



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 38

2004

APPOINTMENT OF COMMISSION OF INQUIRY INTO THE ACTIVITIES,
AFFAIRS, MANAGEMENT AND OPERATION OF THE FORMER
AMALGAMATED COMMERCIAL HOLDING (PTY) LTD (AMCOM)
REGISTRATION NO. 93/261 AND THE FORMER DEVELOPMENT BRIGADE
CORPORATION (DBC) ESTABLISHED UNDER SECTION 2 OF THE
DEVELOPMENT BRIGADE CORPORATION ACT, 1992 (ACT NO. 32 OF 1992)

Under the powers vested in me by section 1 of the Commission's Act, 1947 (Act No. 8 of 1947), I

- (a) declare the provisions of that Act to be applicable with reference to the Commission of Inquiry into the activities, affairs, management and operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM)

Registration No. 93/261 and the former Development Brigade Corporation (DBC) established under section 2 of the Development Brigade Corporation Act, 1992 (Act No. 32 of 1992); and

- (b) make regulations set out in the Schedule with reference to that Commission.

Given under my Hand and Seal of the Republic of Namibia, at Windhoek, this 3rd day of June, Two Thousand and Four.

SAM NUJOMA
PRESIDENT

BY ORDER OF THE PRESIDENT-IN-CABINET

SCHEDULE

1. In these regulations, unless the context otherwise indicates -

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Commission of Inquiry into the Activities, Affairs, Management and Operations of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) established under section 2 of the Development Brigade Corporation Act, 1992 (Act No. 32 of 1992);

“document” includes any book, register, correspondence, pamphlet, note, record (including any tape or other mechanical recording of anything or any transaction of any such notice, record, tape or other mechanical recording), list, circular, plan, placard, poster, publication, drawing, photograph or picture;

“financial institution” means -

- (a) any banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998);
- (b) any building society registered under the Building Societies Act, 1986 (Act No. 2 of 1986);
- (c) any registered insurer, insurance agent or insurance broker as defined in section 1 of the Short-term Insurance Act, 1998, (Act No. 4 of 1998); or
- (d) any registered insurer, insurance agent or insurance broker as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998);

“inquiry” means the inquiry conducted by the Commission in the execution of its terms of reference;

“premises” includes any land, building, structure, or any part of any building or structure or any vehicle, vessel, aircraft, or other means of transport;

“staff member” means any person designated under regulation 2 to assist the Commission;

“Terms of Reference” means the Terms of Reference of the Commission as set out in terms of this Proclamation.

2. (1) The administrative functions of the Commission shall be performed by staff members in the public service assigned for that purpose by the Secretary to the President.

(2) The Secretary and other staff members referred to in sub-regulation (1) shall perform their duties subject to the control and direction of the Commission.

(3) The Commission may, on such terms and conditions as the Secretary to the President may approve -

- (a) appoint any person to assist the Commission in or in connection with the execution of its inquiry;
- (b) designate one or more persons to be present at the inquiry and to present evidence and arguments which have a bearing on the inquiry and to cross-examine witnesses appearing before the Commission, subject to regulation 10.

4. The Chairperson shall determine the procedure to be following at any proceedings of the Commission.

5. All sittings of the Commission shall be held at such times and places as may be determined by the Commission.

6. Written submissions to the Commission shall -

- (a) be prepared in the official language, if possible, or in any other language approved by the Secretary to the Commission;
- (b) if and where possible be typewritten or word-processed on A4-size paper;
- (c) bear the name, address and telephone or fax number and e-mail address of the author and;
- (d) be submitted in tenfold.

7. No shorthand notes or mechanical records of the proceedings of the Commission shall be transcribed except by order of the Commission.

8. (1) Every person employed for, or assisting with, the performance of the functions of the Commission, including a person employed to transcribe the proceedings of the Commission, shall preserve and aid in preserving secrecy with regard to the functions, proceedings and documents of the Commission and any matter or information which may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as disclosure of such proceedings, documents, matter or information is necessary for the purpose of the Commission's report, a criminal investigation or prosecution, or is required in terms of an order of a competent court.

(2) Every person referred to in sub-regulation (1), except a member of the Commission shall at the outset take an oath or make an affirmation of fidelity and secrecy before the Chairperson, or a staff member authorized thereto by the Chairperson, in a form to be determined by the Commission.

