

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**FINANCIAL INSTITUTIONS
SUPERVISORY BILL**

(As read a First Time)

(Introduced by the Minister of Finance)

ACT

To provide for the continued existence of an Authority to exercise supervision over compliance with financial services laws; to provide for the functions, powers and management of the Authority; to provide for the financing of the Authority; to provide for an Appeal Board to hear and determine certain matters; and to provide for incidental matters.

(Signed by the President on 26 November 2019)

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BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:-

PART 1
PRELIMINARY

Definitions

1. In this Act, unless the context indicates otherwise -

“Adjudicator” means the Financial Services Adjudicator as defined in section 1 of the Financial Services Adjudicator Act and includes a Deputy Adjudicator and an *ad-hoc* Adjudicator as defined in that section;

“advisory committee” means the advisory committee established under section 20;

“affiliate” means an affiliate as defined in section 1 of the Financial Institutions and Markets Act;

“Appeal Board” means the Appeal Board established by section 39;

“appellant” means a person referred to in section 45(2) who lodges an appeal with the Appeal Board;

“auditor” means a person registered as an accountant and auditor under section 23 of the Public Accountants and Auditors Act, and who has been admitted as a member of the Institute of Chartered Accountants of Namibia referred to in that Act;

“Authority” means the Namibia Financial Institutions Supervisory Authority referred to in section 2;

“Board” means the Board of the Authority referred to in section 7;

“chief executive officer” means the person appointed as chief executive officer of the Authority under section 26;

“committee” means any committee of the Board contemplated in section 19(1);

“court” means any court of Namibia having jurisdiction in the particular matter or in the particular circumstances;

“electronic” means signs, signals, writing, images, sounds, including voice or intelligence of any nature emitted, transmitted or received, in whole or in part, by any wire, cable, radio, optical, photo-electronic, photo-optical or other electromagnetic or telecommunication system or medium or by any similar technical system or medium, including the storage thereof, and for greater certainty includes the internet;

“entity” means a corporate body, any other juristic person, a trust, partnership, fund, association, joint venture and any other unincorporated organisation or the government of any country or any subdivision thereof;

“financial crime” means a financial crime as defined in section 1 of the Financial Institutions and Markets Act and section 1 of the Microlending Act, and in any other applicable financial services law;

“financial institution” means a financial institution as defined in section 1 of the Financial Institutions and Markets Act, a microlender as defined in section 1 of the Microlending Act, and any other person or entity defined as such in any other applicable financial services law;

“Financial Institutions and Markets Act” means the Financial Institutions and Markets Act, 2020 (Act No. of 2020) and includes the regulations made under that Act and any standards, rules, guidelines or other subordinate measures issued under that Act;

“financial institutions and markets sector” means the sector comprising financial institutions and financial intermediaries regulated and supervised by the Authority under the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services law;

“financial intermediary” means a financial intermediary as defined in section 1 of the Financial Institutions and Markets Act and any other person or entity defined as such in any other applicable financial services law;

“financial service” means a financial service as defined in section 1 of the Financial Institutions and Markets Act, a microlending transaction as defined in section 1 of the Microlending Act and a financial service as defined in any other applicable financial services law;

“Financial Services Adjudicator Act” means the Financial Services Adjudicator Act, 2020 (Act No. of 2020);

“financial services law” means any of the financial services laws as defined in section 1 of the Financial Institutions and Markets Act and any other law which is declared by or under another law to be, or which declares itself to be, a financial services law;

“generally accepted accounting practice” means the frameworks adopted by the Institute of Chartered Accountants of Namibia referred to in section 1 of the Public Accountants’ and Auditors’ Act;

“hearing” means the hearing of an appeal by the Appeal Board under Part 5 in any format described in section 46(2);

“Microlending Act” means the Microlending Act, 2018 (Act No. 7 of 2018);

“Minister” means the Minister responsible for finance;

“Office of the Adjudicator” means the Office of the Financial Services Adjudicator established by section 4 of the Financial Services Adjudicator Act;

“Public Accountants’ and Auditors’ Act” means the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

“Public Enterprises Governance Act” means the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006);

“prescribed” means prescribed by the Minister by regulations made under section 59 or rules made under section 45(5);

“regulations” means regulations made by the Minister under section 59;

“respondent” means a person against whom an appeal is lodged with the Appeal Board under section 45(2);

“self-regulatory organisation” means a self-regulatory organisation referred to in section 1 of the Financial Institutions and Markets Act; and

“this Act” includes the regulations made under this Act and any standards, rules, guidelines or other subordinate measures issued under this Act.

PART 2

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

Namibia Financial Institutions Supervisory Authority

2. (1) The juristic person known as the Namibia Financial Institutions Supervisory Authority established by section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001), despite the repeal of that Act by this Act, continues to exist as if it were a juristic person established by this Act.

(2) The shortened form of the name of the Authority is “NAMFISA” which name may be used together with or independently of its name referred to in subsection (1).

Objects of Authority

3. (1) The objects of the Authority are to foster -
- (a) the financial soundness of financial institutions and financial intermediaries;
 - (b) the stability of the financial institutions and financial markets sector;
 - (c) the highest standards of conduct of business by financial institutions and financial intermediaries;
 - (d) the fairness, efficiency and orderliness of the financial institutions and markets sector;
 - (e) the protection of consumers of financial services;
 - (f) the promotion of public awareness and understanding of the Authority, financial institutions and financial intermediaries; and
 - (g) the reduction and deterrence of financial crime.
- (2) In pursuing its objects, the Authority must -
- (a) monitor and assess risks in financial institutions and financial intermediaries and take steps to reduce risks as required in order to protect the public interest;

- (b) take into account the impact of the costs of regulation and supervision on public access to financial services; and
 - (c) balance the effectiveness and costs of regulation and supervision with the efficiency of the financial system.
- (3) Despite that the regulation and supervision of financial institutions and financial intermediaries by the Authority may reduce the risk that financial institutions and financial intermediaries will fail, regulation and supervision must be carried out having regard to the fact that -
- (a) boards of directors of financial institutions and financial intermediaries that are corporate bodies and those persons having equivalent powers, duties and responsibilities in connection with financial institutions and financial intermediaries that are unincorporated entities are responsible for the management of those financial institutions and financial intermediaries;
 - (b) financial institutions and financial intermediaries carry on business in a competitive environment that necessitates the management of risk; and
 - (c) financial institutions and financial intermediaries can experience financial difficulties that can lead to their failure.

Functions and powers of Authority

4. (1) The functions of the Authority are to -
- (a) regulate and supervise -
 - (i) financial institutions and financial intermediaries and other persons who are subject to the Financial Institutions and Markets Act;
 - (ii) money lenders as defined in section 1 of the Usury Act, 1968 (Act No. 73 of 1968);
 - (iii) microlenders as defined in section 1 of the Microlending Act; and
 - (iv) any other persons or entities that in terms of any applicable financial services law are required to be regulated and supervised by the Authority;
 - (b) advise the Minister on matters related to financial institutions, financial intermediaries and financial markets;
 - (c) monitor risks within the financial institutions and markets sector and take such action as may be required to reduce risk as necessary, including supervising and enforcing compliance with the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services law;

- (d) exercise an oversight role over the macro- and micro-prudential practices, activities and policies of financial institutions and financial intermediaries;
 - (e) provide, fund, promote or otherwise support consumer education, consumer awareness and consumer confidence regarding consumer rights, financial services, financial institutions and financial intermediaries, including, but not limited to -
 - (i) research, market monitoring, surveillance and reporting;
 - (ii) publishing consumer-related materials;
 - (iii) establishing, participating in, or participating in the establishment of, local, regional or international forums dealing with consumer education, financial inclusion, financial literacy and consumer protection matters; and
 - (iv) coordinating or collaborating with any local, regional or foreign entity in respect of the activities referred to in subparagraphs (i) to (iii); and
 - (f) do any other thing that has been assigned to the Authority by this Act, the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services law.
- (2) In order to achieve its objects set out in section 3 and to perform its functions set out in subsection (1) the Authority may -
- (a) employ or otherwise engage persons to render services to the Authority or to otherwise assist it;
 - (b) hire, purchase or otherwise acquire moveable or immovable property and let, sell or otherwise dispose of such property;
 - (c) establish or participate in the operations of a non-profit company, a partnership, trust or an unincorporated joint venture or a similar arrangement;
 - (d) take any steps conducive to consumer education, financial inclusion and the promotion of awareness of the nature and availability of the Authority, the Office of the Adjudicator and other enforcement measures established by or under this Act, the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services law, including arrangements with the Office of the Adjudicator, industry associations or organisations, consumer organisations, financial institutions and financial intermediaries and their representatives to assist in transferring knowledge and information to the general public on matters dealt with in this Act, the Financial Institutions and Markets Act, the Microlending Act and in any other applicable financial services law;
 - (e) request for any information or documents which the Authority reasonably requires for the proper exercise of its powers or the performance of its

functions under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law, from any financial institution, financial intermediary or from any other person who is, has been or might be, subject to regulation or supervision by the Authority;

- (f) insure itself against any loss, damage, risk or liability which it may suffer or incur in good faith;
- (g) enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;
- (h) accept any money or goods donated or bequeathed to it;
- (i) borrow money to the limit approved by the Minister; and
- (j) do any other thing necessary to perform its duties and carry out its responsibilities under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

(3) In order to ensure the proper performance of its functions or the effective supervision of financial institutions and financial intermediaries under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law, the Authority may, through or by means of -

- (a) the Board;
- (b) the chief executive officer or any employee of the Authority authorised in writing by the Board; or
- (c) any other person or entity authorised in writing by the Board,

conduct any investigation or enquiry into any matter regulated by this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

(4) For the purpose of an investigation and or enquiry under subsection (3), the Board, the chief executive officer or an employee or a person or an entity authorised by the Board under that subsection may -

- (a) summon any person who -
 - (i) in the opinion of the Board, the chief executive officer or employee, person or entity has in his or her possession or custody or under his or her control any information of material importance concerning the matter under investigation or enquiry; or
 - (ii) is suspected or believed to have in his or her possession or custody or under his or her control any book, document or thing that may have a bearing on the investigation or enquiry,

to-

- (aa) furnish that information, book, document or thing to the Board, chief executive officer or employee, person or entity; or
 - (bb) appear before the Board, the chief executive officer or employee, person or entity authorised by the Board to investigate the matter or conduct the enquiry at the time and place specified in the summons to be examined or to produce that information, book, document or thing;
- (b) call upon and administer an oath to or accept an affirmation from any person present at the inquiry who was or might have been summoned in terms of paragraph (a); and
- (c) examine any person referred to in paragraph (b) or require that person to produce at the inquiry any book, document or thing referred to in paragraph (a).
- (5) A summons referred to in subsection (4)(a) must be -
 - (a) in the prescribed form;
 - (b) signed by the chairperson of the Board, the chief executive officer or a person authorised in writing by the Board, as the case may be; and
 - (c) served on the person concerned by the chairperson of the Board or the chief executive officer, as the case may be, or by any other person authorised in writing by the Board or by registered post addressed to the person's last known address or in any other prescribed manner.
- (6) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce a book, document or thing before a court of law, applies, subject to necessary changes required by context, in relation to the examination of a person or the production of any book, document or thing under subsection (4)(c).
- (7) A person being examined under this section may be required to answer any question put to that person at the examination despite that the answer might incriminate that person.
- (8) An incriminating answer directly obtained or incriminating evidence directly derived from an examination under this section is not admissible as evidence in criminal proceedings in a court against that the person, except in criminal proceedings where the person is charged with an offence relating to -
 - (a) an oath or affirmation;
 - (b) giving false evidence;
 - (c) making a false statement; or
 - (d) deliberate failure to answer questions fully or satisfactorily.

