



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 29

1994

**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. 1 of 1994: Walvis Bay and Off-shore Islands Act, 1994.

**WALVIS BAY AND OFF-SHORE
ISLANDS ACT****ACT**

WHEREAS Walvis Bay and the off-shore islands in terms of Article 1(4) of the Namibian Constitution are part of the national territory of Namibia;

AND WHEREAS, after the independence of Namibia and notwithstanding the aforesaid provision of the Namibian Constitution, Walvis Bay and the off-shore islands continued to be controlled by the Republic of South Africa in accordance with the laws of South Africa;

AND WHEREAS the Government of the Republic of Namibia and the Government of the Republic of South Africa have agreed that the Republic of South Africa shall cease, with effect from 1 March 1994, to exercise any control over Walvis Bay and the off-shore islands;

AND WHEREAS it is regarded necessary to provide for the smooth transfer of control over Walvis Bay and the off-shore islands from the Republic of South Africa to the Republic of Namibia;

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

(Signed by the President on 24 February 1994)

Definitions.

1. In this Act, unless the context otherwise indicates -

“effective date” means the date of the reintegration of Walvis Bay into Namibia, being 1 March 1994;

“South Africa” means the Republic of South Africa;

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“Walvis Bay” means the areas comprising -

- (a) the port and settlement of Walvis Bay situated on the coast of Namibia to the north of the Tropic of Capricorn and the territory surrounding it, bounded as described in the Walfish Bay and St. John's River Territories Annexation Act, 1884 (Act 35 of 1884, of the Cape of Good Hope), which description reads as follows:

“on the south by a line from a point on the coast fifteen miles south of Pelican Point to Scheppmansdorp to the Rooibank, including the plateau, and thence ten miles inland from the mouth of the Swakop River; on the north by the last ten miles of the course of the said Swakop River, and on the West Coast by the Atlantic Ocean”; and

- (b) the Island of Ichaboe and the other islands, islets and rocks mentioned in the Ichaboe and Penguin Islands Act, 1874 (Act 4 of 1874, of the Cape of Good Hope).

“this Act” includes the Schedule.

Laws to be applied in
Walvis Bay.

2. (1) As from the effective date -

- (a) the laws applied in Walvis Bay immediately prior to that date shall cease to be so applied, unless, and to such extent as, the application of any such law is continued by virtue of any provision of this Act;

(b) no laws other than -

(i) the law of Namibia; and

(ii) such of the laws referred to in paragraph (a) of which the application is continued as contemplated in that paragraph,

shall be applicable in Walvis Bay, but subject to subsection (2).

(2) Any law which in terms of paragraph (b) of subsection (1) applies in Walvis Bay, shall so apply subject to such amendments, additions, modifications, exceptions

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or conditions as are provided for in this Act, whether such amendments, additions, modifications, exceptions or conditions are made, effected or imposed to apply -

- (a) specifically in or in relation to Walvis Bay only;
or
- (b) generally in Namibia as a whole.

Provisions relating to residence and citizenship of Walvis Bay residents.

3. (1) Any person, not being a Namibian citizen, who, on the effective date, is ordinarily resident in Walvis Bay and who -

- (a) is a South Africa citizen; or
- (b) is the holder of a permit for permanent residence issued before the effective date by a competent person or authority in terms of the laws of South Africa,

shall, notwithstanding anything to the contrary contained in the laws of Namibia relating to immigration, be granted a permanent residence permit if such person, before or on 31 May 1994 or such later date (if any) as may have been determined under subsection (4)(a), applies for such a permit in the form prescribed for that purpose under subsection (4)(b).

(2) A person referred to in paragraph (a) of subsection (1) who, up to the effective date, has been resident in Walvis Bay, or in any other place in Namibia and Walvis Bay, for a continuous period of not less than five years, may, instead of so applying for a permanent residence permit, before or on 31 May 1994 or such later date (if any) as may have been determined under subsection (4)(a), apply for Namibian citizenship by naturalization in the form prescribed for that purpose under subsection (4)(b), and such person, if he or she satisfies the Minister of Home Affairs that he or she -

- (a) is willing to renounce his or her foreign citizenship; and
- (b) has not been convicted in Namibia of an offence specified in the Second Schedule to the Namibian Citizenship Act, 1990 (Act 14 of 1990),

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shall, notwithstanding anything to the contrary contained in section 5 of the Namibian Citizenship Act, 1990, but subject to subsection (3) of this section, be granted Namibian citizenship by naturalization and be issued with a certificate of naturalization as a Namibian citizen under the Namibian Citizenship Act, 1990, as fully and effectually as if his or her application in terms of this subsection had been an application for Namibian citizenship by naturalization in terms of section 5 of that Act.

(3) The provisions of subsections (2), (3), (5) and (6) of section 5 of the Namibian Citizenship Act, 1990, shall apply with respect to applications in terms of subsection (2) of this section.

(4) The Minister of Home Affairs may by notice in the *Gazette* -

(a) defer the last day specified in subsections (1) and (2) on which applications in terms of those subsections may be made, to such later date as may be determined by the Minister and specified in the notice, either in respect of both or any one of those subsections;

(b) prescribe a form or forms for the purposes of applications referred to in subsections (1) and (2).

(5) An application in terms of subsection (1) or (2) shall be accompanied by apposite proof of the facts on which the applicant relies for his or her application.

(6) The Permanent Secretary: Home Affairs, or any officer authorized thereto by him or her, shall furnish to a person who -

(a) in terms of subsection (1), applies for a permanent residence permit; or

(b) in terms of subsection (2), applies for Namibian citizenship,

a receipt to the effect that the relevant application has been made and specifying the date of the application.

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(7) A permanent residence permit issued in terms of subsection (1) shall be deemed to be a permit for permanent residence issued under the laws of Namibia relating to immigration, and, except in so far as is inconsistent with any provision of this section, any reference in such a law to a permit for permanent residence shall be construed as including a reference to a permanent residence permit issued in terms of subsection (1).

(8) For the purposes of an application for Namibian citizenship by naturalization in terms of section 5 of the Namibian Citizenship Act, 1990, made -

- (a) by a person referred to in subsection (2) after expiry of the date or (if any) the deferred date referred to in that subsection; or
- (b) by any person referred to in paragraph (b) of subsection (1) who immediately prior to the effective date was ordinarily resident in Walvis Bay in accordance with the laws of South Africa,

such person shall for the purposes of paragraph (b) of subsection (1) of the said section 5 be deemed to have been lawfully admitted to Namibia for residence therein.