(3) No person shall, except in so far as it may be necessary in the execution of the Commission's terms of reference, for the purposes of a criminal investigation or prosecution, or in terms of an order of a competent court, publish or furnish or communicate to any person the report of the Commission or a copy or any part thereof or an extract therefrom or any finding, recommendation or information contained therein, unless and until the President has made the report available for publication.

9. (1) Without limitation of the power conferred by section 3 of the Act, the Commission may, in accordance with that section, cause any director, manager or other employee of a financial institution to be summoned -

- (a) to produce any record, account or other document belonging to or in the possession, custody or control of the financial institution, including computer data or printouts or any other electronic medium by which information or data is stored and which relates to any person contemplated in paragraph 3.1(a), (b), (c), or (d) of the Commission's terms of reference; and

- (b) to provide any information related to any record, account, document or article referred to in paragraph (a).

(2) A director manager or employee of a financial institution referred to in sub-regulation (1) must, upon a request by the Commission, produce any document referred to in that sub-regulation and provide any requested information in relation thereto notwithstanding any duty of secrecy or other restriction on disclosure imposed by any law, agreement or otherwise.

10. (1) No person, other than a member of the Commission or a person designated under regulation 3(b) nor the legal representative of any person, shall have the right to cross-examine any witness appearing before the Commission, unless the Chairperson permits such cross-examination because the Chairperson deems it necessary in the interest of the inquiry.

(2) The Chairperson may, when he or she permits the cross-examination of any witness in terms of sub-regulation (1), limit such cross-examination to the subjects and in the manner which he or she deems necessary in the interests of the inquiry.

11. Any witness appearing before the Commission may, in the discretion of the Chairperson and in the manner determined by him or her, be assisted by a legal practitioner, or by any person, including, if he or she so desires, a person designated by the Chairperson for that purpose.

12. In any proceedings before the Commission the Chairperson of the Commission shall not bound by the rules of laws relating to the admissibility of evidence.

13. If, at the time of any person giving evidence before the Commission, members of the general public are or have been excluded from attendance of the proceedings of the Commission, the Chairperson may, may on the request of such person, direct that no person shall disclose in any manner whatsoever the name or address of that person or any information likely to reveal his or her identity.

14. (1) Any member of the Commission or staff member authorized thereto in writing by the Commission, may at any reasonable time, for that purpose of the inquiry -

- (a) enter any premises and carry out any investigation which he or she deems necessary; and
- (b) demand, inspect, seize or take copies of, or make extracts from any book, account or document found on such premises and which such member or staff member, believes may have a bearing on any matter relating to the inquiry.

(2) Without prejudice to the generality of the power conferred by sub-regulation (1), a member or staff member referred to in that sub-regulation may, in the exercise of the power conferred by the sub-regulation, demand from any director or the manager or any other employee of any financial institution -

- (a) the disclosure and inspection of any record, account or other document belonging to or in the possession, custody or control of the financial institution, including computer data or printouts or any other electronic medium by which information or data is stored and which relates to any person contemplated in paragraph 3.1(a), (b), (c) or (d) of the Commission's Terms of Reference; and
- (b) any information related to any record, account, document or article referred to in paragraph (a).

(3) A director, manager or employee of a financial institution referred to in sub-regulation (2) must comply with a demand by a member or staff member under that sub-regulation notwithstanding any duty of secrecy or other restriction on disclosure imposed by any law, agreement or otherwise.

(4) A member of the Commission or a staff member must, when exercising the power conferred by this regulation, show the written authorization referred to in sub-regulation (1) to any person in relation to whom the power is exercised and who requires proof of such authorization.

15. No person shall insult, disparage or belittle the Chairperson or any other member of the Commission or prejudice, influence or anticipate the proceedings or findings of the Commission.

16. Any person who contravenes or fails to comply with -

- (a) regulation 7 or 8, or any order of the Chairperson made thereunder; or
- (b) regulation 15,

shall be guilty of an offence and liable on conviction -

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding N\$200 or imprisonment for a period not exceeding six months; and
- (ii) in the case of an offence referred to in paragraph (b) to a fine not exceeding N\$1000 or imprisonment for a period not exceeding one year.

17. No -

- (a) Commissioner;
- (b) Secretary to the Commission;
- (c) Staff Member; or
- (d) Person appointed or designated to perform any task on behalf of the Commission;

shall, during and after the existence of the Commission, be liable in respect of anything done or omitted in good faith in the exercise of power or the performance of a duty conferred by or under the Act or these Regulations, or in respect of anything reflected in any public hearing of the Commission, report, finding, point of view, or recommendation made or expressed in good faith and submitted or made known in terms of the Act or these Regulations.

