



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 1386

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GOVERNMENT NOTICE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 216 1996

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 19 of 1996: Minerals Development Fund of Namibia Act, 1996.

Act No. 19, 1996

**MINERALS DEVELOPMENT FUND
OF NAMIBIA ACT, 1996****ACT**

To provide for the establishment and control of the Minerals Development Fund of Namibia and for matters connected therewith.

(Signed by the President on 26 July 1996)

ARRANGEMENT OF SECTIONS

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

Definitions

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

"Board" means the Minerals Development Fund Control Board established by section 4;

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"Fund" means the Minerals Development Fund of Namibia established by section 2;

"mineral" means a mineral as defined in section 1(1) of the Minerals Act and includes -

- (a) a high value mineral, as so defined;
- (b) a precious stone; and
- (c) soil, sand, clay, gravel or stone referred to in paragraph (c) of the definition of "mineral" in subsection (1) of section 1 of the Minerals Act, whether or not the provisions of the Minerals Act apply to such soil, sand, clay, gravel or stone by virtue of a notice issued under subsection (2) of the said section 1;

"mining sector" means any holder of a mineral licence or mining claim, as defined in section 1 of the Minerals Act, actually involved in reconnaissance or prospecting, mining or processing of a mineral;

"Minister" means the Minister of Mines and Energy;

"Ministry" means the Ministry of Mines and Energy;

"Permanent Secretary" means the Permanent Secretary: Mines and Energy;

"Sysmin Agreement" means the Financing Agreement entitled "Support programme to the mining sector of Namibia" entered into between the European Economic Community and the Government of Namibia and concluded on 17 March 1993 in terms of which -

- (a) the European Economic Community has granted to the Republic of Namibia an amount of 40 000 000 ECU to be partly lent, in terms of loan agreements prepared in the Ministry, to the mining sector in accordance with a portfolio of projects specified in that Agreement;
- (b) repayments on money so lent, including interest thereon, shall in terms of such loan agreements be paid into a revolving fund maintained by the Government of Namibia;

"the Minerals Act" means the Minerals (Prospecting and Mining) Act, 1992 (Act 33 of 1992).

Establishment of Minerals Development Fund of Namibia

2. (1) There is hereby established a juristic person to be known as the Minerals Development Fund of Namibia.

(2) The Fund shall consist of -

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- (a) any moneys, including interest, received by means of, or in respect of, the repayment of money lent in terms of the Sysmin Agreement to the mining sector;
- (b) moneys, including interest, received by means of, or in respect of, the repayment of any loan granted from the Fund in terms of section 5(a);
- (c) interest derived from the investment of moneys standing to the credit of the Fund;
- (d) moneys appropriated by Parliament for purposes of the Fund and paid for the benefit of the Fund at such times and in such manner as the Minister may determine;
- (e) moneys accruing to the Fund from any other source, including moneys donated for the benefit of the Fund.

Objects of Fund

3. (1) The objects of the Fund shall, through financing by way of loans, grants and other assistance, be -

- (a) to safeguard the production and earning power of the mining sector;
- (b) to broaden, through diversification and horizontal and vertical integration, the production base of the mining sector into the national economy;
- (c) to support the mining sector by -
 - (i) improving the national geological, geophysical and mineral data base; and
 - (ii) expanding the national training facilities and programmes.

Management of Fund

4. The Fund shall be managed by a board to be known as the Minerals Development Fund Control Board, which shall exercise the powers and perform the duties and functions conferred or imposed upon the Board by this Act.

General powers of Board

5. For the purposes of achieving the objects of the Fund, the Board shall have power -

- (a) to grant, on application made to it in terms of section 15 and on such conditions as may be determined by the Board, loans to the mining sector upon security of the mortgage over immovable property, notarial bond over moveable property, guarantee by any banking or money-lending institution or any other security as may be determined by the Board;

