



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 702

CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 94 Promulgation of Namibia Development Corporation Act, 1993 (Act 18 of 1993), of the National Assembly	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 94 1993

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

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

No. 18 of 1993: Namibia Development Corporation Act, 1993.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993****ACT**

To provide for the establishment of the Namibia Development Corporation; to define the objects and the powers, duties and functions of the said Corporation; and to provide for matters incidental thereto.

(Signed by the President on 11 August 1993)

ARRANGEMENT OF SECTIONS

1. Definitions.
2. Establishment of Corporation.
3. Objects of Corporation.
4. Powers of Corporation.
5. Board of directors.
6. Alternate directors.
7. Persons disqualified from being directors.
8. Tenure of office of directors.
9. Remuneration of directors.
10. Vacation of office by directors.
11. Meetings of the Board.
12. Committees of the Board.
13. Restriction of liability of directors and alternate directors and members of committees.
14. Disclosure of interest.
15. Managing Director.
16. Organizational components.
17. Employment of staff.
18. Financing of Corporation.
19. Exemption from taxes, duties and fees.
20. Financial year.
21. Annual estimates of income and expenditure.
22. Bookkeeping and auditing.
23. Annual report.
24. Exercise of powers by Corporation and submission of matters by Board to Minister.
25. Liquidation of Corporation.
26. Use of name of Corporation.
27. Application of Companies Act.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

28. Transfer of assets, rights, liabilities and obligations to the Corporation.
29. Transfer of staff.
30. Power of President to direct manner of administration of Act.
31. Repeal of laws.
32. Short title and commencement.

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

Definitions.

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

“Board” means the Board of directors referred to in section 5;

“chairperson” means the director designated as chairperson of the Board under section 5(3);

“Corporation” means the Namibia Development Corporation established by section 2;

“director” means a director of the board referred to in section 5;

“Managing Director” means the Managing Director of the Corporation appointed under section 15(1);

“Minister” means the Minister of Trade and Industry acting, if and where so required by virtue of any proclamation under section 30, in consultation with such other Minister or Ministers as are designated in such proclamation.

Establishment of Corporation.

2. (1) There is hereby established a body corporate to be known as the Namibia Development Corporation.

(2) The Registrar of Companies shall enter the name of the Corporation in the registers kept by the Registrar in terms of the Companies Act, 1973 (Act 61 of 1973).

Objects of Corporation.

3. The objects of the Corporation shall be to promote, develop and support all sectors of the Namibian economy for sustained economic growth and the economic

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

empowerment of its people in conformity with the development strategies and policies of the Government of the Republic of Namibia through, *inter alia* -

- (a) promoting employment in both the formal and informal sectors;
- (b) promoting and encouraging sustainable local and foreign investment;
- (c) promoting trade, both nationally and internationally;
- (d) promoting and encouraging training and productivity;
- (e) promoting ecologically sound development;
- (f) promoting import substitution where economically viable;
- (g) promoting economic activities which add value to local and imported resources;
- (h) promoting forward and backward linkages between all sectors of the economy;
- (i) promoting Namibian entrepreneurship through the stimulation of small and informal economic activities;
- (j) developing, with the participation of the private sector, commercially viable enterprises or projects;
- (k) acting as agent for the Government and its institutions in the promotion of enterprises or the implementation of development schemes;
- (l) co-ordinating with other development agencies and institutions in order to facilitate co-operation and encouragement of an interdisciplinary and multidisciplinary approach.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

Powers of the Corporation.

4. For the purpose of achieving its objects the Corporation may -

- (a) finance or otherwise participate in the development of natural resources;
- (b) establish or acquire an interest in any company or co-operative society or enter into partnerships or participate in joint ventures with any other person;
- (c) lend or advance money;
- (d) raise money by such means and for such purposes as the Minister may approve;
- (e) control, carry out, guarantee, underwrite, finance or bring about the issue of any loan, stocks or debentures;
- (f) provide technical or other assistance and expert or specialised advice, information and guidance;
- (g) establish reserve funds for such purposes as the Board may deem fit and deposit in any such reserve fund such amounts of money as the Board may determine;
- (h) invest moneys of the Corporation not immediately required by the Corporation, and vary or realise investments so made;
- (i) make, draw, issue, accept, endorse or discount negotiable instruments;
- (j) acquire by purchase, lease, exchange, or otherwise, any movable or immovable property or any interest in movable or immovable property;
- (k) sell, lease, exchange, pledge, mortgage or otherwise deal with any movable or immovable property of the Corporation;
- (l) enter into contracts of indemnity, guarantee or suretyship, other than those referred to in section 17(2)(c), and to secure the payment of any amount in terms thereof;

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

- (m) accept grants and donations and, with the approval of the Minister, make grants and donations;
- (n) open bank accounts;
- (o) accept moneys from persons for development and hold such moneys on such conditions as may be agreed upon;
- (p) enter into any contract or perform any act, whether within Namibia or outside.

