



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.09

WINDHOEK - 29 December 1997

No. 1761

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 280 1997

PROMULGATION OF ACT OF PARLIAMENT

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

No. 15 of 1997: Bank of Namibia Act, 1997.

ACT

To provide for a central bank of Namibia to serve as the State's principal instrument to control money supply, currency and institutions of finance; and to provide for matters incidental thereto.

(Signed by the President on 5 December 1997)

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

Definitions

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

“affiliate”, in respect of a banking institution, means any corporate body or unincorporated association of persons, in which -

- (i) twenty per cent or more of any class of voting shares or other voting participation is directly or indirectly owned or controlled by such banking institution, or is held by it with power to vote; or
- (ii) the election of a majority of directors is controlled in any manner by such banking institution;

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

“banking institution” means a banking institution registered as a banking institution under the laws governing banking institutions;

“Board” means the board of the Bank referred to in section 4;

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

“General Reserve Account” means the General Reserve Account established under section 16;

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

“member” means a member of the Board;

“Minister” means the Minister of Finance;

“Rand” means the currency of the Republic of South Africa;

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

“this Act” includes any regulation made thereunder.

PART I

BANK OF NAMIBIA, ITS OBJECTS AND POWERS

Continuation of Bank of Namibia as central bank of Namibia

2. (1) The Bank of Namibia established by section 2 of the Bank of Namibia Act, 1990 (Act No. 8 of 1990), shall, notwithstanding the repeal of that Act by this Act, continue to exist as a juristic person under that name as the central bank of Namibia.

(2) The head office of the Bank shall be situated in Windhoek, and the bank may -

- (a) establish branches elsewhere in Namibia or, with the approval of the Minister, abroad; and
- (b) appoint agents and correspondents in Namibia or abroad.

Objects

3. The objects of the Bank shall be -

- (a) to promote and maintain a sound monetary, credit and financial system in Namibia and sustain the liquidity, solvency and functioning of that system;

- (b) to promote and maintain internal and external monetary stability and an efficient payments mechanism;
- (c) to foster monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Namibia;
- (d) to serve as the Government's banker, financial advisor and fiscal agent; and
- (e) to assist in the attainment of national economic goals.

PART II

BOARD, MANAGEMENT AND STAFF

Constitution of Board

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

(2) The Board shall consist of the following persons who shall, subject to the Namibian Constitution and the provisions of this Act, be appointed by the President, namely:

- (a) The Governor;
- (b) the Deputy Governor;
- (c) the Permanent Secretary: Finance;
- (d) one staff member from the Public Service, who shall be appointed on the recommendation of the Minister; and
- (e) four other persons, who shall be appointed after consultation with the Minister.

(3) Whenever the Public Service Commission is required to make its recommendation to the President for the appointment of a Governor or Deputy Governor under Article 32(4)(b)(bb) of the Namibian Constitution, such recommendation shall be made only after consultation with the Minister.

(4) The Governor and Deputy Governor shall be appointed from among persons who have the necessary qualifications and professional experience for the office of Governor or Deputy Governor, as the case may be, and the members referred to in paragraphs (d) and (e) of subsection (2) shall be appointed from among persons of recognised standing and proven experience in business, professional or academic matters.

(5) The appointment of a member of the Board shall be announced by the President by Proclamation in the *Gazette*.

Tenure of office, conditions of service and remuneration of members

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

- (a) for a fixed term of five years, but shall on the expiration of that term be eligible for reappointment; and
- (b)
 - (i) on such terms and conditions of service; and
 - (ii) be paid from the funds of the Bank such remuneration and allowances,

as the President may determine in consultation with the Minister.

(2) Subject to section 7, a member referred to in paragraph (d) or (e) of subsection (2) of section 4 shall be appointed for a term of five years, but shall on the expiration of that term be eligible for reappointment.

(3) The members referred to in paragraph (e) of subsection (2) of section 4 who are not in the full-time employment of the State, shall be paid out of the funds of the Bank such remuneration and allowances as the Minister, in consultation with the Board, may determine.

Termination of appointment and vacation of office of member

6. (1) The appointment of a person as Governor, Deputy Governor or other member shall, subject to subsection (2), terminate if that person -

- (a) becomes subject to a disqualification referred to in section 7;
- (b) is removed from office in accordance with the provisions of that subsection;
- (c) resigns from office in accordance with the provisions of subsection (3); or
- (d) being a member referred to in paragraph (e) of subsection (2) of section 4, fails to attend three consecutive meetings of the Board without the prior approval of the Chairperson.

(2) The Governor, Deputy Governor or a member referred to in paragraphs (d) and (e) of subsection (2) of section 4 may, before the expiration of his or her term of office, be removed from office by the President acting in consultation with the Minister, on grounds of misconduct or inability to efficiently discharge the duties of his or her office.

(3) A member may resign from his or her office by giving written notice of such resignation to the President, of -

- (a) not less than three months, in the case of the Governor or Deputy Governor; and
- (b) not less than one month, in the case of any other member.

(4) Where for any reason other than a temporary incapacity, the office of Governor, Deputy Governor or any other member becomes vacant before the expiration of the term for which he or she was appointed, the President shall appoint another person in the same manner as the member vacating that office was appointed, to fill the casual vacancy for the unexpired portion of the term of office.

