



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 256

2008

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. 5 of 2008: State-owned Enterprises Governance Amendment Act, 2008.

Act No. 5, 2008 **STATE-OWNED ENTERPRISES GOVERNANCE AMENDMENT
ACT, 2008**

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 make different provision for the date with effect from which the constitution of the boards of State-owned enterprises and the appointment of members of such boards must be effected in accordance with the provisions of that Act; to validate the appointment of certain members of such boards purported to have been made in accordance with the provisions of any law or any constituent document or memorandum of association and articles of association pertaining to the State-owned enterprise which have been repealed or amended by the State-owned Enterprise Governance Act, 2006; to impose on the boards of State-owned enterprises an obligation to submit for approval to the portfolio Minister within a specified time a statement on investment policies, standards and procedures of the State-owned enterprise; and to provide for incidental matters.**

(Signed by the President on 6 October 2008)

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

Amendment of section 15 of Act No. 2 of 2006

1. Section 15 of the State-owned Enterprises Governance Act, 2006, (hereafter referred to as the principal Act) is amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“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 must, after consultation with the portfolio Minister, and with due regard to section 14(2), make a report to the Council containing -”.

Substitution of section 27 of Act No. 2 of 2006

2. The following section is substituted for section 27 of the principal Act:

“Investment policies

27. (1) Within 90 days of the date of commencement of the State-owned Enterprises Governance Amendment Act, 2008, the board of a State-owned enterprise must compile and submit to the portfolio Minister for

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approval statement on the policies, standards and procedures to be applied so as to guide the State-owned enterprise in effectively supervising, monitoring and managing transactions for investing money of the State-owned enterprise, including altering an investment or dealing with it in a manner affecting the terms of the initial investment or reinvesting money becoming available upon maturity date.

(2) The portfolio Minister may provide the State-owned enterprise in writing with any comments in relation to its statement on investment policies standards and procedures submitted under subsection (1), or amendment to such statement, and require the board to consult with the portfolio Minister on such comments.

(3) The portfolio Minister must consult with the Minister responsible for finance on the statement on investment policies, standards and procedures, or an amendment to such statement, before the portfolio Minister approves such statement.

(4) The board of a State-owned enterprise may from time to time submit to the portfolio Minister for approval any amendment to its statement on investment policies, standards and procedures as approved by the portfolio Minister.

(5) The board of a State-owned enterprise must take all reasonable step to ensure that the provisions of its statement on investment policies, standards and procedures are observed within the administration and management of the affairs of the State-owned enterprise.".

Substitution of section 48 of Act No. 2 of 2006

3. The following section is substituted for section 48 of the principal Act:

"Savings and transitional provisions

48. (1) Despite the amendment by section 49 of the laws specified in Schedule 2 to this Act and any other provision to the contrary of this Act, the provisions so amended of any such law, and the provisions of the constituent document or the memorandum of association and articles of association of any State-owned enterprise not established by statute which relate to the constitution of the board of the State-owned enterprise established by or under that law or to which such constituent document or such memorandum of association and article of association relate, the appointment of the members or alternate members of such board, the term of office and conditions of office of such members, the filling of casual vacancies in the number of such appointed members or alternate members, the appointment of the chairperson and vice-chairperson of such board continue to be applicable until the date specified by the Prime Minister under section 15(1).

(2) With effect from the specified date referred to in subsection (1) person who immediately before that date held office of chairperson, vice chairperson, member or alternate member of a board of a State-owned enterprise is deemed to have been appointed in accordance with the provisions of this Act for the unexpired period of his or her office as determined by or

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under the relevant establishing Act, constituent document or the memorandum of association and articles of association of the State-owned enterprise, and on the conditions as applied to him or her as a member immediately before that specified date.”

Validation of appointment of certain members or alternate members of board of State-owned enterprises

4. An appointment of a person as member or alternate member of the board of a State-owned enterprise, as defined in the principal Act, that was made at any time during the period after the date of commencement of that Act and the date of commencement of this Amendment Act, and which was purported to have been made -

- (a) under any law repealed or amended by section 49 of the principal Act, or any other law to which the principal Act applies;
- (b) in accordance with the constituent document or memorandum of association and articles of association of the relevant State-owned enterprise as they applied before the commencement of the principal Act; or
- (c) contrary to section 15(6) of the principal Act,

is hereby validated and a person so appointed is for all purposes deemed to have been duly appointed as a member or alternate member of the board in accordance with the relevant provisions as if the State-owned Enterprises Governance Act, 2006 had not been passed.

Short title and commencement

5. This Act is called the State-owned Enterprises Governance Amendment Act, 2008 and comes into operation on the date of publication in the *Gazette*, except sections 1 and 3 which are deemed to have come into operation on the date the principal Act came into operation.