(9) Where any person being examined in terms of the provisions of this section is -

- (a) obliged to answer questions which may incriminate him or her; or
- (b) to be tried on a criminal charge and the evidence may prejudice him or her at the trial,

the person presiding at the examination may order that such part of the examination be held *in camera* and that no information regarding such questions and answers may be published in any manner whatsoever.

(10) Any person who contravenes or fails to comply with any provision of an order contemplated in subsection (9) commits an offence and is liable on conviction to the penalty mentioned in subsection (5) of section 154 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(11) Any person who attends an investigation or enquiry after having been summoned under subsection (4)(a) is entitled to receive from the funds of the Authority such compensation in respect of expenses incurred by him or her in connection with such attendance as he or she would be entitled to receive if he or she was a witness attending criminal proceedings before a magistrates' court.

(12) Any person who -

- (a) after having been duly summoned in terms of subsection (4)(a), without sufficient cause fails to -
 - (i) attend at the date, time and place specified in the summons; or
 - (ii) remain in attendance until excused by the person conducting the investigation or presiding at the enquiry; or
- (b) having been called upon to take an oath or make an affirmation in terms of subsection (4)(b), without sufficient cause -
 - (i) refuses to be sworn or to affirm as a witness; or
 - (ii) fails to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her or to produce any book, document or thing in his or her possession or custody or under his or her control which he or she has been required to produce; or
- (c) prevents another person from obeying a summons issued under subsection (4)(a) or from giving evidence or producing a book, document or thing which he or she in terms of subsection 4(c) is required to give or produce,

commits an offence and is liable on conviction to a fine not exceeding N\$80 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(13) Any person who, after having been sworn or after affirmation as a witness in terms of this section, gives false evidence or makes a false statement on any matter knowing that evidence or statement to be false or not believing the evidence or statement to be true commits an offence and on conviction is liable to the penalties prescribed by law for the crime of perjury.

Minister may issue policy directions to Authority

5. (1) The Minister may issue general policy guidelines to the Authority, not inconsistent with the provisions of this Act, about the policies or priorities adopted or to be adopted by the Authority in exercising powers and performing functions under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law, and subject to which the Authority must exercise the powers vested in it by virtue of, and perform the functions entrusted to it by, this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

(2) The policy guidelines referred to in subsection (1) may only be issued if the Minister is satisfied that it is necessary to do so to promote the objects of the Authority or to protect the stability of the financial system of Namibia and must be prepared after consultation with the Authority.

(3) The Minister must follow such process as the Minister considers expedient to obtain the views of stakeholders in the financial services industry before issuing guidelines in terms of subsection (1).

(4) The Minister may, where appropriate, publish any guidelines issued in terms of subsection (1) in the *Gazette*.

General conduct of business by Authority

6. (1) The Board must ensure that any function or responsibility under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law that is entrusted to or to be performed by the Authority, the chief executive officer or an employee of the Authority is discharged or performed with honesty, integrity and fairness and within a reasonable period of time.

(2) The Board must ensure that every member and alternate member of the Board, including the chief executive officer, and each employee of the Authority signs a code of conduct referred to in section 10(2)(j).

PART 3 MANAGEMENT AND CONTROL OF AUTHORITY

Board of Authority

7. (1) The Authority must have a Board which, subject to this Act, is responsible for the policy, management and control of the affairs of the Authority.

(2) The Authority is a public enterprise as defined in the Public Enterprises Governance Act and its governance must, unless otherwise exempted under that Act, be structured and conducted in accordance with the provisions of that Act.

(3) The chief executive officer is an *ex officio* member of the Board and -

- (a) in that capacity he or she is entitled to vote on matters relating to or concerning the performance of regulatory or supervisory functions or exercise of regulatory or supervisory powers by the Authority under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law; but
- (b) the chief executive officer may not serve as the chairperson of the Board.
- (4) The Minister may appoint an alternate member for each member of the Board.

Appointment of members

8. (1) The Board must be constituted and its members and alternate members, including the chairperson and the vice-chairperson of the Board, must be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the Public Enterprises Governance Act.

(2) In addition to any advice given to him or her pursuant to section 14(1) (c) the Public Enterprises Governance Act, the Minister when appointing members or alternate members of the Board must -

- (a) have due regard to the integrity and stability of the financial institutions and markets sector in Namibia and the public interest; and
- (b) appoint persons with appropriate and relevant knowledge, skills or experience in the business of financial institutions and financial intermediaries.

(3) The Minister must, as soon as possible after an appointment has been made, publish in the *Gazette* the names of the individuals appointed as members and the individuals appointed as alternate members of the Board and their dates of appointment.

(4) Despite subsection (3), a failure to publish the names of members or alternate members of the Board pursuant to that subsection does not invalidate any action or decision taken by the Board, if the members or alternate members were properly appointed.

Disqualification for appointment

9. (1) Subject to subsection (2), a person is not eligible for appointment as a member or an alternate member of the Board or as chief executive officer, if that person -

- (a) is not a Namibian citizen or is not lawfully admitted to Namibia for permanent residence;
- (b) is a member of Parliament or of a regional or local authority council, unless he or she ceases to be such a member before the date of the proposed appointment;
- (c) is an office-bearer of any political party, unless he or she ceases to be such an office-bearer before the date of the proposed appointment;

- (d) manages or is employed by a financial institution or financial intermediary or has any financial interest in any financial institution or financial intermediary or any business having a financial interest in any product or industry that is or may be regulated by the Authority, that is likely to impair or prejudicially affect the member's objectivity or impartiality in the exercise or performance of his or her powers or functions as a member of the Board, unless he or she ceases to so manage or to be so employed or to have the financial interest before the date of the proposed appointment;
- (e) has any other financial or other interest that is likely to prejudicially affect the performance of his or her duties as member of the Board;
- (f) has during the period of 10 years immediately preceding the date of commencement of this Act or at any time after that date been convicted, whether in Namibia or elsewhere, of an offence and has been sentenced to imprisonment without the option of a fine;
- (g) is an unrehabilitated insolvent;
- (h) has under any law been declared to be of unsound mind or under legal disability;
- (i) has been removed from an office of trust; or
- (j) has been sanctioned by any national or international statutory regulatory body for the contravention of a law relating to the regulation and supervision of financial institutions or financial intermediaries.

(2) Despite subsection (1)(a), the Minister may, where he or she considers it necessary and subject to the Immigration Control Act 1993 (Act No. 7 of 1993), appoint a person as a member or an alternate member of the Board who is not a Namibian citizen or lawfully admitted to permanent residency in Namibia.

Functions and powers of Board

10. (1) The Board is responsible for the supervision and control of the management of the affairs of the Authority and it must subject to the overall policy directions issued by the Minister in accordance with section 5, on behalf of the Authority, perform all the functions assigned to, and exercise all the powers conferred on, the Authority or the Board by this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable law.

(2) Without derogating from the generality of subsection (1), the Board must -

- (a) comply with any request by the Minister for information relating to the performance of the Authority's functions;
- (b) on recommendation of the chief executive officer, and subject to consultation with the Minister in particular cases and having due regard to domestic circumstances, foster the adoption and maintenance by the Authority of supervisory policies and procedures that are generally in accordance with international standards of financial supervision, and

which are relevant to the circumstances of Namibia, and ensure that such policies and procedures are made public if necessary;

- (c) on an annual basis establish the objectives of the Authority for the following year;
- (d) after consultation with the Minister on an annual basis review and approve the overall remuneration structure and other conditions of service of the chief executive officer and senior management staff of the Authority;
- (e) on an annual basis review and approve the overall remuneration structure and other conditions of service of the other management staff and other employees of the Authority, as proposed by the chief executive officer;
- (f) on an annual basis, review and approve the business and financial plan of the Authority for the following year, prepared and submitted to the Board by the chief executive officer pursuant to section 27(3)(a);
- (g) prepare the annual financial statements of the Authority in accordance with generally accepted accounting practice and section 37 and approve those statements, and cause those annual financial statements to be audited in accordance with section 35, and submitted to the Minister in accordance with section 36(1)(a);
- (h) prepare an annual report in accordance with section 37 which report must be submitted to the Minister in accordance with section 36(1)(b);
- (i) with the prior approval of the Minister, establish the investment policy, standards and procedures referred to in section 31(7); and
- (j) review and approve the code of conduct established in terms of section 27(2) at least once every two years and file a copy of that code of conduct with the Minister forthwith after its approval.

Conduct of members of Board

- 11. (1) A member or an alternate member of the Board must -
 - (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the Authority;
 - (b) act with fidelity, honesty, integrity and in the best interests of the Authority in managing its financial affairs; and
 - (c) comply with any applicable code of conduct referred to in section 10(2)(j).
- (2) A member or an alternate member of the Board may not -
 - (a) act in a way that is inconsistent with the responsibilities of the Board in terms of this Act; or

(b) use the position and privileges of, or confidential information obtained as, a member of the Board, for personal gain or to improperly benefit another person.

(3) A person who contravenes or fails to comply with subsection (2) or a code of conduct referred to in section (1)(c) commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) A member or an alternate member of the Board who contravenes or fails to comply with subsection (1) or (2), in addition to the penalty provided for in subsection (3), commits an act of misconduct for which he or she is liable to disciplinary action being taken against him or her, including removal from office as contemplated in section 15(2)(b).

