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Government Notices

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 93 2001

COMMENCEMENT OF THE TRADITIONAL AUTHORITIES ACT, 2000 (ACT NO. 25 OF 2000)

In terms of section 22 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000), I hereby determine that the said Act comes into operation on the date of publication of this notice in the *Gazette*.

N. IYAMBO
MINISTER OF REGIONAL AND LOCAL
GOVERNMENT AND HOUSING

Windhoek, 23 April 2001

MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 94 2001

REGULATIONS MADE UNDER THE TRADITIONAL AUTHORITIES ACT, 2000

The Minister of Regional and Local Government and Housing has under section 19 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000), made the regulations set out in the Schedule.

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**PART I
PRELIMINARY**

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Traditional Authorities Act, 2000, shall have that meaning, and-

“Board of Trustees” means the Board of Trustees established in terms of regulation 5;

“committee” means a committee established under regulation 11;

“financial year” means the financial year referred to in regulation 4(3);

“local authority council” means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“secretary of the Board” means the person designated as secretary of the Board of Trustees under regulation 5(1)(g);

“the Act” means the Traditional Authorities Act, 2000 (Act No. 25 of 2000).

**PART II
PROVISIONS RELATING TO DESIGNATION AND
APPOINTMENT OF TRADITIONAL LEADERS**

Application for approval to designate a chief or head of a traditional community

2. An application for approval to designate a chief or head of a traditional community as contemplated in section 5 of the Act shall be made on the Form set out in Annexure A, and shall -

- (a) in the case of an application by a Chief’s Council or a Traditional Council, as the case may be, be signed by any member thereof authorised by the Chief’s Council or the Traditional Council in question;
- (b) in the case of an application by the members of a traditional community, be signed by any member thereof authorised thereto by the customary law that traditional community,

and in verification of the information contained in such application, be signed by the Governor of the regional council of the region in which the traditional community is situated.

Notification of appointment of senior traditional councilors, traditional councilors and secretary

3. Where a chief or head of a traditional community -
- (a) appoints or causes to be elected under subsection (1) of section 10 of the Act a senior traditional councilor or traditional councilor, he or she shall notify the Minister as required by subsection (4) of that section in the form prescribed by Annexure B;
 - (b) appoints under section 10(3) of the Act a secretary of the traditional authority, he or she shall notify the Minister thereof in the form prescribed by Annexure C.

**PART III
MANAGEMENT OF COMMUNITY TRUST FUND**

Moneys of Community Trust Fund

4. (1) A Community Trust Fund shall consist of –
- (a) moneys raised (whether by means of donations, grants or otherwise) as contemplated in section 3(3)(a) of the Act;
 - (b) contributions made in terms section 18(3) of the Act;
 - (c) interest derived from investments made in terms of regulation 10.
- (2) The moneys of a Community Trust Fund shall be utilized by its Board of Trustees in accordance with estimates of expenditure approved by the Board, but any moneys raised as donations or grants under section 3(3)(a) of the Act or received as contributions made under section 18(3) of the Act shall be utilized, in the case of -
- (a) a donation or grant, in accordance with the conditions of the donation or grant;
 - (b) a contribution, for any of the purposes contemplated in section 18(3) of the Act.
- (3) The financial year of a Community Trust Fund shall end on 31 March in each year.

Establishment and composition of Boards of Trustees

5. (1) If a traditional authority of a traditional community has established a Community Trust Fund as contemplated in section 18(3) of the Act, that traditional authority shall for the purpose of managing and controlling the affairs of the Fund establish a Board of Trustees, comprising-
- (a) the chief or head leading the traditional community in respect of which the Fund has been established, who shall be the chairperson;
 - (b) two senior traditional councilors of that traditional community, designated by its traditional authority;
 - (c) the person appointed as secretary of that traditional authority in terms of section 10(3) of the Act;
 - (d) the regional council member elected as contemplated in section 4 of the Regional Councils Act, 1992 (Act No. 22 of 1992) in respect of the constituency in which the area of the traditional community concerned is situated;
 - (e) one member of the local authority council of the local authority area situated in the communal area of that traditional community, designated by that local authority council;
 - (f) one church leader who is ordinarily resident in the communal area of such traditional community, designated by the relevant church authority;
 - (g) one person who has in the opinion of that traditional authority knowledge and experience in a financial sphere, designated by the traditional authority, to be the secretary of the Board; and
 - (h) not more than three other persons representing the residents (inclusive of the professional and business people) in the communal area of that traditional authority, designated by that traditional authority.

