

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

LAND BILL

(As read a First Time)

(Introduced by the Minister of Land Reform)

[B. 19 - 2016]

BILL

To provide for the establishment of communal land boards and provide for their powers and functions; to provide for the demarcation and extent of communal land areas, and the allocation of rights in respect of communal land; to provide for the powers of the chiefs, the Minister, the traditional authorities; to establish the Land Reform Advisory Commission and provide for its powers and functions; to provide for the acquisition of agricultural land by the State for the purposes of land reform and for the allocation of such land to Namibian citizens who do not own or otherwise have the use of any or of adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices; to vest in the State a preferential right to purchase agricultural land; to provide for the compulsory acquisition and alienation of agricultural land by the State for the purposes of this Act; to prohibit the acquisition of agricultural land by foreign nationals; to regulate the leasing of agricultural land by foreign nationals; to establish a Lands Tribunal and determine its jurisdiction; to provide for the establishment of the Land Acquisition and Development Fund; to provide for the allocation of un-surveyed State land and the imposition of land tax and lease hold fees; and to provide for incidental matters.

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

CHAPTER 1 INTRODUCTORY PROVISIONS

Definitions

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

“agricultural land” means any land or an undivided share in land that is used for agricultural purposes;

“agricultural purposes,” includes game farming and aquaculture;

“alienate”, in relation to agricultural land, means sell, exchange, donate, or otherwise dispose of, land, whether for any valuable consideration or otherwise, and includes, in the case where such land is registered in the name of -

- (a) a company, the sale or transfer, to another person, of any of the shares that results in any share; or
- (b) a close corporation, the sale or transfer, to another person, of any interest of a member in the close corporation, or any portion of such interest that results in any interest,

being transferred to such person;

“area of the board” means the area described in a notice under section 4(2) as area of jurisdiction in respect of a board;

“board” means a communal land board established under section 4;

“chief” means a person who has been recognised under the Traditional Authorities Act, 2000 (Act No. 25 of 2000) as the chief of his or her traditional community;

“close corporation” means a close corporation registered under the Close Corporations Act, 1988 (Act No. 26 of 1988);

“Commission” means the Land Reform Advisory Commission established by section 63;

“commonage” means that portion of the communal area of a traditional community which is traditionally used by the residents of such area for the purposes set out in section 31;

“communal area” means the geographical area habitually inhabited by a specific traditional community, and under the jurisdiction of a traditional authority;

“communal land” means land referred to in section 17;

“community based organisation” means an organisation, group, trust, foundation or a body established by or for a community and having as its aims and objectives to serve and benefit the community;

“company” means a company incorporated in terms of the Companies Act, 2004 (Act No. 28 of 2004);

“customary land tenure” means rights in the nature set out in section 23, exercised on communal land and administered under customary law;

“date of expropriation” means the date contemplated in section 84(2)(b);

“date of notice”, in relation to an expropriation notice, means the date on which such a notice is delivered, tendered or posted to a person or is published in the *Gazette*, and if such a notice is so delivered, tendered or posted as well as so published, the date on which it is published;

“expropriation notice” means a notice contemplated in section 84(1);

“farming unit” means a portion of land allocated for farming purposes and conforming to the size prescribed under this Act for such purpose;

“foreign national” means -

- (a) a person who is not a Namibian citizen;
- (b) in relation to a company -
 - (i) a company incorporated under the laws of any country other than Namibia; or
 - (ii) a company incorporated in Namibia in which the controlling interest is held by persons who are not Namibian citizens; and
- (c) in relation to a close corporation, in which the controlling interest is held by persons who are not Namibian citizens;

“Fund” means the Land Acquisition and Development Fund established by section 133;

“group right” means a right to communal land held by a group of two or more persons whether formed together in an association under this or any other law;

“interest”, in relation to -

- (a) a company, means -
 - (i) any percentage of the issued share capital of the company;
 - (ii) any voting rights in respect of the issued shares of the company; or

- (iii) the power, either directly or indirectly, to appoint or remove any of the directors of the company without the concurrence of any other person;
or

(b) a close corporation, means any percentage of the interest in the close corporation;

“land”, includes agricultural land and communal land, but excludes local authority area;

“land reform” means the commitment of the nation to address injustices of the past relating to unequal access and distribution of land and to address social and economic imbalances in the Namibian society by ensuring equitable access to land for all citizens;

“Lands Tribunal” means the Lands Tribunal established by section 120;

“leaseholder” means a person to whom a right of leasehold has been granted under this Act;

“legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“local authority area” means -

(a) an area declared or deemed to have been declared under section 3 of the Local Authorities Act, 1992 (Act No. 23 of 1992) to be a municipality, town or village;

(b) an area declared under section 31 of the Regional Councils Act, 1992 (Act No. 22 of 1992) to be a settlement;

“local authority council” means a local authority council as defined in section 1 of the Local Authorities Act;

“Master” means the Master of the High Court of Namibia;

“Minister” means the Minister responsible for land;

“Ministry” means the Ministry administering land affairs;

“occupational land rights for public services” means a right to occupy communal land for the provision of services that are in the public interest and not for private gain;

“owner”, in relation to land or any registered right in or over land, means the person in whose name such land or right is registered, and includes -

(a) if the owner is deceased, the executor of his or her estate;

(b) if the estate of the owner has been sequestrated, the trustee of the insolvent estate;

(c) if the owner is a company or a close corporation which is being wound up, the liquidator;

(d) if the owner is a minor or a person otherwise under a legal disability, the guardian or curator of such person;

(e) in respect of property attached in terms of an order of court, the sheriff, deputy sheriff or messenger of the court concerned; and

(f) the authorised representative of the owner in Namibia;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribed” means prescribed by regulation;

“public purpose,” includes any purpose relating to the administration of the provisions of any law by any institution of the State;

“region” means a region as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992 (Act No.22 of 1992);

“registered”, in relation to land or a right in or over land, means registered in terms of the Deeds Registries Act, 2015 (Act No. 14 of 2015);

“Registrar” means the registrar responsible for the deeds registry referred to in the Deeds Registries Act;

“relative” means spouse, child, parent or sibling of the owner of land;

“right of leasehold” means a right of leasehold granted under this Act;

“spouse,” includes the spouse or permanent partner in a customary union, whether or not such customary union has been registered;

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

“this Act,” includes regulations made under section 167;

“traditional authority” means a traditional authority of which the traditional leaders have been recognised under the Traditional Authorities Act, 2000 (Act No. 25 of 2000);

“traditional community” means a traditional community as defined in the Traditional Authorities Act, 2000 (Act No. 25 of 2000);

“transfer,” in relation to a right of leasehold, means sale, exchange, donate, sublease, or otherwise dispose of, whether for any valuable consideration or otherwise, and includes, in the case where such leasehold is registered in the name of -

(a) a company, the sale or transfer of shares of the company which results in any share in the company being passed to another person; or

(b) a close corporation, the sale or transfer of any member’s interest in the close corporation, or any portion of such interest, which results in any interest in the close corporation being passed to another person.

Application of Act

2. (1) This Act applies to any land or an undivided share in land, excluding -

- (a) land situated in a local authority area;
- (b) land situated in a settlement area; and
- (c) land declared as a game park or a nature reserve in terms of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975).

(2) The Minister may, by notice in the *Gazette*, exclude any land from the application of this Act.

Objects of Act

3. The objects of this Act are -

- (a) to address, in accordance with the Namibian Constitution, injustices of the past which included dispossessions, discrimination and inequitable access to and unequal distribution of land under colonialism and apartheid;
- (b) to provide for a unitary land system, where Namibian citizens have equal rights, opportunities and security with regard to land, irrespective of where the land is situated;
- (c) to make special provisions in the allocation of land to Namibian citizens who -
 - (i) do not own or otherwise have the use of any or of adequate land, and most importantly to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices in accordance with Article 23 of the Namibian Constitution;
 - (ii) are unemployed, incapacitated, indigent and disadvantaged in accordance with Article 95(g) of the Namibian Constitution, to ensure a decent standard of living which recognises their inherent dignity as members of the human family;
- (d) the commitment of the nation to land reform and reforms to bring about equitable access to the natural resources of Namibia, in order to address the results of racial discriminatory laws or practices made under colonialism and apartheid;
- (e) to ensure that there is established an independent, expeditious, cost effective and just system for adjudication of land disputes which will hear and determine land disputes fairly and without delay;
- (f) to ensure the productive use of land in compliance with the principles of sustainable use for the benefit of present and future generations in accordance with Article 95 (l) of the Namibian Constitution;

- (g) to ensure that payment of just compensation for expropriation of property must reflect an equitable balance between the public interest, which includes the nation's commitment to land reform and the rights of those affected; and
- (h) to provide for an efficient, effective, economical and transparent system of land administration and accountability of public officials.

CHAPTER 2 COMMUNAL LAND

PART 1 COMMUNAL LAND BOARDS

Establishment of communal land boards

4. (1) The Minister must establish communal land boards to exercise and perform the powers and functions conferred and imposed on a board by this Act within the area for which the board is established.

- (2) The Minister must announce by notice in the *Gazette* -
 - (a) the establishment of every board under subsection (1), with a description of the area of jurisdiction of the board; and
 - (b) any alteration of the boundaries of the area of any board.

Powers and functions of boards

- 5.** Subject to this Act, the powers and functions of a board are -
- (a) to control the allocation and the cancellation of customary land rights by chiefs or traditional authorities under this Act;
 - (b) to receive applications for rights of leasehold under this Act and make recommendations to the Minister;
 - (c) to receive applications for occupational land rights for public service under this Act and make recommendations to the Minister;
 - (d) to establish and maintain a register and a system of registration for recording the allocation, transfer and cancellation of -
 - (i) customary land rights;
 - (ii) rights of leasehold; and
 - (iii) occupational land rights for public services under this Act,which rights are to be registered in accordance with the Deeds Registries Act, 2015 (Act No. 14 of 2015) after such communal land has been surveyed; and
 - (e) to consider and resolve land disputes or refer them to appropriate authorities in accordance with this Act.

Constitution of boards

6. (1) Subject to section 7, a board consists of members appointed by the Minister as follows -

- (a) one representative from each of the traditional authorities within the area of jurisdiction of the board, nominated by each such authority;
- (b) one person to represent the organised farming community within the area of the board;
- (c) the chief regional officer of the regional council concerned, and, if the area of the board extends over the boundaries of two or more regions, the chief regional officer of each such region;
- (d) the regional head of the Ministry;
- (e) four women, of whom -
 - (i) two are women engaged in farming operations in the area of the board concerned;
 - (ii) two are women who have expertise relevant to the functions of the board;
- (f) three staff members in the Public Service appointed by the Minister of whom -
 - (i) one is nominated by the Minister responsible for justice;
 - (ii) one is nominated by the Minister responsible for environment; and
 - (iii) one is nominated by the Minister responsible for agriculture.

(2) Before assuming office a member of a board is required to make and subscribe to the oath of office before a magistrate.

(3) For the purpose of seeking nominations as contemplated in subsection (1)(a) and (e), the Minister must in writing request -

- (a) the Traditional Authorities in the area of the board; and
- (b) the Ministers referred to in paragraph (e) of that subsection.

(4) The Minister may, for the purpose of appointing a member -

- (a) referred to in subsection (1)(b), consult with anybody or organisation engaged in activities for furthering the interests of the farming community in the area of the board and which the Minister recognises as being representative of that farming community; or
- (b) referred to in subsection (1)(d), consult with any Traditional Authority or any other person whom the Minister may consider necessary.

(5) The Minister may, in respect of any member being a chief regional officer referred to in subsection (1)(c), and after consultation with the chief regional officer concerned, appoint any other person to attend on behalf of the chief regional officer a meeting of the board or any committee during the absence of the chief regional officer, and a person so appointed, when attending a meeting is considered to be a member of the board concerned.

(6) If a Traditional Authority fails to nominate a person for appointment following a request of the Minister under subsection (3), the Minister may appoint any person whom the Minister thinks fit and the person so appointed holds office as if he or she had been nominated by the Traditional Authority concerned.

(7) The members of a board must elect the chairperson and a deputy chairperson of the board from amongst their number.

Disqualifications

7. A person is not eligible for appointment as a member of a board, if he or she -

- (a) is not a Namibian citizen or permanent resident of Namibia;
- (b) is a member of Parliament, a regional council or a local authority council;
- (c) is a chief;
- (d) is an unrehabilitated insolvent;
- (e) has been sentenced to imprisonment without the option of a fine for any offence 10 years preceding the appointment; or
- (f) has been found guilty in terms of section 11(3).

Term and vacation of office

8. (1) A member of a board, except a member by virtue of office, holds office for a period of three years and is eligible for re-appointment at the expiry of his or her term but not for more than two consecutive terms.

- (2) The office of a member becomes vacant if -
- (a) he or she becomes disqualified in terms of section 7;
 - (b) he or she resigns as a member by written notice delivered to the Minister;
 - (c) the authority by whom he or she was nominated for appointment as member, withdraws such nomination by written notice to the Minister; or
 - (d) he or she is removed from office under subsection (3).

(3) The Minister may by notice in writing remove a member from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that such member -

- (a) has been absent from three consecutive meetings of the board without the prior permission of the board; or
- (b) is incapacitated by physical or mental illness or for any other cause is unable or unfit to efficiently discharge his or her functions.

(4) If the office of a member of a board becomes vacant, the vacancy is filled by the appointment of another person, with due regard to section 6 for the unexpired term of office of the person who ceased to be a member.

Meetings of boards

9. (1) The first meeting of a board is convened by the Minister or his or her delegate and thereafter a board must meet at least once every two months, or as circumstances requires, at such time and place as the board determines.

(2) The chairperson may convene a special meeting of the board if -

- (a) prior written approval is obtained from the Permanent Secretary for such meeting; or
- (b) he or she is requested in writing by the Minister to do so to transact any business stipulated by the Minister.

(3) The majority of the members of the board forms a quorum for a meeting of the board.

(4) The chairperson of a board, or in the absence of the chairperson, the deputy chairperson, or in the absence of both the chairperson and the deputy chairperson, the person elected by the members present from amongst their number, presides at a meeting of the board.

(5) A board, with the approval of the Minister, may invite not more than two persons with appropriate expertise, knowledge or experience to assist the board, or any committee of the board, in the discharge of any of its functions, but such person has no right to vote.

(6) A majority of votes of the members present and voting at a meeting of the board constitute the decision of the board, and in the event of an equality of votes, the person presiding at the meeting has a casting vote.

(7) A decision of the board or an act performed under the authority of the board is not invalid merely by reason of -

- (a) a vacancy in the membership of the board; or
- (b) the fact that a person not entitled to sit as a member of the board was present at a meeting when such decision was taken or such act was authorised,

if the decision was taken or the act was authorised by a majority of the members present and entitled to vote at the meeting.

- (8) A board must cause minutes to be kept of the proceedings at its meetings.

Committees

10. (1) A board may establish any committee consisting of members of the board for the purpose of advising the board on any matter which the board refers to the committee for investigation and advice.

(2) A board may co-opt into the membership of its committees other persons whose knowledge and skills are necessary for the committee to perform its function.

- (3) A board may at any time dissolve or reconstitute a committee.

- (4) A committee may regulate its own procedure.

Disclosure of interest

11. (1) If at any stage during the course of proceedings at any meeting of a board or a committee it appears that a member has or may have an interest in a matter under consideration by the board or such committee which may cause a conflict of interests in the exercise and performance of his or her powers and functions as a member of the board or such committee -

- (a) that member must disclose fully the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests; and
- (b) such disclosure and the decision taken by the remaining members are recorded in the minutes of the relevant meeting.

(2) If a member fails to disclose a conflict of interest as required by subsection (1) and -

- (a) is present at a meeting of the board or a committee; or
- (b) in any manner participates in the proceedings, such proceedings in relation to the relevant matter, as soon as such non-disclosure is discovered, is rendered invalid and is thereafter be reviewed by the board or the committee in the absence of the member concerned.

(3) A member of the board who knowingly fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Remuneration

12. (1) The members of a board and persons referred to in section 9(5) who are not in the full-time employment of the State are paid such allowances in respect of their services as the Minister, with the concurrence of the Minister responsible for finance, may determine.

Financing of boards

13. All expenditures in connection with the performance of the functions of a board are defrayed from moneys appropriated by Parliament for that purpose and from the Fund.

Performance of administrative work

14. (1) The administrative work, including the payment and receipt of money, in connection with the performance of the functions of a board are performed -

- (a) by staff members in the Public Service made available by the Permanent Secretary for the purpose; or
- (b) by staff members of a regional council designated by such council upon agreement between the Minister and the regional council.

(2) The Permanent Secretary or the regional council concerned, must, in respect of each board, appoint a staff member referred to in subsection (1) to act as the secretary of the board who performs such functions as may be prescribed or as may be assigned to him or her by the chairperson of the board.

Annual report

15. (1) Every board must, not more than three months after the closure of the financial year, submit to the Minister a report on the functions performed by the board during the preceding year.

(2) The Minister must table every report received in terms of subsection (1) in the National Assembly within 30 days of receipt if the National Assembly is in ordinary session, or if the National Assembly is not in ordinary session, within 14 days after the commencement of its ensuing ordinary session.

Limitation of liability

16. A chief or a traditional authority or a member of a board or a person referred to in section 14 is not personally liable for any loss or damage arising out of or in connection with the exercise or performance of any power or function conferred or imposed by or under this Act, unless the loss or damage is due to -

- (a) his or her dishonest, gross negligence or unlawful act; or
- (b) anything done by him or her in bad faith.

CHAPTER 2 COMMUNAL LAND

PART 1 COMMUNAL LAND AREAS

Extent of communal land

17. (1) Subject to subsection (2), communal land consists of -

- (a) the areas described in Schedule 1 to this Act;
- (b) any area which is declared to be communal land under section 18(1)(a); and
- (c) any land which is incorporated under section 18(1)(b) into a communal land area referred to in paragraph (a) or (b).

(2) Where a local authority area is situated or established within the boundaries of any communal land area the land comprising such local authority area does not form part of that communal land area any longer and is not communal land.

Establishment of new communal land areas and additions to or subtractions from communal land areas

18. (1) The President, with the approval of the National Assembly, may by proclamation in the *Gazette* -

- (a) declare any defined portion of State land to be a communal land area;
- (b) incorporate as part of any existing communal land area any defined portion of State land; or
- (c) withdraw from any communal land area, subject to subsection (2), any defined portion which is required for any purpose in the public interest or for public purposes,

and in such proclamation make appropriate amendments to Schedule 1 so as to include the description of any new communal land area declared under paragraph (a) or to redefine any communal land area affected by any change under paragraph (b) or (c).

(2) Before acting in terms of subsection (1)(c) the President, by proclamation in the *Gazette*, must publish -

- (a) the location of the communal land to be withdrawn; and
- (b) the extent and boundaries of the communal land to be withdrawn;
- (c) a brief statement of the reasons for the proposed withdrawal,

and invite objections from persons to be affected by the proposed withdrawal and the date when the President intends to seek approval from the National Assembly as contemplated by subsection (1).

