

INSPECTION OF FINANCIAL INSTITUTIONS ACT 38 OF 1984

[ASSENTED TO 20 MARCH 1984] [DATE OF COMMENCEMENT: 4 APRIL 1984]

(Signed by the President)

as amended by

Building Societies Act, 82 of 1986
Financial Institutions Amendment Act 6 of 1987
Financial Institutions Amendment Act 51 of 1988
Trust Property Control Act 57 of 1988
Accountants' and Auditors' and Financial Institutions Amendment Act, 92 of 1988
Financial Institutions Second Amendment Act 54 of 1989
Namibia Financial Institutions Supervisory Authority Act 3 of 2001
Inspection of Financial Institutions Amendment Act 6 of 2011

ACT

To consolidate the laws relating to the inspection of the affairs of financial institutions and to provide for matters incidental thereto.

ARRANGEMENT OF SECTIONS

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1 Definitions

In this Act, unless the context indicates otherwise-

"auditor", in relation to a financial institution, means the person appointed as auditor of that institution under the Act concerned;

"company" includes a close corporation referred to in the Close Corporations Act, 1984 (Act 69 of 1984);

[Definition of "company" inserted by sec 22 of Act 51 of 1988.]

"financial institution" means-

- (a) an insurer registered in terms of the Insurance Act, 1943 (Act 27 of 1943), and includes an agent for brokers or underwriters at Lloyds, or any other person in respect of whom section 20*bis* of that Act or a regulation made under section 23A of that Act applies;
- (b) a pension fund organization registered in terms of the Pension Funds Act, 1956 (Act 24 of 1956);
- (c) a friendly society registered in terms of the Friendly Societies Act, 1956 (Act 25 of 1956), or a person carrying on the business of the control and administration of the affairs of such a friendly society;
- (d)

[Para (d) deleted by sec 13(a) of Act 6 of 1987.]

- (e)

[Para (e) substituted by sec 106 of Act 82 of 1986 and deleted by sec 13(a) of Act 6 of 1987.]

- (f) a medical scheme registered in terms of the Medical Schemes Act, 1967 (Act 72 of 1967);
- (g) a management company registered in terms of the Unit Trusts Control Act, 1981 (Act 54 of 1981), or a unit trust scheme as defined in that Act;

"inspector" means a person appointed as an inspector or temporary inspector under section 2;

"local auditor", in relation to a financial institution, means the person appointed as local auditor of that institution under the Act concerned;

"Minister" means the Minister of Finance;

"registered", in relation to a financial institution, includes provisionally registered;

"registrar" means the person appointed in terms of section 5 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as the chief executive officer of the Namibia Financial Institutions Supervisory Authority;

[Definition of "registrar" amended by sec 106 of Act 82 of 1986 and by sec 13(b) of Act 6 of 1987 and substituted by sec 37 of Act 3 of 2001.]

- (f) the Medical Schemes Act, 1967 (Act 72 of 1967), means the registrar of medical schemes appointed under section 13 of that Act;
- (g) the Unit Trusts Control Act, 1981 (Act 54 of 1981), means the registrar of unit trust companies appointed under section 2 of that Act;

Provided that for the purposes of this definition an agent for brokers or underwriters at Lloyds shall be deemed to be an insurer registered in terms of the Insurance Act, 1943 (Act 27 of 1943);

"the Act concerned" means the Act under which the financial institution concerned is registered or deemed to be registered or under which it is required to render returns or statements to the registrar, and includes the regulations framed thereunder;

"valuator", in relation to a financial institution registered in terms of the Insurance Act, 1943 (Act 27 of 1943), the Pension Funds Act, 1956 (Act 24 of 1956),

or the Friendly Societies Act, 1956 (Act 25 of 1956), respectively, bears the meaning assigned thereto in the Act concerned.

2 Appointment of inspectors

(1) The registrar may appoint inspectors under this Act.

[Subsec (1) substituted by sec 37 of Act 3 of 2001.]

(2) When he or she considers it necessary, the registrar may appoint a person who is not in the fulltime employment of the State or of the Namibia Financial Institutions Supervisory Authority established by section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as a temporary inspector to assist the registrar or an inspector referred to in subsection (1) with an inspection under this Act of the affairs or any part of the affairs of a financial institution, or of any person, partnership or company not registered as a financial institution, or to undertake such an inspection.

