



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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N\$6.00

WINDHOEK - 21 November 2019

No. 7057

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## Government Notice

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### MINISTRY OF FINANCE

No. 359

2019

#### REGULATIONS RELATING TO QUALIFICATIONS, TERMS AND CONDITIONS FOR APPOINTMENT AS MEMBERS OF APPEAL BOARD AND CONDUCTING OF APPEALS: BANKING INSTITUTIONS ACT, 1998

Under section 71(1) of the Banking Institutions Act, 1998 (Act No. 2 of 1998), on the recommendation of Bank of Namibia, I have made the regulations set out in the Schedule.

**C. SCHLETTWEIN**  
**MINISTER OF FINANCE**

Windhoek, 11 November 2019

### SCHEDULE

#### Definitions

1. In these regulations a word or an expression to which a meaning has been assigned in the Act has the same meaning, and unless the context otherwise indicates -

“Appeal Board” means the Appeal Board constituted in terms of section 73B of the Act;

“Ministry” means the Ministry administering matters relating to finance; and

“the Act” means the Banking Institutions Act, 1998 (Act No. 2 of 1998).

### **Members of Appeal Board**

2. In addition to a judge of the High Court designated by the Judge President in terms of section 73B of the Act, the other two members of the Appeal Board to be appointed by the Minister as contemplated in that section are -

- (a) a person registered as an accountant or auditor in terms of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951) and has at least 10 years of experience in the field of accounting or auditing; and
- (b) a person who has a qualification in commercial or financial field and has -
  - (i) at least 10 years of experience at a senior management level in the banking industry; and
  - (ii) knowledge in the laws governing banking and financial industries.

### **Disclosure of interests by members**

3. (1) A member of the Appeal Board must fully disclose his or her interest that the member may have on a matter to be discussed by the Appeal Board -

- (a) to the Minister as soon as possible after the relevant facts have come to the knowledge of the member before the matter is before the Appeal Board for hearing; or
- (b) to other members of the Appeal Board and the Minister, if the member becomes aware of the conflict of interest at the time when the matter is before the Appeal Board for hearing,

and may not attend or take part in the deliberation of the matter.

(2) A member of the Appeal Board who fails to disclose his or her interest in a matter in terms of subregulation (1) commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years and six months, or to both such fine and such imprisonment.

(3) If a member of the Appeal Board discloses his or her interest in a matter before the Appeal Board, the Minister must appoint another person as member of the Appeal Board in accordance with section 73B(2) of the Act.

### **Disqualification for appointment as members of Appeal Board**

4. A person is not qualified for appointment as a member of the Appeal Board, if the person -

- (a) is an employee, executive officer or board member of the Bank, a banking institution or a controlling company of a banking institution;
- (b) is a close relative to a person referred to in paragraph (a);
- (c) is not a Namibian citizen or permanent resident in Namibia;
- (d) is an office-bearer of any political party;

- (e) is a member of Parliament or a regional or local authority council;
- (f) has been declared insolvent and is not rehabilitated;
- (g) has under any law been declared to be of unsound mind;
- (h) has been convicted of any criminal offence in Namibia or elsewhere without an option of a fine;
- (i) has been declared unfit to hold office or has been disqualified to be a director under the Companies Act, 2004 (Act No. 28 of 2004); or
- (j) has declared his or her interest in a matter before or to be heard by the Appeal Board.

#### **Allowances of members of Appeal Board members**

5. A member of the Appeal Board is entitled to such allowances, including sitting, subsistence and travel allowances as the Minister may determine.

#### **Administrative functions of Appeal Board**

6. (1) The Minister, after consultation with the Appeal Board, on such terms and conditions as the Minister may determine, must either -

- (a) designate a staff member of the Ministry; or
- (b) appoint any other person on a fixed-term contract,

as secretary to the Appeal Board to perform the administrative functions of the Appeal Board.

(2) The Executive Director of the Ministry may assign a staff member of the Ministry to assist the secretary of the Appeal Board in his or her functions.

(3) The secretary to the Appeal Board must perform the administrative functions of the Appeal Board in accordance with the direction of the Appeal Board and at such times and places as the chairperson of the Appeal Board may determine.