Board of directors.

5. (1) The affairs of the Corporation shall be managed and controlled by a board of directors which shall be vested with the authority, subject to this Act, to exercise the powers and perform the duties conferred or imposed on the Corporation by this Act.

(2) The Board shall consist of -

(a) the incumbents of the following posts in the public service who shall *ex officio* be directors of the Corporation, namely -

(i) the Permanent Secretary: Trade and Industry;

(ii) the Permanent Secretary: Finance;

(iii) the Permanent Secretary: Agriculture, Water and Rural Development;

(iv) the Permanent Secretary: Mines and Energy; and

(v) the Permanent Secretary: National Planning; and

(b) seven other persons appointed by the Minister from the private sector who in the opinion of the Minister possess expertise in the fields of sectoral or regional matters.

(3) The Minister shall designate one of the directors as chairperson of the Board.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

Alternate directors.

6. (1) Each of the directors referred to in paragraph (a) of subsection (2) of section 5 may from time to time, with the approval of the Minister, designate as alternate director to him or her an officer employed in the ministry or the public office to which he or she belongs.

(2) An alternate director designated under subsection (1) -

- (a) shall act as director only when the director to whom he or she is alternate is unable to exercise his or her functions on the Board by reason of illness, absence or other sufficient cause approved by the Board;
- (b) when acting as a director, shall have all the powers and duties of the director to whom he or she is alternate.

Persons disqualified from being directors.

7. No person shall be appointed as a director referred to in paragraph (b) of subsection (2) of section 5 if he or she -

- (a) is not a Namibian citizen permanently resident in Namibia;
- (b) is a member of the National Assembly or the National Council;
- (c) is an unrehabilitated insolvent;
- (d) has been convicted of an offence and sentenced to imprisonment without the option of a fine.

Tenure of office of directors.

8. (1) Subject to the provisions of section 10, a director appointed under paragraph (b) of subsection (2) of section 5 shall hold office for such period, being not more than three years, as may be specified by the Minister at the time of his or her appointment, and shall be eligible for re-appointment.

(2) On the expiration of the period for which a director referred to in subsection (1) is appointed, he or she shall continue to hold office until his or her successor has been appointed, but in no case shall such further period exceed three months.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

Remuneration of directors.

9. A director who is not in the full-time employment of the State shall in respect of his or her services as director be paid out of the funds of the Corporation such remuneration and such subsistence, travelling and other allowances as the Minister, in consultation with the Minister of Finance, may determine.

Vacation of office by directors.

10. (1) The office of a director appointed under paragraph (b) of subsection (2) of section 5 shall become vacant -

- (a) upon the expiry of one month's notice in writing of his or her intention to resign as director given by him or her to the Minister;
- (b) if he or she is absent from three consecutive meetings of the Board without the leave of the chairperson;
- (c) if he or she becomes subject to any disqualification referred to in section 7;
- (d) if he or she is removed from office by the Minister under the provisions of subsection (2).

(2) A director appointed under paragraph (b) of subsection (2) of section 5 may be removed from office by the Minister if the Minister is of the opinion that he or she -

- (a) is incapacitated by physical or mental illness;
- (b) is otherwise unable or unfit to discharge the functions of a director.

(3) When the office of a director appointed under paragraph (b) of subsection (2) of section 5 becomes vacant, the Minister shall appoint, subject to section 7, another person to fill the vacancy until the expiration of the period during which such director would, but for the vacation of his or her office, have continued in office.

Meetings of the Board.

11. (1) The first meeting of the Board shall be held at the time and place determined by the Minister and thereafter, subject to subsection (2), meetings of the Board shall be held at such times and places as the Board determines.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

(2) The chairperson may at any time, and shall at the request in writing of at least three directors, convene a special meeting of the Board.

(3) The chairperson or, in his or her absence, such director as the directors present shall elect, shall preside at a meeting of the Board.

(4) Seven directors shall constitute a quorum at any meeting of the Board.

(5) A decision of a majority of the directors present at a meeting of the Board, shall be the decision of the Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or here deliberative vote.

