



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

R1,00

WINDHOEK — 9 July 1990

No. 42

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 18

1990

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. 8 of 1990: Bank of Namibia Act, 1990.

ACT

To provide for the establishment of a central bank for the Republic of Namibia, its constitution, objects and powers; to regulate the issue of Bank notes and coins and the monetary system of the Republic of Namibia; and to provide for matters connected therewith.

(Signed by the President on 2 July 1990)

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

Interpretation.

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

“Bank” means the Bank of Namibia established by section 2;

“Board” means the board of the Bank referred to in section 8;

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

“financial institution” means a banking institution as defined in section 1 of the Banks Act, 1965 (Act 23 of 1965);

“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 under section 59 (1).

PART I. CONSTITUTION

Establishment of the Bank.

2. There is hereby established a central bank for the Republic of Namibia, to be known as the Bank of Namibia.

Bank a juristic person.

3. (1) The Bank shall be a juristic person, capable of suing or being sued in its name and, subject to the

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provisions of this Act, of performing all such acts as are necessary for or incidental or conducive to, the achievement of its objects, the carrying out of its functions, the performance of its duties and the exercise of its powers.

(2) The Bank shall have its head office in Windhoek and may -

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

Objects.

4. The objects of the Bank shall be -

- (a) to promote and maintain internal and external monetary stability, an efficient payments mechanism, and the liquidity, solvency, and proper functioning of a soundly based monetary, credit, and financial system in Namibia;
- (b) to foster monetary, credit, and financial conditions conducive to the orderly, balanced, and sustained economic development of Namibia; and
- (c) to assist in the attainment of national economic goals.

PART II. CAPITAL, PROFITS, AND RESERVES

Capital.

5. (1) The authorised capital of the Bank shall be forty million Rand.

(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 whatsoever.

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(5) The Government shall, on or as soon as may be practicable after the commencement of this Act, cause -

(a) to be transferred or delivered to the Bank, such immovable and movable property as the Minister may deem necessary for the Bank to commence with its operations, at a value agreed upon between the Minister and the Board, which valuation shall be deemed to be an amount paid up by the Government in respect of the capital of the Bank; and

(b) to be paid to the Bank, as a charge against the State Revenue Fund, an amount of money which, together with the amount of the valuation of the property contemplated in paragraph (a), shall not be less than twenty-five percent of the authorised capital of the Bank referred to in subsection (1).

(6) The amount representing -

(a) the difference between the authorised capital of the Bank referred to in subsection (1) and the amount paid up in accordance with the provisions of subsection (5);

(b) any increase of the authorised capital of the Bank under subsection (2),

shall be paid up by the Government in such manner as may be recommended by the Board and approved by the Minister.

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

(8) Whenever the Board determines that the assets of the Bank are less than the sum of its liabilities and its paid-up capital, the Minister, notwithstanding anything to the contrary contained in this Act or any other law, shall cause to be transferred to the ownership of the Bank non-negotiable securities issued by the Government for such amounts as are necessary for the purpose of preserving the paid-up capital from any impairment.

Profits.

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

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

General Reserve Account
and other reserves.

7. (1) The Bank shall establish a General Reserve Account to which shall be transferred at the end of each financial year of the Bank a sum not exceeding twenty-five percent of its net profits.

- (2) (a) Subject to the approval of the Minister, the Bank may establish and manage any other reserve account for any specified purpose.
- (b) The Bank may, after the transfer referred to in subsection (1), transfer from the balance of its net profits such amount of money to any such reserve account as it may determine with the consent of the Minister.
- (c) Except with the prior written approval of the Minister, the moneys available in any such reserve account, shall not be used for any purpose other than the purpose for which such reserve account was established.

(3) The balance of the net profits of the Bank for any financial year, after the transfers referred to in subsections (1) and (2) have been made, shall be paid to the Government.

(4) If any reserve account established under subsection (2) is abolished, or if any balance remains in such reserve account after utilization of the moneys therein for the purpose for which such reserve account was established, the moneys in such reserve account or the balance thereof, as the case may be, shall be paid to the Government, unless the Minister has under paragraph (c) of subsection (2) approved that such moneys or such balance be used for another purpose.

