GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

No. 342 2023

REGULATIONS RELATING TO RESTRICTIONS ON LOAN-TO-VALUE RATIOS

Under section 108(1)(i) of the Banking Institutions Act, 2023 (Act No. 13 of 2023), and on the recommendation of the Bank, I have –

(a) made the regulations set out in the Schedule; and

(b) repealed the Regulations Relating to Restrictions of Loan-To-Value Ratios published under Government Notice No. 334 of 7 November 2019.

I. SHIIMI
MINISTER OF FINANCE
AND PUBLIC ENTERPRISES Windhoek, 16 October 2023

SCHEDULE

ARRANGEMENT OF REGULATIONS

Definitions

1. In these regulations, a word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates –

"customer" means any person applying for a mortgage loan from a banking institution;

"equity" means the residual market value of the property, net of any loans used to finance the property;

"financial institution" means an entity that renders a financial service as a regular feature of its business;

"loan value" means the amount of money borrowed from a banking institution against an asset used as collateral to secure the loan;

"loan-to-value ratio" means the ratio of the amount of money borrowed from a banking institution to purchase a property in relation to the purchase price of the property or the valuation of the property, whichever is the lowest;

"mortgage loan" means a loan financing the construction or purchase of a residential property, usually with specified instalments and interest rates;

"residential property" means an immovable property in Namibia that is used for or is suitable for use as a dwelling, or is in the process of being constructed or adapted for use as a dwelling; and

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

Purpose and scope of regulations

2. (1) The purpose of these regulations is to set out the procedures for determining the loan-to-value restrictions when banking institutions extend mortgage loans to customers for the purchase of residential properties in Namibia.

(2) Banking institutions must comply with the prudential requirements, contemplated in regulation 4, regarding imposition of loan-to-value ratios on residential properties.

(3) Only residential property with an active mortgage bond and an outstanding balance will be considered for the purpose of these regulations, residential properties which are not encumbered with a mortgage bond and are without any outstanding balance are not subjected to the provisions of these regulations.

(4) Where a banking institution extends an additional mortgage loan for an existing residential property already financed with a mortgage loan with an outstanding balance and the additional mortgage loan is used to acquire an additional property with a different title deed, the additional mortgage loan is regarded as financing a third or subsequent residential property and that additional mortgage is subjected to these regulations.

(5) A person with a member's interest of 50 percent or more in a close corporation or a shareholding and voting rights of 50 percent or more in a company which owns residential property is considered to be the owner of that residential property for the purpose of these regulations.

(6) A banking institution must treat spouses making a joint application as one person for the purpose of these regulations, and existing residential properties at the time of the application must be accounted for cumulatively.

Responsibility to ensure compliance

3. (1) The Board of Directors of a banking institution is responsible for establishing adequate policies and procedures to ensure that all requirements set out in these regulations are complied with.

(2) A banking institution must –

(a) establish, assess and approve the loan-to-value ratio restrictions on mortgage loans as part of the credit risk management policy of the banking institution; and

(b) develop and implement procedures to ensure adherence to the loan-to-value restrictions set out in these regulations.

(3) The Bank must assess the policies and procedures put in place by banking institutions, as contemplated in subregulations (1) and (2), to ensure compliance with these regulations.

Prudential requirements

4. (1) A banking institution must apply the loan-to-value ratio set out in the Annexure when extending a mortgage loan to a customer for the purchase of a residential property.

(2) The loan-to-value ratio referred to in subregulation (1) must be calculated based on the loan value of the property in relation to the market value of the property or purchase price, whichever is lowest.

(3) A banking institution may only disburse a loan for the purchase of a residential property if a customer pays a deposit based on the applicable loan-to-value ratio set out in the Annexure.

(4) Despite subregulation (3), a banking institution may not disburse a loan for the purchase of a residential property if the deposit referred to in that subregulation is financed through –

(a) equity resulting from the difference between the current value of the existing property of the customer and the amount owed on that property; or

(b) any funds borrowed from any financial institution, including financial institutions not regulated by the Bank.

(5) A banking institution may not extend any credit or financing facility for fulfilment of a deposit or top up for the purchase of third or subsequent residential properties to fulfil the requirements of these regulations.

Declaration by customer

5. (1) For the purpose of determining appropriate loan-to-value ratios to be imposed, a banking institution must request a customer to submit a written declaration on whether –

(a) the customer is applying for the loan for the purchase of a first, second, third or subsequent residential property;

(b) the customer has secured loans from other financial institutions, including those not regulated by the Bank as a source for the required deposit; and

(c) the loans referred to in (a) and (b) were extended for the purpose of purchasing a first property or an additional property.

(2) A banking institution must validate the accuracy of the declaration made by the customer in terms of subregulation (1).

Offences and penalties

6. (1) A banking institution that fails or contravenes these regulations commits an offence and on conviction is liable to a fine not exceeding N$ 100 000 or imprisonment for a period not exceeding two years and six months or both such fine and such imprisonment.

(2) If a banking institution is convicted of an offence under subregulation (1), a person who at the time of the commission of the offence –

(a) was or purported to act as an officer, a director or substantial shareholder of the banking institution; and

(b) was in any manner or to any extent responsible for or assisting in the management of any of the affairs of the banking institution and is proven to have –

(i) given instruction for the commission of the offence; or

(ii) consented to or acted in common purpose in the commission of the offence,

commits the same offence and subject to the same penalty as the banking institution.

Transitional provision

7. Any application made or process initiated under any provision of the repealed regulations and which is pending before any banking institution must continue as if the provisions of the repealed regulation has not been repealed and be finalised under the relevant provision of that repealed regulation.

ANNEXURE

LOAN-TO-VALUE RATIOS

Categorisation of mortgage loan	**Loan-to-value ratios**
First Residential Property	Not Applicable
Second Residential Property	Not Applicable
Third and Subsequent Residential Properties	90 percent

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