



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 46 2005

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 2005: National Arts Fund of Namibia Act, 2005.

ACT

To provide for the establishment of the National Arts Fund; to promote and develop the arts in Namibia; to establish a council to control and manage the Fund and to provide for related matters.

(Signed by the President on 19 April 2005)

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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 indicates otherwise -

“Arts” includes all forms and traditions of dance, drama, music, theatre, visual arts, crafts, design, written and oral literature, all of which serve as means for individual and collective creativity and expression through performance, execution, presentation, exhibition, transmission and study.

“Council” means the Council established by section 5;

“grant” means a grant in the form of initial capital, a donation, subsidy or like funding;

“Minister” means the Minister responsible for arts and culture;

“Ministry” means the Ministry responsible for administering arts and culture;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995).

“this Act” includes regulations made under section 20.

Establishment of Fund

2. There is established a Fund known as the National Arts Fund. The purpose of the Fund is to promote and develop the arts in Namibia.

Revenue of Fund

3. The revenue of the Fund consists of -
- (a) money appropriated by Parliament for the Fund for the achievement of its objects;
 - (b) domestic and foreign donations or contributions made for the benefit of the Fund;
 - (c) interest derived from the investment of money standing to the credit of the Fund; and
 - (d) money accruing to the Fund from any other source.

Objects of Fund

4. The objects of the Fund are -
- (a) to encourage participation of individual persons, groups, institutions and organisations in arts programmes;
 - (b) to expand, improve, upgrade and develop arts activities and related educational services;
 - (c) to support institutions and other bodies engaged in arts activities;
 - (d) to provide and improve arts facilities especially for the socio-economically disadvantaged communities;
 - (e) to grant scholarships and financial support relating to arts to individuals; and
 - (f) to raise funds from any source for the promotion and development of arts; and
 - (g) to finance projects and programmes relating to arts.

Establishment of Council

5. There is established a Council which shall, subject to this Act, be responsible for the control and management of the Fund.

Powers, and functions of Council

6. (1) Subject to this Act or any other law, the Council may -
- (a) evaluate projects and programmes submitted to the Council aimed at developing or promoting arts and to monitor and evaluate projects and programmes financed by the Fund;

- (b) consult with any body, organisation, institution or individual involved in arts activities;
 - (c) accept grants and donations and to receive any money offered or due to it;
 - (d) invest money standing to the credit of the Fund which is not required for immediate use with a banking institution registered otherwise than provisionally in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998), or a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act No. 2 of 1986);
 - (e) subject to the provisions of any law, negotiate, co-operate or enter into agreements with any person, organisation or institution approved by the Minister with regard to any matter which is directly or indirectly aimed at the achievement of the objects of the Fund;
 - (f) upon an application made under section 13 and on such conditions as the Council may determine, make grants to arts bodies including individuals for the purposes of implementing and maintaining projects and programmes, approved by the Council in consultation with the Minister regarding arts.
 - (g) make rules regarding the procedure of Council and committee meetings as well as the keeping of records by Council and committees; and
 - (h) do any other act which is necessary to achieve the objects of the Fund.
- (2) The Council shall perform the following functions -
- (a) advise and recommend to the Minister generally, or in respect of any particular case, in relation to any matter which is connected to or affecting arts;
 - (b) co-ordinate, encourage, facilitate and promote arts activities and services by individuals, private or public institutions, organisations or groups;
 - (c) assess arts education and training needs and undertake research and education relating to arts;
 - (d) allocate funds, in accordance with the provisions of section 14 to -
 - (i) arts groups or bodies; and
 - (ii) such other persons, organisations or institutions as the Minister may from time to time approve; and
 - (e) perform any other function related to the powers of the Council.

(3) For the purpose of the performance of any of its functions or for the rendering of any services, the Council may, with the approval of the Minister and the concurrence of the Minister responsible for finance, enter into any agreement on such conditions and at such remuneration as may be agreed upon, with any person who is in the opinion of the Council fit to perform such functions or to render such services.

Constitution of Council

7. (1) The Council consists of the following members:
- (a) the Permanent Secretary or any other person in the Ministry delegated to represent the Permanent Secretary;

- (b) a staff member, designated by the Minister, who is responsible for the arts and who holds a rank not less than the rank of deputy director;
- (c) a staff member, appointed by the Minister responsible for finance who holds a rank or grade equal to or higher than the rank of deputy director; and
- (d) four persons nominated for appointment by the Minister, by institutions, organisations and individuals with vested interests in arts in accordance with subsection (4).

(2) The Minister may appoint an alternate member for every member of the Council and for every member of the committee appointed in terms of section 12(1), on such conditions and for such period as may be determined by the Minister to serve on the Council or committee during the absence of such member or his or her inability to act as a member of the Council or committee.

