



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 3698

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 149

2006

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 2 of 2006: State-owned Enterprises Governance Act, 2006.

16.11.06

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

(Signed by the President on 29 August 2006)

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

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**PART I
PRELIMINARY**

Definitions

1. 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 No. 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 No. 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

Establishment of Council

2. (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.

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3. (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.

Functions of the Council

4. (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.

Meetings of the Council

5. (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;

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- (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.

Disclosure of interest by members of Council

6. (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.

Committees of the Council

7. (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.

Confidentiality in relation to functions of Council

8. (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**

Administrative personnel

9. (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.

Act No. 2, 2006 STATE-OWNED ENTERPRISES GOVERNANCE ACT, 2006**Expenditure**

10. 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.

Consultants

11. (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.

Preservation of secrecy

12. (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****Application of this Part**

13. (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.

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

14. (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 No. 61 of 1973) or its

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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 jointly 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).

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

15. (1) 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 -

- (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 No. 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.

Appointment of temporary board members

16. (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, 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.

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17. (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.

Performance agreements with board members individually

18. (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.

Business and financial plan

19. (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;

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- (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.

Approval of annual budget of State-owned enterprise

20. (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.

Performance agreements of management staff of State-owned enterprises

21. (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.

Remuneration of board members and management staff of State-owned enterprises

22. (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.

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(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.

Council to be notified of significant affecting events

23. 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.

Duty to furnish information

24. (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

Dividends

25. 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.

Annual reports of State-owned enterprises

26. (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.

Obligations concerning investments

27. (1) Any power entrusted by the establishing Act, constituent document or the memorandum of association and articles of association of any State-owned enterprise to any person to invest any money of the State-owned enterprise or controlled by it must not be exercised by that person unless the prior written approval of the portfolio Minister, acting with the concurrence of the Minister responsible for finance, has been obtained for the investment.

(2) To obtain the prior written approval of the portfolio Minister contemplated in subsection (1), there must be lodged with the portfolio Minister a written application in which full particulars of the terms of the proposed investment are furnished.

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(3) The approval contemplated in subsection (1) must be obtained whenever it is sought -

- (a) to make a further investment of money;
- (b) to alter any investment or deal with it in a manner affecting the terms of the investment as were furnished in terms of subsection (2); or
- (c) to reinvest any money becoming available upon the maturity date of an initial or former investment.

(4) An approval in terms of subsection (1) may be granted on any conditions as the portfolio Minister, acting with the concurrence of the Minister responsible for finance, may stipulate.

Obligations concerning subsidiaries

28. (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 No. 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

Power to direct special investigation

29. 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.

Appointment of special investigator

30. (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.

Powers of special investigator

31. (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).

Publication

32. 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.

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33. (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.

Expenses of special investigation

34. (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.

Offences in relation to special investigation

35. (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****Provisional identification of State-owned enterprise for restructuring**

36. (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.

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(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.

Proposal for restructuring

37. (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 No. 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

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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.

Consultation

38. 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.

Interim measures

39. (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).

Determination of restructuring

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

Information and reports

41. 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.

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GENERAL****Communications to be notified to portfolio Minister**

42. 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.

Regulations

43. 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.

Limitation of Liability

44. 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.

Exemptions

45. 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.

Provisions of this Act prevail

46. 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.

Power to amend Schedule 1

47. 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.

Transitional provision

48. A person who immediately before the date of commencement of this Act held office of chairperson, vice-chairperson or 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 the commencement of this Act.

Amendment of laws

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

Short title and commencement

50. 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 No. 12 of 1981)
2. Karakul Board of South West Africa	Karakul Pelts and Wool Act, 1982 (Act No. 14 of 1982)
3. National Special Risks Association (Nasria)	Second Finance Act, 1987 (Act No. 27 of 1987)
4. Namibian Broadcasting Corporation	Namibian Broadcasting Act, 1991 (Act No. 9 of 1991)
5. National Fishing Corporation of Namibia Limited	National Fishing Corporation of Namibia Limited Act, 1991 (Act No. 28 of 1991)
6. New Era Publication Corporation	New Era Publication Corporation Act, 1992 (Act No. 1 of 1992)

