GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N$8.80 WINDHOEK - 23 October 2024 No. 8483

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General Notice

BANK OF NAMIBIA

No. 662 2024

DETERMINATION UNDER THE BANKING INSTITUTIONS ACT, 2023:
DETERMINATION ON RECOVERY PLANS (BID-36)

In my capacity as the Governor of the Bank of Namibia (Bank) and under the power vested in the Bank in terms of section 108(3)(a) read with section 37(1) of the Banking Institutions Act, 2023 (Act No. 13 of 2023), I hereby issue the *(Determination on Recovery Plans (BID-36))*.

J. !GAWAXAB
GOVERNOR
BANK OF NAMIBIA Windhoek, 8 October 2024

Determination No. BID-36

RECOVERY PLANS

Arrangement of Paragraphs

PART I
PRELIMINARY

PART I
PRELIMINARY

1. Short Title – Recovery Plans

2. Authorisation – Authority for the Bank to issue this Determination is provided in section 108(3)(a) read with section 37(1) of the Banking Institutions Act, 2023 (Act No. 13 of 2023).

3. Definitions – Terms used in this Determination are as defined in the Act, as further defined below, or as reasonably implied by the contextual usage:

“Act” means the Banking Institutions Act, 2023 (Act No. 13 of 2023).

“stress-test” means an analysis conducted under extreme unfavourable but plausible economic scenarios which are designed to determine whether a banking institution has enough liquid assets, other funding sources and capital to withstand the impact of adverse market conditions.

“controlling company” means a company registered under section 18 of the Act as a controlling company in respect of a banking institution or microfinance banking institution.

"core business lines" means business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a banking group of which an institution forms part.

"critical functions" means those functions performed by a banking institution for third party service providers in circumstances where disruption to the provision of such functions, caused by the failure of the banking institution or microfinance banking institution, is considered likely to have adverse effects on financial stability or on the functioning of the real economy.

"critical shared services" means any activities or functions, whether performed internally or outsourced, that support critical functions of a banking institution, microfinance banking institution or controlling company and where a failure of such services would lead to a failure or disruption of critical functions.

"Domestic Systemically Important Banks (DSIBs)" means banking institutions whose financial distress or failure could cause considerable disruption to the domestic financial system and the wider economy. These are banking institutions that are considered domestically "too big to fail".

"financial stability" means the resilience of the domestic financial system to internal and external shocks, be it economic, financial, political or otherwise.

"idiosyncratic scenarios" means stress scenarios that are unique or specific to individual banking institution, microfinance banking institution or controlling company, or events that risk having serious negative consequences on a single banking institution, microfinance banking institution, a single banking group or an institution within a banking group.

"market-wide scenario" means an event that poses the risk of having serious negative consequences for the financial system or the real economy.

"material entity" means a subsidiary or foreign office of the company that is significant to the activities of critical operations or core business lines.

"non-DSIBs" means banking institutions whose distress or failure may not cause considerable disruption to the domestic financial system and the wider economy.

"real economy" means a set of inter-related economic production and consumption activities of goods and services developed in an economy.

"recovery option" means a set of one or more management actions or strategies to be taken by the entity or entities considered in the recovery plan, designed to maintain or restore financial soundness in a situation of financial stress.

"recovery plan" means a management tool developed and maintained by a banking institution, microfinance banking institution or controlling company to help manage its business and restore its financial viability in the event of financial distress.

"recovery triggers" means a set of qualitative and quantitative early warning indicators with specific limits/thresholds attached thereto that signify activation of the recovery plan.

PART II
STATEMENT OF POLICY

4. Purpose

This Determination is intended to −

(a) promote the financial stability and effective working of the banking system;

(b) ensure that banking institutions in Namibia are well prepared to react quickly to and recover from financial distress through their own actions, thereby preventing inordinate disruptions to the intermediation process and maintaining confidence in the financial system;

(c) provide guidance to banking institutions on the key elements of an effective recovery plan; and

(d) set out the Bank's approach and expectation in reviewing the recovery plans of banking institutions, microfinance banking institutions or controlling companies.