Disqualification from membership of Board

7. No person shall be appointed as Governor, Deputy Governor or other member, if he or she -

- (a) is under the age of twenty-one years or has attained the age of sixty-five years;
- (b) is a member of the National Assembly or the National Council;
- (c) is a director, officer, owner, employee or shareholder in any banking institution, except where he or she is appointed as nominee for or on behalf of the Government;
- (d) has been declared mentally ill by a competent court;
- (e) is an unrehabilitated insolvent;
- (f) has at any time been convicted of a criminal offence, whether in Namibia or elsewhere, for which he or she was sentenced to imprisonment without the option of a fine; or
- (g) has at any time by order of a competent authority, been suspended or disqualified from practising a profession on grounds of professional or personal misconduct.

Duties of Governor and Deputy Governor

8. (1) The Governor shall, in addition to such other powers, duties or functions as this Act may confer or impose -

- (a) serve as the chief executive officer of the Bank and be accountable to the Board for the management of the Bank and for the implementation of its policies;
- (b) negotiate and sign contracts, documents and instruments on behalf of the Bank, subject to the provisions of this Act;

- (c) represent the Bank in its relations and transactions with the Government and other institutions; and
 - (d) subject to the overall guidance and directions of the Board, generally exercise all those powers and perform all those duties and functions which are not expressly vested in the Board by this Act, or which may be delegated by the Board to the Governor.
- (2) The Governor may, with the approval of the Board, delegate any of his or her powers under this Act to the Deputy Governor or to an officer or officers of the Bank.
- (3) The Deputy Governor shall exercise the powers delegated to him or her under subsection (2) and shall perform such duties and functions of the Governor as the Governor may assign to him or her, and where the Governor is by reason of absence or other incapacity, temporarily unable to perform the duties and functions of that office, the Deputy Governor may perform those duties and functions during the period of absence or incapacity.
- (4) In the event of both the Governor and Deputy Governor being temporarily unable to perform their duties and functions by reason of absence or other incapacity, the President shall, on the recommendation of the Board, appoint another member of the Board or an officer of the Bank to act as Governor for the period of absence or incapacity.
- (5) The Governor and Deputy Governor shall devote the whole of their professional services to the Bank and neither of them shall, without the written approval of the Minister -
 - (a) receive remuneration from any source other than the Bank; or
 - (b) occupy any other office or position of employment, whether remunerated or not, except as nominee of the Bank.
- (6) The provisions of subsection (5) shall not be construed as prohibiting the Governor or Deputy Governor from -

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

Meetings of Board

9. (1) The Board shall meet as often as the business of the Bank may require, but in any case not less than once every three months.

(2) The Governor may at any time, and shall at the written request of at least three other members, convene a special meeting of the Board.

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

(4) The Governor shall preside over the meetings of the Board, and, in his or her absence from any meeting, the Deputy Governor shall preside at such meeting, and where both the Governor and Deputy Governor are absent from a meeting, the Permanent Secretary: Finance shall preside.

(5) The quorum for a meeting of the Board shall be five members.

(6) A decision of a majority of the members present and entitled to vote at a meeting, shall constitute the decision of the Board, but in the event of an equality of votes, the person presiding over such meeting shall have a casting vote in addition to his or her deliberative vote.

(7) Subject to the provisions of subsection (5), no act or proceedings of the Board shall be invalid merely by reason of the existence of a vacancy on the Board.

(8) All acts authorised or decisions taken by the Board shall be valid notwithstanding the subsequent discovery of any defect in the appointment or

qualification of any person who sat or acted as a member at the time when the act was authorised or the decision was taken, if the act was authorised or the decision was taken by the majority of the members present at the time who were entitled to sit as such members and to vote.

(9) The Board shall cause accurate minutes of the proceedings at its meetings to be kept.

Disclosure of interest

10. (1) A member of the Board who has a direct or indirect personal, pecuniary, commercial, agricultural, industrial, or other interest in any matter being or about to be deliberated upon by the Board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of that interest at a meeting of the Board and such disclosure shall be recorded in the minutes of that meeting.

(2) A disclosure referred to under subsection (1) shall be made before the commencement of the Board's deliberations on the matter in respect of which the disclosure is made, whereupon the member disclosing the interest shall, unless the Board otherwise determines, leave the meeting and not take part in the Board's deliberations and voting on such matter.

(3) Notwithstanding the provisions of subsection (2), a member shall be deemed to have made due and sufficient disclosure of his or her interest in a matter if he or she -

- (a) gives written notice at any Board meeting, to the effect that he or she is a member of a specified body corporate, organisation or association and is to be regarded as interested in any contract or arrangement which is made by the Board with such body corporate, organisation or association after the date of such notice; or
- (b) takes reasonable steps to ensure that the disclosure is made by a written notice which is conveyed to and considered at a Board meeting, even if such member does not physically attend that meeting to make the disclosure himself or herself.

- (4) A member who -
 - (a) knowingly fails to disclose his or her interest in a matter before the Board, contrary to the provisions of subsection (1); or
 - (b) without leave of the Board, takes part in the deliberations of the Board on a matter in which he or she has a direct or indirect interest, contrary to the provisions of subsection (2),

shall be guilty of an offence and be liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

Appointment of staff, agents and correspondents

11. (1) The Governor, or any other officer of the Bank or Deputy Governor to whom the Governor has delegated the power conferred by this subsection, may appoint or employ such officers, employees, agents and correspondents of the Bank, as the Governor may consider necessary for the efficient functioning of the Bank.

