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

- (g) acceptances of a banking institution which are discountable by the Bank of Namibia, not being acceptances of the banking institution concerned itself or of a subsidiary or fellow subsidiary of the banking institution concerned or of a banking institution by which the banking institution concerned is controlled directly or indirectly;
- (h) self-liquidating bills or promissory notes arising out of the movement of goods, with a maturity not exceeding one hundred and twenty days, or six months in the case of agricultural bills, and which are discountable by the Bank of Namibia;
- (i) securities of the Bank of Namibia with a maturity of not more than three years;
- (j) stocks, securities, bills and bonds of the Government of Namibia, other than those mentioned in paragraph (e), with a maturity to the last redemption date of not more than three years;
- (k) stock of any foreign government designated by the Minister by notice in the *Gazette*, with a maturity to the last redemption date of not more than three years;
- (l) loans and advances to, bonds, securities, stocks and instruments of any institution, body, company, corporation or juristic person established by or under any law, as may be designated by the Minister by notice in the *Gazette*; and
- (m) negotiable certificates of deposit or similar negotiable instruments with a maturity of not more than one hundred and eighty-five days, issued by banking institutions other than a subsidiary or fellow-subsubsidiary of the banking institution by which the banking institution concerned is controlled directly or indirectly;

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

- (f) by the deletion of the definition of "Republic";
- (g) by the deletion of the definition of "Reserve Bank";
- (h) by the deletion of the definition of "territory";
- (i) by the substitution for the definition of "Treasury" of the following definition:

" 'Treasury' means the Treasury referred to in section 1 of the State Finance Act, 1982 (Act 11 of 1982); and

- (j) by the substitution in subsection (6) for paragraph (f) of the following paragraph:

“(f) after the commencement of the Financial Institutions Amendment Act, 1972, the institution directly or indirectly undertakes or undertook to guarantee the repayment of a loan or a deposit which a person in [**the Republic**] Namibia (other than a banking institution, the Government of [**the Republic**] Namibia, [**a provincial administration**] a local authority, a board established by or under [**an Act of Parliament**] any law, a juristic person which has been incorporated in terms of such [**an Act**] a law with the object of performing any functions in the public interest, and a subsidiary of any such juristic person) makes to or with another person in [**the Republic**] Namibia (other than a banking institution);”.

Amendment of section 2 of Act 23 of 1965, as amended by section 38 of Act 101 of 1976, section 20 of Act 46 of 1984, section 11 of Act 106 of 1985 and section 3 of Act 96 of 1988.

2. The following section is hereby substituted for section 2 of the principal Act:

“Exemption.

2. This Act shall not apply to -

- (a) the Bank of Namibia;
- (b) the Post Office Savings Bank of South West Africa established by section 58 of the Post Office Act, 1958 (Act 44 of 1958);

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

- (c) the Land Bank;
- (d) a building society registered under the Building Societies Act, 1986 (Act 2 of 1986);
- (e) any institution, body, company, corporation, organisation or juristic person established by or under any law, having as its main objective the financing of activities relating to economic development in Namibia, and which has been approved by the Minister and complies with such conditions as the Minister may from time to time deem necessary and of which that institution has been notified in writing; or
- (f) any local authority:

Provided that such exemption shall not apply to any savings department or savings bank or similar deposit-receiving institution established by or in connection with any local authority.”

Amendment of section 3 of Act 23 of 1965, as amended by section 46 of Act 97 of 1986 and section 4 of Act 6 of 1987.

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

“(1) There shall be an office [in Pretoria] as part of the [Reserve] Bank of Namibia, for the registration of banking institutions and bank controlling companies and for the administration of this Act, and at the head of such office shall be a person to be styled the Registrar of Banks, who shall, subject to the approval of the Minister, be designated by the [Reserve] Bank of Namibia from among its officers or employees, and who shall perform, under the control of the said Bank in accordance with the directions issued by that Bank from time to time and subject to appeal to the Minister, the functions assigned to him or her by this Act.”