(2) Before the first occasion on which a designation of a person is to be made in terms of subregulation (1)(e) or (f), and on each later occasion when an office of a person so designated becomes vacant, the traditional authority concerned shall in writing request the local authority council or church authority, as the case may be, to designate a person as required by that subregulation.

Persons disqualified from being members of Board of Trustees

6. A person shall not be appointed as a member of the Board of Trustees if he or she -

- (a) has been convicted of an offence of which dishonesty is an element and for which he or she has been sentenced to imprisonment for a period exceeding 12 months without the option of a fine;
- (b) has been removed from an office of trust on account of improper conduct;
- (c) is an unrehabilitated insolvent;
- (d) is considered a mentally ill person under the Mental Health Act, 1973 (Act No. 18 of 1973).

Tenure and vacation of office of members of Board of Trustees

7. (1) A member of a Board of Trustees -

- (a) referred to in paragraphs (a), (b), (c), (d) and (e) of regulation 5(1) shall hold office as member of that Board for such period as he or she is the incumbent of the post referred to in the applicable paragraph;
- (b) referred to in paragraphs (f), (g) and (h) of regulation 5(1) shall, subject to subregulations (3) and (4) of this regulation, hold office for such period, but not exceeding three years, as the traditional authority in question may determine at the time of designation of the member concerned.

(2) A member of a Board of Trustees referred to in subregulation (1)(b) whose period of office has expired shall be eligible for re-designation.

(3) A traditional authority may, upon reasonable grounds and after having given the member concerned an opportunity to be heard, remove a member of a Board of Trustees referred to in subregulation (1)(b) at any time before the expiration of such member's period of office.

(4) A member of a Board of Trustees shall vacate his or her office, if he or she -

- (a) ceases to hold the office by virtue of which he or she became a member or is no longer a member of the body which designated him or her to be a member;
- (b) has been absent from more than three consecutive meetings of that Board of Trustees without the leave of that Board; or
- (c) is a member referred to in subregulation (1)(f), (g) or (h) and he or she by a written notice under his or her hand, addressed and delivered to the chairperson of that Board, resigns as member thereof;
- (d) is removed from office in terms of subregulation (3);
- (e) becomes subject to a disqualification referred to in regulation 6.

(5) Any vacancy on the Board of Trustees arising from any circumstance referred to in subregulation (4), or caused by the death of a member of the Board of Trustees shall be filled by the appointment of another person in accordance with regulation 5, and every member so appointed shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died.

Voluntary service by members of Board of Trustees and of committees

8. No remuneration or allowances shall be payable to a member of the Board of Trustees or to a member of a committee of the Board for any service rendered in terms of these regulations.

Meetings of Board of Trustees and election of office-bearers

9. (1) The relevant traditional authority shall determine the date, time, place of, and agenda to be discussed at, the first meeting of the Board of Trustees, and the chairperson of that Board shall determine the date, time, place of, and agenda to be discussed at, successive meetings of that Board.

(2) A Board of Trustees shall at its first meeting elect from amongst its members a vice-chairperson and one other office-bearer.

(3) The chairperson of a Board of Trustees or, in his or her absence, the vice-chairperson thereof, shall preside at the meetings of the Board, and if both the chairperson or the vice-chairperson are absent from, or for any other reason unable to preside at, any meeting of the Board, the members present thereat shall elect one of their number to act as chairperson at that meeting, and the member so elected may during that meeting perform all the functions and exercise all the powers of the chairperson.