(2) The terms and conditions of employment, including conditions relating to remuneration and service benefits, of officers or employees appointed or employed under subsection (1) shall be determined by the Board, on the recommendation of the Governor.

(3) The Bank may, subject to such terms and conditions as may be determined by the Board -

- (a) establish and manage, or make arrangements or enter into agreements with any person to manage, any pension or provident fund or similar scheme for the benefit and protection of officers and employees, and former officers and employees, of the Bank and their dependants or nominees, and make contributions to any such fund or scheme; or
- (b) grant secured or unsecured advances to officers or employees of

the Bank for such purpose and in such amounts as the Board may approve.

Confidentiality

12. (1) No person shall directly or indirectly disclose to another person any information that he or she has acquired in the performance of his or her duties or functions, for or on behalf of the Bank, except for the purpose of the performance of his or her duties or functions in terms of this Act or when required to do so by a court of law or under any law or on authority of the Board.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

Indemnity from personal liability

13. The Governor, Deputy Governor, a member of the Board or an officer or employee of the Bank shall not be personally liable for anything done in good faith under this Act.

PART III

CAPITAL, PROFITS AND RESERVES

Share capital of Bank

14. (1) The authorised share capital of the Bank shall be not less than N\$100 000 000, of which a minimum of N\$40 000 000 shall be subscribed for and fully paid-up by the Government.

(2) The Bank may, from time to time, increase its authorised capital by such amounts as may be recommended by the Board and approved by the Minister.

(3) The Government shall be the sole holder of the capital of the Bank.

(4) The holdings of the Government of such capital shall not be transferable in whole or in part or subject to any encumbrance.

(5) The Board may from time to time, subject to the written approval of the Minister, increase the paid-up capital of the Bank by transfers from the General Reserve Account.

(6) No reduction in the capital or in the paid-up capital of the Bank shall be effected, except by amendment to this Act.

(7) Whenever the Board is of the opinion that the assets of the Bank are less than the sum total of its liabilities and its paid-up capital, the Minister may, from moneys appropriated by law for that purpose, cause funds to be transferred to the ownership of the Bank in such amounts as are necessary to preserve the paid-up capital of the Bank from impairment.

Profits of Bank

15. (1) The net profits of the Bank for any financial year shall be determined by the Board after meeting all current expenditure for such year and after making provision for -

- (a) bad and doubtful debts and depreciation of assets;
- (b) pensions, gratuities, or other benefits for its officers and employees;
- (c) the cost of issue of notes and coins, which may be amortised over a period not exceeding five years; and
- (d) such other items as the Board may deem necessary.

(2) The net profits of the Bank determined in respect of a given financial year shall, at the end of that financial year, be disbursed as follows:

- (a) Where at the close of a financial year the funds in the General Reserve Account are less than fifty percent of the paid-up capital of the Bank, the Board shall credit -

- (i) not less than thirty percent of the net profits of the Bank for that financial year, to the General Reserve Account; and
 - (ii) not less than twenty-five percent of the net profits of the Bank for that financial year, to the State Revenue Fund;
- (b) where at the close of a financial year the funds in the General Reserve Account are more than 50% of the paid-up capital of the Bank, the Board shall credit -
 - (i) not less than twenty-five percent of the net profits of the Bank for that financial year, to the General Reserve Account; and
 - (ii) not less than thirty percent of the net profits of the Bank for that financial year, to the State Revenue Fund;
- (c) the Board may, after the credits referred to in paragraph (a) or (b), transfer from the balance of its net profits such amounts of money to the General Reserve Account or any other reserve account established under section 16 or the State Revenue Fund, as it may determine after consultation with the Minister.

General Reserve Account and other reserve accounts

16. (1) The Bank shall establish and manage a General Reserve Account, which shall only be used to -

- (a) increase the paid-up capital of the Bank pursuant to subsection (5) of section 14;
- (b) off set losses sustained by the Bank during a financial year;
- (c) fund a development reserve account established under subsection (1)(a) of section 53; and

(d) redeem any securities issued by the Bank pursuant to section 55.

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

PART IV

MONETARY UNITS, SYMBOLS, NOTES AND COINS OF LEGAL TENDER

Monetary units and symbols

17. The President may by proclamation in the *Gazette* determine the monetary units and the symbols to be used for such units which shall, with effect from the date specified in such proclamation, be the currency of Namibia.

External value of Namibian Currency

18. The Board shall, on the recommendation of the Governor after consultation with the Minister, establish the arrangements for the determination of the external value of the currency determined under section 17, having due regard to any obligations arising under any international monetary agreement to which Namibia has acceded or is a signatory.

Issuance, manufacture and characteristics of notes and coins

19. (1) Subject to subsection (2), the Bank shall have the sole right to issue notes and coins in Namibia, denominated in the monetary units determined under section 17.

(2) The Board shall, with the approval of the Minister, determine the denominations, composition, form, design and characteristics of the notes and coins to be issued by the Bank, and the Governor shall prior to the issue of such notes and coins cause their characteristics to be published by notice in the *Gazette*.

(3) The Bank shall arrange for -

- (a) the printing of notes and the minting of coins and for all matters relating thereto;
- (b) the security and safe-keeping of unissued notes and coins; and
- (c) the custody and destruction where necessary, of plates and dyes used in the manufacture of currency, and of retired notes and coins.

