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Government Notice

OFFICE OF THE PRIME MINISTER

No. 165 2000

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. 12 of 2000: Namibian Ports Authority Amendment Act, 2000.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To **amend the Namibian Ports Authority Act, 1994, so as to reduce the number of persons to be appointed to the Authority's board of directors; to grant certain powers to the Authority in relation to the combating of pollution of the sea; to make provision for a performance agreement to be entered into between the Minister of Works, Transport and Communication and the Authority; to make further provision in connection with the transfer of the Walvis Bay port to the Authority; and to provide for incidental matters.**

(Signed by the President on 20 June 2000)

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

Substitution of section 4 of Act No. 2 of 1994

1. The following section is substituted for section 4 of the Namibian Ports Authority Act, 1994 (hereafter referred to as the principal Act):

"Board of directors

4. (1) The Authority has a board of directors comprising five members appointed by the Minister, of whom -

- (a) one is to be nominated for appointment by the Minister of Finance; and
- (b) one is to be nominated for appointment by the Minister of Fisheries and Marine Resources,

and who must be persons who have expertise that is relevant to the functions of the Authority.

(2) The majority of the directors must be persons who are not staff members in the Public Service.

- (3) A person is not eligible for appointment as director if he or she -
 - (a) is an unrehabilitated insolvent; or
 - (b) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

(4) Subject to section 5(1), a director holds office for a period of three years and is eligible for re-appointment."

Amendment of section 5 of Act No. 2 of 1994

2. Section 5 of the principal Act is amended -

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

"A director [**appointed under section 4(1)(d)**] shall vacate his or her office if he or she-";

- (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

"If the Minister is satisfied that a director [**referred to in subsection (1)**]-";
and

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

"(3) If the office of a director becomes vacant before the expiration of that director's period of office the vacancy shall be filled by the appointment of another person, in accordance with section 4(1), to hold office for the unexpired portion of that period."

Substitution of section 6 of Act No. 2 of 1994

3. The following section is substituted for section 6 of the principal Act:

"Alternate directors

6.(1) Subject to subsection (2), the Minister may appoint for each director a person as alternate director, and the alternates for the directors referred to in section 4(1)(a) and (b) shall be nominated for appointment by the Minister of Finance and the Minister of Fisheries and Marine Resources, respectively.

(2) A person who is not eligible for appointment as a director in terms of section 4(3) may not be appointed as an alternate director.

(3) The alternate of a director may in the absence of the director from a meeting of the board attend the meeting and act in the place of the director."

Amendment of section 9 of Act No. 2 of 1994

4. Section 9 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

"(4) A quorum for a meeting of the board is three directors."

Amendment of section 14 of Act No. 2 of 1994

5. Section 14 of the principal Act is amended by the addition of the following paragraph:

"(j) subject to such terms and conditions as may be agreed upon with the Minister under section 27(5) of the Prevention and Combatting of Pollution of the Sea by Oil Act, 1981 (Act No. 6 of 1981) to store, maintain and deploy oil recovery equipment for the purpose of combatting pollution of the sea."

Insertion of section 23A in Act No. 2 of 1994

6. The following section is inserted in the principal Act after section 23:

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"Performance Agreement

23A. (1) The Authority shall within two months of the date of commencement of the Namibian Ports Authority Amendment Act, 2000, or before such later date as the Minister may by notice in the *Gazette* determine, and thereafter not later than two months before the commencement of every third financial year of the Authority, and in accordance with procedures as the Minister may determine, submit to the Minister a draft performance agreement which shall contain particulars of -

- (a) the expectations of the Government in respect of the Authority and every company established by it under section 17 in which it holds the majority of shares, as determined in consultation with the Minister, and the scope of business, efficiency and financial performance of the Authority and such company;
- (b) the principles to be followed by the Authority and every such company for the purposes of business planning;
- (c) the measures which may, in the opinion of the Minister, be necessary to protect the financial soundness of the Authority and every such company, including the Authority's investment policy and indemnity insurance, a declaration of the loans made or granted by the Authority and the Authority's cover against exchange rate risks;
- (d) the measures by which the performance of the Authority and every such company can be assessed, including such measures as may relate to their -
 - (i) financial performance;
 - (ii) operational and service level performance; and
 - (iii) management of human resources; and
- (e) any other matter relating to the performance of the functions of the Authority and every such company under this Act which the Minister may require.

(2) The Minister shall, within a period of two months after the receipt of a draft performance agreement referred to in subsection (1) -

- (a) approve; or
- (b) after consultation with the Authority, amend and approve,

the draft agreement, and if the Minister fails to approve the performance agreement within the period, the agreement shall, upon expiration of the period, be deemed to have been approved by the Minister, except if, at that time, any consultation between the Minister and the Authority for amendment of the draft agreement is not concluded.

(3) Upon approval of the draft performance agreement by the Minister, the Minister and the chairperson of the board shall sign the agreement.

(4) The Minister and the Authority may at any time amend a performance agreement.

(5) An amendment of a performance agreement in terms of subsection (4) shall be in writing and be signed by the Minister and by the chairperson of the board."

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NAMIBIAN PORTS AUTHORITY AMENDMENT ACT, 2000**Special provision relating to the transfer of the Walvis Bay port to the Namibian Ports Authority.**

7. Notwithstanding the provisions of an agreement concluded between Transnet Limited, a company incorporated under the laws of the Republic of South Africa, and the Namibian Ports Authority, in terms of which the Walvis Bay port was transferred by Transnet Limited to the Namibian Ports Authority -

- (a) that port shall be deemed to have become vested in the State and to have been transferred by the Minister to the Namibian ports Authority on 11 March 1994 in accordance with the provisions of section 11(2)(a) of the principal Act;
- (b) the acquisition of that port by the Namibian Ports authority pursuant to that agreement shall, for the purposes of subsection (5) and (6) of section 11 of the principal Act, be deemed to have been the acquisition thereof in terms of subsection (2) of that section.

Short title and commencement

8. (1) This Act shall be called the Namibian Ports Authority Amendment Act, 2000 and shall come into operation on a date determined by the Minister by notice in the *Gazette*.

(2) A notice under subsection (1) may appoint different dates for different provisions of this Act.