(9) A temporary permit issued by a competent person or authority in terms of the laws of South Africa entitling the holder thereof to be in Walvis Bay and which was in force on the date immediately prior to the effective date, shall as from the effective date, in accordance with the purpose for which it was issued and subject to the date of expiry and any condition or prohibition stated therein, be deemed to be a temporary permit issued under the laws of Namibia relating to immigration.

(10) Any permanent residence permit and any certificate of naturalization as a Namibian citizen issued before the commencement of subsections (1) and (2), respectively, that would have been lawful if the relevant subsection had been in force is hereby validated and declared to have been lawfully issued.

Civil matters pending
before the superior court.

4. (1) Where, immediately prior to the effective date, any civil matter -

- (a) the cause of which arose in Walvis Bay;

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- (b) in which the defendant or respondent is a person ordinarily resident in, or the local authority of, Walvis Bay or is any company, organization, institution, association or body (whether corporate or incorporate) having its headquarters in Walvis Bay or conducting any business or undertaking, performing or rendering any service or pursuing, promoting or furthering (whether for gain or otherwise) any object or goal within Walvis Bay;
- (c) relating to any property (whether movable or immovable), substance, article, object or thing kept, found or situated in or at Walvis Bay, or to any right or interest in respect thereof;
- (d) relating to any matter of public or local interest, importance or significance in or at Walvis Bay or any occurrence, event, conduct, act or omission affecting or likely to affect the rights or interests of anyone being a person, company, organization, institution, association or body mentioned in paragraph (b);
- (e) pertaining to or affecting the status or capacity of any person ordinarily resident in Walvis Bay,

is pending, such civil matter shall, as agreed between the Government of Namibia and the Government of South Africa, be determined by the Cape Provincial Division of the Supreme Court of South Africa according to the law applied in Walvis Bay prior to the effective date, subject to the provisions of section 7.

(2) For the purposes of subsection (1), a civil matter contemplated in that subsection shall be regarded as being pending -

- (a) if, immediately prior to the effective date, it was partly heard by any court of the Cape Provincial Division of the Supreme Court of South Africa;
or
- (b) if, in any other case, process has prior to the effective date been issued or filed from or with such court with a view to commencing legal proceedings in such court in connection with such

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civil matter, irrespective of whether or not such civil matter, prior to the effective date, has been placed on the roll of such court for trial or hearing.

- (3) (a) Notwithstanding the preceding provisions of this section, the High Court of Namibia may hear and determine any such pending civil matter at the written request of all the parties thereto and upon lodgement with the registrar of that Court of all process and documents filed or issued and served in connection with such matter prior to such request.
- (b) Any process and documents lodged in terms of paragraph (a), shall be deemed to have been filed or issued and served with or from the High Court of Namibia.

Pending proceedings before the lower court.

5. (1) Any civil matter which, immediately prior to the effective date, has been partly heard in the magistrate's court of Walvis Bay, shall in that court, sitting as a Namibian court, be continued and determined, notwithstanding the provisions of section 29 of the Magistrate's Court Act, 1944 (Act 32 of 1944) of Namibia and subject to such arrangements as may be agreed upon between the Government of the Republic of Namibia and the Government of the Republic of South Africa, by the person who, prior to such date, presided as judicial officer in that court over the proceedings pertaining to such civil matter: Provided that if, on or after the effective date, it is not reasonably possible to procure the services of such person, the civil matter in question shall commence *de novo* in the said magistrate's court.

(2) A civil matter referred to in subsection (1), irrespective of whether it is continued as provided for in that subsection or is commenced *de novo* as contemplated in the proviso thereto, shall be determined according to the relevant law as applied in Walvis Bay prior to the effective date.

(3) Notwithstanding the provisions of any other law, the provisions of subsections (1) and (2) shall *mutatis mutandis* apply in relation to any criminal matter partly heard in the magistrate's court of Walvis Bay immediately prior to the effective date.

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Criminal matters pending
before the superior court
or regional court.

6. (1) Notwithstanding the provisions of any other law, any criminal matter with regard to Walvis Bay which, immediately prior to the effective date, is pending before any court of the Cape Provisional Division of the Supreme Court of South Africa or before a regional court of the Cape Regional Division, shall, as agreed between the Government of Namibia and the Government of South Africa, be continued and determined by the court in question according to the relevant law as applied in Walvis Bay prior to the effective date.

(2) For the purposes of subsection (1) -

- (a) "criminal matter with regard to Walvis Bay" shall mean any criminal proceedings founded on the alleged commission of any offence in Walvis Bay;
- (b) such a criminal matter shall be pending if the accused, otherwise than in terms of section 119 of the Criminal Procedure Act, 1977 (Act 51 of 1977), has pleaded to the charge.

Appeals.

7. An appeal against -

- (a) any order or judgment of the magistrate's court of Walvis Bay made or given prior to the effective date in respect of any civil matter;
- (b) any order or judgment of a court of the Cape Provincial Division of the Supreme Court of South Africa made or given prior to the effective date -
 - (i) as a court of first instance, in respect of any civil matter of the nature contemplated in section 4(1);
 - (ii) as a court of appeal, against any order or judgment made or given in a civil matter by the magistrate's court of Walvis Bay or another court of the said Division, in the circumstances contemplated in paragraph (a) and subparagraph (i) of this paragraph, respectively;

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(c) any order, judgment or sentence of -

- (i) the magistrate's court of Walvis Bay;
- (ii) a regional court of the Cape Regional Division;
- (iii) a court of the Cape Provincial Division of the Supreme Court of South Africa, whether as a court of first instance or a court of appeal,

made, issued, imposed or passed prior to the effective date in any criminal proceedings founded on the commission or alleged commission of an offence in Walvis Bay,

which, prior to that date, has been placed on the roll of any court of the Cape Provincial Division or Appellate Division of the Supreme Court of South Africa (as the case may be) for hearing before or after that date, shall be finalized in the said Supreme Court, whereas any such appeal noted before the effective date but not placed on the roll prior to that date, or noted on or after that date, shall be heard and determined by the High Court or Supreme Court of Namibia (as the case may be).

