

**STATE-OWNED ENTERPRISES GOVERNANCE ACT 2 OF 2006**

[ASSENTED TO 29 AUGUST 2006] [DATE OF COMMENCEMENT: 1 NOVEMBER 2006]

*(Signed by the President)*

**as amended by**

State-owned Enterprises Amendment Act 5 of 2008

**also amended by**

Communications Act 8 of 2009  
[with effect from a date to be determined]

**ACT**

**To make provision for the efficient governance of State-owned enterprises and the monitoring of their performances; to make provision for the restructuring of State-owned enterprises; to establish the State-owned enterprises Governance Council and define its powers, duties and functions; and to make provision for incidental matters**

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

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**PART I**  
**PRELIMINARY (s 1)**

**1 Definitions**

In this Act-

**"board"**, in relation to a State-owned enterprise, means the members of the board of directors or other governing body of the State-owned enterprise, by whatever name called, holding positions comparable with those of the board of directors of a company;

**"chief executive officer"**, in relation to a State-owned enterprise, means the person who, either alone or jointly with one or more other persons, is responsible under the direct authority of the board of the State-owned enterprise for the conduct of the business of the State-owned enterprise;

**"company"** means a company registered in terms of the Companies Act, 1973 (Act 61 of 1973);

**"constituent document"**, in relation to a State-owned enterprise which is an unincorporated business, means the constitution, contract or other document under which the business was established and exists;

**"Council"** means the State-owned Enterprises Governance Council established by section 2;

**"establishing Act"**, in relation to a State-owned enterprise, means any law by or under which the State-owned enterprise was established and which governs its functions;

**"executive member"**, in relation to the board of a State-owned enterprise, means a member of the board who holds a salaried office in the State-owned enterprise;

**"portfolio Minister"**, in relation to a State-owned enterprise-

(a) which is not a State-owned company, means the Minister responsible for the administration of the law governing the establishment and functions of the State-owned enterprise; and

(b) which is a State-owned company, means the Minister holding the shares and exercising the rights attached to the shares in the company on behalf of the State;

**"prescribe"** means prescribe by regulation under section 43;

**"secretariat"** means the secretariat of the Council referred to in section 9(1);

**"State-owned company"** means a company incorporated under the Companies Act 1973, (Act 61 of 1973) in which the State is the sole or majority shareholder;

**"State-owned enterprise"** means an entity that is named in Schedule 1 to this Act;

**"this Act"** includes any regulation made under section 43.

## **PART II**

### **STATE-OWNED ENTERPRISES GOVERNANCE COUNCIL (ss 2-8)**

#### **2 Establishment of Council**

(1) There is established a Council to be known as the State-owned Enterprises Governance Council.

(2) The Council is a committee of Cabinet and performs the functions assigned to it by this Act under the supervision, and subject to the approval, of the Cabinet.

#### **3 Constitution of Council**

(1) Subject to subsection (2), the Council consists of the following members, namely-

(a) the Prime Minister, who is the chairperson of the Council;

(b) the member of the Cabinet responsible for finance;

(c) the member of the Cabinet responsible for trade and industry;

(d) the Attorney-General of Namibia appointed under Article 32(3)(i)(cc) of the Namibian Constitution; and

(e) the Director-General of Planning appointed under Article 32(3)(i)(dd) of the Namibian Constitution.

(2) Whenever a matter is to be discussed or considered at a meeting of the Council in relation to a State-owned enterprise or the board of a State-owned enterprise, the Council must invite the relevant portfolio Minister to attend that meeting and, when

attending such meeting, a portfolio Minister who is not a member of the Council is deemed to be such a member.

(3) The Cabinet may appoint for each member of the Council a member of Cabinet to act as alternate for the member of Council whenever he or she is absent or is unable to attend to his or her duties as such a member.

#### **4 Functions of the Council**

- (1) Subject to this Act, the functions of the Council are-
- (a) to establish generally accepted common principles of corporate governance and good practice governing State-owned enterprises;
  - (b) to develop common policy frameworks for the operations of State-owned enterprises, including policy on issues relating to human resources, assets and finance;
  - (c) to determine criteria for the performance measurement and evaluation of State-owned enterprises, and develop appropriate means for monitoring their performance;
  - (d) to lay down directives in relation to-
    - (i) governance agreements to be entered into by a portfolio Minister with the board of a State-owned enterprise;
    - (ii) performance agreements to be entered into between a portfolio Minister and the individual members of a board of a State-owned enterprise and between such a board and its chief executive officer and other senior management staff;
    - (iii) the remuneration levels of board members, chief executive officers and other senior management staff of State-owned enterprises; and
    - (iv) benefits for employees of State-owned enterprises generally;
  - (e) to make determinations in relation to the number of members to be appointed to the boards of State-owned enterprises and advise the portfolio Ministers on the appointment of such members in accordance with sections 14 and 15;
  - (f) to furnish a portfolio Minister with any comments it may wish to make in relation to an annual budget of a State-owned enterprise submitted to that Minister for approval and provided to the Council for its information and comment;
  - (g) to facilitate the provision of programmes for the training and development of members of the boards and management staff of State-owned enterprises on corporate governance and efficient management practices;
  - (h) to receive and consider for approval submissions made by State-owned enterprises on the annual distribution of profits and the declaration of dividends in terms of section 25;

- (i) to submit to Cabinet for decision any proposed restructuring plan prepared and approved by the Council under Part VI in relation to any State-owned enterprise identified by Cabinet for restructuring; and
  - (j) to perform any other function entrusted to the Council by or under this Act or any other law.
- (2) The Council may-
- (a) classify State-owned enterprises into the following categories for the purposes of this Act, namely-
    - (i) regulatory enterprises;
    - (ii) service rendering enterprises;
    - (iii) economic and productive enterprises;
    - (iv) general enterprises; and
  - (b) in performing its functions under subsection (1), differentiate between the different categories of State-owned enterprises.

## **5 Meetings of the Council**

- (1) The Chairperson of the Council decides when and where the Council meets.
- (2) The Council must meet at least four times per year.
- (3) At a meeting of the Council-
  - (a) the Chairperson or, in the absence of the Chairperson, any other member of the Council as the members present may elect, must preside;
  - (b) a majority of the members of the Council form a quorum;
  - (c) the Council must take decisions in a consensus-seeking manner and, if consensus cannot be reached on a matter, the matter must be submitted to Cabinet for decision.
- (4) A resolution of the Council contained in writing and signed by all members of the Council constitutes a valid decision of the Council as if it had been passed at a meeting of the Council.
- (5) The Council may, in its discretion, invite members of labour organisations, representatives of organised business, the members of the board, management and other representatives of a State-owned enterprise and any other persons or entities who or which, in the opinion of the Council, may have an interest in a matter to be considered by the Council to make representations to the Council in relation to the matter in the manner and form as the Council may determine, and to attend a meeting or part of a meeting of the Council as observers and to take part in the deliberations at the meeting in relation to the matter, but a person so attending has no vote at the meeting.
- (6) The Council-
  - (a) may regulate its own proceedings; and
  - (b) must cause minutes to be kept of proceedings and decisions at each meeting of the Council.

## **6 Disclosure of interest by members of Council**

(1) A Council member or portfolio Minister who has a direct or indirect personal or financial interest in any matter being discussed at a meeting of the Council must disclose the nature of that interest and must not further attend that meeting nor participate in any deliberations or decision of the Council in relation to the matter, except if the Council determines otherwise, and subject to any conditions the Council may determine.

(2) A disclosure of interest in accordance with subsection (1) must be noted in the minutes of the meeting concerned.

(3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years.

## **7 Committees of the Council**

(1) The Council may establish committees-

(a) to advise the Council, in relation to any matter which the Council refers to it; or

(b) to exercise any of the powers or perform any of the duties of the Council which the Council delegates or assigns to it.

(2) The Council may at any time dissolve or reconstitute a committee.

## **8 Confidentiality in relation to functions of Council**

(1) A member of the Council or of a committee of the Council, and any other person required or permitted to be present at a meeting of the Council or such a committee, must not publish or communicate or in any other way disclose any information relating to the affairs of any State-owned enterprise or a member of the board of a State-owned enterprise or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person's knowledge-

(a) in the exercise of any power or performance of any duty or function in connection with the functions of the Council; or

(b) as a result of such person's attendance at a meeting of the Council or a committee of the Council.

(2) Subsection (1) does not apply to information disclosed-

(a) for the purpose of the proper administration or enforcement of this Act or the performance of a function of the Council;

(b) for the proper administration of justice; or

(c) at the request in writing of a member of the Council or of a person authorised in writing by a member of the Council.

(3) A person who contravenes 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 5 years, or to both such fine and such imprisonment.

## **PART III SECRETARIAT (ss 9-12)**

## **9 Administrative personnel**

(1) The work incidental to the performance of the functions of the Council must be performed by a secretariat consisting of administrative personnel as the Council may consider necessary.

(2) The members of the secretariat referred to in subsection (1) may-

- (a) be staff members in the Public Service designated for the purpose by the Council; or
- (b) be persons other than such staff members appointed by the Council on such conditions of service and at such remuneration and service benefits as the Council may determine, after consultation with the Public Service Commission and with the concurrence of the Minister responsible for finance.

(3) The members of the secretariat must perform the functions assigned to them by this Act or by the Council.

## **10 Expenditure**

All expenditure connected with the performance of the functions of the Council, including expenditure relating to the remuneration and other service benefits of persons employed under section 9(2)(b) and the remuneration of consultants engaged under section 11, must be defrayed from money appropriated by Parliament for the purpose.

## **11 Consultants**

(1) The Council may engage under contract of service persons with appropriate qualifications, skills or experience to render professional, technical or other assistance as the Council may consider necessary for carrying out its functions.

(2) The Council must engage a consultant only after selection of a suitable person through a process of competitive tender conducted in a manner determined by the Council.

## **12 Preservation of secrecy**

(1) A member of the secretariat of the Council or any consultant engaged by the Council, must not publish or communicate or in any other way disclose any information relating to the affairs of any State-owned enterprise or a member of the board of a State-owned enterprise or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person's knowledge-

- (a) in the performance of any function in connection with the functions of the Council; or
- (b) as a result of such person's attendance at a meeting of the Council or a committee of the Council.

(2) Subsection (1) does not apply to information disclosed-

- (a) for the purpose of the proper administration or enforcement of this Act or the performance of the functions of the Council;
- (b) for the proper administration of justice; or
- (c) at the request of any member of the Council or any other person authorised in writing by a member of the Council.



(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

#### **PART IV**

### **PROCEDURE FOR APPOINTMENT OF BOARD MEMBERS AND OBLIGATIONS OF STATE-OWNED ENTERPRISES (ss 13-28)**

#### **13 Application of this Part**

- (1) This Part applies in relation to every State-owned enterprise despite-
- (a) the absence of any provision; or
  - (b) anything to the contrary contained,

in its establishing Act or constituent document or its memorandum of association and articles of association regulating any matter provided for in this Part.

(2) Any provision contained in the establishing Act or constituent document or memorandum of association and articles of association of a State-owned enterprise which is contrary to a provision of this Part must be construed as if it had been amended correspondingly with the provisions of this Part.