5. Application

This Determination applies to all banking institutions, microfinance banking institutions and controlling companies authorised to conduct business in Namibia on an individual or consolidated basis.

6. Responsibility

The Board of Directors of each banking institution, microfinance banking institution or controlling company of a banking institution or microfinance banking institution is responsible for establishing, implementing and regularly reviewing the recovery plan for all material entities within the banking group. The Board of Directors must ensure that the recovery plan is appropriate for the nature, scale and complexity of the business operation of the institutions and that the recovery plan includes adequate options for addressing both capital and liquidity difficulties.

PART III
IMPLEMENTATION AND SPECIFIC REQUIREMENTS

7. Regulatory requirements

A banking institution, microfinance banking institution or a controlling company of a banking institution or microfinance banking institution must, in terms of this Determination, develop and maintain recovery plans that are commensurate with the nature of their business, size and complexity. The recovery plans must cover all material entities within the banking group and must at a minimum include the following key elements for Domestic Systemically Important Banks (DSIBs) as well as for the non-Domestic Systemically Important Banks (non-DSIBs) with room for exemption for the non-DSIBs:

7.1 Governance structure and oversight

The recovery plans' governance structure and oversight must include the following components –

(a) Clear governance over the development, maintenance and execution of the recovery plan with adequate senior management and board oversight. The governance must entail a clear written description of the escalation/reporting, review and approval including decision making processes and procedures to be followed during the implementation of a recovery plan where all key persons involved are identified, with their roles and responsibilities well defined and assigned.

(b) The policies and procedures governing the approval of the recovery plan, including –

(i) Whether the recovery plan has been approved by the Board of Directors.

(ii) Whether the recovery plan for a banking institution, microfinance banking institution or controlling company has been reviewed by an internal auditor at least once in three years or when there have been material changes to the core business lines, material entities, critical functions and/ or critical shared services.

(c) A description of the internal escalation and decision-making process that applies when the indicators have been met, to consider and determine which recovery option may need to be applied in response to the situation of financial stress that has materialised.

(d) A description of the management information systems required, including a description of how it will be ensured that the information necessary for the implementation of recovery options, is available for decision-making in stressed conditions, in a reliable and timely way.

(e) Governance must cover allocation of sufficient resources to support the recovery planning process, clear responsibilities of business units and identification and/or appointment of a senior executive officer who shall be responsible for ensuring that the institution remain compliance with the requirements of this determination.

(f) The recovery plans must be fully embedded into and form an integral part of a controlling company and all material entities' existing overall risk management framework and practices. Regarding governance, management must, in clear terms, indicate how the preparation, review and approval process and implementation of the recovery plan link to the controlling company and material entities' risk management structure, through which the board and management establish and make decisions about the strategy and risk approach, articulation and monitoring of adherence to risk appetite, adequacy of policies and processes, risk limits in relation to the controlling company and material entities' strategy, and identify, measure, manage and control risks.

(g) A description of the measures and arrangements taken to ensure consistency between an individual recovery plan of a subsidiary, if applicable, and the banking group's (parent/shareholder) recovery plan.

7.2 Identification of core business lines, material entities, critical functions and critical shared services

A banking institution, microfinance banking institution or controlling company must establish a set of assessment criteria or framework for identification of core business lines, critical functions, critical shared services and material entities. The assessment criteria must include both qualitative elements (such as types and compositions of transactions and how these transactions are performed) and quantitative elements (such as amount and volume of transactions). A banking institution, microfinance banking institution or controlling company is also required to provide a detailed description of the process and metric for identifying the core business lines, critical functions and critical shared services.