(3) Any person affected by the decision referred to in subsection (1)(c) may make representations to the National Assembly on the proposed withdrawal of the land, by submitting the representations to the Minister for tabling in the National Assembly, and the National Assembly must take such representations into account when acting in terms of subsection (1).

(4) The President may not withdraw any land from any communal land area under subsection (1)(c), unless just compensation for -

- (a) any right acquired in respect of such land or any portion thereof; and

- (b) any improvements made on such land or any portion thereof,

is paid to the persons concerned and, where available, suitable arrangements for the resettlement of the affected persons on alternative land has been made.

(5) The compensation payable to a person in terms of subsection (4) is determined -

- (a) by agreement between the Minister and the person concerned failing such agreement, by the Lands Tribunal; and
- (b) in accordance with prescribed criteria.

(4) Any portion of a communal land area withdrawn under subsection (1) ceases to be communal land and becomes available for disposal as State-owned land.

Ownership and custody of communal land

19. (1) Subject to this Act, the ownership of all communal land areas vest in the State and such areas are entrusted in the custody of the traditional authorities concerned -

- (a) for the benefit of the traditional communities residing in those areas; and
- (b) for the purpose of promoting the economic and social development of the people of Namibia, in particular -
 - (i) the landless; and
 - (ii) those with insufficient access to land who are not in formal employment or engaged in non-agricultural business activities.

(2) A person may not -

- (a) confer any right of freehold ownership in respect of any portion of communal land; or
- (b) acquire any right of freehold of any portion of communal land.

Prohibition against fencing

20. (1) Subject to such exemptions as may be prescribed, a person may not erect or cause to be erected a fence on any portion of land situated within a communal land area.

(2) Subject to subsection (1), a person, who wishes to erect or cause to be erected a fence on any portion of land situated within a communal land area, may apply in the prescribed form and manner to the relevant board.

PART 3
ALLOCATION OF RIGHTS IN RESPECT OF COMMUNAL LAND

Rights that may be allocated

21. The rights that may be allocated in respect of communal land under this Act are divided into -

- (a) customary land rights;
- (b) rights of leasehold;
- (c) occupational land rights for public services; or
- (d) any other form of customary land tenure that may be prescribed.

Power to allocate and cancel customary land rights

22. (1) The power to allocate or cancel any customary land right in respect of any portion of land in the communal area of a traditional community vests in the Traditional Authority subject to ratification by the board.

(2) If a traditional authority refuses to allocate a customary land right in terms of subsection (1) when in the opinion of the board ought to be allocated, the aggrieved person may apply for an arbitrator to be appointed by the Minister under subsection (4).

(3) The arbitrator referred to in subsection (2) may allocate a customary land right in the place of the traditional authority if he or she is satisfied that the traditional authority is withholding allocation unreasonably.

(4) The Minister must appoint as an arbitrator under subsection (2) a person approved by the board and by the traditional authority concerned and, if either the board or the traditional authority or both -

- (a) fail to communicate their decision to the Minister with respect to a person proposed for appointment within 30 days of being notified by the Minister of the name, address and qualifications of such person; or
- (b) on a third occasion communicate disapproval of a person proposed for the particular appointment, the Minister may disregard the requirement of approval stipulated by this subsection in so far as it concerns the board or the traditional authority or both.

(5) A person who is dissatisfied with the decision of an arbitrator has the right to appeal to the Lands Tribunal within of 30 days of the decision of the arbitrator.

(6) A person who is dissatisfied with the decision of the Lands Tribunal has the right to appeal to the High Court in terms of rule 119 of the High Court Rules.

Customary land tenure

23. Customary land rights may -

-
- (a) be applicable to a specific area of land and a specific description or class of persons;
 - (b) be governed by rules generally accepted as binding by the class of persons to which it applies;
 - (c) be applicable to any person acquiring land in that area in accordance with those rules;
 - (d) apply local customary regulation and management to individual and group ownership use and occupation of and transactions in land;
 - (e) provide for communal use of land;
 - (f) provide for parcels of land that may be recognised as subdivisions belonging to a person, a family or group of families having a business or residence in the area where the land is situated;
 - (g) be inheritable and transmissible by will;
 - (h) be held in perpetuity;
 - (i) subject to section 58(1) and (2), be subject to the payment of prescribed fees; or
 - (j) be subject to expropriation by the State in the public interest subject to the payment of just compensation.

Application for customary land rights

24. (1) A person applying for the allocation of a customary land right in respect of communal land must -

- (a) apply in writing in the prescribed manner and form; and
- (b) submit the application to the traditional authority of the traditional community within whose communal area the land in question is situated.

(2) An applicant referred to in subsection (1) must furnish such information and submit such documents as the traditional authority may require for the purpose of consideration of the application.

(3) Before the allocation of any customary land right a traditional authority must display for a period of at least 21 days, on a notice board at the offices of the traditional authority and of the board concerned, a notice -

- (a) stating -
 - (i) the name of the applicant;
 - (ii) the approximate size of the land applied for;
 - (iii) the geographical location of the land applied for;

- (iv) the reason for wishing to acquire the customary land right;
 - (v) the intended purpose for which the customary land right is to be used;
 - (vi) the number of customary land rights held by the applicant;
 - (vii) the type of customary land right applied for; and
- (b) inviting interested persons to lodge with the traditional authority within 21 days any objections regarding the application.
- (4) A traditional authority must, at its own cost, cause the information in the notice referred to in subsection (3) to be -
- (a) broadcasted on any radio station broadcasting in its communal area; and
 - (b) to be published in a newspaper circulating in the area.
- (5) If any member of the traditional community objects to the allocation of the right the traditional authority must conduct a hearing to afford the applicant and such objector the opportunity to make representations in connection with the application.
- (6) A traditional authority may -
- (a) refuse the application if the applicant already enjoys the beneficial use of other agricultural land, and where the acquisition of the customary land right would be inconsistent with the land reform objectives; or
 - (b) grant the application subject to section 27(4).
- (7) A traditional authority must keep a record of its proceedings.
- (8) When granting an application for a customary land right the traditional authority may -
- (a) allocate the right in respect of the specific portion of land being applied for or, by agreement with the applicant, any other portion of land; and
 - (b) subject to section 25, determine the size and the boundaries of the portion of land in respect of which the right is allocated.
- (9) An applicant referred to in subsection (1) must pay the prescribed application fee.
- (10) The application fee is paid into the community trust account of the traditional authority concerned within whose communal area the land in question is situated to cover administrative costs relating to land allocation.
- (11) Despite subsection (10), a traditional authority may charge a fee that is customarily charged in the area for the allocation of a customary land right, but the fee may not exceed the fee as may be prescribed.

Limitation on size of land that may be held under customary land rights

25. (1) A person is not entitled, without the written approval of the Minister, to be allocated and to acquire any customary land right in respect of communal land which exceeds the maximum size which the Minister, with the consent of the Minister responsible for agriculture, may prescribe for the purposes of this subsection.

(2) In prescribing a maximum size under subsection (1), the Minister may differentiate -

- (a) according to the area where land is situated;
- (b) according to the purpose for which land is to be used; or
- (c) between persons according to the total extent of other land, whether communal land or otherwise, held by them under any right which permits the beneficial use of such land for a purpose similar to which land held under a customary land right may be used.

Ratification of allocation of customary land rights

26. (1) Any allocation or refusal of allocation of a customary land right made by a traditional authority under section 24 does not have legal effect, unless the allocation or refusal of allocation is ratified by the relevant board in accordance with this section.

(2) Upon the allocation or refusal of a customary land right, the traditional authority concerned must notify the relevant board and furnish to the board the reasons and prescribed particulars pertaining to the allocation or refusal of allocation of the right.

(3) Upon receipt of a notification and the particulars referred to in subsection (2), the board must determine whether the allocation or refusal of allocation of the right in the particular case was properly made in accordance with section 24.

(4) In exercising its function under subsection (3), a board may make such enquiries and consult such persons as the board may consider necessary or expedient for that purpose and -

- (a) may confirm the allocation or refusal of allocation of the right if it is satisfied that such allocation or refusal of allocation was made in accordance with this Act;
- (b) may refer the matter back to the traditional authority concerned for reconsideration in the light of any comments which the board may make;
- (c) must refuse the allocation of the right, if -
 - (i) the right has been allocated in respect of land in which another person has a right;
 - (ii) the size of the land concerned exceeds the maximum prescribed size; or

- (iii) the right has been allocated in respect of land which is reserved for common usage or any other purpose in the public interest.

(5) If a board denies the allocation of a right under subsection (4)(c) it must inform the traditional authority and the applicant concerned in writing of the reasons for its decision.

(6) If an application for the allocation of a customary land right has been referred back to the traditional authority in terms of subsection (4)(b), the board may confirm, refuse or vary the revised decision of the traditional authority.

Registration of customary land rights

27. (1) If a board ratifies the allocation of a customary land right under section 26(4)(a) or makes a decision in terms of section 26(6) it must -

- (a) cause such right to be registered in the prescribed register in the name of the person to whom it was allocated or in the name of the group in the case of a group right where they occur; and
- (b) issue to that person or group a certificate of registered title in the prescribed form and manner.

(2) The board must keep a duplicate copy of every certificate of registered title issued under subsection (1)(b).

(3) The board must provide a copy of the registration certificate and a plot diagram to the Registrar of Deeds for recording and safekeeping at the deeds office.

(4) The customary land rights granted under this Act are registered in accordance with the Deeds Registries Act.

Duration of customary land rights

28. (1) Subject to section 29, and unless the right is relinquished by the holder, a customary land right allocated under this Act endures for the natural life of the person to whom it is allocated.

(2) Upon the death of the holder of a right referred to in subsection (1) such right reverts to the traditional authority for re-allocation -

- (a) to the surviving spouse and failing which the child or children failing which the next of kin, of the deceased person, if such spouse and children consent to such allocation;
- (b) to any person approved by the board concerned and such person is bound by all the encumbrances attached to the land; or
- (c) to the surviving group members in the case of a group right.

(3) For the purpose of determining the person to whom a customary land right is to be allocated in the circumstances contemplated in subsection (2), the traditional authority concerned must first consult with such members of the family or families concerned in accordance with the customary law concerned.

(4) Any reference in this section to a child, includes a child born outside marriage, an adopted child and child under guardianship.

(5) If -

(a) in any of the circumstances provided for in subsection (2), no surviving spouse or any children can be found to whom a customary land right can be allocated; or

(b) the surviving spouse and such children decline to accept such allocation of a right,

the traditional authority, with the consent of the family of the deceased, may allocate the right in question to any person or member of the family as it may consider fit.

(7) Where the holder of the right leaves a will in which the disposition of the right is set out, the right devolve in terms of the will.

Cancellation of customary land rights

29. (1) Subject to subsection (2), the traditional authority may cancel a customary land right, including a right referred to in section 30(1) -

(a) if the holder of the right fails to observe in a material respect any condition or restriction attached to the right under this Act;

(b) if the land is being used predominantly for a purpose not recognised under customary law; or

(c) on any other ground as may be prescribed.

(2) A cancellation of a customary land right by a traditional authority under subsection (1) has no legal effect unless the cancellation is ratified by the relevant board.

(3) A customary land right may not be cancelled before the traditional authority has notified the holder in writing of the grounds on which the cancellation is to be effected and has given the holder not less than 21 days within which to show cause why the right should not be cancelled.

(4) Upon the cancellation of a customary land right under subsection (1), the traditional authority by whom it was cancelled must notify the relevant board and furnish to the board the prescribed particulars pertaining to the cancellation.

(5) A board must ratify the cancellation of a customary land right in terms of subsection (1) if it is satisfied that such cancellation was properly effected in accordance with this Act.

(6) The board must cause to be entered in the prescribed register any cancellation of a customary land right in terms of this section.

(7) The Board must notify the registrar of any cancellation who must register or endorse the cancellation in accordance with the Deeds Registries Act.

Recognition of existing customary land rights

30. (1) Subject to subsection (2), a person who immediately before 1 March 2003 held a right in respect of the occupation or use of communal land, being a right of a nature referred to in section 21, and which was granted to or acquired by such person in terms of any law, continues to hold that right, unless -

- (a) the claim to the right of such person to such land is rejected upon an application contemplated in subsection (2); or
- (b) such land reverts to the traditional authority by virtue of subsection (11).

(2) A person who claims to hold a right referred to in subsection (1) in respect of land, is required, subject to subsection (3), to apply in the prescribed form and manner to the relevant board for the recognition and registration of such right under this Act.

(3) An application in terms of subsection (2) is accompanied by -

- (a) any documentary evidence, if available, which the applicant can submit in support of his or her claim;
- (b) a letter from the chief or traditional authority of the traditional community within whose communal area the land in question is situated, furnishing the prescribed information; and
- (c) any further information or documents as the board may require.

(4) In considering an application in terms of subsection (2), and despite a report by an investigating committee in terms of section 44 in a particular case, a board may make such investigations or inquiries and consult such persons as it may consider necessary or expedient to establish any fact relevant to the claim of the applicant, including -

- (a) the date when and manner in which the applicant acquired the right in question;
- (b) whether any other person claims to possess any right in relation to the land in question;
- (c) whether the area of the land conforms to the prescribed size referred to in section 24; or
- (d) the position of the boundaries or any beacons of the land.

(5) If the board is satisfied as to the validity of the claim of the applicant to the right, it must -

- (a) recognise the right of the applicant to the land concerned and cause particulars of that right to be entered in the prescribed register; and
- (b) issue the applicant with a certificate of registration.

(6) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence or fences which exist on the land in question and the board is satisfied that -

- (a) the fence was erected in accordance with customary law or any other law;
- (b) the fence does not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (c) in the circumstances of the particular case, reasonable grounds exist to allow the applicant to retain the fence or fences concerned,

the board must grant to the applicant authorisation for the retention thereof, subject to any conditions which it may consider expedient to impose.

(7) If, in respect of any application in terms of subsection (2), the board is of the opinion -

- (a) that there are conflicting claims in relation to the land; or
- (b) that reasonable grounds exist to doubt the validity of the claim of the applicant,

it must cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as it considers just.

(8) Without prejudice to the generality of the power conferred by subsection (7), a decision under that subsection may include -

- (a) confirmation of the claim;
- (b) subject to subsection (9), rejection of the claim;
- (c) confirmation of the claim subject to any variations as the board may determine, including variation in respect of the area or the position of the boundaries of the land if the board determines that -
 - (i) the area of the land exceeds the prescribed size; or
 - (ii) the position of the boundaries are not in accordance with customary law; or
- (d) the allocation of a right in respect of an alternative portion of land if the land to which the claim of the applicant relates encroaches on the commonage.

(9) If a board is not satisfied as to the validity of the claim of the applicant to the right in question, it is not obliged to reject such claim but may instead refer the matter to the chief or traditional authority concerned for consideration whether the applicant should be allocated a customary land right under this Act, whether in respect of the land to which the claim of the applicant relates or to an alternative portion of land.

(10) Upon referral of a claim in terms of subsection (9), the chief or traditional authority concerned must consider and determine the claim as if it were a new application for the allocation of the right in question.

(11) On expiry of the period allowed for applications in terms of subsection (3), a person is entitled to apply for the recognition and registration of any right referred to in subsection (1), if -

- (a) the person holding the land is deemed to have relinquished his or her claim to that land; and
- (b) the land reverts to the traditional authority concerned and become available for the allocation of any right under this Act,

except if the Minister on good cause shown directs otherwise.

(12) If the person who holds a right referred to in subsection (1) dies -

- (a) without such person having made the application contemplated in subsection (2), the surviving spouse or children of that person, as the board, with the consent of the traditional authority concerned may approve, may make that application as if the right held by the deceased person vested in such spouse or children; and
- (b) after he or she, made the application contemplated in subsection (2), but before the determination of the application, the application is considered to have been made by the surviving spouse or children referred to in paragraph (a), unless such spouse or such children or indicate otherwise.

Commonage

31. (1) Subject to this section and in compliance with the relevant laws, the commonage in the communal area of a traditional community is available for use by the residents of such area for -

- (a) the grazing and watering of stock;
- (b) fishing and hunting in established conservancies;
- (c) the gathering of wood fuel and building materials;
- (d) the gathering of forest resources for food and medicinal purposes; and
- (e) such other purposes as are traditionally accepted by the community using the land communally.

(2) A traditional authority, after consultation with the board and traditional community concerned, may prescribe or impose the following conditions -

- (a) the kinds and number of stock that may be grazed in compliance with relevant laws;
- (b) the section or sections of the commonage where stock may be grazed and the grazing in rotation on different sections;

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- (c) the routes to and from the commonage which livestock are required to use;
 - (d) where the commonage may be used for hunting in terms of the relevant laws, the terms and conditions on which hunting may take place; or
 - (e) the amount of wood fuel and building materials and other natural resources which a member of the community may gather for his or her homestead and his or her family.

(3) The President may, under section 18(1)(c), withdraw and reserve any portion of the commonage for any purpose in the public interest or for public purposes.

(4) Despite subsection (1), a traditional authority may withdraw the rights referred to in subsection (1) of any right holder who -

- (a) fails to observe in a material respect any condition referred to in subsection (2);
- (b) contravenes any provision of subsection (9); or
- (c) has access to other land, whether communal land or otherwise, held by such right holder under any right the total extent of which is equal to or more than the maximum size prescribed by the Minister under section 25 and which the traditional authority considers to offer sufficient grazing for the stock of such right holder.

(5) Before a traditional authority acts in terms of subsection (4) notice must be given to the person, in writing, informing him or her of the intended decision and the grounds and inviting such person to make representations why the right should not be withdrawn.

(6) Despite subsection (1), a traditional authority may upon application of any person who is not a resident referred to in that subsection, grant a commonage right to such person, either for a specified or an indefinite period, and any such person must exercise such right subject to the conditions referred to in subsection (2).

(7) A traditional authority may at any time withdraw a commonage right granted under this section if, due to drought or any other reasonable cause, the traditional authority considers such cancellation in the interest of the residents of the traditional community concerned.

(8) The board concerned may approve or not approve a decision taken by the traditional authority in terms of subsection (6) or (7).

- (9) A person may not -
- (a) erect or occupy any building or other structure on the commonage;
 - (b) plough or cultivate any portion of the commonage;
 - (c) take up his or her abode on or occupy any portion of the commonage;

- (d) obstruct the approaches to any watering place on the commonage, or prevent or attempt to prevent any person from drawing water from, or watering stock at, such a watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place; or
- (e) carry on any activity on the commonage, other than the lawful grazing of stock, which may prevent or restrict the residents of the traditional community concerned from a reasonable exercise of their grazing rights,

except with the written authorisation of the traditional authority ratified by the board concerned.

(10) A person who contravenes subsection (9) commits an offence and is liable to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

(11) A person who subsequently acquires a grazing right in an agricultural area or designated communal area as contemplated in subsection (13) automatically relinquishes his or her grazing right to the commonage in the communal area.

(12) A person may not hold an exclusive grazing right or be allowed to fence off land reserved for grazing in a communal area except in respect of land which is situated within a designated area referred to in subsection (13).

(13) The Minister, after consultation with the traditional authority and the board concerned, must designate by notice in the *Gazette*, in respect of the communal area of each traditional community, an area within which the board may grant grazing and fencing rights for agricultural purposes.

