



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 42 1998

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. 3 of 1998: Namibia Wildlife Resorts Company Act, 1998.

ACT

To establish a company to be known as Namibia Wildlife Resorts Limited, to provide for its powers, duties and functions, to provide for the transfer of the wildlife resorts enterprise of the State to the Company and the transfer of staff members to the Company and to provide for incidental matters.

(Signed by the President on 20 February 1998)

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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 -

“Board” means the board of directors of the Company referred to in section 4;

“Companies Act” means the Companies Act, 1973 (Act 61 of 1973);

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“Company” means Namibia Wildlife Resorts Limited established by section 2;

“managing director” means the managing director of the Company appointed under section 5;

“Minister” means the Minister of Environment and Tourism;

“Ministry” means the Ministry of Environment and Tourism;

“staff member” has the same meaning as assigned to it in the Public Service Act, 1995 (Act 13 of 1995);

“transfer date” means the date determined by the Minister under section 8(1);

“wildlife resorts enterprise” means the undertaking of the State which, before the commencement of this Act, was conducted in the Ministry for the management of wildlife resorts situated within the Etosha National Park, referred to in section 13(1) of the Nature Conservation Ordinance, 1975 (Ordinance 4 of 1975) and within other areas declared under that Ordinance as game parks or nature reserves, including any other resort within any tourist recreation area contemplated in the Accommodation Establishments and Tourism Ordinance, 1973 (Ordinance 20 of 1973);

“wildlife resorts service” means the business of managing wildlife resorts in the Etosha National Park and other game parks and nature reserves and any other resorts acquired and managed by the Company under this Act, including any accommodation establishment defined in section 1 of the Accommodation Establishments and Tourism Ordinance, 1973 (Ordinance 20 of 1973).

Establishment of Company

2.(1) There is hereby established a company to be known as Namibia Wildlife Resorts Limited.

(2) The Company shall be incorporated under the Companies Act as a public company with a share capital and, notwithstanding section 32 of that Act, the State shall be the sole member of the Company.

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(3) Notwithstanding sections 54 and 60 of the Companies Act, the Minister shall on behalf of the State sign the memorandum of association and articles of association of the Company and cause them to be submitted to the Registrar of Companies for registration.

(4) The Registrar of Companies shall register the memorandum of association and articles of association submitted in terms of subsection (3) and shall issue to the Company a certificate of incorporation and a certificate to commence business.

(5) The Registrar of Companies shall issue such directives and authorise such deviations from the regulations made under the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to the provisions of this section.

(6) No fees shall be payable in terms of the Companies Act in respect of the registration of the memorandum of association and articles of association of the Company and the issue of a certificate to commence business.

(7) The Minister shall cause copies of the memorandum of association and articles of association of the Company to be laid before the National Assembly within 14 days of their registration if the National Assembly is then in ordinary session or, if the National Assembly is not then in session, within 14 days after commencement of its first ensuing ordinary session.

Shareholding in Company

3.(1) Upon its incorporation the Company shall issue to the State one share with a nominal value of one Namibia dollar.

(2) The State shall be the sole shareholder of the Company.

(3) The State shall not alienate any shares held in the Company by virtue of the provisions of subsection (1) and section 9 and the Company shall not issue any shares to any person other than the State.

(4) The Minister shall exercise the rights and perform the duties of the State as member and shareholder of the Company.

Board of directors

4.(1) The Company shall have a board of directors comprising not less than seven and not more than nine directors appointed by the Minister with the approval of Cabinet, of whom -

- (a) one shall be the Permanent Secretary: Ministry of Environment and Tourism;
- (b) one shall be a staff member in the Ministry of Finance nominated by the Minister of Finance;
- (c) one shall be a staff member in the Ministry of Lands, Resettlement and Rehabilitation nominated by the Minister of Lands, Resettlement and Rehabilitation;
- (d) one shall be a park conservation specialist employed in the Ministry; and
- (e) from a date to be determined by the Minister by notice in the *Gazette*, one shall be an employee of the Company elected by the employees of the Company.

(2) Subject to paragraphs (a), (b), (c), (d) and (e) of subsection (1), the directors of the Board to be appointed by the Minister shall be selected from amongst persons who have commercial experience in the tourism industry and with due regard to gender representation.

(3) The Minister shall appoint the Chairperson and the Deputy Chairperson of the Board.

(4) The directors of the Board, other than the directors appointed under paragraphs (a), (b), (c) and (d) of subsection (1), shall hold office for a period of three years.

(5) The directors of the Company, other than the managing director, shall fulfil non-executive functions.

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(6) Notwithstanding anything to the contrary contained in the Companies Act, no director or managing director shall hold any shares in the Company, either directly or indirectly.

Managing director

5.(1) The Board shall with the approval of the Minister appoint a person, other than a director, to serve as managing director of the Company, provided that the first managing director of the Company shall be appointed by the Minister, with the approval of Cabinet.