Legal Tender

20. Subject to section 21, notes and coins issued by the Bank shall be legal tender within Namibia and shall be valid -

- (a) in the case of notes, for the payment of any amount; and
- (b) in the case of coins, for the payment of an amount not exceeding fifty times the face value of the coin concerned.

Withdrawal of notes and coins from circulation

21. (1) Subject to the provisions of this section, the Bank may withdraw from circulation any notes or coins issued by it under this Act.

(2) For the purposes of withdrawing notes or coins from circulation, the Governor shall, on the direction of the Board, by notice in the *Gazette*, specify -

- (a) the date on which such notice shall come into operation;
- (b) the notes or coins to be withdrawn from circulation; and
- (c) the period, being not less than three months from the date of publication of the notice, within which the notes or coins to be withdrawn from circulation may be exchanged for legal tender in accordance with the provisions of section 22.

(3) Subject to the provisions of subsections (4) and (5), the notes or coins withdrawn from circulation under this section shall, with effect from the

date immediately following the expiry of the period referred to in paragraph (c) of subsection (2), cease to be legal tender in Namibia.

(4) Notwithstanding the provisions of subsection (2) or (3), a person who holds notes or coins which have ceased to be legal tender in terms of subsection (3) shall, within a period of two years from the date of expiry of the period referred to in paragraph (c) of subsection (2), be entitled to exchange such notes or coins for legal tender at such value as may be determined by the Bank.

(5) Notwithstanding the provisions of subsection (3) or (4), the Bank may, after the expiry of the two year period referred to in subsection (4), continue to exchange withdrawn notes and coins for legal tender, for such further period and at such value as the Governor, on the direction of the Board, may determine by notice in the *Gazette*.

Exchange of notes and coins

22. (1) Upon surrender by any person to the Bank, or to any agent of the Bank authorized for that purpose, of any notes or coins issued by the Bank, the Bank or such agent shall, subject to the provisions of subsections (2) and (3), exchange on demand and without charge such notes or coins for notes and coins of equivalent value.

(2) The Bank or its authorized agent shall not be obliged to exchange any coins that have been perforated, cut, clipped, or broken, or on which any mark has been privately impressed, or that show signs of non-monetary use, or the design of which is not distinguishable, but the Bank may, in its discretion, exchange such coins.

(3) The conditions under which mutilated or otherwise damaged notes may be exchanged at partial or full face value shall be determined from time to time by the Bank.

Bank not liable for lost or stolen notes or coins

23. (1) No person shall be entitled to recover from the Bank the value of any lost or stolen notes or coins, except in relation to a shipment or

consignment of notes or coins in respect of which the Bank has expressly undertaken liability.

(2) The provisions of subsection (1) shall not affect the liability of the Bank for any loss suffered by any person in consequence of the negligence of the Governor, Deputy Governor, any other member, or any officer, employee, or agent of the Bank in the course of and in the execution of his or her duties.

Mutilation of notes

24. (1) A person who, without the permission of the Bank, wilfully -

- (a) cuts, tears, perforates, or in any other way whatsoever mutilates any note issued by the Bank;
- (b) writes, prints, stamps, or draws anything upon any such note;
- (c) attaches or affixes any seal or stamp to or upon any such note,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(2) Notwithstanding anything to the contrary in any other law contained, magistrates' courts shall have jurisdiction to impose the penalty provided for in subsection (1).

Counterfeiting, forgery and related offences

25. (1) Subject to section 2 of the Prevention of Counterfeiting of Currency Act, 1965 (Act No. 16 of 1965), any person who -

- (a) forges, alters or unlawfully issues a note or coin of the Bank, or something purporting to be a note or coin of the Bank;
- (b) utters, tenders or accepts a note or coin of the Bank, or something purporting to be a note or coin of the Bank, knowing it to be

counterfeit, forged or falsified;

(c) without the authority of the Bank -

- (i) engraves or makes upon any material whatsoever any words, figures, letters, marks, lines or devices the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or upon any note of the Bank or any coin, which is legal tender;
- (ii) uses or knowingly has in his or her possession any material whatsoever upon which has been engraved or made any words, figures, letters, marks, lines or devices contemplated in subparagraph (i); or
- (iii) photographs or copies in whatever manner a note of the Bank,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding seven years, or to both such fine and imprisonment.

(2) Notwithstanding anything to the contrary in any other law contained, magistrates' courts shall have jurisdiction to impose the penalty provided for in subsection (1).

(3) In criminal proceedings under this Act or any other law where the genuineness of a coin or note is in issue, a certificate issued by the Governor, Deputy Governor or other officer of the Bank duly authorised thereto by the Governor, stating that such note or coin is a note or coin issued by the Bank, or is not a note or coin issued by the Bank, shall be admissible in evidence as *prima facie* proof of the facts stated in such certificate.

(4) Where a person is convicted of an offence under this section the court may, in addition to the penalty imposed, order that a note, coin, article, instrument, machinery or equipment used in the commission of the offence, be

confiscated or destroyed.

South African Rand to continue as legal tender

26. (1) Notes and coins issued by the South African Reserve Bank and serving as legal tender in the Republic of South Africa shall continue to serve as legal tender within Namibia until a date to be determined by the Minister by notice in the *Gazette*: Provided that a person who continues to hold such notes or coins after the date determined by the Minister may, within two years from that date, or within such longer period as the Minister may determine and specify in the notice, exchange such notes or coins for notes or coins issued by the Bank at such rate as the Bank may determine.

