



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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N\$4.00

WINDHOEK - 9 July 2012

No. 4988

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### CONTENTS

*Page*

#### GENERAL NOTICE

No. 169	Bank of Namibia: Determinations under the Banking Institutions Act, 1998 (Act No. 2 of 1998), as amended.....	1
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## General Notice

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### BANK OF NAMIBIA

No. 169

2012

#### DETERMINATIONS UNDER THE BANKING INSTITUTIONS ACT, 1998 (ACT NO. 2 OF 1998), AS AMENDED

In my capacity as Governor of the Bank of Namibia (Bank), and under the powers vested in the Bank by virtue of section 71(3) of the Banking Institutions Act, 1998 (Act No. 2 of 1998), as amended read in conjunction with section 19A (1) of the aforementioned Act, I hereby issue this Determination on Branches of Foreign Banking Institutions (BID-22), which determination shall become effective on 9 July 2012.

**I.W. SHIMI**  
**GOVERNOR**

Windhoek, 11 June 2012

**Banking Institutions Determination (BID-22)**

**BRANCHES OF FOREIGN BANKING INSTITUTIONS**

**Arrangement of Paragraphs**

**PART I**

**Preliminary**

**PARAGRAPH**

1. Short Title
2. Authorization
3. Application
4. Definitions

**PART II**

**Statement of Policy**

5. Purpose
6. Scope
7. Responsibility
8. Application of the Act to a branch

**PART III**

**Implementation and Specific Requirements**

9. Prudential requirements
10. Management
11. Business operations
12. Supervisory obligations
13. Application procedures, fees and annual license
14. Name

**PART IV**

**OTHER REGULATORY REQUIREMENTS**

15. Reporting Requirements
16. Remedial measures
17. Effective date

**PART I: PRELIMINARY**

1. **Short Title** - Branches of Foreign Banking Institutions (BFBI) or Branches.
2. **Authorization** - Authority for the Bank to issue this Determination is provided in Sections 19A (1) and 71(3) of the Act.
3. **Application** – This Determination applies to Branches of foreign banking institutions authorised by the Bank to conduct banking business in Namibia.
4. **Definitions** - Terms used within this Determination are as defined in the Act, as further defined below, or as reasonably implied by contextual usage.
  - 4.1 **“Act”** – means the Banking Institutions Act, 1998 (Act No. 2 of 1998), as amended.
  - 4.2 **“branch”** – means a branch of a foreign banking institution.
  - 4.3 **“Branch Capital”** – means the amount, expressed in the monetary unit of Namibia, that has been allocated and provided by the foreign banking institution to its branch and includes funds obtained from actual earnings or by way of recoveries and which

have been set aside as a general or special reserve of the branch and must for the purposes of the Act be deemed to comprise regulatory capital of the branch, provided that the amount so allocated and provided by the foreign banking institution:

- (i) Is unencumbered;
- (ii) Is not provided subject to a guarantee for repayment by the branch to the foreign banking institution;
- (iii) May not be revoked without the prior written approval of the Bank; and
- (iv) Must be held in Namibia.

## PART II: STATEMENT OF POLICY

5. **Purpose** - This Determination is intended to set certain conditions and limitations on the operation of branches of foreign banking institutions in Namibia.
6. **Scope** - This Determination applies to branches authorized to operate in Namibia.
7. **Responsibility** - The board of the foreign banking institution must be responsible for establishing policies and procedures, which are adequate to ensure that all requirements as set out in the Act and this determination are fully complied with.
8. **Application of the Act to branches** – Unless expressly stated otherwise, the provisions of the Act, as well as the related by-laws, shall apply to branches of foreign banking institutions.

## PART III: IMPLEMENTATION AND SPECIFIC LIMITATIONS

### 9. Prudential requirements

- 9.1 A foreign banking institution on its own, or a foreign banking group of which such foreign banking institution forms part, must at a point in time not earlier than 24 months prior to such foreign banking institution's application to establish a branch have held, and at all times during the operation of its branch hold, net assets, as certified by their auditors and reflected in their audited Financial Statements (which Financial Statements must comply with Internationally Accepted Accounting Standards, and which must have been audited in accordance with International Financial Reporting Standards), to a total value of at least N\$8.5 billion, provided that:

In the calculation of the value of such net assets, intangible assets that are not readily marketable must be excluded.