#### **14 Council's function in relation boards of State-owned enterprises**

- (1) The function of the Council under section 4(1)(e) in relation to the board of a State-owned enterprise, includes the power-
- (a) to determine the number of board members to be appointed within the limits of 5 to 7 persons, or such larger number as the Council may consider appropriate in a particular case, but with due regard to any stipulation regarding the composition of a board provided for in the establishing Act or constituent document or memorandum of association and articles of association of a State-owned enterprise;
  - (b) to determine the number of persons to be appointed as executive members, if any;
  - (c) to determine the requisite qualifications, experience or skills of persons to be eligible for appointment as members of the board;
  - (d) to determine the term of office of the members of the board, either in relation to members generally or members holding particular positions on the board;
  - (e) to advise the relevant portfolio Minister-
    - (i) in relation to the determinations made by the Council under paragraphs (a), (b), (c) and (d);
    - (ii) on the persons to be considered by the portfolio Minister for appointment as members of the board of the State-owned enterprise, including the persons to be appointed as executive members, if any;
    - (iii) on the appointment of the chairperson and vice-chairperson of the board; and

- (iv) on the appointment of alternate members for the members of the board; and
- (f) to advise a portfolio Minister on the removal of any member of a board from office in accordance with, and on any ground provided for in, its establishing Act, constituent document or, in the case of a member of a board of a State-owned company, in accordance with and on any ground provided for in the Companies Act, 1973 (Act 61 of 1973) or its memorandum of association and articles of association, or in accordance with the provisions of this Act.

(2) Subsection (1) is not applicable in relation to a company in which any person holds shares conjointly with the State, in which event the relevant provisions of the memorandum of association and the articles of association, or any relevant law, are applicable, except that the provisions of subsection (1)(e)(ii) and (iv) of this section and of section 15 must be complied with in relation to any persons required to be appointed or nominated as directors or alternate directors by or on behalf of the State.

(3) The Council must cause notice to be given in the *Gazette* of the determinations of the Council made in relation to a State-owned enterprise under subsection (1)(a), (b), (c) or (d).

### **15 Procedure for appointment of board members and alternate board members of State-owned enterprises**

(1) With effect from a date to be specified by the Prime Minister by notice in the *Gazette* whenever it is necessary to appoint members of the board of a State-owned enterprise, either upon a first constitution or a new term of the board, or for filling a vacancy, the head of the secretariat must, after consultation with the portfolio Minister, and with due regard to section 14(2), make a report to the Council containing-

[Words preceding para (a) substituted by sec 1 of Act 5 of 2008.]

- (a) recommendations on-
  - (i) the number of members, including executive members, if any, to be appointed;
  - (ii) the term for which the members, or members in particular positions are to be appointed; and
  - (iii) the expertise required in the membership of the board;
- (b) the names of persons, equal to at least one and a half times the number of members recommended under paragraph (a)(i), who are qualified to be members of the board and who are recommended as being most suited to serve on the board, including the persons recommended to serve as executive members, if any, together with reasons why they are recommended; and
- (c) in relation to the persons recommended under paragraph (b), particulars of-
  - (i) their personal details;

- (ii) their knowledge, experience and skills concerning issues relevant to the functions of the State-owned enterprise concerned; and
  - (iii) their commitment, if any, in relation to positions held on boards of other State-owned enterprises and interests held in private undertakings; and
- (d) any other information that may be relevant to enable the Council to make the determinations and give the advice contemplated in section 14(1).

(2) The procedure prescribed in subsection (1) applies also in respect of the appointment of alternate members of a board.

(3) For the purposes of subsection (1)(b), a person is qualified to be a member of the board of a State-owned enterprise if the person-

- (a) is not disqualified in terms of the establishing Act or the constituent document or the articles of association and statutes of association of the State-owned enterprise, as the case may be, from being appointed a member of the board of the State-owned enterprise; and
- (b) is not disqualified in terms of the Companies Act, 1973 (Act 61 of 1973) from being appointed as a director of a company.

(4) When advising a portfolio Minister on potential candidates whom the Council considers most suited for appointment as members or alternate members of a board, the Council is not bound by the recommendations of the secretariat.

(5) The portfolio Minister appoints-

- (a) the members of the board of a State-owned enterprise;
- (b) the chairperson and vice-chairperson of the board; and
- (c) the alternate members of the board, if any.

(6) A person must not serve as a board member on more than two boards of State-owned enterprises.

(7) The portfolio Minister must cause notice to be given in the *Gazette* of the appointment of members of the board of a State-owned enterprise and of the date and period of their appointment.

## **16 Appointment of temporary board members**

(1) If at any time during the term of office of the board of a State-owned enterprise-

- (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 portfolio Minister may, despite sections 14 and 15 or anything to the contrary in any other law contained, and if circumstances of a pressing or urgent nature so requires [sic], appoint suitably qualified persons on a temporary basis to serve on the board until new members are appointed.

(2) The appointment of a person as member of a board under subsection (1) ceases to be of effect upon expiry of a period of six months from the date of the

appointment, but the council may approve that such period be extended by an additional period of not more than two months.

## **17 Governance agreement with board**

(1) The portfolio Minister must, within one month of being constituted, and with due regard to any directives laid down by the Council under section 4, enter into a written governance agreement with the board of a State-owned enterprise in relation to-

- (a) the State's expectations in respect of the State-owned enterprise's scope of business, efficiency and financial performance, and achievement of objectives;
- (b) the portfolio Minister's obligations in relation to any function conferred or imposed by the establishing Act of the State-owned enterprise;
- (c) the principles to be followed by the State-owned enterprise for business planning;
- (d) the measures which are necessary to protect the financial soundness of the State-owned enterprise;
- (e) key performance indicators in terms of which the State-owned enterprise's performance will be evaluated;
- (f) the structure of the business and financial plan;
- (g) the principles to be followed at the end of each financial year in respect of any surplus in the accounts of the State-owned enterprise; and
- (h) any other matter relating to the performance of the State-owned enterprise's functions under any law.

(2) The portfolio Minister and the board of a State-owned enterprise may in writing amend the governance agreement from time to time.

(3) A copy of the governance agreement must be open to inspection by the public at the head office of the State-owned enterprise during business hours.

(4) Failure by the board of a State-owned enterprise to comply with a provision of the governance agreement does not affect the validity or enforceability of any agreement, right, obligation or liability entered into, acquired or incurred by the State-owned enterprise.

## **18 Performance agreements with board members individually**

(1) The portfolio Minister must, within one month of appointing a person as a member of a board, enter into a performance agreement with such member, with due regard to any directives laid down by the Council under section 4.

(2) Without limiting the directives which may be laid down by the Council under section 4 in relation to performance agreements, the following conditions apply to every member of the board of a State-owned enterprise as if they were contained in the relevant performance agreement entered into by that member in terms of subsection (1), namely:

- (a) The member must at all times act honestly in the performance of the functions of his or her office;

- (b) the member must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions;
- (c) the member, including after he or she has ceased to be a member of the board of a State-owned enterprise, must not make improper use of information acquired by virtue of his or her position as such a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the State-owned enterprise;
- (d) the member must not make use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or cause detriment to the State-owned enterprise.

(3) If a person contravenes a condition referred to in subsection (2) or any other condition of the performance agreement entered into by him or her in terms of subsection (1), the portfolio Minister, in the name of the relevant State-owned enterprise, may recover from the person as a debt due to the State-owned enterprise by action in a competent court-

- (a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to the profit;
- (b) if the State-owned enterprise has suffered any damage or loss as a result of the contravention, an amount equal to that damage or loss.

(4) Subsections (2) and (3) are applicable in addition to, and not in derogation of, any other law relating to the criminal or civil liability of the member of a board and do not prevent the institution of any criminal or civil proceedings in respect of such liability.

(5) A contravention referred to in subsection (3) by a member of the board of a State-owned enterprise, constitutes a ground for the removal of that member from his or her office by the portfolio Minister.

## **19 Business and financial plan**

(1) Every State-owned enterprise must annually, at least 90 days before the commencement of its next financial year, submit a business and financial plan to the portfolio Minister.

(2) The business and financial plan of a State-owned enterprise must encompass all the businesses and activities, including investments, of the State-owned enterprise and its wholly-owned subsidiaries, if any.

(3) The business and financial plan of a State-owned enterprise must include-

- (a) a statement of-
  - (i) the objects for which the State-owned enterprise is established or incorporated, as set out in its establishing Act or constituent document or its memorandum of association and articles of association;
  - (ii) the State-owned enterprise's objectives for the next five years and for each year in that period and the strategy the State-owned enterprise intends to employ to achieve them; and

- (iii) the State-owned enterprise's expected performance for the next financial year as compared to its projected objectives for that year as set out in its last business and financial plan;
- (b) the operating budget and the capital budget of the State-owned enterprise for the next financial year, with a description of the nature and scope of the activities to be undertaken, including commercial strategies, pricing of products or services and personnel requirements;
- (c) a statement with particulars of any expenditure included in the budget in respect of any project to be funded from any subsidy or grant awarded or given to the State-owned enterprise, from whatever source, for that purpose, the conditions attaching to the subsidy or grant and the control measures to be applied for monitoring such expenditure and the application of the funds received in respect of the subsidy or grant;
- (d) if the State-owned enterprise intends to borrow money in the next financial year, a general indication of the borrowing plans and strategies of the State-owned enterprise for that year;
- (e) a statement of the kind of information to be furnished to the portfolio Minister and the Council in respect of the State-owned enterprise during the course of a financial year, including the information to be included in each annual report; and
- (f) any other matters as may be agreed on by the portfolio Minister and the board of the State-owned enterprise from time to time,

(4) The portfolio Minister must provide a copy of an annual business and financial plan received in terms of subsection (1) to the Council for the Council's information and comment, if any.

(5) A State-owned enterprise must act only in accordance with its business plan, unless it has first obtained the written approval of the portfolio Minister to do otherwise.

(6) Nothing done by a State-owned enterprise is void or unenforceable merely because it has failed to comply with subsection (5).

(7) No person may publish or disclose information or material contained in a business and financial plan of a State-owned enterprise, except-

- (a) with the approval of the board of a State-owned enterprise and the portfolio Minister;
- (b) for the purpose of performing a function under this Act or any other law; or
- (c) for the proper administration of justice.

(8) A person who contravenes subsection (7) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

## **20 Approval of annual budget of State-owned enterprise**

(1) After receipt of the business and financial plan of a State-owned enterprise in terms of section 19(4), the Council may furnish to the portfolio Minister any

comment which the Council considers appropriate in relation to the proposed budget of the State-owned enterprise for the next financial year.

(2) The portfolio Minister may provide the State-owned enterprise in writing with any comments in relation to its budget for the next financial year.

(3) The board of a State-owned enterprise must-

- (a) consider any comments received from the portfolio Minister in terms of subsection (2) within 30 days of their receipt;
- (b) consult with the portfolio Minister on such of the comments as the board does not agree with, with a view to reaching agreement;
- (c) make such changes to the proposed budget as are necessary to give effect to the comments agreed to and any agreement under paragraph (b);
- (d) omit from the proposed budget any matter in respect of which agreement has not been reached; and
- (e) furnish the portfolio Minister and the Council with a copy of the completed budget within 2 months after the commencement of the financial year.

(4) A State-owned enterprise must not incur any expenditure except in accordance with an estimate of expenditure approved under this section.

## **21 Performance agreements of management staff of State-owned enterprises**

(1) The board of a State-owned enterprise must require the chief executive officer, and such other senior management staff of the State-owned enterprise as the board may determine, to enter into a performance agreement with the board, with due regard to any directives laid down by the Council under section 4.

(2) Failure on the part of a chief executive officer or other senior management staff member to comply with any provision of a performance agreement which he or she entered into with the board of a State-owned enterprise, constitutes a ground for his or her dismissal from the service of the State-owned enterprise, subject to compliance with the rules of natural justice.

## **22 Remuneration of board members and management staff of State-owned enterprises**

(1) The remuneration and allowances payable to the members and alternate members of a board of a State-owned enterprise must be determined by the portfolio Minister with the concurrence of the Minister of Finance and with due regard to any directives laid down by the Council under section 4.

(2) No remuneration is payable to a member of a board who is in the full-time service of the State.

(3) The remuneration and other service benefits of the chief executive officer and other management staff of a State-owned enterprise must be determined by the board of the State-owned enterprise with the concurrence of the portfolio Minister, with due regard to any directives laid down by the Council under section 4.

