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Government Notice

OFFICE OF THE PRIME MINISTER

No. 297 2000

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. 32 of 2000: National Housing Enterprise Amendment Act, 2000.

Act No. 32, 2000

**NATIONAL HOUSING ENTERPRISE
AMENDMENT ACT, 2000**

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 National Housing Enterprise Act, 1993, so as to amend the definition of Minister; to amend and extend the powers of the NHE; to limit the number of directors of the board to five; to provide that provisions which relate to the performance of work by directors on behalf of the NHE and to the liability of directors for loss or damage shall also apply to alternate directors; to provide that the period of office of directors shall be three years; to provide that committees may also consist of persons other than directors; to provide for the appointment of a chairperson and the election of a vice-chairperson of a committee, and to regulate the presiding at meetings of committees; to provide that the chief executive officer of the NHE shall not be a director; to provide that minutes of meetings of the board shall be submitted to the Minister as soon as practicable after they have been approved as correct; to provide that the board shall make rules relating to the holding of and procedure at meetings of the board; to provide that dividends shall be paid to the shareholder of the NHE; to provide that the Minister may require the board to submit to him or her any report relating to the achieving of the objects of the NHE, the exercising of the powers of the NHE, the management, including the financial management, of the NHE and any other matter contemplated in this Act as the Minister may deem expedient; to extend the matters in relation to which regulations may be made; to correct certain references in the Act; and to provide for incidental matters.

(Signed by the President on 21 December 2000)

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

Amendment of section 1 of Act No. 5 of 1993

1. Section 1 of the National Housing Enterprise Act, 1993 (hereafter referred to as the "principal Act"), is amended by the substitution for the definition of "Minister" of the following definition:

“‘Minister’ means the Minister responsible for housing affairs;”.

Amendment of section 4 of Act No. 5 of 1993

2. Section 4 of the principal Act is amended –

(a) by the substitution for paragraph (b) of the following paragraph:

“(b) to take over, on such terms and conditions as may be agreed upon, assets of such a building society or of a banking institution, as defined in section 1 of the [Banks Act, 1965 (Act No. 2 of 1965)] Banking Institutions Act, 1998 (Act No. 2 of 1998) or of any other institution established or registered by or under any law;”;

(b) by the substitution for paragraph (f) of the following paragraph:

“(f) to make rules relating to -

(i) the exercising of the powers of the NHE; and

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- (ii) the management, including the financial management, of the NHE;”;
- (c) by the substitution for paragraph (j) of the following paragraph:
- “(j) to accept insurance policies at the surrender value thereof, bank guarantees, insurer’s guarantee policies, cash or fixed deposits with a banking institution registered under the **[Banks Act, 1965]** Banking Institutions Act, 1998 (Act No. 2 of 1998) or a building society registered under the Building Societies Act, 1986, or deposits with the NHE, as collateral security in respect of loans granted by the NHE;”;
- (d) by the substitution for paragraph (m) of the following paragraph:
- “(m) to act as agent for any person registered as an insurer under the **[Insurance Act, 1943 (Act No. 27 of 1943),]** Long-term Insurance Act, 1998 (Act No. 5 of 1998, or the Short-term Insurance Act, 1998 (Act No. 4 of 1998), as the case may be, in effecting insurance of the life of persons or in respect of immovable or movable property which is the subject of any mortgage or pledge registered or made in favour of the NHE;” and
- (e) by the substitution for paragraph (r) of the following paragraph:
- “(r) to appoint **[employees]** staff members and to remunerate, house, discharge, suspend, or train them or cause them to be trained, and indemnify them in respect of any harm, damage or loss arising in the course of the performance of their duties, and to provide or give pension and sick benefits and housing facilities or benefits for or to such **[employees]** staff members.”.

Amendment of section 5 of Act No. 5 of 1993

3. Section 5 of the principal Act is amended -
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) The Minister shall from time to time **[determine the number of]** appoint not more than five directors of the board **[and appoint them]**.”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) **[Subject to section 10(5)]** The Minister shall designate one of the directors as chairperson of the board.”; and
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) **[Subject to section 10(5)]** The directors of the board shall elect from among their number a vice-chairperson of the board **[and determine the tenure of his or her office]**.”.

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Amendment of section 6 of Act No. 5 of 1993

4. Section 6 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of **[paragraph (b)]** subsection (2), the Minister may, if he or she is of the opinion that circumstances require the appointment of an alternate director, and with due regard to the provisions of section 7, appoint any person as the alternate of any director during his or her absence or incapacity.”; and

(b) by the substitution for subsection (5) of the following subsection:

“(5) The provisions of **[section] sections 8(3), 12 and 13 shall mutatis mutandis** apply to an alternate director.”.