(4) The chairperson of a Board of Trustees shall on the written request of at least one third of the members of the Board or of the Minister, convene a special meeting of the Board.

(5) Subject to any rule made under subregulation (10), the chairperson or any other person who acts as chairperson shall determine the procedure of the meeting over which he or she presides.

(6) The majority of the members constituting a Board of Trustees shall form a quorum for a meeting thereof.

(7) A decision of a majority of members present at any meeting of a Board of Trustees shall be a decision of the Board and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) The chairperson at any meeting of a Board of Trustees shall cause a written record to be kept of the proceedings at such meeting.

(9) No decision taken by a Board of Trustees or act performed under the authority of such a Board shall be invalid merely by reason of -

- (a) a vacancy on that Board; or
- (b) the fact that any person who is not entitled to sit as a member of that Board was in attendance when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the required majority of the members of that Board then present and entitled to sit as members.

(10) A Board of Trustees may make rules determining the procedure to be followed at its meetings and at the meetings of any of its committees.

Powers and duties of Board of Trustees

10. (1) A Board of Trustees shall, with due regard to regulation 4(2), manage and control a Community Trust Fund in respect of which it was established and for that purpose the Board -

- (a) shall receive all moneys due to the Fund and administer and apply the moneys of the Fund;
- (b) shall in the name of the Fund, open and maintain with a banking institution, authorised to conduct banking business under the Banking Institutions Act, 1998 (Act No. 2 of 1998), or a building society finally registered in terms of the Building Societies Act, 1986 (Act No. 2 of 1986), one or more accounts into which all moneys received on behalf of the Fund shall be deposited;
- (c) shall invest the moneys of the Fund which is not required for immediate use;
- (d) shall keep or cause to be kept such accounting and related records as are necessary to fairly represent the transactions and financial position of the Fund;
- (e) shall not later than three months after the end of each financial year cause the accounting and related records of the Fund to be audited by any person registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), as an accountant and auditor, and appointed by the Board;
- (f) shall within six months after the end of any financial year of the Fund submit the auditor's report as well as a report on the activities of the Board and of any committee of the Board during that financial year to the traditional authority concerned;
- (g) may, on behalf of the Fund, sign any document relating to the Fund;
- (h)
 - (i) may subject to such conditions as the Board of Trustees may determine, delegate or assign any of the Board's powers or duties to the secretary of the Board, an office-bearer elected in terms of regulation 9(3) or a committee established under regulation 11 and may withdraw or vary any delegation or assignment, but shall not be divested of any power or duty so delegated or assigned;
 - (ii) may vary or set aside any decision so taken by the secretary of the Board, an office-bearer or any committee in the exercise of any power so delegated to him or her or it;
- (i) shall, generally, take such steps as are necessary for the attainment of the purposes for which the Fund was established.

Committees of Board of Trustees

- 11.** (1) A Board of Trustees may -
- (a) from time to time establish any committee to assist or advise that Board in the exercise of any of its powers or the performance of any of its duties, and may, for such period as the Board may determine, appoint such members of the Board or other persons thereon as it may think fit to be members of such committee;
 - (b) designate any member of such committee to be chairperson thereof;
 - (c) during the absence of the chairperson, designate any member of such committee to be the acting chairperson;

- (d) do any other act which is necessary to enable such committee to perform its functions.
- (2) The chairperson of a Board of Trustees shall be a member of any committee.
- (3) A committee shall, subject to the directions of the Board of Trustees, perform its functions.
- (4) A committee shall at the end of every financial year submit to the Board of Trustees concerned a report on its activities during the financial year in question.

Administrative work

12. The secretary of the Board shall, subject to the directions of the Board of Trustees, perform the administrative work connected with the performance of the functions of the Board.

Auditor

13. (1) A person appointed under regulation 10(1)(e) as an auditor shall carry out an audit in accordance with the provisions of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

(2) On completion of an audit contemplated in subregulation (1) an auditor shall submit his or her report thereon to the Board of Trustees.