(6) The person presiding at a meeting of the Board may permit any person who has an interest in any matter due to be considered at that meeting, or any representative of such a person, to attend such meeting and to take part in such discussions of the Board as in the opinion of the person presiding relate to such matter, but such person or representative shall not be entitled to vote.

(7) A decision of the Board or an act performed under the authority of the Board shall not be rendered invalid by reason only of a vacancy on the Board or of the fact that a person who is not entitled to sit as director acted as such 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 the directors who were present at the time and entitled to sit as directors.

(8) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every committee established by the Board, and shall at the request of the Minister furnish to the Minister a copy of the minutes of any meeting of the Board or such a committee that may be required by the Minister.

(9) The procedure at meetings of the Board shall be fixed by the Board.

Committees of the Board.

12. (1) The Board may from time to time establish any committee for the purpose of performing any of its functions and may delegate to any such committee such of its functions as it deems fit.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

(2) The Board may appoint as member of a committee established under subsection (1) any person notwithstanding that he or she is not a director.

(3) The chairperson and the Managing Director may attend any meeting of a committee and may take part in the proceedings thereof, and the chairperson may vote on any matter at any such meeting.

Restriction of liability of directors and alternate directors and members of committees.

13. No director or alternate director or member of any committee established by the Board shall be personally liable for any loss or damage arising out of or in connection with the performance of his or her duties, unless the loss or damage is due to his or her wilful misconduct, gross negligence or failure to comply with any provision of, or direction or decision under, this Act.

Disclose of interest.

14. (1) If a director or alternate director or a member of a committee or his or her spouse or any company or partnership of which he or she is a director or shareholder or partner is in any way directly or indirectly interested in a contract entered into or proposed to be entered into by the Corporation, or in any other matter which is the subject of consideration by the Board and whereby his or her private interest may conflict with his or her duties as a director or such a member, he or she shall disclose the nature of his or her interest at a meeting of the Board at the first opportunity it is possible for him or her to do so.

(2) Any disclosure of interest made in terms of subsection (1) shall be recorded in the minutes of the meeting at which the disclosure was made.

(3) A director or alternate director or member referred to in subsection (1) shall not take part in the consideration of, or vote on, any question relating to a contract, proposed contract or other matter referred to in that subsection.

Managing Director.

15. (1) Subject to the provisions of subsection (4) and section 29(1), the Board shall appoint a person, other than a director, to hold the office of Managing Director.

(2) The period of office, remuneration and other conditions of service of the Managing Director shall be determined by the Board with the prior approval of the Minister.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

(3) A person holding the office of Managing Director shall be eligible for re-appointment upon the expiry of the period for which he or she was appointed.

(4) The Board shall not appoint any person to hold the office of Managing Director or terminate the services of any person holding that office without the prior approval of the Minister.

(5) The Managing Director shall be the chief executive officer of the Corporation and shall exercise such of the powers and perform such of the functions conferred or imposed by or under this Act as may from time to time be delegated or assigned to him or her by the Board.

(6) The Managing Director shall be entitled to attend all meetings of the Board and to take part in discussions, but not to vote, on any matter under consideration before the Board.

Organizational components.

16. (1) For the purposes of exercising its functions the Corporation shall have -

- (a) an agricultural development division; and
- (b) an industrial development division.

(2) The Board may from time to time, after consultation with the Minister, establish such additional divisions as it may consider necessary for purposes of efficiently carrying out the functions of the Corporation, and determine the functions to be assigned to any such division.

(3) Each division referred to in subsection (1) or established under subsection (2) shall have a division head appointed by the Board, subject to the provisions of subsection (5).

(4) A division head is responsible for the efficient management and administration of his or her division, including the effective utilization of staff, the maintenance of discipline and the proper use and care of the property of the Corporation and he or she shall perform the functions entrusted to him or her by the Board or the Managing Director.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

(5) The appointment of the first division head for each of the divisions referred to in subsection (1) or for any additional division established under subsection (2), shall be subject to the prior approval of the Minister.

Employment of staff.

17. (1) The Board may, in addition to the division heads referred to in section 16, appoint, upon such terms and conditions as it may determine, such other persons as may appear to the Board requisite or expedient to employ for carrying out the functions of the Corporation, and discharge and dismiss such persons.

(2) The Board may -

- (a) provide pecuniary benefits for employees of the Corporation on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for such persons and their dependants such pecuniary benefits;
- (b) purchase, take on lease or in exchange or otherwise acquire dwelling-houses for occupation by persons in the Corporation's employ;
- (c) on such terms and conditions as it may determine, subject to the approval of the Minister with the concurrence of the Minister of Finance, enter into contracts of guarantee or suretyship for assisting employees of the Corporation to acquire dwelling-houses or land for residential purposes for their own use or to improve such dwelling-houses or land.