Restriction on acquisition of communal land right by foreign nationals

32. Despite anything to the contrary in any other law, but subject to section 53, a foreign national may not -

- (a) acquire a communal land right; or
- (b) enter into an agreement with any other person where any right to the occupation of a communal land right is conferred upon the foreign national,

without the prior written approval of the Minister.

Granting of right of leasehold

33. (1) Subject to subsections (4) and (5) and section 34, the Minister may, upon application, and on the recommendation of the board concerned, grant to a person a right of leasehold in respect of a portion of communal land.

(2) A right of leasehold for agricultural purposes may be granted only in respect of land which is situated within a designated area referred to in subsection (3).

(3) The Minister, after consultation with the traditional authority and the board concerned, may designate by notice in the *Gazette*, in respect of the communal area

of each traditional community, an area within which rights of leasehold for agricultural purposes may be granted.

(4) Subject to subsection (5), the Minister may grant a right of leasehold in terms of subsection (1) if he or she is satisfied that -

- (a) the granting of the right of leasehold will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (b) in the circumstances of the particular case, reasonable grounds exist for the grant of the right.

(5) The Minister may grant a right of leasehold only if the traditional authority of the traditional community in whose communal area the land is situated and the board concerned, consents to the grant of the right.

(6) If a traditional authority or a board refuses to grant consent in terms of subsection (5), when in the opinion of the Minister consent ought to be given, the aggrieved person may apply for an arbitrator to be appointed by the Minister as referred to in subsection (8) for decision.

(7) The arbitrator referred in subsection (6) may grant consent in the place of the traditional authority and the board, if he or she is satisfied that the traditional authority or the board is withholding consent unreasonably.

(8) The Minister must appoint as arbitrator a person approved by the board and by the traditional authority concerned and, if either the board or the traditional authority or both -

- (a) fail to communicate its or their approval to the Minister with respect to a person proposed for appointment within 30 days of being notified by the Minister; or
- (b) on a third occasion communicate disapproval of a person proposed for the particular appointment,

the Minister may disregard the requirement of approval stipulated by this subsection in so far as it concerns the board or the traditional authority or both and continue with the appointment of the arbitrator.

(9) Any party dissatisfied with the decision of an arbitrator has the right to appeal to the Lands Tribunal within 30 days of the decision.

(10) Any party dissatisfied with the decision of the Lands Tribunal has the right to appeal to the High Court in terms of the Rules of the High Court.

Application for right of leasehold

34. (1) An application for a right of leasehold in respect of communal land is made in the prescribed form and manner to the board in whose area the land in question is situated.

- (2) A board contemplated in subsection (1) -

- (a) must as soon as possible after receipt submit the application concerned to the traditional authority of the traditional community in whose communal area the land is situated for its consent as contemplated in section 33(5), as well as any other information or comments which the traditional authority may consider relevant for purposes of considering the application; and
- (b) must, as soon as possible after the consent of the traditional authority, submit the application to the Minister together with -
 - (i) the consent, information and comments of the traditional authority referred to in paragraph (a); and
 - (ii) its consent as contemplated in section 33(5), as well as any other information or comments which the board considers relevant for purposes of considering the application.

(3) If the traditional authority or the board concerned, does not consent to the granting of the right concerned, the board must, as soon as possible after the decision to not grant consent, submit the application concerned to the Minister, together with -

- (a) any other relevant information or comments contemplated in subsection (2)(a) and (b); and
- (b) any recommendation which the Traditional Authority or the board may wish to make.

(4) A right of leasehold may not be granted in respect of a portion of land to which another person holds a customary land right, unless such person agrees to relinquish his or her right in respect of the land, subject to -

- (a) the payment of compensation as agreed to by such person; and
- (b) suitable arrangements for his or her resettlement on alternative land when necessary.

(5) Before granting a right of leasehold in terms of subsection (1) in respect of land which is wholly or partly situated in an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), or a community forest in terms of section 15(3) of the Forest Act, 2001 (Act No. 12 of 2001), the Minister -

- (a) must have due regard to any management and utilisation plan framed by the conservancy committee concerned in relation to that conservancy, or by the management authority in relation the community forest; and
- (b) may not grant the right of leasehold if the purpose for which the land in question is proposed to be used under such right would defeat the objects of such management and utilisation plan referred to in paragraph (a).

- (6) Any business may apply to the Minister in the prescribed procedure

for -

-
- (a) exemption from paying rental fees for the first period;
 - (b) paying for reduced rental fees for the first period,

of the commencement of its operation not exceeding three years on such terms and conditions as the Minister may determine.

(7) The Minister may refuse or grant the exemption or reduction contemplated in subsection (6).

(8) A right of leasehold may be granted to a community based organisation and such organisation may sublease to an investor.

(9) A sublease agreement to be entered into between a community based organisation and an investor for the purpose of subsection (8) becomes valid after approval by the Minister on the recommendation of the board.

(10) The Minister may refuse to approve a sublease agreement referred to in subsection (9), if the sublease does not conform to the conditions or activities specified in the head-lease.

(11) A right of leasehold may be granted as head-lease to a community-based organisation such as a conservancy, women's or farmer's group, or a community development trust and such organisation may sublease the lease to an investor.

(12) A right of leasehold for farming units in designated areas for agricultural purposes may be allowed to be subleased on the recommendation of the board and with the approval of the Minister and as prescribed.

(13) The Minister may refuse to approve the sublease contemplated in subsection (2) if the sublease does not conform to the conditions or activities specified in the head-lease.

Conditions applicable to right of leasehold

35. (1) A right of leasehold is subject to such conditions as may be prescribed generally or as may be approved by the Minister in a particular case.

(2) Conditions referred to in subsection (1) may include conditions prescribing the circumstances in which the leaseholder of the right of leasehold -

- (a) may be required to cause the land in question to be surveyed, at the expense of the leaseholder, before the registration of such right in his or her name is effected;
- (b) may be permitted to cause the land in question to be surveyed at his or her own expense; or
- (c) may be required to pay rent for the use of the property as a commercial venture.

(3) Any amount required to be paid in respect of subsection (2) and for a certificate of leasehold referred to in section 34 is paid into the Fund.

Registration of right of leasehold

36. (1) Subject to subsection (2), if an application for a right of leasehold is granted by the Minister, the Minister must direct the board concerned to -

- (a) cause such right to be registered in the prescribed register in the name of the applicant; and
- (b) issue to the applicant a certificate of leasehold in the prescribed form and manner.

(2) If the land in respect of which the right of leasehold is granted is surveyed land which is shown on a diagram as defined in section 1 of the Land Survey Act, 1993 (Act No. 33 of 1993) and the term of lease is for a period of 10 years or more, the leasehold is registered in accordance with the Deeds Registries Act.

Duration of right of leasehold

37. (1) A right of leasehold may be granted for such period, not exceeding 99 years, as the Minister and the leaseholder may agree.

(2) A short-term right of leasehold may be granted for a period not exceeding five years for projects that involve listed activities in accordance to Part VII of the Environmental Management Act, 2007(Act No. 7 of 2007).

(3) A right of leasehold may be renewed by agreement between the Minister and the leaseholder.

(4) If a leaseholder dies, becomes insolvent, or if a curator is appointed for a leaseholder under any law relating to health, the executor of the estate of the leaseholder, trustee or such curator, may assign the lease to any person who is approved in writing by the Minister on the recommendation of the board concerned.

(5) If the leaseholder was awarded a loan and the leasehold was surrendered as security to the creditor, the loan is taken over or paid off by the person who inherits the lease if he or she agrees.

(6) If the person who inherits the lease is not willing to take over the loan contemplated in subsection (5), the Minister with the consent of the creditor and the traditional authority may, through the prescribed procedures, grant the lease to any other person who is willing and able to inherit the lease and take over the loan.

(7) Pending the assignment of the lease in accordance with subsection (4), the executor or curator must continue the lease on behalf of the estate or the leaseholder subject to this section and in terms and conditions of the lease, which must be fulfilled by the executor or curator or on his or her behalf by a person nominated by him or her and approved in writing by the Minister.

(8) If the executor or the curator fails to assign the lease within the period of five months after the date of his or her appointment as executor or curator, the Minister may cancel the lease, in which event the executor or curator is entitled to be paid by the State for the improvements made on the land.

(9) The Minister may deduct any rent due or any other debt owed to the State in respect of the land being leased from any compensation payable.

Cancellation of right of leasehold

38. In addition to the grounds for cancellation set out in a deed of leasehold, a right of leasehold may be cancelled by the Minister if the leaseholder fails -

- (a) to comply with the terms and conditions; or
- (b) to adhere to any restrictions imposed by or under any other law pertaining to the utilisation of the land to which the right relates.

Granting of occupational land rights

39. (1) Subject to subsections (3) and (4) and section 40, the Minister may, upon application and on the recommendation of the board concerned, grant to a ministry, agency, office, religious institution or any other institution offering public services an occupational land right in respect of a portion of communal land, but an occupational land right for agricultural purposes may be granted only in respect of land which is situated within a designated area referred to in subsection (3).

(2) An occupational land right for public services may be granted for -

- (a) government projects;
- (b) projects of a public enterprise as referred to in the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006);
- (c) health facilities;
- (d) educational facilities;
- (e) religious facilities; or
- (f) community projects.

(3) The Minister, after consultation with the traditional authority and the board concerned, may designate by notice in the *Gazette*, in respect of the communal area of the traditional community, an area within which occupational land rights for agricultural purposes may be granted.

(4) Despite subsection (1), an institution providing public services may apply to the Minister for approval for the grant of an occupational land right in respect of a portion of land which is wholly or partly situated outside a designated area, and the Minister may grant the application if the Minister, after consultation with the traditional authority and the board concerned, is satisfied that -

- (a) the grant of the occupational land right will not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (b) in the circumstances of the particular case, reasonable grounds exist for the grant of approval.

(5) Subject to section 40(1), the Minister may grant an occupational land right if the traditional authority of the traditional community in whose communal area the land is situated and the board concerned consent to the granting of the right.

(6) If a traditional authority or a board refuses to grant consent in terms of subsection (5) when in the opinion of the Minister consent ought to be given, the aggrieved party may apply for an arbitrator to be appointed by the Minister as referred to in subsection (8) for a decision.

(7) The arbitrator referred to in subsection (6) may grant consent in the place of the traditional authority or a board if he or she is satisfied that the traditional authority or a board is withholding consent unreasonably.

(8) The Minister must appoint as arbitrator under subsection (6) a person approved by the board and by the traditional authority concerned and, if either the board or the traditional authority or both -

- (a) fail to communicate its or their decision to the Minister with respect to a person proposed for appointment within 30 days of being notified by the Minister of the name, address and qualifications of the person; or
- (b) on a third occasion communicate disapproval of a person proposed for the particular appointment,

the Minister may disregard the requirement of approval stipulated by this subsection in so far as it concerns the board or the traditional authority or both.

(9) Any party dissatisfied with the decision of an arbitrator has the right to appeal to the Lands Tribunal within 30 days of the decision.

(10) Any party dissatisfied with the decision of the Lands Tribunal has the right to appeal to the High Court in terms of the Rules of the High Court.

Application for occupational land rights

40. (1) An application for an occupational land right in respect of communal land is made in the prescribed form and manner to the board in whose area the land in question is situated.

- (2) A board contemplated in subsection (1) -
 - (a) must as soon as possible after receipt thereof submit the application concerned to the traditional authority of the traditional community in whose communal area the land is situated for its consent as contemplated in section 39(5), as well as any other information or comments which the traditional authority may consider relevant for purposes of considering the application; and
 - (b) must, as soon as possible after the consent of the traditional authority, submit the application to the Minister together with -
 - (i) the consent, information and comments of the traditional authority referred to in paragraph (a); and
 - (ii) its consent as contemplated in section 39(5), as well as any other information or comments which the board considers relevant for purposes of considering the application.

(3) If the traditional authority or the board concerned, does not consent to the grant of the right concerned, the board must, as soon as possible after the decision to not grant consent, submit the application concerned to the Minister, together with -

- (a) any other relevant information or comments contemplated in subsection (2)(a) and (b); and
- (b) any recommendation which the traditional authority or the board may wish to make.

(4) An occupational land right may not be granted in respect of a portion of land which another person holds under a customary land right, unless such person agrees to relinquish his or her right in respect of the land, subject to -

- (a) the payment of compensation as agreed to by such person; and
- (b) suitable arrangements for his or her resettlement on alternative land.

(5) Before granting an occupational land right in terms of subsection (1) in respect of land which is wholly or partly situated in an area which has been declared a conservancy in terms of section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), or a community forest in terms of section 15 (3) of the Forest Act, 2001 (Act No. 12 of 2001), the Minister -

- (a) must have due regard to any management and utilisation plan framed by the conservancy committee concerned in relation to that conservancy, or by the management authority in relation the community forest; and
- (b) may not grant an occupational land right if the purpose for which the land in question is proposed to be used under such right would defeat the objects of such management and utilisation plan referred to in paragraph (a).

(6) An applicant referred to in subsection (1) is required to pay the prescribed application fee for an occupational land right.

Conditions applicable to occupational land rights

41. (1) An occupational land right is subject to such conditions as may be prescribed by the Minister generally or as may be approved by the Minister in a particular case.

(2) The conditions referred to in subsection (1) may include conditions prescribing the circumstances in which the occupational land right holder may be required to cause the land in question to be surveyed, at the expense of the holder, before the registration of such right in the name of the holder.

Registration of occupational land rights

42. (1) Subject to subsection (2), if an application for an occupational land right is granted by the Minister, the Minister must direct the board concerned to -

- (a) cause such right to be registered in the prescribed register in the name of the applicant; and

- (b) issue to the applicant a certificate of occupational land right in the prescribed form and manner.

(2) If the land in respect of which the occupational land right is granted is surveyed land which is shown on a diagram as defined in section 1 of the Land Survey Act, 1993 (Act No. 33 of 1993) and the term of occupational land right is for a period of 10 years or more, the occupational land right is registered in accordance with the Deeds Registries Act.

Duration of occupational land rights

43. (1) An occupational land right may be granted for such period, not exceeding 99 years, as the Minister and the occupational land right holder may agree.

(2) An occupational land right may be renewed by agreement between the Minister and the occupational land right holder.

Recognition of existing rights to occupy communal land as occupational land rights

44. (1) Subject to subsection (2), any institution offering public services which immediately before the commencement of this Act held a right, not being a right under customary law, to occupy any communal land, whether by virtue of any authority granted under any law or otherwise, may continue to occupy such land under that right, subject to the same terms and conditions on which the land was occupied, until -

- (a) such right is recognised and an occupational land right is granted to such institution in respect of the land upon acceptance of an offer made in terms of subsection (8);
- (b) the claim to the right of such institution to such land is rejected upon an application contemplated in subsection (2);
- (c) such institution declines or fails to accept an offer of an occupational land right made in terms of subsection (8); or
- (d) such land reverts to the State by virtue of subsection (9) or (14).

(2) With effect from a date determined by the Minister, by notice in the *Gazette*, either generally or with respect to an area specified in the notice, every institution providing public services which claims to hold a right referred to in subsection (1) in respect of land situated in the area to which the notice relates is required to apply in the prescribed form and manner to the relevant board -

- (a) for the recognition of such right and the grant of an occupational land right under this Act; and
- (b) where applicable, for authorisation for the retention of any fence existing on the land, if the applicant wishes to retain such fence.

(3) Subject to section 46 an application in terms of subsection (2) is made within a period of three years of the date notified under that subsection, but the Minister may by similar notice extend that period by such further period as the Minister may determine.

(4) A notification under subsection (2) or (3) may be communicated to the public in any other media as the Minister considers necessary or expedient.

(5) An application in terms of subsection (2) is accompanied by -

- (a) any documentary evidence, if available, which the applicant can submit in support of his or her claim; and
- (b) a letter from the traditional authority of the traditional community within whose communal area the land in question is situated, furnishing the prescribed information;
- (c) any further information or documents as the board may require.

(6) In considering an application in terms of subsection (2), and despite a report by an investigating committee in terms of section 46 in a particular case, the Minister may make such investigations or inquiries or cause such investigations and enquiries to be made and consult such persons as he or she may consider necessary or expedient to establish any fact relevant to the claim of the applicant, including -

- (a) the date when and manner in which the applicant acquired the right in question;
- (b) whether any other person or institution claims to possess any right in relation to the land in question;
- (c) whether the land to which the claim relates conforms to the prescribed size for the particular use for which the land is held;
- (d) the position of the boundaries or any beacons on the land; and
- (e) whether the land is fenced-off and the nature, extent and date of erection of the fence.

(7) If the Minister is satisfied as to the validity of the claim of the applicant, the Minister must in writing -

- (a) offer to grant to the applicant an occupational land right in respect of the land;
- (b) state the conditions, if any, subject to which the occupational land right is offered, but such conditions imposed may not be more restrictive than existing conditions;
- (c) specify the time, not being less than 30 days and not more than 90 days after the date on which the offer is made, within which the offer may be accepted; and
- (d) inform such institution that if it declines the offer or fails to accept it within the specified time, it ceases to have any claim to the land in question.

(8) An institution which refuses or fails to accept an offer made in accordance with subsection (7) ceases to have any claim to the land in question, in

which event the land reverts to the traditional authority for the allocation of any right under this Act.

(9) If the applicant has, in terms of subsection (2)(b), applied for authorisation to retain any fence which exist on the land in question and the Minister is satisfied that -

- (a) the fence was erected in accordance with the provisions of any law or with the consent of a competent authority;
- (b) the fence does not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community; and
- (c) in the circumstances of the particular case reasonable grounds exist for allowing the applicant to retain the fence,

the Minister must grant to the applicant authorisation for the retention, subject to such conditions as he or she may consider expedient to impose.

(10) If, in respect of any application in terms of subsection (2), the Minister is of the opinion -

- (a) that there are conflicting claims in relation to the land; or
- (b) that reasonable grounds exist to doubt the validity of the claim of the applicant,

the Minister must cause a hearing to be conducted in the prescribed manner to resolve the matter, and may make such decision in relation to the claim as he or she considers just.

(11) Without prejudice to the generality of the power conferred by subsection (10), the Minister may -

- (a) confirm the claim;
- (b) subject to subsection (12), reject the claim; or
- (c) confirm the claim subject to any variations as determined by the Minister, including variation in respect of the area or the position of the boundaries of the land if the Minister determines that the area of the land exceeds the prescribed size or that the position of the boundaries are not valid.

(12) Where the Minister is not satisfied as to the validity of the claim of the applicant to the right in question, the Minister is not obliged to reject such claim but may instead offer to the owner or holder of a registered right the grant of an occupational land right under this Act, either in respect of the piece of land to which the claim of the applicant relates or a portion thereof or in respect of any other piece of land as the Minister may determine.

(13) An institution offering public services is, on expiry of the period allowed for applications in terms of subsection (3), entitled to apply for the recognition

of any right referred to in subsection (1) and the grant of an occupational land right under this Act, except if the Minister on good cause shown directs otherwise in which event -

- (a) the institution holding the land is considered to have relinquished its claim to the land; and
- (b) the land reverts to the traditional authority and become available for the allocation of a right under this Act.

