



Republic of Namibia
Annotated Statutes

Namibian Ports Authority Act 2 of 1994

(GG 810)

came into force on 1 March 1994, with the *exception* of paragraphs 4, 5, 6, 7, 8 and 9 of Schedule 2 (section 32(1) of Act); the remaining provisions (amendments to the National Transport Corporation Act 21 of 1987, which has since been repealed) were brought into force on 1 April 1995 by GN 58/1995 (GG 1044)

as amended by

National Transport Services Holding Company Act 28 of 1998 (GG 1961)

brought into force in relevant part on 1 April 1999 by GN 51/1999 (GG 2075)

Namibian Ports Authority Amendment Act 12 of 2000 (GG 2365)

brought into force on 8 November 2001, with the exception of sections 1, 2, 3 and 4, by GN 221/2001 (GG 2641);

remaining sections brought into force on 2 May 2002 by GN 66/2002 (GG 2734)

State-owned Enterprises Governance Act 2 of 2006 (GG 3698)

brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733);

amended and re-named as Public Enterprises Governance Act by Act 8 of 2015 (GG 5835);

repealed by Public Enterprises Governance Act 1 of 2019 (GG 6907)

ACT

To provide for the establishment of the Namibian Ports Authority to undertake the management and control of ports and lighthouses in Namibia and the provision of facilities and services related thereto; and to provide for matters incidental thereto.

(Signed by the President on 25 February 1994)

ARRANGEMENT OF ACT

Section

INTERPRETATION

1. Definitions

CHAPTER I

Namibian Ports Authority Act 2 of 1994

ESTABLISHMENT OF NAMIBIAN PORTS AUTHORITY

2. Establishment of the Namibian Ports Authority
3. Objects of the Authority
4. Board of directors
5. Vacation of office by directors and filling of vacancies
6. Alternate directors
7. Remuneration of directors and alternate directors
8. Duty of director to disclose interest
9. Meetings of the board
10. Committees of the board

CHAPTER II

TRANSFER OF PORTS AND ASSETS TO THE AUTHORITY

11. Transfer of Walvis Bay and Lüderitz ports and lighthouses to the Authority
12. Transfer of State land to Authority

CHAPTER III

FUNCTIONS, POWERS AND DUTIES OF THE AUTHORITY

13. Authority's area of jurisdiction in respect of ports
14. Functions of the Authority
15. Powers of the Authority
16. Employees of the Authority
17. Power to form companies
18. Power of Minister to give directions to Authority
19. Authority may let or subcontract facilities or services

CHAPTER IV

OPERATION OF PORTS

20. Appointment of Port Captain
21. Prohibition on construction of ports
22. Closure or expansion of ports, or curtailment or restriction of port facilities
23. Compulsory pilotage ports
- 23A. Performance Agreement

[section 23A inserted by Act 12 of 2000]

CHAPTER V

GENERAL

24. Financing of Authority
25. Financial year

Namibian Ports Authority Act 2 of 1994

26. Accounting and auditing
27. Annual report
28. Winding-up and judicial management
29. Regulations
30. Transitional provisions and saving
31. Repeal and amendment of laws
32. Short title and commencement

SCHEDULES

- Schedule 1
- Schedule 2

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

INTERPRETATION

Definitions

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

“Authority” means the Namibian Ports Authority established by section 2;

“Authority’s area of jurisdiction”, in relation to a port, means an area referred to in section 13;

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

“lighthouse” means any lighthouse of which the management and control has been entrusted to the Authority by or under this Act;

“master”, in relation to a ship, means any person, other than a pilot, having charge of that ship;

“Minister” means the Minister of Works, Transport and Communication;

“port” means the Walvis Bay port or the Lüderitz port as described in Schedule 1 or any other port of which the management and control has been entrusted to the Authority under section 12, and includes the water and land comprising the Authority’s area of jurisdiction in respect of such port;

“Port Captain” means the officer appointed as Port Captain of a port in terms of section 20, or anyone lawfully acting in that capacity;

“ship” includes a ship vessel, or boat of any kind whatsoever, whether propelled by steam, diesel or otherwise or towed;

“this Act” includes regulations made thereunder.

CHAPTER I

ESTABLISHMENT OF NAMIBIAN PORTS AUTHORITY

Namibian Ports Authority Act 2 of 1994

Establishment of the Namibian Ports Authority

2. (1) There is hereby established a body corporate to be known as the Namibian Ports Authority.

(2) The Registrar of Companies shall enter the name of the Authority in the registers kept by the Registrar in terms of the Companies Act, 1973 (Act 61 of 1973).

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

Objects of the Authority

3. (1) It shall, subject to the provisions of this Act, be the object and general duty of the Authority -

- (a) to manage and exercise control over the operation of ports and lighthouses and other navigational aids in Namibia and its territorial waters;
- (b) to provide facilities and services normally related to the functioning of a port; and
- (c) to conduct its business in accordance with sound and generally accepted business principles, but subject to subsection (2).