Financing of Corporation.

18. (1) The funds of the Corporation shall consist of -

- (a) moneys appropriated by Parliament to finance the functions of the Corporation;
- (b) all moneys which vest in the Corporation in terms of section 28;
- (c) moneys received by virtue of the functions performed by the Corporation;

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

- (d) moneys paid to the Corporation by the Government, or any institution of the Government, as reimbursement of costs incurred by the Corporation acting as agent of the Government or any such institution for any purpose contemplated in paragraph (k) of section 3;
- (e) all moneys received by the Corporation by virtue of grants and donations;
- (f) all moneys derived by virtue of the realization of assets of the Corporation;
- (g) all moneys borrowed by the Corporation;
- (h) interest on investments made by the Corporation;
- (i) any other moneys received by, or made available to, the Corporation for the purposes of this Act.

(2) The Corporation shall utilize its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers: Provided that moneys received by the Corporation by virtue of any grant or donation shall be utilized in accordance with the conditions of the grant or donation concerned.

Exemption from taxes,
duties and fees.

19. Notwithstanding anything to the contrary in any other law contained, the Corporation is exempted from the payment of any income tax, transfer duty, stamp duty, levies or fees which would otherwise have been payable by the Corporation to the State in terms of any law, but excluding a law relating to customs and excise or sales tax.

Financial year.

20. The financial year of the Corporation shall end on 31 March in each year.

Annual estimates of
income and expenditure.

21. (1) The Board shall annually, in such form and at such time as the Minister may direct, submit to the Minister for his or her approval, with the concurrence of the Minister of Finance, a statement of the estimated income and expenditure of the Corporation for the ensuing financial year, and may during the course of a financial year submit to the Minister for his or her approval, with the concurrence of the Minister of Finance, supplementary estimates of expenditure for that financial year.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

(2) The Corporation shall not incur any expenditure except in accordance with an estimate of expenditure approved in terms of subsection (1).

Bookkeeping and auditing.

22. (1) The Corporation shall keep such account books as are necessary to represent fairly the state of affairs and business of the Corporation and to explain the transactions and financial position of the business of the Corporation.

(2) The books and accounts of the Corporation shall be audited by the Auditor-General.

Annual report.

23. (1) The Board shall within six months after the end of each financial year of the Corporation submit to the Minister a report on the activities of the Corporation in respect of that financial year.

(2) The Minister shall lay the report submitted in terms of subsection (1) on the Table of the National Assembly within thirty days after receipt thereof, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within thirty days after the commencement of its ensuing session.

Exercise of powers by Corporation and submission of matters by Board to Minister.

24. (1) The Minister may require the Board to submit to him or her for decision any matter relating to the powers of the Corporation, and the Board may of its own accord submit any matter to the Minister for decision.

(2) The Minister may determine the procedure for the submission of matters referred to in subsection (1).

(3) In regard to any matter submitted to the Minister in terms of subsection (1), the Minister -

(a) shall give his or her decision after consultation with the Board; and

(b) may, either in general or in particular, determine such conditions as he or she may think fit,

and every such decision given or condition determined shall for all purposes be deemed to be a decision given or condition determined by the Board, and no such decision or condition may be withdrawn or amended by the Board except with the approval of the Minister.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

Liquidation of Corporation.

25. The Corporation shall not be wound up except by or under the authority of an Act of Parliament.

Use of name of Corporation.

26. (1) Subject to the provisions of subsection (2), no person or company shall carry on business under or, in the case of a company, be registered under the Companies Act, 1973 (Act 61 of 1973) under a name which is the same as that of the Corporation or so closely resembles it as to be calculated to deceive.

(2) A company shall not by virtue of the provisions of subsection (1) be prohibited from carrying on business or remaining registered under the name under which it was registered at the commencement of this Act.

(3) Subject to the provisions of subsection (2), any person who carries on business in contravention of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000.

Application of Companies Act.

27. (1) Subject to subsection (2), no provision of the Companies Act, 1973 (Act 61 of 1973), shall apply in relation to the Corporation.

(2) The Minister may, after consultation with the Board, by notice in the *Gazette* declare that any provision of the Companies Act, 1973, which is not inconsistent with the provisions of this Act, shall apply in relation to the Corporation with such modifications as the Minister may determine, and may likewise withdraw or amend any such notice.

