

BANK OF NAMIBIA
BANKING INSTITUTIONS ACT
CIRCULAR – BIA 2/99

TO: ALL BANKS

DATE: 22 SEPTEMBER 1999

PREFERENCE SHARES HELD BY BANKING INSTITUTIONS IN COMPANIES

In view of the concerns raised by the banking institutions regarding the provisions of Circular BIA-3/98 issued on 23 April 1998, the Bank has made the following amendments with regard to the provisions of the said Circular. Therefore, this Circular (BIA 2/99) replaces Circular BIA 3/98 of 23 April 1998.

Section 39(2) of the Banking Institutions Act, 1998 (No. 2 of 1998) prohibits a banking institution from having any direct interest in any activities relating to non-banking business. Since a number of banking institutions currently hold preference shares in non-banking companies the following arrangements shall immediately apply:

1. Exemptions

Exemptions from the provisions of section 39 may be granted on a case by case basis in terms of section 39(6) subject to the following conditions:

- 1.1 The aggregate value of all investments in preference shares does not exceed the surplus of the capital adequacy requirements;
and
- 1.2 These preference shares should: -
 - 1.2.1 be redeemable;
 - 1.2.2 confer no voting rights to the holder;
 - 1.2.3 not be convertible; and
 - 1.2.4 have cumulative preferential rights to dividends.

For the purposes of this Circular a "surplus" shall be defined as an amount of capital exceeding the minimum capital adequacy requirements.

When applying for exemption in terms of section 39(6) of the Act, banking institutions are required to provide:

- (i) The latest amounts (i.e. as at date of application) of their surplus of the capital adequacy requirements;
- (ii) Terms and conditions of preference shares (e.g. redemption date, not convertible, etc.);
- (iii) Details of how the risks relating to the preference shares and the dividend will be mitigated;
- (iv) Value of the transaction as percentage of the company's total capital;
- (v) Type of business conducted by the company;
- (vi) Purpose for which this facility is to be granted; and
- (vii) Amount of other credit facilities already granted to the company, if any.

2. Reporting requirement

The value of the transaction must be reported under Loans and Advances as "preference shares" and not as "investments" on the statutory returns submitted to the Bank. If the facility, on its own or together with other credit facilities extended to a company, equals to or exceeds 10% of the banking institution's capital funds it must also be reported as a large exposure. In such case, the Determinations on Large Exposures shall apply.

3. Phase out of existing facilities

Current holdings of preference shares by banking institutions shall be allowed to reach maturity and may not be renewed without the approval of this Office.

L S IPANGELWA
DEPUTY GOVERNOR