



# GOVERNMENT GAZETTE

OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### 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.

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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.

**Act No. 2, 2006 STATE-OWNED ENTERPRISES GOVERNANCE ACT, 2006****Constitution of Council**

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;

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

- (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