Cancellation of occupational land rights

45. The Minister may cancel an occupational land right if the occupational land right holder fails to -

- (a) comply with the terms and conditions; or
- (b) adhere to any restrictions imposed by or under any other law pertaining to the utilisation of the land to which the right relates.

PART 4 GENERAL PROVISIONS

Preliminary investigation of claim to existing rights

46. (1) The Minister, with consent of a board, may establish for the board an investigating committee, comprising such members as the Minister may appoint, to -

- (a) conduct a preliminary investigation referred to in subsection (3); and
- (b) report to the board and the Minister.

(2) The Minister must designate one of the members of the investigating committee as chairperson.

(3) Despite sections 30 and 44 and the period allowed for applications referred to in subsection (2) of each of those sections, if -

- (a) a board, in the case of an application referred to in section 30(2);
- (b) the Minister, in the case of an application referred to in section 44(2),

has not yet determined an application in respect of land occupied, used or otherwise controlled by a person or institution and enclosed with a fence, irrespective of whether an application has been made, the board or the Minister may at any time direct an investigating committee referred to in subsection (1) to conduct a preliminary investigation to establish the circumstances concerning -

- (i) the occupation, use or control of the land by such person;
- (ii) the existence of the fence on the land; or

- (iii) any other matter which the board itself or the Minister himself or herself may investigate in terms of either of those sections or which may be indicated by the board or the Minister.
- (4) The chairperson of the investigating committee must give at least 30 days notice to the person in respect of whom the preliminary investigation is to be conducted, informing him or her -
 - (a) of the time and place of the preliminary investigation;
 - (b) that he or she is required to attend the preliminary investigation to be questioned on the matters mentioned in subsection (3); and
 - (c) that he or she must produce before the committee any book or document relevant to the subject of the preliminary investigation which he or she may wish to submit to the committee.
- (5) For the purposes of a preliminary investigation -
 - (a) the chairperson of the investigating committee may summon the chief or any other traditional leader of the traditional community concerned or any other person who -
 - (i) is believed to be able to furnish information on the subject of the preliminary investigation; or
 - (ii) has in his or her possession or under his or her control a book or document which relates to that subject,to appear before the investigating committee at the time and place specified in the summons to be questioned or to produce such book or document;
 - (b) the committee may question a person appearing before it under oath or affirmation administered by the chairperson, and examine or retain for further examination or safe custody any such book or document, but a receipt is issued to the person and he or she is allowed to make and retain a copy of the book or document.
- (6) The notice referred to in subsection (4) and a summons referred to in subsection (5) is signed by the chairperson of the investigating committee and served in the manner prescribed.
- (7) If a person summoned in terms of subsection (5) -
 - (a) without sufficient cause fails to appear before the investigating committee at the time and place specified in the summons or to remain in attendance until excused by the chairperson from further attendance;
 - (b) at his or her appearance before the investigating committee refuses to be sworn in or to make an affirmation when requested to do so by the chairperson;
 - (c) having taken the oath or having made an affirmation -

- (i) fails to answer fully and satisfactorily any question lawfully put to him or her;
- (ii) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
- (iii) gives false evidence knowing it to be false or not knowing or believing it to be true,

commits an offence and is liable to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

(8) If at the conclusion of the preliminary investigation the investigating committee thinks it expedient that the board or the Minister should consider the claim of the person or institution -

- (a) to the land in question or
- (b) to the entitlement of such person or institution to the fence on the land,

the investigating committee must instruct that person or institution to prepare and submit to the chairperson of the committee, within the time stipulated by the committee, an application in terms of section 30(2) and 44(2), in respect of the land and the fence for referral to the board or the Minister.

(9) If the person or institution in respect of whom a preliminary investigation is held -

- (a) fails to attend the preliminary investigation; or
- (b) fails to comply with an instruction of the investigating committee in terms of subsection (7),

the investigating committee must state that fact in its report to the board or the Minister.

(10) If the investigating committee reports to the board or the Minister any failure on the part of the person or institution as contemplated in subsection (9), the board or the Minister may, by notice in writing served on that person or institution in the prescribed manner -

- (a) inform such person or institution of the report of the investigating committee concerning the failure of such person or institution;
- (b) direct such person or institution to comply, within the time specified in the notice, with such requirements as the board or the Minister may stipulate in the notice in connection with that failure; and
- (c) inform such person or institution of the consequences referred to in subsection (11).

(11) If the person or institution without reasonable cause fails to comply with a requirement stipulated in the notice referred to in subsection (10), the board or the Minister may declare the person or institution to be divested of any claim in respect of the land in question.

(12) A person or institution declared to be divested of a claim under subsection (11) -

- (a) is not entitled to make an application in terms of section 30(2) or 44(2) in respect of the land concerned; and
- (b) ceases to have any claim to or in respect of that land or anything erected or installed on the land,

despite the fact that the period for applications in terms of any of those sections has not expired.

Transfer and conversion of rights

47. (1) Subject to subsection (2) and to such exemptions as may be prescribed or unless any condition attaching to a customary land right, a right of leasehold or an occupational land right under this Act provides otherwise -

- (a) a customary land right may be transferred with the written consent of the traditional authority concerned, subject to the approval of the board;
- (b) a right of leasehold may be transferred with the written consent of the Minister; and
- (c) an occupational land right may be transferred with the written consent of the Minister .

(2) Subsection (1) does not apply where a customary land right, a right of leasehold or an occupational land right is transferred -

- (a) by or to a regional council or a local authority council, but only to the extent that such right is alienated otherwise than being sold in the open market;
- (b) in the administration of a deceased estate to an heir or legatee of such estate, except where that heir or legatee is a company or close corporation;
- (c) in a redistribution of assets in an estate between heirs and legatees;
- (d) by a co-owner of such right to another co-owner, except where -
 - (i) the other co-owner is a foreign national; or
 - (ii) such right is owned by a company or close corporation; or
- (e) in such other circumstances as the Minister may prescribe.

(3) A customary land right may be converted into a right of leasehold with the written consent of the traditional authority, subject to the approval of the board.

(4) A right of leasehold may be converted into a customary land right with the written approval of the Minister, subject to the consent by the traditional authority.

(5) An application for a transfer or conversion of a right is made in the prescribed form to the relevant authority and is considered in the case of -

- (a) a traditional authority within 60 days;
- (b) a board within 30 days; or
- (c) the Minister within 30 days,

of receipt of the application.

(6) When the Minister approves an application for conversion, the Minister may attach conditions to the conversion.

(7) A person who is aggrieved by a decision relating to a transfer of a right or a conversion of a right may appeal to the Lands Tribunal.

Restriction on acquisition of right of leasehold by foreign nationals

48. (1) Despite anything to the contrary in any other law, but subject to section 53, a foreign national may not -

- (a) acquire a right of leasehold whether or not the right is required to be registered in the deeds registry; or
- (b) enter into an agreement with any other person where any right to the occupation or possession of communal land or a portion of such land is conferred upon the foreign national -
 - (i) to acquire a right of leasehold for a period exceeding 10 years;
 - (ii) to acquire a right of leasehold for an indefinite period or
 - (iii) for a fixed period of less than 10 years, but which is renewable from time to time, and without it being a condition of such agreement that the right of occupation or possession of the land concerned may not exceed a period of 10 years in total,

without the prior written approval of the Minister.

(2) A foreign national who wishes to acquire a right of leasehold must apply to the Minister in the prescribed manner and in accordance with the prescribed requirements.

(3) The Minister may approve or reject the application made in terms of subsection (2) subject to such conditions as the Minister may determine.

Acquisition and holding of right of leasehold as nominee of foreign national

49. A person may not acquire and hold, as a nominee, on behalf or in the interest of any foreign national any right of leasehold if the written consent of the Minister has not been obtained as required by section 48.

Right of leasehold unlawfully acquired or held

50. (1) Where any right of leasehold has been acquired -
- (a) by a foreign national in contravention of section 48(1); or
 - (b) by a nominee holder of a right of leasehold in contravention of section 49,

the Minister may issue an order that such right of leasehold is cancelled and the claimant is ordered to leave the land within a specified period.

- (2) Where the Minister issues an order under subsection (1), he or she must give notice in writing -
- (a) to the foreign national concerned; and
 - (b) where applicable, to the nominee holder of a right of leasehold concerned,

and such notice must state that unless the foreign national or such nominee holder of a right of leasehold, submits to the Minister, within a period of 30 days from the date of service of the notice, a leasehold agreement with the board, such right of leasehold is automatically cancelled after the laps of 30 days.

(3) A copy of every notice under subsection (2) is transmitted to the board and the Registrar, and the board and the Registrar must upon receipt of such notice endorse on such notice the day and hour of its receipt and endorse in the appropriate registers that such a notice has been given in respect of the leasehold in question.

(4) The foreign national or nominee holder of the right of leasehold who unlawfully acquired or held the right of leasehold as contemplated under subsection (1), subject to subsection (5), commits an offence and is liable 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.

(5) In any prosecution under subsection (4), it is a defence to prove that the accused had reasonable grounds for believing and did believe that the consent of the Minister had been obtained.

(6) The Registrar, after receipt by him or her of any notice referred to in subsection (2), may not register any transfer of, any sublease, mortgage bond or other encumbrance in respect of or over the leasehold in question in accordance with the Deeds Registries Act, except where the Minister notifies the Registrar in writing that -

- (a) the registration of such transfer;
- (b) sub-lease;
- (c) mortgage bond; or
- (d) other encumbrance,

is in accordance with a leasehold agreement submitted to the Minister in terms of subsection (2).

Offences in relation to disposal of right of leasehold

51. (1) Despite any action taken by the Minister under section 50, where any right of leasehold has been acquired -

- (a) by a foreign national in contravention of section 48(1)(a); or
- (b) by a nominee holder of a right of leasehold in contravention of section 49,

the person who transferred or disposed of that right to the foreign national or nominee holder of a right of leasehold, subject to subsection (2), commits an offence and is liable 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.

(2) In any prosecution under subsection (1), it is a defence to prove that the accused had reasonable grounds for believing and did believe that the person who acquired the right in question was not by law disqualified from acquiring it.

Restrictions upon registration of right of leasehold

52. Despite anything to the contrary in any law, the Registrar may not register any lease or sublease in respect of right of leasehold or any cession of such a lease or sublease, unless there is submitted to the Registrar -

- (a) a statement made under oath or affirmation by, in the case of a company or close corporation, on behalf of, the lessee, sublessee or cessionary, declaring -
 - (i) his or her nationality or, in the case of a company or close corporation, the nationality of each member and whether or not the company or close corporation is a foreign national; and
 - (ii) whether or not the land mentioned in the lease, sublease or cession, will be held by him or her or it on behalf or in the interest of any other person and, where applicable, giving particulars of the name and nationality of that person or, in the case of a company or close corporation, the name and nationality of each member; and
- (b) if in the statement referred to in paragraph (a), the lessee, sub-lessee or cessionary, declares that he or she is not a Namibian citizen or, in the case of a company or close corporation, that it is a foreign national, or that the land in question will be held by him or her or it on behalf or in the interest of another person who is not a Namibian citizen or, in the case of a company or close corporation, which is a foreign national -
 - (i) the written approval of the Minister referred to in section 48; or
 - (ii) proof by affidavit in the form and manner determined by the Registrar that he or she or it qualifies for exemption from the provisions of section 48 by virtue of section 53,

and the Registrar may request the lessee, sublessee or cessionary concerned to submit to the Registrar such further proof as he or she may require that the lessee, sublessee or cessionary may lawfully acquire or hold such right in terms of this Act.

Exemptions under this Chapter

53. The provisions of this Chapter do not apply to the acquisition of a right of leasehold by a foreign national who is married in community of property to a Namibian citizen and by virtue of such marriage is ordinarily residing in Namibia.

Appeals

54. A person or institution offering public services who or which is aggrieved by a decision of a traditional authority or any board or the Minister may appeal in the prescribed manner against such decision to the Lands Tribunal.

Compensation for improvements

55. (1) A person or institution offering public services may not -

- (a) have any claim against a traditional authority, a board, the Minister or the State for compensation in respect of any improvement effected by such person or institution or any other person on the land in respect of which such person or institution holds or held a customary land right, a right of leasehold or an occupational land right under this Act, including a right referred to in section 30(1) or 44(1), where such person or institution voluntarily vacates the land unless such land is allocated to a person or an institution who is willing to pay for the improvements; or
- (b) remove or cause to be removed from such land, destroy, damage or cause to be destroyed or damaged on such land any improvement when such person or institution vacates or intends to vacate the land, whether such improvements was effected by such person or institution or any other person, but the board concerned, after consultation with the Minister, in the case of a customary land right, a right of leasehold or an occupational land right may grant consent for the removal of any such improvements.

(2) Subsection (1) is not to be construed as precluding the holder of a customary land right, right of leasehold or an occupational land right who proposes to transfer the right to another person or institution in accordance with this Act from accepting, in accordance with an agreement entered into between such holder and the person or institution, payment of compensation for any improvement on the land in respect of which the right is to be transferred.

(3) Despite subsection (1), and except if compensation is paid in the circumstances referred to in subsection (2) or in terms of subsection (4), the Minister, after consultation with the board concerned, upon the termination of -

- (a) a customary land right,
- (b) a right of leasehold; or

- (c) an occupational land right,

may compensate the person or institution whose right has terminated in respect of any necessary improvement effected by the person or institution on the land concerned.

- (4) If -
 - (a) a right of leasehold or an occupational land right has terminated in respect of land on which any improvement exists which was effected by the leaseholder or holder of an occupational land right during the currency of the lease or the occupational land right; and
 - (b) upon a subsequent grant of a further right of leasehold or occupational land right in respect of the land to another person or institution, the person or institution is required by the Minister in terms of section 35(1) or 41(1) to pay any consideration in respect of the improvement,

the Minister must, from the moneys so recovered in respect of the improvement, pay compensation to the former leaseholder or former holder of an occupational land right in such amount as may be determined in terms of subsection (6), except to the extent that any compensation has been paid to the leaseholder or holder of an occupational land right in terms of subsection (3).

(5) The amount of compensation payable to a person or institution in terms of subsection (3) or (4) is determined by agreement between -

- (a) the board concerned and such person or institution, subject to the approval of the Minister in the case of a customary land right; and
- (b) the Minister and such person or institution, in the case of a right of leasehold and an occupational land right,

and failing such agreement or approval, by arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965).

(6) Compensation payable to a person or institution in terms of subsection (3) is paid from the Fund.

(7) If compensation in respect of any improvement has been paid from the Fund in terms of subsection (3) and a subsequent allocation of a customary land right, a right of leasehold or an occupational land right in respect of the land concerned, the holder is required to pay to -

- (a) the board in the case of a customary land right; and
- (b) the Minister in the case of a right of leasehold and occupational land right,

any consideration in respect of the improvement, and the board or the Minister must refund the money so received by him or her to the Fund and which money must be equal to the amount of the compensation paid, and -

- (i) if the consideration received by the board in the case of a customary land right is insufficient, such amount as the Minister, with the consent of the Minister responsible for finance, may approve; or

- (ii) if the consideration received by the Minister in the case of a right of leasehold or an occupational land right is insufficient, such amount as the Minister responsible for finance, may approve.

Compensation for cancellation of right to communal land

56. The Minister has, in the public interest, the right to divest a person or institution offering public services of any right held over communal land in terms of this Act, subject to the payment of just compensation in terms of section 55.

Survey of communal land

57. (1) A board, with the prior approval of the Minister, subject to subsection (2), may cause any area of communal land within its region to be surveyed and a diagram and plan to be prepared in respect of the surveyed area.

(2) The survey of any area of land and preparation of a diagram and general plan in accordance with subsection (1), is carried out in accordance with a lay-out plan which the board must cause to be prepared with the co-operation of the traditional authority concerned.

(3) Where the area to be surveyed comprises individual portions of land occupied or used by persons or institutions offering public services under a customary land right, a right of leasehold or occupational land right granted under this Act, including a right referred to in section 30(1) or 44(1), a board may -

- (a) with the consent of the traditional authority concerned and of any other person or institution who is affected; and
- (b) subject to the payment of just compensation by the State to such person or institution, cause such adjustments to be effected to the layout of such individual pieces of land, as may be necessary for the purpose of preparing the lay-out plan in an effective manner.

Consideration not payable for allocation of customary land right

58. (1) Except where, and to the extent to which, compensation for any improvement is payable in any of the circumstances contemplated in section 53, consideration of any nature, whether money or goods or any other benefit of an economic value, may not be paid or delivered or given, or may not be claimed or received, by any person as compensation for the allocation of any customary land right under this Act.

(2) Subsection (1) does not apply to any fees, charges or other moneys which are prescribed to be paid in respect of any application or the issue of any certificate or document or for any other purpose in terms of this Act.

(3) The Minister must cause payments as prescribed to be made from the Fund to a Community Trust Fund established in terms of section 18(3) of the Traditional Authorities Act for costs incurred in the administration of communal land by a traditional authority.

(4) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$ 4 000 or to imprisonment not exceeding a period of 12 months, or to both such fine and such imprisonment.

Unlawful occupation of communal land

59. (1) A person or institution offering public services may not occupy or use for any purpose any communal land other than under a right acquired in accordance with this Act.

(2) The Minister, the traditional authority or the board concerned may institute legal action for the eviction of any person or institution who occupies any communal land in contravention of subsection (1).

Fences

60. (1) A person or a duly authorised representative of an institution offering public services who, without the required authorisation granted under this Act, and subject to such exemptions as may be prescribed -

- (a) erects or causes to be erected on any communal land any fence of whatever nature; or
- (b) retains any fence on any communal land after the expiry of a period of 30 days after the application of such person or institution for such authorisation in terms of section 30(2)(b) or 44(2)(b) has been refused,

commits an offence and is 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.

(2) If the offence for which a person or a duly authorised representative of such institution is convicted in terms of subsection (1) is continued after the conviction, such person or duly authorised representative is liable to a fine not exceeding N\$50 for every day on which the offence continues.

(3) If any fence is found to be on any communal land in contravention of subsection (1), the board concerned may, in accordance with the prescribed procedure, cause such fence to be removed and may dispose of the material used for the erection of the fence in such manner as may be prescribed.

(4) Any costs incurred in connection with the removal of a fence in terms of subsection (3) may be recovered from the person or institution who erected or retained such fence in contravention of subsection (1).

Jurisdiction

61. Where a traditional authority has not been recognised or where the jurisdiction area of two or more recognised traditional authorities are not clearly defined, any decision which in terms of this Act could have been exercised by a traditional authority is exercised by a board, and any ratification of a decision of a board is exercised by the Minister.

Compliance with other laws

62. The land rights granted to occupiers of communal land in terms of this Act is exercised in compliance with the laws relating to the protection of the environment and especially in terms of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), Forestry Act, 1968 (Act No. 72 of 1968), Subdivision of Agricultural Land

Act, 1970 (Act No. 70 of 1970), Agricultural Land Act, 1981 (Act No. 5 of 1981), Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992), Roads Ordinance (Ordinance No. 17 of 1972) and the Environmental Management Act, 2007 (Act No. 7 of 2007) , Water Act, 1956 (Act No. 54 of 1956) and other relevant laws.