(5) The General Reserve Account established under subsection (1) shall only be used to offset losses and to redeem any securities issued in terms of section 5 (8).

PART III. BOARD, MANAGEMENT, AND STAFF

Establishment, constitution and powers of the Board.

8. (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 policies and general administration of the Bank.

(2) The Board shall consist of six members, namely:

(a) the Governor;

(b) the Deputy Governor; and

(c) four other members.

Tenure of office, conditions of service and responsibilities of Governor and Deputy Governor.

9. (1) The Governor and the Deputy Governor shall be persons with special knowledge of or recognized experience in financial matters.

(2) Whenever the Public Service Commission is required to make its recommendation to the President for the purpose of appointing 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.

(3) The Governor and Deputy Governor shall be appointed for a term of five years and they shall be eligible for reappointment.

(4) The Governor and the Deputy Governor shall -

(a) be appointed on such terms and conditions; and

(b) be paid from the funds of the Bank such remuneration and allowances,

as may be determined by the President in consultation with the Minister.

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(5) The Governor shall -

- (a) serve as chief executive officer of the Bank and be responsible to the Board for the execution of its policy and the management of the Bank;
- (b) act, contract and sign instruments and documents on behalf of the Bank, in accordance with the provisions of this Act;
- (c) represent the Bank in its relations with other institutions, and the Government; and
- (d) generally, subject to the overall guidance of the Board, exercise all powers and perform all duties and functions of the Bank not explicitly provided to be exercised or performed by the Board.

(6) The Governor may, with the approval of the Board, delegate any of his or her powers to the Deputy Governor or any officer or officers of the Bank.

(7) The Deputy Governor shall -

- (a) exercise the powers delegated to him or her under subsection (6) and carry out such duties and functions as the Governor may assign to him or her; and
- (b) in the event of a vacancy in the office of the Governor, exercise the powers and perform the duties of the Governor.

(8) The Governor and the 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 employment, whether remunerated or not, except as nominee of the Bank.

(9) The provisions of subsection (8) shall not be construed as prohibiting the Governor or the Deputy Governor from -

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

Appointment, tenure of office and remuneration of other members of the Board.

10. (1) The members of the Board referred to in section 8 (2) (c) shall be appointed by the President, in consultation with the Minister, from among persons of recognized standing and experience in business, professional or academic matters: Provided that -

- (a) an officer of the Department of Finance, designated by the Minister, shall be appointed as one such member; and
- (b) at least two of the remaining three members so appointed shall not be officers or employees in the public service.

(2) A member appointed under subsection (1), excluding the member referred to in paragraph (a) thereof, shall be appointed for a period of three years: Provided that in appointing the first members under that subsection, the President may, in consultation with the Minister, determine any shorter term of office for any of the members so appointed.

(3) A member appointed under subsection (1), shall be eligible for reappointment at the expiry of his or her term of office.

(4) The members appointed under subsection (1), 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 may be determined by the Board with the approval of the Minister.

Disqualification from membership of the Board.

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

- (a) is under the age of 21 years;
- (b) is a member of the National Assembly;
- (c) is a director, officer, employee, or owner of, or shareholder in, any financial institution, except

as nominee of the Government: Provided that any such person may be appointed as a member contemplated in section 8 (2) (c) if such person has, on the request of the Minister, been nominated for appointment by the Clearing Bankers Association; or

- (d) is an unrehabilitated insolvent;
- (e) is of unsound mind and has been declared so by a competent court;
- (f) has at any time been convicted of an offence, whether in Namibia or elsewhere, for which he or she has been sentenced to imprisonment without the option of a fine; or
- (g) has at any time, by the order of any competent authority, been disqualified or suspended, on grounds of personal misconduct, from practising a profession.

Termination of appointment and removal from office.

12. (1) The appointment of any person as Governor, Deputy Governor or other member shall terminate if that person -

- (a) becomes subject to any disqualification mentioned in section 11 (b), (c), (d), (e), (f) or (g);
- (b) is removed from office under subsection (2); or
- (c) resigns in accordance with the provisions of section 13.