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

Amendment of section 4 of Act 23 of 1965, as amended by section 23 of Act 86 of 1984, section 12 of Act 106 of 1985 and section 5 of Act 6 of 1987.

4. Section 4 of the principal Act is hereby amended by the deletion of paragraph (d) of subsection (7).

Amendment of section 10 of Act 23 of 1965, as amended by section 41 of Act 101 of 1976 and section 14 of Act 106 of 1985.

5. Section 10 of the principal Act is hereby amended -

(a) by the deletion of subsection (1); and

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) If the Registrar has registered a banking institution on the strength of any false or incorrect statement, or if a banking institution or any person carrying on the business of a banking institution has been convicted of any offence under this Act or any law repealed by this Act, or if any banking institution does not carry on satisfactorily the business of a banking institution of the class in which the institution in question is registered, or if any banking institution misrepresents the facilities which it offers to its members or to the public, or if any banking institution continues with a practice or method of doing business which in terms of section 1(7) has been declared an irregular or undesirable practice or method of doing business, the Registrar may apply to the [competent division of the Supreme Court of South Africa] High Court for an order cancelling or suspending the registration of the said institution, and the said [division] Court may thereupon entertain the application and make such order thereon as it deems desirable to make: Provided that if any person has been convicted of [fraud or *falsitas* under subsection (1)] contravening section 49(2) because he or she made a false statement on the strength whereof the banking institution was registered as aforesaid, the Registrar may [himself], with the consent of the Minister, cancel the registration or suspend it on such conditions as he or she may deem fit to impose.”

Act No. 22, 1991

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

Amendment of section 12A of Act 23 of 1965, as amended by section 42 of Act 101 of 1976, section 28 of Act 103 of 1979, section 17 of Act 106 of 1985 and section 106 of Act 82 of 1986.

6. Section 12A of the principal Act is hereby amended by the deletion of subsection (9).

Amendment of section 14 of Act 23 of 1965 as amended by section 3 of Act 23 of 1970, section 44 of Act 101 of 1976, section 29 of Act 103 of 1979, section 46 of Act 99 of 1980, section 23 of Act 36 of 1981 and section 19 of Act 106 of 1985.

7. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) [**one**] two million rand; or”.

Amendment of section 15 of Act 23 of 1965, as amended by section 45 of Act 101 of 1976 and section 20 of Act 106 of 1985.

8. The following section is hereby substituted for section 15 of the principal Act:

“Share capital requirement for discount houses.

15. A discount house shall maintain in [**the Republic**] Namibia a paid-up share capital and unimpaired reserve funds together amounting to not less than -

(a) [**one**] two million rand; or

(b) [**two**] twelve percent of the amount of its liabilities to the public and the total amount of its repurchase agreements (excepting such agreements entered into with the [**Reserve**] Bank of Namibia) as shown in the last preceding quarterly statement furnished by it to the Registrar in terms of paragraph (b) of subsection (1) of section [**thirteen**] 13,

whichever is the greater.”.

Amendment of section 16 of Act 23 of 1965, as amended by section 13 of Act 91 of 1972, section 47 of Act 99 of 1980, section 21 of Act 106 of 1985, section 6 of Act 6 of 1987 and section 5 of Act 96 of 1988.

9. Section 16 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A bank shall maintain a reserve balance with the [**Reserve**] Bank of Namibia which, together with the average daily amount of its [**Reserve bank notes and subsidiary coin**] notes and coin which are legal tender in Namibia, calculated over all the days of the latest month in respect of which it has furnished a return to the Registrar in terms of section 13(1)(a), amounts to not less than the sum of -

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

- (a) five per cent of its short-term liabilities to the public in **[the Republic] Namibia**, other than liabilities under acceptances; and
- (b) two per cent of its medium-term liabilities to the public in **[the Republic] Namibia**, other than liabilities under acceptances,

as shown in the last preceding return furnished by it to the Registrar in terms of the said section.”