(2) The Bank shall on demand exchange notes and coins of the South African Reserve Bank for notes and coins of the Bank at such rate as the Bank may determine.

(3) A reference in any law, deed, instrument, contract, agreement or other legally binding document enforceable in Namibia, to an amount of money expressed in Rand shall -

- (a) on or before the date determined by the Minister under subsection (1), be construed as including a reference to a corresponding amount of money expressed in terms of the currency issued by the Bank, and payable either in Rand or the currency issued by the Bank; and
- (b) after the date determined by the Minister under subsection (1), be construed as a reference to the corresponding amount of money expressed in terms of the currency issued by the Bank, and payable only in that currency.

(4) For the purposes of section 25(1), notes and coins referred to in subsection (1) of this section shall, until the date determined under the said subsection, be deemed to be notes and coins of the Bank.

- (5) (a) The Minister may, after consultation with the Bank, take

such measures as he or she may deem appropriate in respect of the continued participation of Namibia in the arrangements of the Common Monetary Area.

- (b) For the purposes of paragraph (a) "Common Monetary Area" means the area in which exchange and monetary arrangements are co-ordinated in accordance with the Multilateral Monetary Agreement concluded on 6 February 1992 between the Republic of Namibia, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Swaziland.

PART V
INTERNATIONAL RESERVE, FOREIGN EXCHANGE OPERATIONS
AND
REVALUATION RESERVE ACCOUNT

International reserve

27. (1) The Bank shall establish and maintain, on such terms and conditions as the Board may from time to time determine, an international reserve, which shall consist of all or any of the following:

- (a) Gold;
- (b) foreign exchange in the form of notes and coins or bank balances held abroad, denominated in such currencies and located in such countries as the Board may approve for the purposes of this section;
- (c) any internationally recognized reserve asset, including -
 - (i) the reserve position of Namibia in the International Monetary Fund; and
 - (ii) holdings of special drawing rights by Namibia;
- (d) bills of exchange and promissory notes, as well as treasury bills

and other securities issued or guaranteed by foreign governments or international financial institutions, denominated in foreign currencies and payable outside Namibia; and

- (e) such other external assets as the Board may approve for the purposes of this section.

(2) The Bank shall have due regard to the liquidity and safety of such assets and to the need to protect the international purchasing power of the reserve.

Adequacy of international reserve

28. (1) The Bank shall use its best endeavours to maintain the international reserve established under section 27 at a level that is, in the opinion of the Board, adequate for the international transactions of Namibia.

(2) If such international reserve is at such a level that the Board considers its adequacy in jeopardy, the Board shall submit to the Minister a report on the reserve position together with recommendations concerning the measures that the Board considers necessary to forestall or otherwise remedy the situation.

(3) Until such time as, in the opinion of the Board, the situation has been rectified, the Board shall continue to make such reports and recommendations to the Minister at intervals not exceeding one month.

Power to deal in gold, foreign exchange and to open accounts

29. The Bank may -

- (a) buy, sell, or deal in gold or other precious metals;
- (b) buy, sell, or deal in foreign currencies, using for these purposes any of the instruments commonly used in such transactions;
- (c) buy, sell, or deal in treasury bills and other securities issued or guaranteed by foreign governments or international financial organizations;

- (d) open and maintain accounts with any central bank or monetary authority, or any banking or other financial institution or any international financial organization; and
- (e) open and maintain accounts, and act as agent or correspondent, for any foreign central bank or monetary authority, or any banking or other financial institution outside Namibia, or any foreign government or agent of such government, or any international financial organization.

Limitation

30. The Bank shall, subject to the provisions of this Act, when exercising the powers conferred by section 29, deal only with -

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

Revaluation Reserve Account

31. (1) Any net gains in any financial year of the Bank arising from any change in the book or realized value of the Bank's assets or liabilities denominated in currencies or units of account other than domestic currency, such as gold, special drawing rights and foreign currencies, as a result of any change in the value of such currencies or units of account in terms of the currency of Namibia, shall be credited to a Revaluation Reserve Account.

- (2) (a) Where in any financial year the Bank incurs net losses arising from the change in value referred to in subsection (1), such losses shall be set off against any credit balance in the Revaluation Reserve Account.
- (b) If the balance in the Revaluation Reserve Account is insufficient to cover such losses, the Government shall issue to the Bank non-negotiable securities to the extent of the deficiency, on such terms and conditions as the Minister and the Board may agree upon.
- (3) In the computation of the Bank's annual net profits, neither the gains of the Bank referred to in subsection (1), nor the losses referred to in subsection (2) shall be included in such profits.
- (4) Any credit balance in the Revaluation Reserve Account at the end of each financial year of the Bank shall be applied to redeem any securities issued and outstanding under subsection (2)(b).
- (5) No credits or debits shall be made to the Revaluation Reserve Account except in accordance with the provisions of this section.

PART VI

RELATIONS WITH FINANCIAL INSTITUTIONS

Lender of last resort

32. The Bank may, where the Board considers it necessary for the purposes of maintaining a sound financial system, act as a lender of last resort for the account holders referred to in section 33, on such terms and conditions as the Board may determine.