(3) No person shall be appointed as an auditor if -

- (a) he or she is, or at any time during the financial year in question, was a member of the Board of Trustees in question;
- (b) he or she is related in the first degree of consanguinity or affinity to a member of the Board of Trustees.

ANNEXURE A

APPLICATION FOR APPROVAL TO DESIGNATE A CHIEF OR HEAD OF A TRADITIONAL COMMUNITY

PART A

THE FOLLOWING HAS TO BE COMPLETED BY *CHIEF'S COUNCIL/ TRADITIONAL COUNCIL/ AUTHORISED MEMBERS OF TRADITIONAL COMMUNITY:

- 1. Name of Traditional Authority:
.....
- 2. Address of Traditional Authority:
.....
.....
.....
- 3. Name of Traditional Community represented:
.....
- 4. State or give a description of the communal area inhabited by the above-mentioned Traditional Community:
.....
.....
- 5. Give the estimated number of members comprising the -above-mentioned Traditional Community:
- 6. Give the following particulars of the person in respect of whom this application is made for designation as *Chief/Head of Traditional Community:
Surname: First Name:
Citizenship: Id.:
Date of birth: Sex:
Office and traditional title (if any)
- 7. Give the reason for the proposed designation:
.....
- 8. Give a summary of the customary law applicable in the Traditional Community in respect of the designation of a *Chief /Head of the Traditional Community:
.....
.....

I declare that the above information is, to the best of my knowledge and belief, correct.

Signed this dayofat

.....
Signature of applicant

.....
Title of applicant

*Delete whichever is not applicable.

PART B

THE FOLLOWING HAS TO BE COMPLETED BY THE ABOVE-MENTIONED CANDIDATE:

1. Are you related to any recognised chief and/or head of a traditional community?
Yes/No:

2. If the answer is *Yes*, give the name or names of any such chief and/or head and the Traditional Authority which he or she leads:

.....
.....
.....
.....

3. Do your culture, tradition, customs and languages differ from the above-mentioned traditional authority/authorities? Yes / No

4. If answer to question 3 is *Yes*, state in what respect it is different:

.....
.....
.....
.....

I declare that the above information is, to the best of my knowledge and belief, correct.

Signed this dayofat

.....

**Signature/Thumb print of candidate*

**Delete whichever is not applicable*

PART C

THE FOLLOWING MUST BE COMPLETED AND SIGNED BY THE GOVERNOR OF THE REGIONAL COUNCIL OF THE REGION IN WHICH THE TRADITIONAL COMMUNITY IS SITUATED:

I verify that the above information is correct.

Signed this day of at

.....
Signature of Governor

.....
Region

ANNEXURE B

NOTIFICATION OF APPOINTMENT OR ELECTION OF SENIOR TRADITIONAL COUNCILOR OR TRADITIONAL COUNCILOR

I *Chief/Head
of the Traditional Community of
on at

have under section 10(1) of the Traditional Authorities Act, 2000, *appointed / caused to be elected as *Senior Traditional Councilor/Traditional Councilor:

Surname: First Name:
Citizenship: Id.:
Date of birth: Sex:
Office and traditional title (if any)

Address of Traditional Authority
.....
.....
.....
.....

I declare that the above information is, to the best of my knowledge and belief correct.

.....
**Signature/Thumb print of *Chief/Head of the Traditional Community*

**Delete whichever is not applicable*

ANNEXURE C

**NOTIFICATION OF APPOINTMENT OF SECRETARY
OF TRADITIONAL AUTHORITY**

I*Chief/Head

of the Traditional Community of

on at

have under section 10(3) of the Traditional Authorities Act, 2000, appointed as Secretary of the traditional Authority:

Surname: First Name:
Citizenship: Id.:
Date of birth: Sex:
Office and traditional title (if any)

Address of Traditional Authority
.....
.....
.....
.....

I declare that the above information is, to the best of my knowledge and belief correct.

.....
**Signature/Thumb print of *Chief/Head of the Traditional Community*

**Delete whichever is not applicable*