Amendment of section 17 of Act 23 of 1965, as amended by section 4 of Act 23 of 1970, section 14 of Act 91 of 1972, section 46 of Act 101 of 1976, section 48 of Act 99 of 1980, section 24 of Act 36 of 1981, section 20 of Act 46 of 1984, section 22 of Act 106 of 1985 and section 6 of Act 96 of 1988.

10. Section 17 of the principal Act is hereby amended -

- (a) by the substitution in the proviso to subsection (1) for paragraph (v) of the following paragraph:

“(v) a bank may, in calculating the amount of its liquid assets on a particular day, take into account as the amount of its **[Reserve Bank notes, subsidiary coin and] notes and coins which are legal tender in Namibia, gold coin and bullion**, the average daily amount of those assets, calculated according to the amounts thereof on all the days of the latest month in respect of which it has furnished to the Registrar a return in terms of section 13(1)(a).”; and

- (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) The Minister may, whenever the Minister deems it desirable in the national economic interest, by notice in the *Gazette* -

- (i) increase or decrease the percentage prescribed in paragraph (a), (b) or (c) of subsection (1); and
- (ii) determine that in respect of the business conducted by a bank outside **[the Republic] Namibia** in accordance with section 13(2)(b), liquid assets shall be maintained as prescribed in subsection (1) of this section or as increased or decreased under subparagraph (i) of this paragraph.”

Act No. 22, 1991

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

Amendment of section 21A of Act 23 of 1965, as amended by section 18 of Act 94 of 1977, section 31 of Act 103 of 1979, section 106 of Act 82 of 1986 and section 8 of Act 96 of 1988.

11. Section 21A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The total amount of a banking institution’s investment in fixed property, in loans and advances to subsidiaries of the banking institution of which the main object is the holding of fixed property and in shares (excluding shares referred to in section [28 of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965)] 27 of the Building Societies Act, 1986 (Act 2 of 1986), and redeemable preference shares but not preference shares which can be converted into ordinary shares), including shares in subsidiary companies of the banking institution, shall not, except with the written approval of the Minister and on such conditions as he or she may determine, exceed the banking institution’s paid-up capital and unimpaired reserves: Provided that in the case where fixed property or an undertaking is bought in by a banking institution to protect an investment (including a loan or an advance) the amount of such an investment shall for a period of five years from the date of purchase not be taken into account for the purposes of this subsection.”.

Amendment of section 25 of Act 23 of 1965, as amended by section 27 of Act 106 of 1985.

12. The following section is hereby substituted for section 25 of the principal Act:

“Valuation
of securities.

25. For the purpose of section [~~seventeen~~] 17 securities shall be valued at their market value, as certified by the [Public Investment Commissioners] person designated for this purpose by the Bank of Namibia.”.

Amendment of section 36 of Act 23 of 1965.

13. The following section is hereby substituted for section 36 of the principal Act:

“Keeping
of records.

36. A banking institution shall keep such records in [one of] the official [languages] language of [the Republic] Namibia as are necessary to exhibit clearly and correctly the state of its affairs and to explain its transactions and financial position and to enable the Registrar to determine whether the insti-

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

tution has complied with the provisions of this Act, and it shall preserve every such record in a safe place for a period of at least three years as from the date of the last entry therein.”

Amendment of section 41
of Act 23 of 1965.

14. Section 41 of the principal Act is hereby amended by the deletion of subsection (9).

Amendment of section
47A of Act 23 of 1965.

15. The following section is hereby substituted for section 47A of the principal Act:

“Annual
licence.

47A. (1) Every banking institution registered or provisionally registered under this Act shall obtain from the Receiver of Revenue in Windhoek a banker’s licence in respect of each and every year ending on the thirty-first day of December.

(2) The duty payable in respect of such licence shall be R5 000, irrespective of the number of branches of such banking institution.

(3) The said duty shall be paid before the end of January of the year for which the licence is required: Provided that the duty in respect of any new banking institution established after the beginning of any year shall be paid within one month after the date of such establishment.

