

**BANK OF NAMIBIA**  
**BANKING INSTITUTIONS ACT**  
**CIRCULAR – BIA 5/99**

**TO:** ALL BANKING INSTITUTIONS

**DATE:** 17 NOVEMBER 1999

**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 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).

The issues that banking institutions had problems with, with regard to the implementation of these Determinations have been addressed in this Circular.

**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). The Bank also 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. ACCOUNTS MAINTAINED AT DIFFERENT BANKS**

A bank 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 at Bank X and another at 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 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 their customer that the cheque account has been suspended and the implication thereof in terms of BID-12, order the customer to refrain from issuing further cheques and demand them to surrender unissued cheques to their banking institutions. Should the customer continue issuing cheques contrary to the order from a banking institution while the cheque account is suspended, such cheques should be honoured to the extent of the sufficiency of funds in the cheque account without the suspension of the cheque account being lifted. A banking institution should exercise its discretion whether to impose penalties upon such an offender on further cheques issued while the cheque account is under suspension. This is to discourage persons from issuing out cheques while their cheque accounts are suspended. The amount of the penalties imposed must be reasonable in line with the value of the R/D cheque(s).

Should a customer have another five cheques referred to drawer in a period of three months while the same cheque account is under suspension, he/she shall be regarded as a second time offender (or third time offender whatever the case may be), and the respective period of the suspension shall commence immediately on the elapse of the previous period of suspension.

**6. COMMUNICATION 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 view of suspending a cheque account in terms of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12).

Further, if a cheque would not have been referred to drawer if it was 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 view of suspending a cheque account 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 compulsorily 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 all banking institutions in case the applicant does not disclose all information required.

Further, the Bank is not opposed to the sharing of information between banking institutions when such information is required in order to comply with the provisions of the Determinations on the Compulsory Suspension of Cheque Accounts by Banking Institutions (BID-12).

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

There is no basis upon which the Bank can interpret the channelling of activities and funds from own cheque accounts to accounts conducted by their related parties as a contravention of the Determinations since such practices are not prohibited by the Determination 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 of 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 business entity and look beyond it. However, banking institutions are encouraged to exercise their own discretion whether to grant a cheque account 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 columns entitled "Value of Cheques Returned" and "No. of Cheques Returned" the value and number of cheques returned, respectively, on the date of submitting the report. For example, where a further three cheques have been issued by a customer which have been referred to drawer after the suspension of the cheque account, this would mean that in total eight cheques have been referred to drawer on that cheque account, and therefore the value and number of the eight cheques should be recorded in the two columns respectively. The rationale is to capture the extent to which cheques are issued and referred to drawer after the cheque account has been suspended.

**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 have no discretionary powers to suspend the cheque account facility of any customer including big companies.

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

**L S IPANGELWA**  
**DEPUTY GOVERNOR**