Governance agreement with Board

12. (1) The Minister and the Board must within one month of the appointment of the Board members enter into a written governance agreement contemplated in section 17 of the Public Enterprises Governance Act.

(2) The agreement referred to in subsection (1) must contain the matters contained in section 17 of the Public Enterprises Governance Act and the business and financial plan contemplated in section 19 of that Act.

Performance agreements with individual Board members

13. (1) The Minister must, within one month of the appointment of a member of the Board, enter into a performance agreement contemplated in section 18 of the Public Enterprises Governance Act with that member of the Board.

(2) The agreement referred to in subsection (1) must contain the matters contained in section 18 of the Public Enterprises Governance Act.

Term of office of members

14. (1) Unless a different determination has been made in terms of section 14(1)(d) of the Public Enterprises Governance Act, and subject to subsection (2), the term of office of a member or an alternate member of the Board is three years.

(2) A member or an alternate member whose term of office has expired, may be re-appointed as a member or an alternate member.

(3) When a vacancy arises on the Board, the Minister must appoint a member or an alternate member for the unexpired portion of the term of office of the member who has vacated his or her office.

Vacation of office

15. (1) A member or an alternate member vacates office as member or an alternate member if that member or alternate member -

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- (a) resigns as a member or an alternate member by giving not less than one month's written notice to the Minister;
 - (b) in the case of a member, has without the leave of the Board, been absent from three consecutive meetings of the Board;
 - (c) has become subject to any disqualification referred to in section 9; or
 - (d) is removed from office under subsection (2).
- (2) The Minister may by written notice remove any member or alternate member from his or her office if -
- (a) the Minister is satisfied that that member or alternate member is by reason of his or her physical or mental condition or for any other reason incapable of acting as such member;
 - (b) that member or alternate member is found guilty of conduct which renders him or her unable or unfit to efficiently discharge the functions of the office as a member or an alternate member or has taken part in the discussion of, or has voted in connection with, any matter in which he or she has an interest; or
 - (c) that member or alternate member is guilty of conduct prejudicial to the objectives of the Authority.
- (3) The Minister may only so remove a member or an alternate member from office after giving written notice to that member or alternate member and after affording him or her a reasonable opportunity to be heard.
- (4) The Minister may suspend a member or an alternate member from office without complying with subsection (3), if the Minister is satisfied that the member or alternate member is guilty of dishonesty, gross misconduct or other unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Authority or the financial system in Namibia, but the Minister must give notice to the member or alternate member as soon as practicable thereafter and consider any representations made by the member or alternate member on the matter.
- (5) If a member or an alternate member of the Board dies or the office of a member or alternate member becomes vacant as a result of the happening of an event referred to in subsection (1), the Minister may, within a period of 90 days from the date of the death or the happening of the event and with due regard to section 9, appoint a person to fill the vacancy for the unexpired portion of the term of office of the member or alternate member concerned.
- (6) If at any time during the term of office of the Board -
- (a) the offices of all the members of the Board become vacant; or
 - (b) the number of members of the Board is reduced to less than the number of members required for a quorum of the Board,

the Minister may, despite anything to the contrary contained in this Act or any other law and if circumstances of a pressing or urgent nature so require, appoint suitably qualified persons on a temporary basis to serve on the Board until new members are appointed.

(7) The appointment of a person as member of a Board pursuant to subsection (6) ceases to be of effect upon the earlier of -

- (a) the expiry of a period of six months from the date of the appointment, but that period may be extended, once only, by the Minister for an additional period of not more than two months; or
- (b) the appointment of a person as a member of the Board pursuant to subsection (5).

(8) A member or an alternate member who participated as a member of the Board in the consideration of any matter may not represent or appear before the Authority on behalf of a party in relation to that matter.

(9) A person who contravenes or fails to comply with subsection (8) commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Chairperson of Board

16. (1) The Minister must, subject to section 8, appoint a chairperson and a vice-chairperson from among the members of the Board.

(2) The chairperson or in his or her absence, the vice-chairperson must preside at a meeting of the Board.

(3) If both the chairperson and the vice-chairperson are for any reason unable to preside over a meeting of the Board, the members present must elect a member from among themselves to act as chairperson of the Board for that meeting.

Meetings of Board

17. (1) Meetings of the Board may be held at such date, time and place as the Board may determine, but in any case not less than once every three months.

(2) The chairperson -

- (a) may at any time on his or her own initiative; or
- (b) must at the written request of the Minister or at the written request of a majority of the members of the Board,

convene an extraordinary meeting of the Board.

(3) The majority of the members constitute a quorum at a meeting of the Board.

(4) The chairperson must cause reasonable notice of every meeting of the Board to be given to the members.

(5) The decision of a majority of the members present and voting at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.

(6) Despite subsection (5), a decision of the Board approving standards made pursuant to section 60 of this Act and sections 409 and 410 of the Financial Institutions and Markets Act must be agreed to by at least four members present and entitled to vote at a meeting of the Board.

(7) A decision of the Board or an act performed under the authority of the Board is not invalid only by reason of -

- (a) a vacancy on the Board; or
- (b) the fact that a person not entitled to sit as a member of the Board was in attendance when the decision was taken or act authorised,

if the decision was taken or act authorised by a majority of the members who were present and entitled to vote at a meeting of the Board.

(8) The Board must cause minutes to be kept of the proceedings at its meetings and the meetings of its committees.

(9) Subject to subsection (10), all meetings of the Board where any person makes representations to the Board or presents arguments on a question of law or fact to the Board as well as any hearing before any organ of the Authority must be open to the public, except that in the case of a meeting or part of a meeting where the members of the Board only deliberate among themselves may be open or closed to the public as the Board may decide.

(10) The Board may decide to close the whole or part of any meeting or hearing that in terms of subsection (9) must be open to the public on the grounds that such meeting or part of a meeting will relate to or disclose -

- (a) matters that must be kept secret in the interest of national security;
- (b) matters relating to the internal personnel rules and practices of the Authority;
- (c) trade secrets or commercial or financial information that is privileged or confidential; or
- (d) information of a personal nature the disclosure of which would constitute an unwarranted invasion of personal privacy.

(11) In determining whether to close a meeting to the public the Board may require a person requesting that action to give reasons why that meeting must be closed to the public, in a meeting of the Board that is closed to the public.

(12) The grounds for closing a meeting to the public must be recorded and that recording must state the provision of this section authorising that closing.

(13) Despite subsection (5), a written resolution not passed at a meeting of the Board but signed by all the members of the Board is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted, and that resolution must be recorded in the minutes of the next meeting of the Board.

(14) For the purposes of this section, “member” includes an alternate member present at a particular meeting of the Board during the absence or vacancy in the office of the member for whom he or she is appointed as an alternate member.

Consultation with Minister

18. The Board may consult with the Minister -

- (a) on the exercise of the powers conferred upon, and the performance of the duties assigned to, the Authority by this Act, the Financial Institutions and Markets Act or by any other law as the Minister may determine; and
- (b) on any other matter that the Board wishes to bring to the attention of the Minister.

Committees of Board

19. (1) The Board may, subject to such terms and conditions as it may determine, from time to time establish one or more committees to -

- (a) assist and advise the Board in the exercise of its powers and performance of its duties; and
- (b) perform any function or exercise any power that the Board may assign or delegate to that committee.

(2) A committee established under subsection (1) must consist of at least one member of the Board and such other person or persons as the Board may determine, and that committee may, with the approval of the Board, co-opt persons of special expertise to advise it in the performance of its functions, but the co-opted person is not entitled to vote at any such meeting.

(3) The Board may not appoint as a member of a committee any person who would be disqualified under section 9 from becoming a member of the Board.

(4) The Board must appoint a committee to consider and recommend to the Board the approval of standards made pursuant to section 60 of this Act and sections 409 and 410 of the Financial Institutions and Markets Act.

(5) The Board must designate a member of the Board as chairperson of a committee.

(6) The Board may by notice in writing remove a member of a committee from that committee if -

-
- (a) the member has failed to perform the functions or exercise the powers assigned or delegated to that committee in a satisfactory manner or is unable to perform them effectively;
 - (b) the member has failed to comply with or breached any applicable code of conduct; or
 - (c) the conduct of the member impacts negatively on the integrity of the Authority or the committee in question.

(7) The Board may only so remove a member of a committee from the committee after giving written notice to that member and after affording the member a reasonable opportunity to be heard.

(8) The Board may suspend a member of the committee from the committee without complying with subsection (7), if the Board is satisfied that the member is guilty of dishonesty, gross misconduct or other unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Authority or the financial system in Namibia, but the Board must give notice to the member as soon as practicable thereafter and consider any representations made by the member on the matter.

(9) The Board may at any time dissolve or reconstitute a committee.

(10) The Board is not divested or relieved of a power or function which has been delegated or assigned to a committee.

(11) A decision by a committee in the exercise of a power delegated to the committee is subject to approval by the Board and the Board may at any time vary or set aside the decision.

(12) Sections 11, 16(2) and (3) and 17(3) to (7) and (10) to (13), with the changes required by the context, apply to members of a committee who are not members of the Board.

(13) The person presiding at a meeting of a committee must cause a record of the minutes of the proceedings of the meeting to be kept and must cause that record to be submitted to the Board as soon as possible after the meeting.

(14) The Board may make rules, not inconsistent with rules made under section 23, to regulate the procedures to be followed at meetings of a committee.

Advisory committee

20. (1) The Board must establish an advisory committee which must perform functions in accordance with the provisions of this Act.

(2) The advisory committee consists of at least one member of the Board and not less than four other members appointed by the Board who are -

- (a) nominated by industry associations and self-regulatory organisations; and

(b) persons representative of consumers of financial services.

(3) The chief executive officer is a member of the advisory committee, but does not have voting power on matters on which the chief executive officer is to be advised by the committee.

(4) The Board must appoint a chairperson of the advisory committee who must be a member of the Board and the members of the advisory committee must, at their first meeting, elect from their number a vice-chairperson of the committee.

(5) A member of the advisory committee, other than the chief executive officer, holds office for three years and, at the expiration of that period, is eligible for re-appointment.

(6) If, on the expiry of the term of office of a member of the advisory committee, a re-appointment of the member has not been made or a new member has not been appointed, the former member may at the request of the Board remain in office until the re-appointment or new appointment.

(7) The Board may, on good cause shown, by notice in writing remove a member of the advisory committee on the grounds of misconduct, incapacity or incompetence after having given the member a reasonable opportunity to be heard.