## **23 Council to be notified of significant affecting events**

If any event occurs that may prevent, or significantly affect, achievement of the objectives of a State-owned enterprise or any of its wholly-owned subsidiaries, if

any, under its business and financial plan, or achievement of the targets under that plan, the board must immediately notify the Council of such affecting events and the reasons therefor.

## **24 Duty to furnish information**

(1) The Council may in writing request the chief executive officer of a State-owned enterprise, or a person acting in that capacity, to furnish to the Council any information or documents required by the Council in connection with-

- (a) any business or activity carried on or undertaken or to be carried on or undertaken by the State-owned enterprise or any of its wholly-owned subsidiaries in accordance with its business and financial plan, and in respect of any period covered by the business and financial plan;
- (b) any business or activity carried on or undertaken or to be carried on or undertaken by the State-owned enterprise or any of its wholly-owned subsidiaries otherwise than in accordance with its business and financial plan; or
- (c) any matter contained in the annual report of the State-owned enterprise in terms of section 26.

(2) A chief executive officer must comply with a written request of the Council within such time as may be specified in the Council's request or as the Council and the chief executive officer may agree.

(3) A chief executive officer who-

- (a) refuses or fails to furnish information requested by the Council in terms of subsection (1); or
- (b) furnishes information which is false or misleading, knowing that it is false or misleading,

commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment

## **25 Dividends**

The board of a State-owned enterprise in the economic and productive category must-

- (a) annually, at such time as the Council may determine, submit to the Council a proposal on the distribution of its profits for the past financial year and the declaration of dividends; and
- (b) declare and pay such dividend as is agreed to between the board and the Council or, failing agreement, as the Council directs in writing.

## **26 Annual reports of State-owned enterprises**

(1) The board of a State-owned enterprise must as soon as possible, but in any case not later than six months after the end of each financial year of the State-owned enterprise, submit an annual report on the operations of the State-owned enterprise in that year concurrently to the portfolio Minister and to the Council.

(2) The annual report of a State-owned enterprise must include-

- (a) the audited financial statements of the State-owned enterprise;



- (b) the auditor's report on those financial statements;
- (c) a statement on the extent to which the State-owned enterprise has met its objectives for the financial year;
- (d) quantitative information respecting the performance of the State-owned enterprise, including its wholly-owned subsidiaries, if any, relative to the State-owned enterprise's objectives; and
- (e) such other information in respect of the financial affairs of the State-owned enterprise as is required by the portfolio Minister to be included therein,

and must be prepared in a form that clearly sets out information according to the major businesses or activities of the State-owned enterprise and its wholly-owned subsidiaries, if any.

(3) The portfolio Minister must cause a copy of the report of a State-owned enterprise to be laid before the National Assembly within 30 days of the 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 the commencement of its first ensuing ordinary session.

## **27 Investment policies**

(1) Within 90 days of the date of commencement of the State-owned Enterprises Governance Amendment Act, 2008, the board of a State-owned enterprise must compile and submit to the portfolio Minister for approval statement on the policies, standards and procedures to be applied so as to guide the State-owned enterprise in effectively supervising, monitoring and managing transactions for investing money of the State-owned enterprise, including altering an investment or dealing with it in a manner affecting the terms of the initial investment or reinvesting money becoming available upon maturity date.

(2) The portfolio Minister may provide the State-owned enterprise in writing with any comments in relation to its statement on investment policies standards and procedures submitted under subsection (1), or amendment to such statement, and require the board to consult with the portfolio Minister on such comments.

(3) The portfolio Minister must consult with the Minister responsible for finance on the statement on investment policies, standards and procedures, or an amendment to such statement, before the portfolio Minister approves such statement.

(4) The board of a State-owned enterprise may from time to time submit to the portfolio Minister for approval any amendment to its statement on investment policies, standards and procedures as approved by the portfolio Minister.

(5) The board of a State-owned enterprise must take all reasonable step[s] to ensure that the provisions of its statement on investment policies, standards and procedures are [sic] observed within the administration and management of the affairs of the State-owned enterprise.

[Sec 27 substituted by sec 2 of Act 5 of 2008.]

## **28 Obligations concerning subsidiaries**

(1) The Council may by regulation impose obligations in relation to any subsidiary of any State-owned enterprise in relation to any matter with a view to achieving the

efficient governance of the subsidiary and the monitoring of its performance and the performance of the board and senior management of the subsidiary.

(2) In terms of subsection (1), obligations may be imposed either on the board of the State-owned enterprise or the board or senior management of the subsidiary and may include requirements with regard to-

- (a) the manner of composition of the governing board of a subsidiary and the appointment process;
- (b) the conclusion of performance agreements with the board members and senior management staff of the subsidiary and the matters to be provided for in such agreements; and
- (c) any other matter provided for in this Part in relation to a State-owned enterprise.

(3) A provision contained in the memorandum of association or articles of association of a subsidiary of a State-owned enterprise which is contrary to a provision of any regulation made under subsection (1) must be construed as if it had been amended correspondingly with the provisions of the regulation.

(4) For the purposes of this Part-

- (a) the question whether a body corporate is a subsidiary of any State-owned enterprise which is not a State-owned company, must be determined in the same manner as the question would be determined under the Companies Act, 1973 (Act 61 of 1973) if the State-owned enterprise and the body corporate were companies within the meaning of that Act; and
- (b) the question whether a body corporate is a subsidiary of a State-owned company must be determined in accordance with the Companies Act, 1973.

## **PART V** **SPECIAL INVESTIGATIONS (ss 29-35)**

### **29 Power to direct special investigation**

If the Council, after consultation with the portfolio Minister, considers it necessary or desirable for any reason, the Council may by notice in the *Gazette* direct that a special investigation be conducted in relation to any matter concerning the business, trade, dealings, affairs, assets or liabilities of a State-owned enterprise as may be specified in the notice.

### **30 Appointment of special investigator**

(1) The Council may appoint one or more persons as special investigators, on such terms and conditions as are determined and specified by the Council in the instrument of appointment or as varied by a later instrument, to conduct an investigation referred to in section 29.

(2) The powers of a special investigator extend not only to the matters or affairs specified in a notice referred to in section 29 but also to any other matter of which the investigator becomes aware and which the investigator considers should be brought to the attention of the Council.

### **31 Powers of special investigator**

(1) A special investigator may, by notice in writing, require any member of the board or an employee of the State-owned enterprise to which the notice in terms of section 29 relates-

- (a) to produce to the investigator such documents relating to a matter to which the investigation relates as are in the custody or under the control of the person;
- (b) to give to the investigator all possible and reasonable assistance in connection with the investigation;
- (c) to appear before the investigator for examination and to answer questions.

(2) Notwithstanding any oath or other obligation of secrecy imposed by law or otherwise, a person on whom a notice referred to in subsection (1) is served must, comply with the requirements of that notice within the time specified therein.

(3) A special investigator may make copies of, or take extracts from, documents produced under subsection (1).

### **32 Publication**

Subject to any directions of the Council, a special investigator may-

- (a) make public statements as to the nature and conduct of an investigation; and
- (b) invite and receive information or submissions as to any matter relevant to the investigation from such persons as the investigator thinks fit.

### **33 Reports**

(1) A special investigator may make written or oral reports to the Council in the course of an investigation.

(2) A report to the Council may include such recommendations as the special investigator thinks fit.

(3) A special investigator is not, in the absence of malice, liable to an action for defamation at the suit of any person in respect of any statement made, whether orally or in writing, in the course of carrying out any function under this Part.

### **34 Expenses of special investigation**

(1) The expenses of and incidental to an investigation must be defrayed from money appropriated by Parliament for the purpose.

(2) If the Council is of the opinion that the whole or any part of the expenses of or incidental to an investigation should be paid by the State-owned enterprise the affairs of which were investigated, the Council may in writing direct the enterprise to pay such amount, within the time and in the manner specified.

### **35 Offences in relation to special investigation**

(1) A person must not-

- (a) fail to comply with a lawful direction of a special investigator;
- (b) without lawful reason, refuse or fail to produce documents or answer questions sought or asked by a special investigator;
- (c) hinder or obstruct a special investigator;

(d) wilfully destroy or alter any document or any other thing relevant to an investigation.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years.

## **PART VI**

### **RESTRUCTURING OF STATE-OWNED ENTERPRISES (ss 36-41)**

#### **36 Provisional identification of State-owned enterprise for restructuring**

(1) The Council, in consultation with the Cabinet, may provisionally identify any State-owned enterprise to be considered for restructuring, hereinafter referred to as "restructuring enterprise"

(2) Before making a provisional identification under subsection (1), the Council must consult with the portfolio Minister and the board of the State-owned enterprise concerned.

(3) The Council must forthwith give notice in writing to the board of a State-owned enterprise of the fact that it has been provisionally identified as contemplated in subsection (1).

(4) Within 30 days of receipt of a notice in terms of subsection (3), or such longer period as the Council may approve, the board of a restructuring enterprise must submit to the Council a full and detailed risk and impact assessment report, certified by the external auditors of the State-owned enterprise, on all risks and consequences of the proposed restructuring, which must *inter alia* take into account-

- (a) all existing agreements with any third parties;
- (b) all rights and obligations of the State-owned enterprise in respect of third parties; and
- (c) any other relevant information pertaining to the operations of the State-owned enterprise.

#### **37 Proposal for restructuring**

(1) The members of the secretariat of the Council, on a written direction of the Council, must prepare and submit to the Council proposed plans for the restructuring of a State-owned enterprise provisionally identified under section 36(1).

(2) A restructuring plan must contain detailed proposals on the proposed method or methods of restructuring of the State-owned enterprise, which may include-

- (a) in the case of a State-owned enterprise not being a company, that the State-owned enterprise-
  - (i) be converted into a company registered under the Companies Act, 1973 (Act 61 of 1973); or
  - (ii) forms or acquires a company to which specified assets, liabilities and undertakings of the State-owned enterprise must be transferred;
- (b) that a State-owned company which is not a public company be converted into a public company; ,

- (c) that the share capital of a State-owned company be reorganised and made available, either in full or in part, for disposal to members of the public;
- (d) that the undertaking and assets and liabilities, or certain specified assets and liabilities of the State-owned enterprise be transferred to another State-owned enterprise;
- (e) that the undertaking and assets of a State-owned enterprise, or part of its undertaking and certain of its assets, be offered for disposal to members of the public;
- (f) that a State-owned enterprise be liquidated;
- (g) in the case of a proposal referred to in paragraph (a) or (b), the proposed distribution of shares in the proposed company, either to the State as sole share holder, or to the State and members of the public or solely to members of the public;
- (h) any other method through which the restructuring of a State-owned enterprise should be effected; and
- (i) any measures, including any legislation or legislation changes, which may be required to achieve the restructuring of the State-owned enterprise as proposed.

(3) In approving or determining a proposed plan for restructuring, the Council must give consideration to the inclusion of schemes on achieving empowerment objectives through increasing private sector participation, and in particular for the empowerment of persons who have been disadvantaged by past discriminating laws and practices that were applied before the date of Namibia's independence.

(4) In subsection (3) "empowering objectives" means objectives to increase the number of historically disadvantaged persons who-

- (a) have ownership or control of enterprises; or
- (b) serve in executive and senior capacities in the management of enterprises.

### **38 Consultation**

In formulating a proposed restructuring plan, the members of the secretariat must-

- (a) consult on a continuous basis with the portfolio Minister, the board, the chief executive officer, other senior management staff of the relevant State-owned enterprise and any other relevant stakeholder;
- (b) take into account-
  - (i) the purpose for which the State-owned enterprise was established originally;
  - (ii) the risk assessment and impact report submitted in terms of section 36(4);
  - (iii) the performance of the State-owned enterprise concerned since its establishment;

- (iv) the reasons which prompted the provisional identification of the State-owned enterprise for restructuring; and
  - (v) any representations made by any relevant stakeholder; and
- (c) act in accordance with such directives as the Council may give.