Amendment of section 8 of Act No. 5 of 1993

5. Section 8 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) **[The Minister shall determine the period of office of a director and of the chairperson of the board]** A director shall hold office for a period of three years from the date of his or her appointment and shall be eligible for re-appointment.”.

Amendment of section 9 of Act No. 5 of 1993

6. Section 9 of the principal Act is amended -

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The board may establish one or more committees consisting of one or more directors and such other persons, if any, appointed by the board and may -”; and

(b) by the insertion after subsection (1) of the following subsections:

“(1A) A committee shall consist of not more than five members.

(1B) The board shall, appoint a director as chairperson of a committee.

(1C) The members of a committee shall, elect from among their number a vice-chairperson of the committee.

(1D) The provisions of section 14(2) and (3) shall mutatis mutandis apply to a committee.”.

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Amendment of section 10 of Act No. 5 of 1993

7. Section 10 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The board shall, with the approval of the Minister, appoint a **[director or any other person]** person other than a director as chief executive officer of the NHE on such conditions of service and at such remuneration and service benefits as the board may determine.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The chief executive officer **[if he or she is not a director]** shall, unless the board determines otherwise, attend board meetings, and may partake in discussions at such meetings, but shall not be entitled to vote.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) If the chief executive officer is absent or unable to perform his or her functions or if the post of chief executive officer is vacant, the board shall designate any **[director or employee]** suitable staff member of the NHE to act, during such absence or incapacity or until a chief executive officer is appointed, as chief executive officer and to perform such functions of the chief executive officer as the board may determine.”; and

(d) by the deletion of subsection (5).

Amendment of section 14 of Act No. 5 of 1993

8. Section 14 of the principal Act is amended -

(a) by the substitution for subsection (7) of the following subsection:

“(7) The board shall cause minutes to be kept of the proceedings at its meetings, and **[the Minister may at any time require that]** such minutes shall as soon as practicable after they have been approved as correct, be submitted to [him or her] the Minister for inspection.”; and

(b) by the substitution for subsection (8) of the following subsection:

“(8) The board **[may]** shall make rules in relation to the holding of and procedure at meetings of the board.”.

Amendment of section 15 of Act No. 5 of 1993

9. Section 15 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsection (2), the share capital of the NHE shall be such amount as the Minister may determine by notice in the *Gazette*, and shall be divided into ordinary shares of one **[rand]** Namibia dollar each.”.

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Substitution of section 18 of Act No. 5 of 1993

10. The following section is substituted for section 18 of the principal Act:

“Appropriation of property of NHE and dividends

18. (1) Except as expressly otherwise provided in this Act, the property of the NHE, from whatever source acquired, shall be applied exclusively for promoting the objects of the NHE **[and no dividends shall, be paid to the shareholder]**.

(2) The board and the Minister shall as soon as practicable after the auditing of the books of the NHE as contemplated in section 20, and if there is a profit for the financial year concerned, consult and decide on the dividends, if any, to be paid to the shareholder.”.

Amendment of section 20 of Act No. 5 of 1993

11. Section 20 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of Chapter XI of, and of Schedule 4 to, the Companies Act, 1973 (Act No. 61 of 1973), except sections 285, 302 and 306 and the provisions relating to offences, shall, **[and]** subject to the provisions of subsection (2), apply *mutatis mutandis* to the NHE as if the NHE were a public company with a share capital and as if a company acquired or formed by the NHE under section 4 **[(f)]** **(e)** were a subsidiary of which the NHE is the holding company.”.

Amendment of section 22 of Act No. 5 of 1993

12. Section 22 of the principal Act is amended by the addition of the following subsection:

“(4) The Minister may at any time require the board to submit to him or her a report relating to -

- (a) the achieving of the objects of the NHE;
- (b) the exercising of the powers of the NHE;
- (c) the management, including the financial management, of the NHE; and
- (d) any other matter contemplated in this Act as the Minister may deem expedient.”.

Amendment of section 23 of Act No. 5 of 1993

13. Section 23 of the principal Act is amended by the substitution for paragraph (a) of the following paragraph:

“(a) the procedure in connection with the submission of matters or reports to the Minister under section 22;”.

Act No. 32, 2000

**NATIONAL HOUSING ENTERPRISE
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14. Section 26 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) No provision of the [**Banks Act, 1965 (Act No. 23 of 1965),**] Banking Institutions Act, 1998 (Act No. 2 of 1998), or, subject to the provisions of subsection (2) and of section [**21**] 20, of the Companies Act, 1973 (Act No. 61 of 1973), shall apply in relation to the NHE.”

Short title and commencement

15. (1) This Act shall be called the National Housing Enterprise Amendment Act, 2000, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.