Operations with account holders

33. (1) The Bank may, subject to such terms and conditions as the Board may from time to time determine -

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- (a) open bank accounts for, other than a bank account referred to in section 35, and accept deposits from, banking institutions or such other bodies or institutions as the Minister may approve for that purpose; and
 - (b) purchase from, sell to, discount or rediscount for the account holders contemplated in paragraph (a) -
 - (i) bills of exchange or promissory notes which -
 - (aa) are drawn for a *bona fide* commercial purpose;
 - (bb) bear two or more good signatures of which at least one is that of a banking institution; and
 - (cc) mature within 183 days from the date of their acquisition by the Bank;
 - (ii) treasury bills or other securities issued or guaranteed by the Government, which form part of a public issue;
 - (iii) securities issued by the Bank under section 55; and
 - (iv) such negotiable instruments, security bonds, or debentures as the Board may, with the approval of the Minister, determine and designate by notice in the *Gazette*.
- (2) The Bank may, on such terms and conditions as the Board may from time to time determine, grant to the account holders referred to in this section, for periods not exceeding 183 days, advances that are secured by -
- (a) an instrument referred to in paragraph (b) of subsection (1);
 - (b) warehouse receipts or documents of title issued in respect of staple commodities or other goods duly insured; or
 - (c) holdings of any assets that the Bank is permitted to buy, sell, or

otherwise deal in under section 29.

(3) Notwithstanding the provisions of subsection (2), the Bank may, on such terms and conditions as the Board may determine, grant to an account holder referred to in this section, a loan which is unsecured or secured by assets other than those referred to in that subsection, when, in the opinion of the Board, such loan is necessary to meet the liquidity requirements of that account holder.

Determination of Bank rates

34. The Bank shall from time to time determine and announce the rates chargeable by the Bank for discounts, rediscounts and advances, and may determine different rates and ceilings for different classes of transactions or maturities.

Banking institutions to maintain minimum reserve balance

35. (1) Every banking institution shall maintain an account with the Bank in which such banking institution shall maintain a minimum reserve balance in accordance with the provisions of this section.

(2) For the purposes of maintaining monetary stability in Namibia, the Bank may from time to time direct a banking institution to deposit or transfer into that banking institution's account held with the Bank pursuant to the provisions of subsection (1), such amounts of money expressed as a percentage of that banking institution's -

- (a) demand deposits;
- (b) savings accounts;
- (c) time deposits;
- (d) deposit liabilities; or
- (e) any other liabilities,

as the Bank may determine.

(3) If a banking institution fails or is unable to comply with a directive of the Bank under subsection (2), it shall forthwith submit a written report of its failure or inability to comply with the directive and the reasons therefore, to the Governor.

(4) A banking institution which has failed or is unable to comply with a directive of the Bank under subsection (2) shall not without the prior approval of the Board extend new loans or credit to its customers during the period of such failure or inability.

(5) Any person who contravenes or fails to comply with a provision of subsection (1), (2), (3) or (4) shall be guilty of an offence and liable on conviction to a fine of N\$10 000, or to imprisonment for a period not exceeding six months.

(6) The Bank may summarily bring a charge in terms of subsection (5) against the banking institution in question or, if in the circumstances the Board deems it fit to do so, condone the failure or inability and afford that banking institution an opportunity, subject to such conditions as the Board may determine, to comply with the relevant provision within a specified period.

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

Additional powers of the Bank

36. (1) In addition to the powers, functions and duties conferred upon or assigned to the Bank by this Act, the Bank shall exercise such powers and perform such functions and duties as may be conferred upon or assigned to it by any other law.

(2) Notwithstanding anything to the contrary contained in any law, the Minister may by notice in the *Gazette* entrust to the Bank any power, function or duty conferred upon or assigned to any other person or authority by a law, the

administration of which falls under the responsibility of the Ministry of Finance.

Disclosure of information by banking institutions

37. Without prejudice to the provisions of any other law relating to the disclosure of information by a banking institution to its customers, every banking institution shall, in such manner as the Board may determine, disclose to -

- (a) each customer who makes a deposit with the banking institution, the terms and conditions upon which the deposit is made, including the effective annual interest rate payable to such customer and any fees, charges or commission, if any, payable by such customer in respect of that deposit;
- (b) each customer to whom the banking institution extends credit, the terms and conditions upon which such credit is extended, including the effective annual interest rate, fees, charges or commission, if any, payable by such customer in respect of such credit; and
- (c) the public, the indicative annual rates offered by that banking institution on deposits and loans.

Maximum positions in foreign currencies

38. (1) The Bank may from time to time determine the maximum netto open position in foreign currency positions that banking institutions may hold generally or in any specified currency or currencies.

(2) If any banking institution exceeds the position determined under subsection (1) the Board may impose on that banking institution a penalty not exceeding five percent per day of the amount in excess of the maximum position so determined.

Clearing operations

39. The Bank may, in conjunction with banking institutions -

- (a) organise facilities for the clearing of cheques and other instruments for effecting payments, and establish such rules and procedures relating to clearing operations as may be appropriate; and
- (b) establish and enforce arrangements for the settlement of balances arising from clearing operations between the Bank and banking institutions or between banking institutions.

PART VII

RELATIONS WITH THE GOVERNMENT

Banker, financial advisor, and fiscal agent

40. (1) The Bank shall, as banker for, financial advisor to and fiscal agent of, the Government, render advice and furnish reports to the Minister on -

- (a) any economic or financial matter which the Minister may refer to the Bank for investigation and advice; and
- (b) any matter which, in the opinion of the Board, is likely to affect the achievement of its objects or the performance of its functions under this Act.

(2) The Board shall express its opinion on the preparation of the Government's budget.