(8) The Board may suspend a member of the advisory committee from the advisory committee without complying with subsection (7), if the Board is satisfied that the member is guilty of dishonesty, gross misconduct or other unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Authority or the financial system in Namibia, but the Board must give notice to the member as soon as practicable thereafter and consider any representations made by the member on the matter.

Meetings of advisory committee

21. (1) The advisory committee may, after consultation with the Board, meet or otherwise arrange for the performance of its functions and regulate its meetings.

(2) The chairperson of the advisory committee may at any time convene an extraordinary meeting of the advisory committee to be held at a date, time and place determined by the chairperson.

(3) A majority of the members of the advisory committee, one of whom must be a member of the Board, constitutes a quorum for a meeting of the advisory committee.

(4) The decision of a majority of the members of the advisory committee present at any meeting thereof is the decision of the advisory committee, and in the case of an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

Functions of advisory committee

22. (1) The advisory committee must, at the request of the Board, investigate and report or advise on any policy, administrative, technical or supervisory matters concerning financial institutions, financial intermediaries and financial services.

(2) The advisory committee must advise the Board on any other matter referred to it by the Board.

(3) The advisory committee may appoint an expert or such other person as it may consider necessary to assist it or to investigate matters relating to financial institutions, financial intermediaries or financial services.

(4) The advisory committee may appoint one or more subcommittees which may perform such functions of the advisory committee as the advisory committee may determine.

(5) A subcommittee consists of as many members of the advisory committee or as many other persons as the advisory committee considers necessary, but at least one member of a subcommittee must be a member of the advisory committee.

(6) The advisory committee may at any time dissolve or reconstitute a subcommittee.

(7) The advisory committee must designate one of the members of the subcommittee as chairperson, and if the chairperson is absent from a meeting of the subcommittee, the members present must from their number elect a person to preside at the meeting.

(8) Officers or employees of the Authority designated by the chief executive officer must perform the administrative work incidental to the performance of the functions of the advisory committee and its subcommittees.

(9) The advisory committee may make rules regarding the manner in which meetings of a subcommittee are to be convened, the procedure at, the functions of, and the quorums for, those meetings and the manner in which minutes of those meetings must be kept.

Rules of Board

23. The Board may make rules, not inconsistent with this Act and the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services law relating -

- (a) to the manner in which its meetings and meetings of any committee are to be convened, the procedure at and the quorum for the meetings and the manner in which minutes of those meetings must be kept;
- (b) to the management of the affairs of the Authority and the effective execution of its functions;
- (c) to the provision of safety measures for staff members in the performance of their duties and functions;
- (d) to staff rules of conduct and disciplinary matters;
- (e) to the signing authority of senior management; and
- (f) generally, to any matter which the Board may consider necessary or expedient to regulate in order to achieve the objects of the Authority.

Disclosure of interest

24. (1) A member or an alternate member of the Board or of a committee of the Board who has a direct or indirect financial or personal interest that is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board or committee -

- (a) in a contract or proposed contract with the Authority; or
- (b) in a matter being considered or proposed to be considered by the Board or a committee of the Board of which the person is a member or an alternate member;

must, as soon as is practicable after the relevant facts have come to the attention of the member or alternate member of the Board or member of the committee of the Board, disclose the nature of the interest at a meeting of the Board or of the committee of the Board, as the case may be.

(2) Where a member or an alternate member of the Board or of a committee of the Board has an interest referred to in subsection (1) solely in the capacity of a shareholder of a company listed on an exchange as defined in section 78 of the Financial Institutions and Markets Act and does not control, directly or indirectly, more than five per cent of the shares of that company, subsection (1) does not apply to that member or alternate member.

(3) A disclosure made under subsection (1) must be recorded in the minutes of the meeting at which it is made.

(4) When a member has made a disclosure under subsection (1), the other members of the Board or a committee of the Board must -

- (a) in the absence of that member, discuss the nature of the interest on which a member has made the disclosure; and
- (b) determine whether the interest is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board or of a committee of the Board.

(5) If the members of the Board or a committee of the Board determine that the interest of the member is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board or of a committee of the Board that member -

- (a) may not take any further part in any consideration or discussion or decision relating to or in connection with the -
 - (i) contract, proposed contract or other matter;
 - (ii) future administration, or oversight over the administration, of the contract or other matter;
- (b) may not take part in any vote on the contract, proposed contract or other matter;

- (c) may not be counted for the purposes of a quorum; and
- (d) must absent himself or herself from the proceedings concerning the contract or matter in which he or she has an interest.

(6) A person who makes a full and accurate disclosure under subsection (1) and who complies with subsection (5) is not in breach of any duty owed by that person to the Board or any committee of the Board by reason of the interest of the person in the contract, proposed contract or other matter about which the disclosure was made.

(7) A person who contravenes or fails to comply with subsection (1) or (5) commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Remuneration of Board and committee members

25. (1) A member or an alternate member of the Board and a member of a committee of the Board or of the advisory committee who is not in the full time employment of the State is entitled to be paid out of the funds of the Authority such remuneration or allowances in respect of his or her service as a member, as the Minister may, subject to section 22(1) of the Public Enterprises Governance Act, determine in respect of the chairperson and other members.

(2) Allowances or other remuneration determined under subsection (1) may differ according to the different offices held or functions performed by members or an alternate member of the Board or of a member of a committee or of the advisory committee.

Chief executive officer

26. (1) The Board, with the approval of the Minister and on such terms and conditions as the Board may determine, must, subject to section 9, appoint a suitably qualified person to be the chief executive officer of the Authority, who is, in accordance with the policies and directions of the Board, responsible for the daily management and administration of the Authority, and for ensuring that the objects and functions of the Authority are carried out and its powers exercised appropriately.

(2) Apart from matters dealt with in sections 10 and 27, directions of the type referred to in subsection (1) may specify that a particular function or category of functions -

- (a) may not be performed by the chief executive officer without the prior approval of the Board;
- (b) may be performed by the chief executive officer in accordance with guidelines issued by the Board; or
- (c) may be performed by the chief executive officer in his or her discretion.

(3) A person appointed as chief executive officer holds office for a period of five years and at the expiration of that period is eligible for re-appointment.

(4) The chief executive officer is the accounting officer of the Authority.

(5) The chief executive officer may at any time resign from office by submitting a written resignation to the Board and the Minister at least three calendar months before the intended date of vacation of office, unless the Board and the Minister allow a shorter period.

(6) The Board, with the approval of the Minister and after having given the chief executive officer a reasonable opportunity to be heard, may by notice in writing remove the chief executive officer from office on the grounds of misconduct, incapacity, incompetence or failure to comply with a provision of the performance agreement referred to in section 29.

(7) The Board, with the approval of the Minister, may suspend the chief executive officer without complying with subsection (6), if the Board is satisfied that the chief executive officer is guilty of dishonesty, gross misconduct or other unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Authority or the financial system in Namibia, but the Board must give notice to the chief executive officer as soon as practicable thereafter and consider any representations made by the chief executive officer on the matter.

(8) The office of the chief executive officer becomes vacant if the chief executive officer -

- (a) becomes subject to a disqualification referred to in section 9;
- (b) resigns from office pursuant to subsection (5);
- (c) is removed from office pursuant to subsection (6); or
- (d) is for any reason unable to perform his or her functions for a period exceeding four months.

(9) If the office of the chief executive officer becomes vacant as a result of the happening of an event referred to in subsection (8) or a suspension under subsection (7), the Board, with the approval of the Minister, must designate an employee of the Authority or other suitable individual to act as interim chief executive officer until a new chief executive officer is appointed pursuant to subsection (10) or (11).

(10) Subject to subsection (11), if there is a vacancy a new chief executive officer must be appointed pursuant to subsection (1) as soon as possible, and not later than six months or such extended period that the Minister may allow which period in total must not exceed 12 months, after the vacancy arises.

(11) If, as required by subsection (10), a new chief executive officer has not been appointed pursuant to subsection (1) within the period of six months or the extended period referred to in subsection (10), the Minister must appoint a suitably qualified person as chief executive officer.

Functions and powers of chief executive officer

27. (1) The chief executive officer is responsible for the day-to-day operations of the Authority and, without limiting the generality of the forgoing, is responsible for ensuring that -

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- (a) the operations of financial institutions and financial intermediaries are properly monitored and that the provisions of the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services laws are consistently applied;
 - (b) subject to section 10(2)(b), the Authority, having due regard to domestic circumstances, adopts and maintains supervisory policies and procedures that are generally in accordance with international standards of financial supervision as may be established from time to time by the relevant international standard setting bodies and that such policies and procedures are made public;
 - (c) the Authority employs such qualified persons as are required to carry out the provisions of this Act, the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services law and provides adequate training for such employees;
 - (d) subject to section 10(2)(d) and (e), the remuneration structure and other conditions of service of all staff of the Authority are appropriate;
 - (e) the employees of the Authority adhere to the code of conduct referred to in section 10(2)(j);
 - (f) the employees of the Authority follow high standards of professional conduct; and
 - (g) the employees of the Authority apply policies and procedures that safeguard information, the confidentiality of which is protected by section 55.

(2) The chief executive officer must, subject to the approval of the Board, establish a code of conduct containing acceptable ethical standards and conflict of interest guidelines applicable to the Board members, the chief executive officer and the employees of the Authority, review and if appropriate revise the code of conduct at least once every two years, and submit a copy of that code of conduct and any revisions thereto to the Board for its review and approval.

(3) The chief executive officer must, within 90 days before the end of the financial year of the Authority referred to in section 34, prepare and submit to the Board for approval -

- (a) the business and financial plan contemplated in section 19 of the Public Enterprises Governance Act for the following year, including the operational objectives and a detailed listing of estimated income and expenditures, together with an explanation of major variances that may have occurred with respect to the business and financial plan for the previous year when compared to actual income and expenses; and
- (b) a review of and report on the operations of the Authority for the previous year, including the accomplishments of the Authority in light of the objectives that were established by the Board for that year.

(4) At each quarterly meeting, the chief executive officer must update the Board on the current and emerging issues being considered by the Authority and must receive the Board's comments and suggestions thereon.