(2) The managing director shall be appointed for such period, not exceeding five years, and on such terms and conditions as may be determined by the Board, with the concurrence of the Minister, but the contract of employment of the managing director may be renewed by the Board from time to time with the approval of the Minister.

(3) 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.

Objects of Company

6. The objects of the Company shall be to conduct a wildlife resorts service in conformity with the development strategies and policies of the government of the Republic of Namibia through, *inter alia* -

- (a) managing, controlling, maintaining, utilising and promoting in the national interest the wildlife resorts service according to general business principles;
- (b) promoting and encouraging training and research with a view to increase productivity in the wildlife resorts service;
- (c) developing, with or without the participation of the private sector, commercially viable enterprises or projects concerning the wildlife resorts service or the tourism industry in general;

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- (d) promoting the development of environmentally sustainable tourism with a view to preserving the assets and attractions on which the tourist industry depends, and in particular safeguarding and maintaining ecological processes, biodiversity, aesthetic and cultural qualities for the long term benefit of the tourism industry and Namibian people.

Powers of Company

7.(1) The Company shall exercise its powers with a view to enhancing corporate profit and shareholder gain, taking into account the promotion of an economically prosperous and efficient wildlife resorts service conducted on sound business, conservation and environmental principles.

(2) In addition to the powers conferred by section 34 of the Companies Act, the Company may -

- (a) finance or otherwise participate in the development of natural resources;
- (b) establish subsidiary companies or acquire an interest in any other company or co-operative society or enter into a partnership or joint venture with any person;
- (c) establish such reserve funds and deposit therein such amounts of money as the Board may determine with the approval of the Minister, granted with the concurrence of the Minister of Finance;
- (d) effect the transfer or assignment of any assets, liabilities, rights or obligations of the Company to any of its subsidiaries;
- (e) accept grants and donations; and
- (f) determine rates and charges to be levied for services rendered by the Company.

(3) The power conferred by section 34 of the Companies Act to invest

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moneys shall authorise such investments by the Company only with a banking institution or a building society which is registered in accordance with the relevant laws.

(4) In the exercise of its powers under this Act and the Companies Act, the Company shall not without the approval of the Minister, granted with the consent of the Minister of Finance -

- (a) alienate or in any way encumber any assets of the Company representing more than 10 percent of the total market value of all the assets of the Company;
- (b) alter the objects or nature of business of the Company;
- (c) alienate any shares or rights to shares held or acquired by the Company in or in respect of any subsidiary of the Company or in any other company; or
- (d) amalgamate with any other company.

(5) The Company shall take such measures as may be necessary to ensure that no subsidiary of the Company shall issue any of its shares to any person other than the Company without the approval of the Minister.

(6) The Company shall ensure that in the performance of its functions, or of any subsidiary of the Company, the requirements stipulated in any performance agreement which the Company shall have entered into with the Minister, are observed.

Transfer of wildlife resorts enterprise

8.(1) The Minister shall by agreement with the Company, and on a date determined by the Minister -

- (a) transfer to the Company the wildlife resorts enterprise;
- (b) transfer in ownership or make available under agreement of lease to the Company, as the Minister with the concurrence of the Minister of

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Finance may decide, any State land which before such date was being used for or in connection with the conduct of the wildlife resorts enterprise; and

- (c) transfer and assign to the Company such other assets and such liabilities, rights and obligations of the State which relate to or are connected with the conduct of the wildlife resorts enterprise.

(2) The Minister shall cause the date of transfer determined under subsection (1) to be notified in the *Gazette*.

(3) Except in the case of State land made available to the Company under an agreement of lease as contemplated in subsection (1)(b), the Company shall, with effect from the transfer date, be vested with the ownership of the assets and rights and be charged with the liabilities and obligations transferred or assigned to it by virtue of the provisions of subsection (1).

(4) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to the Company in terms of subsection (1), shall be sufficient proof that the asset or right so described vests in the Company.

(5) Upon the submission of a certificate referred to in subsection (4) to the Registrar of Deeds or to any other person in charge of any other office where a register or record is being kept of the ownership of or entitlement to an asset or right described in such certificate, the Registrar or such person, as the case may be, shall 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 Company.

(6) Notwithstanding any provision to the contrary in any other law, no stamp duties, transfer duties or registering fees payable in terms of any law for the acquisition or transfer of assets or rights shall be payable in respect of -

- (a) the transfer of assets or rights by the State to the Company in terms of subsection (1); or

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- (b) the transfer of assets or rights by the Company to any of its subsidiaries in terms of section 7(2)(d).

(7) The value of assets and liabilities transferred to the Company in terms of subsection (1), including the net asset value of the wildlife resorts enterprise so transferred, shall be determined by the Minister with the concurrence of the Minister of Finance.

