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MEDIA STATEMENT

**PUBLIC STATEMENTS ON THE BANKING INSTITUTIONS AND PAYMENT
SYSTEM MANAGEMENT AMENDMENT BILLS TABLED IN PARLIAMENT**

This statement is prepared in response to the recent public statements published in the newspapers regarding the proposed amendments on the various legislative changes proposed by the Bank of Namibia and tabled in the National Assembly by the Hon. Minister and Hon. Deputy Minister of Finance. The Bank of Namibia, through this announcement, expresses concern over the said recent public statements that are not only misleading but have the potential to damage or undermine the confidence in the local banking system.

According to media reports, the banking industry feels ignored and has not been consulted on the proposed amendments to the Banking Institutions and Payment System Management Acts. The fact, however, is that since 2003 all banks were given an opportunity through a consultative process to comment on the proposed amendments and likely implications pertaining to the Banking Institutions Act. The Bank of Namibia can also confirm with evidence that all written comments received from all banks relating to the proposed amendments did not include the concerns raised recently. As for

the Payment System Amendment Bill, the banks, through the Bankers Association of Namibia, were duly informed of the intended amendments, but they did not raise any concerns.

By way of this statement, the Bank of Namibia wishes, yet again, to explain the intentions of the proposed amendments and put these amendments into perspective for the better understanding by the general public.

1. Banking Institutions Act of 1998

This Act has not been reviewed since its inception over ten years ago. Meanwhile, significant changes have taken place in the local and international arena (both in the financial markets and supervisory environment), which warrant the review of the current legal framework and regulatory provisions. As it was noted that some sections in this Act became redundant, while others were problematic in their implementation, these amendments were indeed justified. One of the amendments envisaged is related to the monetary penalties and entry of branches of foreign banks. In this regard, the Bank of Namibia wishes to clarify these as follows:

Monetary penalties: It is proposed to impose some administrative penalties for contravention or non-compliance with the Act. It is common practice for central banks around the world to impose penalties on banking institutions rather than presenting cases to Courts. By presenting such cases in a Court of law, this may lead to bad publicity and reputational risk for non-complying banks. This, in turn, may lead to loss of confidence. The imposition of administrative penalties should therefore not be regarded as a conviction in respect of a criminal offence, as no prosecution for the contravention or non-compliance with the Act will take place.

It should be stated that parent banks of subsidiary banks operating in Namibia are subjected to more stringent monetary penalties in South Africa that can be imposed by the Registrar of Banks. It is, therefore, strange that these subsidiary banks are condemning some of the best proposed regulatory practices for banks in Namibia or rendering these proposal as unconstitutional. As an example, in South Africa, monetary penalties can be imposed up to R10 million compared to N\$100 thousands in Namibia. Moreover, the penalties that could be imposed by the Bank only apply to administrative offences and cases of non-compliance with certain procedures. This means that an imposition of administrative penalties should however not be regarded as a conviction in respect of a criminal offence, as no prosecution will be applicable in terms of the Bill, not in as far as the intended determination by the Bank is concerned. However the necessary Court proceedings may still be initiated against any transgressors or gross

violations of the Act. Moreover, if a banking institution feels that the penalty imposed on it by the Bank of Namibia is not fair, there is nothing that stops it from approaching the court to set aside the penalty.

Branches of foreign banks: Another proposed amendment to the Banking Institutions Act is to allow branches of foreign banks to be established in Namibia. In its present form, the Banking Institutions Act only allows for subsidiaries and representative offices of foreign banks to be incorporated in Namibia. By allowing branches of foreign banks to be established, it will be possible for such institution to test the local market conditions before setting up fully-fledged banks locally.

The Bank of Namibia does not regard the creation of such a possibility as discriminatory, because such branches will be subjected to similar prudential requirements pertaining to, for example, capital, as existing banks. The marked difference however between subsidiaries and branches of foreign banks, are that branches may be confined to specified geographical areas.

It is important to state that no branch of a foreign bank shall be granted approval to operate in Namibia, unless the Bank of Namibia is satisfied that such branch will bring the desired benefits through competition to the local banking system and will serve in the best interest of the national economy.

2. Payment Systems Act

Fees and charges: The proposed amendment with particular reference to the fees and charges of banks under the Payment Systems Management Amendment Act gives power to the Bank of Namibia to regulate fees and charges to be in the interests of the public, promote competition, efficiency and cost-effectiveness. The Amendment Act does not give the Bank the right to prescribe or impose specific bank charges, but it will empower the Bank to set standards in terms of which the banking institutions must determine their fee structure.

Research indicates that many countries, such as Ghana, Singapore and Australia, use the powers given within their Payment Systems Acts to affect changes on the fees and charges of specific payment system activities, once designated. Namibia will therefore not be the exception in this regard.

In conclusion, Namibia will not be the first country in the world to introduce mechanisms to jealously safeguard the national banking system in order to retain its systemic strength. This includes the efforts made to attract branches of foreign banks to stimulate competition or to prevent potential erosion of public confidence in the banking institutions, by initiating monetary

penalties to deal with administrative non-compliance habits of bank institutions in the country.

Issued by the Corporate Communication Division at the Bank of Namibia,

tel: (061) 283 5056,

Fax: (061) 283 5228, web-address: www.bon.com.na