

BANKING INSTITUTIONS ACT

CIRCULAR – BIA 1/09

TO: ALL BANKING INSTITUTIONS

DATE: 23 February 2009

APPLICATION OF SET-OFF AND CASH-MANAGEMENT SCHEMES

1. OVERVIEW

This Circular is issued to explain the terms and conditions for set-off arrangements of assets and liabilities where it is permissible, as well as the circumstances to be applied for the reduction of balance resulting from application of cash management schemes.

These arrangements shall apply forthwith to all determinations issued under the Banking Institutions Act (No. 2 of 1998) where specific mention is made in the determinations of adjustments due to set-off.

Definitions

For the purpose of this Circular –

“Monitor and Control the relevant exposures” means the position where the banking institution will be able to accurately determine net balances to be utilized for the purpose of calculating the capital amount as assets are treated as exposures and liabilities are treated as collateral.

“Roll-over risk” refers to the ability of the banking institution to have the maturity of existing liabilities/cash deposits or investment lengthened to a future date in the event the banking institution’s exposures/assets is not fully settled on the agreed settlement date.

“Currency mismatch” refers to instances where the amount of assets and liabilities that are subjected to set-off or cash management agreement are not denominated in the same currency.

“Cash Management Scheme” refers to instances where banking institutions are permitted to transfer credit or debit balances from individual accounts to a central group account on behalf of companies that are subsidiaries of the same holding company and whose financial activities are included in the group audited financial statements of such holding company.

2. APPLICATION OF SET-OFF

- 2.1 Where a client maintains both debit and credit balances with a banking institution, it may be permissible in certain circumstances, to set such balances off against one another for the purposes of completing the statutory returns; thus reporting net balances only.
- 2.2 Unless otherwise determined, set-off shall be allowed only if all of the following circumstances apply: -
 - 2.2.1 a legal right of set-off must exist and the reporting banking institution should have obtained a legal opinion to the effect that its right to apply set-off is legally well founded and would be enforceable in each relevant jurisdiction regardless of whether the counterparty is insolvent or bankrupt;
 - 2.2.2 the debit and credit balances must relate to the same person;
 - 2.2.3 both the debit and credit balances must be denominated in the same currency to eliminate the effect of foreign exchange rate fluctuation emanating from currency mismatch;
 - 2.2.4 the debit and credit balances must have identical maturities;
 - 2.2.5 The banking institution is able at anytime to determine those assets and liabilities with the same counterparty that are subject to the netting agreement;
 - 2.2.6 The banking institution is able to monitor and control the relevant exposures on a net basis and its roll-off risk.

3. CASH MANAGEMENT SCHEMES

Unless otherwise prescribed in this Circular, the reduction of balances resulting from the application of a cash management scheme shall be taken into account in completing the prescribed forms only where all of the following circumstances apply, namely: -

- 3.1 a cash management scheme shall be conducted only for those companies that are subsidiaries of the same holding company and that are included in the consolidated audited annual financial statements of such holding company, as well as for such holding company;
- 3.2 transfers of debit or credit balances from individual accounts to a central group account must be shown as actual transactions on individual accounts, as well as in the accounting records of the individual account holders, in order to ensure that the accounting system of a banking institution reflects the true debtor/creditor and legal relationships;
- 3.3 a banking institution must provide its clients with statements of account evidencing the effect of transfers, whenever such transfers are made between their accounts and a central group account, to enable its clients to make the necessary entries to ensure that their accounting records reflect their true debtor/creditor and legal relationships vis-à-vis the banking institution (except for un-cleared items, balances in the books of clients should therefore correspond to balances on client accounts in the accounting system of the banking institution);
- 3.4 a group account, or any other account to which transfers are made, must be in the name of a legal entity in order to protect the legal position of the banking institution;
- 3.5 transfers between client accounts and a central group account must be supported by legal authorization granted to the banking institution by its clients, including resolutions of clients' boards of directors, to effect such transfers;
- 3.6 agreements whereby authorization is granted as contemplated in paragraph 3.5 must legally limit the banking institution's risk to the debtor/creditor relationship that exists after transfer have been effected;
- 3.7 statutory returns must reflect the true debtor/creditor and legal relationships of the bank vis-à-vis its clients';

- 3.8 a banking institution entering into agreements relating to cash management schemes with its clients must ensure that the clients are fully aware that after the transfer of balances on their accounts, they have no claim against or obligation to the banking institution in respect of the amounts so transferred;
- 3.9 a banking institution must ensure that all agreements relating to cash management scheme entered into by it with clients are legal and binding;
- 3.10 all cash management schemes involving the transfer of balances among different legal entities, as well as a standardized agreement, shall be validated by the legal department of the relevant banking institution, and must be submitted to the Bank for its review.
- 3.11 For the purpose of reporting to the Bank on liquid assets holding position and minimum reserve requirements, banking institutions in Namibia shall report the gross balances of total deposits (i.e. including the capitalized interest portion during the reporting period prior to the application of set-off and cash management scheme where appropriate).

4. Effective date

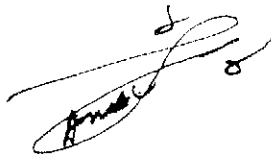
The effective date of the revised Circular is 31 March 2009. Banking institutions are therefore requested to ensure that all new agreements are drawn up in accordance with the requirements of this Circular.

5. Repeal

This Circular repeals and replaces the Circular BIA 5/98 on application of set-off and cash management schemes.

6. Acknowledgement of receipt

Two additional copies of this Circular are enclosed for the use of your institution's external 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.



MICHAEL MAMBO MUKETE
DIRECTOR