(2) The Governor, the Deputy Governor, or any other member may be removed from office by the President on the ground of misconduct, or unfitness for the duties of his or her office or his or her incapacity to carry them out efficiently.

Resignation.

13. (1) The Governor or Deputy Governor may resign such office on giving not less than three months' notice in writing to the President.

(2) Any other member may resign his or her office on giving not less than one month's notice in writing to the President.

Vacancy.

14. If the office of Governor, Deputy Governor, or other member becomes vacant for any reason before the expiry of the term for which he or she has been appointed, such vacancy shall be filled by the appointment, in the manner in which the member who vacated his or her office was required to be appointed, of another person, for the unexpired portion of the term for which the member whose office has become vacant was appointed.

Meetings of the Board.

15. (1) The Board shall meet as often as the business of the Bank may require but not less frequently than once in each calendar quarter.

(2) The Governor may at any time, and shall at the written request of not fewer than three other members, call a special meeting of the Board.

(3) Reasonable prior notice shall be given for all meetings of the Board: Provided that the Board may, by means of by-laws, provide for regular meetings for which no such notice shall be necessary and the procedure to be followed in exceptionally urgent circumstances where a decision of the Board is necessary before a meeting of the Board can be convened.

(4) The Governor shall preside at meetings of the Board, and, in his or her absence from any meeting, the Deputy Governor shall preside at such meeting, and if both the Governor and the Deputy Governor are absent from a meeting, any other member, previously designated by the Governor for this purpose, shall preside at such meeting.

(5) Each member shall have one vote, except that the Deputy Governor shall have no vote unless when he or she is acting as chairman at any meeting of the Board in the absence of the Governor.

(6) A quorum at any meeting of the Board shall consist of three members who are entitled to vote at such meeting.

(7) A decision of a majority of the members present at any meeting of the Board, and who are entitled to vote at such meeting, shall constitute the decision of the Board.

(8) Subject to the provisions of subsection (6), no act or proceedings of the Board shall be invalid merely by reason of the existence of a vacancy on the Board.

(9) 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.

Appointment of officers, employees, agents, and correspondents.

16. (1) The Board, or any such officer or officers of the Bank to whom the Board has delegated the power conferred by this section, may appoint or employ such officers and other employees, agents or correspondents as the Board 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 persons appointed or employed under subsection (1), shall be determined by the Board.

(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 any 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;

(b) grant advances, whether secured or unsecured, to officers or employees of the Bank for such purpose and in such amounts as the Board may approve.

(4) No salary, fee, wage, or other remuneration or allowance paid by the Bank shall be computed by reference to the profits of the Bank.

Conflict of interest.

17. (1) (a) Every member shall disclose fully to the Board the nature, extent and particulars of any personal, commercial, financial, agricultural, industrial, or other interest, which that member may directly or indirectly have in any matter which is to be considered by the Board.

(b) Such disclosure shall be made at the commencement of the discussion by the Board of such matter and the member concerned shall thereupon recuse himself or herself from the meeting during the discussion of and voting upon such matter.

(2) The provisions of subsection (1) shall not apply to any discussion concerning any remuneration or allowance to be paid to members appointed under section 10(1) in their capacity as such.

(3) No member, officer or employee of the Bank shall accept any gift or advantage for himself or herself or on behalf of any person with whom he or she has family, business or financial connections, if the acceptance thereof would diminish, or give the appearance of diminishing, such person's impartial devotion to his or her duties under this Act.

(4) Any person who contravenes the provisions of this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Secrecy.

18. (1) No member, officer, employee, agent or correspondent of the Bank, or auditor appointed under section 53, and no officer or employee in the Ministry of Finance (including the Department of Finance), shall disclose to any person any information relating to the affairs of the Bank or any financial institution or any other person that he or she has acquired in the performance of his or her duties or functions, except -

(a) to the Minister;

(b) for the purpose of the performance of his or her duties or functions in terms of this Act;

(c) on authority of the Board; or

(d) when required to do so by a court of law or under any law.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

PART IV. MONETARY UNIT, NOTES AND COINS

Monetary unit.

19. (1) 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 a date specified in such proclamation, be the currency of Namibia.