#### **Notice of appeal**

7. (1) A notice of appeal contemplated in section 73A (4) of the Act must -

- (a) be lodged on Form set out in the Annexure;
- (b) contain grounds for appeal as well as any supporting documents on which the appellant wishes to rely; and
- (c) be accompanied by a non-refundable fee of N\$10 000.

(2) The Minister must within five days of receipt of the notice of appeal acknowledge receipt of the notice.

#### **Appeal hearing proceedings**

8. (1) The chairperson of the Appeal Board determines the date, time and venue for the hearing of the appeal and must notify, in writing, the parties to the appeal at least 30 days

before the date of the commencement of the hearing.

(2) The chairperson of the Appeal Board determines the procedures to be followed at the hearing of appeal.

(3) The Appeal Board is restricted to information which was used by the Bank in arriving at its decision.

(4) If the Appeal Board considers it necessary that the Appeal Board be assisted by an expert person with knowledge of a particular subject matter, the Appeal Board may call on such expert person to participate in the deliberation of any matter before the Appeal Board but such person has no right to vote or decide on such matter.

(5) If the Appeal Board is unable to conclude a hearing due to the resignation, illness, death or withdrawal of a member of the Appeal Board, the Minister may -

(a) direct the hearing of the matter to proceed before the remaining members of the Appeal Board; or

(b) suspend the hearing in its totality and, subject to subregulation (6), appoint any other person as a member of the Appeal Board.

(6) The Minister must appoint a person as a member of the Appeal Board who complies with regulation 2 and the appointment must be made within 14 days of the suspension of the hearing under subregulation (5)(b).

(7) If a new member of the Appeal Board is appointed as contemplated in subregulation (6), the appeal hearing must start afresh.

### **Representation**

9. At the appeal hearing, any party to the appeal may be represented by a legal practitioner or by any other person of his or her choice.

### **Decision of Appeal Board**

10. (1) The decision of the Appeal Board must be given as soon as practically possible after the appeal hearing.

(2) The decision of the Appeal Board must -

(a) be in writing; and

(b) be signed by the chairperson of the Appeal Board.

(3) The secretary to the Appeal Board must deliver a copy of the decision of the Appeal Board to all the parties to the appeal and to the Minister.

### **Confidentiality**

11. A member of the Appeal Board may not disclose any confidential information that the member acquires in the exercise or performance of his or her powers or functions as a member of the Appeal Board, unless when required to do so by a court of law or under any law.

**ANNEXURE****NOTICE OF APPEAL**

(Section 73A(4))  
(Regulation 7(1)(a))

Complete this Form if you wish to appeal against the decision of Bank made or fine imposed as contemplated in section 73A of the Act and submit this Form to the Minister of Finance.

**GENERAL INSTRUCTIONS FOR COMPLETING APPEAL FORM**

1. You must lodge an appeal within 14 days of the date of the decision.
2. Print clearly using **BLOCK LETTERS** in the space provided.
3. You must complete the whole application and provide your signature in the appropriate signature box.

**APPELLANT INFORMATION FROM PRINCIPAL OFFICER**  
(Please print clearly)

Name of banking institution/controlling company: \_\_\_\_\_

Address: \_\_\_\_\_

Representative Name and I.D Number: \_\_\_\_\_

Company Registration Number: \_\_\_\_\_

Contact details: Tel: \_\_\_\_\_

Cell: \_\_\_\_\_

E-mail: \_\_\_\_\_

**FINE IMPOSED, OR DECISION MADE, BEING APPEALED****Administrative fines/Decision****Relevant Section in the Act**

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Date of Notification: \_\_\_\_\_

**REASONS WHY YOU BELIEVE THE FINE OR DECISION OF THE BANK SHOULD BE  
AMENDED OR SET ASIDE**

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**IF YOU BELIEVE THAT THERE ARE OTHER CIRCUMSTANCES THAT WOULD JUSTIFY  
YOUR APPLICATION, PLEASE PROVIDE A DETAILED EXPLANATION BELOW AND  
ATTACH SUPPORTING DOCUMENTATIONS**

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<b>Signature:</b> _____	<b>Date:</b> _____
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