7.2.1 Material entities

A banking institution, microfinance banking institution and controlling company must provide a detailed description of the legal and financial structures of the entity, or entities covered by the plan. This entails a description of intra-group interconnectedness with respect to any material legal entities or branches, including a description of the following matters:

(a) legal entities within which the core business lines and activities are located;

(b) all existing material intra-group exposures and funding relationships, capital flows within the entity or entities covered by the recovery plan, intra-group guarantees that are in place and intra-group guarantees that are expected to be in place when recovery action is required;

(c) legal interconnectedness, which covers material legally binding agreements between entities of a banking group including any profit and loss transfer agreements;

(d) operational interconnectedness, which covers functions that are centralised in one legal entity or branch and are important for the functioning of other legal entities, branches or the banking group, in particular centralised information technology functions, treasury functions, risk functions or administrative functions; and

(e) a description of any existing intra-group financial support agreements.

7.2.2 Critical functions

In determining the criticality of functions, a banking institution, microfinance banking institution or controlling company must assess and confirm that, based on their assessment of the following items, conclusion was reached on the criticality of such function to the operation of the banking institution, microfinance banking institution or controlling company –

(a) Analysis of the impact of the sudden discontinuation of the function and whether the provisions of such function can be substituted or not;

(b) Evaluation of the market for that function ("supply side analysis"); and

(c) Assessment of the impact of failure of a specific financial institution that performs those functions (firm-specific test).

7.2.3 Critical shared services

In determining the status of the shared services as being critical, a banking institution, microfinance banking institution or controlling company must ensure that the following elements are present:

(a) An activity, function or service is performed by either an internal unit, a separate legal entity within the banking group or an external service provider;

(b) An activity, function or service is performed for one or more business units or legal entities of the banking group; and

(c) The sudden or disorderly failure or malfunctioning of the shared service will lead to the collapse of, or present a serious impediment to the performance of a critical function.

7.3 Stress scenarios

A banking institution, microfinance banking institution or controlling company is required to run stress scenarios that are suitable for their recovery planning purposes. The stress scenarios should generally be of a particular severe nature which at a minimum should be in the form of idiosyncratic scenarios, a market-wide scenario or a combination of the two.

A banking institution, microfinance banking institution or controlling company must have a robust and comprehensive stress-testing programme in place as part of their risk management techniques, covering all material entities.

7.3.1 The stress-testing methods must be utilised to test the effectiveness, impact and feasibility of the institution's recovery plan against a range of stressful scenarios. This is to ensure that the institution's set of recovery options are both realistic and far-reaching enough to deal with a wide range of problems, which an individual banking institution, microfinance banking institution and/ or any other material entity may encounter.

7.3.2 The stress-test programme must be comprised of the following elements –

(a) Effective oversight of the stress-testing programme by the Board of Directors and Senior Management;

(b) Stress tests must include both quantitative and qualitative criteria;

(c) Stress scenarios must, as far as possible, cover on-and off-balance sheet positions of all major portfolios in the trading book and the banking book;

(d) A Banking institution or microfinance banking institution must adopt an integrated approach to stress testing and produce stress tests on an institution-wide basis (where stress tests cater for all major types of risk factors such as market, credit, country, liquidity and interest rate risks);

(e) Stress tests must be conducted at suitable intervals having regard to the nature of risks involved, but at least once a year;

(f) Stress tests must be based on events that are relevant to the banking institution or banking group concerned and must consider factors such as business and funding model, activities and structures, size or its interconnectedness to other institutions or to the financial system in general, and in particular, any identified vulnerabilities or weaknesses of the institution or banking group;

(g) A banking institution, microfinance banking institution or controlling company must keep its senior management, relevant business line managers and board risk committee closely informed of the results of stress-testing, drawing their attention to the potential risk and vulnerabilities identified and making recommendations for possible course of remedial actions (which varies from one bank to the next, depending on the circumstances of each case); and

(h) A banking institution, microfinance banking institution or controlling company must review annually and update the methodology and effectiveness of its stress-testing programme to take account of changes in portfolio characteristics and external conditions and to assess whether the underlying assumptions and scenarios are still valid and relevant.