(4) Any banking institution which fails to pay the full amount of the duty within the period allowed in terms of subsection (3) shall in addition to such duty, pay for each month or part of a month during which the duty remains so unpaid, a penalty calculated at the rate of ten per cent of the amount of the duty which it has failed to pay as aforesaid, and reckoned from the date on which liability to pay the fee arose.

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

(5) All moneys due under this section shall be a debt due to the Government of Namibia and shall be recoverable by action in any competent court.

(6) All moneys collected under this section shall accrue for the benefit of the State Revenue Fund.

Amendment of section 49 of Act 23 of 1965, as amended by section 6 of Act 23 of 1970, section 32 of Act 86 of 1984, section 36 of Act 106 of 1985, section 16 of Act 96 of 1988 and section 6 of Act 13 of 1989.

16. Section 49 of the principal Act is hereby amended -

(a) by the substitution for subsection (2) of the following subsection:

“(2) If any person signs any statement, return or report or makes any statement or gives any information, whether oral or in writing, for which provision is made in this Act, with the knowledge that the statement, return, report or information in question is false or incorrect, he or she shall be **[deemed to be guilty of fraud or falsitas]** guilty of an offence.”; and

(b) by the substitution for subsection (5) of the following subsection:

“(5) If any person has failed to comply with the provisions of section [**fourteen, fifteen, sixteen, seventeen or twenty**] 14, 15, 16, 17 or 20 he or she shall incur a penalty at the rate of one-tenth of one per cent on the amount of the deficiency in question for each day that a deficiency exists, which the Registrar may in his or her discretion recover by civil action in any competent court of law: Provided that the Registrar may sue the person in default for an amount less than the full penalty which he or she has incurred.”; and

(c) by the substitution for subsection (7) of the following subsection:

“(7) Any person convicted of any offence under this Act [**other than fraud or falsity**] shall be liable -

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

- (a) in the case of the offence of contravening section 7(1) or (2), to a fine not exceeding ~~[R100 000]~~ R250 000 or to imprisonment of a period not exceeding ~~[five]~~ seven years or to both such fine and such imprisonment; and
- (b) in the case of any other offence, to a fine not exceeding five thousand rand."

Amendment of section 52
of Act 23 of 1965.

17. Section 52 of the principal Act is hereby deleted.

Interpretation.

18. (1) The principal Act is hereby amended -

- (a) by the substitution for the expression "Reserve Bank", wherever it appears, of the expression "Bank of Namibia";
- (b) by the substitution for the expression "South African", wherever it appears, of the expression "Namibian";
- (c) by the substitution for the words "the Republic", wherever they appear, of the word "Namibia"; and
- (d) by the substitution for the expression "Master of the Supreme Court," wherever it appears, of the expression "Master of the High Court".

(2) Any reference in the principal Act to a mutual building society or a building society or to the Mutual Building Societies Act, 1965 (Act 24 of 1965), or the Building Societies Act, 1986 (Act 82 of 1986), shall be construed as a reference to a building society referred to in section 2 of the principal Act as substituted by section 2 of this Act or to the Building Societies Act, 1986 (Act 2 of 1986), respectively.

Transitional provisions.

19. Notwithstanding the provisions of any law -

- (a) a banking institution registered or provisionally registered under the principle Act which on the date of commencement of this Act does not comply with the provisions of section 14 or 15 of

**BANKING INSTITUTIONS AMENDMENT
ACT, 1991**

the principal Act as amended by this Act, shall correct the deficiency within a period of three months from the date of commencement of this Act;

- (b) the provisions of section 28E of the principal Act shall not apply to the shareholding in any banking institution registered or provisionally registered under the principal Act before the date of independence of Namibia; and
- (c) a licence issued in terms of section 47A of the principal Act before the commencement of this Act in respect of the year ending on 31 December 1991 to any banking institution registered or provisionally registered under the principal Act, shall be deemed to have been issued in terms of that section as substituted by section 15 of this Act.

Short title.

20. This Act shall be called the Banking Institutions Amendment Act, 1991.