### **39 Interim measures**

(1) The Council, by notice published in the *Gazette*, may declare that the constitution of the board of a restructuring enterprise, not being a State-owned enterprise established by an Act of Parliament, be changed as specified in the notice, and may-

- (a) change the number of members of the board;
- (b) determine the qualifications of persons for, or terms and conditions of, appointment to the board;
- (c) determine the manner of appointment of the chairperson and deputy chairperson;
- (d) make such other changes to the composition of the board as the Council considers necessary or expedient.

(2) The Council, with the concurrence of the portfolio Minister, may-

- (a) by notice published in the *Gazette*, alter or vary the functions of a restructuring enterprise;
- (b) direct the board of a restructuring enterprise to take any specified steps which the Council considers necessary for reorganising its affairs in anticipation of its restructuring,

despite anything to the contrary in the establishing Act, constituent document or the memorandum of association and articles of association of the restructuring enterprise.

(3) Despite anything to the contrary in its establishing Act or constituent document or memorandum of association and articles of association or in any other law or instrument conferring functions or powers on it, a restructuring enterprise may do all things necessary to comply with, and must comply with, a direction under subsection (2).

### **40 Determination of restructuring**

The Council must submit a proposed plan for the restructuring of a provisionally identified State-owned enterprise to the Cabinet for determination.

### **41 Information and reports**

The board of a restructuring enterprise must, at a time and manner determined by the Council, submit to the Council-

- (a) such information as the Council may require;
- (b) a business plan in a form approved by the Council;
- (c) a report on such matters as may be specified by the Council.

## **PART VII GENERAL (ss 42-50)**

#### **42 Communications to be notified to portfolio Minister**

The Council must ensure that the relevant portfolio Minister is notified forthwith of every communication-

- (a) by the Council to a State-owned enterprise, or to the chief executive officer or the members of the board of a State-owned enterprise, to request any information or any document or to give any direction or notification; or
- (b) by a State-owned enterprise, or by the chief executive officer or the members of the board of a State-owned enterprise, to the Council to submit any report, return or other document or to furnish any information or advice,

and, if in writing, a copy of the communication and of any accompanying document must be furnished to the portfolio Minister.

#### **43 Regulations**

The Council may make regulations for or with respect to any matter required or permitted by this Act to be prescribed or necessary or expedient to be prescribed to give effect to this Act.

#### **44 Limitation of Liability**

Neither the Council nor any person engaged in carrying out any provision of this Act, is liable in respect of anything done or omitted in good faith and not attributable to intent or negligence in the exercise of a power or performance of a duty or function under or by virtue of this Act or in respect of anything that may result therefrom.

#### **45 Exemptions**

Upon application of a State-owned enterprise, and on good cause shown, the Council may by notice in the *Gazette* exempt the State-owned enterprise from any of the provisions of this Act.

#### **46 Provisions of this Act prevail**

The provisions of this Act prevail if a conflict relating to any matter provided for in this Act arises between this Act and the provisions of the establishing Act or constituent document or of the memorandum of association and articles of association of a State-owned enterprise.

#### **47 Power to amend Schedule 1**

The Council may from time to time by notice in the *Gazette* amend Schedule 1 to this Act by including or adding the name of-

- (a) any board, corporation, council, fund, trust or other body established as a body corporate by or under an Act of Parliament for performing functions prescribed by that Act or any other law;
- (b) any unincorporated business in which the State owns half or more of the interest; and
- (a) any company of which the State is the sole or majority shareholder,

which the Council determines to be subject to the provisions of this Act.

#### **48 Savings and transitional provisions**

(1) Despite the amendment by section 49 of the laws specified in Schedule 2 to this Act and any other provision to the contrary of this Act, the provisions so amended of any such law, and the provisions of the constituent document or the memorandum of association and articles of association of any State-owned enterprise not established by statute which relate to the constitution of the board of the State-owned enterprise established by or under that law or to which such constituent document or such memorandum of association and article of association relate, the appointment of the members or alternate members of such board, the term of office and conditions of office of such members, the filling of casual vacancies in the number of such appointed members or alternate members, the appointment of the chairperson and vice-chairperson of such board continue to be applicable until the date specified by the Prime Minister under section 15(1).

(2) With effect from the specified date referred to in subsection (1) [a] person who immediately before that date held office of chairperson, vice chairperson, member or alternate member of a board of a State-owned enterprise is deemed to have been appointed in accordance with the provisions of this Act for the unexpired period of his or her office as determined by or under the relevant establishing Act, constituent document or the memorandum of association and articles of association of the State-owned enterprise, and on the conditions as applied to him or her as a member immediately before that specified date.

[Sec 48 substituted by sec 3 of Act 5 of 2008.]

#### **49 Amendment of laws**

The laws specified in Schedule 2 to this Act are amended to the extent provided for in that Schedule.

#### **50 Short title and commencement**

This Act is called the State-owned Enterprises Governance Act, 2006 and commences on a date to be determined by the President by proclamation in the *Gazette*.

### **SCHEDULE 1 State-owned enterprises**

<i>Enterprise</i>	<i>Establishing Act</i>
• 1 Meat Board of Namibia	Meat Industry Act, 1981 (Act 12 of 1981)
• 2 Karakul Board of South West Africa	Karakul Pelts and Wool Act, 1982 (Act 14 of 1982)
• 3 National Special Risks Association (Nasria)	Second Finance Act, 1987 (Act 27 of 1987)
• 4 Namibian Broadcasting	Namibian Broadcasting Act, 1991 (Act 9 of 1991)



## Corporation

- 5 National Fishing Corporation of Namibia Limited  
National Fishing Corporation of Namibia Limited Act, 1991 (Act 28 of 1991)
- 6 New Era Publication Corporation  
New Era Publication Corporation Act, 1992 (Act 1 of 1992)
- 7 Namibia Press Agency  
Namibia Press Agency Act, 1992 (Act 3 of 1992)
- 8 Namibia Post and Telecom Holdings Limited  
Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992)
- 9 Namibian Agronomic Board  
Agronomic Industry Act, 1992 (Act 20 of 1992)
- 10 National Housing Enterprise  
National Housing Enterprise Act, 1993 (Act 5 of 1993)
- 11 Namibian Ports Authority  
Namibian Ports Authority Act, 1994 (Act 2 of 1994)
- 12 Social Security Commission  
Social Security Commission Act, 1994 (Act 34 of 1994)
- 13 Minerals Development Fund of Namibia  
Minerals Development Fund of Namibia Act, 1996 (Act 19 of 1996)
- 14 Namibia Qualifications Authority  
Namibia Qualifications Authority Act, 1996 (Act 29 of 1996)
- 15 Namibian College of Open Learning  
Namibian College of Open Learning Act, 1997 (Act 1 of 1997)
- 16 Games Products Trust Fund  
Games Products Trust Fund Act, 1997 (Act 7 of 1997)
- 17 Namibia Water Corporation Limited  
Namibia Water Corporation Act, 1997 (Act 12 of 1997)

- 18 Namibia Wildlife Resorts Company  
Namibia Wildlife Resorts Company, 1998 (Act 3 of 1998)
- 19 Security Enterprises and Security Officers Regulation Board  
Security Enterprises and Security Officers Act, 1998 (Act 19 of 1998)
- 20 Namibia National Reinsurance Corporation  
Namibia National Reinsurance Corporation Act, 1998 (Act 22 of 1998)
- 21 Namibia Airports Company  
Airports Company Act, 1998 (Act 25 of 1998)
- 22 Transnamib Holdings Limited  
National Transport Services Holding Company Act, 1998 (Act 28 of 1998)
- 23 Diamond Board of Namibia  
Diamond Act, 1999 (Act 13 of 1999)
- 24 Roads Contractor Company  
Roads Contractor Company Act, 1999 (Act 14 of 1999)
- 25 Namibia Institute of Pathology  
Namibia Institute of Pathology Act, 1999 (Act 15 of 1999)
- 26 War Veterans Trust Fund  
War Veterans Subvention Act, 1999 (Act 16 of 1999)
- 27 Roads Authority  
Roads Authority Act, 1999 (Act 17 of 1999)
- 28 Road Fund Administration  
Road Fund Administration Act, 1999 (Act 18 of 1999)
- 29 Electricity Control Board  
Electricity Act, 2000 (Act 2 of 2000)
- 30 National Art Gallery of Namibia  
National Art Gallery of Namibia Act, 2000 (Act 14 of 2000)
- 31 Namibia Tourism Board  
Namibia Tourism Board Act, 2000 (Act 21 of 2000)

- 32 Trust Fund for Regional Development and Equity Provisions  
Trust Fund for Regional Development and Equity Provisions Act, 2000 (Act 22 of 2000)
- 33 Fisheries Observer Agency  
Marine Resources Act, 2000 (Act 27 of 2000)
- 34 Meat Corporation of Namibia  
Meat Corporation of Namibia Act, 2001 (Act 1 of 2001)
- 35 Namibia Financial Institutions Supervisory Authority  
Namibia Financial Institutions Supervisory Authority Act, 2001 (Act 3 of 2001)
- 36 Motor Vehicle Accident Fund  
Motor Vehicle Accident Fund Act, 2001 (Act 4 of 2001).
- 37 Environmental Investment Fund of Namibia  
Environmental Investment Fund of Namibia Act, 2001 (Act 13 of 2001)
- 38 Namibian Competition Commission  
Competition Act, 2003 (Act 2 of 2003)
- 39 Agricultural Bank of Namibia  
Agricultural Bank of Namibia Act, 2003 (Act 5 of 2003)
- 40 Development Bank of Namibia  
Development Bank of Namibia Act, 2002 (Act 8 of 2002)
- 41 National Commission on Research, Science and Technology  
Research, Science and Technology Act, 2004 (Act 23 of 2004)
- 42 National Disability Council  
National Disability Council Act, 2004 (Act 26 of 2004)
- 43 National Heritage Council  
National Heritage Council Act, 2004 (Act 27 of 2004)
- 44 Accreditation Board of Namibia  
Accreditation Board of Namibia Act, 2006 (Act 8 of 2006)
- 45 Namibia Power Corporation (Proprietary) Limited

- 46 Air Namibia (Proprietary) Limited
- 47 National Petroleum Corporation of Namibia (Proprietary Limited
- 48 August 26 Holdings Company (Proprietary) Limited
- 49 Windhoek Machinen Fabrik (1998) (Proprietary) Limited
- 50 Namibia Bricks Enterprise (Proprietary) Limited
- 51 Star Protection Services (Proprietary) Limited
- 52 National Theatre of Namibia (Association not for gain)
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## **SCHEDULE 2 LAWS AMENDED**

The laws specified below are amended to the extent indicated:

### **1 Meat Industry Act, 1981 (Act 12 of 1981)**

The Meat Industry Act, 1981 is amended-

(a) in section 4-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the board shall include-

- (a) 9 persons selected by the Minister from amongst persons nominated at the Minister's request by any body or organisation which in the Minister's opinion is representative of producers of livestock;
- (b) one person selected by the Minister from amongst persons nominated at the Minister's request by any body or organisation which in the Minister's opinion is representative of manufacturers of meat products;
- (c) one person selected by the Minister from amongst persons nominated at the Minister's request by any body or organisation which in the Minister's opinion is representative of persons trading in meat; and
- (d) one person who is a marketing agent of any controlled product."; and

(ii) by the deletion of subsection (2);

(b) by the deletion of section 5;

(c) in section 7, by the deletion of subsection (1);

(d) in section 8, by the substitution for subsection (3) of the following subsection:

"(3) A majority of the members of the board shall form a quorum for a meeting of the board."; and

(e) by the deletion of section 15.