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- (b) to make, on application made to in in terms of section 15 and on such conditions as may be determined by the Board, grants to the mining sector;
- (c) to guarantee, underwrite, or bring about the granting of any loans made upon security contemplated in paragraph (a) by any other person to the mining sector in relation to any project or programme approved by the Board;
- (d) to provide, on terms and conditions not inconsistent with the objects of the Fund and as may be determined by the Board, technical or other assistance or expert or specialized advice, information, guidance or training in the identification, preparations, appraisal, evaluation, financing, implementation or financial or technical auditing of developmental activities to the mining sector or cause such assistance or advice, information, guidance or training to be so provided;
- (e) to co-operate and co-ordinate its activities with the activities of any other person or body having objects similar to the objects of the Fund;
- (f) to borrow money on such terms and conditions as may be approved by the Board;
- (g) to accept grants and donations and to receive any moneys offered or due to it;
- (h) to purchase, hire or otherwise acquire or sell, let or otherwise dispose of movable and, with the prior approval in writing of the Minister, immovable property;
- (i) to invest in its discretion any money standing to the credit of the Fund not immediately required for use, limiting investment to short or medium term placement in recognised Namibian banking institutions;
- (j) to establish reserve funds for such purposes as the Board may deem fit and to deposit in any such reserve fund such amounts of money as the Board may determine;
- (k) to enter into agreements with any person upon such conditions as the Board and such person may agree;
- (l) to pay all expenses in connection with its establishment and administration;
- (m) to investigate or deal with or cause to be investigated or to be dealt with any matter relating to the objects of the Fund or the powers, duties and functions of the Board; and
- (n) to exercise any other power conferred upon the Fund or the Board under any other provision of this Act or any other law, and may, generally,

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do anything that is necessary for or conducive to the attainment of the objects of the Fund and the exercise or performance of the powers, duties and functions of the Board, whether or not it relates to any matter expressly mentioned in this section.

Constitution of Board and periods of office and conditions of service of members

6. (1) The Board shall consist of seven members appointed by the Minister of whom -

- (a) two shall be staff members in the Ministry of whom at least one shall be an officer in the Directorate: Geological Survey of Namibia;
- (b) one shall be a staff member in the Ministry of Finance nominated by the Minister of Finance;
- (c) one shall be a person nominated in writing by the Chamber of Mines of Namibia;
- (d) one shall be a person who in the opinion of the Minister represents the interests of persons involved in small scale mining operations and who is not a member of the Chamber of Mines of Namibia or of any of its committees;
- (e) one shall be a person appointed on account of his or her managerial skills and special knowledge of, and experience in, the mining industry in Namibia; and
- (f) one shall be a person nominated in writing by trade unions.

(2) (a) The Minister may, at the request of the Board, appoint for every member of the Board, on such conditions and for such period as may be determined by him or her, an alternate member in the same manner as such member to act as an alternate for such member during the absence of such member or his or her inability to act, whether as member of the Board or a committee of the Board.

(b) The provisions of subsection (6) of this section and sections 7, 9, 10 and 11 shall apply *mutatis mutandis* in relation to an alternate member appointed under paragraph (a).

(3) No member of the National Assembly, the National Council, or a Regional Council shall be qualified for appointment as, or to be, a member or alternate member of the Board.

(4) (a) In order to appoint a person referred to in paragraph (c) of subsection (1) or an alternate for a member so appointed, the Minister shall in writing request the Chamber of Mines to submit to him or her within 30 days after the date of the request the name of a person who in its

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opinion represents its interests and is a fit and proper person to be appointed as a member of the Board.

- (b) If the Chamber of Mines fails to submit a name within the period referred to in paragraph (a), the Minister may appoint a person considered by him or her as suitable, as a member or alternate member of the Board in the place of the person referred to in that paragraph.

(5) A member of the Board shall be appointed and hold office for a period of three years, but shall at the expiration of his or her period of office as a member of the Board be eligible for re-appointment as such a member.

(6) A member of the Board who is not in the full-time employment of the Public Service shall be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

- (7) (a) The Board may co-opt, on such conditions, including conditions relating to remuneration, and for such period as may be determined by the Board from time to time, not more than five persons to assist it in the performance of its functions.

- (b) A person co-opted under subsection (1) may take part in the proceedings at any meeting of the Board, but shall not -

- (i) be entitled to vote at such meeting;
- (ii) not be taken into account for purposes of a quorum in terms of section 16(2);
- (iii) otherwise participate in the decision-making of the Board or any of its committees.

- (c) The provisions of subsection (3) of this section and sections 7, 9, 10 and 11 shall apply *mutatis mutandis* in relation to a person co-opted under paragraph (a).

Vacation of offices by members of Board

7. (1) A member of the Board shall vacate his or her office -
- (a) if his or her estate is sequestrated;
 - (b) if he or she is under law detained as a mentally ill person;
 - (c) if he or she is convicted of any offence and sentenced to imprisonment without the option of a fine;
 - (d) if he or she absents himself or herself from three consecutive meetings of the Board without its leave;

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- (e) if he or she, by writing under his or her hand addressed and delivered to the Minister, resigns as member of the Board;
- (f) if he or she becomes disqualified to be a member of the Board; or
- (g) if he or she is removed from office in terms of subsection (2).