(5) In addition to any powers granted elsewhere in this Act, the chief executive officer has the power to -

- (a) outsource supervisory functions to outside parties, subject to the Board's agreement, and the approval of the Minister, as long as there are adequate arrangements in place to assess their competence, monitor their performance and ensure compliance with appropriate standards of confidentiality and independence;
- (b) request such information from any person who or entity that is subject to this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law or any employee, officer, director, partner, auditor or valuator, shareholder or other owner of that person or entity as may, in the opinion of the chief executive officer, be required to administer this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law;
- (c) retain such outside advisors, auditors and valuers as may be required to properly administer the provisions of this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law, subject to the same confidentiality requirements as they apply to the employees of the Authority;
- (d) make recommendations to the Board, after any appropriate consultations, with regard to any legislation, including regulations or standards necessary or desirable to properly supervise the financial institutions and markets sector, in keeping with standards and principles established by the relevant international standard setting bodies;
- (e) make such administrative arrangements as the chief executive officer considers necessary for the operational effectiveness of the Authority, including, without limiting the generality of the foregoing, establishing bank accounts, arranging for premises, purchasing materials, obtaining information technology and other services; and
- (f) subject to any conditions that the chief executive officer considers appropriate, delegate or assign in writing to any employee of the Authority the exercise of any power or the performance of any duty that this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law confers on or assigns to the chief executive officer, and all acts done or decisions made under the delegation are as valid as if done or made by the chief executive officer.

(6) In connection with the annual report referred to in section 10(2)(h), the chief executive officer must attend a meeting or meetings with representatives of financial institutions and financial intermediaries in order to explain the contents of the report.

Staff of Authority

28. (1) Subject to section 22(3) of the Public Enterprises Governance Act, the Board may on the recommendation of the chief executive officer and on such remuneration and conditions of service approved by the Board in terms of section 10(2) (d) and (e), appoint as employees of the Authority such persons as it considers necessary in order to assist the Authority with all such work as may arise through the exercise and performance of its powers, duties and functions in terms of this Act.

(2) An officer or employee who leaves the employment of the Authority may not represent any person in any matter pending before the Authority if that officer or employee has performed any significant function in relation to that matter.

(3) The Board and the Minister may conclude an agreement whereby staff members in the public service whose duties relate to the functions of the Authority may be transferred to the Authority under such conditions as are contained in the agreement in question.

(4) A person who contravenes or fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Performance agreements with members of senior management

29. The Board must within such time as may be determined by the Board enter into the performance agreement contemplated in section 21 of the Public Enterprises Governance Act with -

- (a) the chief executive officer; and
- (b) the other members of senior management of the Authority.

Co-operation with other agencies and organisations

30. (1) The Authority may -

- (a) enter into an arrangement or agreement with any other agency or organisation within Namibia; or
- (b) with the approval of the Minister, enter into an arrangement or agreement with any other institution or organisation outside Namibia,

that has any function related to the regulation or supervision of financial services, taxation, social security or financial systems or any other matter relevant to the objects of the Authority.

(2) Arrangements and agreements referred to in subsection (1) may include provision for the exchange of information between the Authority and such other agency or organisation and the rendering of assistance to that agency or organisation, subject always to the agency or organisation having in place provisions satisfactory to the Authority with regard to the safeguarding of confidential information.

PART 4
FINANCIAL MATTERS

Funds of Authority

- 31.** (1) The funds of the Authority consist of -
- (a) money standing to the credit of the Authority having accrued to the Authority under the law repealed by section 61;
 - (b) money raised as fees, and interest on unpaid fees, in respect of services rendered by the Authority in the performance of its functions;
 - (c) levies imposed on financial institutions under section 32 and interest on unpaid levies;
 - (d) fees, charges and any money payable to the Authority in terms of the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law;
 - (e) surplus money referred to in section 437(12) of the Financial Institutions and Markets Act;
 - (f) any financial penalty payable to the Authority pursuant to section 439(4)(g) of the Financial Institutions and Markets Act;
 - (g) money accruing to the Authority by way of any donation or bequest referred to in section 4(2)(h);
 - (h) money borrowed by the Authority under section 4(2)(i); and
 - (i) money received by the Authority from any other source.

(2) The Authority must utilise its funds for the defrayal of the costs and expenditures of the Authority, the committees of the Authority and the Office of the Adjudicator in the performance of their functions, and in furtherance of the objects of the Authority.

(3) The Authority must open an account with an institution registered as a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) or a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986), and must deposit in that account all moneys referred to in subsection (1), except that the Authority may continue to use any account opened by it in terms of section 9(4) of the law repealed by section 61.

(4) The Authority may invest money deposited under subsection (3) which is not required for immediate use in accordance with the investment policy, standards and procedures of the Authority referred to in subsection (7), except that the Authority must establish a reserve account and deposit into that reserve account from time to time an amount of such moneys sufficient to meet the objects of subsection (5).

(5) The objects of the reserve account established pursuant to subsection (4) are to provide for the defrayal of -

- (a) unforeseen costs and expenditures in connection with the items referred to in subsection (2); and
 - (b) other unforeseen costs and expenditures not referred to in subsection (2), but which may arise from time to time.
- (6) The Board must determine the amounts to be held in the reserve account and may authorise the defrayal of costs and expenditures from that account.
- (7) The Board, with the prior approval of the Minister, must establish an investment policy, standards and procedures for the purposes of the investment of moneys referred to in subsection (4).
- (8) The Board must submit to the Minister for prior approval any proposed changes to the investment policy, standards and procedures referred to in subsection (7).
- (9) The Board must take all reasonable steps to ensure that the provisions of the investment policy, standards and procedures are observed.

Levies

- 32.** (1) The Authority may, after consultation with financial institutions or financial intermediaries concerned and subject to the approval of the Minister, by notice in the *Gazette* impose levies on financial institutions and financial intermediaries.
- (2) In the notice referred to in subsection (1) the Authority -
- (a) must determine -
 - (i) the amounts of the levies referred to in subsection (1) or the basis or manner of determining the amounts;
 - (ii) the periods in respect of which the levies referred to in subsection (1) are imposed, the dates on which or the periods within which those levies are payable and the manner of payment;
 - (iii) the rates of interest and the manner of calculating the interest contemplated in subsection (4);
 - (iv) the manner in which applications for exemptions referred to in subsection (10) must be made; and
 - (v) the manner in which a notice in terms of subsection (11)(b) must be served;
 - (b) may impose, in respect of different financial institutions and financial intermediaries, different categories of financial institutions and financial intermediaries and different subcategories of a specific category of financial institutions and financial intermediaries -
 - (i) different types of levies; and
 - (ii) different amounts of levies;

- (c) must determine, in respect of different financial institutions and financial intermediaries, different categories of financial institutions and financial intermediaries and different subcategories of a specific category of financial institutions and financial intermediaries -
 - (i) the basis or manner of determining the amounts of the levies referred to in paragraph (b);
 - (ii) the period in respect of which the levies referred to in paragraph (b) are imposed, the dates on which or the periods within which those levies are payable, and the manner of payment;
 - (iii) the rates of interest and the manner of calculating the interest contemplated in subsection (4);
 - (iv) the manner in which applications for exemptions referred to in subsection (10) must be made; and
 - (v) the manner in which a notice in terms of subsection (11)(b) must be served.

(3) Before imposing the levies referred to in subsection (1), the Authority must publish the proposed levies and the period within which or date on which they must be paid, in the *Gazette* and in such manner as may be appropriate in order to bring the proposed levies to the attention of the financial institutions or financial intermediaries in question, together with a statement that representations on the proposed levies may be made to the Authority within the time period specified in the notice which period may not be less than 30 days from the date of the notice.

(4) A financial institution or financial intermediary which is subject to the imposition of a levy pursuant to subsection (1) is liable for the payment of that levy, and if it fails to pay the levy in full within the period or on the date for payment stated in the notice it -

- (a) must pay interest on the balance of the levy outstanding at the rate determined in accordance with subsection (2)(a)(iii) or (c)(iii); or
- (b) may be liable to have its registration cancelled or, subject to such conditions as the Authority may impose, suspended.

(5) A financial institution or financial intermediary which is liable to pay a levy pursuant to this section must, within the period specified in the notice referred to in subsection (1), calculate the amount of levy which that financial institution or financial intermediary is liable to pay, and pay over the amount of levy due to the Authority within the time period specified in the notice.

(6) If the Authority does not agree with the calculation of the amount of the levy due and payable by a financial institution or financial intermediary, the Authority must notify the financial institution or financial intermediary in writing of the difference in the calculation and the reasons for the difference, and the financial institution or financial intermediary may object to the Authority's calculation of the levy due and payable by that financial institution or financial intermediary, and may make

representations in writing to the Authority within a period of 21 days after receipt of the notification from the Authority.

(7) The Authority must consider any representations made pursuant to subsection (6), if any, and in writing notify the financial institution or financial intermediary -

- (a) of the Authority's final decision with respect to the calculation of the levy and the period within which the levy and any interest charged as contemplated in subsection (4)(a) after the calculation by the Authority must be paid; and
- (b) that if the financial institution or financial intermediary does not agree with the Authority's calculation, it may appeal against the Authority's decision to the Appeal Board within the prescribed period.

(8) If a financial institution or financial intermediary fails to calculate the levy as required by subsection (5), the Authority may calculate the levy which the financial institution or financial intermediary is liable to pay and by written notice addressed to the financial institution or financial intermediary -

- (a) inform the financial institution or financial intermediary concerned of the levy due and payable by it;
 - (b) direct the financial institution or financial intermediary concerned to pay to the Authority the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice; and
 - (c) inform the financial institution or financial intermediary concerned that if it does not agree with the calculation of the amount of levy by the Authority, it may appeal against the Authority's decision to the Appeal Board within the prescribed period.
- (9) If a financial institution or financial intermediary -
- (a) fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice referred to in subsection (1), and the Authority has not disagreed with the calculation of the levy pursuant to subsection (6);
 - (b) fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice referred to in subsection (7)(a), and the financial institution or financial intermediary has not appealed against the decision of the Authority to the Appeal Board within the period referred to in subsection (7)(b);
 - (c) fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice referred to in subsection (8), and the financial institution or financial intermediary has not appealed against the decision of the Authority to the Appeal Board within the period referred to in subsection (8)(c); or

- (d) appeals to the Appeal Board as contemplated in subsection (7)(b) or (8)(c), but the appeal has been dismissed in whole or in part, and the financial institution or financial intermediary fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified by the Appeal Board,

the Authority may, in the prescribed manner, file with the clerk or registrar of a competent court a statement of the amount outstanding and the statement thereupon has the effect of a civil judgment lawfully given in that court in favour of the Authority.

(10) The Authority may, on the application of a financial institution or financial intermediary in the prescribed manner and if the Authority considers that there are sound reasons for doing so, by notice served on the financial institution or financial intermediary concerned and published in the *Gazette*, grant an exemption to that financial institution or financial intermediary from the levy referred to in subsection (1) or from a provision relating to the levy referred to in subsection (2), to the extent of and subject to the conditions determined by the Authority, except that such exemption cannot be granted retrospectively.