CHAPTER 3 LAND REFORM ADVISORY COMMISSION

Establishment of Land Reform Advisory Commission

63. The Land Reform Advisory Commission established by section 2 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) to advise the Minister on matters relating to agricultural commercial land is continued subject to this Chapter.

Functions of Commission

- 64.** The functions of the Commission are -
- (a) to deliberate and recommend to the Minister upon request by him or her on matters related to agricultural commercial land;
 - (b) to investigate and recommend upon a request by the Minister on matters he or she may refer to the Commission for that purpose; and
 - (c) to perform such other functions relating to agricultural commercial land upon request by the Minister.

Constitution of Commission

65. (1) The Commission consists of 13 members appointed by the Minister as follows -

- (a) the Permanent Secretary who is the chairperson;
- (b) two staff members of the Ministry, selected by the Minister one of whom is the deputy chairperson;
- (c) two staff members of the Ministry administering agricultural affairs nominated by the Minister responsible for agriculture with knowledge of agriculture extension services and water services;
- (d) one staff member of the Ministry administering justice, who is a legal officer, nominated by the Minister responsible for justice ;
- (e) five persons, at least three of whom are women, and who are persons not employed in the Public Service and who, have knowledge and experience in any of the following fields -
 - (i) land survey and valuation;
 - (ii) agricultural economics;
 - (iii) land management and administration; or

(iv) any other relevant field as the Minister may decide,

selected by the Minister after having successfully applied for the positions as members of the Commission;

- (f) one staff member of the Ministry administering environmental affairs nominated by the Minister responsible for environment; and
- (g) one staff member of the Agricultural Bank of Namibia nominated by the CEO of Agricultural Bank of Namibia.

(2) The Minister, for the purposes of appointment of persons under subsection (1)(c), (d), (f) and (g), must request the respective nominating authority in writing to nominate a staff member for appointment.

(3) The Minister, for the purposes of appointment of persons under subsection (1)(e), by notice in the *Gazette* and in at least two local newspapers circulating nationally, must invite any person who complies with the requirements for appointment as a member of the Commission referred in that subsection, to apply in writing within 15 days for appointment as a member of the Commission.

(4) If -

- (a) the nomination referred to in subsection (2); or
- (b) the applications from suitable applicants under subsection (3),

are not received by the Minister within the period referred to in those subsections, the Minister must appoint suitably qualified persons as members of the Commission and a person so appointed holds office as if he or she was appointed in accordance with that subsection.

(5) The members of the Commission are sworn in or affirmed by a magistrate before assuming office and may not perform any function as such a member unless he or she has taken the oath or made an affirmation.

(6) The following oath is administered by the magistrate referred to in subsection (5):

*“I,
 ... (full name) do solemnly swear/sincerely affirm and declare that I will in my capacity as member of the Lands Tribunal administer justice to all persons alike, without fear, favour or prejudice, and as the circumstances in any particular case may require, in accordance with the law of the Republic of Namibia.*

So help me God/ I so affirm.”

(7) A person who at the commencement of this Act held office as a member of the Land Reform Advisory Commission established by section 2 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995), ceases to hold office by virtue of that appointment, unless such person has been reappointed by the Minister.

(8) A person does not qualify for appointment as a member of the Commission if the person -

- (a) is not a Namibian citizen;
- (b) is a member of Parliament, a regional council or a local authority council;
- (c) is an unrehabilitated insolvent; or
- (d) has been convicted of an offence, other than a political offence committed before the date of independence, for which he or she has been sentenced to imprisonment without the option of a fine for a period of 12 months or more.

Term of office

66. Subject to section 67(1), a member of the Commission holds office for a period of three years and may be reappointed upon the expiry of such term but not exceeding two consecutive terms.

Vacation of office and filling of vacancies

67. (1) The office of a member of the Commission becomes vacant if the member -

- (a) becomes subject to any disqualification mentioned in section 65(5);
- (b) has been absent, without the leave of the Commission, from more than three consecutive meetings of the Commission or of a committee thereof of which he or she is a member;
- (c) by notice in writing to the Minister resigns as a member of the Commission;
- (d) is removed from office under subsection (2); or
- (e) in the case of a member referred to in section 65(1)(a), (b), (c) or (d), ceases to hold the qualification by virtue of which he or she was appointed as a member of the Commission.

(2) If the Minister, after having given the member an opportunity to be heard, is satisfied that a member of the Commission -

- (a) has become physically or mentally incapable of performing his or her functions as a member; or
- (b) is otherwise unable or unfit to discharge the functions of a member of the Commission,

the Minister may remove such member from his or her office.

(3) A vacancy on the Commission arising from a circumstance referred to in subsection (1) or caused by the death of a member is filled by the appointment of another person in the manner in which the member whose office has been vacated was required to be appointed and any person so appointed holds office for the unexpired portion of the term of office of the member in whose stead he or she is appointed.

Remuneration and Allowances

68. A member of the Commission who is not in the full-time employment of the State is paid such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

Meetings

69. (1) Subject to subsection (2), meetings of the Commission are held at such times and places as the chairperson may determine.

(2) The chairperson must convene a meeting of the Commission if the Minister or at least five members in writing so request.

(3) Seven members form a quorum at a meeting of the Commission.

(4) The chairperson of the Commission or, in his or her absence, the deputy chairperson presides at the meetings of the Commission, and if both the chairperson and the deputy chairperson are absent, or for any other reason are unable to preside at, any meeting of the Commission, the members present must elect one of their number to preside at that meeting.

(5) The Commission may invite any person with relevant information, knowledge or expertise to attend and to participate in the deliberations of a meeting of the Commission, but such person has no right to vote.

(6) A decision of the Commission on any question is by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(7) The Commission may make rules in relation to the holding of, and procedure at meetings of the Commission.

Committees of Commission

70. (1) There is established for every region a regional resettlement committee to assist the Commission in the exercise of such of its powers or the performance of such of its functions under this Act as the Commission may delegate or assign to the committee.

(2) A regional resettlement committee established under subsection (1) consists of not less than 11 and not more than 19 members -

(a) the regional governor appointed in terms of the Special Advisors and Regional Governors Appointment Act, 1990 (Act No. 6 of 1990) for the respective region who is the chairperson of the committee;

(b) one or more members of the Commission, designated by the Commission for that purpose, and, if the Commission considers it necessary, one or more other suitable persons who are not members of the Commission appointed by the Commission.

(3) The Commission may -

(a) establish one or more committees to assist the Commission in the exercise of such of its powers or the performance of such functions under this Act as the Commission may delegate or assign to it;

(b) at any time dissolve or reconstitute a committee contemplated in paragraph (a).

(4) If so authorised by the Commission, a committee may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the committee, but such person has no right to vote.

(5) A delegation or assignment under this section may be made subject to such conditions and restrictions as the Commission may determine and may, at any time, be varied or withdrawn by it.

(6) The Commission is not divested or relieved of any power or function delegated or assigned by it under this section, and may, without prejudice of a right, vary or set aside any decision taken in the exercise of the power so delegated.

Disclosure of interest

71. (1) A member of the Commission or a member of a committee of the Commission may not participate in the deliberations or vote on any matter which is the subject of consideration at a meeting of the Commission or committee of the Commission if, in relation to such matter, such member has any interest, whether direct or indirect, which precludes him or her from performing his or her functions as a member in a fair, unbiased and proper manner.

(2) If at any stage during a meeting of the Commission or a of committee of the Commission it appears that a member of the Commission or a of committee of the Commission has or may have an interest which may cause a conflict of interests to arise on his or her part, such member must -

(a) immediately disclose the nature of his or her interest; and

(b) leave the meeting so as to enable the remaining members to discuss such disclosure and determine whether such member is precluded from participating in such meeting by reason of a conflict of interest.

(3) A disclosure by a member in accordance with subsection (2) and the decision taken by the remaining members in terms of that subsection are recorded in the minutes of the meeting in question.

(4) A member of the Commission or of a committee of the Commission who contravenes subsection (1) or fails to comply with subsection (2) commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Prohibition on publication or disclosure of confidential information

72. (1) A member of the Commission or of a committee of the Commission, or any other person attending any meeting of the Commission or of a committee of the Commission, or any person employed to assist the Commission or of a committee of the Commission in the performance of its functions, may not,

without the written consent of the Minister, disclose to any other person any confidential information obtained by such person in the performance of his or her functions under this Act, except -

- (a) for the purpose of the performance of his or her functions under this Act; or
- (b) when required to do so by any court or under any other law.

(2) A person who knowingly contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Expenditure

- 73.** The remuneration and allowances payable to -
- (a) members of the Commission; and
 - (b) any person referred to in section 74(1)(c),

and all expenses incidental to the performance of the functions of the Commission are defrayed from the Fund.

Performance of functions of Commission

74. (1) The Commission, in the exercise of its powers and the performance of its functions under this Act, may request the assistance of -

- (a) staff members of the Ministry designated for that purpose by the Permanent Secretary;
- (b) such other staff members in the Public Service to be nominated by their permanent secretaries; and
- (c) such other persons as the Commission may enter into an agreement with to so assist the Commission or to advise it in regard to any matter falling within the scope of its functions.

(2) An agreement referred to in subsection (1)(c) is subject to such conditions as to remuneration and otherwise as the Minister may determine.

CHAPTER 4 AGRICULTURAL (COMMERCIAL) LAND

PART 1 ACQUISITION OF AGRICULTURAL LAND BY STATE FOR PURPOSES OF LAND REFORM

Minister to acquire agricultural land for purposes of land reform

75. (1) Subject to subsection (2), the Minister may acquire for the purposes of land reform, in accordance with this Act, agricultural land in order to make such land available to Namibian citizens who -

- (a) do not own or otherwise have the beneficial use of agricultural land or adequate agricultural land; and
 - (b) have been socially, economically or educationally disadvantaged by past discriminatory laws or practices and those Namibians who are unemployed, deprived, indigent and disadvantaged in order to address social and economic imbalances in the Namibian society and bring about equitable access to land.
- (2) The Minister may under subsection (1) acquire -
- (a) any agricultural land offered for sale to the Minister in terms of section 78(4) ;
 - (b) any agricultural land which has been acquired by a foreign national, or by a nominee owner on behalf or in the interest of a foreign national, in contravention of section 115 or 116;
 - (c) any agricultural land which the Minister considers to be appropriate for the purposes contemplated in subsection (1); or
 - (d) any agricultural land that is -
 - (i) held in excess of an economic farming unit;
 - (ii) owned by absentee land lord;
 - (iii) abandoned; or
 - (iv) under utilised,as may be prescribed.
- (3) Agricultural land acquired under subsection (2) is used for the purposes of land reform as prescribed.

Inspection of agricultural land to be acquired

76. (1) Where the Minister considers it necessary or expedient for the performance of the functions in section 75(1) and section 83(1) he or she may direct the Permanent Secretary to authorise in writing any person to enter upon any agricultural land to investigate -

- (a) the suitability of the land for the purposes contemplated in section 75(1);
- (b) the existence of registered rights and take all reasonable steps to establish the existence of unregistered rights on the land;
- (c) the value of the land;
- (d) the current use of the land;
- (e) the extent of direct state investment and subsidy in the acquisition of the land and any beneficial capital improvement of the property;

-
- (f) the history of acquisition and use of the land; or
 - (g) other relevant factors.

(2) If authorised in writing by the Permanent Secretary, a person conducting an investigation contemplated in subsection (1)(a) may -

- (a) enter upon such land with assistants and necessary vehicles and equipment;
- (b) survey and determine the area and levels of the land;
- (c) dig or bore on or into the land;
- (d) employ any other method considered appropriate for determination of suitability;
- (e) demarcate the boundaries of the land required for the purposes of land reform;
- (f) require the owner, tenant or occupier of the land or the agent of the owner, on instructions by the Permanent Secretary, to give him or her access to a document in possession of the owner, tenant, occupier or agent that the person reasonably requires for the purposes of valuing the land;
- (g) make extract from or copies of a document to which he or she is given access in terms of paragraph (f); and
- (h) in writing require the owner, tenant or occupier of the property, or the agent of the owner, to provide him or her, either in writing or verbally, with particulars regarding the property that he or she requires to value the land.

(3) A person authorised by the Permanent Secretary under subsection (1) -

- (a) may, in so far as it may be necessary to gain access to the land in question, enter upon or go across any other land;
- (b) may not, enter upon the land, unless he or she has given the owner or occupier at least seven days notice of his or her intention to do so;
- (c) may not, in the exercise of the powers conferred by this section, enter into any dwelling-house without the consent of the owner or occupier;
- (d) must on demand, provide the owner, tenant or occupier of the property or the agent of the owner, tenant or occupier with a copy of such written authorisation;
- (e) must at all times whilst performing the inspection be in possession of such written authority; and
- (f) must on demand, identify himself or herself by means of an official identification document to the owner, tenant or occupier of the property or the agent of the owner, tenant or occupier.

(4) If the person contemplated in subsection (3) fails to comply with paragraphs (d), (e) or (f) of that subsection, the owner, tenant or occupier of the property or the agent of the owner, tenant or occupier, may refuse that person entry to the property or may refuse the performance of an act contemplated in subsection (2).

(5) If any person has suffered any damage as a result of the exercise of any power conferred in terms of subsection (1), the State is liable to pay damages or to repair such damage.

(6) Any proceedings by virtue of subsection (5) is instituted within six months after the damage in question has been caused or within six months after the completion of the acts contemplated in subsection (1), whichever is the longer period.

(7) Proceedings referred to in subsection (6) may not be instituted before the prospective plaintiff has given the Minister at least 30 days notice and has stated, together with such notice the cause of the alleged damage.

PART 2

PREFERENTIAL RIGHT OF STATE TO PURCHASE AGRICULTURAL LAND

Definitions for purposes of this Part

77. For the purposes of this Part -

- (a) “certificate of waiver”, in relation to any offer to sell agricultural land in terms of section 78(6), means a statement in writing made by the Minister certifying that the State waives its preferential right conferred by subsection (1) of that section and does not intend to acquire the agricultural land in question at the time of the offer;
- (b) “day”, excludes Saturdays, Sundays or Public Holidays, and the days during the period starting from 24 December of a particular year up to and including 1 January of the following year; and
- (c) “land tax clearance certificate” means a statement in writing by the Minister certifying that all land taxes imposed under this Act on the agricultural land in question have been paid.

Vesting in the State preferential right to purchase agricultural land

78. (1) Subject to subsection (4), the State has a preferential right to purchase agricultural land whenever any owner of such land intends to alienate such land.

(2) Whenever one or more members of a company or close corporation or trust which is the owner of agricultural land intends to sell or transfer -

- (a) in the case of a company, any shares of the company to another person;
or
- (b) in the case of a close corporation, any interest in the close corporation to another person; or
- (c) in the case of a trust, any share or interest in the trust to another person,

it is, for the purposes of subsection (1) and (2), deemed that the company or close corporation or trust in its capacity as owner of the agricultural land held by it, intends to alienate such land.

(3) An owner of agricultural land who intends to have a servitude, usufruct, *habitatio, usus* or any other real right registered over the whole or part of such land in favour of a person, other than a relative of the owner, it is, for the purposes of subsection (1) and (2), deemed that the owner intends to alienate such land.

(4) Despite anything to the contrary in any other law and subject to subsection (5), an agreement of alienation of agricultural land entered into by the owner of such land, or, in the case where such land is alienated by a company or close corporation or trust, an agreement of sale or instrument of transfer of any shares of the company or of any interest of a member in the close corporation or any interest or share in a trust, is not of any force and effect until the owner of such land -

- (a) has first offered such land for sale to the State; and
- (b) has been furnished with a certificate of waiver in respect of such land; or
- (c) has been furnished with a certificate of waiver in respect of such land on the basis that the land is being sold to a buyer or donated to a person, who is a previously disadvantaged person contemplated in Article 23(2) of the Namibian Constitution, who does not own any agricultural land or in the case of a donation, the person is indigent and does not own any agricultural land.

(5) Subsections (1), (2), (3) and (4) do not apply where agricultural land is alienated -

- (a) by or to a regional council or a local authority council as defined in section 1, but only to the extent that such land is alienated otherwise than being sold in the open market;
- (b) in the administration of a deceased estate to an heir or legatee of such estate, except where that heir or legatee is a company or close corporation;
- (c) in a redistribution of assets in an estate between heirs and legatees;
- (d) by a co-owner of such land to another co-owner, except where -
 - (i) the other co-owner is a foreign national; or
 - (ii) such land is owned by a company or close corporation or trust; or
- (e) in such other circumstances as the Minister may prescribe.

(6) An offer to sell agricultural land to the State as required by subsection (4)(a) is made in writing to the Minister through the Permanent Secretary, and must -

- (a) specify the price which the owner is prepared to accept for the land;

- (b) contain such particulars as may be prescribed; and
- (c) be accompanied by a true copy of the title deed under which such land is held by the owner concerned.

(7) Unless the Minister decides to issue a certificate of waiver to the owner concerned, the Permanent Secretary must within 30 days after receipt of an offer in terms of subsection (6) refer such offer to the Commission, which must consider the offer and make its recommendations to the Minister within 30 days of receipt of such referral.

(8) Within 14 days after the receipt of the recommendations of the Commission, the Minister must by notice in writing to the owner concerned, either -

- (a) decline the offer and issue to the owner a certificate of waiver; or
- (b) if the Minister decides to acquire the land in question for the purposes contemplated in section 75(1) -
 - (i) accept the offer; or
 - (ii) if the Minister, acting on the recommendation of the Commission, considers the purchase price specified in the offer to be excessive -
 - (aa) make a counter offer to such owner, specifying the price which the Minister is prepared to pay for the land; and
 - (bb) inform the owner that if such counter offer is not accepted by the owner, the owner must inform the Minister in writing within 5 days of receipt of the counter-offer.
 - (iii) after receipt of the notification by the owner referred to in subparagraph (ii)(bb), the Minister must convene a negotiating committee, to negotiate the purchase price with the owner, and for purposes of advising the Minister.

(9) The negotiation committee referred to in subsection (8)(b)(iii) must consist of -

- (a) the head of the land purchase office in the Ministry as chairperson;
- (b) the head of valuation and estate management in the Ministry as deputy chairperson;
- (c) deputy head of land acquisition in the Ministry;
- (d) deputy head of valuation in the Ministry;
- (e) two staff members of the Ministry designated by the Permanent Secretary to serve as secretariat to the committee.

(10) The negotiating committee may invite any person, whose presence is in its opinion is desirable, to attend and to participate in its deliberations, but such person may not partake in the decisions of the negotiating committee.

(11) if the negotiating committee and the owner fail to reach an agreement on the purchase price -

- (a) the owner may apply to the Lands Tribunal for the determination of the purchase price not later than 30 days after the failure to reach the agreement; and
- (b) the committee must forthwith advise the owner of the provisions of subsection (15).

(12) The Minister may, at any time before the expiry of the periods of 30 days and 14 days referred to in subsections (7) and (8), and despite those subsections, by written notification to the owner extend the period within which -

- (a) the Commission must make its recommendations as required by subsection (7); or
- (b) the Minister may decline or accept the offer in question or make a counter offer as required by subsection (8), for such period, not exceeding 90 days at a time, and on such conditions as the Minister and such owner may agree.