Recognition of judgments, orders, etc. given or made with reference to Walvis Bay before the effective date.

8. (1) Subject to the provisions of this Act, any judgment, order, finding, ruling, decision or direction given, made or issued -

- (a) prior to the effective date, by the magistrate's court of Walvis Bay in any civil matter;
- (b) prior to the effective date, by any court of the Supreme Court of South Africa having jurisdiction -
 - (i) in relation to any civil matter of the nature referred to in paragraph (a), (b), (c), (d) or (e) of section 4(1); or
 - (ii) in relation to any other civil matter, inasmuch as such judgement, order, finding, ruling, decision or direction, immediately prior to the effective date, is operative or enforceable in relation to any person resident in Walvis Bay;

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- (c) prior to the effective date, by a court of any Provincial Division of the Supreme Court of South Africa sitting as a court of appeal in relation to any judgment, order, finding, ruling, decision or direction arising from any civil matter determined by a court referred to in paragraph (a) or (b), in the circumstances contemplated in that paragraph,
- (d) after the effective date -
 - (i) by the magistrate's court of Walvis Bay, in the circumstances contemplated in section 5(1) and (2);
 - (ii) by a court of the Cape Provincial Division of that Supreme Court, sitting as a court of first instance, in relation to any civil matter contemplated in section 4(1); or
 - (iii) by a court of the Cape Provincial or Appellate Division of that Supreme Court, sitting as a court of appeal, as contemplated in section 7, in relation to any order or judgment referred to in paragraph (a) or (b)(i) or (ii) of that section (as the case may be),

shall in Namibia be as binding, operative and enforceable and be given effect to, in all respects, as if such judgment, order, finding, ruling, decision or direction had been given, made, or issued by a court of law in Namibia of like status and jurisdiction.

(2) For the purpose of or in connection with the implementation, application, enforcement or operation in Namibia, on or after the effective date, of any judgment, order, finding, ruling, decision or direction made, given or issued prior to the fixed date as contemplated in subsection (1)(a), (b) or (c) -

- (a) any act performed prior to that date by any competent authority, official or person of the Republic of South Africa in accordance with the law of that country and with a view to the implementation, application, enforcement or operation of any such judgment, order, finding, ruling, decision or direction, shall be deemed to have been performed by a competent authority, official or person of the Republic of Namibia in accordance with the law of Namibia;

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- (b) any act which, in compliance with or in contravention of any such judgment, order, finding, ruling, decision or direction, was performed or omitted prior to the effective date by or on behalf of any person in favour of or against whom such judgment, order, finding, ruling, decision or direction was made, shall in Namibia have all such consequences as would have arisen had such act been performed or omitted in Namibia on or after that date.

Enforcement of punishments, penalties and certain other orders.

9. Notwithstanding the cessation of the application of the laws referred to in section 2(1)(a), and except in so far as provided otherwise in this Act, any punishment, penalty or forfeiture incurred by or imposed on any person pursuant to or in respect of any offence committed against any such law shall not be affected and may be enforced against such person as if the application of such law had not so ceased.

Prosecutions in respect of offences committed in Walvis Bay before effective date.

10. (1) Notwithstanding the cessation of the application of the laws referred to in section 2(1)(a), any person alleged to have committed an offence in Walvis Bay under any such law before the effective date, may, if the act or omission alleged to constitute the offence, had it been performed or had it occurred after the effective date, would have constituted an offence against a corresponding provision of a law of Namibia, be tried for such offence, by a competent court of Namibia as if the offence in question had been committed against such corresponding provision, unless it is in accordance with any other provision of this Act justiciable by a court of South Africa, but subject to subsection (2).

(2) Where, in a case contemplated in subsection (1), the penalty prescribed for the offence in question in the relevant law of South Africa differs from that prescribed in the corresponding provision of the Namibian law, that prescribed penalty which is less onerous shall be taken to be the penalty which may be imposed in respect of such offence.

Recognition, enforcement or effect of official acts of certain bodies or persons.

11. Where, prior to the effective date, any person or official or any tribunal, council, board, committee, association, society, institute, fellowship or other body (of whatever nature or description) established or recognized by or in terms of any law of South Africa has, in terms of

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any law of that country (in this section referred to as the authorizing law) and in respect of, in relation to or in connection with any matter -

- (a) made, taken, given or issued any finding, ruling, decision, order, direction, requirement or award;
- (b) given, granted or conferred any authorization, permission, right, benefit, privilege or exemption; or
- (c) imposed any duty or obligation,

which, immediately prior to the effective date, is binding on and affects or is operative or enforceable in respect of any person resident or property (whether movable or immovable) found or situated in Walvis Bay, then, in the absence of or subject to any provision elsewhere in this Act whereby any other arrangement is made and notwithstanding the provisions of any other law, any such finding, ruling, decision, order, direction, requirement, award, authorization, permission, right, benefit, privilege, exemption, duty or obligation shall, as from the effective date, in law be deemed to have been made, taken, given, issued, granted, conferred or imposed (as the case may be) -

- (i) by a competent functionary of Namibia in the exercise or performance of a like power, function or duty in terms of such law of Namibia as corresponds to the authorizing law; and
- (ii) where and to such extent as may be applicable, for a like period, and on or subject to the same terms, conditions, duties, obligations and restrictions.

Continuation of registrations, licences and other written authorizations.

12. (1) Where, prior to the effective date, any notice, registration, deed, title, scheme, endorsement, licence, permit, certificate, authority or concession or official or public document or instrument affecting, relating to or in connection with -

- (a) any immovable property, including any real right in respect of minerals, in Walvis Bay;
- (b) any person who, immediately prior to the effective date, is resident in Walvis Bay;

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- (c) any movable property which is used, found or present, or any right, interest or entitlement which is exercisable, enforceable or exploitable, in Walvis Bay immediately prior to the effective date,

has, in terms of the provisions of any law of South Africa been issued, served, effected, executed, attested, registered or endorsed, then, in the absence of or subject to any provision elsewhere in this Act whereby any other arrangement is made and notwithstanding the provisions of any other law, any such notice, registration, deed, title, scheme, licence, permit, certificate, authority or concession shall, as from that date, in law be deemed to have been issued, served, effected, executed, attested, registered or endorsed (as the case may be) for the same purpose -

- (i) by a competent functionary of Namibia in terms of the law of Namibia; and
- (ii) where and to such extent as may be applicable, for a like period, and in so far as they are not inconsistent with the provisions, objects and spirit of any law of Namibia, on or subject to the same terms, conditions, duties, obligations and restrictions.

