



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

BANK OF NAMIBIA

No. 240

2020

DETERMINATIONS UNDER THE BANKING INSTITUTIONS ACT, 1998
AS AMENDED: FIT & PROPER TEST FOR SUBSTANTIAL
AND PROSPECTIVE SUBSTANTIAL SHAREHOLDERS OF BANKING INSTITUTIONS
AND CONTROLLING COMPANIES

In my capacity as Governor of the Bank of Namibia (Bank), and under the powers vested in the Bank by virtue of section 71(3) of the Banking Institutions Act, 1998 (Act No. 2 of 1998), as amended, read in conjunction with section 20(4) and section 25 of the aforementioned Act, I hereby issue this **Determination on the Fit & Proper Test for Substantial and Prospective Substantial Shareholders of Banking Institutions and Controlling Companies (BID-23)**.

J. !GAWAXAB
GOVERNOR

Windhoek, 18 June 2020

Determination No. BID-23**FIT & PROPER TEST FOR SUBSTANTIAL AND PROSPECTIVE SUBSTANTIAL SHAREHOLDERS OF BANKING INSTITUTIONS AND CONTROLLING COMPANIES****Arrangement of Paragraphs****PART I****Preliminary****PARAGRAPH**

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PART I: PRELIMINARY

1. **Short Title** – Fit & Proper Test for Substantial Shareholders
2. **Authorization** – Authority for the Bank to issue this Determination is provided in Sections 71(3) read with 20(4) of the Banking Institutions Act, 1998 (No. 2 of 1998) as amended.
3. **Application** – This Determination applies to all banking institutions authorised to conduct banking business and controlling companies operating in Namibia.

4. **Definitions** – Terms used within this Determination are as defined in the Act, as further defined below, or as reasonably implied by contextual usage:
- 4.1 “**Act**” - refers to the Banking Institutions Act, 1998 (Act No.2 of 1998) as amended;
- 4.2 “**fit & proper person**” - refers to person who when subjected to the criteria of this Determination, together with any other criteria which may be stipulated by the Bank, presents the likelihood of being in a position to discharge all the responsibilities of being a substantial shareholder in a banking institution or a controlling company in a honest, competent, and prudent manner, in the best interest of the banking institution or controlling company.
- 4.3 “**significant influence**” means the capacity of a shareholder to unduly influence, as a result of his/her shareholdings, the composition of the board of directors of a banking institution or controlling company and/or its financial, strategic, and operational policy decisions.

PART II: STATEMENT OF POLICY

5. **Purpose** – The purpose of this Determination is to set out a framework for assessing whether a person is fit and proper to remain or become a substantial shareholder in a banking institution or a controlling company.
6. **Scope** – This Determination applies to all prospective substantial shareholders applying for a banking license; potential investors seeking to acquire substantial interests in banking institutions or controlling companies. The fit and proper criteria is also applicable to existing substantial shareholders in banking institutions or controlling companies, on an ongoing basis.
7. **Responsibility** – The Bank must subject any person applying for approval to become a substantial shareholder in a banking institution or controlling company to the fit and proper criteria outlined in this Determination. The onus is however on existing and prospective substantial shareholders to demonstrate that they are fit and proper persons at all times to remain or become shareholders of banking institutions or controlling companies. It is the responsibilities of the substantial shareholders to truthfully provide adequate information to enable the Bank to properly perform fitness and probity assessment of such shareholders.

PART III: ASSESSMENT

8. ASSESSING FITNESS & PROBITY

- 8.1 **Submission of Information**- every banking institution or controlling company must give the Bank written notice prior to the allotting, issuing or registration of the transfer of any of its shares to any substantial shareholder. Such notice must reach the Bank at least 30 days prior to the allotting, issuing or registration of the transfer of shares. The notification must be accompanied by the following forms and documentation, as the case may be, duly completed and signed by the prospective substantial shareholder, existing substantial shareholder or the duly authorised representative in respect of a juristic person.
- a) **Annexure A** (i.e. form BIF025);
 - b) **Annexure B** (i.e. form BIF 023) or latest audited financial statements;
 - c) **Annexure C** (i.e. declaration form);
 - d) Certified copies of personal identification documents or company registration documents;

- e) A police clearance or certificate of conduct; and
- f) Any other documents the Bank may deem reasonably necessary.