## **2 Karakul Pelts and Wool Act, 1982 (Act 14 of 1982)**

The Karakul Pelts and Wool Act, 1982 is amended-

(a) by the substitution for section 4 of the following section:

"4(1) The board shall be constituted, and its member, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the board shall include-

(a) four persons who are producers of karakul pelts or wool selected by the Minister from amongst persons nominated at the Minister's request by any body or organization which in the Minister's opinion is representative of such producers;

(b) one person who is a member of the Karakul Breeders Association of Southern Africa (Northern Region) selected by the Minister from amongst persons nominated at the Minister's request by that Association; and

(c) one person selected by the Minister from amongst persons nominated at the Minister's request by any body or organization which in the Minister's opinion is representative of persons engaged in the marketing of karakul pelts.

(2) If a body or organization referred to in subsection (1) does not exist or fails to make a nomination in terms of that subsection and within the period specified in the request concerned, the Minister may appoint such persons as the Minister may deem fit to be members of the board in terms of that subsection.

(3) The Minister, after consultation with the body or organization concerned referred to in subsection (1), may appoint any person whom the Minister deems fit to act as a member of the board-

(a) in the stead of a member of the board during the absence of the member; or

(b) for as long as there is a vacancy in the membership of the board.

(4) The board may from time to time and for such period as it may determine, appoint any person to advise the board in the exercise of its powers or the performance of its functions or duties and the Minister may so appoint any person by virtue of his or her knowledge of the international fur trade.";

(b) by the deletion of section 5;

- (c) in section 7, by the deletion of subsection (1);
- (d) in section 8, by the substitution for subsection (3) of the following subsection:

"(3) A majority of the members of the board shall form a quorum for a meeting of the board."; and
- (e) by the deletion of section 16.

### **3 Namibian Broadcasting Act, 1991 (Act 9 of 1991)**

The Namibian Broadcasting Act, 1991 is amended-

- (a) in section 6-
  - (i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."; and
  - (ii) by the deletion of subsection (3);
- (b) in section 8, by the deletion of subsection (1); and
- (c) in section 13, by the substitution in paragraph (c) for the words preceding subparagraph (i) of the following words:

"(c) may determine the duties and functions of its officers and employees and, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, their salaries wages, allowances and other remuneration or conditions of employment, including the establishment or support, on such terms and conditions as may be determined by it, of-".

### **4 New Era Publications Corporation Act, 1992 (Act 1 of 1992)**

The New Era Publications Corporation Act, 1992 is amended-

- (a) in section 5-
  - (i) by the substitution for subsection (1) of the following subsection:

"(1) The affairs of the Corporation shall be managed and controlled by a board of directors which shall be constituted, and the members whereof, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."; and
  - (ii) by the deletion of subsection (4);
- (b) in section 6, by the deletion of subsection (1); and
- (c) in section 10, by the substitution for subsection (5) of the following subsection:

"(5) Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the board may determine the remuneration and other conditions of service of the chief executive officer and its other employees and their service benefits, including the provision or supply of medical aid benefits, housing facilities or benefits, and the provision for and payment of pensions."

## **5 Namibia Press Agency Act, 1992 (Act 3 of 1992)**

The Namibia Press Agency Act, 1992 is amended-

(a) in section 6-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The affairs of the Corporation shall be managed and controlled by a board of directors which shall be constituted and the members whereof, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."; and

(ii) by the deletion of subsection (4);

(b) in section 7 by the deletion of subsection (1); and

(c) in section 11, by the substitution for subsection (5) of the following subsection:

"(5) Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the board may determine the remuneration and other conditions of service of the chief executive officer and its other employees and their service benefits, including the provision or supply of medical aid benefits, housing facilities or benefits, and the provision for and payment of pensions."; and

(d) in section 13, by the deletion of subsections (2), (3) and (4).

## **6 Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992)**

The Posts and Telecommunications Companies Establishment Act, 1992 is amended-

(a) in section 2, by the deletion of subparagraphs (i) and (ii) of paragraph (b) of subsection (10); and

(b) by the insertion of the following subsection after subsection (10):

"(10A) The board of directors of the holding company shall be constituted, and its members, including the chairperson and vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."

## **7 Namibian Agronomic Industry Act, 1992 (Act 20 of 1992)\***

The Namibian Agronomic Industry Act, 1992 is amended-

- (a) in section (1), by the deletion of the definition of "Chairperson" and "Deputy Chairperson";
- (b) in section 4 by the substitution for subsections (1) and (2) of the following subsections:
- "(1) The Board shall be constituted, and its members, including the Chairperson and Deputy Chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the board shall include-
- (a) nine persons selected by the Minister from amongst persons nominated by an organisation which in the Minister's opinion is representative of producers of agronomic crops;
- (b) one person selected by the Minister from amongst persons nominated by an organisation which in the Minister's opinion is representative of processors of agronomic crops;
- (c) one person selected by the Minister from amongst persons nominated by an organisation which in the Minister's opinion is representative of persons trading in controlled products;
- (d) one person who is a marketing agent of a controlled product; and
- (e) one person selected by the Minister from amongst persons nominated by an organisation which in the Minister's opinion is representative of consumers of controlled products.
- (2) If an organisation specified in paragraph (a), (b), (c) or (e) of subsection (1) does not exist or fails to nominate the required number of persons for selection, the Minister may appoint such other persons as he or she may deem fit to be Board members under this section."
- (c) in section 5-
- (i) by the deletion of subsections (1), (2) and (3); and
- (ii) by the deletion of paragraphs (a) and (b) of subsection (4);
- (d) in section 7, by the deletion of subsection (1);
- (e) in section 8, by the substitution for subsection (3) of the following subsection:
- "(3) A majority of the members of the Board shall form a quorum for a meeting of the Board."; and
- (f) by the deletion of section 15.



\* Actually the Agronomic Industry Act 20 of 1992

\* Actually the Agronomic Industry Act 20 of 1992

## **8 National Housing Enterprise Act, 1993 (Act 5 of 1993)**

The National Housing Enterprise Act, 1993 is amended-

(a) in section 5-

(i) by the substitution for subsection (2) of the following subsection:

"(2) The board of directors shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."; and

(ii) by the deletion of subsections (3) and (4);

(b) in section 6-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, subject to section 15(2) of the State-owned Enterprises Governance Act, 2006 appoint any person to act as the alternate of a director during his or her absence or incapacity."; and

(ii) by the deletion subsection (2);

(c) in section 8, by the deletion of subsection (1);

(d) in section 10, by the substitution for subsection (1) of the following subsection:

"(1) The board shall, with the approval of the Minister, appoint a person other than a director as chief executive officer of the NHE on such conditions of service and at such remuneration and service benefits as the board, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine.".

## **9 Namibian Ports Authority Act, 1994 (Act 2 of 1994)**

The Namibian Ports Authority Act, 1994 is amended-

(a) in section 4-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Authority has a board of directors, which shall be constituted, and the members whereof, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."; and

(ii) by the deletion of subsections (2) and (4);

(b) in section 6, by the substitution for subsection (1) of the following subsection:

"(1) Subject to section 15(2) of the State-owned Enterprises Governance Act, 2006, the Minister may appoint for each director a person as alternate director.";

(c) by the substitution for section 7 of the following section:

"7 A director and an alternate director who is not in the full-time service of the State shall in respect of his or her services as director be paid, out of the funds of the Authority, such remuneration and such subsistence and travelling allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."

(d) in section 9, by the substitution for subsection (4) of the following subsection:

"(4) A majority of the members of the board shall form a quorum for a meeting of the board."; and

(e) by the substitution for section 16 of the following section:

"16 The board may appoint such employees as it may consider necessary for carrying out the functions of the Authority and, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine their duties and salaries, wages, allowances or other remuneration and their condition of service."

## **10 Social Security Commission Act, 1994 (Act 34 of 1994)\***

The Social Security Commission Act, 1994 is amended-

(a) in section 4-

(i) by the substitution for subsections (1), (2) and (3) of the following subsections:

"(1) The Commission shall be constituted, and its members, including the chairperson and the deputy chairperson of the Commission, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Commission must include-

(a) three representatives of the Government, of whom one shall be nominated by the Minister responsible for finance, one by the Minister responsible for social services and one by the Minister and of whom one shall be a female person;

(b) three persons nominated by trade union, of whom at least one must be a woman; and

(c) three persons nominated by employers' organisations, of whom at least one must be a woman.

(2) The Minister shall by notice in the *Gazette* invite trade unions and employers' organisations to nominate persons as members of the Commission under paragraphs (b) and (c) of subsection (1), and

to submit such nominations to the Minister within the period stipulated in the notice.

(3) If the trade unions or employers' organisations fail to submit the nominations within the period contemplated in subsection (2), the Minister may, subject to the provisions of paragraphs (b) and (c) of subsection (1), appoint any person as a member of the Commission and any person so appointed shall be deemed to have been appointed in terms of the relevant paragraph."; and

(ii) by the deletion of subsection (6);

(b) in section 5, by the deletion of subsection (1); and

(c) in section 12, by the substitution for subsection (2) of the following subsection:

"(2) Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the Commission shall determine the remuneration and other conditions of service of the executive officer and his or her service benefits, including the provision or supply of medical aid benefits, housing facilities or benefits and the provision for and payment of gratuities and pensions."

#### Footnote -

\* Actually the Social Security Act 34 of 1994

\* Actually the Social Security Act 34 of 1994

## 11 Minerals Development Fund of Namibia Act, 1996 (Act 19 of 1996)

The Minerals Development Fund of Namibia Act, 1996 is amended-

(a) in section 6-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board shall include-

(a) one person nominated in writing by the Chamber of Mines of Namibia;

(b) one person who represents the interests of persons involved in small scale mining operations and who is not a member of the Chamber of Mines of Namibia or of any of its committees;

- (c) one person appointed on account of his or her managerial skills and special knowledge of, and experience in, the mining industry in Namibia; and
- (d) one person nominated in writing by trade unions.";
- (ii) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
  - "(a) In order to appoint a person referred to in paragraph (a) of subsection (1) or an alternate for a member so appointed, the Minister shall in writing request the Chamber of Mines to submit to him or her within 30 days of the request the name of a person who in its opinion represents its interests and is a fit and proper person to be appointed as a member of the Board.";
- (iii) by the deletion of subsection (5); and
- (iv) by the substitution for subsection (6) of the following subsection:
  - "(6) A member of the Board who is not in the full-time service of the State, shall be paid such remuneration and allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006.".
- (b) in section 8 by the deletion of subsections (1) and (2); and
- (c) in section 16, by the substitution for subsection (2) of the following subsection:
  - "(2) A majority of the members of the Board shall form a quorum for a meeting of the Board.".

## **12 Namibia Qualifications Authority Act, 1996 (Act 29 of 1996)**

The Namibia Qualifications Authority Act, 1996 is amended-

- (a) in section 5-
  - (i) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
    - "The Council shall be constituted, and its members, including the chairperson and the vice-chairperson of the Council, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Council shall include the following persons-"; and
  - (ii) by the deletion of paragraphs (a), (b) and (c) of subsection (6);
- (b) in section 6-
  - (i) by the deletion of subsection (1); and
  - (ii) by the substitution for subsection (5) of the following subsection:
    - "(5) A member of the Council, who is not in the full-time employment of the State, shall be paid such remuneration and allowances as

the Minister may determine in accordance with section 22(1) of the State-owned Enterprises Governance Act, 2006.";

- (c) in section 10, by the substitution in subsection (1) for the words preceding paragraph (a), of the following words:

"(1) The Council shall, on the recommendation of a selection committee established by the Council for the purpose, and with the concurrence of the Minister, appoint on such conditions of employment, privileges and period of office as it, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine-"; and

- (d) in section 11, by the substitution for subsection (2) of the following subsection:

"(2) The NQA shall out of its funds pay to the officers and employees referred to in subsection (1) such remuneration as the Council, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006 may determine in accordance with a system approved from time to time by the Minister, with the concurrence of the Minister of Finance.".