(13) An offer made in terms of subsection (6) is deemed to have been declined by the Minister -

- (a) if the Commission has failed to make its recommendations thereon to the Minister in terms of subsection (7) within the period of 30 days referred to in that subsection, or, where that period has been extended by agreement under subsection 12(a), such extended period; or
- (b) if the Minister has failed to accept the offer or to make a counter offer in terms of subsection (11)(b)(ii) within the period of 14 days referred to in that subsection, or, where that period has been extended by agreement under subsection (12)(b), such extended period.

(14) Where, in the circumstances contemplated in subsection (13), an offer is deemed to have been declined, the Minister must, at the request of the owner concerned, issue a certificate of waiver in respect of the agricultural land offered for sale.

(15) Unless -

- (a) the Minister has issued to the owner a certificate of waiver;
- (b) the Minister, acting on a recommendation of the Commission, and the owner have agreed on the purchase price for the land in question; or
- (c) the Minister, acting on the advice of the negotiating committee, and the owner have agreed on the purchase price,

the owner is deemed to have accepted a counter offer made by the Minister in terms of subsection (8)(b)(ii) if, upon expiry of the period specified in subsection (11), the

owner has not withdrawn the offer or made application to the Lands Tribunal for the determination of the purchase price.

(16) Where, in the circumstances contemplated in subsection (15), an owner is deemed to have accepted a counter offer made by the Minister, the owner must, at the request of the Minister, and if the Minister -

- (a) pays to the owner the amount specified in the counter offer; or
- (b) furnishes to the owner a guarantee for the payment of that amount against registration of transfer of the land into the name of the State,

cause the land to be transferred to the State through the Government Attorney or, where the Minister and owner have so agreed, through a conveyancer appointed by the owner.

(17) Before the land is transferred as contemplated in subsection (16), the owner of the land may request the Minister to withdraw from the transaction and the Minister may withdraw from the transaction if the owner is a Namibian citizen and the reasons given are satisfactory.

(18) Where a mortgage bond is registered over the land in question the Minister must pay the amount concerned or furnish guarantees for the payment, as contemplated in subsection (16), in accordance with such terms as may have been agreed upon between the owner and the mortgagee and as the Minister may have been notified of by them.

(19) If the owner and the mortgagee fail to conclude an agreement as contemplated in subsection (17), any one of them or the Minister may make an application to the Lands Tribunal to determine what portion of the amount payable by the State, must be paid or guaranteed to the owner and mortgagee.

(20) Subject to subsection (15), and unless the Minister has issued to the owner concerned a certificate of waiver in respect of the land in question or the Minister and such owner have agreed otherwise, an offer made in terms of subsection (4) and a counter offer made in terms of subsection (8)(b)(ii) remains in force until -

- (a) it is substituted, either before or after the institution of proceedings for an application to the Lands Tribunal to determine the purchase price by a subsequent offer by the owner or a subsequent counter offer by the Minister ; or
- (b) the purchase price is determined by the Lands Tribunal.

Period of validity of certificate of waiver

79. (1) Subject to subsection (2), a certificate of waiver issued in respect of agricultural land -

- (a) remains in force for a period not exceeding 12 months from the date on which it was issued; and
- (b) unless for the purpose of transferring the land it is lodged with the Registrar within that period, it lapses.

(2) When a certificate of waiver has lapsed in terms of subsection (1), the preferential right previously conferred on the State by section 77(1) to purchase the agricultural land in question, reverts to the State if at any time after such lapsing the owner of such land intends to alienate such land.

(3) The Minister must publish the prescribed information concerning the waivers issued in respect of agricultural land in at least two daily newspapers.

Restriction on transfer of agricultural land

80. (1) The Registrar may not register any transfer of agricultural land unless -

- (a) a certificate of waiver;
- (b) a land tax clearance certificate; and
- (c) a fully completed data verification form in duplicate.

in respect of such land is submitted to the Registrar.

(2) Paragraphs (a) and (c) of subsection (1) do not apply where -

- (a) agricultural land has been alienated by or to the State;
- (b) agricultural land has been alienated in any of the circumstances contemplated in section 78(5);
- (c) agricultural land is to be transferred otherwise than by virtue of an alienation; or
- (d) the Minister in writing directs otherwise.

(3) Subsection (1)(b) does not apply where agricultural land has been alienated by the State.

(4) The Registrar of Companies and Close Corporations, auditors and secretaries of companies and close corporations may not register -

- (a) any sale or transfer of any share of a company; or
- (b) the sale or transfer of any interest of a member in a close corporation, or any portion of such shares or interest,

where it results in any interest in agricultural land passing to any person, without the prior written consent of the Minister having been granted.

PART 3 EXPROPRIATION OF AGRICULTURAL LAND

Definitions for purposes this Part

81. For the purposes of this Part -

“date of notice” means the date on which a notice of expropriation is in terms of section 84(3) delivered, tendered or posted to a person or is in terms of section 84(5) published in the *Gazette*, and if such a notice in respect of the same property is so delivered, tendered or posted or published, the date on which it is so published;

“lessee,” includes a sub-lessee by virtue of a written sublease contract;

“notice of expropriation” means a notice contemplated in section 84;

“owner”, apart from its definition in section 1, includes -

- (a) in relation to a farming unit allotted or leased in terms of this Act, the person to whom it was allotted or leased or his or her cessionary or sub-lessee; and
- (b) in the case of a right of leasehold granted in terms of section 42, the holder of such right;

“possess”, includes the exercise of a right over a property; and

“property” means agricultural land, and includes a right in or to such property.

Power of Minister to expropriate property

82. (1) Subject to an obligation to pay just compensation, the Minister may at any time expropriate any property for land reform as contemplated in section 75(1).

(2) The power of the Minister to expropriate property for the purpose of section 75 -

- (a) is in the public interest;
- (b) includes the power to expropriate any other property which -
 - (i) has been affected by the expropriation of any property; and
 - (ii) for any reason the Minister may consider expedient to expropriate;
- (c) in the case where only a portion of land is expropriated in terms of this section, includes the power to expropriate the remainder of such a piece of land if -
 - (i) the owner so requests and satisfies the Minister that due to that partial expropriation the remainder has become uneconomic to the owner; or
 - (ii) the Minister after consultation with the Minister responsible for agriculture, is satisfied that the remainder is or is likely to become an uneconomic farming unit.

Notice of intention to expropriate property

83. (1) If the Minister intends to expropriate property, the Minister must serve a copy of the notice to that effect on all persons, including holders of

unregistered rights, of whom the Minister is aware and whose rights or interests may be affected by the intended expropriation.

- (2) The notice contemplated in subsection (1) must include -
 - (a) a statement of the intended expropriation, setting out the purpose for the expropriation;
 - (b) full description of the property earmarked for expropriation;
 - (c) an invitation to any person who may be affected by the intended expropriation to lodge with the Minister, within 30 days after service of the notice -
 - (i) any written submissions relating to the effects of the intended expropriation; and
 - (ii) a postal address, a facsimile number or email address, if any, to which further communications to such person may be addressed by the Minister; and
 - (d) a directive to the owner to submit in writing the names and addresses of all holders of unregistered rights and particulars of such rights, to the extent that such names, addresses and particulars are within the knowledge of the owner.
- (3) The Minister must -
 - (a) upon receiving the written submissions from an affected person, notify the person that the submissions has been received; and
 - (b) within 15 days of receiving the submission referred to in paragraph (a), invite the person to enter into negotiations regarding the procedure of the intended expropriation.
- (4) If an agreement cannot be reached between the Minister and the person referred to in subsection (3)(b) within 20 days of the invitation contemplated in that subsection, the Minister may decide -
 - (a) to expropriate, and serve the required notice in terms of section 84; or
 - (b) not to expropriate, and inform the affected parties accordingly in writing.

Notice to expropriate property

84. (1) If the Minister has decided to expropriate the property in terms of section 82, the Minister must, subject to subsection (6), cause a notice of expropriation to be served on the owner of the property or a known holder of a registered or unregistered right in the property in accordance with subsection (5).

- (2) The notice of expropriation must include an offer of compensation and must -

- (a) contain a clear and full description of the property, including -
 - (i) in the case where the expropriation applies to a portion of the land only, the approximate extent of such portion and an annexed sketch plan showing the approximate position of such portion in relation to the whole;
 - (ii) in the case where the expropriation applies to a right in land, a sketch plan showing the approximate position of the right on such land, unless the right in land is accurately described without such a sketch plan;
- (b) state the date of the expropriation;
- (c) state the date upon which the State takes possession of the property;
- (d) contain a statement as to the date or dates on which the Minister pays compensation and any interest due in terms of section 88(4), if any such date is later than the date on which the compensation and interest becomes payable in terms of sections 87(3) and (4);
- (e) state the amount offered as compensation for the property, including the amount offered as compensation to holders of unregistered right in the property of which the Minister is aware;
- (f) contain an explanation of what the amount of compensation contemplated in paragraph (e) comprises of;
- (g) call upon the owner to submit in writing the names and addresses of all holders of unregistered rights and particulars of such rights, other than those furnished in accordance with section 80(1)(e), to the extent that such names, addresses and particulars are within the knowledge of the owner;
- (h) be accompanied by copies of reports detailing how the amount of compensation was determined; and
- (i) draw the attention of the owner of the property to the fact that if a person has an unregistered right in respect of the property of which the Minister had no knowledge on the date of notice, the Minister may adjust the offer.

(3) Rights in the property or properties may be expropriated from different owners or holders of rights in the same notice of expropriation.

(4) The Minister must state a separate offer of compensation in respect of each owner or holder mentioned in the notice of expropriation contemplated in subsection (3).

(5) Non-compliance by the Minister with any provisions of this section does not affect the validity of the expropriation, but the owner may request any non-compliance with any provision to be rectified by the Minister within seven days of such notice, failing which the owner or holder of the right is entitled to approach the Lands Tribunal to order compliance.

(6) Subject to subsection (7), the notice of expropriation and all other notices and documents are delivered, tendered, or sent by registered post to the owner, his or her spouse or his or her duly authorised agent.

(7) If -

- (a) the whereabouts of the owner or of any person having an interest in the property as contemplated in subsection (1), is not readily ascertainable by the Minister; or
- (b) by reason of the number of such owners or persons having such an interest or for any other reason, the Minister is satisfied that service of a notice or other document in accordance with subsection (6) is not practicable,

the Minister may, instead of causing a notice or document to be delivered in accordance with subsection (6), cause to be published -

- (i) once in the *Gazette*; and
- (ii) once a week during two consecutive weeks in local newspapers circulating in the area in which the property in question is situated,

an appropriate notice complying with subsection (2).

Passing of ownership in expropriated property

85. (1) The effect of an expropriation of property is that -

- (a) the ownership of the property so expropriated vests in the State on the date the property is released from all mortgage bonds;
- (b) all unregistered rights in such property are also expropriated on the date of expropriation unless otherwise stated in the notice of expropriation; and
- (c) the property remains subject to all registered rights, with the exception of mortgage bonds, in favour of third parties with which the property has been burdened prior to expropriation, unless or until such registered rights are expropriated from the holder in accordance with this Act.

(2) Possession of the expropriated property passes to the State on the date stated in terms of section 84(2)(b) or such other date as may be agreed upon between the owner or holder of a registered right of a registered or unregistered right and the Minister.

(3) The owner or holder of a registered or unregistered right who is in possession of the property must, from the date of expropriation to the date upon which the State takes possession of the property, take care of and maintain the property.

(4) If an owner or holder of a registered or unregistered right, who is in possession of the property, wilfully or negligently fails to take care of and maintain the property and as a result the property depreciates in value, the Minister may recover the amount of the depreciation from the owner or the holder of such right.

(5) The Minister must compensate the owner or the holder of a registered or unregistered right for costs which in the opinion of the Minister were necessarily incurred after the date of expropriation in respect of such maintenance or care.

(6) If -

- (a) the owner of expropriated property or holder of a registered right desires to place the State in possession of the property expropriated prior to the date stated in terms of section 84(2)(b); and
- (b) such owner or the holder of a registered or unregistered right and the Minister do not agree upon a date on which possession passes to the State,

the owner or the holder of a registered or unregistered right must give the Minister notice in writing of not less than 21 days before the date on which he or she desires to place the State in possession, in which case possession of the property passes to the State on that date.

(7) The owner or holder of a registered or unregistered right, whoever is in possession of the expropriated property -

- (a) remains entitled to the use of and the income from the property, as was enjoyed immediately prior to the date of expropriation, from the date of expropriation to the date upon which possession passes to the State; and
- (b) during the period from the date of expropriation to the date the State takes possession, remains responsible for the payment of any charges in respect of the property as if the property had not been expropriated.

Compensation on claims

86. (1) The owner or holder of a registered or unregistered right whose property has been expropriated in terms of this Act, must within 30 days from the date of notice referred to in section 82(4), deliver or cause to be delivered to the Minister a written statement indicating -

- (a) whether the offer of compensation is accepted; and
- (b) the physical address or postal address and facsimile number or email address, if any, to or at which further documentation in connection with the expropriation is to be delivered.

(2) If the offer of compensation referred to in subsection (1) is not accepted, the owner or holder of a registered right must also set out in the statement contemplated in subsection (1) -

- (a) the amount claimed by him or her as compensation;
- (b) full particulars as to how the amount is made up, including a copy of a valuation or other professional report, if any, that forms the basis of the compensation claimed;

(c) full particulars of all improvements on the property, which, in the opinion of the owner, affect the value of such property; and

(d) the physical address or postal address and facsimile number or email address, if any, to or at which further documentation in connection with the expropriation is to be delivered.

(3) The Minister may extend the period of 30 days referred to in subsection (1) upon request of the owner or holder of a registered right.

(4) If the owner or holder of a registered right requests the extension of the period of 30 days in writing before the expiry of that period, the Minister must extend such period by a further 30 days.

(5) The owner or holder of a registered right must deliver or cause to be delivered to the Minister within 30 days of the request by the Minister, the title deed to such land or, if it is not in his or her possession or under his or her control, written particulars of the name and address of the person who is in possession of the title deed or who has the title deed under his or her control.

(6) The person referred to in subsection (5), in whose possession the title deed may be, must deliver or cause to be delivered the title deed in question within 30 days of the request by the Minister.

(7) A person who refuses or fails to comply with a request by the Minister in terms of subsection (2)(d) or (5) or (6) commits an offence and is liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

Offers of compensation

87. (1) If the Minister does not accept the amount claimed by a owner or holder of a registered right in terms of section 86(2), the Minister must within 30 days of delivery of the statement contemplated in that subsection -

(a) make an offer of compensation to the owner or holder of a registered right in writing; and

(b) indicate how the amount is made up and calculated.

(2) If the owner or holder of a registered right fails to claim an amount of compensation or to furnish the information contemplated in section 86, the Minister must within 30 days after the expiry of the period or the extended period contemplated in that section, offer in writing an amount of compensation to such owner or holder of a registered right.

(3) The offer of compensation contemplated in subsection (1)(a) and (2) is accompanied by copies of reports detailing how the amount of compensation is determined, if the amount is different to the amount offered by the Minister in terms of section 84(2).

(4) If the owner or holder of a registered right fails to respond to an offer of compensation contemplated in subsection (2) he or she is deemed to have accepted the offer made to him or her by the Minister in terms of subsection (1) or (2).

- (5) An offer of compensation remains in force until -
 - (a) the Minister makes a revised offer;
 - (b) it has been accepted; or
 - (c) the amount of compensation has been approved or decided otherwise by the Lands Tribunal in case of disagreement between the parties.

(6) The Minister or the owner or holder of a registered right may from time to time request for relevant particulars regarding the claim for compensation or the offer of compensation and particulars so requested are furnished within 21 days of such request.

(7) If the Minister or the owner or holder of a registered right fails to comply with a request in terms of subsection (6), the Lands Tribunal may, on application, issue an order directing the party to comply.

Payment of amounts offered as compensation

88. (1) Compensation due to an owner or holder of a registered right in terms of this Act becomes payable on the date on which the amount of such compensation has been determined by agreement between the Minister and the owner or holder of a registered right or approved or determined by the Lands Tribunal.

(2) Despite subsection (1) and subject to sections 95 and 96, the Minister must -

- (a) on the date on which an amount is offered as compensation or, if the State has not yet taken possession of the property, the date on which possession passes to the State in terms of section 84(2); and
- (b) unless the Minister has proposed a later date for the payment of the compensation in terms of section 83(2)(c),

pay, by way of an advance payment, not less than 80 per cent of the amount of compensation offered to the owner or holder of a registered right concerned or to the person referred to in section 93.

(3) Interest due in terms of section 89(4) becomes payable only after the amount of compensation has been determined and at the time when payment of the last outstanding portion of compensation is made.

(4) If the Minister has proposed a later date or dates in terms of section 83(2)(c), the compensation and the interest are payable, subject to an agreement to the contrary between the owner or holder of a registered right and the Minister, on such dates as the Lands Tribunal may order.

(5) An owner or holder of a registered right or the Minister may apply to the Lands Tribunal for an order contemplated in subsection (4) at any time after the Minister has proposed a later date in terms of section 83(2)(c).

(6) The payment or use of the money in terms of sections 95 and 96 of any amount under subsection (1) may not preclude the determination by the Lands Tribunal of a different amount as compensation.

(7) If the amount determined by the Lands Tribunal as compensation is less than the amount paid in terms of subsection (2)(b), the owner or holder of a registered right must refund the difference to the Minister together with interest at the rate contemplated in section 89(3) from the date on which the amount was so paid or any interest that accrued on the amount.

Basis on which compensation is to be determined

89. (1) The amount of compensation to be paid to an owner or holder of a registered right must be just, by having regard to the public interest in land reform, the interests of the owner or holder of a registered right and having regard to all relevant circumstances, including -

- (a) the current use of the property;
- (b) the market value of the property; and
- (c) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property.

(2) In determining the amount of compensation to be paid in terms of this Act the Minister may not take account of -

- (a) the fact that the property has been acquired without the consent of the owner or holder of a registered right;
- (b) the special suitability or usefulness of the property in question for the purpose for which it is required by the State if it is unlikely that the property would have been purchased for that purpose on the open market;
- (c) any enhancement in the value of the property, if such enhancement is a consequence of the use of the property in a manner which is unlawful;
- (d) improvements made on the property in question, after the date on which the notice of expropriation was served on the owner or holder of a registered right, except where they were undertaken in compliance with an obligation in terms of section 85(5) or where they were undertaken in pursuance of obligations entered into before that date;
- (e) anything done with the object of obtaining compensation; or
- (f) any enhancement or depreciation, after the date of service of the notice of expropriation, in the value of the property in question which can be attributed to the scheme or purpose in connection with which the property was expropriated.

(3) Despite anything to the contrary in this Act, there is added to the total amount payable in accordance with subsection (1) a solatium amount equal to -

- (a) 10 per cent of such total amount, if it does not exceed N\$50 000; plus
- (b) five per cent of the amount by which it exceeds N\$50 000, if it does not exceed N\$250 000; plus

- (c) three per cent of the amount by which it exceeds N\$250 000, if it does not exceed N\$500 000; plus
- (d) one per cent, but not amounting to more than N\$5 000, of the amount by which it exceeds N\$500 000.