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| 7. | Namibia Press Agency | Namibia Press Agency Act, 1992 (Act No. 3 of 1992) |
| 8. | Namibia Post and Telecom Holdings Limited | Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992) |
| 9. | Namibian Agronomic Board | Agronomic Industry Act, 1992 (Act No. 20 of 1992) |
| 10. | National Housing Enterprise | National Housing Enterprise Act, 1993 (Act No. 5 of 1993) |
| 11. | Namibian Ports Authority | Namibian Ports Authority Act, 1994 (Act No. 2 of 1994) |
| 12. | Social Security Commission | Social Security Commission Act, 1994 (Act No. 34 of 1994) |
| 13. | Minerals Development Fund of Namibia | Minerals Development Fund of Namibia Act, 1996 (Act No. 19 of 1996) |
| 14. | Namibia Qualifications Authority | Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996) |
| 15. | Namibian College of Open Learning | Namibian College of Open Learning Act, 1997 (Act No. 1 of 1997) |
| 16. | Games Products Trust Fund | Games Products Trust Fund Act, 1997 (Act No. 7 of 1997) |
| 17. | Namibia Water Corporation Limited | Namibia Water Corporation Act, 1997 (Act No. 12 of 1997) |
| 18. | Namibia Wildlife Resorts Company | Namibia Wildlife Resorts Company, 1998 (Act No. 3 of 1998) |
| 19. | Security Enterprises and Security Officers Regulation Board | Security Enterprises and Security Officers Act, 1998 (Act No. 19 of 1998) |
| 20. | Namibia National Reinsurance Corporation | Namibia National Reinsurance Corporation Act, 1998 (Act No. 22 of 1998) |
| 21. | Namibia Airports Company | Airports Company Act, 1998 (Act No. 25 of 1998) |
| 22. | Transnamib Holdings Limited | National Transport Services Holding Company Act, 1998 (Act No. 28 of 1998) |
| 23. | Diamond Board of Namibia | Diamond Act, 1999 (Act No. 13 of 1999) |

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24. Roads Contractor Company	Roads Contractor Company Act, 1999 (Act No. 14 of 1999)
25. Namibia Institute of Pathology	Namibia Institute of Pathology Act, 1999 (Act No. 15 of 1999)
26. War Veterans Trust Fund	War Veterans Subvention Act, 1999 (Act No 16 of 1999)
27. Roads Authority	Roads Authority Act, 1999 (Act No. 17 of 1999)
28. Road Fund Administration	Road Fund Administration Act, 1999 (Act No. 18 of 1999)
29. Electricity Control Board	Electricity Act, 2000 (Act No. 2 of 2000)
30. National Art Gallery of Namibia	National Art Gallery of Namibia Act, 2000 (Act No.14 of 2000)
31. Namibia Tourism Board	Namibia Tourism Board Act, 2000 (Act No. 21 of 2000)
32. Trust Fund for Regional Development and Equity Provisions	Trust Fund for Regional Development and Equity Provisions Act, 2000 (Act No. 22 of 2000)
33. Fisheries Observer Agency	Marine Resources Act, 2000 (Act No. 27 of 2000)
34. Meat Corporation of Namibia	Meat Corporation of Namibia Act, 2001 (Act No. 1 of 2001)
35. Namibia Financial Institutions Supervisory Authority	Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001)
36. Motor Vehicle Accident Fund	Motor Vehicle Accident Fund Act, 2001 (Act No. 4 of 2001).
37. Environmental Investment Fund of Namibia	Environmental Investment Fund of Namibia Act, 2001 (Act No. 13 of 2001)
38. Namibian Competition Commission	Competition Act, 2003 (Act No. 2 of 2003)
39. Agricultural Bank of Namibia	Agricultural Bank of Namibia Act, 2003 (Act No. 5 of 2003)
40. Development Bank of Namibia	Development Bank of Namibia Act, 2002 (Act No. 8 of 2002)
41. National Commission on Research, Science and Technology	Research, Science and Technology Act, 2004 (Act No. 23 of 2004)

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| 42. | National Disability Council | National Disability Council Act, 2004
(Act No. 26 of 2004) |
| 43. | National Heritage Council | National Heritage Council Act, 2004
(Act No. 27 of 2004) |
| 44. | Accreditation Board of Namibia | Accreditation Board of Namibia Act,
2006 (Act No. 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) | |

**SCHEDULE 2
LAWS AMENDED**

The laws specified below are amended to the extent indicated:

1. Meat Industry Act, 1981 (Act No. 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 No. 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

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- (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 No. 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 No. 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 No. 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).

Act No. 2, 2006 STATE-OWNED ENTERPRISES GOVERNANCE ACT, 2006**6. Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 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 No. 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.

8. National Housing Enterprise Act, 1993 (Act No. 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.”.

Act No. 2, 2006 STATE-OWNED ENTERPRISES GOVERNANCE ACT, 2006**9. Namibian Ports Authority Act, 1994 (Act No. 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 No. 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.”.

11. Minerals Development Fund of Namibia Act, 1996 (Act No. 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

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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 No. 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:

