



Republic of Namibia
Annotated Statutes

Namibia Industrial Development Agency Act 16 of 2016

(GG 6202)

brought into force on 1 October 2018 by GN 253/2018 (GG 6724)

with the exception of sections 30, 32, 33 and 34,

which were brought into force on 15 November 2018 by GN 295/2018 (GG 6767)

ACT

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

(Signed by the President on 12 December 2016)

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BE IT ENACTED as passed by the Parliament, and assented by the President, of the Republic of Namibia as follows:

Definitions

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

“Agency” means the Namibia Industrial Development Agency established by section 2;

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

“chairperson” means the director appointed as chairperson of the Board under section 8;

“Chief Executive Officer” means the Chief Executive Officer of the Agency appointed under section 20;

“director” means a director of the board referred to in section 8;

“economic zone” means the exclusive economic zone within the Republic of Namibia as defined in section 4 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990);

“export processing zone” means an export processing zone as defined in section 1 of the Export Processing Zones Act, 1995 (Act No. 9 of 1995);

“Minister” means the Minister responsible for trade and industry; and

“Ministry” means the Ministry responsible for the administration of trade and industry.

Establishment of Agency

2. There is established a body corporate to be known as the Namibia Industrial Development Agency.

Objects of Agency

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3. The objects of the Agency include -
- (a) executing, monitoring, reviewing and updating of industrial policies implementation, strategic framework and sector growth strategies;
 - (b) researching on and development of new opportunities for value addition;
 - (c) developing key industrial and business infrastructure;
 - (d) promoting and facilitating trade, investment and the introduction of new technology;
 - (e) offering advisory services and implementing business incentives and support schemes contributing to industrialisation;
 - (f) acting as agent in making equity investments on behalf of the Namibian Government and its institutions;
 - (g) entering public private partnerships for fostering economic transformation;
 - (h) taking such measures as are necessary to enable the Agency to exercise effective control over its interest in enterprises in which it has invested;
 - (i) promoting viable strategic investment projects in development initiatives and export processing zones as part of the Government's industrial and integrated rural development strategies;
 - (j) undertaking such marketing and promotional activities, campaigns and schemes in terms of any law of Namibia as the Agency considers necessary to ensure the successful growth and expansion of Namibia's export processing zones and economic zones;
 - (k) promoting or assisting in the promotion of bodies corporate operating in Namibia and countries that Namibia enter into agreement with for purposes of conducting industrial operations, development, trade and service operations;
- [The verb "enter" should be "enters" to be grammatically correct.]**
- (l) facilitating, developing, coordinating and fostering partnerships across all spheres of government, the private sector and relevant stake-holders that may assist the Agency to achieve its objectives;
 - (m) undertaking economic and sector studies and surveys so as to identify investment opportunities;
 - (n) undertaking research generally on matters relating to industry, industry development and productivity;
 - (o) in consultation with the Ministry and the Ministry responsible for finance implementing procurement and outsourcing policies and programmes that promote economic empowerment;
 - (p) with the consent of the Minister, developing methods and programmes to provide adequate funding for continuous sustainable promotional operations and manage

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and maintain a publicity programme promoting Namibia in relation to export-driven industrial growth;

[Paragraph (p) is reproduced above as it appears in the *Government Gazette*. There is a grammatical problem. The verbs “manage” and “maintain” were perhaps intended to be “managing” and “maintaining”.]

- (q) performing and assisting in the execution of other tasks that the Minister assigns to the Agency; and
- (r) undertaking such marketing and promotional activities, campaigns and representation schemes as the Agency considers necessary to ensure successful growth and expansion of Namibia’s export processing zones and offshore enterprise developments.

Powers of Agency

- 4. (1) For the purpose of achieving its objects the Agency may -
 - (a) in consultation with the Minister and the Minister responsible for finance -
 - (i) establish or acquire an interest in any juristic entity; or
 - (ii) enter into partnerships or participate in joint ventures with another natural or juristic person;
 - (b) in terms of its investment policy as approved by the Minister hold, manage, develop, let, hire or buy, subscribe for or otherwise acquire, or sell or otherwise dispose of, or hypothecate or otherwise deal in, immovable or movable property of any sort, including stocks, shares, bonds, debentures and securities of, and any interest in any corporate body and where necessary to act as a trustee for debenture holders;
 - (c) in consultation with the Minister and the Minister responsible for finance and in terms of its investment policy invest money of the Agency not immediately required by the Agency for its affairs or apply that money in the manner approved by the Board for the establishment of -
 - (i) a loan redemption fund;
 - (ii) a reserve fund to provide for the maintenance, replacement and improvement of assets; or
 - (iii) a contingency reserve fund;
 - (d) secure, with the prior approval of the Minister, the registration of the Agency as a body corporate in any country or territory;
 - (e) provide or procure technical or other assistance, expert advice, information or guidance in any sector of interest;
 - (f) in consultation with the Minister and the Minister responsible for finance, raise money by such means and for such purposes as approved by the Minister;

