

BANKING INSTITUTIONS ACT

CIRCULAR - BIA 5/98

TO: ALL BANKS

DATE: 8 June 1998

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 balances resulting from the 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.

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 the liquidation or bankruptcy of the client or the banking institution;

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; and

2.2.4 the debit and credit balances must have identical maturities.

- 2.3 No set-off shall be allowed in respect of balances relating to clients, other than foreign banking institutions, outside Namibia.

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 uncleared 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 schemes entered into by it with clients are legal and binding; and
 - 3.10 all cash management schemes involving the transfer of balances among different legal entities, as well as a standardized agreement, providing for the conduct of such a scheme, entered into between a banking institution and its clients, must be submitted to the Bank for its approval.
4. 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.

**R W LAWRENCE
SENIOR MANAGER
BANK SUPERVISION DEPARTMENT**