(11) The Authority may withdraw or amend an exemption granted under subsection (10) if -

- (a) the Authority finds that the financial institution or financial intermediary concerned has contravened a provision of, or has failed to comply with, a condition determined by the Authority under subsection (10) or has otherwise acted contrary to the exemption; and
- (b) the Authority has served a written notice to that effect on the financial institution or financial intermediary concerned and published such notice in the *Gazette*.

(12) The Authority must, before withdrawing or amending an exemption pursuant to subsection (11), give the financial institution or financial intermediary concerned a reasonable opportunity to be heard.

(13) A person who -

- (a) continues to operate, or engage in, the business of a financial institution or financial intermediary after the cancellation or suspension of registration under subsection (4)(b); or
- (b) fails to comply with a condition imposed by the Authority under subsection (4)(b),

commits an offence and is liable on conviction to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Fees

33. (1) The Authority may, after considering any representation made under subsection (2), determine -

-
- (a) those matters in respect of which fees are payable under this Act, the Financial Markets and Institutions Act, the Microlending Act or any other applicable financial services law;
 - (b) the amount of the fee payable in respect of each such matter;
 - (c) the persons by whom the fees must be payable and the manner of payment; and
 - (d) where necessary, the payment of interest on overdue fees.

(2) Before making a determination with respect to fees under subsection (1), the Authority must publish information about the proposed fees through a notice in the *Gazette* and in such manner as may be appropriate in order to bring the proposed fees to the attention of persons who may be affected thereby, together with a statement that representations on the proposed fees may be made to the Authority within the time period specified in the notice which period may not be less than 30 days from the date of the notice.

(3) A fee determined by the Authority under subsection (1) or any change to such fee, comes into effect 30 days after the date of the notice announcing the final fee or within such extended period as may be determined by the Authority, which period may not exceed 90 days from date that the notice was published in the *Gazette*.

Financial year

34. The financial year of the Authority ends on March 31 of each year.

Accounting and auditing

35. (1) The chief executive officer must keep full and proper accounts and records of all moneys received or expended by the Authority and of all assets, liabilities and financial transactions of the Authority during each financial year of the Authority.

- (2) The Board must -
 - (a) from the accounts and records referred to in subsection (1), prepare or cause to be prepared the annual financial statements of the Authority; and
 - (b) cause the annual financial statements to be audited by an auditor appointed by the Authority,

as contemplated in section 10(2)(g).

(3) The auditor referred to in subsection (2) must, in accordance with the Public Accountants' and Auditors' Act and as soon as is reasonably possible, prepare the audited annual financial statement of the Authority.

Annual financial statements and report

36. (1) The Board must, in accordance with section 26 of the Public Enterprises Governance Act, submit to the Minister in respect of each financial year of the Authority but not more than -

- (a) 90 days after the end of the financial year, in the case of the audited annual financial statement of the Authority referred to in section 35(3); and
- (b) 180 days after the end of the financial year, in the case of the annual report referred to in section 10(2)(h),

those audited financial statements together with a report of the auditor thereon, and that annual report.

- (2) The audited financial statements of the Authority must -
 - (a) contain detailed particulars of moneys received by the Authority and expenditure incurred by the Authority during, and its assets and liabilities at the end of, the financial year in question;
 - (b) fairly present the results of operations and the financial position of the Authority; and
 - (c) contain such other additional matters as the Minister may direct.

(3) Without prejudice to subsection (1), if in the opinion of the Minister, there are reasonable grounds for doing so, the Minister may direct the Auditor-General to investigate into and report on the accounts of the Authority or any other matter relating to the affairs of the Authority, and the Authority must provide the Auditor-General with all the information and facilities necessary for such investigation.

Contents of statements and report

37. The financial statements and the annual report referred to in section 36 must, without prejudice to the requirements of section 26 of the Public Enterprises Governance Act -

- (a) fairly present the state of affairs of the Authority, its business, financial results and performance against predetermined objectives and its financial position at the end of the financial year concerned;
- (b) include particulars of -
 - (i) any material losses through criminal conduct and any irregular and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular and wasteful expenditure;
 - (iii) any losses recovered or written off; and

-
- (iv) any other matter that may be prescribed;
 - (c) describe the major operations and accomplishments of the Authority during the previous year;
 - (d) subject to confidentiality considerations, provide information about any problem or failed financial institutions or financial intermediaries, as well as other issues relevant to the financial institutions, financial intermediaries and the financial markets sector, together with the actions taken by the Authority in respect thereof;
 - (e) describe the activity and financial health of the financial institutions, financial intermediaries and the financial markets sector using such standards and data as the Board and the chief executive officer consider appropriate;
 - (f) indicate complaints about the business conduct of financial institutions and financial intermediaries; and
 - (g) indicate exemptions granted under the Financial Institutions and Markets Act, the Microlending Act and any other applicable financial services law during the previous year and the reasons why such exemptions were granted.

Tabling of statements and report

38. (1) The Minister must table with the National Assembly the audited annual financial statements and the annual report received pursuant to section 36(1) within 30 days from the date of receipt thereof, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within 30 days after commencement of its next ordinary session.

(2) The annual financial statements and the annual report referred to in subsection (1) form part of the public record.

PART 5 APPEAL BOARD

Appeal Board

39. (1) There is established an Appeal Board to hear and determine appeals made to it in terms of this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

(2) The Appeal Board consists of five members appointed by the Minister who must include -

- (a) one or more individuals with suitable knowledge and experience in law; and
- (b) one or more individuals who, in the opinion of the Minister, have sufficient knowledge of, and experience in, the financial services industry.

(3) The Minister must appoint the chairperson of the Appeal Board from the members of the Appeal Board referred to in subsection (2)(a).

(4) The chairperson of the Appeal Board -

- (a) is responsible for managing the case load of the Appeal Board;
- (b) may establish a panel, consisting of at least three suitably qualified members of the Appeal Board, to hear a particular appeal and to make a recommendation to the Appeal Board with respect to its decision; and
- (c) must, where a panel has been established in terms of paragraph (b), appoint a chairperson for that panel with suitable knowledge and experience in law to preside over the proceedings of that panel, and in the event of an equality of votes on the recommendation to be made to the Appeal Board, that chairperson has a casting vote in addition to his or her deliberative vote.

(5) When the Appeal Board considers it necessary that the Appeal Board be assisted by a person or persons who have expert knowledge of a particular matter, the Appeal Board may appoint a person or persons to provide the Appeal Board with expert knowledge, but such person or persons does or do not have the right to participate in any decision of the Appeal Board.

(6) Any reference in this Act, the Financial Institutions and Markets Act, the Microlending Act or any other law to the Appeal Board or to the board of appeal must be construed as including a reference, where appropriate, to a panel referred to in subsection (4) to which an appeal is or was assigned.

(7) All expenditure incurred by the Appeal Board, including remuneration payable to Appeal Board members, must be defrayed out of, or paid out from, public funds as determined by the Minister and within 90 days before the end of the financial year of the Authority referred to in section 34, the Appeal Board must prepare and submit to the Minister a proposed budget for the following year.

Disqualification for appointment as member

40. A person does not qualify for appointment as a member of the Appeal Board, if that person -

- (a) is an unrehabilitated insolvent;
- (b) is not a Namibian citizen or is not lawfully admitted to Namibia for permanent residence;
- (c) is actively engaged in the business of a financial institution or financial intermediary, unless that person ceases to engage in that business before the date of the proposed appointment;
- (d) is an office-bearer of any political party, unless that person ceases to be such an officer-bearer before the date of the proposed appointment;

- (e) is a member of Parliament or of a regional or local authority council, unless that person ceases to be such a member before the date of the proposed appointment;
- (f) has, during the period of 10 years immediately preceding the date of commencement of this Act, or at any time after that date, been convicted, whether in Namibia or elsewhere, of theft, fraud, forgery or perjury, an offence under any law on corruption or any other offence involving dishonesty;
- (g) has under any law been declared to be of unsound mind or under legal disability;
- (h) has been removed from an office of trust;
- (i) has been sanctioned by any national or international statutory regulatory body for the contravention of a law relating to the regulation and supervision of financial institutions or financial intermediaries; or
- (j) is a member of the Board of the Authority or is an officer or employee of the Authority, unless that person ceases to be such a member, employee or officer before the date of the proposed appointment.

Term of office

41. Subject to section 40, a member of the Appeal Board holds office for a period of three years and, at the expiration of that period, is eligible for re-appointment.

Vacation of office

- 42.** (1) A member of the Appeal Board vacates office, if the member -
- (a) becomes subject to a disqualification referred to in section 40;
 - (b) resigns from office by written notice to the Minister; or
 - (c) is removed from office by the Minister under subsection (2).

(2) The Minister may, on good cause shown, by notice in writing remove a member of the Appeal Board from office on the grounds of misconduct, incapacity, incompetence or loss of confidence after having given the member concerned a reasonable opportunity to be heard.

(3) The Minister may suspend a member of the Appeal Board from office without complying with subsection (2), if the Minister is satisfied that the member is guilty of dishonesty, gross misconduct or other serious unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Appeal Board or the financial system in Namibia, but the Minister must give notice to the member as soon as practicable thereafter and consider any representations made by the member on the matter.

(4) If a member of the Appeal Board dies or the office of a member becomes vacant as a result of the happening of an event referred to in subsection (1), the Minister

may, with due regard to section 40, appoint a person to fill the vacancy for the unexpired portion of the term of office of the member concerned.

(5) If, because of death, illness, resignation or of any other reason, a member of the Appeal Board is unable to complete a hearing, the chairperson of the Appeal Board -

- (a) may direct that the hearing of that matter proceed before the remaining members of the Appeal Board; or
- (b) must, if the number of the members hearing the appeal is less than three, terminate the proceedings before the Appeal Board, whereupon the Minister must forthwith appoint a person to fill the vacancy on the Appeal Board pursuant to subsection (4).

(6) If the proceedings before the Appeal Board are terminated in terms of subsection (5)(b), the chairperson must, as soon as the Minister has appointed a person to fill the vacancy pursuant to subsection (4), ensure that the Appeal Board conducts a new hearing of the appeal.

Remuneration

43. A member of the Appeal Board who is not in full-time employment of the State is entitled to be paid out of the funds referred to in section 39(7), such remuneration and allowances in respect of services rendered in that capacity, as the Minister may determine in respect of the chairperson and other members.

Administration

44. The Minister must make arrangements for the performance of the administrative and clerical work of the Appeal Board, including the designation or appointment of a secretary and other support staff, the cost of which forms part of the budget referred to in section 39(7).

Right of appeal

- 45.** (1) The Appeal Board has primary jurisdiction to -
- (a) hear and determine any appeal brought to it under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law;
 - (b) make a declaratory order on application made to it under section 51(3).
- (2) A person aggrieved by -
- (a) a decision of the Authority, other than a decision taken with the approval of the Minister, in the performance of its regulatory or supervisory functions or exercise of its regulatory or supervisory powers under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law;

- (b) a decision of the claims officer appointed in terms of section 161 of the Financial Institutions and Markets Act; or
- (c) a decision of any other person against which an appeal lies to the Appeal Board under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law,

may appeal against that decision to the Appeal Board.

(3) An appeal must be lodged with the Appeal Board within the period, in the manner and on payment of such fees as may be prescribed by the Minister in rules pursuant to subsection (5).

(4) The Appeal Board must hear an appeal on a date, at a time and place determined by the chairperson of the Appeal Board, and the chairperson must accordingly notify the appellant and the respondent in writing.

(5) The Minister, with the concurrence of the Appeal Board, may make rules relating to -

- (a) the period within which an appeal to the Appeal Board against a decision of a respondent must be taken;
- (b) the manner in which such appeal must be made;
- (c) the conduct of proceedings before the Appeal Board and the procedures to be followed by the Appeal Board, including matters relating to condonation for non-compliance and the admissibility of evidence;
- (d) witnesses, including payment of expenses and costs incurred by witnesses, offences by or relating to witnesses and other matters relating to witnesses;
- (e) sittings of the Appeal Board;
- (f) the integrity of the Appeal Board and measures that are necessary or expedient to prevent the Appeal Board or a member of the Appeal Board from being insulted, disparaged or belittled or to prevent the proceedings or findings of the Appeal Board from being prejudiced, influenced or anticipated;
- (g) the fees payable by the appellant; and
- (h) any other matter which the Minister considers necessary to ensure effective and expeditious resolution of matters before the Appeal Board.

(6) Rules made under subsection (5) may create offences for contraventions thereof and penalties for such contraventions which may not exceed a fine of N\$20 000 or imprisonment for periods not exceeding two years or both such fine and such imprisonment.

Procedure on appeal

46. (1) Subject to any rules made under section 45(5), the chairperson of the Appeal Board must determine the procedure to be followed at the hearing of an appeal.

(2) With respect to the hearing of an appeal the Appeal Board may -

- (a) hold an oral hearing;
- (b) determine the matter on the basis of documentary or other evidence presented to it by the parties;
- (c) conduct a hearing using electronic or other information communication based technology as may be prescribed; or
- (d) invoke a procedure that combines two or more of the formats referred to in paragraphs (a) to (c).

(3) The Appeal Board must conduct its hearings in public except -

- (a) where the chairperson excludes a specific person or group of persons from the hearing;
- (b) in the circumstances contemplated in Article 12(1)(a) of the Namibian Constitution; or
- (c) where the exclusion is authorised in terms of any law.

(4) If before or during the hearing of an appeal it becomes apparent that a member of the Appeal Board hearing the appeal has a direct or indirect interest in the outcome of that appeal that member must -

- (a) immediately and fully disclose the interest to the other members of the Appeal Board designated to hear the matter; and
- (b) withdraw from that hearing.

(5) If a member of the Appeal Board withdraws pursuant to subsection (4) the chairperson of the Appeal Board may -

- (a) direct that the matter proceeds before the remaining members of the Appeal Board hearing the appeal;
- (b) appoint another member of the Appeal Board to the hearing.

(6) The appellant and the respondent are entitled, subject to section 15(8) and section 28(2), to be represented at the hearing of an appeal by a legal practitioner or any other person.

(7) An appeal is decided on the record of proceedings that took place before the respondent which record consists of -

-
- (a) any oral, written or electronic evidence and factual information or the written and electronic documentation submitted to the respondent prior to the respondent making the decision which is the subject of the appeal; and
 - (b) the decision of the respondent together with reasons given for the decision as well as any representations which any party made during proceedings before the respondent.
- (8) Subject to subsection (9), no other evidence or other information, other than -
- (a) the evidence and information contained in the record of proceedings referred to in subsection (7); and
 - (b) oral or written submissions or representations as prescribed in the rules made under section 45(5) which the parties wish the Appeal Board to take into account in determining the appeal,

may be submitted to the Appeal Board by a party to the appeal.

- (9) Despite subsection (8), the chairperson of the Appeal Board may on application by -
- (a) the appellant, on good cause shown, allow other evidence or information in addition to that referred to in subsection (7); and
 - (b) the respondent, on good cause shown, allow other evidence or information in addition to that referred to in subsection (7),

to be submitted and introduced into the record of the appeal.

(10) If further evidence or information is allowed into the record pursuant to subsection (9), the chairperson of the Appeal Board must refer the matter back to the respondent for reconsideration and the appeal is deferred pending the final decision of the respondent.

(11) If, after the respondent has made a final decision pursuant to subsection (10), the appellant continues with the appeal by giving written notice to the secretary of the Appeal Board, the record of the appeal must include any further oral evidence or factual information properly transcribed, any further written or electronic evidence or factual information and any further evidence or information allowed under subsection (9) and the further evidence or information submitted to the respondent.

(12) For purposes of allowing further oral evidence pursuant to subsection (9) the Appeal Board may -

- (a) summon any person to appear before it at a date, time and place specified in the summons, to be questioned or to produce any document;
- (b) retain for examination any document so produced; and

- (c) administer an oath to or accept an affirmation from any person called as a witness at an appeal.

(13) A person summoned to provide oral evidence pursuant to subsection (12) is entitled to legal representation at the expense of that person.

(14) The law relating to privilege as applicable to a witness summoned to give evidence or to produce a book, document or thing before a court of law applies, subject to necessary changes required by context, in relation to a person summoned to give evidence pursuant to subsection (12).

(15) A person giving oral evidence under this section may be required to answer any question put to that person at the hearing despite that the answer might incriminate that person.

(16) An incriminating answer directly obtained or incriminating evidence directly derived from a hearing under this section is not admissible as evidence in criminal proceedings in a court against the person giving the evidence, except in criminal proceedings where the person is charged with an offence relating to -

- (a) an oath or affirmation;
- (b) giving false evidence;
- (c) making a false statement; or
- (d) deliberate failure to answer questions fully or satisfactorily.

(17) Where any person giving evidence in terms of the provisions of this section is obliged to answer questions which may incriminate him or her or where he or she is to be tried on a criminal charge the evidence may prejudice him or her at the trial, the Appeal Board may order that such part of the hearing be held *in camera* and that no information regarding such questions and answers may be published in any manner whatsoever.

(18) Any person who contravenes or fails to comply with any provision of an order contemplated in subsection (17) commits an offence and is liable on conviction to the penalty mentioned in subsection (5) of section 154 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(19) Any person who has been duly summoned under subsection (12)(a) and who without sufficient cause -

- (a) fails to appear at the date, time and place specified in the summons;
- (b) fails to remain in attendance until excused by the Appeal Board from further attendance;
- (c) refuses to take the oath or to make an affirmation as referred to in subsection (12)(c);
- (d) fails to answer fully and satisfactorily any question lawfully put to the person; or

- (e) fails to furnish information or to produce a document specified in the summons,

commits an offence and is liable on conviction to a fine not exceeding N\$80 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Decision of Appeal Board

47. (1) The decision of the majority of the members of the Appeal Board is the decision of the Appeal Board, and where a panel has been appointed to hear an appeal as contemplated in section 39(4)(b), the Appeal Board must take the recommendation of that panel into account in making its decision.

(2) A decision of the Appeal Board must be in writing and a copy must be furnished to every party to the appeal within 30 days of the decision being finalised.

(3) The Appeal Board may -

- (a) confirm, set aside or vary the decision under appeal, and order that the decision of the Appeal Board be given effect to; or
- (b) remit the matter for reconsideration by the respondent in accordance with such directions, if any, as the Appeal Board may determine.

(4) The Appeal Board may make such order as to costs of the appeal in an amount not to exceed that prescribed by regulation as it may consider suitable and fair, including an order regarding the fees referred to in section 45(3) that have been paid by the appellant.

(5) An order of the Appeal Board has legal force and effect and may be enforced as if it were issued in civil proceedings in a court.

(6) The chairperson of the Appeal Board must make the decision of the Appeal Board public by publication in the *Gazette*.

Decision not suspended

48. An appeal lodged with the Appeal Board pursuant to this Part does not suspend a decision of any person or entity referred to in section 45(2), unless the Appeal Board upon application directs otherwise.

Rights not limited

49. This Act must not be construed so as to limit the right of any interested person to appeal against or have a decision of the Appeal Board reviewed by a court, subject to the obligation of that person first to have exhausted all available remedies under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

PART 6
GENERAL PROVISIONS

Authority to report financial institutions in difficulties

- 50.** (1) If the Authority is of the opinion that -
- (a) a financial institution or financial intermediary is financially unsound; and
 - (b) the situation may impair the stability of the Namibian financial system or the safety and soundness of the financial institutions and markets sector generally,

the Authority must forthwith report the matter to the Minister.

(2) The Minister may require the Authority to provide further information on the matter in question and to take any further corrective action that the Authority is empowered to take under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

Decisions and actions by Authority

51. (1) Whenever it is stated in this Act, in the Financial Institutions and Markets Act, the Microlending Act or in any other applicable financial services law that a decision or action is required or permitted to be made or taken by the Authority, unless it is specified that such decision or action must be made or taken by the Board, it must be made or taken by the chief executive officer or by another officer or employee of the Authority to whom the power to make such decision or take such action has been duly delegated in writing by the chief executive officer.

(2) The Authority may of its own accord reverse or correct a decision taken by the Authority in the performance of its regulatory or supervisory functions or exercise of its regulatory or supervisory powers under this Act, the Financial Institutions and Markets Act, the Microlending Act or under any other applicable financial services law if -

- (a) the Authority is satisfied that the decision is wrong in fact or in law or was based on an incorrect application or interpretation of the law; and
 - (b) the reversal or correction of the decision does not adversely affect any person or entity in relation to whom the decision was made.
- (3) Where the Authority is satisfied that a -
- (a) decision made by it is wrong in fact or in law or was based on an incorrect application or interpretation of the law; and
 - (b) reversal or correction of the decision as contemplated in subsection (2) could adversely affect any person or entity in relation to whom the decision was made,

the Authority may, in the manner prescribed, apply to the Appeal Board for a declaratory order in respect of that decision.