(2) Except where otherwise required in the national interest, the Authority shall conduct its business in such a manner as to ensure that the facilities and services relating to a port are operated in order to obtain maximum usage of such facilities and services at competitive prices which will yield a fair and reasonable profit to the Authority.

Board of directors

4. (1) The Authority has a board of directors, which shall be constituted, and the members whereof, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the Public Enterprises Governance Act, 2006.

[Subsection (1) is substituted by Act 12 of 2000 and by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006, which has been replaced by the Public Enterprises Governance Act 1 of 2019.]

(2)

[subsection (2) substituted by Act 12 of 2000 and deleted by Act 2 of 2006]

(3) A person is not eligible for appointment as director if he or she -

- (a) is an unrehabilitated insolvent; or
- (b) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

[subsection (3) substituted by Act 12 of 2000]

(4)

[subsection (4) substituted by Act 12 of 2000 and deleted by Act 2 of 2006]

Vacation of office by directors and filling of vacancies

5. (1) A director shall vacate his or her office if he or she -
- (a) resigns as director by written notice to the Minister;
 - (b) has been absent from three consecutive meetings of the board without the permission of the chairperson of the board;
 - (c) becomes subject to a disqualification referred to in section 4(2);
 - (d) is removed from office by the Minister under subsection (2).

[subsection (1) amended by Act 12 of 2000]

- (2) If the Minister is satisfied that a director -
- (a) is incapacitated by physical or mental illness;
 - (b) is otherwise unable or unfit to discharge the functions of a director,

the Minister may remove such director from office.

[subsection (2) amended by Act 12 of 2000]

(3) If the office of a director becomes vacant before the expiration of that director's period of office the vacancy shall be filled by the appointment of another person, in accordance with section 4(1), to hold office for the unexpired portion of that period.

[subsection (3) substituted by Act 12 of 2000]

Alternate directors

6. (1) Subject to section 15(2) of the Public Enterprises Governance Act, 2006, the Minister may appoint for each director a person as alternate director.

[Section 6 is substituted by Act 12 of 2000, creating a subsection (1), and subsection (1) is then substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006, which has been replaced by the Public Enterprises Governance Act 1 of 2019.]

(2) A person who is not eligible for appointment as a director in terms of section 4(3) may not be appointed as an alternate director.

(3) The alternate of a director may in the absence of the director from a meeting of the board attend the meeting and act in the place of the director.

[section 6 substituted by Act 12 of 2000]

Remuneration of directors and alternate directors

7. A director and an alternate director who is not in the full-time service of the State shall in respect of his or her services as director be paid, out of the funds of the Authority, such remuneration and such subsistence and travelling allowances as the Minister may determine, subject to section 22(1) of the Public Enterprises Governance Act, 2006.

[Section 7 is substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006, which has been replaced by the Public Enterprises Governance Act 1 of 2019.]

Duty of director to disclose interest

8. (1) If a director or an alternate director or his or her spouse, or any company or partnership of which he or she or his or her spouse is a director or shareholder or partner, is in any way directly or indirectly interested in a contract entered into or proposed to be entered into by the Authority, or in any other matter which is the subject of consideration by the board and whereby his or her private interest may conflict with his or her duties as a director or alternate director, he or she shall disclose the nature of such interest at a meeting of the board at the first opportunity it is possible for him or her to do so.

(2) A director or an alternate director who has an interest as contemplated in subsection (1) shall not take part in the consideration of, or vote on, any question relating to a contract, proposed contract or other matter referred to in that subsection.

Meetings of the board

9. (1) The first meeting of the board shall be held at such time and place as the Minister may determine and thereafter, subject to subsection (2), meetings of the board shall be held at such times and places as the board determines.

(2) The chairperson of the board may at any time, and shall at the request in writing of at least three directors, convene a special meeting of the board.

(3) The chairperson of the board or, in his or her absence, such director as the directors present shall elect, shall preside at a meeting of the board.

(4) A majority of the members of the board shall form a quorum for a meeting of the board.

[subsection (4) substituted by Act 12 of 2000 and by Act 2 of 2006]

(5) A decision of a majority of the directors present at a meeting of the board shall be the decision of the board and, in the event of an equality of votes, the director presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(6) A decision of the board shall 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 a director acted as such when the decision was taken, if such decision was taken by the requisite majority of the directors who were present at the time and entitled to vote.

Committees of the board

10. (1) The board may from time to time establish any committee to perform, subject to such conditions as the board may stipulate, such functions of the board as the board may assign to it.

(2) The board may appoint as member of a committee established under subsection (1) any person, whether he or she is a director or not.

TRANSFER OF PORTS AND ASSETS TO THE AUTHORITY

Transfer of Walvis Bay and Lüderitz ports and light houses to the Authority

11. (1) The Authority shall -
- (a) with effect from 1 March 1994, or such later date as the Minister may determine by notice in the *Gazette*, be charged with the management and control of the Walvis Bay port, as defined in Schedule 1, and all lighthouses, other than the lighthouse situate at Diaz Point, and other navigational aids along the coast of Namibia and in its territorial waters;
 - (b) with effect from a date determined by the Minister by notice in the *Gazette*, be charged with the management and control of the Lüderitz port, as defined in Schedule 1, and the lighthouse situate at Diaz Point.

[The date determined under paragraph (b) is 1 April 1995, See GN 58/1995 (GG 1044).]

(2) On the date with effect from which the Authority, in accordance with subsection (1)(a), becomes charged with the management and control of the Walvis Bay port and the lighthouses referred to in that subsection, or as soon as practicable thereafter.

- (a) the Minister shall, after consultation with the Minister of Finance, transfer to the Authority such of the assets, rights, liabilities or obligations which became vested in or binding upon the State in relation to the Walvis Bay port and the lighthouse situate at Pelican Point by reason of the reintegration of Walvis Bay into Namibia, whether by virtue of the international laws of State succession, agreement or otherwise, as the Minister, by agreement with the Authority, may determine are necessary for the effective management and control of that port and that lighthouse by the Authority, and may so transfer any asset, whether situate within or outside the boundaries of that port as defined in Schedule 1; and
- (b) every other lighthouse situate along the coast of Namibia, except the one referred to in subsection (3), and which immediately before that date was the property of Transnamib Limited referred to in section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987), shall become the property of the Authority.

[The National Transport Corporation Act 21 of 1987 has been replaced by the National Transport Services Holding Company Act 28 of 1998. Section 18 of Act 28 of 1998 provides that references to Act 21 of 1987 shall be construed as references to Act 28 of 1998.]

(3) On the date determined by the Minister under subsection (1)(b), or as soon as practicable thereafter, the Minister shall by notice in the *Gazette* specify such of the assets owned by, and the rights, liabilities and obligations binding upon, Transnamib Limited with respect to the Lüderitz port and the lighthouse situate at Diaz Point as the Minister, after consultation with Transnamib Limited and the Authority, may determine shall pass to the Authority to enable it to effectively manage and control that port and lighthouse.

[The relevant notice in terms of this section is GN 131/1998 (GG 1885).]

(4) Notwithstanding any provision to the contrary in any other law, the assets, rights, liabilities and obligations specified in the notice referred to in subsection (3), shall, on the date of publication of that notice in the *Gazette*, become vested in or be binding upon the Authority.

Namibian Ports Authority Act 2 of 1994

(5) Notwithstanding any law to the contrary, the Authority shall be exempt from any transfer duty, stamp duty or registration or office fee payable in terms of any law in relation to the acquisition of any land in terms of subsection (2) or (4).

(6) The Registrar of Deeds shall make the entries or notes he or she deems necessary to give effect to the provisions of subsections (2) and (4), in or on any relevant register, title deed or other document in his or her office, or any title deed or other document submitted to him or her.

[Act 12 of 2000 contains the following transitional provision:

“Special provision relating to the transfer of the Walvis Bay port to the Namibian Ports Authority

7. Notwithstanding the provisions of an agreement concluded between Transnet Limited, a company incorporated under the laws of the Republic of South Africa, and the Namibian Ports Authority, in terms of which the Walvis Bay port was transferred by Transnet Limited to the Namibian Ports Authority -

- (a) that port shall be deemed to have become vested in the State and to have been transferred by the Minister to the Namibian ports [sic] Authority on 11 March 1994 in accordance with the provisions of section 11(2)(a) of the principal Act;
- (b) the acquisition of that port by the Namibian Ports authority [sic] pursuant to that agreement shall, for the purposes of subsection (5) and (6) of section 11 of the principal Act, be deemed to have been the acquisition thereof in terms of subsection (2) of that section.”]

Transfer of State land to Authority

12. (1) The Minister may by notice in the *Gazette* declare a defined area as an area in which a port, lighthouse or any other navigational aid may be constructed or erected and managed and controlled by the Authority.

(2) Where, in terms of subsection (1), the Minister declares a defined area as an area in which a port, lighthouse or any other navigational aid may be constructed or erected and managed and controlled by the Authority, the Minister may, after consultation with the Minister of Finance, transfer to the Authority such portion of any State land as may be necessary for the Authority to construct or erect and effectively manage and control a port, lighthouse or any other navigational aid.

(3) Notwithstanding the provisions of section 5 of the Crown Lands Disposal Proclamation, 1920 (Proclamation 13 of 1920) and section 18 of the Deeds Registries Act, 1937 (Act 47 of 1937) the Registrar of Deeds; upon submission to him or her of a certificate by the Minister that State land defined in the certificate has been transferred to the Authority in terms of subsection (2), shall make such entries or endorsements as he or she may deem necessary in or on any relevant register, title deed or other document in his or her office, or any title deed or other document submitted to him or her, in order to register the transfer of such land in the name of the Authority.

[The Deeds Registries Act 47 of 1937 has been replaced by the Deeds Registries Act 14 of 2015.]

(4) Notwithstanding any law to the contrary, the Authority shall be exempt from any transfer duty, stamp duty or registration or office fee payable in terms of any law in relation to the acquisition of any land in terms of subsection (2).

CHAPTER III

FUNCTIONS, POWERS AND DUTIES OF THE AUTHORITY

Namibian Ports Authority Act 2 of 1994

Authority's area of jurisdiction in respect of ports

- 13.** (1) For the purposes of this Act the Authority's area of jurisdiction in respect of -
- (a) the Walvis Bay port and the Lüderitz port, shall be the relevant areas comprising the land and waters as defined in respect of each of those ports in Schedule 1; and
 - (b) a port contemplated in section 12, shall be such area of land and waters as shall be defined by the Minister by notice in the *Gazette*.

(2) The Minister may by notice in the *Gazette* alter any area defined in Schedule 1 or in a notice referred to in paragraph (b) of subsection (1).

Functions of the Authority

14. Without prejudice to the generality of the provisions of section 3, the Authority shall have the capacity -

- (a) to undertake the berthing and dry-docking of ships;
- (b) to undertake the storing, warehousing, sorting, weighing, loading, off-loading, lighterage and handling of goods and the embarking or disembarking of passengers on or from ships within the Authority's area of jurisdiction;
- (c) to operate, or construct and operate, lighthouses, and to provide and maintain other aids to navigation, whether within a port or within the territorial waters of Namibia or along the coast of Namibia;
- (d) to provide and maintain surveillance aids and other equipment to monitor the movement of ships;
- (e) to provide and maintain lifeboats and other life-saving equipment;
- (f) to provide and maintain search and rescue services;
- (g) to undertake dredging services in ports and channels and approaches thereto;
- (h) to provide tug and pilotage services;
- (i) to protect the environment within its areas of jurisdiction;
- (j) subject to such terms and conditions as may be agreed upon with the Minister under section 27(5) of the Prevention and Combatting of Pollution of the Sea by Oil Act, 1981 (Act No. 6 of 1981) to store, maintain and deploy oil recovery equipment for the purpose of combatting pollution of the sea.

[paragraph (j) inserted by Act 12 of 2000]

Powers of the Authority

15. (1) Subject to the provisions of this Act, the Authority shall have all such powers as may be exercised by a company in accordance with section 34 and Schedule 2 of the Companies Act, 1973 (Act 61 of 1973), and shall, in addition to such powers, have the power -

Namibian Ports Authority Act 2 of 1994

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (a) to control the movement of goods or passengers within a port;
 - (b) to deny access to a port to any ship which has the nationality of any state which the Minister has by notice in the *Gazette* declared to be a state which denies access to its ports to ships of Namibian nationality;
 - (c) to direct that any ship in a port which has been attached by order of court be moved to a designated place within the port, and, if necessary, to move such ship to such place;
 - (d) to raise, remove or destroy any sunken, stranded or abandoned ship or wreck within the Authority's area of jurisdiction and to recover, in accordance with subsection (3), the costs incurred in connection therewith;
 - (e) to give notice to the owner or other person legally responsible for the upkeep of any ship within the Authority's area of jurisdiction calling upon such owner or person to remove or otherwise dispose of such ship, or any article being, or forming part of, the hull, tackle, equipment, or ballast of such ship, which is in the opinion of the Authority not in a condition of seaworthiness, or is likely to become an obstruction, wreck or derelict, and should such owner or person fail to comply with such notice within the time specified therein, to do whatever may be necessary for the removal or disposal of such ship or article, and to recover all costs incurred from such owner or person;
 - (f) to direct, by written notice, that any light which may be mistaken for a navigation light be removed or effectively screened by the owner of the property on which the light is exhibited or the person having charge of such light, and, if such owner or person fails to comply with such direction, to remove such light and recover from such owner or person the expenses of such removal;
 - (g) to remove any wreck or other obstruction as may endanger any ship entering or leaving a port, and to recover the cost thereof and incidental thereto from the owner of such wreck or obstruction, or from any person responsible for the presence of such wreck or obstruction;
 - (h) to exercise control over the waters of any port and the approaches thereto, and to control all marine traffic in any port;
 - (i) to prescribe tariffs for, and to levy and collect fees and charges in respect of, the provision by the Authority of port services, including port dues, pilotage fees, towage charges, light dues, berth dues, wharfage and any other services rendered;
 - (j) to require any person, body, organization or authority with whom the Authority has contracted in terms of section 19, to determine and publish, in such manner as the Authority deems necessary or expedient, tariffs for any services to be rendered by such person, body, organization or authority in pursuance of such contract; and
 - (k) generally, to do all such acts and things as may be necessary to achieve its objects.
- (2) The Authority shall publish in the *Gazette* any tariffs prescribed by it under paragraph (i) of subsection (1).