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- (g) in consultation with the Minister and the Minister responsible for finance accept grants and donations and make grants and donations;
- (h) open bank accounts;
- (i) in consultation with the Minister and the Minister responsible for agriculture, enter into contracts and perform acts, within Namibia or elsewhere, necessary, incidental or conducive to the realisation of the objects of the Agency, or which are calculated, either directly or indirectly, to enhance the value of the services which the Agency can render towards industrial or agricultural development or ancillary or related economic activities;
- (j) with the consent of the Minister enter into agreement with companies or other corporate bodies for the purpose of advancing the establishment and development of export processing zones and offshore activities in Namibia;
- (k) with the consent of the Minister enter into agreements with companies or other corporate bodies that have applied to become licensed or certified as offshore enterprises in the Namibian offshore enterprise industry, including export processing zone enterprises or management companies;
- (l) coordinate and promote the creation of facilities and services to establish, assist and sustain offshore and export processing enterprises;
- (m) in respect of export processing zones -
 - (i) determine fees, charges or other levies to be paid by offshore enterprises;
 - (ii) by notice in the *Gazette* make rules not inconsistent with this Act and the Export Processing Zones Act, 1995 (Act No. 9 of 1995) for the control and management of all export processing and other offshore activities and operations; and
 - (iii) establish criteria for the management and operation of all export processing and other offshore operations; and
- (n) generally in addition to anything that it is required or empowered to do in terms of this Act, do everything that is necessary for or conducive to the attainment of its objects.

Board of directors

5. A board, consisting of six (6) members, known as the Board of directors of the Agency must be established in accordance with section 15 of the Public Enterprises Governance Act 2006 (Act No. 2 of 2006) and vested with the authority, subject to this Act, to exercise the powers and perform the duties conferred on the Agency by this Act including to -

- (a) administer and control the affairs of the Agency;
- (b) determine the policies and procedures of the Agency; and
- (c) exercise control in general over the performance and the functions of the Agency.

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

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Powers and functions of members of Board

[The word “members” in the heading is misspelt in the *Government Gazette*, as reproduced above. The word is spelt correctly in the heading as it appears in the ARRANGEMENT OF SECTIONS.]

6. The Board must ensure that it has and maintains -
- (a) proper systems of financial and risk management;
 - (b) appropriate procurement systems which are fair, equitable, transparent, competitive and cost effective; and
 - (c) proper systems of regulating expenses for operational purposes.

Fiduciary duties of members of Board

7. The Board members must -
- (a) exercise their duties with utmost care and responsibility;
 - (b) act with fidelity, honesty, integrity and in the best interest of the Agency; and
 - (c) not use their positions or privileges of, or confidential information obtained as members of the Board, for personal gain or to improperly benefit another person.

[There should be a comma after the phrase “or confidential information obtained as” to set it off properly.]

Constitution of Board

8. (1) The members, chairperson and vice-chairperson and all alternative directors of the Board are appointed by the Minister in terms of section 15(5) of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006).

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

(2) The directors are appointed by the Minister from among persons with expertise and experience with regard to socio-economic development, industrial development, development finance, agricultural development and administration.

Alternate directors

9. An alternate director appointed by the Minister in terms of section 15 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006), when acting in the place of a director, has all the powers and must discharge all the duties of only that director to whom he or she is alternate.

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

Persons disqualified from being director

10. A person may not be appointed or remain as a director or alternate director if he or she -

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- (a) is a member of Parliament of the Republic of Namibia;
- (b) is an unrehabilitated insolvent;
- (c) has during the period of ten years preceding the date of appointment, been convicted, whether in Namibia or elsewhere, of theft, fraud, forgery, uttering or perjury, an offence under any law on corruption or any other offence involving an element of dishonesty;
- (d) has a financial or other interest likely to prejudicially affect the performance of his or her duties as a director of the Agency; or
- (e) is disqualified in terms of the Companies Act, 2004 (Act No. 28 of 2004) from holding the office of director.