(4) Interest at the interest rate determined in terms of section 35(a) of the State Finance Act, 1991 (Act No 31 of 1991), is due from the date of expropriation on the outstanding portion of the amount of compensation payable in accordance with this section and becomes payable in accordance with section 86(3) and (4).

(5) If the owner or holder of a registered right fails to comply with section 86(1) and (2) within the periods referred to in that section, including any extension of such periods, the amount so payable during the period of such failure and for the purposes of the payment of interest, is not regarded as an outstanding amount.

(6) Interest due in terms of subsection (4) is regarded as having been paid on the date on which the amount has been made available or been posted to the owner or holder of a registered right concerned.

(7) a payment, utilisation or deposit of an amount in terms of section 88(1), 91(2) and 92(1) or (4) must be regarded as being a payment to the owner or holder of a registered right and interest does not accrue on any such amount as from the date on which it has been paid, utilised or deposited.

(8) An owner or holder of a registered right is not entitled to interest for any period before possession of the property has passed to the Minister in terms of section 85(2) and (4).

(9) If the owner or holder of a registered right occupies or utilizes the property or any portion, such owner or holder of a registered right is not entitled to interest in respect of the period during which he or she so occupies or utilizes the property or portion thereof on so much of the outstanding amount as relates to the property or portion so occupied or utilized.

Property subject to mortgage bonds and deeds of sale

90. (1) If a property expropriated in terms of this Act was immediately prior to the date of expropriation encumbered by a registered mortgage bond or subject to a deed of sale, the Minister may not pay out any portion of the compensation money in question to the owner or holder of a registered right concerned except -

- (a) after the compensation due to the mortgagee or buyer, has been determined; and
- (b) to such person and on such terms as may have been agreed upon between the owner or holder of a registered right and the mortgagee or buyer concerned after the owner or holder of a registered right has notified the Minister of such agreement.

(2) If the owner or holder of a registered right and the mortgagee or buyer fail to conclude an agreement contemplated in subsection (1)(b), any of the parties may apply to the Lands Tribunal for an order directing the Minister to pay out the compensation money or an advance payment in terms of section 88(2)(b) in such manner as the Lands Tribunal may determine.

(3) The Lands Tribunal may on such application issue such order, including an order as to costs, as the Lands Tribunal considers just.

Payment of land tax out of compensation money

91. (1) If a property has been expropriated, the owner must, upon receipt or publication of an expropriation notice in terms of section 83, inform the Minister in writing of any outstanding land tax.

(2) The Minister may utilise so much of the compensation money in question as is necessary for the payment on behalf of the owner of any land tax in terms of subsection (1).

Deposit of compensation money with Master

92. (1) If -

- (a) a property expropriated under this Act was left in terms of a will or testament to undetermined beneficiaries;
- (b) compensation is payable in terms of this Act to a person whose address is not readily ascertainable or who fails to supply the prescribed information and documentation for payment after 30 days' written notice to do so; or
- (c) compensation is payable and the Minister is unable to determine to whom it is payable,

the Minister may deposit the amount of compensation payable in terms of this Act with the Master after which the Minister ceases to be liable in respect of that amount.

(2) In the event of dispute or doubt as to the person who is to receive any compensation payable in terms of this Act or in the event of an interdict in respect of the payment of compensation, the Minister may, subject to section 90(2), pay such compensation to the Master.

(3) Any moneys received by the Master in terms of subsection (1) or (2) is paid into the Guardian's Fund referred to in section 86 of the Administration of Estates Act, 1965 (Act No 66 of 1965), for the benefit of the persons who are or may become entitled thereto, and bear interest at a rate determined from time to time under section 88 of that Act.

(4) The Lands Tribunal has jurisdiction to make an order which may be expedient in respect of any moneys received by the Master in terms of subsection (1) or (2).

Withdrawal of expropriation

93. (1) Despite anything to the contrary in any law, the Minister may withdraw any expropriation from a date mentioned in a notice of withdrawal if the withdrawal of that expropriation is in the public interest or such withdrawal is otherwise expedient.

(2) The notice of withdrawal contemplated in subsection (1) is served on every person on whom the notice of expropriation in question was served.

- (3) An expropriation notice may not be withdrawn -
 - (a) after the expiration of three months from the date of expropriation, except -
 - (i) with the written consent of the owner and all holders of registered right; or,
 - (ii) the Lands Tribunal, on application by the Minister, authorises the withdrawal on the ground that it is in the public interest that the expropriation be withdrawn;
 - (b) if the property has already been registered in the name of the State in consequence of the expropriation; or
 - (c) if the Minister has already paid compensation in connection with such expropriation, unless the agreement in writing of every person to whom such compensation has been paid is obtained to refund the State.
- (4) If expropriation of property is withdrawn in terms of this section -
 - (a) ownership of such property again vests, from the date contemplated in subsection (1), in the owner from whom it was expropriated;
 - (b) any mortgage bonds and other rights discharged or expropriated by virtue of section 88(1) as a consequence of the expropriation are fully revived; and
 - (c) the Registrar, on receipt of a copy of the notice of withdrawal, must cancel any endorsement made in connection with the expropriation in his or her registers and on the title deed in question.

PART 4 ALLOTMENT OF AGRICULTURAL LAND

Definitions for purposes of this Part

- 94. For the purposes of this Part -
 - (a) “farming unit” means any piece of surveyed land allotted or available for allotment under this Chapter; and
 - (b) “date of allotment” means the date on which the beneficiary signs the allotment letter from the Minister.

Power of Minister to lease or dispose of certain State land or agricultural land

95. Subject to this Chapter, the Minister, by way of lease or in such other manner as may be prescribed, may allot to any person or group of persons contemplated in section 75(1), for agricultural purposes -

- (a) any land, other than communal land, of which the State is the owner and which has been made available to the Minister for the purpose of this Act;

- (b) any agricultural land acquired by the State under Part 1, 2 or 3; or
- (c) any land allotted under this Part which has reverted to the State in terms of section 105.

Subdivision of land

96. (1) The Minister, with concurrence of the Minister responsible for agriculture, may -

- (a) direct that any land acquired under this Act be subdivided into holdings for allotment to persons for purposes of small-scale farming; and
- (b) cause each such holding to be surveyed.

(2) Any subdivision of land in terms of subsection (1) is carried out in accordance with a partition plan approved by the Minister.

(3) Despite anything to the contrary in any other law regarding the subdivision and registration of land -

- (a) the Surveyor-General may approve any diagram or plan of subdivision prepared in accordance with a partition plan referred to in subsection (2); and
- (b) the Registrar may register the transfer of any such piece of subdivided land.

Preparation and publication of allotment plans

97. (1) The Minister must cause the preparation of an allotment plan for the purpose of the allotment of land in terms of section 95 as a farming unit.

(2) An allotment plan referred to in subsection (1) must-

- (a) show the boundaries of each farming unit;
- (b) have annexed to it or recorded on it a statement of the approximate area of each farming unit; and
- (c) have annexed to it a statement -
 - (i) indicating the nature of any improvements.
 - (ii) specifying the manner in which, as contemplated in section 95, the farming units are to be allotted and the terms and conditions subject to which such allotment is made; and
 - (iii) setting out the minimum qualifications which may be required of persons to qualify for allotment of any farming unit.

(3) When an allotment plan has been approved by the Minister, the Minister must cause copies to be made available for public inspection at such place or places and during such times as the Minister notifies by notice in the *Gazette* and in at least

one newspaper circulating in the area in which the land is situated and, if the Minister considers it expedient, in any other manner as the Minister may direct.

(4) The notice published under subsection (3) must invite applications for the allotment of farming units offered for allotment and must state -

- (a) the number of farming units offered for allotment and the location of each such unit;
- (b) a description of each such farming unit;
- (c) any special conditions upon which each farming unit is offered for allotment;
- (d) the minimum qualifications required of applicants to qualify for the allotment of a farming unit;
- (e) where any farming unit is offered for lease, the approximate rent;
- (f) the manner of application for the allotment of a farming unit; and
- (g) the closing date for such applications.

(5) Allotment of any farming unit included in an allotment plan referred to in subsection (1) may not be made unless -

- (a) such allotment plan has been made available for public inspection in accordance with subsection (3); and
- (b) the closing date for applications specified in accordance with subsection (4)(g) has expired.

(6) Sections 96, 97 and 98 do not apply to the allotment of any farming units that the Minister has -

- (a) specifically reserved or designated to certain identified vulnerable groups or communities; or
- (b) designated for allocation to communities that have been affected by natural disasters or any other causes as the Minister may prescribe.

Disposal of farming units reverting to State

98. (1) Sections 100 and 101 do not apply to the allotment of any farming unit that has previously been allotted but has reverted to the State in terms of this Part and which the Minister considers for allotment without any alteration of the boundaries.

(2) Whenever the Minister intends to allot any farming unit referred to in subsection (1), the Minister must by notice, given in the manner as prescribed in section 97(3), offer farming unit for allotment, and such notice must contain the information contemplated in section 97(4).

(3) The Minister may not allot any farming unit referred to in subsection (1) unless -

-
- (a) the notice referred to in subsection (2) has been published; and
 - (b) the closing date for applications specified in the notice has expired.

Application for allotment and consideration of applications

99. (1) Every application for the allotment of a farming unit offered for allotment under this Part is made in writing to the Minister in the manner as prescribed.

(2) The Minister may not approve any application for allotment of any farming unit made on behalf of a company or close corporation unless such company or close corporation -

- (a) is incorporated under the laws of Namibia;
- (b) undertakes that it will occupy the farming unit through the agency of a manager to be approved by the Minister under section 102(1) who will personally reside on that farming unit and use and develop it for agricultural purposes; and
- (c) is legally competent to hold agricultural land under this Act or any other law.

(3) The Minister, with consent of the applicant, may allocate farming units to applicants elsewhere other than the specific units they have applied for.

(4) The Minister must, by notice in the *Gazette*, publish the names of the successful applicants.

(5) An applicant who is aggrieved by a decision of the Minister under this section may, within 21 days from the date of publication of the names of successful applicants in the *Gazette* or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.

(6) If an applicant in his or her application furnishes information or makes a statement material to the application which the applicant knows to be false or misleading, he or she commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(7) In the event of the conviction of an applicant of a farming unit under subsection (6) which farming unit has been allotted to the applicant, the Minister must cancel the allotment and the lease.

Duration and registration of leases

100. (1) The Minister may grant any lease in respect of a farming unit under this Chapter for any period not exceeding 99 years.

(2) The Minister must cause any lease referred to in subsection (1) to be registered in accordance with the Deeds Registries Act.

(3) The lessee of a farming unit is liable for the payment of any fees and costs pertaining to the registration of the lease, unless the Minister prescribe otherwise.

Rent of farming unit leased

101. The yearly rent payable in respect of any farming unit is such amount and is payable on such terms and conditions as the Minister may determine.

Occupation of farming unit leased

102. (1) A lessee must take up effective occupation of the farming unit, either personally or through a manager in the full-time employment of the lessee approved by the Minister, not later than 30 calendar days after the date of commencement of the lease, or such extended period as the Minister in a particular case may approve.

(2) If the lessee fails to comply with subsection (1), the Minister may withdraw the allotment for re-allocation

(3) Except with the prior written approval of the Minister, a lessee of a farming unit may not use such farming unit for any purpose other than -

- (a) agricultural and ancillary purposes;
- (b) for the personal residence of himself or herself and his or her family;
- (c) where applicable, the manager of the lessee approved under subsection (1) and his or her family; and
- (d) such employees as may be necessary for the farming operations of the lessee on the farming unit.

Compensation on termination of lease

103. (1) On the termination of a lease by effluxion of time or otherwise, but subject to sections 107 and 108, compensation is payable to a lessee in respect of buildings or improvements effected on the farming unit after the allotment to the lessee in terms of this Part.

(2) The Minister must, in relation to the compensation to be paid in terms of subsection (1) and in the determination of such compensation, have regard to -

- (a) the value of the buildings or improvements concerned and the period of the lease;
- (b) the economic state, at the date of termination of the lease, of the agricultural industry in the area in which the farming unit is situated; and
- (c) contributions made from public funds towards the cost of permanent improvements on the farming unit.

(3) Despite anything to the contrary in any other law, when any compensation determined under subsection (2) is payable to a lessee, there must be deducted from the amount so payable any rent due and payable under the lease and any other debts owing to the State by the lessee may be deducted from the amount so payable.

(4) The Minister must, by written notice, inform a lessee of the amount -

- (a) of any compensation payable to the lessee in terms of subsection (1); and
 - (b) when compensation is so payable to the lessee, of any deductions under subsection (3).
- (5) A lessee who is not satisfied with the amount of -
- (a) any compensation determined by the Minister under subsection (2); or
 - (b) any deductions made under subsection (3) from the compensation payable to him or her or it,

may, within 30 days from the date of notice of the amount so determined or deducted, or such extended period as the Minister in a particular case may allow, appeal against the determination of that compensation or deductions to the Lands Tribunal.

Restraint on certain transactions by lessee of farming unit

- 104.** (1) A lessee may not -
- (a) assign, mortgage or in any manner whatsoever encumber, or part with possession of the farming unit in question or any part; or
 - (b) enter into any partnership for the operation of such farming unit,

except with the prior written consent of the Minister.

(2) An application for the consent of the Minister for the purposes of subsection (1) is made in writing.

(3) The Minister must, by written notice, inform the lessee concerned of his or her decision under subsection (1).

(4) A lessee who is aggrieved by a decision of the Minister under subsection (1) may within 21 days from the date of receipt of notice of the decision, or such extended period as the Minister in a particular case may allow, appeal against the decision to the Lands Tribunal.

(5) An act referred to in subsection (1)(a) which entails the registration, execution or attestation of any deed or other document in a deeds registry may not be registered, executed or attested, unless proof of the required consent of the Minister under subsection (1) is submitted to the Registrar.

- (6) A farming unit may not be sublet.

Cancellation of lease

- 105.** (1) Subject to subsection (3), if a lessee fails -
- (a) to comply with any provision of this Act which is applicable to the lessee or to fulfil any term or condition of the lease, the Minister may cause written notice to be served upon such lessee calling upon that lessee to remedy any default within a period specified in the notice; and

- (b) to remedy such default within the period specified in the notice referred to in paragraph (a), the Minister, may cancel the lease, and if the lease is so cancelled, the Minister must by written notice inform the lessee of such cancellation.
- (2) Subject to subsection (3), upon cancellation of a lease under subsection (1), the right to occupy the farming unit in question and all improvements revert to the State, subject to the payment of compensation in accordance with section 103.
- (3) A cancellation of a lease under subsection (1) may not take effect until -
 - (a) the period for noting an appeal under subsection (4) has expired and the lessee concerned has not noted an appeal; or
 - (b) where an appeal has been noted under subsection (4), the appeal has been abandoned or dismissed.
- (4) Any lessee who is aggrieved by a decision of the Minister under subsection (1) to cancel his or her or its lease may, within 30 days from the date of receipt of notice of the decision of the Minister to cancel the lease or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.

Debts due under lease cancelled or surrendered

106. (1) The termination of a lease under this Chapter or the surrender of a lease does not extinguish any debt due by the lessee to the State under such lease and upon such termination or surrender such debt, subject to subsection (2), becomes payable to the State.

(2) If the Minister is satisfied that the termination or surrender of a lease was due to drought, flood, tempest, locusts, lack of water, failure of crops, disease of stock or other adverse farming conditions not attributable to the conduct of the lessee, the Minister may waive the whole or any part of any debt which has become due and payable in terms of subsection (1).

Insolvency of lessee

107. (1) If the lessee becomes insolvent or, in the case of a lessee which is a company or close corporation, the company or close corporation is placed under liquidation, the trustee of the insolvent estate or the liquidator of the company or close corporation may assign the lease to any person approved in writing by the Minister on the recommendation of the Commission.

(2) If the trustee or liquidator fails to assign the lease within the period of three months after the date of his or her appointment or such longer period as the Minister may allow, the Minister may cancel the lease, in which event, the trustee or liquidator is, subject to subsection (3), entitled to be paid by the State compensation for the benefit of the insolvent estate or the company or close corporation under liquidation in accordance with section 101.

(3) Despite anything to the contrary in any other law contained, the Minister may deduct from any compensation payable in terms of subsection (2) any rent due or any other debt owing to the State in respect of the farming unit.

Death or mental illness of lessee

108. (1) If a lessee dies and leaves no valid will, or if a curator is appointed for a lessee under any law relating to mental health, the executor of the estate of the lessee or such curator may assign the lease to any person who is approved on the recommendation of the Commission.

- (2) Pending the assignment of the lease in accordance with subsection (1) -
 - (a) the executor or curator must continue the lease on behalf of the estate or the lessee subject to this section; and
 - (b) the executor or curator or on his or her behalf by a person nominated by him or her and approved in writing by the Minister must fulfil the terms and conditions of the lease.

(3) If the executor or curator fails to assign the lease within the period of six months after the date of his or her appointment as executor or curator or such longer period as the Minister may allow, the Minister may cancel the lease, in which event, the State must pay compensation to the executor or curator for the benefit of the deceased estate or the lessee in accordance with section 103.

(4) Despite anything to the contrary in any other law, the Minister may deduct from any compensation payable in terms of subsection (3) any rent due or any other debt owing to the State in respect of the farming unit.

(5) If, pending the assignment of the lease or during the period the lease is continued by the executor or curator as provided in subsection (2), the executor or the curator or the person nominated by him or her in terms of that subsection, fails -

- (a) to comply with any requirement of this Chapter which was applicable to the lessee; or
- (b) to fulfil any term or condition of the lease,

sections 105 and 106 apply.

Option to purchase farming unit leased

109. (1) A lessee of a farming unit may apply to the Minister to obtain an option to purchase the farming unit concerned at a purchase price equal to the capital value as specified in the relevant statement referred to in section 39(2)(c), on condition that -

- (a) at least five years have lapsed since the date of commencement of the lease; and
- (b) all the provisions of this Act which are applicable to the lessee and all the terms and conditions of the lease have been complied with.

(2) An application for an option to purchase a farming unit as contemplated in subsection (1) is made to the Minister in the prescribed form.

(3) The Minister must refer the application made in terms of subsection (2) to the Commission for recommendation to the Minister.

(4) The Commission must, in relation to every application referred to it in terms of subsection (3) -

- (a) satisfy itself whether or not the requirements stated in subsection (1) are met; and
- (b) if satisfied, make a recommendation to the Minister to grant the option to purchase, stipulate the terms and conditions on which it recommends the option, including conditions as to the manner in and time within which the option may be exercised.

(5) Where the Commission, under subsection (4), recommends to the Minister that it is not satisfied with the application, the Minister may either -

- (a) by written notice to the applicant, refuse the application; or
- (b) refer the application back to the Commission for reconsideration in the light of any comments which the Minister may make in relation thereto.

(6) Where the Commission, under subsection (4), has advised the Minister that it is satisfied with the application, the Minister must grant the applicant an option to purchase the farming unit on the terms and conditions determined by the Minister on the recommendation of the Commission.

Amendment of terms and conditions of option to purchase

110. The Minister, on the recommendation of the Commission, may, at the request of the lessee, either before or after the exercise of the option, amend the terms and conditions on which an option was granted under section 109.