(2) The Board shall, with the approval of the Minister, establish the arrangements for the determination of the external value of the currency determined under subsection (1), having due regard to any obligations arising under any international monetary agreement to which Namibia is a party or to which it has adhered.

Issue of notes and coins.

20. Subject to the provisions of section 22 (2), the Bank shall have the sole right to issue notes and coins denominated in the monetary units determined under section 19(1).

Legal tender.

21. Subject to the provisions of section 23, 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; or

(b) in the case of coins, for the payment of an amount not exceeding fifty times the face value of the coin concerned.

Manufacture and characteristics of notes and coins.

22. (1) 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 safekeeping of unissued notes and coins; and

(c) the custody and destruction, as necessary, of plates, dies, and retired notes and coins.

(2) Notes and coins issued by the Bank shall be of such denominations, composition, form, and design as may be approved by the Minister.

(3) The Bank shall cause the characteristics of notes and coins approved by the Minister under subsection (2), to be announced by notice in the *Gazette* prior to the issue of such notes and coins.

Power of recall.

23. (1) The Bank may by notice in the *Gazette* call in, for the purpose of withdrawing from circulation, any notes and coins issued by it.

(2) Such notice shall come into operation on the date mentioned therein and shall specify the period, which shall not be less than three months, during which notes and coins so called in may be exchanged in accordance with the provisions of section 24.

(3) Subject to the provisions of subsection (4), notes and coins so called in shall, with effect from the date immediately following the expiry of the period referred to in subsection (2), cease to be legal tender in Namibia.

(4) A holder of notes and coins which 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 subsection (2), be entitled to claim payment from the Bank of the face value of such notes and coins.

(5) Notwithstanding the provisions of subsection (4), the Bank may, after the expiry of the period referred to in that subsection, and within such further period and at such charge as may be determined and specified by the Bank by notice in the *Gazette*, exchange such notes and coins.

Exchange of notes and coins.

24. (1) Upon surrender by any person to the Bank, or to any agent of the Bank authorized for this purpose, of any notes or coins issued by the Bank, the Bank or such

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agent shall, subject to subsection (2) and (3), exchange on demand and without charge such notes or coins for notes and coins of equivalent value.

(2) The Bank or such 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 Board.

Mutilation of notes.

25. Any 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; or

(c) attaches or affixes any seal or stamp to or upon any such note,

shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

Bank not liable for lost or stolen notes or coins.

26. (1) No person shall be entitled to recover from the Bank the value of any lost or stolen notes or coins, except as may be provided in an expressed assumption by the Bank of risks incident to shipment of notes and coins.

(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.

Counterfeiting and evidence.

27. (1) Subject to the provisions of section 2 of the Prevention of Counterfeiting of Currency Act, 1965 (Act 16 of 1965), any person who -

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- (a) forges, alters or unlawfully issues a note of the Bank or something purporting to be a note of the Bank, or any coin; or
- (b) utters, tenders or accepts any such note or a coin which has been forged, altered or unlawfully issued,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding fifteen years, or to both such fine and such imprisonment.

(2) A certificate purporting to be issued by the Governor or the Deputy Governor stating that any note or coin is a note or coin of the Bank, or that something having the appearance of or purporting to be a note or coin issued by the Bank, is not a note or coin of the Bank, shall in any criminal proceedings under this Act or any other law, be admissible in evidence and be *prima facie* proof of the facts contained in such certificate.

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

International reserve.

28. (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; and
- (c) any internationally recognized reserve asset, including -
 - (i) the reserve position of Namibia in the International Monetary Fund;

(ii) Namibia's holdings of special drawing rights;

(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.

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

(2) If such international reserve has declined, or in the opinion of the Board appears to be in danger of declining, by fifteen percent or more over any twelve month period, or is at such a level that the Board considers its adequacy in jeopardy, the Bank shall submit to the Minister a report on the reserve position and the causes that have led to or may lead to such a decline, 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 Bank shall continue to make such reports and recommendations to the Minister at intervals not exceeding one month.

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

30. (1) The Bank may -

(a) buy, sell, or deal in gold coins or bullion 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;

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- (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 in foreign countries 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.

