



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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GOVERNMENT NOTICE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 213

2015

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. 8 of 2015: Public Enterprises Governance Amendment Act, 2015.

Act No. 8, 2015

**PUBLIC ENTERPRISES GOVERNANCE
AMENDMENT ACT, 2015**

EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the State-owned Enterprises Governance Act, 2006 so as to replace the State-owned Enterprises Governance Council with the Minister responsible for public enterprises; and to provide for incidental matters.

(Signed by the President on 10 September 2015)

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

Substitution of word “Minister” for words “Council” and “Prime Minister” in Act No. 2 of 2006

1. The State-owned Enterprises Governance Act, 2006 (in this Act referred to as the “principal Act”) is amended by the substitution for the words “Council” and “Prime Minister” wherever they appear in the Act of the word “Minister”.

Amendment of section 1 of Act No. 2 of 2006

- 2.** Section 1 of the principal Act is amended:
- (a) by the deletion of the definition of “Council”;
- (b) by the insertion of the following definitions after the definition of “executive member”:
- “Minister” means the Minister responsible for public enterprises;; and
- “Ministry” means the Ministry administering public enterprises;;
- (c) by the insertion after the definition of “prescribe” of the following definition:
- “public enterprise” means a State-owned enterprise or State-owned company or any other entity established under any law or in terms of any other instrument, and the purpose of which is to advance any interest of the public;
- (d) by the deletion of the definition of “secretariat”; and
- (e) by the insertion after the definition of “secretariat” of the following definition:

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“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);”.

Substitution of heading of Part II of Act No. 2 of 2006

3. The principal Act is amended by the substitution for the heading of Part II of the following heading:

“GOVERNANCE OF PUBLIC ENTERPRISES”

Deletion of sections 2, 3, 5, 6 and 7 of Act No. 2 of 2006

4. The principal Act is amended by the deletion of sections 2, 3, 5, 6 and 7.

Amendment of section 8 of Act No. 2 of 2006

5. Section 8 of the principal Act is amended:

(a) by the substitution for the heading “**Confidentiality in relation to functions of Council**” of the following heading:

“**Confidentiality of information**”; and

(b) by the substitution for the introductory sentence of subsection (1) of the following introductory sentence:

“(1) A [**member of the Council or of a committee of the Council,**] staff member and any other person required or permitted to be present at a meeting of the [**Council or such a committee,**] Ministry may not publish or communicate or in any other way disclose any information relating to the affairs of any [**State-owned**] public enterprise or a member of the board of a [**State-owned**] public enterprise or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person’s knowledge -”.

Substitution of heading of Part III of Act No. 2 of 2006

6. The principal Act is amended by the substitution of the heading “SECRETARIAT” of Part III of the following heading:

“ADMINISTRATION”

Deletion of sections 9, 10 and 11 of Act No. 2 of 2006

7. The principal Act is amended by the deletion of sections 9, 10 and 11.

Substitution of section 12 of Act No. 2 of 2006

8. The principal Act is amended by the substitution for section 12 of the following section:

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PUBLIC ENTERPRISES GOVERNANCE
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12. (1) A staff member of the [**secretariat of the Council**] Ministry or any consultant engaged by the [**Council**] Ministry must not publish or communicate or in any other way disclose any information relating to the affairs of any State-owned enterprise or a member of the board of a State-owned enterprise or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person’s knowledge -

- (a) in the performance of any function in connection with the functions of the [**Council**] Minister; or
 - (b) as a result of such person’s attendance at a meeting of the [**Council**] Ministry [**or a committee of the Council**].
- (2) Subsection (1) does not apply to information disclosed -
- (a) for the purpose of the proper administration or enforcement of this Act or the performance of the functions of the [**Council**] Minister;
 - (b) for the proper administration of justice; or
 - (c) at the request of any staff member of the [**Council**] Ministry or any other person authorised in writing by [**a member of the Council**] the Minister.

(3) A staff member or person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.”.

Substitution of section 15 of Act No. 2 of 2006

- 9.** Section 15 of the principal Act is amended -
- (a) by the substitution, in subsection (1), for the words preceding paragraph (a) of the following word:
 - “(1) With effect from a date to be specified by the Prime Minister by notice in the Gazette whenever it is necessary to appoint members of the board of a State-owned enterprise, either upon a first constitution or a new term of the board, or for filling a vacancy, [**the head of the secretariat**] staff members designated by the Minister must, after consultation with the portfolio Minister, and with due regard to section 14(2), make a report to the [**Minister**] containing-”; and
 - (b) by substitution for subsection (4) of the following subsection:
 - “(4) When advising a portfolio Minister on potential candidates whom the [**Minister**] considers most suited for appointment as members or alternate members of a board, the Council is not

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bound by the recommendations of the [secretariat] designated staff members referred to in subsection (1).”

Amendment of section 25 of Act No. 2 of 2006

10. Section 25 of the principal Act is amended by the substitution for paragraph (b) of the following paragraph:

“(b) declare and pay such dividends as is agreed to between the board and the [Council] Minister subject to approval by Cabinet or as is directed by Cabinet or, failing agreement, as the [Council] Minister directs in writing.”.

Amendment of section 30 of Act No. 2 of 2006

11. Section 30 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The [Council] Minister may appoint a staff member or, one or more persons as special investigators, on such terms and conditions as are determined and specified by the [Council] Minister in the instrument of appointment or as varied by a later instrument, to conduct an investigation referred to in section 29.”.

Amendment of section 37 of Act No. 2 of 2006

12. Section 37 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, in writing, direct designated staff members to prepare and submit to the Minister proposed plans for the restructuring of a State-owned enterprise provisionally identified under section 36(1).”.

Amendment of section 38 of Act No. 2 of 2006

13. Section 38 of the principal Act is amended by the substitution for the words preceding paragraph (a) of the following words:

“In formulating a proposed restructuring plan, the [members of the secretariat] designated staff members referred to in section 37(1) must -”

Substitution of section 50 of Act No. 2 of 2006

14. The principal Act is amended by the substitution for section 50 of the following section:

“Short title and commencement

50. This Act is called the [State-owned Enterprises] Public Enterprises Governance Act, 2006 and commences on a date [to be] determined by the President by proclamation in the *Gazette*.”.

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Amendment of laws

15. Schedule 2 to the principal Act and other laws are amended by the substitution for the reference to the “State-owned Enterprises Governance Act, 2006” of the following reference:

“Public Enterprises Governance Act, 2006”

Short title

16. This Act is called the Public Enterprises Governance Amendment Act, 2015.