(3) When members of the Council referred to in subsection (1)(d) are required to be appointed, the Minister must cause to be published in not less than two local newspapers, a notice inviting nominations of persons to be appointed to serve on the Council under subsection (1)(d).

(4) In appointing members to the Council, the Minister must consider expertise in various fields of arts, and knowledge of the different geographic areas of Namibia.

(5) A member of the National Assembly, National or Regional Council or a person who is not a Namibian citizen does not qualify for appointment as, or to be, a member or alternate member of the Council.

- (6) (a) The members of the Council must elect from among their number a chairperson and a vice-chairperson of the Council.
- (b) When the chairperson of the Council is absent or unable to perform his or her functions as chairperson of the Council, the vice-chairperson must act as chairperson, and must while so acting exercise all the powers and perform all the duties and functions of the chairperson.

Tenure and vacation of office

8. (1) Subject to subsection (2), a member of the Council holds office for a period of three years and is, upon the expiry of his or her term of office, eligible for reappointment.

- (2) a member of the Council vacates his or her office if -
 - (a) his or her estate is sequestrated or he or she enters into a compromise with his or her creditors;
 - (b) he or she is absent from three consecutive meetings of the Council without leave of the Council;
 - (c) he or she resigns that office by written notice to the Minister;
 - (d) he or she is convicted of any offence and sentenced to imprisonment without the option of a fine;
 - (e) he or she is removed from office under subsection (3) by the Minister.

(3) The Minister may, after consultation with the Council, and after giving a member of the Council an opportunity to make representations on the matter, by notice in writing, remove that member from office if the Minister is satisfied that, that member is -

- (a) incapacitated by physical or mental illness; or
- (b) unable or unfit to carry out the functions of a member of the Council.

(4) A casual vacancy on the Council is, with due regard to the provisions of section 7, filled for the unexpired portion of the period of office of the person who has ceased to be a member.

Allowances of members of Council and committees

9. (1) The allowances of a member of the Council, and any person appointed as a member of a committee of the Council in terms of section 12(1) not being in the full-time employment of the State shall be determined from time to time by the Minister, in consultation with the Minister responsible for finance.

(2) The allowances referred to in subsection (1) shall be paid from moneys standing to the credit of the Fund.

Disclosure of interest

10. (1) A member of the Council who has or intends to acquire a direct or an indirect personal interest in any agreement contemplated in section 6(1)(e), shall in writing declare the nature, extent and particulars of such interest to the Council.

(2) A member of the Council must not be present at or take part in any consideration or discussion of, or cast his or her vote on a matter in which he or she has an interest as contemplated in subsection (1).

(3) A declaration made in terms of subsection (1) must be recorded in the minutes of the meeting of the Council at which the declaration is made.

(4) A member who contravenes or fails to comply with a provision of subsection (1) and (2) commits an offence and is on conviction liable to a fine not exceeding NS\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Meetings and decisions of Council

11. (1) The Council must hold meetings at such times and places as the chairperson may determine.

(2) Four members of the Council constitute a quorum for a meeting of the Council.

(3) The chairperson of the Council or, in his or her absence, the vice-chairperson must preside at a meeting of the Council, and if both the chairperson and the vice-chairperson are absent from, or for any other reason are unable to preside at meetings, the members present at a meeting must elect one of their number to preside at that meeting.

(4) The decision of the majority of members present at a meeting of the Council constitutes a decision of the Council, and, in the event of an equality of votes in regard to any matter, the chairperson or the vice-chairperson or such other member presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(5) No decision of the Council or an act performed by authority of the Council is invalid by reason only -

- (a) of the existence of a vacancy on the Council; or
- (b) of the fact that a person who was not entitled to sit as a member of the Council sat as such a member at the time when the decision was taken or the act was performed or authorised,

if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and entitled to sit as members.

(6) The Council must keep proper records of the proceedings at its meetings, and the Minister may at any time request that such records be submitted to him or her or to the Permanent Secretary by the Council for inspection.

Committees of Council

12. (1) The Council may appoint one or more committees, consisting of not fewer than 2 and not more than 8 members, to perform such functions as may from time to time be assigned to any such committee by the Council.

- (2) A committee appointed under subsection (1) may consist of -
 - (a) at least one member of the Council, nominated by the Council for that purpose;
 - (b) such other person or persons not being a member or members of the Council as may be appointed by the Council.

(3) The Council must in respect of every committee designate one of the members of a committee as the chairperson thereof.

(4) When a member of a committee nominated in terms of subsection (2)(a) is unable to act as a member on account of his or her absence or incapacity, the chairperson of the Council may nominate another member of the Council, who is not a member of the committee in question, to act as a member of that committee in the place of such member during the absence or incapacity of such member.