Official depository and cashier

41. (1) The Bank shall be the official depository of Government funds and shall on behalf of the Government receive and disburse moneys and keep account thereof.

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

Transactions in and management of Government securities

42. (1) The Bank may be entrusted with the issue and management of securities issued or guaranteed by the Government, upon such terms and conditions as may be agreed upon between the Minister and the Board.

(2) The Bank may purchase and sell securities issued by the Government and may deal directly with any person in relation to such securities or treasury bills.

Lending to the Government

43. (1) Subject to section 45, the Bank may grant loans to the Government on such terms and conditions as the Board and the Minister may agree upon, but every such loan shall be repaid to the Bank within six months from the date on which the loan in question was granted.

(2) Subject to the provisions of subsection (1), the Bank may grant loans to the Government, on such terms and conditions as the Board and the Minister may agree upon, for the purposes of paying subscriptions, fees, or other financial obligations of the Government arising from, or incidental to -

- (a) the membership of Namibia in any international bank or international financial organization;
- (b) the participation of Namibia in any account thereof; or
- (c) any transaction or operation in connection therewith.

Foreign borrowing by Government and statutory bodies or institutions

44. (1) Where the Government or any governmental body or institution established by or under any law intends to borrow from any source in a foreign country, it shall -

- (a) before entering into any commitment to borrow any foreign currency from such source, consult the Bank regarding the timing,

terms and conditions and financial expediency of the intended borrowing; and

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

(2) Where after the consultation referred to in paragraph (a) of subsection (1) the Bank is of the opinion that the intended borrowing is financially or economically inappropriate or inexpedient for the prevailing economic conditions, the Bank shall report the matter to the Minister, and may recommend to him or her such measures as it may consider necessary to remedy the situation.

Limitations on lending to Government

45. (1) The Bank shall not lend to the Government or acquire the securities of the Government except in accordance with the provisions of section 31(2)(b), 33(1)(b)(ii), 42(2) or 43, or in the course of satisfaction of debts due to the Bank from the Government.

(2) Subject to the provisions of subsection (4), the total of all outstanding loans from the Bank to the Government in terms of section 43(1) and the Bank's holdings of securities purchased or acquired under section 33(1)(b)(ii) or 42(2) shall not exceed twenty-five percent of the Government's average annual ordinary revenue for the three financial years immediately preceding: Provided that if the accounts for the latest completed financial year are not yet available, the official estimates of that year's ordinary revenue may be used in the computation of the average.

(3) For the purposes of subsection (2), "revenue" shall not include loans, grants, or other forms of economic aid obtained or received by the Government.

(4) The Minister may, in exceptional circumstances, authorise the Bank to allow the total referred to in subsection (2) to be increased to an amount not exceeding thirty-five percent of the average annual ordinary revenue contemplated in that subsection.

(5) Whenever the Bank is of the opinion that the lending limitation provided in subsection (2) is about to be exceeded, it shall submit to the Minister a report on the Bank's outstanding loans and credit facilities and holding of securities, and the causes that may lead to such excess, together with recommendations the Bank deems appropriate to forestall or otherwise remedy the situation.

(6) Where the limitation provided in subsection (2) is exceeded in accordance with subsection (4), the Bank shall continue to make such reports and recommendations to the Minister, as it may deem appropriate in order to remedy the situation and avoid its recurrence in the following financial year.

Agent for administration of exchange control

46. (1) The Bank shall act as agent for the Government in the administration of any law relating to exchange control, in accordance with such instructions or directives as the Minister may from time to time issue for this purpose.

(2) Any return, statement, account, or information required to be submitted to the Minister by authorised dealers in terms of the provisions of a law or pursuant to any instruction or directive contemplated in subsection (1) shall be submitted to the Bank for consolidation and transmittal to the Minister.

(3) The Bank shall at all times maintain a record of balance of payments containing such information, statistics and particulars and for such periods as the Board may from time to time determine, for the purpose of carrying out the objects of the Bank and discharging its duties and functions under this Act.

(4) For the purpose of maintaining the record of balance of payments, the Bank shall have the power to require in writing from any person who, in the opinion of the Bank, has in his or her possession or under his or her custody or control, or has within his or her capacity to obtain, compile or submit, any information, statistics or document relating to the record of balance of payments -

(a) to submit such information, statistics or document to the Bank within such period or at such intervals or in such manner or form

as the Bank may specify; or

- (b) to attend before an officer of the Bank to answer any enquiries in relation to such information, statistics or document.

(5) Any person who fails to comply with any requirement of the Bank under this section or who wilfully supplies false or misleading information commits an offence and shall be liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Fiscal agent for international financial organisations

47. The Bank may serve as depository of, and fiscal agent through which transactions may be conducted with any international financial organisation of which Namibia is a member.

Other agency functions

48. The Bank may act as agent for the Government for such purposes and on such terms and conditions as may be agreed upon between the Minister and the Board.

Policy directives by Cabinet

49. (1) Where, after consultation with the Bank, the Minister is of the opinion that the policies being pursued by the Bank are not adequate for, or conducive to, the achievement of the objects of the Bank, the Minister shall submit a recommendation to the Cabinet, and the Cabinet may, after consultation with the Board, determine the policy to be adopted by the Bank, and issue a directive setting out the essential policy reasons therefor and specifying the period during which such policy shall be implemented by the Bank.