Transfer of assets, rights, liabilities and obligations to the Corporation.

28. (1) Upon the commencement of this Act all assets, rights, liabilities and obligations of the First National Development Corporation of South West Africa established by section 2 of the First National Development Corporation of South West Africa Proclamation, 1978 (Proclamation AG. 61 of 1978) shall vest in the Corporation.

(2) Subsection (1) shall not apply in respect of such assets, rights, liabilities and obligations as, immediately before the commencement of this Act, may still have vested in the name, or have been in the possession of, the said First National Development Corporation of South West Africa, but are to be transferred or delivered to the company known as Amalgamated Commercial Holdings (Proprietary) Limited (hereinafter referred to as Amcom

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

Holdings) pursuant to the transfer of certain commercial enterprises of that corporation to that company in accordance with an agreement concluded between the said corporation and company before the commencement of this Act.

(3) Where, after the commencement of this Act, any steps are required to be taken in order to effect the transfer or delivery of any previous asset or right of the said First National Development Corporation of South West Africa to Amcom Holdings by virtue of the agreement referred to in subsection (2), such steps may be taken, subject to the directions of the Minister, by the Permanent Secretary: Trade and Industry.

(4) Any question as to whether any previous asset, right, liability or obligation of the said First National Development Corporation of South West Africa is vesting in the Corporation or in Amcom Holdings as contemplated in subsections (1) and (2), shall be decided by the Minister after consultation with the boards of directors of the Corporation and that company, respectively.

(5) Any reference in any law or document to the said First National Development Corporation of South West Africa shall be construed as a reference to the Corporation, but with due regard to the provisions of subsection (2).

(6) The registrar of deeds shall at the request of the Corporation effect the entries and endorsements which may be considered necessary in order to carry into effect the provisions of subsection (1).

(7) No transfer duty, stamp duty, office fees or other charge shall be payable in respect of any vesting in terms of subsection (1) or in respect of any entry or endorsement referred to in subsection (6).

Transfer of staff.

29. (1) The person who immediately before the commencement of this Act held office as the managing director of the First National Development Corporation of South West Africa by virtue of the provisions of section 11 of the First National Development Corporation of South West Africa Proclamation, 1978 (Proclamation AG. 61 of 1978) shall be the first Managing Director of the Corporation and shall be deemed to have been appointed in that office under section 15(1) of this Act on the same conditions of service which applied to him immediately before the commencement of this Act.

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

(2) Where any person, other than the person referred to in subsection (1), who was in the service of the said First National Development Corporation of South West Africa immediately before the commencement of this Act agrees to transfer from that service to the service of the Corporation, he or she shall, until he or she is offered new terms and conditions of employment as contemplated in subsection (3), or until his or her retrenchment by the Corporation, enjoy such terms and conditions of employment as are not less favourable than he or she enjoyed in the service of the said First National Development Corporation of South West Africa immediately before the commencement of this Act, and his or her service with that corporation shall, for the purposes of determining rights to or eligibility for retirement, pension, sick or vacation leave, or any gratuity, be deemed to be service with the Corporation.

(3) The Board shall within a period of three months from the date of commencement of this Act, or such longer period as the Minister may approve, determine the terms and conditions of employment in respect of those persons referred to in subsection (2) whose services the Board wishes to retain for the Corporation, and in writing offer those terms and conditions to such persons.

(4) The terms and conditions of employment offered in terms of subsection (3) to a person who is required to perform duties reasonably comparable to the duties performed by him or her immediately before he or she transferred his or her services to the Corporation shall be no less favourable than those enjoyed by him or her while in the service of the said First National Development Corporation of South West Africa.

Power of President to direct manner of administration of Act.

30. The President may by proclamation in the *Gazette* direct that any power or duty conferred or imposed by this Act upon the Minister shall, either generally or in relation to any matter specified in the proclamation, be exercised or performed by the Minister in consultation with such other Minister or Ministers as may be designated in the proclamation.

Repeal of laws.

31. The First National Development Corporation of South West Africa Proclamation, 1978 (Proclamation AG. 61 of 1978), the First National Development Corporation of South West Africa Amendment Proclamation, 1979 (Proclamation AG. 4 of 1979) and the First

**NAMIBIA DEVELOPMENT CORPORATION
ACT, 1993**

National Development Corporation of South West Africa Amendment Act, 1980 (Act 27 of 1980) are hereby repealed.

Short title and commencement.

32. This Act shall be called the Namibia Development Corporation Act, 1993 and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.