7.4 Recovery triggers

7.4.1 A banking institution, microfinance banking institution or controlling company is required to develop and maintain a trigger framework, covering all material entities, to identify risks before severe crises occur and help the banking institution, micro banking institution or any of the material entities' initiate actions to restore financial stability. The mechanism must be fully embedded within the banking institutions', micro banking institutions' or material entities' existing risk management framework

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7.4.2 The recovery triggers must comprise of both qualitative and quantitative indicators that are relevant to each material entity. It is important for management to ensure that the sets of triggers employed by each material entity, covers a wide range of potential threats to each particular entity's viability such as a liquidity problem, capital shortfall, threat to earnings and loss of market confidence.

7.4.3 The set of triggers to be applied must be in a form of early warning indicators with specific limits/thresholds attached to them. These include, but are not limited to, the amount that represents the levels of minimum qualifying capital, earnings, liquid assets positions and non-performing loans, including the capturing and monitoring of historical data that support those triggers.

7.4.4 The set of triggers to be applied must be consistent with the risk management framework of the banking institution, microfinance banking institution or controlling company, including a description of those relevant triggers (early warning signals), which are used as part of the institution's or banking group's regular internal risk management process, where these relevant benchmarks are useful to inform the management that the indicators could potentially be breached.

7.5 Menu of credible recovery options

7.5.1 A banking institution, microfinance banking institution or controlling company must identify and develop a full set of feasible and achievable recovery options, in response to liquidity, capital and operational stresses, that could play a substantive role in preserving or restoring liquidity, earnings and capital levels, and ultimately, going concern viability of all material entities within the banking group.

7.5.2 When designing the menu of credible options, a banking institution, microfinance banking institution or controlling company must take a longer-term perspective on the business viability of all material entities, and not only focus purely on dealing with immediate stress situations.

7.5.3 The options must include a range of capital and liquidity actions required to maintain or restore the viability and financial position of the material entities covered by the recovery plan, to ensure the viability of critical functions and core business lines.

7.5.4 Arrangements and measures to ensure that the material entities covered by the recovery plan have adequate access to contingency funding sources, to ensure that it can carry on its operations and meet its obligations as they fall due. These measures must include external measures and, where appropriate, measures that aim at reorganising the available liquidity within the banking group. The contingency funding sources must include potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across banking group entities and business lines.

7.5.5 Arrangements and measures to reduce risk or to restructure business lines. A banking institution, microfinance banking institution or controlling company must conduct an analysis of possible material divestment of assets, legal entities, or business lines.

7.5.6 In assessing the credibility of recovery options, a banking institution, microfinance banking institution or controlling company must take into account the factors that have the potential to reduce the likelihood of success of options such as pledging of assets, adverse movement in the price of assets, conditions attached to placement of fund and line of credits, other encumbrances and legal charges attached to resources that may be earmarked as recovery option.

7.5.7 A banking institution, microfinance banking institution or controlling company must conduct an impact assessment of each recovery option, which shall include –

(a) A financial and operational impact assessment which sets out the expected impact on solvency, liquidity, funding positions, profitability and operations of the material entities covered by the recovery plan. Where relevant, the assessment must clearly identify the different entities of the banking group which may be affected by the option or be involved in its implementation; and

(b) An assessment of external impact and systemic consequences which sets out the expected impact on critical functions performed by the material entities, covered by the recovery plan and the impact on shareholders, customers, counterparties and, where applicable, on the rest of the banking group.