### **13 Namibian College of Open Learning Act, 1997 (Act 1 of 1997)**

The Namibian College of Open Learning Act, 1997 is amended-

- (a) in section 7, by the substitution for the words in subsection (1) preceding paragraph (a) of the following words:

"Subject to the provisions of this Act, the government and general control of NAMCOL shall be vested in a board to be known as the Board of Governors of NAMCOL, which shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board shall include the following persons:";

- (b) in section 8-

- (i) by the deletion of subsection (1); and  
(ii) by the deletion of the expression "referred to in subsection (1)" where it occurs in subsections (2), (3) and (5);

- (c) in section 14, by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) The Board shall, with the concurrence of the Minister, appoint on such conditions of employment, privileges and period of office as it, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine-";

- (d) in section 20, by the deletion of paragraph (a) of subsection (4).

### **14 Games Products Trust Fund Act, 1997 (Act 7 of 1997)**

The Games Products Trust Fund Act, 1997 is amended-

- (a) in section 5-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board but must include at least two persons representing community based organisations involved in sustainable wildlife resource management projects and programmes, nominated by those organisations for appointment."; and

(ii) by the deletion of subsections (2) and (4);

(b) in section 6, by the deletion of subsection (1);

(c) in section 7, by the substitution for subsection (1) of the following subsection:

"(1) The remuneration and allowances of a member of the Board, and any person appointed as a member of a committee of the Board in terms of section 11(2)(b), not being in the full-time employment of the Government, shall be determined from time to time by the Minister, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."; and

(d) in section 10, by the substitution for subsection (2) of the following subsection:

"(2) A majority of the members of the Board shall form a quorum at a meeting of the Board."

## **15 Namibia Water Corporation Act, 1997 (Act 12 of 1997)**

The Namibia Water Corporation Act, 1997 is amended-

(a) in section 17, by the substitution for subsections (1) and (2) of the following subsection[s]:

"(1) The Board shall be constituted and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board must include-

(a) a representative of the Association of Local Authorities in Namibia designated by that Association;

(b) not less than four and not more than eight persons from the private sector selected from amongst persons who possess expertise and proven experience in water engineering matters, consumer interests, financial, business, legal or environmental matters so as to achieve a varied representation of interested parties; and

(c) with effect from a date to be fixed by the Minister by notice in the *Gazette*, an employee of the Corporation elected by the employees of the Corporation.

- (2) A person is not eligible for appointment as a director if he or she-
- (a) is not a Namibian citizen;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of a criminal offence and sentenced to imprisonment with or without the option of a fine;
  - (d) has a financial or other interest likely to prejudicially affect the performance of his or her duties as director of the Corporation;  
or
  - (e) is disqualified in terms of the Companies Act, 1973 from holding the office of director.";
- (b) in section 18-
- (i) by the deletion of subsection (1);
  - (ii) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
"The office of a director becomes vacant if-";
  - (iii) by the substitution for subsection (3) of the following subsection:  
"(3) The Minister may by written notice remove a director from office if the Minister, after having afforded the member an opportunity to be heard, is satisfied that the member-
    - (a) is incapacitated by physical or mental illness;
    - (b) is guilty of conduct prejudicial to the Corporation's objectives; or
    - (c) is unfit or unable to effectively perform the functions of his or her office.";
  - (iv) by the substitution for subsection (4) of the following subsection:  
"(4) If the office of a director becomes vacant, the vacancy must be filled by the appointment of another person in that office for the unexpired portion of the term of office of the former director.";
- (c) in section 19-
- (i) by the substitution for subsection (1) of the following subsection:  
"(1) The Minister may appoint for each director a person to be the alternate of the director."; and
  - (ii) by the deletion of subsection (2);
- (d) in section 21-
- (i) by the deletion of subsection (1); and
  - (ii) by the deletion in subsection (2) of the words "referred to in paragraph (c) of subsection (1) of section 17"; and

(e) in section 22, by the substitution for subsection (1) of the following subsection:

"(1) A director or alternate director who is not in the full-time employment of the Public Service or the Corporation shall be paid out of the funds of the Corporation such allowances or other remuneration in respect of his or her service as director, as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act 2006.";

(f) in section 28, by the substitution for subsection (1) of the following subsection:

"(1) The Board shall appoint a suitably qualified person to serve as the chief executive officer of the Corporation upon such terms and conditions as the Board, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine.".

## **16 Namibia Wildlife Resorts Corporation Act, 1998 (Act 3 of 1998)\***

The Namibia Wildlife Resorts Corporation Act, 1998 is amended-

(a) in section 4-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Company shall have a board of directors, which shall be constituted and the members whereof, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006.";

(ii) by the deletion of subsections (2), (4) and (5);

(b) in section 5, by the substitution for subsection (2) of the following subsection:

"(2) The managing director shall be appointed for such period, not exceeding five years, and on such terms and conditions as may, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, be determined by the Board with the concurrence of the Minister, but the contract of employment of the managing director may be renewed by the Board from time to time with the approval of the Minister.".

### **Footnote -**

\* Actually the Namibia Wildlife Company Act 3 of 1998

\* Actually the Namibia Wildlife Company Act 3 of 1998

## **17 Security Enterprises and Security Officers Act, 1998 (Act 19 of 1998)**



The Security Enterprises and Security Officers Act, 1998 is amended-

(a) in section 1, by the deletion of the definitions of "chairperson" and "vice-chairperson";

(b) in section 5-

(i) by the substitution for subsection (1) of the following subsection:

"(1) SESORB shall be constituted and its member, including the chairperson and the vice-chairperson of SESORB, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of SESORB shall include at least six security officers selected from amongst persons whose names appear on a list compiled in terms of subsection (3), of whom three shall be representative of employers and three representative of employees."; and

(ii) by the deletion of subsection (6);

(c) in section 9, by the deletion of subsections (1) and (2);

(d) by the substitution for section 13 of the following section:

"13 A member or a member of a committee who is not in the full-time employment of the State shall in respect of his or her services as member be paid out of the funds of SESORB, such remuneration and subsistence, travelling and other allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."

## **18 Namibia Airports Company Act, 1998 (Act 25 of 1998)\***

The Namibia Airports Company Act, 1998 is amended-

(a) in section 1, by the deletion of the definition of "Shareholding Minister";

(b) in section 2-

(i) by the deletion of subsection (1);

(ii) by the deletion of subsection (2), excluding paragraph (b) thereof; and

(ii) by the deletion in subsection (6) of the word "Shareholding";

(c) in section 3-

(i) by the substitution for subsection (2) of the following subsection:

"(2) The Minister shall, on behalf of the State, exercise the rights attached to the shares of which the State is the holder."; and

(ii) by the deletion of subsections (3) and (4);

(d) in section 4, by the deletion in paragraph (a) of subsection (2) of the word "Shareholding";

(e) in section 5-

- (i) by the deletion in paragraph (d) of subsection (1) of the word "Shareholding"; and
- (ii) by the substitution for subsection (3) of the following subsection:
  - "(3) The board shall, after consultation with the Minister, appoint a chief executive officer for such period and, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, on such terms and conditions as the board may determine, to serve as the manager of the Company."
- (f) in section 6, by the deletion of the word "Shareholding", wherever it occurs;
- (g) in section 7-
  - (i) by the deletion in paragraph (a) of subsection (1) of the word "Shareholding", wherever it occurs; and
  - (ii) by the deletion of paragraph (b) of subsection (1);
- (h) in section 8, by the deletion of the word "Shareholding", wherever it occurs;
- (i) in section 9, by the deletion in subsection (1) of the words "in consultation with the Shareholding Minister and";
- (j) in section 10, by the deletion of the word "Shareholding";
- (k) in section 11-
  - (i) by the deletion in paragraph (a) of subsection (1) of the words "acting in consultation with the Shareholding Minister"; and
  - (ii) by the deletion in subsection (3) of the words "and after consultation with the Shareholding Minister"; and
- (l) in section 14-
  - (i) by the deletion in subsection (1) of the words "the Shareholding Minister and"; and
  - (ii) by the deletion in subsection (13) of the words "of the Shareholding Minister and".

**Footnote -**

\* Actually the Airports Company Act 25 of 1998

\* Actually the Airports Company Act 25 of 1998

## **19 National Transport Services Holding Company Act, 1998 (Act 28 of 1998)**

The National Transport Services Holding Company Act, 1998 is amended-

- (a) in section 1, by the deletion of the definition of "Shareholding Minister";
- (b) in section 2-
  - (i) by the deletion of subsection (1);
  - (ii) by the deletion of subsection (2), excluding paragraph (b) thereof; and
  - (iii) by the deletion in subsection (6) of the word "Shareholding";
- (c) in section 3-
  - (i) by the substitution for subsection (2) of the following subsection:

"(2) The Minister shall, on behalf of the State, exercise the rights attached to the shares of which the State is the holder.";
  - (ii) by the deletion of subsections (3) and (4); and
  - (iii) by the deletion in subsection (5) of the word "Shareholding";
- (d) in section 4, by the deletion in paragraph (b)(ii) of the word "Shareholding";
- (e) in section 5, by the substitution for subsection (3) of the following subsection:

"(3) The board shall, after consultation with the Minister, appoint a chief executive officer for such period and, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, on such terms and condition as the board may determine, to serve as the manager of the Holding Company.";
- (f) in section 6, by the deletion of the word "Shareholding", wherever it occurs;
- (g) in section 7, by the deletion of the word "Shareholding", wherever it occurs;
- (h) in section 8, by the deletion in subsection (1) of the words "in consultation with the Shareholding Minister and";
- (i) in section 9, by the deletion of the word "Shareholding";
- (j) in section 10, by the deletion in paragraph (a) of subsection (1) of the words "acting in consultation with the Shareholding Minister";
- (k) in section 14 by the deletion in subsection (3)(b) of the words "the Shareholding Minister and" and of the word "Shareholding"; and
- (l) in section 17, by the deletion of the word "shareholding", wherever it occurs.

## **20 Diamond Act, 1999 (Act 13 of 1999)**

The Diamond Act, 1999 is amended-

(a) in section (1), by the deletion of the definition of "voting member";

(b) in section 4-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board shall include-

- (a) three persons who are nominated by producers, which producers in the opinion of the Minister are capable of representing the interests of large-scale producers;
- (b) one person who is nominated by a producer, which producer in the opinion of the Minister is capable of representing the interests of small-scale producers;
- (c) one person who is a member of a recognized trade union which in the opinion of the Minister represents the interests of employees in the diamond industry and who is nominated by that trade union;
- (d) one person who is nominated by a cutter, which cutter in the opinion of the Minister is capable of representing the interests of cutters;
- (e) one person who is nominated by a dealer, which dealer in the opinion of the Minister is capable of representing the interests of dealers; and
- (f) one person who is nominated by a dealer in polished diamonds engaged in the manufacturing of jewellery, which dealer in the opinion of the Minister is capable of representing the interests of such.";

(ii) by the deletion of subsection (2);

(iii) by the substitution for subsection (4) of the following subsection:

"(4) The members of the Board referred to in subsection (1)(c), (d), (e) and (f) shall not have the right to vote at meetings of the Board."; and

(iv) by the deletion of subsection (5);

(c) in section 6-

(i) by the deletion of subsection (1); and

(ii) by the deletion of paragraph (f) of subsection (2);

(d) in section 7, by the substitution for subsection (5) of the following subsection:

"(5) A majority of the voting members of the Board shall form a quorum for a meeting of the Board."; and

(e) by the substitution for section 9 of the following section:

"9. A member or an alternate member of the Board, or a member of any committee of the Board, who is not in the full-time employment of the State, may be paid out of the funds of the Board such remuneration and allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."