Namibian Ports Authority Act 2 of 1994

(3) Where, in terms of paragraph (d) of subsection (1), the Authority has raised, removed or destroyed any sunken, stranded or abandoned ship or wreck, the Authority shall be entitled -

- (a) to recover from the owner of the ship or wreck, or any other person who had the beneficial use of the ship at the time it sank or stranded or was abandoned, all costs incurred in such raising, removal or destruction, and in lighting, buoying, marking or detaining the ship or wreck; and
- (b) on non-payment after written demand of such costs or any part thereof, to sell such ship or wreck and out of the proceeds of the sale to defray such unpaid costs, rendering the surplus, if any, to the person entitled thereto and recovering any unpaid balance from such owner or such other person.

Employees of the Authority

16. The board may appoint such employees as it may consider necessary for carrying out the functions of the Authority and, subject to section 22(3) of the Public Enterprises Governance Act, 2006, may determine their duties and salaries, wages, allowances or other remuneration and their condition of service.

[Section 16 is substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006, which has been replaced by the Public Enterprises Governance Act 1 of 2019.]

Power to form companies

17. (1) The Authority may form and incorporate one or more limited liability companies under the provisions of the Companies Act, 1973 (Act 61 of 1973) with the object of entering into contracts with the Authority in accordance with the provisions of section 19 for rendering any port services.

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

(2) The share capital, shareholding, powers, constitution of the board of directors and memorandum and articles of association of any company incorporated under the provisions of subsection (1) shall be determined with the prior approval of the Minister.

Power of Minister to give directions to Authority

18. (1) If the Minister considers it necessary or expedient in the national interest or for the discharge of an international obligation of the State, the Minister may, by notice in writing to the Authority, direct the Authority to -

- (a) exercise any power or perform any function conferred or imposed on the Authority by this Act, and specified in the notice, or exercise or perform such power or function in accordance with limitations so specified; or
 - (b) discontinue any activity specified in the notice.
- (2) Where, under subsection (1), the Minister requires -
- (a) any power or function to be exercised or performed, or that it be exercised or performed in accordance with specified limitations, the Minister may direct that

such power or function be exercised or performed by the Authority itself and not through any person, body, organization or authority contemplated in section 19;

- (b) any activity to be discontinued, such direction shall be binding on any such person, body, organization or authority carrying on such activity,

notwithstanding the provisions of any contract concluded between the Authority and such person, body, organization or authority in terms of section 19.

(3) The Minister shall consult with the Authority prior to the giving of any direction under subsection (1).

(4) The Authority shall take all necessary steps to give effect to any direction of the Minister under subsection (1).

(5) Where the Minister intends to give a direction under subsection (1) with relation to any function of the Authority referred to in paragraph (c), (d) or (e) of section 14, the Minister shall, if so required by the Authority on the grounds of the non-profitability of providing the service in question, and before the commencement of the provision of such services, conclude a contract with the Authority with respect to the payment by the State of -

- (a) the capital costs in connection with the construction, acquisition or replacement of any building or apparatus necessary for providing the service;
- (b) the expenses and disbursements the Authority incurs in connection with the maintenance and operation of the service; and
- (c) any loss which the Authority may suffer as a result of such construction, acquisition or replacement or the provision of such service, but excluding the depreciation of any fixed asset.

Authority may let or subcontract facilities or services

19. (1) Subject to any direction of the Minister given under section 18(2)(a), the Authority may enter into any contract with any person, body, organization or authority to perform a particular act or render a particular service on behalf of or in favour of the Authority, and may let or subcontract any facility or service it is required or entitled to provide or render, but any such contract shall not be inconsistent with the objects of the Authority.

(2) Any contract entered into by the Authority in terms of subsection (1) may regulate prices to be charged in respect of any facility or service to be provided or rendered in pursuance thereof, and may set standards to be complied with in the performance thereof.

(3) Subject to subsection (4), the Authority may sell, lease or transfer to any person, body, organization or authority with whom a contract has been concluded in terms of subsection (1), such of its property or assets as may be necessary to enable such person, body, organization or authority to perform the obligations assumed by it in terms of such contract.

(4) No immovable property of the Authority shall in terms of subsection (3) be sold or transferred without the approval of the Minister.

CHAPTER IV

OPERATION OF PORTS

Appointment of Port Captain

20. (1) The board shall appoint a Port Captain for each port managed and controlled by the Authority.

(2) The Port Captain shall, in respect of the port for which he or she is appointed, be the final authority in respect of all matters relating to pilotage, marine safety, navigation, dredging and all other matters relating to the movement of ships within the area of the port.

Prohibition on construction of ports

21. (1) Except with the approval of the Minister, no person, other than the Authority, may construct, develop or operate any port.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Closure or expansion of ports, or curtailment or restriction of port facilities

22. (1) No port or portion of any port shall be closed, nor shall any facility provided at a port be substantially curtailed or restricted, and no port shall be expanded beyond its limits, unless -

- (a) the Authority has, by publication of a notice in the *Gazette*, given notice of such intended closure, curtailment or expansion and invited any objections to such action to be lodged with it in writing within a period of 90 days of the publication of such notice; and
- (b) the Minister's prior approval for such closure, curtailment or expansion has been obtained by the Authority.