Term of office of directors

11. (1) A person appointed as director in terms of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006) holds office for such period as specified by the Minister.

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

(2) The term referred to in subsection (1) must be no more than five years.

(3) On the expiration of the period for which a director referred to in subsection (1) is appointed he or she, subject to section 10, is eligible for reappointment by the Minister.

Remuneration of directors

12. A director or alternate director who is not in the full-time employment of the Public Service must in respect of his or her services as director, subject to section 22(1) of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006), be paid out of the funds of the Agency such remuneration and such allowances as determined by the Minister in concurrence with the Minister responsible for finance.

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

Vacation of office by directors

13. (1) The office of a director becomes vacant -

- (a) upon the expiry of one month after the date upon which he or she gives notice in writing to the Minister of his or her intention to resign;
- (b) if he or she is required in terms of subsection (2) to vacate office;
- (c) if, after such director was given not less than seven days notice of each meeting, he or she is absent from three consecutive meetings of the Board without the leave of the chairperson; or
- (d) if he or she becomes subject to any disqualification referred to in section 10.

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(2) The Minister may require a director to vacate his or her office if the Minister is satisfied that the director -

- (a) has conducted himself or herself in a manner unbecoming of a director or that is prejudicial to the interests or reputation of the Board or of the Agency;

[The word “prejudicial” in paragraph (a) is misspelt in the *Government Gazette*, as reproduced above.]

- (b) has failed to comply with the conditions of his or her office fixed by the Minister; or
- (c) is mentally or physically incapable of efficiently performing his or her functions as a director.

(3) Upon the office of a director becoming vacant, the Minister must appoint, subject to subsection (4), a person to fill the vacancy until the expiry of the period during which the director would, but for the vacation of his or her office, have continued in office.

(4) If a director would, but for the vacation of his or her office, have continued to hold the office for less than six months, the Minister need not appoint a person to fill the vacancy as contemplated in subsection (3).

Meetings of Board

14. (1) The first meeting of the Board must be held at a time and place determined by the Minister and thereafter, subject to subsection (2), meetings of the Board are to be held at such times and places determined by the Board.

(2) Meetings of the Board must be held at least once every three months and the Board must fix the procedure at those meetings.

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

(4) The chairperson or, in his or her absence, the vice-chairperson, presides at a meeting of the Board.

(5) Should both the chairperson and the vice-chairperson be absent the members present must elect one member from their number to preside over that meeting.

(6) A majority of directors constitute a quorum at a meeting of the Board.

(7) A decision of a majority of the directors present at a meeting of the Board constitutes the decision of the Board and, in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(8) The person presiding at a meeting of the Board may permit a person who has an interest in a matter due to be considered at that meeting, or a representative of such a person, to attend such meeting and to take part in such discussions of the Board as to such interested matter.

(9) An interested party or representative of an interested party attending a meeting of the Board as contemplated in subsection (8) does not have the right to vote on any matters before the Board.

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(10) A decision of the Board or an act performed under the authority of the Board may 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 authorized, 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.

[The Government Gazette uses the alternative spellings
“authorized” and “authorised” as reproduced above.]

(11) The Board must cause minutes to be kept of the proceedings of every meeting of the Board and of every committee established by the Board under section 15 and the Board must, 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.

Committees of Board

15. (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 considers fit.

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

(3) A committee established under subsection (1) must consist of at least one member of the Board and the chairperson of a committee must be a member of the Board.

(4) The chairperson and the Chief Executive Officer may attend any meeting of a committee, take part in the proceedings thereof and the chairperson may vote on any matter at any such meeting.

(5) The Board may dissolve or reconstitute a committee at any time.

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

16. No director, alternate director or member of an *ad hoc* committee established by the Board is 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 willful misconduct, gross negligence, dishonesty, fraud or failure to comply with any provision or direction or decision under this Act.

Disclosure of interest

17. (1) If a director, alternate director or a member of a committee or his or her spouse, including a spouse in a customary union, or his or her child or any other member of his or her household, or his or her partner, agent or business associate, has a personal or financial interest in any matter to be considered at any meeting of the Board, he or she must -

- (a) immediately disclose the nature and extent of such interest at the meeting of the Board; and
- (b) withdraw from the meeting during the discussion of and voting on the matter.

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

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(3) A director who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

(4) A contravention or failure to comply referred to in subsection (1) by a member of the Board constitutes a ground for the removal of that member from his or her office by the Minister.