(5) If consensus is not reached on any matter under consideration by any committee, the matter must be referred to the Council for decision.

(6) The chairperson of the Council may attend any meeting of a committee and is entitled to take part in the proceedings at such meeting.

(7) The Council may in its discretion dissolve or reconstitute a committee.

(8) The Council may, subject to such conditions as it may determine, delegate any power or impose any function conferred or imposed upon it by or under this Act to a committee appointed under subsection (1), but the Council is not thereby divested or relieved of the power or function so delegated or imposed.

(9) A decision by a committee in the exercise of a power delegated to it under subsection (8), is subject to the approval of the Council, and the Council may at any time vary or set aside any such decision.

Application for grants

- 13.** An application for a grant referred to in section 6(1)(f) must be -
- (a) made in the prescribed form and manner;
 - (b) submitted to the Council; and
 - (c) accompanied by -
 - (i) full particulars of the purposes of the project or programme for which the grant is required; and
 - (ii) such documents and other information as the Council may require in a particular case.

Allocation of funds

14. (1) In allocating funds referred to in section 6(2)(d), the Council must give effect to priorities determined, and reviewed at least once in each year, by the Council on technical assessments and advice on the feasibility and suitability of projects and programmes regarding arts activities obtained from the Ministry or any other ministry, office or agency or any person or body of persons with relevant expertise in arts.

(2) The Council may allocate funds only upon an application made by an organisation, institution, or any other person in accordance with section 14.

(3) Recipients of funds allocated by the Council in terms of this Act must properly account for and report to the Council on the use of any such funds in such manner and form and at such times as the Council may determine.

(4) The qualifications for the allocation of the funds in terms of this Act shall be as prescribed.

Banking account

15. (1) The Council shall, in the name of the Fund open and maintain banking accounts with a banking institution or building society referred to in section 6(1)(d) -

- (a) into which must be deposited all money accruing to the Fund in terms of this Act; and
- (b) from which shall be defrayed all expenditure in connection with the performance of the functions of the Council and be paid any amounts with which the Fund is charged in terms of this Act.

(2) No payment must be made as a charge to the Fund except by authority of the Council.

Financial year, bookkeeping and accounting, and unexpended balances

16. (1) The financial year of the Fund extends from 1 April of every year to 31 March in the next year.

(2) The Council must keep or cause to be kept proper accounts and records of all money accrued to or paid from the account of the Fund so as to at all times present fairly and correctly all the financial transactions and the financial position of the Fund.

(3) Any unexpended balance in the account of the Fund at the close of any financial year, including accrued interest on investment balances and other receipts, must be carried forward as a credit in such account to the next financial year.

Annual statements and auditing

17. (1) The Council shall as soon as practicable, but not later than six months after the end of each financial year of the Fund, prepare and submit, subject to the provisions of subsection (2), to the Minister annual financial statements in respect of the financial year in question.

(2) The statements referred to in subsection (1) shall -

- (a) be prepared in such form and contain such particulars as the Minister may determine after consultation with the Auditor-General;
- (b) be examined and audited by the Auditor-General before being submitted to the Minister.

(3) The Minister must lay upon the Table of the National Assembly -

- (a) an annual report prepared and submitted to the Minister by the Council on its activities;
- (b) all the statements of the Council received in terms of subsection (1); and
- (c) the report of the Auditor-General relating to such statements,

within 60 days from the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 30 days after the commencement of its next ensuing ordinary session.

Submission of matters by Council to Minister for decision

18. (1) The Council may submit for decision to the Minister any matter in terms of this Act.

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

- (a) must give his or her decision on the matter;
- (b) may, either in general or in particular, determine such conditions as he or she may think fit to impose,

and every such decision given or condition determined is binding on the Council.

Performance of administrative work

19. (1) The administrative work pertaining to the functions of the Council or a committee of the Council shall be performed by staff members in the Ministry made available for that purpose by the Permanent Secretary.

(2) The Chairperson of the Council, or any other member of the Council designated and authorised in writing by the Council, shall represent the Council and execute any document on behalf of the Council.

Regulations

- 20.** The Minister may make regulations relating to -
- (a) any matter which is required to be prescribed in terms of section 13(a) or 14(4); or
 - (b) any matter which is necessary to achieve the objects of the Fund.

Indemnity

21. A member of the Council or committee, or any staff member referred to in section 19(1) is not liable in respect of anything done in good faith under this Act.

Exemption of Fund from certain taxes

- 22.** No tax or charge on income is payable by the Fund in terms of any law.

Liquidation of Council

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

Short title and commencement

24. This Act is called the National Arts Fund of Namibia Act, 2005, and shall come into operation on a date fixed by the Minister by notice in the *Gazette*.