(2) The Authority shall, when it applies for the Minister's approval in terms of subsection (1)(b), submit to the Minister any written objections to its intended action which may have been lodged with it, together with such comments which it may wish to make in connection therewith.

Compulsory pilotage ports

23. (1) The ports of the Authority are compulsory pilotage ports and the following provisions shall apply thereto:

- (a) Every ship entering, leaving or moving in such a port shall be navigated by a pilot who is an employee of the Authority, except ships that are exempt by statute or regulation or a permit issued by the Authority.
- (b) It shall be the pilot's function to navigate a ship in the port, to direct its movements and to determine and control the movements of the tugs assisting the ship under pilotage.
- (c) The pilot shall determine the number of tugs required for pilotage in consultation with the Port Captain, whose decision shall be final.
- (d) A master shall at all times remain in command of his or her ship.

Namibian Ports Authority Act 2 of 1994

- (e) Neither the master nor any person under his or her command may, while the ship is under pilotage, in any way interfere with the navigation or movement of the ship or prevent the pilot from carrying out his or her duties, but the master may intervene in the case of an emergency to preserve the safety of his or her ship, crew or cargo and may take whatever action he or she deems necessary to avert the danger.
- (f) Where a master intervenes, he or she shall immediately inform the pilot thereof and, after having restored the situation, he or she shall permit the pilot to proceed with the execution of his or her duties.
- (g) The master shall ensure that the officers and crew are at their posts, that a proper look-out is kept and that the pilot is rendered all assistance necessary in the execution of his or her duties.
- (h) The Authority and the pilot shall be exempt from liability for loss or damage caused by a negligent act or omission on the part of the pilot, but not an act amounting to gross negligence.

(2) For the purpose of subsection (1) “pilot” shall mean any person duly licensed by the Authority, or any other authority approved by the Authority, to act as a pilot at a particular port.

Performance Agreement

23A. (1) The Authority shall within two months of the date of commencement of the Namibian Ports Authority Amendment Act, 2000, or before such later date as the Minister may by notice in the *Gazette* determine, and thereafter not later than two months before the commencement of every third financial year of the Authority, and in accordance with procedures as the Minister may determine, submit to the Minister a draft performance agreement which shall contain particulars of -

[For purposes of the timeline referred to above, the Namibian Ports Authority Amendment Act 12 of 2000 was brought into force on 8 November 2001 with the exception of sections 1, 2, 3 and 4 of the amending Act (GN 221/2001, GG 2641); these remaining sections were brought into force on 2 May 2002 (GN 66/2002, GG 2734).]

- (a) the expectations of the Government in respect of the Authority and every company established by it under section 17 in which it holds the majority of shares, as determined in consultation with the Minister, and the scope of business, efficiency and financial performance of the Authority and such company;
- (b) the principles to be followed by the Authority and every such company for the purposes of business planning;
- (c) the measures which may, in the opinion of the Minister, be necessary to protect the financial soundness of the Authority and every such company, including the Authority's investment policy and indemnity insurance, a declaration of the loans made or granted by the Authority and the Authority's cover against exchange rate risks;
- (d) the measures by which the performance of the Authority and every such company can be assessed, including such measures as may relate to their -
 - (i) financial performance;

- (ii) operational and service level performance; and
- (iii) management of human resources; and
- (e) any other matter relating to the performance of the functions of the Authority and every such company under this Act which the Minister may require.

(2) The Minister shall, within a period of two months after the receipt of a draft performance agreement referred to in subsection (1) -

- (a) approve; or
- (b) after consultation with the Authority, amend and approve,

the draft agreement, and if the Minister fails to approve the performance agreement within the period, the agreement shall, upon expiration of the period, be deemed to have been approved by the Minister, except if, at that time, any consultation between the Minister and the Authority for amendment of the draft agreement is not concluded.

(3) Upon approval of the draft performance agreement by the Minister, the Minister and the chairperson of the board shall sign the agreement.

(4) The Minister and the Authority may at any time amend a performance agreement.

(5) An amendment of a performance agreement in terms of subsection (4) shall be in writing and be signed by the Minister and by the chairperson of the board.

[section 23A inserted by Act 12 of 2000]

CHAPTER V

GENERAL

Financing of Authority

24. The funds of the Authority shall consist of -
- (a) revenue and other moneys obtained by it through the performance of its function;
 - (b) moneys appropriated by Parliament to finance any of its functions; and
 - (c) such other moneys as may accrue to it from any other source.

Financial year

25. The financial year of the Authority shall be as determined by the board.

Accounting and auditing

26. (1) The Authority shall keep such account books as are necessary in accordance with internationally accepted accounting practice to reflect fairly the state of affairs and business of the Authority and to explain the transactions and financial condition of the Authority.

Namibian Ports Authority Act 2 of 1994

(2) The Authority shall ensure that financial statements are prepared in respect of the Authority and any company established by it under section 17 for each financial year of the Authority and such company.

