



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GENERAL NOTICE

No. 158	Bank of Namibia: Determination under the Banking Institutions Act, 1998 (Act No. 2 of 1998) as amended: Priority of claims in the event of winding-up of a banking institution or controlling company	1
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General Notice

BANK OF NAMIBIA

No. 158

2017

DETERMINATION UNDER THE BANKING INSTITUTIONS ACT, 1998 (ACT NO. 2 OF 1998) AS AMENDED: PRIORITY OF CLAIMS IN THE EVENT OF WINDING-UP OF A BANKING INSTITUTION OR CONTROLLING COMPANY

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)(b), read together with section 59(1) of the Banking Institutions Act, 1998 (Act No. 2 of 1998) as amended, I hereby issue the Determination on the Priority of Claims in the event of winding-up of a Banking Institution or Controlling Company (BID-26).

I.W. SHIMI
GOVERNOR

Windhoek, 7 June 2017

Determination No. BID-26**PRIORITY OF CLAIMS IN THE EVENT OF WINDING-UP OF A BANKING
INSTITUTION OR CONTROLLING COMPANY****Arrangement of paragraphs****PART I
PRELIMINARY****PARAGRAPH**

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

**PART II
STATEMENT OF POLICY**

5. Purpose

**PART III
IMPLEMENTATION AND SPECIFIC REQUIREMENTS**

6. Payment of claims

**PART V
EFFECTIVE DATE**

7. Effective Date

PART I: PRELIMINARY

1. **Short Title** – Priority of Claims
2. **Authorisation** – Authority for the Bank to issue this Determination is provided in terms of section 71(3)(b) read together with section 59(1) of the Banking Institutions Act, 1998 (Act No. 2 of 1998) as amended.
3. **Application** - This Determination applies to all banking institutions and bank controlling companies authorised by the Bank to conduct banking business in Namibia.
4. **Definitions** – Terms used in this Determination are as defined in the Act, as further defined below, or as reasonably implied by the contextual usage.
 - 4.1 “**Act**” means the Banking Institutions Act, 1998 (Act No. 2 of 1998) as amended;
 - 4.2 “**secured creditor**”, for the purpose of this Determination, means a creditor who holds security for his claim in a form of special mortgage, pledge or right of retention, and who is entitled to be paid out of the proceeds of the property of a banking institution or controlling company subject to the security, after payment of certain expenses and any secured claim that ranks before his/hers.

PART II: STATEMENT OF POLICY

5. **Purpose** – This Determination sets out the order of priority that must be followed when payment of claims is made in the event of a winding-up of a banking institution or controlling company.

PART III: IMPLEMENTATION AND SPECIFIC REQUIREMENTS**6. Payment of claims**

- 6.1 The Priority of Claims Determination grants preference to the depositors and creditors highlighted under paragraphs 6.2(a), (b), and (c) over other general creditors to be paid before remaining creditors can be paid.
- 6.2 In the event of winding up of a banking institution or controlling company, the following order of priority shall apply:
- (a) The cost and administrative expenses of the liquidator and Master of the High Court incurred in the process of liquidating the banking institution, or controlling company;
 - (b) Remuneration of employees in accordance with the Labour Act;
 - (c) Deposit liabilities up to an amount of N\$25,000 per depositor;
 - (d) Secured creditors; and
 - (e) Other creditors, including any claim exceeding the limits referred to in (c).
- 6.3 Any surpluses that may arise after applying paragraph 6.2 will be dealt with in accordance with the Insolvency Act.
- 6.4 The liquidator shall provide a Final Distribution and Liquidation Account as prescribed in the Insolvency Act, to the Bank within 30 days after payment of claims.

PART V: EFFECTIVE DATE

7. **Effective date** – This Determination comes into effect on 15 June 2017.

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