



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 167 2002

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. 8 of 2002: Development Bank of Namibia Act, 2002.

ACT

To provide for the establishment of the Development Bank of Namibia the purpose of which is to contribute to the economic growth and social development of Namibia by providing financing in support of key development activities; and to provide for matters incidental thereto.

(Signed by the President on 18 September 2002)

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

Definitions

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

“articles” means the articles of association of the Bank;

“Bank” means the Development Bank of Namibia established by section 2;

“Board” means the Board of Directors of the Bank referred to in section 7;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“director” means a director of the Board;

“institution” means an organized economic activity carried on by one or more persons;

“memorandum” means the memorandum of association of the Bank;

“Minister” means the Minister responsible for Finance;

“Registrar” means the Registrar of Companies referred to in section 7 of the Companies Act;

“rule” means a rule of the Bank made under section 12;

“this Act” includes the regulations made under section 19.

Part I

Development Bank of Namibia

Establishment of Bank

2. There is established a corporate body to be known as the Development Bank of Namibia.

Bank to be registered as a public company

3. (1) The Bank must be incorporated under the Companies Act as a public company with a share capital.

(2) The Minister exercises the rights and powers and performs the duties and functions attached to the shares of which the Government of Namibia is the holder and must take the necessary steps for the incorporation of the Bank and the issue of a certificate to commence business in terms of the Companies Act.

(3) The memorandum and articles of the Bank must be drawn up in accordance with the Companies Act and the Minister must sign and submit them to the Registrar for registration.

(4) When the memorandum and articles have been signed as contemplated in subsection (3) -

(a) they are deemed to comply with the provisions of the Companies Act relating to the signature of the memorandum and articles of a company; and

(b) the Bank is deemed to comply with the provisions of the Companies Act relating to the membership of a public company.

(5) Upon registration of the memorandum and articles in accordance with section 63 of the Companies Act the Registrar must -

(a) endorse thereon a certificate under the hand and seal of the Registrar that the Bank is duly incorporated as a public company; and

(b) issue to the Bank a certificate to commence business.

Application of Companies Act, Banking Institutions Act, 1998, and other laws

4. (1) The Companies Act applies to the Bank subject to the provisions of this Act.

(2) Sections 66, 190 and 344(d) of the Companies Act do not apply to the Bank while the Government of Namibia is a member of the Bank and the total number of members of the Bank is less than seven.

(3) The Minister, after consultation with the Bank and the shareholders of the Bank, may by notice in the *Gazette* exempt the Bank from the application of any other provision of the Companies Act, or render such provision applicable subject to such modification as the Minister may deem fit, and the Minister may withdraw or amend such notice.

(4) The Registrar may issue such directives and authorize such deviations from the regulations made under the Companies Act and the forms prescribed by that Act as the Registrar may deem necessary to give effect to the provisions of this Act.

(5) The Banking Institutions Act, 1998 (Act No. 2 of 1998), does not apply to the Bank, but the Minister, after consultation with the Bank of Namibia, may by notice in the *Gazette* -

(a) apply any provision of that Act to the Bank in so far as such provision is not inconsistent with the provisions of this Act, with such modifications as the Minister may deem fit and may specify in the notice; and

(b) may withdraw or amend any such notice.

(6) Notwithstanding anything to the contrary in any other law -

(a) the Bank is exempt from the payment of -

(i) income tax;

(ii) transfer duties or other money payable in respect of the acquisition of immovable property by the Bank;

(iii) annual duties under section 174 of the Companies Act;

(b) non-resident shareholders' tax referred to in section 42 of the Income Tax Act, 1981 (Act No. 24 of 1981), is not payable by a non-resident shareholder, of the Bank;

(c) interest received by or accrued to any natural person or any external company not carrying on business in Namibia, from stock or securities issued by the Bank is exempt from tax,

but the Minister, after consultation with the Bank and the shareholders of the Bank, may at any time withdraw any exemption referred to in paragraphs (a), (b) and (c) by notice in the *Gazette*.

Objects of Bank

5. (1) The object of the Bank is to contribute to the economic growth and social development of Namibia and for the sustainable promotion of the welfare of the Namibian people by means of -

- (a) mobilizing financial and other resources from the private and public sectors nationally and internationally;
- (b) appraising, planning and monitoring the implementation of development schemes, export projects and other economic programmes of national importance;
- (c) facilitating the participation of the private sector and community organizations in development schemes, export projects and other economic programmes of national importance; and
- (d) assisting in the development of money and capital markets.

(2) The ancillary objects of the Bank include -

- (a) to cooperate with, and assist, other development financial institutions in order to achieve an integrated finance system in Namibia for economic growth and sustainable development; and
- (b) to assist other institutions in the public and private sectors with the management of specific funds in order that the development requirements of Namibia may be met.

(3) The Bank may, under section 55 of the Companies Act, make additions to or alter the provisions of its memorandum with regard to the objects and powers of the Bank, but the object mentioned in subsection (1) may not be altered.