Government Notice

OFFICE OF THE PRESIDENT

No. 132

2004

APPOINTMENT OF COMMISSION OF INQUIRY INTO THE ACTIVITIES, AFFAIRS, MANAGEMENT AND OPERATION OF THE FORMER AMALGAMATED COMMERCIAL HOLDING (PTY) LTD (AMCOM) REGISTRATION NO. 93/261 AND THE FORMER DEVELOPMENT BRIGADE CORPORATION (DBC) ESTABLISHED UNDER SECTION 2 OF THE DEVELOPMENT BRIGADE CORPORATION ACT, 1992 (ACT NO. 32 OF 1992)

It is made known for general information that His Excellency Dr. Sam Nujoma, President of the Republic of Namibia, has appointed a Commission of Inquiry into the Activities, Affairs, Management and Operations of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) established under section 2 of the Development Brigade Corporation Act, 1992 (Act No. 32 of 1992), consisting of the following members:

Mr. Petrus Unengu, who is the Chairperson;
Mr. Bro-Mathew Shinguadja;
Mr. Festus Mbandeka;
Mr. Brian Nalisa; and
Ms. Emma Haiyambo.

Adv. Lovisa Indongo has been appointed by the President as Secretary and a Member of the Commission.

1. The Chairperson may, in consultation with the Secretary to the President, co-opt additional persons from time to time to assist the Commission in an advisory capacity in the performance of its assigned tasks.
2. The Terms of Reference of the Commission are as follows:
 - 2.1 To inquire and report generally upon the activities, affairs, management and operations of AMCOM and the DBC since their establishment until dissolution and, more particularly, but without derogating from the generality of the aforesaid, to inquire and report upon:
 - (a) the usage, handling and disposal of all funds allocated to the entities by appropriation by Parliament of the Republic of Namibia, loans, overdrafts, grants from foreign Governments/Funds and any other source;
 - (b) the usage, handling and disposal of all property, equipment and materials acquired by the entities;
 - (c) the structuring of the holding companies of the entities where relevant in the view of the Commission, including any business activities of such holding companies, their subsidiaries and business ventures where the Commission deems such investigation relevant to the fulfillment of its functions under these Terms of Reference;
 - (d) the overall competency of management of the entities as regarding their structuring, business units, business plans, decision making, resource allocation, control systems and viability of business decisions;
 - (e) the usage, handling and disposal of all proceedings arising from or in connection with the business activities, investments, income, dividends paid or reinvestments by the entities and in particular, all borrowings, loans, alienations, hypothecations, disposal of fixed and movable assets;
 - (f) the services rendered by each entity, business carried out by the entities on their own or in association with any other individual or entity;
 - (g) the execution of responsibilities and decision making by supervising authorities in respect of the entities as regarding the:
 - i) appointment and activities of the Board of Directors,
 - ii) Management, including the Chief Executive Officers,
 - iii) Human Resource Policies and Practices,
 - iv) Remuneration Policy, and
 - v) Investment and Business Policies.
 - (h) the delegations surrounding the financial management of the entities respectively by the relevant authorities as the case may be; and
 - (i) all contracts for services and procurement actually engaged, planned or anticipated.

- 2.2 The Commission shall be entitled to report to the President, as and when the Commission deems fit, any acts, by commission or omission, of intimidation of any witness, potential witness or sources of information regarding any matter relevant the Commission's investigations.
- 2.3 The Commission shall report to the President on its findings and make relevant recommendations as it may deem necessary in light of the findings.
3. The Commission shall submit an Interim Report on the Terms of Reference within 3 (three) months of the date of appointment of the Commission and its Final Report within 2 (two) months of submission of its Interim Report or such further period as the President may, at the request of the Commission, determine.
4. Interested persons wishing to submit written representations to or give evidence before the Commission are requested and required to send or submit, in the manner prescribed in the regulations set out in the Schedule to Proclamation No. 38 of 2004, written submissions in which those representations or a summary of that evidence is set out, to:

The Secretary
Commission of Inquiry: AMCOM and DBC
c/o The Secretary to the President
Private Bag 13339
Windhoek

State House, Windhoek
Tel No: (061) 207 7111
Facsimile at (061) 221 780 or 221 770

5. The deadline for the aforesaid submissions shall be set by the Commission, which shall be entitled to hear any representation by any person or persons during any time of the existence of the Commission.
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