(2) The Bank shall, from time to time, determine and announce in such manner as it may deem expedient, the rates at which it will buy, sell, or deal in foreign currencies.

Limitations.

31. The Bank shall, when exercising the powers conferred by section 30, deal only with -

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

Revaluation Reserve Account.

32. (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) Any net losses in any financial year of the Bank arising from any such change 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.

(3) Neither net gains referred to in subsection (1) nor net losses referred to in subsection (2) shall be included in the computation of the annual net profits of the Bank.

(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.

33. The Bank may act as lender of last resort for account holders referred to in section 34 on such terms and conditions as the Board may determine.

Operations with account holders.

34. (1) The Bank may, subject to such terms and conditions as the Board may determine from time to time, open accounts for, and accept deposits from, financial institutions, or such other institutions or bodies as may be approved by the Minister for this purpose.

(2) The Bank may, on such terms and conditions as the Board may from time to time determine, purchase

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from, sell to, or discount or rediscount for account holders contemplated in subsection (1) -

(a) bills of exchange or promissory notes drawn or made for commercial, industrial, or agricultural purposes, provided such bills of exchange or promissory notes -

(i) bear two or more good signatures of which at least one shall be that of a financial institution; and

(ii) mature within 183 days from the date of their acquisition by the Bank;

(b) treasury bills or other securities issued or guaranteed by the Government which form part of a public issue;

(c) securities issued by the Bank under section 55; and

(d) any negotiable instruments, security bonds, or debentures determined by the Board, with the approval of the Minister, and designated by notice in the *Gazette*.

(3) The Bank may, on such terms and conditions as the Board may from time to time determine, grant to such account holders advances of periods not exceeding 183 days that are secured by -

(a) any instrument mentioned in paragraph (a), (b), (c) or (d) of subsection (2);

(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 deal in under section 30.

(4) Notwithstanding the provisions of subsection (3), the Bank may, on such terms and conditions as the Board may determine, grant to any account holder an advance that is unsecured or secured by assets other than

those referred to in subsection (3), when, in its opinion, such an advance is necessary to meet the liquidity requirements of such account holder.

Determination of rates for discounts, rediscounts and advances.

35. The Bank shall determine and announce from time to time its rates for discounts, rediscounts, and advances and may determine differential rates and ceilings for different classes of transactions or maturities.

Supervisory powers.

36. (1) The Bank shall in respect of financial institutions or any other institution or body established by or under any law, exercise such supervisory and other powers or perform such duties and functions 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, duty or function conferred upon or assigned to any person or authority by -

- (a) the Insurance Act, 1943 (Act 27 of 1943);
- (b) the Pension Funds Act, 1956 (Act 24 of 1956);
- (c) the Friendly Societies Act, 1956 (Act 25 of 1956);
- (d) the Medical Schemes Act, 1967 (Act 27 of 1967);
- (e) the Unit Trusts Control Act, 1981 (Act 54 of 1981);
- (f) the Participation Bonds Act, 1981 (Act 55 of 1981); or
- (g) the Building Societies Act, 1986 (Act 2 of 1986),

which relates to the supervision or inspection of any person, business or organization registered in terms of any such Act, or any scheme established, administered or managed in terms of the provisions of any such Act.

Disclosure.

37. (1) Every financial institution shall, in such manner as may be determined by the Bank by notice in the *Gazette*, disclose to the public and to -

(i) each depositor, the effective annual interest rates payable in respect of deposits made therewith;

(ii) each person to whom credit is extended, of the terms of obtaining such credit, and the effective annual interest rate payable in respect thereof.

(2) Any determination made by the Bank under subsection (1), shall apply in addition to and not in substitution for the provisions of any other law relating to disclosure of information of the kind contemplated in subsection (1).

Maximum positions in foreign currencies.

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

(2) If any financial institution exceeds the position prescribed under subsection (1) the Bank may impose on that financial institution a penalty not exceeding one-tenth of one percent per day of the amount in excess of the maximum position so prescribed.

Clearing facilities.

39. The Bank shall, in conjunction with financial institutions, organize facilities for the clearing of cheques and other instruments for effecting payments and establish such procedures and rules relating thereto as may be appropriate.