Powers of Bank

6. (1) Subject to subsection (2), the Bank has the power -

- (a) to appraise, approve or mobilize, wholesale funding for, and to monitor the implementation of, development schemes, export projects and other economic programmes of national importance;
- (b) to establish, within Namibia or elsewhere, any juristic person capable of exercising, performing or carrying out such powers, functions and duties as may or must be exercised, performed or carried out by the Bank in terms of this Act, and to open offices within Namibia and elsewhere.

(2) The powers set out in subsection (1) are in addition and supplementary to the powers set out in Schedule 2 of the Companies Act except in so far as a power set out in that Schedule 2 is qualified or limited by subsection (1), in which case such qualification or limitation must be adhered to by the Bank.

Shareholding

7. Shares of the Bank may be issued to the Government of Namibia, statutory and private financial institutions in Namibia and, with the approval of the Minister, international financial institutions.

Special Development Fund

8. (1) The Bank must establish a special fund to be called the Special Development Fund the purpose of which is to promote and support development projects and schemes, including small-scale projects, private ventures or other activities as may be determined in the rules under subsection (2).

(2) The allocation of money to, and utilization of money from, the nature of projects and schemes to be funded from, the procedures with regard to, the accounting and auditing of, and the administration of the Special Development Fund must be determined in the rules subject thereto that such rules must first be approved in writing by the Minister.

**Part II
Management of Bank****Board of Directors**

9. (1) Subject to this Act, the Companies Act and the articles, the Board determines and controls the business strategy of the Bank and directs the operations of the Bank.

(2) The Board consists of seven directors, being -

(a) three directors appointed by the Minister;

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

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

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

(c) the Chief Executive officer of the Bank referred to in section 13.

(3) The directors must be appointed from among persons who have shown ability in and experience with regard to socio-economic development, development finance, business, finance, banking and administration.

(4) As long as the Government of Namibia remains the guarantor of instruments issued by the Bank, the Minister appoints one of the directors as Chairperson of the Board and such person is eligible for re-appointment.

Term of office and remuneration of directors

10. (1) Directors referred to in section 9(2)(a) and (b) are appointed for a term specified in the instrument of appointment and not exceeding five years.

(2) A Director referred to in subsection (1) vacates his or her office if he or she becomes subject to a disqualification mentioned in section 11 or if he or she is removed from office by the authority who appointed him or her -

(a) for misconduct; or

(b) for incompetence or neglect of duty.

(3) A director is eligible for reappointment after the expiration of term of office.

(4) For every director an alternate director may be appointed in the manner prescribed in section 9(2), to act in the place of the director if the director is absent or temporarily incapable of performing his or her duties.

(5) A director and alternate director receives such remuneration and benefits, including reimbursements of expenses in connection with travel and subsistence, as the shareholders of the Bank determine.

Disqualifications of directors

11. A person may not be appointed as director or alternate director if such person -

(a) is disqualified from being appointed or acting as a director of a company in terms of the Companies Act;

(b) is a member of the National Assembly or National Council, a local authority council or a regional council;

(c) has a financial or other interest likely to prejudicially affect his or her performance of duties as director of the Bank.

Rules of Bank

12. Subject to this Act and the memorandum and articles, the Board may make rules regarding -

(a) the Bank's approach to economic and social development in any specific or general form;

(b) the Bank's preferences and priorities as to what constitutes economic and social development, development schemes, export projects and any other schemes, projects and programmes referred to in this Act;

(c) personnel matters, including disciplinary procedures, and other administrative and procedural matters of the Bank;

(d) such other matters as provided for in this Act or as are necessary or useful for the achievement of the objects of the Bank and to regulate the business and affairs of the Bank.

Chief executive officer and staff

13. (1) The Minister appoints the first chief executive officer of the Bank and thereafter the Board makes the appointment.

(2) The chief executive officer of the Bank is responsible for the conduct of the business and the management of the affairs of the Bank in accordance with the policies and directions of the Board.

(3) The term of office of the chief executive officer is five years and he or she is eligible for reappointment.

(4) If, for any reason, the chief executive officer is unable to act the Board may appoint another person to act in his or her stead during such inability, and the person so appointed has, while so acting, all the powers and carries out all the duties of the chief executive officer.

(5) The Bank may, on the terms and conditions determined by it, employ such other officers and employees, and may engage such agents, advisers and consultants, as it considered necessary for carrying out the purpose of this Act and for the proper conduct of the business of the Bank.

**Part III
Accounting****Accounts, audit and annual report**

14. (1) The Board must, in addition to any record, statement or report required by Chapter XI of the Companies Act, and within six months after the end of each financial year, submit to the Minister a report on the activities of the Bank during the financial year concerned, which report must include -

- (a) the audited and approved financial statements contemplated in that Chapter in respect of the business of the Bank during the financial year;
- (b) a report on the achievement of the objects of the Bank during the financial year; and
- (c) any other matter required in writing by the Minister.

(2) The annual financial statements and report referred to in subsection (1) must be tabled in the National Assembly by the Minister within a period of 28 days after the receipt if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within 28 days after the commencement of its next ordinary session.