(3) The books of account and financial statements of the Authority and a company referred to in subsection (2) shall be audited annually to the satisfaction of the Auditor-General by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

(4) The Authority's annual financial statements and the report of the Auditor-General shall be tabled in the National Assembly by the Minister within fourteen days of receipt thereof if the National Assembly is then in ordinary session or, if the National Assembly is then not in ordinary session, within fourteen days of the commencement of its next ensuing ordinary session.

Annual report

27. (1) The board shall within three months after the end of each financial year of the Authority submit to the Minister a report on the activities of the Authority during that financial year.

(2) The report referred to in subsection (1) shall deal with -

- (a) the financial affairs of the Authority;
- (b) the performance of all ports managed and controlled by the Authority, including details of cargoes transhipped, number of ships landed, cost to users of port facilities and productivity indicators using generally accepted international standards; and
- (c) such other matters as the board may deem fit.

(3) The report referred to in subsection (1) shall be tabled in the National Assembly by the Minister within fourteen days after the receipt thereof if the National Assembly is then in ordinary session or, if the National Assembly is then not in ordinary session, within fourteen days after the commencement of its next ensuing session.

Winding-up and judicial management

28. The Authority shall not be wound up or placed under judicial management except by or under the authority of an Act of Parliament.

Regulations

29. (1) The Minister may make regulations in connection with -

- (a) the contents of the annual financial statements of the Authority;
- (b) the licensing of ferrymen, boatmen, carriers, porters, stevedores, landing agents, forwarding agents, shipping agents, baggage and parcels agents, contractors for the supply of water or ballast, or other persons concerned in port work, and the fees payable for the issue or renewal of such licences;

Namibian Ports Authority Act 2 of 1994

- (c) the licensing or other authorization of admission onto the wharves, docks, jetties or other works of any port of representatives of accommodation establishments, landing agents or other persons soliciting patronage from passengers;
- (d) the duties and conduct while within a port of taxi drivers, carriers and other persons who are not in the employment of the Authority but who ply for hire to or from a port;
- (e) the manner of dealing with property lost or left behind within the area of the Authority's jurisdiction,

and, in general, any other matter in respect of which the Minister deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Any regulation made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, but no such penalty shall exceed a fine of N\$20 000 or imprisonment for a period of five years.

Transitional provisions and saving

30. (1) Notwithstanding anything to the contrary in this Act or the Walvis Bay and Off-shore Islands Act, 1994, any regulations and any tariff of fees applied in relation to the Walvis Bay port and which, in terms of any law applied in Walvis Bay before 1 March 1994, were in force immediately before that date, shall, in so far as they relate to any matter which, in terms of this Act, may be -

- (a) determined or prescribed by the Authority; or
- (b) regulated by the Minister by regulation,

continue to be of force until repealed or substituted by determinations made by the Authority or regulations made by the Minister in terms of this Act.

(2) Any reference in any regulations or tariff of fees referred to in subsection (1) to any institution or body which, in terms of any law referred to in that subsection, was immediately before 1 March 1994 charged with the management and control of the Walvis Bay port, shall be deemed to be a reference to the Authority.

(3) Nothing in this Act shall be construed as derogating from the powers, duties and functions conferred or imposed by the Sea Fisheries Act, 1992 (Act 29 of 1992) on the Minister of Fisheries and Marine Resources or any other person with respect to fishing harbours.

**[The Sea Fisheries Act 29 of 1992 has been replaced by
the Marine Resources Act 27 of 2000.]**

Repeal and amendment of laws

31. Subject to subsection (2) of section 32, the laws referred to in Schedule 2 are repealed or amended as set out in that Schedule.

Short title and commencement

32. (1) This Act shall be called the Namibian Ports Authority Act, 1994, and shall, except for paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of Schedule 2, come into operation on 1 March, 1994.

Namibian Ports Authority Act 2 of 1994

(2) The amendments and repeals effected to the provisions of the National Transport Corporation Act, 1987 (Act 21 of 1987) by paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of Schedule 2 shall come into operation on the date determined by the Minister under section 11(1)(b).

[The National Transport Corporation Act 21 of 1987 has been replaced by the National Transport Services Holding Company Act 28 of 1998.]

SCHEDULE 1

DESCRIPTION OF PORTS
(Section 11)

WALVIS BAY PORT

The area bounded -

- (a) on the south, by a line drawn west (true) from a point (A) on the high water mark of the Atlantic Ocean through a point in position 22° 57'38,0"S; 14°28'55,7"E to a point (B) on the high water mark of the Atlantic Ocean on the western side of the Walvis Peninsula;
- (b) on the west, by -
 - (i) the high water mark of the Atlantic Ocean from the last-mentioned point (B) to the point of intersection (C) of the high water mark of the Atlantic Ocean with a line drawn north (true) from the Pelican Point Lighthouse; and
 - (ii) a line drawn north (true) from the said point of intersection (C) to a point (D) 4 km from the Pelican Point Lighthouse;
- (c) on the north, by a line drawn east (true) from the last-mentioned point (D) to a point (E) on the high water mark of the Atlantic Ocean on the mainland; and
- (d) on the east, by the high water mark of the Atlantic Ocean from the last-mentioned point (E) to the first-mentioned point (A), except within the Fishing Harbour Area where it shall be the old high water mark of the Atlantic Ocean, according to Municipal Proclamation 79 of 1968 of the Administrator of the Province of the Cape of Good Hope of the Republic of South Africa,

inclusive of the islands, jetties, port works and port lands.

