

Introduction of the Banking Institutions Amendment Act of 2010

The Bank of Namibia is pleased to announce that the long-awaited Banking Institutions Amendment Act, 2010 (Act No.14 of 2010) was signed into law by His Excellency the President on 19 October 2010. This Act was then published in the Government Gazette dated 5 November 2010.

The Banking Institutions Amendment Act of 2010 amends the principal Act, the Banking Institutions Act, 1998 (Act No.2 of 1998) and addresses, amongst others, the following key issues:

1. The Bank of Namibia is now empowered to assess and mitigate potential risks that banking institutions could be exposed to as a consequence of the activities of other entities within the same group of companies. This means that the Bank is given power to regulate and supervise the holding or controlling companies of banking institutions.
2. Credible foreign banking institutions are now allowed to establish branches in Namibia. Over the past few years, limited competition characterized the banking industry in Namibia. The law is now amended to address this concern. Previously, the law only allowed for fully incorporated subsidiaries and representative offices of such institutions. Such branches will, however, be subjected to the same prudential requirements as banking institutions.
3. The Bank of Namibia is now empowered to effectively deal with pyramid schemes. Due to the mushrooming of pyramid and similar schemes in Namibia over the past few years, the Amendment Act of 2010 defines, criminalizes and specifically prohibits pyramid schemes as opposed to the previous provision, which was generally referring to the "receiving of funds from the public" by way of the introduction of new members, who may receive payment in return for such introduction. In addition, it further prohibits even banking institutions from participating in such activities.
4. The Minister of Finance now has the power to, on recommendation of the Bank of Namibia, make regulations relating to the ownership of banking institutions and controlling companies in Namibia. This amendment gives room to enhance local ownership of banking institutions and controlling companies. In addition, the Minister of Finance may now, on the recommendation of the Bank of Namibia, issue a regulation on the contractual terms and conditions in standard contracts used by the banking institutions with their customers or the general public.
5. The Bank of Namibia is now allowed to impose administrative fines on banking institutions. This is intended to strengthen the oversight function of the Bank of Namibia over the activities of commercial banks. This means that the Bank of Namibia can now apply administrative fines to banking institutions for not complying with prudential requirements. This was not possible before, as the practice under the principal law required that a banking institution must first be convicted of an offence before a fine may be levied by the Courts.

The ultimate objective of the Banking Institutions Amendment Act of 2010 is to strengthen and closely align the Namibian banking law to international best practices. In essence, the principal law, the Banking Institutions Act of 1998 has been in force for more than 10 years and its review through the adopted amendment was inevitable. The electronic copy of the Banking Institutions Amendment Act can be found on the Bank of Namibia's website under *Laws & Regulations - Acts*.