## **21 Roads Contractor Company Act, 1999 (Act 14 of 1999)**

The Roads Contractor Company Act, 1999 is amended-

- (a) in section 1, by the deletion of the definition of "Shareholding Minister";
- (b) in section 2-
  - (i) by the deletion of subsection (1);
  - (ii) by the deletion of subsection (2), excluding paragraph (b) thereof; and
  - (ii) by the deletion in subsection (6) of the word "Shareholding";
- (c) in section 3-
  - (i) by the substitution for subsection (2) of the following subsection:

"(2) The Minister shall, on behalf of the State, exercise the rights attached to the shares of which the State is the holder.";
  - (ii) by the deletion of subsections (3) and (4); and
  - (iii) by the deletion in subsection (5) of the word "Shareholding";
- (d) in section 4, by the deletion in paragraph (a) of subsection (2) of the word "Shareholding";
- (e) in section 5 by the deletion in paragraph (b) of subsection (2) of the word "Shareholding";
- (f) in section 6, by the substitution for subsection (1) of the following subsection:

"(3)\* The board shall, after consultation with the Minister, appoint a chief executive officer for such period and, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, on such terms and conditions as the board may determine, to serve as the manager of the Company.";
- (g) in section 7, by the deletion of the word "Shareholding", wherever it occurs;
- (h) in section 8, by the deletion of the word "Shareholding", wherever it occurs;
- (i) in section 9, by the deletion of the word "Shareholding"; and
- (j) in section 10-

- (i) by the deletion in subsection (1) of the words "the Shareholding Minister and"; and
- (ii) by the deletion in subsection (12) of the words "the Shareholding Minister and"

**Footnote -**

\* Actually subsection (1)

\* Actually subsection (1)

## **22 Namibia Institute of Pathology Act, 1999 (Act 15 of 1999)**

The Namibia Institute of Pathology Act, 1999 is amended-

(a) in section 11-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."; and

(ii) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"(2) A person shall not be eligible for appointment as a director if he or she-"; and

(b) in section 12, by the deletion of subsection (1);

(c) in section 13, by the deletion in subsection (1) of the expression "referred to in paragraph (b) of subsection (1) of that section";

(d) in section 15, by the deletion of subsection (1);

(e) in section 16, by the substitution for subsection (1) of the following subsection:

"(1) A director or alternate director who is not in the full-time employment of the Public Service, shall be paid out of the funds of the Institute such allowances or other remuneration in respect of his or her service as a director of the Board, as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."; and

(f) in section 22, by the substitution for subsection (1) of the following subsection:

"(1) The Minister shall appoint a suitably qualified person to serve as the first chief executive officer of the Institute for the initial term of five years contemplated in subsection (2), upon such terms and conditions as the Board, after consultation with the Minister, may determine, and thereafter the appointment or reappointment of a person as chief executive officer shall be made by the Board, upon such terms and conditions as the Board, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine."

### **23 War Veterans Trust Fund Act, 1999 (Act 16 of 1999)\***

The War Veterans Trust Fund Act, 1999 is amended-

(a) in section 13-

(i) by the substitution for subsection (1) of the following subsection-

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board shall include at least two persons who are representatives of organisations representing war veterans, nominated by those organisations in accordance with subsection (3)."; and

(ii) by the deletion of subsections (2);

(iii) by the substitution for subsection (3) of the following subsection:

"(3) For the purposes of subsection (1) the Minister shall by written notice to organisations representing war veterans invite those organisations to nominate in writing, within a period specified in the notice, persons for appointment as members of the Board.";

(iv) by the deletion in subsection (5) of the words "notwithstanding the provisions of subsection (1)(f) but having regard to the requirements of subsection (2)"; and

(v) by the deletion of subsection (7);

(b) in section 14-

(i) by the deletion of subsection (1); and

(ii) by the substitution for paragraph (f) of subsection (2) of the following paragraph:

"(f) being a member who is a representative of organisations referred to in section 13(1), ceases to be such a representative."; and

(c) by the substitution for section 16 of the following section:

"16 A member of the Board, and any person appointed as a member of a committee of the Board in terms of section 19(2)(b), who are not in the full-time employment of the State, shall be paid from the Fund such remuneration and allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."

#### Footnote -

\* Actually the War Veterans Subvention Act 16 of 1999

\* Actually the War Veterans Subvention Act 16 of 1999

#### 24 Roads Authority Act, 1999 (Act 17 of 1999)

The Roads Authority Act, 1999 is amended-

- (a) in section 4, by the substitution for subsection (2) of the following subsection-

"(2) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006.";

- (b) by the deletion of section 6;

- (c) in section 9, by the substitution for subsection (5) of the following subsection:

"(5) A majority of the members of the board shall form a quorum for a meeting of the board.";

- (d) in section 11, by the substitution for subsection (1) of the following subsection:

"(1) There shall be paid to a director and an alternate director and a member of a committee, not being a director or alternate director, in respect of his or her services, out of the Road Fund, such allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."; and

- (e) in section 14, by the substitution for subsection (4) of the following subsection:

"(4) Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the Authority shall determine the remuneration and other conditions of service of its employees, including conditions of service in respect of medical aid, housing, gratuities and pension benefits.".

#### 25 Road Fund Administration Act, 1999 (Act 18 of 1999)

The Road Fund Administration Act, 1999 is amended-

- (a) in section 4 by the substitution for subsection (2) of the following subsection:

"(2) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in



accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006.";

(b) by the deletion of section 6;

(c) in section 9, by the substitution for subsection (5) of the following subsection:

"(5) A majority of the members of the board shall form a quorum for a meeting of the board.";

(d) in section 11, by the substitution for subsection (1) of the following subsection:

"(1) There shall be paid out of the Fund to a director and an alternate director and a member of a committee, not being a director or alternate director, in respect of his or her services such allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."; and

(e) in section 14, by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, determine the remuneration and other conditions of service of its employees who are in management.".

## **26 Electricity Act, 2000 (Act 2 of 2000)**

The Electricity Act, 2000 is amended-

(a) in section 4 by the substitution for subsection (1) of the following subsection-

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006.";

(b) in section 5, by the deletion of subsections (1) and (2);

(c) by the substitution for section 10 of the following section:

"10 A member of the Board who is not in the full-time employment of the Public Service must be paid from the funds of the Board such remuneration and allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."; and

(d) in section 11, by the substitution for subsection (5) of the following subsection:

"(5) Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the Board determines the conditions of service of the Chief Executive Officer and other members of its staff.".

## **27 National Art Gallery of Namibia Act, 2000 (Act 14 of 2000)**

The National Art Gallery of Namibia Act, 2000 is amended-

(a) in subsection (1) by the deletion of the definitions of "chairperson" and "vice-chairperson";

(b) by the substitution for section 5 of the following section:

"5 The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board shall include-

(a) two trustees selected from amongst persons nominated by the Arts Association of Namibia; and

(b) one person nominated by an association or organisation which the Minister reasonably believes represents regional councils in Namibia, and who is not necessarily a councillor, but who is conversant with matters pertaining to visual art within regions.";

and

(b) by the deletion of section 7.

## **28 Namibia Tourism Board Act, 2000 (Act 21 of 2000)**

The Namibia Tourism Board Act, 2000 is amended-

(a) in section 4 by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the board must include two persons to represent the tourism private sector, to be selected from nominations by that private sector.";

(b) in section 7, by the deletion of subsection (1);

(c) in section 8, by the substitution for subsection (5) of the following subsection:

"(5) A majority of the members of the Board shall form a quorum for a meeting of the Board."; and

(d) in section 11, by the substitution for subsection (2) of the following subsection:

"(2) The remuneration and other conditions of service of the Chief Executive Officer shall be determined by the Board, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006."; and

(e) by the substitution for section 13 of the following section:

"13 A member of the Board or of a committee who is not a staff member of the Public Service shall be paid from the funds of the Board such remuneration and allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006.".

## **29 Trust Fund for Regional Development and Equity Provisions Act, 2000 (Act 22 of 2000)**

The Trust Fund for Regional Development and Equity Provisions Act, 2000 is amended-

(a) in section 5-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board must include-

- (a) two members nominated by the Association of Regional Councils;
- (b) two members nominated by the Association of Local Authorities;
- (c) one member nominated by the Namibia Non-Governmental Organisation Forum; and
- (d) one member nominated by the Association of Physically Handicapped Persons.";

(ii) by the substitution in paragraphs (a) and (b) of subsection (2) for the expression "subsection (1)(b)" of the expression "subsection (1)";

(iii) by the deletion of subsection (3);

(iv) by the substitution in subsection (4) for the expression "subsection (1)(b)" of the expression "subsection (1)";

(v) by the deletion in subsection (5) of the expression "appointed under subsection (1)(b)";

(vi) by the substitution in subsection (6) for the expression "subsection (1)(b)(i) or (ii)" of the expression "subsection (1)(a) or (b)"; and

(vii) by the substitution for subsection (7) of the following subsection:

"(7) A vacancy on the Board caused by the death or vacation of office of a member shall be filled by the appointment by the Minister of a person as a member for the unexpired portion of the period of office of the former member."; and

(b) by the substitution for section 11 of the following section:

"11 The Minister may appoint for each member a person to be the alternate of the member and to act in the stead of the member during any period of the member's temporary absence or incapacity.".

## **30 Marine Resources Act, 2000 (Act 27 of 2000)**

The Marine Resources Act, 2000 is amended-

(a) in section 13-

(i) by the substitution for section 13 of the following section:

"13 The board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the board must include at least two persons who fairly represent the fishing industry or any branch of the fishing industry."; and

(ii) by the substitution for subsection (3) of the following subsection:

"(3) Before appointing the persons referred to in subsection (1) to represent the fishing industry or a branch of the fishing industry, the Minister shall consult with any trade association which, in the opinion of the Minister, is representative of the fishing industry or any branch of the fishing industry.";

(b) by the deletion of section 15;

(c) in section 16, by the substitution for subsection (3) of the following subsection:

"(3) If the office of a member of the board becomes vacant the vacancy must be filled by the appointment of another person in that office for the unexpired portion of the term of office of the former member."; and

(d) in section 17, by the substitution for subsection (4) of the following subsection:

"(4) A majority of the members of the board shall form a quorum for a meeting of the board.".

### **31 Meat Corporation of Namibia Act, 2001 (Act 1 of 2001)**

The Meat Corporation of Namibia Act, 2001 is amended-

(a) in section 1, by the deletion of the definition of "chairperson";

(b) in section 5-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Corporation shall have a Board of directors, which shall be constituted, and the members of which, including the chairperson and the vice-chairperson of the Board, shall be appointed, in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board must include-

(a) one employee of the Corporation selected by the Minister from amongst persons nominated by the employees of the Corporation to represent their interests;

(b) one person selected by the Minister from amongst persons nominated by the members of the Corporation to represent the interests of communal farmers;

- (c) one person selected by the Minister from amongst persons nominated by the members of the Corporation to represent the interests of commercial farmers;
  - (d) two persons selected by the Minister from amongst persons nominated by the members of the Corporation from persons possessing in their opinion expertise in the management of abattoirs, the trading of livestock and livestock products, or any other business or financial sphere, so as to achieve a varied representation on the Board to best serve the interests of the producers of livestock.";
- (ii) by the deletion of subsection (2); and
- (iii) by the substitution for subsection (3) of the following subsection:
  - "(3) When a nomination is to be made in terms of paragraph (a), (b), (c) or (d) of subsection (1), the Minister shall in writing request the chairperson of the Board, or any other person determined by the Minister, to convene a meeting of the interest group concerned to nominate within a specified period the required number of persons.";
- (c) in section 7-
  - (i) by the substitution for subsection (1) of the following subsection:
    - "(1) A director shall upon the expiration of his or her period of office continue to hold office for a further period, not exceeding 3 months, until his or her successor has been appointed.";
  - (ii) by the substitution in paragraph (b) of subsection (4) for the expression "paragraph (c), (d) or (e)" of the expression "paragraph (b), (c) or (d)";
- (d) by the substitution for section 8 of the following section:
  - "8 A director of the Board and any member of a committee who are not in the full-time employment of the Public Service or of the Corporation shall be paid from the funds of the Corporation such allowances as may be determined by the Minister, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006.";
- (e) in section 9-
  - (i) by the substitution for subsection (1) of the following subsection:
    - "(1) Meetings of the Board shall, subject to subsection (4), be held at such times and places as the Board may determine."; and
  - (ii) by the substitution for subsection (5) of the following subsection:
    - "(5) A majority of the members of the board shall form a quorum for a meeting of the board."; and
- (f) in section 12, by the substitution for subsection (1) of the following subsection:

"(1) The Board shall appoint a person (other than a director) as chief executive officer of the Corporation and, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, determine his or her remuneration and other conditions of service."