(2) The Minister responsible for the administration of any law of Namibia corresponding to any law of South Africa referred to in subsection (1), may by notice in the *Gazette* direct that any licence, permit, certificate, authority or concession or official or public document or instrument referred to in that subsection be submitted by the holder thereof to any functionary of Namibia, within such reasonable period and at such place, as may be specified in the notice, with a view to having -

- (a) it replaced by an equivalent licence, permit, certificate, authority or concession or official or public document or instrument under the relevant law of Namibia;
- (b) it endorsed to the effect that the provisions of subsection (1) apply thereto; or
- (c) the particulars thereof entered in any register or record kept by such functionary,

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and such Minister may in such notice declare that the relevant licence, permit, certificate, authority or concession or official or public document or instrument held by a person who fails to comply with such direction within the specified period, shall, with effect from the date immediately following on the expiry of that period, cease to be valid and of any force and effect in Namibia.

(3) In any case where the provisions of any law of Namibia which, in terms of section 2(1)(b)(i), is to be applied in Walvis Bay as from the effective date, require registration of any person, thing or matter or require any licence, permit, certificate, authority, concession or other written permission or authorization prerequisite to or in connection with -

- (a) carrying on, conducting or rendering, for gain or otherwise, or so engaging in, any particular business, profession, occupation, trade, undertaking, operation, service, activity or conduct;
- (b) the possession, holding, use or exploitation of property (whether movable or immovable);
- (c) holding, exercising, utilizing, exploiting or pursuing any right, interest or claim,

of any particular nature or description, in Walvis Bay whereas the laws of South Africa as applied in Walvis Bay immediately prior to that date do not, in relation to any matter referred to in paragraph (a), (b) or (c) of this subsection, impose any such requirement, then, in the absence of or subject to any provision in this Act whereby any other arrangement is made and notwithstanding the first-mentioned provisions or the provisions of any other law of Namibia to the contrary, any person who, immediately prior to the effective date in Walvis Bay -

- (i) carries on, conducts, renders or is engaged in any of the activities mentioned in paragraph (a); or
- (ii) possesses, holds, uses, exploits, exercises, utilizes or pursues any property, right, interest or claim contemplated in paragraph (b) or (c),

in good faith and in a lawful manner shall, on application made to the competent authority or person in terms of the relevant law of Namibia not later than 31 May 1994, or

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such later date (if any) as the Minister charged with the administration of the relevant law may by notice in the *Gazette* generally determine (which is hereby authorized), be accorded such required registration or be issued with such required licence, permit, certificate, authority, concession or written permission or authorization (as the case may be).

(4) Notwithstanding the provisions of this Act or any other law, it shall be permissible for any person contemplated in subsection (3) -

(a) to continue his or her activity of the nature contemplated in paragraph (i) of that subsection;
or

(b) to continue his or her possession, tenure, use, exploitation, exercise, utilization or pursuit (whichever is applicable) referred to in paragraph (ii) of that subsection,

(as the case may be) in Walvis Bay on and after the effective date until such time -

(i) where such person has made application in terms of subsection (3), as the required registration, licence, permit, certificate, authority, concession or written permission or authorization contemplated in subsection (3) has been effected or issued to him or her under the relevant law of Namibia;

(ii) where he or she has not so made application, as the period of three months referred to in subsection (3) expires,

subject to compliance during any such period with the relevant law of Namibia.

Continuation of certain
appointments.

13. (1) Notwithstanding the cessation of the application of the laws referred to in paragraph (a) of subsection (1) of section 2, and except in so far as provided otherwise in this Act, the appointment, prior to the effective date, of any person under any provision of any such law, except a law governing the government service, for the purpose of performing any functions in Walvis Bay, and which was in force immediately prior to the effective date, shall, with effect from that date, where such appointment could have been made under a corresponding provision of any law of

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Namibia, continue to remain in force and be deemed to have been made under such corresponding provision, provided the person concerned, after the effective date, continues in Walvis Bay the trade, profession or occupation in connection with which the appointment was made.

(2) Subsection (1) shall not preclude the application in terms of the relevant law of Namibia of disciplinary measures in relation to any person referred to in that subsection, including the termination of his or her appointment, on the grounds also of any act performed or omitted or conduct on his or her part before the effective date.

Exercise of powers and performance of functions before the effective date.

14. Any act performed prior to the effective date for the purposes of exercising control over Walvis Bay as from the effective date under any law of Namibia, and which is declared to be of force as from that date, shall be as valid and effective as if it had been so performed on or after the effective date.

Publication of agreements.

15. The President may by proclamation in the *Gazette* publish any agreement entered into between the Government of the Republic of Namibia and the Government of the Republic of South Africa for the purpose of ensuring the smooth transfer of control over Walvis Bay.

Short title and commencement.

16. This Act shall be called the Walvis Bay and Off-shore Islands Act, 1994, and shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

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SCHEDULE

APPLICATION OF LAWS
(Section 2(2))

PART I

LAWS PERTAINING TO THE MINISTRY OF JUSTICE

Wills Act, 1953 (Act 7 of 1953)

1. (1) The Wills Act, 1953 (Act 7 of 1953) of Namibia is hereby amended -

(a) by the substitution for the definition of "Court" in section 1 of the following definition:

"Court" means the High Court of Namibia or any judge thereof;";

(b) by the substitution for the definition of "Master" in section 1 of the following definition:

"Master" means the Master or Deputy Master of the High Court of Namibia.

(2) Notwithstanding anything to the contrary contained in the Wills Act, 1953 (Act 7 of 1953) of Namibia, any will executed or amended before the effective date by a testator who was domiciled or resident in Walvis Bay immediately before the effective date, shall not be held to be invalid if it was executed or amended in conformity with the requirements of the laws of South Africa relating to wills as they were applied in Walvis Bay immediately before the effective date.

(3) Where a deceased has left a will which immediately before the effective date was governed by the laws of South Africa relating to wills, any question arising in relation to that will shall be determined in accordance with such laws as applied in Walvis Bay immediately prior to the effective date.