(4) A person aggrieved by the decision of the Authority made under subsection (2) may in the prescribed manner appeal against the decision to the Appeal Board.

Prohibition on implying connection with Authority

52. (1) A person may not, in connection with a corporate body, unincorporated entity, business or undertaking, use a name or description that signifies a connection between that corporate body, unincorporated entity, business or undertaking and the Authority, other than a statement that such corporate body, unincorporated entity, business or undertaking is registered, authorised or approved by the Authority.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Exemptions by Minister

- 53.** (1) The Minister may on reasonable grounds -
- (a) on the Minister's own initiative, but after consultation with the Authority; or
 - (b) on the recommendation of the Authority, after an application has been made in the prescribed manner to the Authority,

by notice in the *Gazette*, exempt any person or category of persons from any provision of this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law, if the Minister is satisfied that granting the exemption will not -

- (i) conflict with the public interest;
- (ii) prejudice the interests of consumers; and
- (iii) frustrate the achievement of the objects of this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

(2) A recommendation of the Authority given under subsection (1)(b) is not binding on the Minister.

(3) With respect to any exemption granted under subsection (1), the Minister may impose any requirements or conditions that the Minister considers to be necessary or desirable in the circumstances.

(4) Where a person who has been granted an exemption to which is attached requirements or conditions contravenes or fails to comply with those requirements and conditions, the Minister may withdraw the exemption.

Delegation of powers and assignment of functions

54. (1) The Minister may, subject to such conditions as the Minister may determine, delegate any power conferred upon or assign a function or duty entrusted to the Minister by -

- (a) this Act, excluding the powers conferred upon or function or duty entrusted to the Minister by or under sections 5, 8, 14(3), 26, 38, 39, 43 and 45(5); or
- (b) the Financial Institutions and Markets Act, the Microlending Act or in any other applicable financial services law, excluding the power to issue regulations or other subordinate legislative measures and to publish notices in the *Gazette*,

to the Executive Director in the ministry responsible for finance or to the Board.

(2) The Board may subject to such conditions as the Board may determine -

- (a) delegate to the chief executive officer any power conferred on the Authority by or under this Act, Financial Institutions and Markets Act, the Microlending Act or in any other applicable financial services law; and
- (b) authorise the chief executive officer to perform any function or duty assigned to the Authority by or under this Act, Financial Institutions and Markets Act, the Microlending Act or in any other applicable financial services law,

excluding the power or duty to appoint or dismiss the chief executive officer, to determine the conditions of service of the chief executive officer and senior management staff of the Authority, to approve the conditions of service of other staff of the Authority, to issue standards or other subordinate legislative measures and to publish notices in the *Gazette*.

(3) The chief executive officer may subject to such conditions as the chief executive officer may determine -

- (a) delegate to any other senior officer or employee of the Authority any power conferred on the chief executive officer under this Act, Financial Institutions and Markets Act, the Microlending Act or in any other applicable financial services law, including a power delegated to the chief executive officer under subsection (2)(a); and
- (b) authorise any other senior officer or employee of the Authority to perform any function or duty assigned to the chief executive officer by or under this Act, Financial Institutions and Markets Act, the Microlending Act or in any other applicable financial services law.

(4) A delegation or assignment made under subsection (1), (2) or (3) does not prevent the Minister, Board or chief executive officer, as the case may be, from exercising the power so delegated or performing the function or duty so assigned.

(5) Anything done or omitted to be done by an officer or employee of the Authority in the exercise of any power delegated or the performance of any function or duty assigned to him or her under subsection (3) must be considered to have been done or omitted to have been done by the Board or chief executive officer, as applicable.

Preservation of secrecy

55. (1) A person referred to in subsection (2) may not disclose to any person information relating to the affairs of the Board or of any other person, acquired in the performance of duties or the exercise of powers under this Act, the Financial Institutions and Markets Act, the Microlending Act or in any other applicable financial services law, except -

- (a) for the purpose of the exercise of powers or the performance of duties under this Act, the Financial Institutions and Markets Act, the Financial Services Adjudicator Act, the Microlending Act or any other applicable financial services law; or
 - (b) when required to disclose that information before a court or under any law.
- (2) The persons to whom subsection (1) applies are -
- (a) a member or an alternate member of the Board;
 - (b) a member of a committee of the Board or of the advisory committee;
 - (c) the chief executive officer or any other officer or employee of the Authority;
 - (d) a member of the Appeal Board; and
 - (e) a former member or alternate member of the Board, a former member of a committee of the Board or of the advisory committee, a former chief executive officer or officer or employee of the Authority and a former member of the Appeal Board; and
 - (f) any other person performing a function or exercising a power that he or she is lawfully required or requested to perform or exercise in terms of this Act.

(3) Despite subsection (1) but pursuant to section 30, the Authority may share information concerning any matter dealt with under this Act with the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997), the Public Accountants' and Auditors' Board constituted under the Public Accountants' and Auditors' Act, self-regulatory organisations, the Ministry responsible for finance, the Minister and with all other persons, whether inside Namibia or elsewhere, responsible for regulating, supervising, investigating or prosecuting financial institutions or financial intermediaries.

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or

to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Limitation of liability

56. (1) The Minister or any person referred to in subsection (2) is not personally liable in respect of anything done or omitted to be done in good faith and without gross negligence in the exercise of any power or the performance of any duty under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law.

- (2) The persons to whom subsection (1) apply are -
- (a) a member of the Board;
 - (b) a member of a committee of the Board or of the advisory committee;
 - (c) the chief executive officer or any other officer or employee of the Authority;
 - (d) a member of the Appeal Board; and
 - (e) any other person performing a function or exercising a power that he or she is lawfully required or requested to perform or exercise in terms of this Act.

Prescription

57. (1) Despite anything to the contrary in any law, a debt arising from any matter regulated by or under this Act, the Financial Institutions and Markets Act, the Microlending Act or any other applicable financial services law that is owed to the Authority prescribes after a period of six years.

(2) All matters relating to prescription, including the determination of the dates from which prescription begins to run, completion of delayed prescription, interruption of prescription, in relation to a debt referred to in subsection (1) are governed by the Prescription Act, 1969 (Act No. 68 of 1969).

Liquidation

58. The Authority may not be placed into liquidation, except by or under the authority of an Act of Parliament.

Regulations

59. (1) The Minister may, after consultation with the Authority, make regulations relating to -

- (a) the period within which a person who wishes to appeal against a decision referred to in section 45(2) must appeal against such decision;
- (b) the manner in which a person referred to in paragraph (a) must appeal against a decision referred to in section 45(2);

- (c) the fees which a person referred to in paragraph (a) must pay in respect of an appeal;
- (d) the criteria and guidelines that must be used or taken into consideration by the Authority or any other person in determining what constitutes or amounts to “public interest” or “in the public interest” for purposes of this Act;
- (e) any matter which is by this Act required or permitted to be prescribed; and
- (f) generally all other matters which the Minister considers necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Regulations made under subsection (1) may prescribe penalties in respect of a contravention of or a failure to comply with any provision thereof not exceeding a fine of N\$20 000 or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Standards and other measures

60. (1) The Authority may, after obtaining the approval of the Board pursuant to section 17(6), by notice in the *Gazette* and after complying with the provisions of subsection (2), issue such standards for the due carrying out of the provisions of this Act and to achieve the objects of this Act that the Authority may consider necessary or advisable, and may set fees in accordance with section 33.

- (2) Before issuing a standard, the Authority must -
 - (a) publish a draft of the proposed standard in the *Gazette* and bring it to the attention of the financial institutions or financial intermediaries to whom the standard will apply and to their industry associations or self-regulatory organisations;
 - (b) give those financial institutions, financial intermediaries, industry associations or self-regulatory organisations at least 30 days after the date of publication of the proposed standard to make representations in writing to the Authority with respect to the proposed standard; and
 - (c) take any such representations into account in determining whether to issue the standard as originally published or in a modified form.

(3) Despite subsection (2), if the Authority considers that it is necessary to issue a standard on an urgent basis, the Authority may issue the standard without complying with subsection (1), but any such standard ceases to have effect at the end of 90 days after it has been issued, unless the procedure referred to in subsection (2) is followed.

(4) The Authority may, by notice in the *Gazette*, revoke or modify a standard subject to the procedure referred to in subsection (2).

(5) The Authority may issue such guidelines, bulletins, rules and other measures for the purposes referred to in subsection (1) that the Authority may consider necessary or advisable.

(6) The Authority may publish the guidelines, bulletins, rules and other measures referred to in subsection (5) in the *Gazette* and the Authority must take measures that are necessary to ensure that the guidelines, bulletins, rules and other measures referred to in that subsection are brought to the attention of the persons or entities to whom they apply.

Repeal of law

61. The Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No.3 of 2001) is, subject to section 62, repealed.

Transitional provisions

62. (1) In this section -

“effective date” means the date on which this Act, or any relevant provision of this Act, comes into operation pursuant to section 63; and

“repealed law” means the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001) repealed by section 61.

(2) Any subordinate measure made under the repealed law remains in force unless if it is in conflict with this Act and is deemed to be made thereunder until superseded by a subordinate measure made under this Act.

(3) Any appointment made, agreement conducted or any other steps taken or things done by or under any provision of the repealed law is deemed, subject to such changes or modifications as may be necessary to align the appointment, agreement, step or thing with this Act, to have been made, concluded, held, taken or done, by or under a corresponding provision of this Act.

(4) In the case of an appointment which expires after a specified period, the appointment remains in force for so much of that period as falls after the effective date.

(5) Any right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the repealed law that had not been spent or fulfilled immediately before the effective date is a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(6) A notice given by any person to another person in terms of any provision of the repealed law must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the repealed law.

(7) A document that, before the effective date, had been served in accordance with the repealed law must be regarded as having been satisfactorily served for any comparable purpose of this Act.

(8) Any proceedings of a court in terms of the repealed law must continue in terms of that law as if it had not been repealed.

(9) Any order of the Board of Appeal or a court made under the repealed law, and in force immediately before the effective date, continues to have the same force and effect as if that law had not been repealed, subject to any further order of the Board of Appeal or court.

(10) On the effective date and within a period of 60 days after the effective date, the Minister and the Authority may make any subordinate measure of a legislative nature contemplated in this Act without meeting the procedural requirements set out in this Act, provided the Minister and the Authority have published such proposed subordinate measure in the *Gazette*, allowing a period of at least 30 days for comment.

Short title and commencement

63. (1) This Act is called the Namibia Financial Institutions Supervisory Authority Act, 2020, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (1) or (2).