### **32 Namibia Financial Institutions Supervisory Authority Act, 2001 (Act 3 of 2001)**

The Namibia Financial Institutions Supervisory Authority Act, 2001 is amended-

(a) in section 5, by the substitution for subsection (1) of the following subsection:

"(1) The board must, in consultation with the Minister and subject to the provisions of this Act, and upon such terms and conditions as the board, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine, appoint a suitably qualified person to be the chief executive officer of the Authority, who must, in accordance with the policy and directions of the board, be responsible for the day-to-day management and administration of the Authority.";

(b) by the substitution for section 7 of the following section:

"7 The Authority, in consultation with the Minister, and subject to section 22(3) of the State-owned Enterprises Governance Act, 2006 must determine the remuneration and other conditions of service of its employees, including conditions of service in respect of medical aid, housing and pension benefits.";

(c) in section 10, by the substitution for subsection (2) of the following subsection:

"(2) The board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006.";

(d) by the deletion of section 12;

(e) in section 13, by the deletion in paragraph (b) of subsection (1) of the expression "referred to in section 14(2)";

(f) in section 14-

(i) by the deletion of subsection (2); and

(ii) by the substitution for subsection (5) of the following subsection:

"(5) A majority of the members of the board shall form a quorum for a meeting of the board."; and

(g) in section 16, by the substitution for subsection (1) of the following subsection:

"(1) There must be paid to a member or an alternate member of the board or a member of any committee, who is not in the full-time employment of the State, such remuneration and allowances, out of the funds of the

Authority, as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006."

### **33 Motor Vehicles Accidents Fund Act, 2001 (Act 4 of 2001)**

The Motor Vehicles Accidents Fund Act, 2001 is amended in section 6-

(a) by the substitution for subsection (2) of the following subsection:

"(2) The board shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the board must include-

- (a) one medical practitioner from the medical fraternity who the Minister shall appoint after consultation with the association or associations which represent medical practitioners in Namibia;
- (b) one person from the legal fraternity who the Minister shall appoint after consultation with the association or associations which represent legal practitioners in Namibia; and
- (c) one person who the Minister shall appoint after consultation with the association or associations which represent persons who are engaged in the business of transportation of persons by road for reward.";

(b) by the deletion of paragraph (c) of subsection (3); and

(c) by the substitution for paragraph (d) of subsection (3) of the following paragraph:

"(d) be eligible for reappointment at the end of his or her term of office."

### **34 Environmental Investment Fund of Namibia Act, 2001 (Act 13 of 2001)**

The Environmental Investment Fund of Namibia Act, 2001 is amended-

(a) in section 7-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board must include-

- (a) a person representing community based organisations having the sustainable environmental and natural resources and community based tourism management as their main object; and
  - (b) a person having expertise in financial matters, representing financial institutions.";
- (ii) by the substitution in subsection (3) for the expression "subsection (1)(d) and (e)" of the expression "subsection (1)(a) or (b)"; and

(iii) by the deletion of subsection (5);

(iv) by the substitution for subsection (7) of the following subsection:

"(7) The names, positions and nationalities of the persons appointed as members of the Board must be made known by notice in the *Gazette*.";

(b) by the deletion of section 8;

(c) in section 9, by the deletion of paragraph (d) of subsection (1);

(d) in section 14, by the substitution for subsection (1) of the following subsection:

"(1) Members of the Board or committees who are not in the full-time employ of the State, must be paid such allowances, including travel and subsistence allowances as the Minister may determine, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006.";  
and

(e) in section 21, by the substitution for subsection (2) of the following subsection:

"(2) The remuneration and other conditions of service of the Chief Executive Officer are determined by the Board, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006.".

### **35 Development Bank of Namibia Act, 2002 (Act 8 of 2002)**

The Development Bank of Namibia Act, 2002 is amended-

(a) in section 9 by the substitution for subsection (2) of the following subsection:

"(2) The Board shall be constituted, and its members shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board must include-

(a) three directors appointed by the Minister;

(b) three directors appointed by the shareholders of the Bank other than the Government, in the manner determined in the articles:  
Provided that-

(i) if the Government has more than 50 percent of the shares of the Bank the Minister may appoint one of those directors for every full 20 percent of shares the Government holds over 50 percent; or

(ii) if the Government is the sole shareholder of the Bank, the Minister appoints the remaining three directors; and

(b) the Chief Executive officer of the Bank referred to in section 13.";  
and

(b) in section 13-



(i) by the substitution for subsection (1) of the following subsection:

"(1) Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the Minister appoints the first chief executive officer of the Bank and thereafter the Bank makes the appointment."; and

(ii) by the substitution for subsection (5) of the following subsection:

"(5) The Board may on the terms and conditions determined by it, but subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, employ such other officers and employees, and may engage such agents, advisers and consultants, as it considers necessary for carrying out the purposes of this Act and for the proper conduct of the business of the Bank."

### **36 Competition Act, 2003 (Act 2 of 2003)**

The Competition Act, 2003 is amended-

(a) by the substitution for section 5 of the following section:

"5 The Commission shall be constituted, and its members, including the chairperson and the vice-chairperson of the Commission, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006.";

(b) by the deletion of section 7; and

(c) in section 13, by the substitution for subsection (4) of the following subsection:

"(4) Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the Commission determines the remuneration and other conditions of service and benefits of the Secretary and other employees of the Commission."

### **37 Agricultural Bank of Namibia Act, 2003 (Act 5 of 2003)**

The Agricultural Bank of Namibia Act, 2003 is amended-

(a) by the substitution for section 7 of the following section:

"7 There shall be a Board of the Agribank which shall be responsible for the policy, management and control of the affairs of the Agribank and for exercising the powers and performing the functions and duties of the Agribank subject to this Act.";

(b) in section 8-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Board shall be constituted and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 the State-owned Enterprises Governance Act, 2006."; and

- (ii) by the deletion of subsection (2); and
- (c) in section 10, by the deletion of subsections (1) and (2);
- (d) in section 11, by the substitution for subsection (5) of the following subsection:
  - "(5) A majority of the members of the Board shall form a quorum for a meeting of the Board.";
- (e) in section 16, by the substitution for subsection (5) of the following subsection:
  - "(5) The Board, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, must determine the remuneration and allowances of the Chief Executive Officer."; and
- (f) in section 17, by the substitution for subsection (2) of the following subsection:
  - "(2) The Board, on the recommendation of the Chief Executive Officer, and subject to section 22(3) of the State-owned Enterprises Governance Act 2006, must determine the remuneration and other conditions of service of employees appointed under subsection (1)."

### **38 Research, Science and Technology Act, 2004 (Act 23 of 2004)**

The Research, Science and Technology Act, 2004 is amended-

- (a) by the substitution for section 6 of the following section:
  - "6 The Commission shall be constituted, and the commissioners, including the chairperson and the vice-chairperson of the Commission, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Commission must include-
  - (a) a person nominated by the President;
  - (b) every chairperson of a council;
  - (c) the President of the Namibia Chamber of Commerce and Industry or his or her duly appointed representative;
  - (d) a person nominated by the Director-General of the National Planning Commission referred to in Article 129 of the Namibian Constitution;
  - (e) a person with experience or expertise relevant to the functions of the Commission nominated by the National Council for Higher Education established by section 4 of the Higher Education Act, 2003 (Act 26 of 2003);
  - (f) a person nominated by an organisation which is, in the opinion of the Minister, representative of students in a scientific area;
  - (g) a legal practitioner nominated by the Law Society of Namibia; and

(h) six persons with experience or expertise relevant to the functions of the Commission selected by the Minister and of whom, in the opinion of the Minister, each represents one of the following sectors-

- (i) environment and tourism;
- (ii) fisheries and marine resources;
- (iii) works, transport and communication;
- (iv) mines and energy;
- (v) agriculture; and
- (vi) trade and industry."; and

(b) by the deletion of section 8.

### **39 National Disability Council Act, 2004 (Act 26 of 2004)**

The National Disability Council Act, 2004 is amended-

(a) in section 5, by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

'The Council shall be constituted, and its members, including the chairperson and the vice-chairperson of the Council, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Council must include-"; and

(b) in section 7, by the deletion of subsection (1).

### **40 National Heritage Act, 2004 (Act 27 of 2004)**

The National Heritage Act, 2004 is amended-

(a) in section 1, by the deletion of the definition of "appointed member";

(b) in section 4-

(i) by the substitution for subsection (1) of the following subsection:

"(1) The Council shall be constituted, and its members, including the chairperson and vice-chairperson of the Council, shall be appointed in accordance with, and for a period determined under sections 14 and 15 of the State-owned Enterprises Governance Act, 2006."; and

(ii) by the deletion of subsections (2), (3) and (4);

(c) by the deletion of section 6;

(d) in section 7, by the deletion of subsection (1); and

(e) by the substitution for section 18 of the following section:

"18 Subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the Council determines the remuneration and other conditions of

service and benefits of the Director and other employees of the Council."

#### **41 Accreditation Board of Namibia Act, 2006 (Act 8 of 2006)\***

The Accreditation Board of Namibia Act, 2005 is amended-

(a) in section 6-

(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) Subject to paragraph (b), the Board shall be constituted, and its members, including the chairperson and vice-chairperson of the Board, shall be appointed in accordance with, and for a period determined under sections 14 and 15 of the State-owned Enterprises Governance Act, 2006;" and

(ii) by the deletion of subsection (2);

(b) in section 7-

(i) by the deletion of subsection (1);

(ii) by the substitution for subsection (2) of the following subsection:

"(2) A member of the Board whose term of office has expired is eligible for reappointment as such a member."; and

(iii) by the substitution for subsection (3) of the following subsection:

"(3) If the office of a member of the Board becomes vacant the vacancy must be filled by the appointment of another person in that office for the unexpired portion of the term of office of the former member.";

(c) in section 8, by the substitution for the words preceding paragraph (a) of the following words:

"A person may not be appointed as a member of the Board if that person-";

(d) by the substitution for section 9 of the following section:

"9 A member of the Board must vacate office if the member-

(a) becomes disqualified in terms of section 8 from being appointed as a member of the Board;

(b) resigns from office by written notice addressed and delivered to the Minister;

(c) has been absent from three consecutive meetings of the Board without the leave of the Board;

(d) is removed as a member of the Board by the Minister, by written notice addressed to the member, if there is sufficient reason for the Minister to do so, and after having given the member a reasonable opportunity to be heard; or

- (e) being the chief executive officer, ceases to hold that office.";
- (e) in section 13, by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- "(a) members of the Board; and";
- (f) in section 15-
- (i) by the substitution for the words following on paragraph (b) of subsection (1) of the following words:
- "as the Board, with the approval of the Minister acting in consultation with the Minister responsible for finance, and subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, may determine."; and
- (ii) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
- "(b) determine, subject to the directions of the Minister given in consultation with the Minister responsible for finance, and subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the remuneration and other conditions of employment of employees of the Board, which conditions of employment may include Council conditions with regard to medical aid, housing, gratuities, pension benefits and any other benefits.".

**Footnote -**

\* Actually the Accreditation Board of Namibia Act, 2005 (Act 8 of 2005)

\* Actually the Accreditation Board of Namibia Act, 2005 (Act 8 of 2005)