(8) For the purposes of the Income Tax Act, 1981 (Act 24 of 1981) the assets acquired by the Company by virtue of subsection (1) shall be deemed to have been acquired by it at a cost equal to the value determined under subsection (7).

(9) The Minister shall determine any question as to whether or not any asset, liability, right or obligation relates to or is connected with the conduct of the wildlife resorts enterprise.

Issue of shares to State

9. (1) The Company shall compensate the State, for the transfer to the Company of the wildlife resorts enterprise and the assets, liabilities, rights and obligations referred to in section 8 and for the provision of working capital, as may be agreed upon by the Minister and the Minister of Finance and the Company, either-

- (a) by the issue to the State of additional fully paid-up shares; or
- (b) by the issue to the State of additional fully paid-up shares as well as the creation in favour of the State of a loan account,

to a value determined by the Minister with the concurrence of the Minister of Finance.

(2) Shares to be issued to the State in terms of subsection (1) shall -

- (a) have such nominal value and be issued at such premium, if any; and
- (b) be allotted and issued at such time and on such conditions,

as the Minister, with the concurrence of the Minister of Finance, may determine.

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- (3) The Company is exempt from the payment -
- (a) of any stamp duty in respect of shares issued to the State; and
 - (b) of any moneys in terms of section 63 or 75 of the Companies Act in respect of the creation of, or increase in, the share capital of the Company.

Staff matters

10.(1) The staff members employed in the Ministry for performing functions in relation to the wildlife resorts enterprise shall on the transfer date be transferred to the service of the Company, and they shall be offered employment by the Company on such terms and conditions of service which in the aggregate, shall not be less favourable financially than those held by such person in the Ministry at the date of transfer of service, provided that the post of managing director and other managerial posts with the Company shall be filled by open candidacy.

(2) Any staff member referred to in subsection (1) shall, if he or she elects to enter into a new employment agreement with the Company, notify the Ministry in writing of his or her election and, notwithstanding the provisions of the Public Service Act, 1995 (Act 13 of 1995) and without interrupting his or her service, from the date of such new employment, become an employee in an appropriate post of the Company on the conditions of employment agreed upon between him or her and the Company, but subject to the conditions mentioned in subsection (4).

(3) Those staff members who elect not to enter into new employment agreements with the Company shall be deemed to have remained in the Public Service and shall be dealt with by the Public Service Commission in terms of the Public Service Act, 1995.

(4) Where a person is appointed in the service of the Company in accordance with subsection (2) -

- (a) vacation leave standing to his or her credit with the State shall, subject to a limit of 60 days, be transferred as accrued leave to his or her credit in the service of the Company, and any balance of such credit

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shall be paid out to him or her by the State as accrued leave remaining upon termination of service;

- (b) such person shall in respect of any disciplinary steps instituted or contemplated against him or her for alleged misconduct committed before the date of his or her employment by the Company, be liable to be dealt with in accordance with the disciplinary rules applied by the Company as if such misconduct had been committed in the service of the Company;
- (c) such person shall continue to be a member of the Government Institutions Pension Fund referred to in section 2(b) of the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation AG. 56 of 1989), and for such purpose, the Company shall be deemed to be a statutory institution which has been admitted to membership under the Rules of that Pension Fund; and
- (d) it shall be deemed, for the purposes of the Income Tax Act, 1981 (Act 24 of 1981), that no change of employer has occurred.

(5) The Minister shall determine any question as to whether or not a staff member was performing functions in the Ministry in relation to the wildlife resorts enterprise.

(6) The Minister, or any other Minister responsible for any other government Ministry, may make the services of any other staff member available to the Company on such terms and conditions as may be agreed upon with the Company.

Pending litigation

11. Any litigation, including arbitration proceedings, in respect of which the cause of action arose before the transfer date and to which any State authority is a party by virtue of the State's ownership of the wildlife resorts enterprise, shall be instituted or continued by or against the Company, and in any such pending proceedings the Company shall be substituted as a party in place of the relevant State authority.

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12.(1) The Companies Act shall apply to the Company subject to the provisions of this Act.

(2) The provisions of sections 66 and 344(d) of the Companies Act shall not apply to the Company.

(3) The Minister may by notice in the *Gazette* exempt the Company from such provisions of the Companies Act as may be specified by the Minister in the notice.

Annual financial statements

13.(1) The Company shall in respect of each financial year, not later than six months after the end of the financial year, provide the Minister with copies of its audited financial statements for that financial year.

(2) The Minister shall lay copies of the financial statements referred to in subsection (1) before the National Assembly within 30 days after receipt thereof if the National Assembly is in ordinary session or, if the National Assembly is not then in ordinary session, within 30 days after commencement of its first ensuing ordinary session.

Short title

14. This Act shall be called the Namibia Wildlife Resorts Company Act, 1998.