Provisions relating to maintenance orders

2. Any maintenance order made by a competent court in terms of the Maintenance Act, 1963 (Act 23 of 1963) of South Africa -

(a) before the effective date and which, immediately before that date, was required to be complied with by, and enforceable against any person in Walvis Bay;

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- (b) on or after the effective date by virtue of the provisions of section 4 or 5 of this Act,

shall in Namibia be complied with and be enforceable in accordance with the provisions of the said Act of South Africa.

Attorneys Act, 1979 (Act 53 of 1979)

3. (1) The Attorneys Act, 1979 (Act 53 of 1979) of Namibia is hereby amended by the insertion after section 19 of the following section:

"Enrolment in Namibia of certain South African practitioners practising in Walvis Bay on 28 February 1994.

19A. (1) Notwithstanding any provisions in this Act to the contrary, any person -

- (a) duly admitted and enrolled, prior to 1 March 1994 (hereinafter referred to as the effective date), in terms of the laws of the Republic of South Africa, to practise as an attorney or a notary or a conveyancer (whichever may be applicable) in that country;
- (b) who immediately prior to the effective date is ordinarily resident in Walvis Bay and practises as an attorney or a notary or a conveyancer (whichever may be applicable) in Walvis Bay in accordance with the said laws; and
- (c) who is a Namibian citizen or is a South African citizen who satisfies the requirements for acquiring Namibian citizenship by naturalization or a permanent residence permit within the contemplation of section 3 of the Walvis Bay and Off-shore Islands Act, 1994, and has applied for citizenship by naturalization or a permanent residence permit in terms of that section,

shall, on application made to the registrar of the court not later than three months as from the effective date, be enrolled to practise in Namibia as an attorney or a notary or a conveyancer of the court, subject to the provisions of subsections (2) and (5).

(2) An application referred to in subsection (1) shall be in writing and signed by the applicant, and shall be accompanied by proof to the satisfaction of the registrar of the court -

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- (a) that the applicant was ordinarily resident and practised as an attorney or a notary or a conveyancer (whichever may be applicable) in Walvis Bay immediately prior to the effective date;
 - (b) that, immediately prior to the effective date, the name of the applicant is upon the roll of attorneys or of notaries or of conveyancers (whichever may be applicable) of the Cape Provincial Division of the Supreme Court of South Africa;
 - (c) that the applicant is a Namibian citizen or is a South African citizen who has made application for Namibian citizenship by naturalization or a permanent residence permit in accordance with the provisions of section 3 of the Walvis Bay and Off-shore Islands Act, 1994.
- (3) When the name of an applicant has been placed by the registrar of the court upon the roll of attorneys or of notaries or of conveyancers (whichever may be applicable), he or she -
- (a) shall, subject to compliance with the provisions of sections 18, 19 and 20 of the Legal Practitioners' Fidelity Fund Act, 1990 (Act 22 of 1990), be entitled to practise in Namibia; and
 - (b) shall have all the rights and privileges and be subject to all the obligations which he or she would have had and to which he or she would have been subject if he or she had been admitted by the court.
- (4) An applicant shall not in terms of this section be enrolled as a notary or a conveyancer unless he or she has also been enrolled thereunder as an attorney.
- (5) Notwithstanding the provisions of this Act or any other law, it shall, with effect from the effective date, be permissible for a person contemplated in subsection (1) to continue his or her practice in Namibia, in all respects, *mutatis mutandis*, as if he or she were a Namibian practitioner -

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- (a) where he or she has made application in terms of this section, until such time as his or her name is placed on the roll as contemplated in subsection (3); or
- (b) where he or she has not so made application, until the expiry of the period referred to in subsection (1),

and during any such period the provisions of subsection (3)(b) shall *mutatis mutandis* apply in respect of such person.”.

(2) A practitioner referred to in section 19A of the Attorneys Act, 1979 (Act 53 of 1979), shall be liable to pay the contribution, referred to in section 20(4) of the Legal Practitioners' Fidelity Fund Act, 1990 (Act 22 of 1990), payable by practitioners applying for the first time for a fidelity fund certificate under that Act.

Provisions governing candidate attorneys under articles of clerkship in Walvis Bay immediately prior to the effective date.

4. Notwithstanding any provisions to the contrary contained in the Attorneys Act, 1979 (Act 53 of 1979), of Namibia (in this clause referred to as the Namibian Attorneys Act) or any other law -

- (a) any period of service which, prior to the effective date, was performed under articles of clerkship in terms of the Attorneys Act, 1979, of South Africa (in this clause referred to as the South African Attorneys Act), by any person ordinarily resident in Walvis Bay who, immediately prior to that date and in terms of the South African Attorneys Act, is a candidate attorney in the service of a legal practitioner who satisfies the requirements of section 19A(1)(a) and (b) of the Namibian Attorneys Act, shall be deemed to have been performed by such person under articles of clerkship in terms of the Namibian Attorneys Act;
- (b) any such candidate attorney who, prior to the effective date, has passed any practical examination contemplated in section 14(1) of the South African Attorneys Act, shall be deemed to have passed the corresponding practical examination contemplated in section 14(1)(a), (b), (d), (e) or (f) of the Namibian Attorneys Act (whichever may be applicable) and the practical examination referred to in section 14(1)(c) of the Namibian Attorneys Act;

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- (c) any such candidate attorney who, immediately prior to the effective date, performed his or her service under articles of clerkship by virtue of the provisions of section 2(1)(e) of the South African Attorneys Act, shall be deemed to be duly qualified within the meaning of section 1A(1)(a) of the Namibian Attorneys Act, and the provisions of section 2(2) of the Namibian Attorneys Act shall not apply in respect of any period of service which, either prior to or after the effective date, has been performed by him or her before the obtaining of any degree, diploma or certificate prescribed under section 1A(3) of the last-mentioned Act.

PART II**LAWS PERTAINING TO THE MINISTRY
OF TRADE AND INDUSTRY***Companies Act, 1973 (Act 61 of 1973)***1. (1) For the purposes of this clause -**

- (a) "existing company" means a company incorporated in South Africa under Chapter IV of the South African Company Law and which on the effective date has its registered office or a place of business in Walvis Bay;
- (b) "existing external company" means a company or other association of persons incorporated under the laws of any country other than Namibia or South Africa, the memorandum of which has been registered by the South African Registrar in accordance with section 322 of the South African Company Law and which on the effective date has a place of business in Walvis Bay;
- (c) "the Namibian Company Law" means the Companies Act, 1973 (Act 61 of 1973) as applied in Namibia (but excluding Walvis Bay) immediately before the effective date;
- (d) "the Namibian Registrar" means the Registrar of Companies of Namibia;
- (e) "the South African Company Law" means the Companies Act, (Act 61 of 1973) as applied in South Africa immediately before the effective date;

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(e) "the South African Registrar" means the Registrar of Companies of South Africa.