[Subsec (2) substituted by sec 23 of Act 54 of 1989 and by sec 37 of Act 3 of 2001.]

(3) Before the registrar appoints a temporary inspector under subsection (2), he shall take all reasonable steps to ensure that the person he appoints will be able to report objectively and impartially on the affairs of the financial institution, person, partnership or company concerned.

(4) A temporary inspector appointed under subsection (2) has for the purpose of an inspection for which he has been appointed all the powers and duties of an inspector under this Act.

(5) Every inspector and every temporary inspector so appointed shall be furnished with a certificate signed by the registrar stating that he has been appointed as an inspector or temporary inspector under this Act.

3 Inspection of the affairs of a financial institution

(1) The registrar may at any time inspect the affairs or any part of the affairs of a financial institution or instruct an inspector to carry out such an inspection and may in particular carry out such an inspection or cause such an inspection to be carried out-

- (a) if the financial institution has failed to render a return or statement prescribed by or under the Act concerned within the period prescribed by or under that Act;
- (b) if the financial institution, after having rendered an incorrect or incomplete return or statement prescribed by or under the Act concerned, has not corrected or completed that return or statement within a period of 30 days from the date upon which the registrar called upon it in writing to correct or complete that return or statement;
- (c) if the registrar has required the financial institution to furnish him with information which he was entitled under the Act concerned to require it to furnish, and the institution has not within the period determined by the registrar (which shall not be less than 30 days from the date upon which he required it in writing to furnish the information) fully and satisfactorily furnished that information;
- (d) if a return furnished by the financial institution to the registrar shows that the financial institution has failed to comply with a material provision of the Act concerned;

- (e) if the registrar has reason to believe that the financial institution has contravened a provision of section 20*bis* of the Insurance Act, 1943 (Act 27 of 1943), or of a regulation made under section 23A of that Act;
- (f) if the registrar considers it desirable to ascertain whether a person has or had any interest, direct or indirect, in or in the business of the financial institution;
- (g) if the auditor, local auditor or valuator of the financial institution reports to the registrar in terms of the Act concerned that an irregularity or undesirable practice in the conduct of the financial institution's business was reported to the financial institution and was not corrected within the period prescribed by or under that Act or, if such a period is not so prescribed, within a period of 30 days from the date upon which the irregularity or undesirable practice was reported to the institution by the auditor, local auditor or valuator;
- (h) if a person has applied for such an inspection and has supported his application by such evidence as the registrar may require in order to show that the applicant has good reason for requiring the inspection.

(2) All expenses necessarily incurred by and the remuneration of any temporary inspector who may be appointed under section 2(2) shall be defrayed by-

- (a) a person who has applied for an inspection of a financial institution or any person, partnership or company not registered as a financial institution, and the registrar may require such person to furnish such security as the registrar may deem satisfactory and sufficient to defray such expenses and remuneration; or
- (b) the financial institution, or any person, partnership or company not registered as a financial institution, being inspected if the registrar after having considered the inspection report so decides and notwithstanding the provisions of paragraph (a).

[Subsec (2) substituted by sec 24 of Act 54 of 1989.]

4 Powers of the registrar and inspectors

(1) In order to carry out an inspection under section 3 the registrar or an inspector may-

- (a) at any time during normal office hours without previous notice enter any premises occupied by a financial institution and require the production to him of any or all of the financial institution's securities, books, records, accounts or documents;
- (b) search any premises occupied by a financial institution for any moneys, securities, books, records, accounts or documents;
- (c) open or cause to be opened any strongroom, safe or other container in which he suspects any moneys, securities, books, records, accounts or documents of a financial institution are kept;
- (d) examine and make extracts from and copies of all securities, books, records, accounts and documents of a financial institution or, against a full receipt issued by him for such securities, books, records, accounts

or documents, remove them temporarily from the premises of the financial institution for that purpose;

- (e) require an explanation of any entries in the books, records, accounts or documents of a financial institution;
- (f) against a full receipt issued by him, seize any securities, books, records, accounts or documents of a financial institution which in his opinion may afford evidence of an offence or irregularity;
- (g) retain any such seized securities, books, records, accounts or documents for as long as they may be required for any criminal or other proceedings.