7.5.8 A banking institution, microfinance banking institution or controlling company must conduct a feasibility assessment of each recovery option, which shall include –

(a) An assessment of the risk associated with the recovery option, drawing on any experience of executing the recovery option or an equivalent measure;

(b) A detailed analysis and description of any material impediment to the effective and timely execution of the recovery option and a description of whether and how such impediments could be overcome;

(c) Where applicable, an analysis of potential impediments to the effective implementation of each recovery option which result from the structure of the banking group or from intra-group arrangements, including whether there are substantial practical or legal impediments to the prompt transfer of own funds, or the repayment of liabilities or assets within the banking group;

(d) Solutions to the potential impediments identified under subsections 7.5.8 (b) and (c) above;

(e) An assessment of the expected timeframe for the implementation and effectiveness of each recovery option; and

(f) An assessment of the effectiveness of each recovery option.

7.6 Communication and disclosure plan

7.6.1 A banking institution, microfinance banking institution, or controlling company must develop a comprehensive communication and disclosure plan to accompany the deployment of each recovery option(s), which must include at the minimum, the following aspects –

(a) identification of key stakeholders (both internal and external);
(b) approach to communication including the preferred channel; and
(c) personnel assignment for communication.

7.6.2 When designing the communication plan, management must carefully consider and address the potential adverse impact of communication and recovery action on its reputation, and subsequent knock-on effect, if any.

7.6.3 The communication and disclosure plan shall adequately document practical steps in terms of how the Bank will be informed during all stages of implementing the recovery plan.

8. Treatment of a banking groups' recovery plans

8.1 The Bank recognises the use of banking groups' recovery plans developed by banking institutions or microfinance banking institutions' parent companies for the entire banking group and where appropriate, a locally incorporated banking institution or microfinance banking institution may draw on the banking group recovery plan.

8.2 The banking institutions or microfinance banking institutions benefiting from the banking group's recovery plan are expected to fulfil the regulatory requirements as delineated in section 7 above. The banking institution or microfinance banking institution must further demonstrate to the Bank how such recovery plans are centred on local operations, how it is executable in Namibia and how the banking institution or microfinance banking institution fits into the broad banking group structure.

8.3 The interconnectedness and dependencies between the banking group-level and local-level plan, in terms of possible shared resources, must be detailed in the banking institution or microfinance banking's submission to the Bank. This requirement is necessary to avoid instances where the activation of the banking group recovery options may potentially render some options unavailable either at local level or at the banking group level, in other jurisdictions.

9. Review and testing of recovery plans

9.1 Senior management of a banking institution, microfinance banking institution or controlling company are expected in terms of this Determination, to conduct an annual scenario analysis test and review the effectiveness of the recovery plan.

9.2 If any material changes or adjustment are effected to the recovery plan regarding any of the above-mentioned key elements of the recovery plan, a test and review must be carried out immediately instead of an annual one.

10. Reporting requirements

10.1 The recovery plan must be submitted, in a format as specified in the template, to the Bank once a year (180 days after the financial year end) for review, and must reach the Bank by not later than the 180th day of the financial year end. However, the Bank may, whenever it deems it necessary, request for the submission of the recovery plan from any banking institution, microfinance banking institution or controlling company at an early interval than the above-mentioned specified period.

10.2 If information contained in the report submitted to the Bank for review by the banking institution, microfinance banking institution or controlling company is found to be inadequate to enable the Bank to make a comprehensive assessment of the banking institution, banking institution, microfinance banking institution or controlling company's recovery plan, the Bank may request additional information from the reporting banking institution, microfinance banking institution or controlling company.

PART IV
CORRECTIVE MEASURES

11. Remedial measures

If a banking institution, microfinance banking institution or controlling company fails to comply with this Determination, the Bank may pursue any remedial measures as provided under the Act, or any other measures that the Bank may deem appropriate in the interest of prudent banking practice.

PART V
EFFECTIVE DATE

12. Effective date

12.1 For banking institutions and microfinance banking institutions – this Determination comes into force on the date of publication in the *Gazette*.

12.2 For controlling companies of banking institutions or microfinance banking Institutions – this Determination will come intoforce on **1 January 2027** to allow additional time for the establishment of recovery plans at controlling company level.