LÜDERITZ PORT

The area bounded by a line from Angra Point to a point 1 097 metres due north thereof: thence by a line from the said point to the southern shore extremity of North-East Point, including the foreshore therein, the jetties, port works and port lands, and including Penguin Island and Seal Island.

SCHEDULE 2

REPEAL AND AMENDMENT OF LAWS
(Section 31)

Namibian Ports Authority Act 2 of 1994

[The National Transport Corporation Act 21 of 1987 has been replaced by the National Transport Services Holding Company Act 28 of 1998, making items 2-9 of the Schedule irrelevant.]

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981, section 1 of Act 3 of 1982, section 1 of Act 25 of 1985 and section 1 of Act 7 of 1991.

1. Section 2 of the Merchant Shipping Act, 1951 is hereby amended by the substitution for paragraph (b) of the definition of “port” of the following paragraph:

“(b) a port in Namibia means the Walvis Bay port or the Lüderitz port as defined in Schedule 1 to the Namibian Ports Authority Act, 1994, or a fishing harbour contemplated in the Sea Fisheries Act, 1992 (Act 29 of 1992), or any place which has under this Act or any other law been designated as a place from or at which any vessel or a vessel of a particular type may be launched, beached, moored or berthed;”.

Amendment of section 1 of Act 21 of 1987, as amended by section 1 of Proclamation AG 20 of 1987, and section 116 of Act 6 of 1992.

2.

[This item in the Schedule is deleted by Act 28 of 1998, which repeals the Namibian Ports Authority Act, 1994 “In so far as it in Schedule II relates to section 1 of Act No. 21 of 1987”; it is not clear why the other provisions in the Schedule pertaining to Act 21 of 1987 (items 3-9) were not deleted by Act 28 of 1998, since it repealed Act 21 of 1987 in its entirety.]

Amendment of section 5 of Act 21 of 1987.

3. Section 5 of the National Transport Corporation Act, 1987 is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) at a place (other than a railway junction or an airport) situated outside an urban area as defined in section 1 of the Liquor Ordinance, 1969 (Ordinance 2 of 1969); or”.

Amendment of section 29 of Act 21 of 1987.

4. Section 29 of the National Transport Corporation Act, 1987 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1) separate accounts shall be kept for the railway services, road transport services, sea transport services, pipeline services and air transport services.”.

Repeal of section 38 of Act 21 of 1987.

5. Section 38 of the National Transport Corporation Act, 1987 is hereby repealed.

Amendment of section 41 of Act 21 of 1987.

Namibian Ports Authority Act 2 of 1994

6. Section 41 of the National Transport Corporation Act, 1987 is hereby amended by the substitution for the proviso to that section of the following proviso:

“Provided that no excavation on any railway premises for any purposes shall be made without approval of the Corporation, and no such wires, pipes or other appliances shall be laid or constructed without due notice thereof to the Corporation and without the local authority taking at its expense such measures for the safety of the railway and the public travelling thereon as may be required in connection with the construction of such wires, pipes or other appliances.”.

Amendment of section 51 of Act 21 of 1987.

7. Section 51 of the National Transport Corporation Act, 1987 is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“No line or railway for the conveyance of public traffic shall be constructed or acquired without the prior approval of the Minister of Works, Transport and Communication: Provided that such approval shall not be required for -”.

Amendment of section 52 of Act 21 of 1987.

8. Section 52 of the National Transport Corporation Act, 1987 is hereby amended -
- (a) by the deletion of paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of subsection (1); and
 - (b) by the deletion of subsection (5).

Repeal of the First Schedule to Act 21 of 1987.

9. The First Schedule to the National Transport Corporation Act, 1987 is hereby repealed.

Amendment of section 21 of Act 6 of 1981, as amended by section 8 of Act 24 of 1991.

10. Section 21 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981 is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) outside a harbour, being a port as defined in section 1 of the Namibian Ports Authority Act, 1994, or a fishing harbour as defined in section 1 of the Sea Fisheries Act, 1992 (Act 29 of 1992), and within the prohibited area, render any ship having oil on board (whether as cargo or otherwise), or any tanker, incapable of sailing or manoeuvring under its own power;”.

Amendment of section 1 of Act 2 of 1981, as amended by section 1 of Act 5 of 1983 and section 1 of Act 15 of 1991.

Namibian Ports Authority Act 2 of 1994

11. Section 1 of the Marine Traffic Act, 1981 is hereby amended by the substitution for the definition of “harbour” of the following definition:

“‘harbour’ means a port as defined in section 1 of the Namibian Ports Authority Act, 1994;”.