Delegation of powers and assignment of duties

18. (1) The Board may in writing delegate or assign to the Chief Executive Officer appointed in terms of section 21 or any other employee of the Agency or any other person any power or duty conferred or imposed on the Board by this Act other than the power to appoint the Chief Executive Officer.

(2) The Chief Executive Officer may delegate any power conferred on or assign any duty assigned specifically to him or her under subsection (1) to any employee of the Agency.

(3) A delegation or assignment by the Board under subsection (1) or the Chief Executive Officer under subsection (2) -

- (a) must be ratified by the Board prior to execution;
- (b) may be effected subject to such conditions as the Board or the Chief Executive Officer determines;
- (c) may be withdrawn or varied by the Board or the Chief Executive Officer; and
- (d) does not preclude the Board or the Chief Executive Officer from exercising or performing any power or duty so delegated or assigned.

Consultation with Minister

19. (1) The Board -

- (a) must consult with the Minister where directed to do so by the Minister in the exercise of powers conferred upon and the performance of functions imposed upon the Board by this Act or any other law; and
- (b) may consult with the Minister in connection with any matter that the Board wishes to bring to the attention of the Minister.

(2) If after consultation contemplated in subsection (1) the Minister is of the opinion that the policies pursued by the Agency are not adequate for or conducive to the achievement of the objectives of the Agency, the Minister, by notice in writing, may issue a policy directive to be adopted by the Agency setting out -

- (a) the essential policy reasons; and
- (b) specifying the period during which such policy must be implemented by the Agency.

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(3) The Agency must give effect to the policy as determined by the Minister within the period referred to in subsection (2)(b).

Chief Executive Officer and other staff

20. (1) Subject to the provisions of section 32(1), the Board, with the approval of the Minister, must appoint a person, other than a director, to hold the office of Chief Executive Officer.

(2) The Board, with the approval of the Minister, must, subject to section 22(3) of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006), determine the period of office, remuneration and other conditions of service of the Chief Executive Officer.

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

(3) The appointment of the Chief Executive Officer is for a term of five years, renewable upon expiration of the period for which he or she was so appointed.

(4) The Chief Executive Officer -

- (a) must be in the full-time employment of the Agency and not engage in any other occupation or employment, whether for remuneration or not, without the prior written approval of the Board;
- (b) must perform such functions as are conferred by this Act or delegated or assigned to him or her by the Board;
- (c) is entitled to attend all meetings of the Board and to take part in discussions at such meetings without voting on matters under consideration before the Board; and
- (d) is responsible for the supervision and control of the staff of the Agency.

(5) If for any reason the Chief Executive Officer is unable to act as such, the Board may, subject to the approval of the Minister -

- (a) designate any employee of the Agency; or
- (b) appoint any other person on such terms and conditions as the Board may determine;

to act during such absence, incapacity or until a new Chief Executive Officer is appointed and the person so appointed, while so acting, has all the powers and must discharge all the duties of the Chief Executive Officer.

(6) The office of Chief Executive Officer becomes vacant if he or she -

- (a) by notice addressed and delivered to the Board resigns as Chief Executive Officer on not less than three months' notice; or
- (b) is removed from office by the Board under subsection (7).

(7) The Board may at any time, with the approval of the Minister, remove the Chief Executive Officer from office if the Board is satisfied that such Chief Executive Officer is for

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whatsoever reason incapable of efficiently performing the functions of the Chief Executive Officer.

(8) The removal of the Chief Executive Officer by the Board under subsection (7) may only occur after the Board has afforded the Chief Executive Officer an opportunity to be heard and make representations on the proposed removal and allegations.

(9) The Board may, on the terms and conditions determined by it, employ such other officers and employees, and may engage such agents, advisers and consultants, as it considers necessary for carrying out the purpose of this Act and for the proper conduct of the business of the Agency.

Financing of Agency

21. (1) Funds of the Agency consist of -

- (a) moneys appropriated by Parliament to finance the functions of the Agency;
- (b) moneys which vest in the Agency by virtue of the transfer of the assets and rights of the Namibia Development Corporation and Offshore Development Company to the Agency;
- (c) moneys received by virtue of the functions performed by the Agency;
- (d) moneys paid to the Agency by the Government or any institution of the Government as reimbursement of costs incurred by the Agency acting as agent of the Government or such institution;
- (e) moneys received by the Agency by virtue of grants or donations;
- (f) moneys derived by virtue of the realisation of assets of the Agency;
- (g) moneys borrowed by the Agency;
- (h) interest on investments made in accordance with section 27 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006) by the Agency; and

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

- (i) other moneys received by or made available to the Agency from other lawful sources for the purposes of this Act.