(2) Any existing company that wishes to be converted into a company incorporated in Namibia under Chapter IV of the Namibian Company Law, shall not later than 21 days after the effective date, furnish the Namibian Registrar with a written notice in duplicate stating that it wishes to be so converted and such existing company shall -

- (a) if it has a place of business but not its registered office in Walvis Bay, furnish the Namibian Registrar, together with such notice, with particulars, in the prescribed form referred to in section 170(3) of the Namibian Company Law, of its postal address and the situation of its registered office in Namibia;
- (b) if it has a place of business in South Africa, in such notice state whether or not it wishes that its registration in South Africa be converted into that of an external company.

(3) Upon receipt of a notice referred to in subclause (2), the Namibian Registrar shall, for the purposes of giving effect to any agreement between the Government of Namibia and the Government of South Africa in relation to companies in Walvis Bay, forward one copy of the notice to the South African Registrar.

(4) If, pursuant to the notification forwarded to the South African Registrar in terms of subclause (3), the Namibian Registrar receives from the South African Registrar -

- (a) the memorandum and articles of association of the existing company concerned kept by the South African Registrar; and
- (b) a notification that the registration of the existing company concerned in South Africa has, with effect from a date specified in the notification, been terminated or, where applicable, been converted into that of an external company,

the Namibian Registrar shall, notwithstanding anything to the contrary contained in the Namibian Company Law, enter the name of such existing company in the register kept by him or her in respect of companies incorporated in Namibia under Chapter IV of the Namibian Company Law and issue to that company a certificate to the effect that its registration as a company under the South African Company Law has been converted to registration as a company under the Namibian Company Law with effect from the date specified in the notification referred to in paragraph (b).

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(5) A company of which the registration has been converted in terms of subclause (4), shall for all purposes be deemed to be a company incorporated in Namibia under Chapter IV of the Namibian Company Law and be deemed to have been so incorporated on the specified date referred to in that subclause, and a certificate issued by the Namibian Registrar under that subclause shall for all purposes be deemed to be a certificate of incorporation given by the Namibian Registrar under section 64 of the Namibian Company Law.

(6) The Namibian Registrar shall by notice in the *Gazette* publish the name of every company which in terms of subclause (5) is deemed to be incorporated in Namibia.

(7) Every existing company and every existing external company that wishes to be registered in Namibia as an external company, may at any time after the commencement of this Act, but not later than 21 days after the effective date, furnish the Namibian Registrar with a notice in writing to that effect and thereupon the provisions of section 322 of the Namibian Company Law shall *mutatis mutandis* apply, and for the purposes of that section -

- (a) such existing company or existing external company shall be deemed to have established a place of business in Namibia on the date the written notice is furnished to the Namibian Registrar in accordance with this subclause;
- (b) it shall be deemed to be sufficient compliance with the provisions of paragraphs (a), (d) and (e) of subsection (1) of that section if there is lodged with the Namibian Registrar copies of the documents referred to in those paragraphs kept in the office of the South African Registrar and certified by him or her to be true copies of such documents.

(8) If upon expiry of the period of 21 days after the effective date, any existing company has failed to furnish the Namibian Registrar with a notification either in accordance with subclause (2) or subclause (7), or any existing external company has failed to furnish the Namibian Registrar with a notification in accordance with subclause (7), and such existing company or existing external company, on the date immediately following the date of expiry of the said period of 21 days, has a place of business in Walvis Bay, it shall for the purposes of section 333 of the Namibian Company Law be considered to be a company incorporated outside Namibia which has established a place of business in Namibia on the effective date, unless -

- (a) in the case of an existing company, it is on the effective date registered under the Namibian Company Law as an external company in respect of a place or places of business carried on by it in Namibia, (but excluding Walvis Bay);

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- (b) in the case of an existing external company, it is on the effective date also registered under the Namibian Company Law as an external company in respect of a place or places of business carried on by it in Namibia (but excluding Walvis Bay).

(9) Any company incorporated in Namibia before the effective date which has in respect of a place of business carried on by it in Walvis Bay been registered in South Africa as an external company may furnish the Namibian Registrar with a notice in writing to that effect and, unless it has any other place or places of business in South Africa in respect of which it wishes to retain its registration in South Africa as an external company (particulars of which shall be stated in such notice), request that its registration as an external company in South Africa be terminated.

(10) Upon receipt of a notification in terms of subclause (9), the Namibian Registrar shall forward a copy thereof to the South African Registrar.

(11) The conversion, in accordance with the provisions of this clause, of an existing company into a company incorporated in Namibia under Chapter IV of the Namibian Company Law or of an existing company or an existing external company into an external company under the Namibian Company Law shall not affect -

- (a) the corporate existence of the juristic person which existed before such conversion;
- (b) the rights, liabilities or obligations of such juristic person which vested in it or were binding on it immediately before such conversion;
- (c) any legal proceedings instituted before such conversion by or against such juristic person.

(12) Notwithstanding anything to the contrary contained in the foregoing provisions of this clause, where the notification contemplated in subclause (2) or (7) is furnished to the Namibian Registrar by an existing company or existing external company, as the case may be, after the expiry of the period of 21 days referred to in those subclauses, the Namibian Registrar may, with the approval of the Minister of Trade and Industry, take such steps in accordance with the provisions of this clause as he or she would have been required or permitted to take if such notification had been received within the said period of 21 days, but -

- (a) in such event such existing company or existing external company shall be liable to pay to the Namibian Registrar a penalty of N\$50 for each day by which the period of 21 days referred to in subclause (2) or (7), as the case may be, was exceeded;

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- (b) the provisions of this subclause shall not derogate from the provisions of subclause (8).