(2) In carrying out an inspection under section 3 the registrar or an inspector may examine under oath in relation to the business of a financial institution any person who is or formerly was a director, auditor, local auditor, attorney, valuator, agent, servant, employee, member, debtor, creditor, policy-holder or shareholder of the financial institution and he may administer an oath or affirmation to that person for the purpose of such an examination: Provided that the person examined, whether under oath or not, may have his legal adviser present at the examination.

(3) A person contemplated in subsection (2) shall, when he is requested by the registrar or an inspector to do so, produce to the registrar or the inspector every security, book, record, account or document of the financial institution to which he has access, and shall give the registrar or the inspector, at his request, any information at his disposal relating to the affairs of the financial institution.

(4) An inspector may, with the written authority of the registrar, also inspect the securities, books, records, accounts or documents of any person, partnership or company-

- (a) if the registrar has reason to believe that the financial institution the affairs of which are being inspected, has or had a direct or indirect interest in or in the business of that person, partnership or company;
- (b) if the registrar has reason to believe that such person, partnership or company has or had a direct or indirect interest in or in the business of the financial institution;
- (c) if the registrar considers it necessary for a proper inspection of the affairs of the financial institution that those securities, books, records, accounts or documents be inspected,

and the provisions of subsections (1), (2) and (3) apply *mutatis mutandis* in respect of such an inspection: Provided that for the purposes of paragraph (b) a person who holds shares as a nominee or in trust on behalf of another person in a financial institution, is deemed to have an interest in the financial institution, and shall upon request of the inspector disclose the name of that other person.

(5) An inspector shall on demand produce the certificate of his appointment as an inspector or temporary inspector furnished to him by the registrar under section 2(5) or the written authority granted to him by the registrar under subsection (4) of this section.

(6) The financial institution of which the securities, books, records, accounts or documents have been seized under subsection (1)(f) or its lawful representative is

entitled to examine, make entries in and make extracts from them during office hours under such supervision as the registrar or an inspector may determine.

5 Report on inspection

When an inspector has completed his inspection, he shall prepare a report thereon which he shall submit to the registrar, and if the inspection was carried out by the registrar, he shall likewise prepare a report thereon, and the registrar shall transmit a copy of every such report to the financial institution concerned.

6 Inspection of affairs of person, partnership or company not registered as a financial institution

(1) If the Minister has reason to suspect that a person, partnership or company which is not registered as a financial institution, is carrying on the business of a financial institution, he may direct the registrar to inspect or cause to be inspected the affairs or any part of the affairs of that person, partnership or company in order to establish whether or not the business of a financial institution is being carried on by that person, partnership or company.

(1A) Despite subsection (1), if the registrar has reason to suspect that a person, partnership or company which is not registered as a financial institution is carrying on the business of a financial institution, the registrar may inspect, or direct any person to carry out an inspection of, the affairs or any part of the affairs of that person, partnership or company to establish whether or not the business of a financial institution is being carried on by that person, partnership or company.

[Subsec (1A) inserted by sec 1 of Act 6 of 2011.]

(2) The provisions of sections 4, 5 and 8 apply *mutatis mutandis* in respect of such an inspection.

[Subsec (2) substituted by sec 3 of Act 92 of 1988.]

7 Expenses of inspection

The remuneration of, and all expenses necessarily incurred by, a temporary inspector appointed under section 2(2) in connection with an inspection of the affairs of a financial institution, person, partnership or company carried out by him shall be borne by the State: Provided that the Minister may in his discretion recover such remuneration and expenses in whole or in part from the financial institution, person, partnership or company if the inspection proved to have been necessary, or, if the inspection proved to have been unnecessary, in whole or in part from the person who applied for the inspection.

8 Observance of secrecy

(1) A person carrying out an inspection under this Act shall preserve, or aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his duties and shall not communicate any such matter to any person save to the registrar or the financial institution, person, partnership or company concerned or its lawful representative or by order of a court of law: Provided that-

(a) any information obtained by the registrar in the course of an inspection under this Act or from a report by an inspector-

(i) may be used by the registrar or his staff in connection with any financial institution, person, partnership or company; and

(ii) may at the discretion of the registrar be conveyed to the Master of the Supreme Court; and

[Para (a) substituted by sec 26 of Act 57 of 1988.]

- (b) if the registrar has reason to believe that an offence or irregularity affecting any department of State has been committed, he may convey information regarding that offence or irregularity to the department concerned; and
- (c) if the registrar has reason to believe that any person who acted in the capacity of auditor to a financial institution did not comply with the provisions of subsection (3) of section 26 of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), the registrar may send a copy of the report by an inspector who inspected the affairs of such institution as well as any other information with regard to the affairs of such financial institution obtained by him as a result of the application of this Act, to the Accountants' and Auditors' Board established by section 2 of the Public Accountants' and Auditors' Act, 1951;

[Para (c) added by sec 4(c) of Act 92 of 1988.]

- (d) if the registrar is of the opinion that a report of an inspector who inspected the affairs of a financial institution, or that any information obtained by the registrar as a result of the application of this Act, may assist the liquidator of such institution to carry out his duties, to perform his functions or to exercise his powers with regard to the liquidation of such institution, he may submit to that liquidator a copy of such report or such information.

[Para (d) added by sec 4(c) of Act 92 of 1988.]

(2) Subject to the provisions of subsection (1) every member of the staff of the registrar shall preserve, or aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his official duties from any report by the registrar or an inspector.

9 Offences and penalties

- (1) A person who-
 - (a) when requested by the registrar or an inspector to take an oath or to make an affirmation, refuses to do so;
 - (b) without lawful excuse refuses or fails to answer to the best of his ability a question put to him by the registrar or an inspector in the exercise of his powers or the performance of his duties and relating to the affairs of a financial institution, person, partnership or company, even though the answer may tend to incriminate that person;
 - (c) wilfully gives any false information to the registrar or an inspector;
 - (d) refuses or fails to comply to the best of his ability with any reasonable request made to him by the registrar or an inspector in the exercise of his powers or the performance of his duties;
 - (e) wilfully hinders the registrar or an inspector in the exercise of his powers or the performance of his duties;
 - (f) contravenes section 8,

is guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding two years or to both that fine and that imprisonment.

(2) A person who, having taken an oath or made an affirmation before the registrar or an inspector, knowingly makes a false statement in relation to the matter which is the subject of the inspection, is deemed to be guilty of perjury.

10 Application to South West Africa

This Act and any amendment thereof also apply to the territory of South West Africa, including the Eastern Caprivi Zipfel.

11 Repeal and amendment of laws

(1) Subject to the provisions of subsection (2) the laws mentioned in the Schedule are hereby repealed or amended to the extent set out in the third column thereof.

(2) Anything done or deemed to have been done under any provision of a law repealed or amended by subsection (1) and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

12 Short title

This Act is called the Inspection of Financial Institutions Act, 1984.

Schedule LAWS REPEALED OR AMENDED

Number and year of law	Short title	Extent of repeal or amendment
Act 68 of 1962	Inspection of Financial Institutions Act, 1962	The repeal of the whole
Act 23 of 1965	Banks Act, 1965	The amendment of the Schedule by the deletion of the entries relating to the Inspection of Financial Institutions Act, 1962
Act 24 of 1965	Building Societies Act, 1965	The amendment of the Schedule by the deletion of the entries relating to the Inspection of Financial Institutions Act, 1962
Act 43 of 1975	Medical Schemes Amendment Act, 1975	The repeal of section 33
Act 101 of 1976	Financial Institutions Amendment Act, 1976	The repeal of section 32

Act 94 of 1977	Financial Institutions Amendment Act, 1977	The repeal of sections 15 and 16
Act 80 of 1978	Financial Institutions Amendment Act, 1978	The repeal of sections 15 and 16
Act 54 of 1981	Unit Trusts Control Act, 1981	The amendment of the Schedule by the deletion of the entries relating to the Inspection of Financial Institutions Act, 1962
Act 82 of 1982	Financial Institutions Amendment Act, 1982	The repeal of section 15

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