PART VII. RELATIONS WITH THE GOVERNMENT

Banker, financial adviser, and fiscal agent.

40. (1) The Bank shall act as banker and financial adviser to, and fiscal agent of, the Government.

(2) It shall be the duty of the Bank to render advice and to furnish reports to the Minister on -

(a) any matter which the Minister refers 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.

(3) The Bank shall be consulted by the Minister on the occasion of the preparation of the Government's budget and shall submit a written report to the Minister on economic and financial matters pertinent thereto.

Depository and cashier.

41. (1) The Bank shall be the official depository of Government funds: Provided that the Government may also maintain accounts with, and generally use the services of, financial institutions.

(2) The arrangements for maintaining such accounts and the use of such services may be made by the Bank at the request of the Minister.

(3) The Bank shall, on behalf of the Government, receive and disburse moneys and keep account thereof.

Management of Government securities.

42. The Bank may be entrusted, upon such terms and conditions as may be agreed upon with the Minister, with the issue and management of Government securities or securities guaranteed by the Government which form part of a public issue and, may deal directly with members of the public therein.

Agency functions.

43. 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 Bank.

Foreign borrowings by Government and statutory bodies or institutions.

44. (1) The Government and any governmental body or institution established by or under any law shall -

(a) before borrowing from any source in any foreign country, seek the advice of the Bank concerning the timing, terms, and conditions of such borrowing; and

(b) following such a borrowing, promptly notify the Bank of the terms and conditions of such borrowing.

(2) If, in the opinion of the Bank, such borrowing operations individually or collectively appear to be of a magnitude inappropriate to prevailing economic conditions, the Bank shall report to the Minister, drawing attention to the situation and recommending measures to remedy the situation.

Advances to the Government.

45. (1) The Bank may grant advances to the Government, subject to repayment within six months, at rates of interest related to the current treasury bill rate.

(2) Notwithstanding the provisions of subsection (1), the Bank may grant additional advances to the Government, on such terms and conditions as may be agreed upon, in respect of subscriptions and other payments resulting 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; and

(c) any transactions or operations in connection therewith.

Transactions in Government securities.

46. The Bank may purchase and sell securities issued by the Government that formed part of a public issue and may deal directly with members of the public therein.

Limitation on lending to the Government.

47. (1) The Bank shall not acquire the securities of, or grant any advances to the Government, except in accordance with the provisions of section 5 (8), 32 (2) (b), 34 (2) (b) or 46 or in the course of satisfaction of debts due to it.

(2) Subject to the provisions of subsection (4), the total of all outstanding advances by the Bank to the Government in terms section 45(1) and the Bank's holdings of securities purchased or acquired under section 34 (2) (b) or section 46, shall at no time 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 such year's ordinary revenue may be used in the aforesaid computation.

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

(4) The Minister may, in exceptional circumstances, call on the Bank to allow the total referred to in subsection

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(2) to be increased to an amount not exceeding thirty-five percent of the average ordinary annual revenue contemplated in that subsection.

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

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

Agent for the administration of exchange control.

48. (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) Returns, statements, accounts, or information required to be submitted to the Minister by authorised dealers in terms of the provisions of any such law or pursuant to any such instructions or directives shall be submitted to the Bank for consolidation and transmittal to the Minister.

Fiscal agency for international financial organizations.

49. The Bank shall serve as the depository of, and the fiscal agency through which dealings shall be conducted with, any international financial organization of which Namibia is a member.

Policy directives by Cabinet.

50. (1) If, 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 Bank, 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 applied.

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

PART VIII. ACCOUNTS AND STATEMENTS

Financial year.

51. The financial year of the Bank shall begin on the first day of February and end on the 31st day of January of the following year.

Accounts and audit.

52. (1) The accounts of the Bank shall be audited by professionally qualified accountants and auditors appointed by the Board with the approval of the Minister.

(2) Without prejudice to subsection (1), if in the opinion of the Minister there are reasonable grounds for so doing, the Minister 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 information and facilities necessary for such investigation.

Submission and publication of accounts and reports.

53. (1) The Bank shall submit to the Minister -

(a) within three months after the close of each financial year -

(i) a copy of its annual accounts certified by the auditors; and

(ii) a report of its operations and affairs during that year; and

(b) within four months after the close of each financial year, a report on the state of the economy.

(2) The Bank shall, as soon as possible after the last working day of each month, but in any event within 15 working days, prepare and submit to the Minister a return of its 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 then in ordinary session, or if it is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

PART IX. GENERAL

Prohibited activities.

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

(a) engage in trade, purchase or otherwise acquire shares in any financial institution or any corporation or company, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial, or other business undertaking;

(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 or Deputy Governor or officers or employees 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.

(2) 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
issue securities.

55. (1) The Bank may make arrangements or enter into agreements with the Government or any 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.

(2) The Bank may, with the approval of the Minister, 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 Board may in writing direct any person -

(a) to furnish the Board periodically or otherwise, and before the dates or within the period specified in the direction, with such information as the Board may consider necessary to perform effectively its functions under this Act and as may be available to any such person; or

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- (b) to submit to the Board 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 financial institution about its operations or those of its affiliates in Namibia.

(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 R6 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

Limitation of liability.

57. No person, including the State, shall be liable in respect of anything done in good faith under this Act.

Exemption from taxation.

58. 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.

Regulations and by-laws.

59. (1) The Minister may make regulations, not inconsistent with the provisions of this Act, 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.

Restrictions on the use of names.

60. (1) Except with the consent of the Minister, no financial institution, association or company shall carry on business under, or be registered under the Banks Act, 1965 (Act 23 of 1965), or the Companies Act, 1973 (Act 61 of 1973) or any other law, by a name which is identical with the name of the Bank or which corresponds in such a manner therewith that it could be misleading, or which

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includes the word "central", "government", "reserve" or "state", or any derivative thereof, in conjunction with the word "bank", or any derivative thereof.

(2) If at the commencement of this Act any financial institution, association or company is conducting its business under, or is registered under any law by, a name contrary to the provisions of subsection (1), such financial institution shall cause its name to be changed within thirty days of the commencement of this Act, or such longer period as the Minister may allow.

Transitional provisions.

61. (1) Notes issued by the South African Reserve Bank and coins 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 holder of such notes and coins shall be entitled, within a period of two years from publication of such notice or within such longer period of time as may be determined by the Minister and specified in such notice, to exchange such notes and coins for notes and coins of the Bank at the rate determined under section 30 (2).

(2) With effect from the date of the first issue of notes and coins by the Bank under section 20, the Bank shall on demand exchange notes and coins so issued against receipt of the equivalent amount of rand at its head office or such other places and in such manner as may be determined by the Board.

(3) The Minister may by notice in the *Gazette* establish arrangements for the exchange of rand against receipt of the equivalent amount of notes and coins issued by the Bank.

(4) Any reference to an amount of money expressed in terms of rand in any law or in any document evidencing a legal obligation undertaken on or before a date to be determined by the Minister by notice in the *Gazette*, and which is to be discharged in Namibia shall -

- (a) until such date be construed as including a reference to the corresponding amount of money expressed in terms of the currency issued by the Bank, and hence payable in rand or the currency issued by the Bank; and

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(b) after such date shall be construed as being a reference to the corresponding amount of money expressed in terms of the currency issued by the Bank, and hence payable only in that currency.

(5) The Minister may, after consultation with the Board, take such measures as the Minister may deem appropriate in respect of the continued participation of Namibia in the arrangements of the Common Monetary Authority.

(6) For the purposes of section 27 (1), notes and coins referred to in subsection (1), shall, until the date determined under that subsection, be deemed to be notes and coins of the Bank.

Repeal of law and savings.

62. (1) Subject to the provisions of subsection (2), the South African Reserve Bank Act, 1989 (Act 90 of 1989), 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 this Act, shall be deemed to have been done in terms of the corresponding provision of this Act.

Construction of certain reference.

63. A reference in any other law to the South African Reserve Bank, shall be construed as a reference to the Bank.

Short title and commencement.

64. (1) This Act shall be called the Bank of Namibia Act, 1990, and shall come into operation on a date determined by the President by proclamation in the *Gazette*.

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