Close Corporations Act, 1988 (Act 26 of 1988)

2. (1) For the purposes of this clause -

- (a) "existing corporation" means a close corporation registered in South Africa under Part III of the South African Close Corporations Law and which on the effective date has its registered office or a place of business in Walvis Bay;
- (b) "the Namibian Close Corporations Law" means the Close Corporations Act, 1988 (Act 26 of 1988) of Namibia;
- (c) "the Namibian Registrar" means the Registrar of Close Corporations of Namibia;
- (d) "the South African Close Corporations Law" means the Close Corporations Act, 1984 (Act 69 of 1984) of South Africa;
- (e) "the South African Registrar" means the Registrar of Close Corporations of South Africa.

(2) Any existing corporation that wishes to be converted into a close corporation registered in Namibia under Part III of the Namibian Close Corporations Law shall not later than 21 days after the effective date, or within such extended period as may be determined by the Minister of Trade and Industry by notice in the *Gazette*, furnish the Namibian Registrar with a written notice in duplicate stating that it wishes to be so converted and such existing corporation shall -

- (a) if for the purposes or as a result of such conversion, any change will be made or occur in respect of any particulars stated in the founding statement of the existing corporation as registered in the office of the South African Registrar, which would, had such founding statement been registered in the office of the Namibian Registrar, require the lodgement of an amended founding statement by virtue of the provisions of section 15 of the Namibian Close Corporations Law, lodge with the Namibian Registrar for registration an amended founding statement in the manner and subject to the requirements as provided in the said section 15;
- (b) if no change as contemplated in paragraph (a) will be made or occur, in such notice make a statement to that effect; and

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- (c) if the existing close corporation has a place of business in South Africa, in such notice state whether or not it wishes its registration in South Africa to be converted into that of an external company under the laws relating to companies of South Africa.

(3) Upon receipt of a notice referred to in subclause (2), the Namibian Registrar shall, in accordance with any agreement between the Government of Namibia and the Government of South Africa in relation to close corporations in Walvis Bay, forward one copy of the notice to the South African Registrar.

(4) If, pursuant to the notification forwarded to the South African Registrar in terms of subclause (3), the Namibian Registrar receives from the South African Registrar -

- (a) the founding statement of, and any other relevant documents relating to, the existing corporation concerned kept by the South African Registrar; and
- (b) a notification that the registration of the existing corporation concerned in South Africa has, with effect from a date specified in the notification, been terminated or converted into that of an external company, as the case may be,

the Registrar shall, notwithstanding anything to the contrary contained in the Namibian Close Corporations Law, enter the name of such existing corporation in the registers kept by him or her in respect of close corporations registered in Namibia, and, where applicable, register the amended founding statement lodged in accordance with the provisions of paragraph (a) of subclause (2) if such amended founding statement complies with the requirements of the Namibian Close Corporations Law and issue to that existing corporation a certificate to the effect that it is registered as a close corporation under the Namibian Close Corporations Law with effect from the date specified in the notification referred to in paragraph (b).

(5) An existing close corporation of which the name has in accordance with subclause (4) been entered in the registers kept by the Namibian Registrar, shall for all purposes be deemed to be a close corporation registered in Namibia under Part III of the Namibian Close Corporations Law, and be deemed to have been so registered on the specified date referred to in that subclause, and a certificate issued by the Namibian Registrar under that subclause shall for all purposes be deemed to be a certificate of incorporation given by the Namibian Registrar under section 14 of the Namibian Close Corporations Law.

(6) The Namibian Registrar shall by notice in the *Gazette* publish the name of every close corporation which in terms of subclause (5) is deemed to be registered in Namibia.

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(7) The foregoing provisions of this clause shall not be construed as prohibiting an existing corporation to apply for registration, and to have itself registered, in Namibia as an external company in terms of section 322 of the Companies Act, 1973 (Act 61 of 1973), and for the purposes of that section it shall be deemed that the existing close corporation established a place of business in Namibia on the effective date.

(8) If upon expiry of the period of 21 days or the extended period (if any) referred to in subclause (2), any existing corporation has failed to furnish the Namibian Registrar with a notification in accordance with the provisions of that subclause, or has not applied for its registration as an external company as contemplated in subclause (7), such existing corporation shall, for the purposes of section 333 of the Companies Act, 1973 of Namibia, be considered to be a company incorporated outside Namibia which has established a place of business in Namibia on the effective date.

PART III**LAWS PERTAINING TO THE MINISTRY OF REGIONAL
AND LOCAL GOVERNMENT AND HOUSING***Provisions relating to the local authority of Walvis Bay*

1. (1) Subject to the provisions of this clause, the Walvis Bay Municipal Ordinance, 1978 (Ordinance 26 of 1978) of the Province of the Cape of Good Hope of South Africa (in this clause referred to as the Ordinance) shall, with effect from the effective date, continue to be applied in Walvis Bay to the exclusion of the Local Authorities Act, 1992 (Act 23 of 1992) of Namibia until the date with effect from which the President by proclamation in the *Gazette* declares that Ordinance to cease to apply in Walvis Bay.

(2) The local authority, known as the Municipality of Walvis Bay, established by paragraph (1) of Proclamation No. 122 of 1993 of the Administrator of the Province of the Cape of Good Hope of South Africa, and as it existed immediately prior to the effective date, shall as from that date continue to exist and -

- (a) have as its area of jurisdiction the area of jurisdiction contemplated in subparagraph (a) of paragraph (1) of that Proclamation; and
- (b) be governed and represented by the municipal council constituted in accordance with the provisions of paragraph (2) of that Proclamation, and consisting of the councillors in office immediately before the effective date, but subject to subclause (3).

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(3) The councillors referred to in paragraph (b) of subclause (2) shall, subject to the provisions of the Ordinance relating to the vacation of offices by councillors, as from the effective date, continue in their respective offices as councillors and, where applicable, as office-bearers of the council, until the date determined under subclause (1), but any vacancy occurring in the council before such date shall, notwithstanding the provisions of the Ordinance, not be filled: Provided that where upon the occurrence of any vacancy the number of councillors remaining is less than seven, that vacancy shall be filled in accordance with the provisions of section 27 of the Ordinance, but without derogation from the provisions of section 28 thereof.

(4) Any by-laws made or deemed to have been made under the Ordinance and applied in Walvis Bay immediately prior to the effective date, shall continue to be so applied until amended, repealed or substituted in accordance with the provisions of the Ordinance or any law of Namibia.