(2) Subject to the provisions of subsection (3), the Bank shall, during the period specified, give effect to the policy determined by the Cabinet.

(3) The Cabinet may at any time amend or withdraw any directive

issued by it under subsection (1).

(4) The Minister shall cause any directive issued by the Cabinet under subsection (1) or any amendment or withdrawal of any such directive, to be published by notice in the *Gazette*.

(5) If the Board objects to a directive of Cabinet issued under this section, the Board may within 30 days after receipt thereof submit its objections and the reasons therefor in writing to the Minister, who shall cause the same, together with his or her recommendations thereon to be laid upon the Tables in the National Assembly within 30 days of his or her receipt thereof if the National Assembly is in ordinary session or, if it is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

PART VIII ACCOUNTS AND STATEMENTS

Financial year

50. The financial year of the Bank shall begin on the first day of January and end on the thirty first day of December of that year.

Accounts and audit

51. (1) Subject to the provisions of subsection (2), the Board shall appoint a firm of accountants and auditors registered under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), who shall annually audit the Bank's books of accounts.

(2) Without prejudice to subsection (1), if in the opinion of the Minister there are reasonable grounds for doing so, he or she may direct the Auditor-General to investigate into and report on the accounts of the Bank or any matter relating to the affairs of the Bank, and the Bank shall provide the Auditor-General with all the information and facilities necessary for such investigation.

(3) The report of the Auditor-General referred to in this section shall

be in accordance with the directives of the Minister and shall be submitted to the Minister in writing.

Submission and publication of accounts and reports

52. (1) The Bank shall submit to the Minister within three months after the close of each financial year -

- (a) a copy of the Bank's annual accounts certified by the auditors;
- (b) a report of the Bank's operations and affairs during that year; and
- (c) a report on the state of the economy.

(2) The Bank shall, as soon as possible after the last business day of each month, but in any event within 15 business days, prepare and submit to the Minister a return of the Banks' assets and liabilities as at the close of business on that day.

(3) The copy of the accounts and the report referred to in subsection (1)(a) and the return referred to in subsection (2) shall be signed by the Governor or the Deputy Governor and the chief financial officer of the Bank.

- (4) (a) The Bank shall cause the accounts, reports and returns referred to in subsections (1) and (2) to be published in such manner as the Minister may approve.
- (b) The Bank may at any time publish such other reports and studies on financial and economic issues as the Board deems appropriate.

(5) The Minister shall, within 30 days after the receipt thereof, lay a copy of the annual accounts and reports referred to in subsection (1) upon the Tables in the National Assembly if the National Assembly is in ordinary session or, if it is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

PART IX
MISCELLANEOUS PROVISIONS

Developmental role of Bank

53. (1) Subject to subsection (2), the Bank may in order to obtain its objects, with the concurrence of the Minister -

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

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

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

Prohibited activities

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

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

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

Authority to borrow and to issue securities

55. The Bank may with the approval of the Minister -

- (a) make arrangements or enter into agreements with the Government

or any banking or other financial institution or with any institution in a foreign country to borrow money in such manner, at such rate of interest and subject to such other terms and conditions as the Board may approve;

- (b) issue securities in its own name and for its own account, and may buy, sell, or otherwise deal in such securities with members of the public.

Authority to call for information

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

- (a) to furnish the Bank periodically or otherwise, and before the date or within the period specified in the direction, with such information as may be available to such person and as the Board may consider necessary for the Bank to perform effectively its functions under this Act; or
- (b) subject to any other law, to submit to the Bank within the period specified in the direction any register, book or document in the possession or custody or under the control of any such person which contains or is believed to contain any such information.

(2) Without limiting the generality of the power conferred by subsection (1), the Bank may call for any information that it may require for the purposes of this Act from any banking institution about its operations or those of its affiliates in Namibia or elsewhere.

(3) Any person who fails to supply any information called for by the Bank under subsection (1) or (2), or who wilfully supplies any false or misleading information shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Exemption from taxation

57. The Bank shall be exempt from the payment of any tax on its income, any stamp duty, and any duty or tax in respect of the importation of notes or coins.

Restriction on the use of Bank's name

58. Except with the written consent of the Bank, no banking institution, company or other person shall carry on business under, or be registered under the Companies Act, 1973 (Act No. 61 of 1973), or any law governing banking institutions or any other law, by a name -

- (a) which is identical with the name of the Bank, or which corresponds in such a manner to the name of the Bank that it could be misleading; or
- (b) which includes in conjunction with the word "bank" or its derivative or translation in any language the word "central", "government", "reserve", "royal" or "state" or any derivative of any such word or any translation of any such word in any language.

Regulations and by-laws

59. (1) The Minister may, in consultation with the Bank, make regulations in relation to any matter which the Minister considers necessary or expedient for the effective carrying out of the objects of the Bank or the achievement of the purposes of this Act.

(2) The Board may make by-laws or issue directives or instructions, not inconsistent with the provisions of this Act, in connection with any matter which it considers necessary or expedient for the good government of the Bank, the conduct of its business or the employment of its staff.

Repeal of law and savings

60. (1) Subject to section 2 and subsection (2) of this section, the

Bank of Namibia Act, 1990 (Act No. 8 of 1990), is hereby repealed.

(2) 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.

Construction of certain reference

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

Short title and commencement

62. (1) This Act shall be called the Bank of Namibia Act, 1997 and shall come into operation on a date determined by the Minister by notice in the *Gazette*.

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