On an on-going basis, all banking institutions or controlling companies must every three years and at least 90 days after the financial year end of such banking institution or controlling company submit the necessary documentation as prescribed herein to demonstrate that the respective substantial shareholders are still fit and proper to remain substantial shareholders of the banking institution or controlling company.

8.2 Assessment Criteria

The Bank will consider the following criteria when assessing fitness and propriety of substantial shareholders within banking institutions or controlling companies: -

- i. Good character (i.e. honesty, integrity, fairness, and reputation);
- ii. Financial solvency and integrity;
- iii. Other Considerations.

It should be noted that this list is not exhaustive, and thus the Bank may consider each application on its own merit and examine any other matters that it deems reasonably relevant to the circumstances of an applicant on a case-by-case basis.

8.2.1 Good Character

Good character incorporates various qualities including honesty, integrity, fairness and reputation, which are demonstrated over time. In determining a person's good character, the Bank takes into account the past conducts, and actions of the applicant and will have regard to all appropriate factors, including but not limited to the following: -

8.2.1.1 In the case of natural and juristic persons

The Bank considers all the factors listed below whether they have arisen in Namibia or elsewhere. The Bank should be informed of all these matters and will consider the extent and circumstances of the person's involvement in the relevant events, the time it occurred and seriousness thereof. In its assessment, the Bank will gather information from all appropriate sources, in determining the person's fitness and probity.

- i) Whether the person has been convicted or found guilty of a criminal offence under any legislation designed to protect members of the public from financial loss i.e. an offence relating to dishonesty, fraud or financial crime. However, the Bank may consider other criminal offences, especially those that may point to the applicant's character;
- ii) Whether the person has been convicted or found guilty in any proceedings of a disciplinary nature;
- iii) Whether the person has been the subject of any adverse findings or any settlement in civil proceedings, particularly in connection with banking or other financial business, misconduct, or fraud;

- iv) Whether the person or any business in which the person is controlling shareholder, has controlling interest or exercises significant influence, has been investigated and disciplined or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately.
- v) Whether the person has been the owner, manager or director of a company, partnership or other organisation that has been refused registration, authorisation, membership or a license to conduct trade, business or professional or has had that registration, authorisation, membership or license revoked, withdrawn or terminated;
- vi) Whether, as a result of removal of the license, registration or other authority the person has been refused the right to carry on a trade, business requiring a license, registration or other authorisation.
- vii) Whether the person has been a director, partner, or otherwise involved in the management of a business that has gone into receivership, insolvency or compulsory liquidation while the person was a part of that organisation or within a reasonably short period (e.g. one year) after the person's departure from the institution;
- viii) Whether the person has been dismissed, asked to resign or resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity.
- ix) Whether the person has ever been disqualified, in terms of the relevant Companies Act or any other legislation, from acting as a director or serving in a managerial capacity as a result of wrongdoing.
- x) Whether the person has not been fair, truthful and forthcoming in dealings with customers, auditors and regulatory authorities within the past ten years and has been the subject of any justified complaint relating to regulated activities; and
- xi) Whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards.

8.2.2 Financial Solvency and Integrity

In assessing financial soundness, due regard will be given to the solvency of the person. Accordingly, the assessment will not only focus on the ability of the person to meet its liabilities but it will also determine the ability to maintain sufficient financial resources to allow the business to continue as a going concern, taking into account the nature and extent of the person's current and proposed business and its ability to maintain adequate capital levels, ascertained in accordance with the Determination on Measurement

and Calculation of Capital Charges for Credit Risk, Operational Risk and Market Risk (i.e. with respect to banks).

The assessment will amongst others consider the following factors: -

8.2.2.1 In the case of a natural person

- i) Whether the person has ever filed for bankruptcy and been declared bankrupt, had his estate sequestrated, or is the subject of such proceedings in Namibia or elsewhere;
- ii) Whether the person has made a compromise with his/her creditors;
- iii) Whether the person has failed to satisfy any debt adjudged due and payable as a judgment-debtor under an order of a court.
- iv) Whether the person has been an executive officer or shareholder in a position to exercise significant influence in an institution that has been the subject of adverse judgment or award or made arrangements or compromise with his or her creditors, filed for bankruptcy, has been adjudged bankrupt, had it estates sequestrated or has been involved in any similar proceedings.
- v) Whether the person has been associated with any illegal activity concerning banking business, deposit taking, financial dealing or any other dealings.
- vi) Whether the person has the ability to inject capital when called upon to do so.

8.2.2.2 In the case of a juristic person

- i) Whether the person has been declared bankrupt, is or has been threatened with receivership, administration, liquidation or other similar proceedings in Namibia or elsewhere;
- ii) Whether the person has made a compromise with its creditors;
- iii) Whether the person is able to meet any financial or capital requirements applicable to it.
- iv) Whether the person has been associated with any illegal activity concerning banking business, deposit taking, financial dealing or any other dealings in Namibia or elsewhere.
- v) Whether the person has the ability to inject capital when called upon to do so.

8.3 Other Considerations

- 8.3.1** In addition to the criteria stated above, the Bank may consider any other issues such as the nature and scope of business operations of a person and its group and organisational structure, as deemed relevant. The Bank will assess the extent to which the corporate structure of the applicant will be in accordance with the effective supervision and regulation of the banking institution.
- 8.3.2** In case the applicant is a financial entity, the Bank will consider whether it is regulated and in good standing with regulatory authorities.
- 8.3.3** In case of applications to exercise control over a banking institution, the Bank will have regard, but not limited, to whether the acquisition of such control will be in national economic and public interests, the desirability of diversified ownership of banking institutions or controlling companies, and the shareholder agreements and their impact on control and management of the banking institution or controlling company.

PART IV: REMEDIAL MEASURES

9 Remedial measures –

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

PART V: EFFECTIVE DATE

- 10 Effective date** –This Determination comes into effect on the date of the publication in the Government Gazette.

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

BIF 025**ANNEXURE A**

(If insufficient space provided, please attach a separate sheet)

STATEMENT BY PERSONS WHO ARE SUBSTANTIAL AND PROSPECTIVE SUBSTANTIAL SHAREHOLDERS OF BANKING INSTITUTIONS OR CONTROLLING COMPANY AND (IN THE EVENT OF AN INSTITUTION THIS IS TO BE COMPLETED BY THE PRINCIPAL OFFICER OR OFFICER WITH MANAGERIAL RESPONSIBILITIES**(Confidential and not available for inspection by the public)**

1. Name of institution in connection with which this questionnaire is being completed:

2. Your first and surname (natural person):

3. Former surname(s) and or forename(s) by which you may have been known (natural person)

4. Name of a company/institution (juristic person):

5. Please state in what capacity you are completing this questionnaire, i.e. as a current or prospective substantial shareholder.

6. Complete Addresses (including Postal):
7. Residential and work (natural person):

8. Business Address (juristic person):

9. Any previous address (es) during the past 10 years:
-
-
-
10. Date and place of your birth (including town or city):
-
-
11. Date and place of incorporation (including town or city):
-
-
12. Your nationality and how it was acquired (birth, naturalization or marriage):
-
-
13. Name(s) and address(es) of your bankers during the past 10 years:
-
-
14. Main business activities (juristic person)
-
-
15. Your occupation and employment now and during the past 10 years, including the name and address of your employer in each case, the nature of business, the position held and relevant dates:
-
-
16. Do you hold or have you ever held or applied for a license or equivalent authorization to carry on any business activity in Namibia or elsewhere? If so, give particulars. If any such application was refused or withdrawn after it was made or any authorization was revoked, give particulars:
-
-
17. Have you been convicted or found guilty of a criminal offence under any legislation designed to protect members of the public from financial loss i.e. an offence relating to dishonesty, fraud or financial crime? If so, give particulars of the court that convicted you, the offence, the penalty imposed and the date of conviction. If rehabilitated, kindly provide the necessary proof:
-
-
-
-

18. Have you, in Namibia or elsewhere, been censured, disciplined, warned as to future conduct, or made the subject of a court order at the instigation of any regulatory authority or any professional body to which you belong or belonged, or have you ever held a practicing certificate subject to conditions? If so, give particulars:

19. Have you been the subject of any adverse findings or any settlement in civil proceedings, particularly in connection with banking or other financial business, misconduct, or fraud? If so, give particulars:

20. Have you been or any business in which you are controlling shareholder, has controlling interest or exercises significant influence, been investigated and disciplined or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately? If so, give particulars:

21. Have you been the owner, manager or director of a company, partnership or other organisation that has been refused registration, authorization, membership or a license to conduct trade, business or professional or has had that registration, authorization, membership or license revoked, withdrawn or terminated? If so, give particulars:

22. Have you been refused the right to carry on a trade, business requiring a license, registration or other authorization as a result of removal of the license, registration or other authority? If so, give particulars:

23. Have you been a director, partner, or otherwise involved in the management of a business that has gone into receivership, insolvency or compulsory liquidation while the you were a part of that organisation or within a reasonably short period (e.g. one year) after the your departure from the institution? If so, give particulars:

24. Have you been dismissed, asked to resign or resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity? If so, give particulars:
-
-
-
-
25. Have you been disqualified, in terms of the relevant Companies Act or any other legislation, from becoming a substantial shareholder or acting as a director or serving in a managerial capacity as a result of wrongdoing? If so, give particulars:
-
-
-
-
26. Have you been a subject of any justified complaint relating to regulated activities i.e. charged with unfairness, untruthfulness and lack of forthcoming in dealings with customers, superiors, auditors and regulatory authorities within the past ten years? If so, give particulars:
-
-
-
-
27. Have you ever been declared insolvent (either provisionally or finally) by a court in Namibia or elsewhere, or has bankruptcy petition ever been served on you? If so, give particulars:
-
-
-
28. Have you, in connection with the formation or management of any body corporate, partnership or unincorporated institution, been adjudged by a court in Namibia or elsewhere, civilly liable for any fraud, misfeasance or other misconduct by you towards such a body or company or towards any members thereof? If so, give particulars:
-
-
-
29. Has anybody corporate, partnership or unincorporated institution with which you were associated as a substantial shareholder or a director or executive officer, in Namibia or elsewhere, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading, either while you were associated with it or within one year after you ceased to be associated with it, or has anything analogous to any of these events occurred under the laws of any other jurisdiction? If so, give particulars:
-
-
-
30. How many shares in the institution are registered in your name or the name of a related party? If applicable, give name(s) in which registered and class of shares:
-
-
-

31. How many shares in the institution (not being registered in your name or that of a related party) are related parties beneficially interested?
-
-

32. Do you, or does any related party, hold any shares in the institution as trustee or nominee? If so, give particulars:
-
-

33. Are any of these shares in the institution mentioned in reply to questions 30, 31 and 32 equitably or legally charged or pledged to any party? If so, give particulars:
-
-

34. What proportion of the voting power at any general meeting of the institution (or of another body corporate of which it is a subsidiary) are you or any related party entitled to exercise or control the exercise of?
-
-

35. If the exercise of the voting power at any general meeting of the institution, or of another body corporate of which it is a subsidiary, is or may be controlled by one or more of your associates or any related party, give the proportion of the voting power so controlled in each case and the identity of each associate:
-
-

36. Are you currently, or do you, other than in professional capacity, expect to be, engaged in any litigation in Namibia or elsewhere? If so, give particulars:
-
-

37. Do you have a basic knowledge and understanding of the risks to which banking institutions are exposed?
-
-

38. Have you acquainted yourself with, and do you understand, the extent of the rights and powers, as well as your responsibilities and duties as a substantial shareholder of the banking institution or controlling company, as contained in the common law, the Companies Act, 2004 (Act No. 28 of 2004), the Banking Institutions Act, 1998 (as amended). (To be completed only by substantial shareholders or prospective substantial shareholders).
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-

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ANNEXURE B

**Provide your latest personal financial statements below:
(In the event of a juristic person, provide your latest audited financial statement)**

PERSONAL FINANCIAL STATEMENTS (Natural person)

(To be submitted by Substantial Shareholders)

(Amounts in N\$'000)

| | |
|---|---|
| Balance sheet (as at _____) | |
| Assets | Liabilities & Net worth |
| Cash & Bank Balances: _____ (Schedule I) | Accounts Payable: _____ |
| Marketable Securities: _____ (Schedule II) | Notes Payable: _____ |
| CSV Life Insurance: _____ (Schedule III) | Mortgage Indebtedness: _____ |
| Debtors-Good: _____ | Interest Payable: _____ |
| Debtors-doubtful: _____ | Taxes Payable: _____ |
| Other Investments: _____ (Schedule IV) | Judgments: _____ |
| Machinery & Equipment: _____ | Other Liabilities (specify): _____ |
| Real Estate (1): _____ (Schedule V) | |
| Farms Products (2): _____ | Total Liabilities: _____ |
| Business Interests: _____ | Net Worth: _____ |
| Other Assets (specify): _____ | |
| Total Assets: _____ | Total Liabilities's & Net Worth: _____ |
| ===== | |
| Income (for the year: _____) | |
| Salary/Wages: _____ | |
| Investments: _____ | |
| Real Estate: _____ | |
| Other (Specify): _____ | |
| Total: _____ | |

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PERSONAL FINANCIAL STATEMENTS (natural person)
SUPPORTING SCHEDULES
 (Attach additional sheets as necessary)

SCHEDULE I
CASH IN BANKS

| TYPE OF SECURITY (Savings, checking) | BANK AND ADDRESS | ACCOUNT NAME | BALANCE |
|---|------------------|--------------|---------|
| | | | |

SCHEDULE II
MARKETABLE SECURITIES

| TYPE OF SECURITY (Stock, Bonds) | DESCRIPTION | NO. OF SHARES OR FACE VALUE | IN NAME OF | COST | MARKET VALUE |
|------------------------------------|-------------|--------------------------------|------------|------|--------------|
| | | | | | |

SCHEDULE III
LIFE INSURANCE IN FORCE

| FACE AMOUNT | TYPE OF POLICY (Whole life, term) | POLICY NUMBER | INSURANCE COMPANY AND ADDRESS | (A) INSURED (B) BENEFICIARY | CASH VALUE |
|-------------|---|------------------|-------------------------------------|--------------------------------|---------------|
| | | | | | |

Note: Please provide account numbers where applicable.

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**SCHEDULE IV
OTHER INVESTMENTS**

| DESCRIPTION (INCLUDE NATURE/ EXTENT OF OWNERSHIP) | DATE PURCHASED | COST | CURRENT VALUE |
|--|----------------|------|---------------|
| | | | |

**SCHEDULE V
REAL ESTATE OWNED**

| DESCRIPTION (INCLUDE NATURE/EXTENT OF INTEREST) | DATE PURCHASED | COST | MORTGAGE* INDEBTEDNESS | CURRENT VALUE |
|---|----------------|------|---------------------------|---------------|
| | | | | |

* Describe below the terms of mortgages with name and address of mortgage.

**SCHEDULE VI
NOTES/LOANS PAYABLE - BANKS AND OTHERS**

| WHERE BORROWED | DATE OF LOAN | ORIGINAL AMOUNT | REPAYMENT TERMS | COLLATERAL SECURITY (IF ANY) | CURRENT BALANCE OWING |
|----------------|--------------|-----------------|-----------------|---------------------------------|--------------------------|
| | | | | | |

Please provide account numbers where applicable.

ANNEXURE C

DECLARATION

I,, hereby declare the following:

This statement consists of pages, each signed by me. The content of this declaration is true to the best of my knowledge and belief. I am aware that should it be submitted as evidence and there is something contained therein that I know to be false or believe not to be true; I may be liable to prosecution.

I undertake that, as long as I continue to be a substantial shareholder of the institution, I will notify the Bank of Namibia of any material changes to, or affecting the completeness or accuracy of, the information supplied by me on forms BIF 023 and BIF 025 as soon as possible, but in no event later than **21 days** from the day that the changes come to my attention.

I also authorize the Bank to request and receive any information necessary, from any source the Bank deems appropriate, to verify the accuracy of information contained in these statements.

I know and understand the content of this declaration. I have*/do not have* objections to taking the prescribed oath. I consider the prescribed oath to be binding*/not binding* on my conscience.

..... SIGNATURE OF DEPONENT
..... ADDRESS OF DEPONENT
..... NAME OF DEPONENT
..... POSITION OF DEPONENT

I certify that the above statement was taken by me and that the deponent has acknowledged that he*/she* knows and understands the content of this statement. This statement was sworn to*/affirmed* before me and the deponent's signature was placed hereon in my presence at on

.....
COMMISSIONER OF OATHS

FULL NAMES
EX OFFICIO
AREA
ADDRESS

**Delete whichever is not applicable*