(2) The Minister may remove any member of the Board from his or her office on the ground of incapacity or misconduct or, if such member has contrary to the provisions of section 10, divulged any matter which has been entrusted to him or her under secrecy or has taken part in the discussion of, or has voted in connection with, any matter referred to in that section.

(3) Any casual vacancy in the Board caused by the death of any member of the Board, or the removal from, or vacation of, office of any such member shall, with due regard to the provisions of section 6(1), be filled for the unexpired portion of the period of office of the member who has died or has been removed from, or has vacated, his or her office, as the case may be.

Chairperson and vice-chairperson of Board

8. (1) The Minister shall designate a member of the Board who has been appointed in terms of paragraph (a) of section 6(1) as chairperson of the Board.

(2) The members of the Board shall elect from among their number one member as the vice-chairperson of the Board.

(3) When the chairperson of the Board is absent or unable to perform his or her functions as chairperson of the Board, the vice-chairperson shall act as chairperson, and the vice-chairperson shall while so acting have all the powers and perform all the duties and functions of the chairperson.

Oath by members of Board

9. (1) Every member of the Board shall, before assuming his or her duties, make and subscribe before a commissioner of oaths an oath in the following form:

"I, AB, a member/alternate member/co-opted member of the Minerals Development Fund Control Board do hereby swear that I will perform the duties of my office conscientiously and to the best of my ability and that I will not communicate or divulge directly or indirectly any matters which are entrusted to me under secrecy. So help me God."

(2) A member of the Board may, in lieu of an oath, make and subscribe a solemn affirmation in the corresponding form.

Preservation of secrecy

10. (1) A member of the Board or any staff member employed in the

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Ministry, whether or not engaged in carrying out the provisions of this Act, and any other person engaged in carrying out any provision of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or the performance of the duties and functions conferred or imposed upon the Board or any such staff member or person in terms of any provision of this Act, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody, except in so far as any such communication -

- (a) is required by, or may be made in terms of, this Act or any other law, or is required by an order of a competent court;
- (b) is effected with the prior permission in writing of -
 - (i) the Board; or
 - (ii) the Minister who may grant such permission in respect of any matter which in his or her opinion is of a general nature and may be disclosed in the public interest.

(2) A member of the Board shall not make any statement, whether by way of an interview or answers to questions put to him or her, to the media in relation to any matter falling within the powers, duties and functions of the Board, unless he or she is otherwise authorized thereto by the Board.

(3) Any person who contravenes or fails to comply with the provisions of subsection (1) or (2) shall be guilty of an offence and on conviction liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Duty of members of Board to declare interest in contracts of Fund

11. (1) Any member of the Board who is in any way, whether directly or indirectly, materially or otherwise connected in a contract which has been or is to be entered into by the Fund, or who becomes materially or otherwise connected in any such contract after it has been entered into, shall declare his or her interest and full particulars thereof before or at the meeting of the Board at which the entering into of the contract is considered or at the first meeting of the Board held thereafter at which it is possible for him or her to do so, and if such contract is discussed by the Board during a meeting thereof, such member shall withdraw from that meeting during the discussion and he or she shall not participate in any voting in connection therewith.

(2) A declaration whereby a member of the Board declares an interest as contemplated in subsection (1) shall be recorded in the minutes of the meeting of the Board at which such declaration is made.

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12. (1) The administrative work incidental to the performance of the functions of the Board shall be performed by staff members in the Ministry designated for such purpose by the Permanent Secretary.

(2) The Board may appoint any person or firm, on such terms and conditions as may be mutually agreed upon between the Board and such person or firm, to administer the Fund on behalf of the Board in accordance with the provisions of this Act and the decisions of the Board, and to in particular be responsible for the collection, for the credit of the Fund, of all moneys due or accruing to the Fund and for payments out of the Fund.

(3) The Board may delegate in writing any of its powers, duties or functions to a staff member referred to in subsection (1) or person or firm referred to in subsection (2), but shall not be divested of any power, duty or function so delegated and may at any time revoke or alter any decision taken by virtue of any delegation under this subsection.

(4) The expenses relating to the performance of the administrative work of the Board as contemplated in this section shall be paid from the Fund.

Committees

13. (1) The Board may in its discretion establish one or more committees which shall consist of two or more members of the Board nominated for such purpose and may delegate to such committee such powers, duties or functions and give such directives in connection therewith as the Board may deem expedient.

(2) Whenever a member of a committee nominated in terms of subsection (1) is unable to act as such on account of his or her absence or incapacity, the chairperson of the Board may designate another member of the Board who is not a member of the committee in question to act as a member of that committee in the place of such member during the absence or incapacity of such member.

(3) The Board may designate one of the members of a committee as the chairperson of the committee.

(4) If consensus cannot be reached on any matter by any committee the matter shall be referred to the Board.

(5) The chairperson of the Board may attend any meeting of a committee and shall be entitled to take part in the proceedings.

Establishment of co-ordinating unit

14. (1) The Permanent Secretary shall, at the request of the Board, establish as soon as practicable a co-ordinating unit consisting of at least two staff members in the Ministry, of whom at least one shall be a senior mining engineer and another shall be a staff member holding a degree in mining or geology.

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(2) The functions of the co-ordinating unit referred to in subsection (1) shall be -

- (a) to enquire into and evaluate the technical and financial merits of any application for a loan or grant made to the Board for consideration and to make recommendations to the Board;
- (b) to assist the Board in exercising control over the implementation and utilization of any loan or grant made under this Act;
- (c) to perform any other function assigned to it by the Minister or the Board.

Applications for, and implementation and administration of, loans or grants

15. (1) An application for a loan or grant referred to in section 5(a) or (b) shall be made to the Board in such form as may be determined by the Board.

(2) An application referred to in subsection (1) -

(a) shall contain -

- (i) in the case of a natural person the full names, nationality, date of birth, postal and residential address of such person;
- (ii) in the case of a company, the name of such company, particulars of its incorporation and registration as a company, the registered address and principal place of business of such company in Namibia and the names and nationality of the directors of the company; and

(b) shall contain particulars of -

- (i) the mining operations carried on by such person;
- (ii) any mineral or a group of minerals mined by such person;
- (iii) any licences issued in terms of the Minerals Act or any law repealed by that Act held by such person alone or jointly with any other person; and
- (iv) any prospecting operations and mining operations carried on by such person alone or jointly with any other person within Namibia;

(c) shall contain detailed particulars of the purposes or project or programme for which the loan or grant is required;

(d) shall contain such other information as may be specified by the Board which the Board in its discretion deem necessary for purposes of considering such application.

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(3) An application referred to in subsection (1) shall be submitted through the Permanent Secretary for the attention of the co-ordinating unit.

(4) In order to enable the Board to consider any application referred to in subsection (1) the Board may cause such investigations to be made or undertaken by the co-ordinating unit or otherwise as the Board may in its discretion deem necessary.

(5) The Board shall not grant any application referred to in subsection (1), unless it is satisfied -

- (a) that in market conditions prevailing at the time of such application alternative financing is not elsewhere available on terms and conditions which are in the opinion of the Board reasonable;
- (b) that the loan or grant to which the application relates will contribute to -
 - (i) the acceleration of mineral exploration programmes which may reasonably be predicted to evolve into economically viable new or extended mining operations;
 - (ii) the development of new mines or expansion of production capacity at existing mines and the recommissioning of dormant mines;
 - (iii) the development or expansion of mineral processing facilities;
 - (iv) the maintenance of production outputs through the provision of bridging finance to mines or mineral processing facilities where outputs are adversely affected for reasons beyond the control of such ventures and the Board may deem it to be of a temporary nature;
 - (v) the development of supporting infrastructure to advance the economic liability of any mining or mineral processing venture;
 - (vi) the recruiting and promotion of private investment in the mining sector;
 - (vii) the encouragement of greater linkage of mines and mineral processing facilities with other productive sectors of the economy;
 - (viii) the development of the national geological, geophysical and mineral data base through acquisition of new geological, geophysical and mineral occurrence data;
 - (ix) the development of training facilities and programmes to provide suitably skilled Namibian citizens for gainful employment in the mining sector;
 - (x) constant research and development undertaken by institutions selected for that purpose to define the most modern state of art and to

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undertake the necessary research and development to promote innovation, diversification and expansion of mining and related industries;

- (xi) such related development and other activities not inconsistent with the objects of the Fund as the Board may from time to time deem fit.

(6) In determining the terms and conditions on which a loan is granted under section 5(a), the Board shall ensure that such loan bear a concessional rate of interest on terms reflecting the profitability and risk of each project.