**Part IV
Miscellaneous****Validity of decisions**

15. A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy on the Board, or of the fact that a person who is not entitled to sit as a director sat as a director at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of directors who were present at the time and entitled to sit.

Delegations

16. (1) Subject to the Companies Act and the articles, the Board may delegate any power, except the power to make rules and to appoint the chief executive officer, conferred upon it by this Act to any director of the Board, the chief executive officer or any other employee of the Bank.

(2) The chief executive officer may delegate any power conferred upon him or her under this Act or delegated to him or her under subsection (1), to any employee of the Bank.

(3) A power delegated under this section must be exercised subject to the direction of the Board or the chief executive officer, as the case may be, and the Board and chief executive officer are not divested of such delegated power and may -

- (a) amend or set aside anything done in the exercise of the power; and
- (b) at any time withdraw the delegation.

(4) Nothing in this section prevents the Board or chief executive officer from exercising a power delegated by them.

Winding up of Bank

17. The Bank may not be wound up except in accordance with an Act of Parliament.

Restriction on use of name of Bank

18. No person may under a name containing the words "Development Bank of Namibia" or an abbreviation thereof -

- (a) conduct any business or carry on any occupation or trade;
- (b) be registered or licensed in terms of any legislation; or
- (c) falsely claim to be acting on behalf of the Bank.

Regulations

19. The Minister, after consultation with the Bank and the shareholders of the Bank, may make regulations in relation to -

- (a) the election, appointment, filling of vacancies and vacation of office of directors of the Board;
- (b) the funding and mobilizing wholesale funding for initiatives to minimize or mitigate the environmental impact of development schemes, export projects or other economic programmes of national importance;
- (c) the receiving of grants and donations made to the Bank and the issuing of debentures or debenture stock or the raising of wholesale loans;
- (d) any such other matters as are necessary or useful to be prescribed for the achievement of the objects of this Act.

Offences

20. A person who contravenes section 18 is guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a term not exceeding two years, or to both.

Part V**Repeal of Laws, Transitional Provisions and Commencement****Repeal of Development Fund of South West Africa/Namibia Act, 1987**

21. (1) The Development Fund of South West Africa/Namibia Act, 1987 (Act No. 29 of 1987), is repealed and the Development Fund, of South West Africa/Namibia (hereafter called "the Fund") established by that Act is wound up as set out in this section.

(2) Upon the commencement of this Act, the Minister must transfer the assets, liabilities, rights and obligations of the Fund, on such conditions as the Minister may determine, to the Bank or such other statutory body or Government Ministry (hereafter called the "recipient") as may be specified by the Minister by notice in the *Gazette*.

(3) Notwithstanding any law to the contrary, the recipient is, with effect from the date of transfer, vested with the ownership of the assets and rights and charged with the liabilities and obligations transferred or assigned to it under subsection (2).

(4) A certificate issued by the Minister stating that any land or a servitude or other real right or lease or any other asset or right described in the certificate has been transferred to the recipient in terms of subsection (2), is sufficient proof that the asset or right so described vests in the recipient.

(5) Upon submission of the certificate referred to in subsection (4) to the Registrar of Deeds or any other person in charge of any other office where a register or a record is being kept of the ownership of or entitlement to an asset or right described in such certificate, the Registrar or such person must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer in the name of the recipient.

(6) Notwithstanding any law to the contrary, no servitude or other right of any kind in respect of land transferred to the recipient in terms of subsection (2) may be acquired by prescription.

(7) The recipient shall be substituted for the Fund as a contracting party in respect of any agreement transferred to the recipient in terms of subsection (2) without that substitution bringing about a novation of such agreement.

(8) Any reference in any law or document to the Fund is to be construed as a reference to the recipient.

(9) The Minister determines the value of the assets and liabilities transferred to the recipient in terms of subsection (2).

(10) Notwithstanding any law to the contrary, no stamp duties, transfer duties, registration fees, value added tax or any other duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the transfer of assets or rights of the Fund to the recipient in terms of subsection (2).

Repeal of Namibia Development Corporation Act, 1993

22. (1) The Namibia Development Corporation Act, 1993 (Act No. 18 of 1993), is repealed and the Namibia Development Corporation (hereafter called "the Corporation") established by that Act is wound up as set out in this section.

(2) Section 21(2) to (10) applies with the necessary changes to the winding up of the Corporation under this section.

(3) (a) Subsequent to the winding up of the Corporation under this section, the Corporation is deemed to be dissolved under the Companies Act and the Minister must send to the Registrar a certificate to that effect.

(b) Upon the receipt of the certificate referred to in paragraph (a) the Registrar must record the dissolution of the Corporation in accordance with section 419 of the Companies Act.

Short title and commencement

23. (1) This Act is called the Development Bank of Namibia Act, 2002, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined by the Minister under subsection (1) in respect of different provisions of this Act.

(3) A reference in this Act to the commencement of this Act must in relation to a particular provision be construed as a reference to the date determined under subsection (2) for the commencement of that provision.