- 9.2 The foreign banking institution must have been afforded a long-term investment grade debt rating, acceptable to the Bank, by an internationally recognized external credit assessment institution. An example of such rating is illustrated in the table below:

**Table 1:** Examples of investment grades by some rating agencies

Moody's	S& P	Fitch
<b>Aaa</b>	AAA	AAA
<b>Aa</b>	AA	AA
<b>A</b>	A	A
<b>Baa</b>	BBB	BBB

- 9.3 The Branch in question must manage its affairs in such a way that the sum of its Capital must not at any time amount to less than the greater of:
- (i) An amount as may be specified by the Bank based on the proposed business model; or
  - (ii) An amount which represents 10% of the risk weighted assets of a branch and other exposures of a branch that the Bank may deem fit.

## **10. Management**

- 10.1 Every person who holds, or stands to hold, the office of an executive officer must be fit and proper, in terms of the Act, to hold such a position.
- 10.2 The provisions of section 41 of the Act, shall apply to the appointment of executive officers of the branch.
- 10.3 The foreign banking institution shall appoint at least two natural persons residing in Namibia, who are fit and proper, to conduct the management of the business of the branch, at least one of which shall be appointed as the principal officer of the branch.
- 10.4 Description of the extent of involvement and decision-making that the executive officers of the foreign banking institution will have in the operation of the branches of foreign banking institutions must be stated at the application stage and subsequently if and when there are any changes.
- 10.5 The reporting lines between the principal officers of the branches of foreign banking institutions and the executives at the foreign banking institutions must also be provided to the Bank at the application stage and subsequently if and when there are any changes.

## **11. Business operations**

- 11.1 Branches may accept deposits from any person (natural or juristic).
- 11.2 A foreign banking institution, having been granted authorization to establish a branch in Namibia, may conduct such business by means of only one branch office in Namibia.
- 11.3 The business operations of a branch must at all times be covered and supported by a valid letter of comfort issued by the relevant foreign banking institution, which letter of comfort, to the satisfaction of the Bank, such foreign banking institution duly:
- (i) Confirms its understanding and acceptance of the ultimate objective of the maintenance of a financially sound branch in the interest of an efficiently functioning financial system in Namibia;
  - (ii) Confirms its understanding and acceptance thereof that the pursuit of the ultimate objective (set forth in subparagraph i) above requires that the performance of the supervisory functions in respect of a branch, assigned to the management thereof, shall be directed primarily towards the promotion of the best practice standards of risk management by a branch;
  - (iii) Confirms its understanding and acceptance of, and its adherence to, the relevant provisions of the Act, the relevant Determinations relating to such a branch, including this Determination;

- (iv) Undertakes, within reasonable standards, to ensure that the executives of a branch at all times adheres to the fit and proper requirements, in terms of the Act, to fulfill their respective responsibilities and tasks;
- (v) Confirms its acceptance of and its responsibility for the operations of a branch; and
- (vi) Undertakes to safeguard the financial soundness and stability, including the maintenance of the branch capital.

**12. Supervisory obligations**

- 12.1 The Bank must be satisfied that the foreign banking institution lawfully conducts business similar to the business of a bank in a country other than Namibia.
- 12.2 The Bank must be satisfied that the foreign banking institution is supervised by a Home Regulator that is capable of performing effective Consolidated Supervision.

**13. Application procedures, fees and annual license**

- 13.1 A foreign banking institution is required to apply for the establishment of a branch and pay the prescribed fees in accordance with the procedures set out by the Bank.

**14. Name**

- 14.1 A branch may not use, or refer to itself by, a name other than the name under which a foreign banking institution was incorporated in a country outside Namibia, or any literal translation or abbreviation thereof or any other name which has been approved by the Bank.
- 14.2 The name referred to under paragraph 14.1 above must be used in immediate conjunction with the term "branch".

**PART IV: OTHER REGULATORY REQUIREMENTS**

**15. Reporting Requirements**

- 15.1 Branches must, at the end of each calendar month and quarter submit to the Bank returns in the manner set out in the Circular on Statutory Returns and Instructions, Directives and Interpretations issued by the Bank.

**16. Remedial measures**

- 16.1 If a branch fails to comply with this Determination or any other applicable legal and regulatory provisions, the branch must report the failure in writing to the Bank and state the reasons for failure, as well as measures taken or to be taken to rectify the non-compliance and prevent reoccurrence.
- 16.2 The Bank may pursue any remedial measures as provided under the Act or any other measures the Bank may deem appropriate in the interest of prudent banking practice.

**17. Effective date**

The effective date of this Determination shall be 9 July 2012.

**Questions relating to this Determination should be addressed to:  
The Director, Banking Supervision Department, Bank of Namibia, Tel: 283-5040**

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