(2) Payment of any amount of money to serve as capital of the Agency may be made at such times and in such amounts as determined following consultations between the Minister, the Minister responsible for finance and the Board.

(3) The Agency must utilize its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers.

(4) Moneys received by the Agency by virtue of a grant or donation must be utilized in accordance with the conditions of the grant or donation concerned.

Financial year

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22. The financial year of the Agency ends on 31 March in each year.

Business and financial plans

23. (1) The Board must annually, in such form and at such time as the Minister directs, submit to the Minister for approval, at least 90 days before the commencement of its next financial year, submit a business and financial plan to the Minister in accordance with section 19 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006).

[Subsection (1) contains superfluous words. It was probably intended to read in one of the following ways:

“(1) The Board must annually, in such form and at such time as the Minister directs, submit to the Minister for approval, at least 90 days before the commencement of its next financial year, ~~submit~~ a business and financial plan ~~to the Minister~~ in accordance with section 19 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006).”

“(1) The Board must annually, in such form and at such time as the Minister directs, ~~submit to the Minister for approval~~, at least 90 days before the commencement of its next financial year, submit a business and financial plan to the Minister **for approval** in accordance with section 19 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006).”

Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

(2) The plans in terms of subsection (1) must include a statement of the estimated income and expenditure of the Agency for the following financial year and the Board may during the course of a financial year submit to the Minister for approval supplementary estimates of expenditure for that financial year.

(3) The plans in terms of subsection (1) must include specific growth objectives for the offshore industry, including -

- (a) creation of employment;
- (b) contribution to trade balance; and
- (c) training of industrial personnel and matters incidental thereto.

(4) The Agency may act only in accordance with its business plan approved in terms of subsection (1), unless it has first obtained the written approval of the Minister to do otherwise.

Accounting and auditing

24. (1) The Board must keep such account books as are necessary to represent accurately the state of affairs, business, transactions and financial position of the business of the Agency.

(2) The Board must cause the accounts and records referred to in subsection (1) to be audited annually by a person registered as an auditor under section 23 of the Public Accountants and Auditors Act, 1951 (Act No. 51 of 1951), and appointed by the Agency.

[The correct name of Act 51 of 1951 is the “Public Accountants’ and Auditors’ Act” (with apostrophes).]

Annual report

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25. (1) The Board must not later than six months after the meeting following the end of the financial year has been held submit to the Minister the annual report on the activities and operations in respect of its last preceding financial year in accordance with section 26 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006).

[Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.]

- (2) The annual report of the Agency must include -
- (a) the audited financial statements of the Agency;
 - (b) the auditor's report on the Agency's financial statements;
 - (c) a statement on the extent to which the Agency has met its objectives for the financial year; and
 - (d) all other information in respect of the financial affairs of the Agency as is required by the Minister to be included therein.

(3) The Minister must present the report submitted in terms of subsection (1) to the Table of the National Assembly within 30 days after receipt thereof, if the National Assembly is in ordinary session or, if the National Assembly is not in ordinary session, within 30 days after the commencement of its first ensuing ordinary session.

Submission of certain matters to Minister

26. (1) The Minister may require the Board to submit to him or her for decision any matter relating to the powers of the Agency 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) Regarding matters submitted to the Minister in terms of subsection (1), the Minister -

- (a) must 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 thinks fit;

and every such decision given or condition determined is for all purposes 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 without the prior approval of the Minister.

Windup of Agency

27. The Agency may not be wound up except by or under the authority of an Act of Parliament.

Use of name of Agency

28. (1) Subject to the provisions of subsection (2), a person or body corporate may not carry on business, or in the case of a body corporate, be registered under any law relating to

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the registration of bodies corporates under a name which is the same as that of the Agency or so closely resembles it as to be calculated to deceive.

[The phrase “bodies corporates” should be “bodies corporate”.]

(2) A body corporate may 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 before the commencement of this Act.

(3) Subject to the provisions of subsection (2), any person who carries on business in contravention of subsection (1) commits an offence and is liable on conviction to fine not exceeding N\$6 000 or to imprisonment for a period not exceeding 12 months.