(5) In the application of the provisions of the Ordinance as applied by subclause (1) or any by-laws referred to in subclause (4), any reference in that Ordinance or such by-laws -

- (a) to the Administrator of the Province of the Cape of Good Hope of South Africa, shall be construed as a reference to the Minister of Regional and Local Government and Housing;
- (b) to the *Province of the Cape of Good Hope Official Gazette*, however expressed, shall be construed as a reference to the *Government Gazette* of Namibia;
- (c) to any law or functionary of South Africa, shall be construed as a reference to the corresponding law of Namibia or the functionary of Namibia performing corresponding functions in Namibia, unless obviously inappropriate.

(6) The provisions of this clause shall not be construed as affecting any right, privilege, obligation or liability of the Municipality of Walvis Bay which immediately before the effective date vested in or was enforceable by or against that Municipality.

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WORKS, TRANSPORT AND COMMUNICATION**

Provisions relating to registrations, licences, certificates or ratings under the Aviation Act, 1962, of South Africa

1. The provisions of section 12(1) of this Act shall not apply in relation to any registration, licence, certificate or rating issued, effected, registered or endorsed under the Aviation Act, 1962 (Act 74 of 1962) of South Africa before the effective date in respect of -

- (a) any person ordinarily resident in Walvis Bay on the effective date; or
- (b) any aircraft ordinarily based in Walvis Bay on the effective date,

and the provisions of regulation 1.10 of the Air Navigation Regulations, 1976, of Namibia promulgated under Government Notice R.141 of 1976 shall apply in respect of any such registration, licence, certificate or rating.

Application of Road Traffic Ordinance, 1967 and regulations

2. (1) In the application of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967) of Namibia, paragraph (b) of section 3(1) shall be deemed to have been amended by the addition of the following subparagraphs:

- “(iii) the examiners of vehicles; and
- (iv) the examiners of drivers’ licences.”

(2) Subject to the provisions of subclauses (3) and (4), any motor vehicle which immediately before the effective date was registered and licensed in Walvis Bay under the Road Traffic Act, 1989 (Act 29 of 1989) of South Africa shall, as from the effective date, be deemed to be registered and licensed under the relevant provisions of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967) of Namibia, and any such licence shall be renewable in Namibia under that Ordinance within 21 days from the date on which it would have expired in terms of the said Act had that Act not ceased to be applied in Walvis Bay.

(3) An application for the renewal, in accordance with subclause (2), of a licence referred to in that subclause, shall be accompanied by the expired licence concerned.

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(4) If by virtue of the provisions of subclause (2) the period for which a licence referred to in that subclause is to be renewed under the Road Traffic Ordinance, 1967 is not a full licence year, the annual licence fee payable under that Ordinance shall be calculated proportionately in the same relation as the unexpired months of the then current licence year bears to a full licence year.

(5) In the application of the Road Traffic Regulations of Namibia promulgated under Government Notice 95 of 1967 with regard to a motor vehicle referred to in subclause (2), those regulations shall be deemed to have been amended in accordance with the provisions of Part 2 (*Equipment on or in respect of vehicles*), Part 3 (*Dimensions of vehicles*), Part 4 (*Loads on vehicles*), Part 5 (*Provisions relating to passenger-carrying vehicles operating for hire or reward and to school buses*) of Chapter III of the Road Traffic Regulations promulgated by Government Notice R.910 of 1990 under the Road Traffic Act, 1989 of South Africa.

(6) The Road Traffic Regulations of Namibia promulgated under Government Notice 95 of 1967 is hereby amended by the insertion after regulation 4A of the following regulation:

“4B. Notwithstanding anything to the contrary contained in these regulations, the registration mark of a motor vehicle in Walvis Bay, as assigned to that district by Government Notice 57 of 1990, may with effect from 1 March 1994, and shall with effect from 8 March 1996 be displayed on a registration plate in a manner which complies with the Standard Specification for Retro-Reflective Registration Plates for Motor Vehicles as set out in Schedule 4 to these Regulations: Provided that a motor vehicle which is registered on or after 1 March 1994 shall display the said registration mark on a registration plate in the manner contemplated in this regulation with effect from the date of such registration.”.

Roads Ordinance, 1972 (Ordinance 17 of 1972)

3. Any road in Walvis Bay which, immediately prior to the effective date, was a proclaimed public road under section 3 of the Roads Ordinance, 1976 (Ordinance 19 of 1976) of the Province of the Cape of Good Hope of South Africa shall, from the said date, be deemed to be a proclaimed road under section 22 of the Roads Ordinance, 1972 (Ordinance 17 of 1972) of Namibia.

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ISLANDS ACT****PART V****LAWS PERTAINING TO THE MINISTRY OF FINANCE***Transfer Duty Act, 1993 (Act 14 of 1993)*

1. In the application of section 12(1) of the Transfer Duty Act, 1993 (Act 14 of 1993) of Namibia in relation to the transfer of any property situate in Walvis Bay which was acquired before the effective date, proof that transfer duty payable in respect of such acquisition has been paid in terms of the provisions of the Transfer Duty Act, 1949 (Act 40 of 1949) of South Africa as applied in Walvis Bay immediately prior to the effective date, shall be sufficient proof for the purposes of that section.

Stamp Duties Act, 1993 (Act 15 of 1993)

2. In the determination of any stamp duty in terms of section 22(4) of the Stamp Duties Act, 1993 (Act 15 of 1993) of Namibia in respect of the continuance, renewal or extension, after the effective date, of a lease or an agreement of lease pertaining to property situate in Walvis Bay, there shall be allowed as a deduction from the duty payable for any period after that date, any stamp duty previously paid in terms of the law relating to stamp duties of South Africa in respect of such lease or agreement of leases or earlier renewals, continuations or extensions.

Sales Tax Act, 1992 (Act 5 of 1992)

3. Any person who immediately before the effective date carried on any enterprise in Walvis Bay and who, with effect from that date, continues to carry on that enterprise shall, without prejudice to the provisions of section 5 of the Sales Tax Act, 1992 (Act 5 of 1992) of Namibia, be deemed, for the purposes of section 12 of that Act, to have commenced carrying on such enterprise as from the effective date.

Income Tax Act, 1981 (Act 24 of 1981)

4. Any person who on the effective date continues to be an employer in Walvis Bay shall comply with the provisions of paragraph 15(1) of Schedule 2 to the Income Tax Act, 1981 as if that person had become an employer for the first time on that date.