(7) The Board shall exercise control over the implementation and utilization of any loan or grant made under this Act by -

- (a) requiring such returns from the person to whom a loan or grant was made as may be determined by the Board;
- (b) carrying out such inspections as the Board may deem fit,

or in such other manner as may be determined by the Board.

Meetings and decisions of Board

16. (1) The Board shall meet at least four times in every year at such times and places as the chairperson of the Board may determine.

(2) Four members of the Board shall form a quorum for a meeting of the Board.

(3) The chairperson of the Board or, in his or her absence, the vice-chairperson, shall preside at the meetings thereof, and if both the chairperson and the vice-chairperson are absent from, or for any other reason unable to preside at any meeting, the members present shall elect one from among their number to act as chairperson at that meeting.

(4) The decision of the majority of the members of the Board present at a meeting thereof shall constitute a decision of the Board, and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote.

(5) The chairperson may allow any person who in his or her opinion has an interest in the functions of the Board to attend the proceedings of the Board, or to nominate a person for such purpose, and to take part in such discussions of the Board as in the opinion of the chairperson relate to the interests of the person in question or to the interests represented by such a person, but such person or his or her nominee may not vote in respect of any decision.

(6) No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that the Board did not consist of the full number of members referred to in section 6, or by reason only of the fact that a disqualified person was present or acted as a member of the Board at the time when such decision was taken or act was done.

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(7) The Board shall cause a record to be kept of the proceedings at the meetings of the Board, and the Minister may at any time require that such record be submitted to him or her for inspection.

Rules by Board

17. The Board may make rules, not inconsistent with the provisions of this Act, in relation to -

- (a) the good management of the affairs of the Board and the effective execution of its functions;
- (b) the holding of meetings of the Board and committees of the Board;
- (c) the manner in which applications for loans should be made and dealt with by or on behalf of the Board;
- (d) in general, any matter which the Board may deem necessary or expedient to prescribe or to regulate in order to achieve the aims of this Act, the generality of this provision not being limited by the preceding paragraphs.

and may make such rules in such manner as it may deem fit.

Banking account

18. (1) The Board shall open and maintain a banking account in the name of the Fund with any banking institution or building society registered under the laws governing banking institutions and building societies in Namibia -

- (a) into which shall be deposited all moneys received for the benefit of the Fund; and
- (b) from which shall be made all payments required to be made in terms of this Act.

(2) No payments shall be made from any account referred to in subsection (1), except on authority of the Board or a person or persons designated for such purpose by the Board.

Financial year, bookkeeping and auditing of books and accounts

19. (1) The financial year of the Fund shall end on 31 March in each year.

(2) The Board shall -

- (a) keep such account books as are necessary to represent fairly the state of affairs and business of the Fund and to explain the transactions and financial position of the business of the Fund;

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(b) as soon as possible, but not later than six months after the end of any financial year, cause in respect of the financial year in question financial statements to be compiled in such form as the Board may determine after consultation with the Auditor-General.

(3) The books, accounts and balance sheets of the Fund shall be audited by the Auditor-General.

Annual report

20. (1) The Board shall as soon as possible after the end of a financial year, but not later than nine months after the end of such financial year, compile a report regarding its activities during that financial year.

(2) The financial statements referred to in section 19(2)(b) and the report referred to in subsection (1) of this section shall be laid upon the Table of the National Assembly by the Minister within 14 days after it became available, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

Indemnity

21. A member of the Board or any staff member or person referred to in section 12 or 14 shall not be liable in respect of anything done *bona fide* under this Act.

Submission of matters by Board to Minister for decision

22. (1) The Minister may require the Board to submit to him or her for decision any matter relating to the powers of the Board, and the Board may of its own volition submit any matter to the Minister for decision.

(2) In regard to any matter submitted to the Minister in terms of subsection (1), the Minister -

- (a) shall 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 may think fit,

and every such decision given or condition determined shall for all purposes be 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 except with the approval of the Minister.

Exemptions

23. (1) No tax or charge on income imposed under any law shall be payable by the Fund.

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(2) No transfer duty, stamp duty, office fee or other moneys shall be payable in respect of the transfer of property to the Fund by virtue of the powers referred to in section 5(h).

Liquidation of Fund

24. The Fund shall not be wound up except by or under the authority of an Act of Parliament.

Short title

25. This Act shall be called the Minerals Development Fund of Namibia Act, 1996.