Application of Companies Act

29. (1) Subject to subsection (2), the Companies Act, 2004 (Act No. 28 of 2004), is not applicable in relation to the Agency.

(2) The Minister may, after consultation with the Board, by notice in the *Gazette* declare that any provision of the Companies Act, 2004, which is not inconsistent with the provisions of this Act, applies in relation to the Agency 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 Agency

30. (1) On a date determined by the Minister by notice in the *Gazette* all assets, rights, liabilities and obligations of the Namibia Development Corporation established by section 2 of the Namibia Development Corporation Act, 1993 (Act 18 of 1993) vest in the Agency.

(2) On a date determined by the Minister by notice in the *Gazette* all assets, rights, liabilities and obligations of the Offshore Development Company established by section 26 of the Export Processing Zone Act, 1995 (Act No. 9 of 1995) vest in the Agency.

(3) Where, on or after the date determined in subsection (1) or (2), any steps are required to be taken in order to effect the transfer or delivery of any previous asset or right of the -

- (a) Namibia Development Corporation referred to in subsection (1); and
- (b) the Offshore Development company referred to in subsection (2);

to the Agency such steps may be taken, subject to the directions of the Minister, by the Permanent Secretary responsible for trade and industry.

(4) Any question as to whether any previous asset, right, liability or obligation of the said Namibia Development Corporation or Offshore Development Company is vesting in the Agency as contemplated in subsections (1) and (2), is decided by the Minister after consultation with the Board of the Agency.

(5) After the dates determined under subsections (1) and (2) following the commencement of the Act, reference in any law or document to the Namibia Development Corporation or Offshore Development Company respectively must be construed as a reference to the Agency.

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(6) The registrar of deeds must at the request of the Agency effect the entries and endorsements which may be considered necessary in order to carry into effect the provisions of subsections (1) and (2).

(7) No transfer duty, stamp duty, office fees or other charges are payable in respect of any vesting in terms of subsections (1) and (2) or in respect of any entry or endorsement referred to in subsection (6).

Transfer of staff

31. (1) The Minister responsible for Public Enterprises in consultation with the Minister must identify and appoint the first Chief Executive Officer of the Agency.

(2) Where any person who was in the service of the Namibia Development Corporation or the Offshore Development Company immediately before the commencement of this Act agrees to transfer from that service to the service of the Agency, he or she must, 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 Agency, enjoy such terms and conditions of employment as are not less favorable than those enjoyed in the service of the said Namibia Development Corporation or the Offshore Development Company immediately before the commencement of this Act, and his or her service with that Corporation or Company must, for the purpose of determining rights to or eligibility for retirement, pension, sick or vacation leave or any gratuity, be considered to be in the service of the Agency.

(3) The Board must within a period of three months from the date of commencement of this Act, or such longer period as the Minister approves, determine the terms and conditions of employment in respect of those persons referred to in subsection (2) whose services the Board wishes to retain 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 immediately before he or she transferred his or her services to the Agency may be no less favorable than those enjoyed while in the service of the said Namibia Development Corporation or the Offshore Development Company.

Amendment of Export Processing Zones Act, 1995

32. (1) Part IX of the Export Processing Zones Act, 1995 (Act No. 9 of 1995) is amended by -

- (a) the substitution for the title to that Part of the following title - "NAMIBIA INDUSTRIAL DEVELOPMENT AGENCY";
- (b) the substitution for the heading of section 26 of the following heading - "Purpose of Namibia Industrial Development Agency";
- (c) the substitution for subsection (1) of section 26 of the following subsection:

"(1) The Namibia Industrial Development Agency established by section 2 of the Namibia Industrial Development Agency Act, 2016 (Act No. 16 of 2016) shall in this Part be referred to as "the Agency" which agency shall comply with the requirements of, and have the powers, duties and functions as set out in, this Part.";

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- (d) the substitution for the word “company” wherever it occurs of the word “Agency”;
and
- (e) the repeal of sections 27 and 28.

Repeal of Namibia Development Corporation Act, 1993

33. Subject to sections 31 and 32, the Namibia Development Corporation Act, 1993 (Act No. 18 of 1993), is repealed.

Amendment of Development Bank of Namibia Act, 2002

34. The Development Bank of Namibia Act, 2002 (Act No. 8 of 2002) is amended by the repeal of section 22.

Short title and commencement

35. (1) This Act is called the Namibia Industrial Development Agency Act, 2016 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) The Minister may determine different dates for different provisions under subsection (1).