

BANKING INSTITUTIONS ACT

CIRCULAR – BIA 2/00

TO: ALL BANKING INSTITUTIONS

DATE: 28 JUNE 2000

CLARIFICATION RELATING TO THE IMPLEMENTATION OF THE DETERMINATIONS ON THE COMPULSORY SUSPENSION OF CHEQUE ACCOUNTS BY BANKING INSTITUTIONS (BID-12)

1. BACKGROUND

This Circular is issued to replace Circular BIA 5/99 issued on 17 September 1999 in view of the concerns raised by some banking institutions regarding the implementation of certain provisions contained in the latter Circular. Further this Circular is issued for the purpose of providing clarification on certain issues pertaining to the implementation of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12).

2. PUBLIC AWARENESS OF BID-12

The Bank regards public awareness of BID-12 as the major step towards educating the general public about the fact that issuing of cheques with insufficient funds available in the cheque account constitutes a criminal activity punishable by law. Therefore, the Bank is to approach the public with the objective of highlighting such undesirable activity and reinforcing awareness of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12). Further, the Bank takes note of and appreciates the actions undertaken by the banking institutions to reinforce public awareness about the implications and consequences of these Determinations.

3. ACCOUNT MAINTAINED AT DIFFERENT BANKS

A banking institution should only suspend a cheque account in respect of which five cheques are referred to drawer due to insufficient funds over a period of three months. Banking institutions that came to know about the suspension of one of their customer's cheque accounts at another banking institution have no basis on which they can suspend the cheque account of the same customer at their institution. This means that, where a customer has more than one cheque account at different banking institutions, say one Bank X and another Bank Y, the suspension of the cheque account at Bank X should not result in an automatic suspension of the cheque account at Bank Y in terms of the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12).

4. THE SAME CHEQUE BEING PRESENTED MORE THAN ONCE

When one cheque is presented more than once and each and every time it is referred back to drawer, then this should be treated as one contravention in respect of the same cheque irrespective of the number of times it is presented and referred to drawer.

5. SUBSEQUENT FUNDS BECOMING AVAILABLE

The Bank is conscious of the fact that whenever a cheque is dishonoured, the payee of such a cheque is the one who is negatively affected by such activities. Therefore, in an event where the cheque account has been suspended in terms of BID-12 a banking institution should immediately inform the customer that the cheque account has been suspended and the implication thereof in terms of BID-12. Furthermore, the customers should be ordered to refrain from issuing further cheques and demand them to surrender unissued cheques to their banking institution. Should the customer continue issuing cheques contrary to the order from the banking institution while the cheque account is suspended, such cheques should not be honoured irrespective of whether or not there are sufficient funds available to meet the drawing. Therefore, banking institutions may furnish as reasons that the cheque has been dishonoured due to the fact that the cheque account facility has been suspended in terms of BID-12. This is to discourage persons from issuing cheques while their cheque accounts are suspended.

6. COMMUNICATIONS GAPS BETWEEN OFFICIALS, SYSTEM FAILURES IN A BANKING INSTITUTION, ETC.

It is important to understand that customers should not be unfairly prejudiced merely because of events for which they were not responsible. Therefore, where a cheque has been referred to drawer and it is subsequently discovered that a customer had made an arrangement with one of the officials in a banking institution, but the cheque was referred to drawer due to the fact that the information about such an arrangement was not communicated to other officials (who may have referred a cheque to drawer), such a cheque should not be regarded as a contravention in terms of the Determinations on the Compulsory Suspension of Cheque Account by Banking Institutions (BID-12). Further, if a cheque would not have been referred to drawer if it were not for a problem in the accounting system and /or computer system or other problems in a banking institution, such a cheque should also not be regarded as a contravention in terms of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12).

7. DIFFERENTIATION OF REPORTING

A cheque account that has been closed in terms of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12) must be reported to the Bank of Namibia, as compulsory closed, under the same reporting requirements as applicable to a cheque account that has been suspended.

8. SHARING OF INFORMATION

The provisions of section 64 of the Banking Institutions Act, 1998 (Act No.2 of 1998) should be observed at all times.

In order for an interbank confirmation of a previous cheque account status to be performed as required in terms of paragraph 1.1 of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12), a banking institution should obtain written consent from the applicant.

The written consent obtained as such should enable a banking institution to confirm the previous cheque account status with a particular banking or all banking institutions in case the applicant does not disclose all information required.

Further, in order to facilitate the effective implementation of the provisions of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12), banking institutions are hereby authorized, in terms of the provisions of section 64 (10)(i) of the Banking Institutions Act, 1998 (Act No.2 of 1998), to disclose, to other banking institutions in the Republic of Namibia, information about the cheque account facility of their customer or former customer, that is required in order to perform interbank confirmation of previous cheque account status by another banking institution in terms of paragraph 1.1 of the said Determination. The information disclosed as such should be limited to information which is necessary in order for the enquiring banking institution to perform an interbank confirmation of the previous cheque account status.

9. POSSIBLE CIRCUMVENTION OF BID-12 BY CHEQUE ACCOUNT HOLDERS

There is no basis upon which the Bank can interpret the channeling of activities and funds from own cheque accounts conducted by their related parties as a contravention of the Determinations since such practices are not prohibited by the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12). The same applies when a cheque account of a business entity had been suspended due to the contravention of BID-12 and the proprietors of that entity registers a new business entity and opens a new cheque account facility with the aim of circumventing BID-12. In all these circumstances, banking institutions should conduct thorough investigations whenever they suspect a circumvention of BID-12 in such a manner and endeavour to lift the 'veil' of the particular entity and look beyond it. However, banking institutions are encouraged to exercise their own discretion whether to grant a cheque facility in circumstances like this.

10. REPORT ON COMPULSORY SUSPENDED, CHEQUE ACCOUNT FACILITIES ANNEXURE A BID-12

In completing the report on Compulsory Suspended Cheque Account Facilities Annexure A BID-12, a banking institution should record in the same columns entitled "Value of Cheques Returned" and "No. of Cheques Returned" the value and number of cheques returned, respectively, on the date of suspension of the cheque account facility immediately after the fifth (5th) cheque that resulted in the suspension of the account, i.e. the value of and number of the five cheques.

11. DISCRETION IN SUSPENDING CHEQUE ACCOUNTS

In terms of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12), banking institutions shall immediately suspend the cheque account facility of any customer, including big companies, in respect of which five cheques are referred to drawer due to insufficient funds over a period of three months. Therefore, banking institutions have no choice nor discretion, but should suspend the cheque account as required in terms of BID-12.

12. Two additional copies of this Circular are enclosed for the use of your institutions independent auditors. The attached " Acknowledgement of Receipt" duly completed and co-signed by the said auditors, should be returned to this Office at the earliest convenience.

L S IPANGELWA
DEPUTY GOVERNOR