Land to be registered subject to existing rights and encumbrances

111. (1) A land purchased under this Part is subject to all rights and encumbrances as are registered against the title held by the State in respect of the land.

(2) A person who purchases land under this Part is entitled to obtain registered title of the land upon payment to the State of the whole purchase price, survey fees and the transfer costs.

Purchased farming unit to be used for agricultural purposes

112. (1) Except with the prior written approval of the Minister, a farming unit purchased under this Part may not be used for any purpose other than for agricultural purposes and for occupancy by the purchaser and the family of the purchaser and the necessary employees of the purchaser and their families.

(2) If a person uses the farming unit in contravention of subsection (1), the Minister may by notice in writing require such person to cease such other use within a period specified in the notice, and, if such person fails to comply with such requirement within the specified period, the farming unit becomes subject to expropriation and the Minister must expropriate the farming unit and Part 3 applies with the necessary changes.

Right to enter and inspect

113. (1) Any staff member or person referred to in section 74(1)(a), (b) or (c), or any other person authorised in writing by the Permanent Secretary may at all reasonable times enter and inspect any farming unit allotted under this Part for the purpose of ascertaining whether this Act or the terms and conditions of the relevant agreement of lease are being complied with in respect of the farming unit.

(2) Before exercising the powers conferred by subsection (1), the staff member or person concerned must, whenever reasonably practicable -

- (a) obtain the consent of the lessee of the farming unit; or
- (b) give the lessee not less than 48 hours notice in writing of his or her intention to enter and inspect the farming unit,

and unless such consent has been obtained or such notice has been given, the staff member or person concerned may not, in the exercise only of the powers conferred by this section, enter into any enclosed building or dwelling house without the consent of the lessee.

PART 5 PROHIBITION ON ACQUISITION OF AGRICULTURAL LAND BY FOREIGN NATIONALS

Prohibition on acquisition of agricultural land by foreign nationals

114. (1) Despite any provision to the contrary in any law, but subject to section 115, a foreign national may not -

- (a) acquire agricultural land through the registration of transfer of ownership in the deeds registry; or
- (b) acquire directly or indirectly a majority interest in a company or close corporation that owns, directly or indirectly, agricultural land.

(2) When -

- (a) the Registrar of Companies or the secretary or auditors of the company becomes aware that an interest in a company; or
- (b) the Registrar of Close Corporations or the secretary or auditors of the close corporation becomes aware that an interest in a close corporation,

owning agricultural land has passed to a foreign national, he or she must inform the Minister in a prescribed form and manner that such interest has so passed.

(3) A foreign national, after obtaining the written approval of the Minister, may enter into an agreement with any other person where any right to the occupation of agricultural land or a portion of such land is conferred upon the foreign national -

- (a) for a period of 10 years at a time renewable; or
- (b) for a fixed period of less than 10 years, but which is renewable, and it being a condition of such agreement that the right of occupation of the

land concerned may not exceed a period of 10 years in total, renewable for another maximum of 10 years at a time.

(4) An application for approval of the Minister for the purposes of subsection (3) is made in the prescribed form and manner.

(5) The Minister may grant an application in terms of subsection (4) subject to such conditions as the Minister may determine.

(6) The Minister may not grant an application made in terms of subsection (4), unless the Minister is satisfied -

- (a) that the land concerned is capable of being occupied beneficially for the purpose which the applicant proposes to use or occupy it;
- (b) that the use or occupation of the land concerned will not have an adverse effect on the environment or adequate measures will be provided by the applicant to prevent or deal with any adverse environmental consequences which may result from such use or occupation;
- (c) that the holding of the land in question will contribute towards the economic development of Namibia, by either -
 - (i) utilising Namibian resources, including labour and natural resources;
 - (ii) increasing employment opportunities;
 - (iii) providing for training of Namibian citizens;
 - (iv) earning or saving foreign exchange; or
 - (v) generating development in the less developed areas of Namibia; and
- (d) that the holding of the land in question is not inconsistent, whether directly or indirectly, with the implementation, whether by or under any law or otherwise of policies or programmes aimed at redressing economic imbalances in Namibia, including such policies or programmes relating to any land reform or resettlement in Namibia.

Exemptions

115. (1) Section 114(1) does not apply to the acquisition of agricultural land by a foreign national -

- (a) by virtue of any succession by intestacy or testamentary disposition, if such heir or legatee -
 - (i) is ordinarily residing in Namibia;
 - (ii) is a company in which the controlling interest is held by Namibian citizen and such company is doing business in Namibia; or

- (iii) is a close corporation in which the controlling interest is held by Namibian citizen and such close corporation is doing business in Namibia; or
 - (b) who is married in community of property to a Namibian citizen and by virtue of such marriage is ordinarily residing in Namibia.
- (2) Where heirs or legatees are not ordinarily resident in Namibia the executor must make an offer to the State as contemplated in section 78(4).

Acquisition and holding of agricultural land by and on behalf of foreign nationals

116. A person may not acquire and hold as a nominee owner on behalf of or in the interest of any foreign national any agricultural land.

Agricultural land unlawfully acquired or held

- 117.** (1) Where any agricultural land has been acquired -
- (a) by a foreign national in contravention of section 114(1); or
 - (b) by a nominee owner in contravention of section 116,
- the Minister may -
- (i) issue an order that such agricultural land be sold;
 - (ii) acquire such land in accordance with the provisions of Part 1 of Chapter 4 for the purposes of section 75(1).
- (2) Where the Minister issues an order under subsection (1) he or she must give notice in writing -
- (a) to the foreign national concerned; and
 - (b) where applicable, to the nominee owner concerned,

and such notice must state that unless the foreign national or such nominee owner submits to the Minister, within a period of 30 days from the date of service of the notice, an agreement of sale or disposal otherwise of the land concerned to a person who is not by law disqualified from acquiring it, the Minister may cause such land to be sold in accordance with subsection (3).

- (3) If -
 - (a) an agreement of sale or disposal otherwise of the land as contemplated in subsection (2) is not submitted to the Minister within the period referred to in that subsection; or
 - (b) upon submission of such an agreement, subsequent proof that the land has been transferred to the purchaser concerned is not furnished to the Minister within 60 days of the date of the notice in terms of subsection (2) or such extended period as the Minister in a particular case may allow,

the Minister may cause such land to be sold by public tender or public auction on such terms and conditions as the Minister may determine.

(4) If, according to the registers of the Registrar, any mortgage bond or any other encumbrance or real right is registered over or in relation to agricultural land in respect of which an order is issued by the Minister under subsection (1), the Minister must, if the address of the person in whose favour such mortgage bond, other encumbrance or real right is registered is stated in the deed or other instrument embodying such mortgage bond, other encumbrance or real right, cause a copy of the notice referred to in subsection (2) to be sent by registered post to that person at the address so stated.

(5) The Minister must cause a copy of a notice given under subsection (2) to be transmitted to the Registrar and the Registrar must upon receipt endorse the date and hour of its receipt and endorse in the appropriate registers that such a notice has been received in respect of the land in question.

(6) Subject to subsection (7), after receipt of any notice referred to in subsection (2), the Registrar may not register any transfer of, or any lease or mortgage bond or other encumbrance in respect of or over, the land in question, except where the Minister notifies the Registrar in writing that the registration of such transfer, lease, mortgage bond or other encumbrance is in pursuance of -

- (a) an agreement of sale submitted to the Minister in terms of subsection (3); or
- (b) a sale by public tender or public auction under subsection (3).

(7) If the Minister withdraws a notice referred to in subsection (2), the Minister must cause a notice of the withdrawal to be transmitted to the Registrar, and upon receipt of such a notice or upon the transfer of the land in question in accordance with subsection (6), the Registrar must cancel any endorsement made under subsection (5).

(8) The costs incidental to the sale of any agricultural land by public tender or public auction under subsection (3) is a first charge upon the proceeds derived from such sale and -

- (a) any balance is applied towards the payment of any debt the payment of which is secured by the land in question, in its legal order of priority; and
- (b) any balance left is paid to the foreign national or, where applicable, to either the nominee owner or the foreign national, as the Minister may direct.

(9) The Minister or any officer designated by the Minister for that purpose may sign any document and do whatever may be necessary in order to effect the transfer of any land sold by public tender or public auction under subsection (3) to the purchaser of such land.

(10) If -

- (a) the owner of the land in question fails to produce the title deed; or

- (b) the holder of any mortgage bond over such property fails to consent to the cancellation of the bond or the release of the property from the operation of the bond,

the Registrar must, if the Minister so directs in writing, register the transfer of ownership of the property and endorse the transfer on the duplicate title filed in his or her office and in the appropriate registers.

Offences in relation to sale or otherwise disposal of agricultural land

118. (1) Despite any action taken by the Minister under section 116, where any agricultural land has been acquired -

- (a) by a foreign national in contravention of section 114(1); or
- (b) by a nominee owner in contravention of section 116,

the person who sold or otherwise disposed of agricultural land to the foreign national or nominee owner commits an offence and subject to subsection (2) is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(2) In any prosecution under subsection (1), it is a defence to prove that the accused had reasonable grounds for believing and did believe that the person who acquired the agricultural land in question was not by law disqualified from acquiring it.

Restrictions upon registration of agricultural land

119. (1) Despite anything to the contrary in any law, the Registrar may not register any transfer of agricultural land or any lease or sublease in respect of such land or any cession of such a lease or sublease, unless there is submitted to the Registrar -

- (a) a statement made under oath or affirmation by or, in the case of a company, close corporation or trust, on behalf of the transferee, lessee, sub-lessee, cessionary or beneficiary declaring -
 - (i) his or her nationality or, in the case of a company or close corporation, the nationality of each member and whether or not the company or close corporation is a foreign national; and
 - (ii) whether or not the land to be transferred or mentioned in the lease, sub-lease or cession will be held by him or her or it on behalf or in the interest of any other person and, where applicable, giving particulars of the name and nationality of such person or, in the case of a company or close corporation, the name and nationality of each member; and
- (b) if in the statement referred to in paragraph (a), the transferee, lessee, sub-lessee or cessionary declares that he or she is not a Namibian citizen or in the case of a company or close corporation that it is a foreign national, or that the land in question will be held by him or her or it on behalf or in the interest of another person who is not a Namibian citizen or, in the case of a company or close corporation, which is a foreign national -

- (i) the written consent of the Minister referred to in section 114(2);
or
- (ii) proof by affidavit in the form and manner determined by the Registrar that he or she or it qualifies for exemption from section 116 by virtue of section 114(4), and the Registrar may request the transferee, lessee, sub-lessee or cessionary concerned to submit to the Registrar such further proof as he or she may require that the transferee, lessee, sub-lessee or cessionary may lawfully acquire or hold such land in terms of this Part.

(2) A person who in a statement referred to in subsection (1)(a) makes any representation or any statement knowing it to be false commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

CHAPTER 4 LANDS TRIBUNAL

Lands Tribunal

120. (1) The Lands Tribunal established by section 63 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) is continued, subject to this Chapter.

- (2) The Lands Tribunal consists of seven members -
 - (a) a Judge of the High Court, or a person who has legal qualifications and has been practising law for a period of at least 10 years, who is the chairperson;
 - (b) a person who has legal qualifications, knowledge and experience of at least 10 years in the practice of law, who is the deputy chairperson;
 - (c) a person who has knowledge and experience of at least 10 years in customary law;
 - (d) a person who has knowledge and experience of at least 10 years in the practice of social sciences;
 - (e) a person who has knowledge and experience of at least 10 years in agricultural matters, land management and administration;
 - (f) a person who has knowledge and experience of at least 10 years in valuation;
 - (g) a person who has knowledge and experience of at least 10 years in economics, financial or accounting profession,

appointed by the Minister with the approval of the National Assembly upon recommendation of the Minister.

(3) At least three of the members mentioned under subsection (2) must be women.

(4) For purposes of appointment under subsection (2), the Minister must request by notice in at least two newspapers circulating throughout the country qualified persons contemplated in paragraph (b) to (g) of that subsection to apply for appointment as members of the Lands Tribunal.

(5) If pursuant to the request made under subsection (4), the Minister fails -

- (a) to receive sufficient applications; or
- (b) to secure a fit and proper person for appointment from the interviewed candidates,

the Minister may select any person meeting the requirements mentioned in subsection (2) for appointment as a member of the Lands Tribunal.

(6) The members of the Lands Tribunal are appointed for five years and are paid from the Fund such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(7) The office of a member of the Lands Tribunal becomes vacant if he or she -

- (a) resigns office by written notice to the Minister; or
- (b) is removed from office under subsection (8).

(8) The Minister with the approval of the National Assembly may remove a member of the Lands Tribunal from office if the member -

- (a) is incapable of performing his or her duties;
- (b) neglects his or her duty or is indolent;
- (c) commits a dishonourable conduct;
- (d) is declared insolvent; or
- (e) is convicted of a Schedule 1 offence referred to in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(9) The Minister may only exercise his or her power under subsection (8) after having given a member of the Lands Tribunal a reasonable opportunity to be heard.

(10) Any vacancy that occurs on the Lands Tribunal is filled by the appointment of another member in accordance with subsection (2) and any person so appointed holds office for the unexpired portion of the period of office of the member in whose place he or she is appointed.

Oath of office

121. (1) A member of the Lands Tribunal may not perform any function as such a member unless he or she has taken an oath or made an affirmation which is subscribed by him or her in the form set out below:

“I, , do solemnly
(full name)

swear/ sincerely affirm and declare that I will in my capacity as member of the Lands Tribunal administer justice to all persons alike, without fear, favour or prejudice, and as the circumstances in any particular case may require, in accordance with the law of the Republic of Namibia.

So help me God/ I so affirm.”.

(2) An oath or affirmation in terms of subsection (1) is taken or made before the Judge-President of the High Court or any other judge of that Court designated by the Judge-President.

Assessors

122. (1) For the purpose of procuring assistance in the determination of any matter under this Act, the Lands Tribunal may appoint not more than two persons with expertise relevant to the matter to sit as assessors in an advisory capacity.

(2) If during any proceedings before the Lands Tribunal or so shortly before the commencement that the vacancy cannot be filled in time for the hearing, an assessor dies or he or she for any other reason becomes incapable of taking his or her seat, the chairperson of the Lands Tribunal may -

- (a) either adjourn the proceedings in order to invoke the assistance of another person as assessor; or
- (b) proceed with the hearing with the remaining assessor, if there be one, or without any assessor should there be no remaining assessor.

(3) A person appointed as an assessor is entitled to such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(4) The Lands Tribunal must give due consideration to, but is not bound by, the opinion of any assessor.

Registrar of Lands Tribunal

123. The Minister must designate a staff member of the Public Service to be -

- (a) the registrar of the Lands Tribunal; and
- (b) in charge of the administrative functions of the Lands Tribunal.

Seat and jurisdiction of Lands Tribunal

124. (1) The seat of the Lands Tribunal is Windhoek, but the functions of the Lands Tribunal may be performed at any such place in Namibia as the chairperson of the Lands Tribunal may determine.

(2) The Lands Tribunal has jurisdiction to -

-
- (a) adjudicate upon all land related disputes and matters;
 - (b) consider and decide any appeal lodged with it in terms of this Act;
 - (c) consider and decide any application made to it in terms of this Act;
 - (d) consider appeals emanating from agricultural commercial land valuation court; and
 - (e) generally to inquire and adjudicate upon any matter which is required or permitted to be referred to it under this Act or any other law.

Proceedings of Lands Tribunal

125. (1) Subject to subsection (2), the chairperson of the Lands Tribunal presides over the proceedings of the Tribunal.

(2) If at the commencement of any proceedings before the Lands Tribunal the chairperson is for any reason unable to preside at such proceedings, the deputy chairperson presides.

(3) Where

- (a) any proceedings have commenced before the Lands Tribunal with either the chairperson or the deputy chairperson presiding, such proceedings is completed with the person so presiding; and
- (b) at any stage before the Lands Tribunal has taken a decision on the subject matter of the proceedings, the person so presiding dies or becomes incapable to perform his or her functions, the proceedings is adjourned and commenced anew.

(4) If at any stage during any proceedings before the Lands Tribunal any member, other than the chairperson or the deputy chairperson dies or becomes incapable of serving, the hearing must commence anew, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the remaining members.

(5) If the term of office of any member of the Lands Tribunal expires during the course of any proceedings before the Lands Tribunal, the Minister may authorise the member concerned to continue serving as a member of the Lands Tribunal for the purpose of completing such proceedings.

(6) Five members form a quorum at a sitting of the Lands Tribunal.

(7) A decision of the majority of the members at a sitting of the Lands Tribunal is the decision of the Lands Tribunal.

(8) A member of the Lands Tribunal or an assessor may not sit at a hearing of the Tribunal if he or she has any interest, direct or indirect or personal or pecuniary, in any matter before the Lands Tribunal.

(9) The Lands Tribunal -

- (a) may conduct the proceedings in a manner that it considers appropriate in order to determine the dispute fairly and quickly;

- (b) may at the commencement of the case or at any time during the hearing of the case advise the parties to the case that, in its opinion, the nature of the case is such that mediation would be appropriate to the resolution of the case and the Lands Tribunal may adjourn the case for such period as it considers appropriate to enable the parties to refer the matter for mediation in accordance with the High Court Rules;
- (c) must deal with the substantial merits of the dispute with less legal formalities;
- (e) may determine a matter referred to it without strictly applying the rules of evidence;
- (f) may condone non-compliance with the rules governing its proceedings; and
- (g) may condone the late noting of an appeal on good cause shown and if substantial injustice would occur.

Representation

126. In any proceedings before the Lands Tribunal a party to such proceedings may appear personally or may be represented at such proceedings by a legal practitioner.

Summoning of witnesses

127. (1) A party to any proceedings before the Lands Tribunal may procure the attendance of any witness in the manner provided for in the rules of the Lands Tribunal.

(2) The chairperson may administer the oath to, or accept an affirmation from any witness appearing before it to give evidence or to produce any book, record, document or thing.

(3) A member of the Lands Tribunal and any person sitting as an assessor in any proceedings before the Lands Tribunal may put any question to any witness appearing before the Lands Tribunal.

(4) The chairperson of the Lands Tribunal may disallow any question put to a witness which in the opinion of the chairperson is not relevant to the matter which is being dealt with.

(5) If a person who has been duly subpoenaed to attend any proceedings before the Lands Tribunal for the purpose of giving evidence or producing any book, record, document or thing in his or her possession or under his or her control fails, without reasonable cause -

- (a) to attend or to give evidence or to produce that book, record, document or thing according to the subpoena, unless excused by the chairperson of the Lands Tribunal; or
- (b) to remain in attendance throughout the proceedings,

such person commits an offence, and the Lands Tribunal, upon being satisfied on oath or affirmation or by return of the person by whom the subpoena was served that -

- (i) such person has been duly subpoenaed; and
- (ii) his or her reasonable expenses have been paid or offered to him or her,

may impose upon the person a fine not exceeding N\$2 000, or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

Costs

128. The Lands Tribunal may in any proceedings make an order as to costs as it thinks fit.

Contempt of Lands Tribunal

- 129.** (1) A person may not -
- (a) insult, disparage or belittle any member of the Lands Tribunal in that capacity, or prejudice, influence the proceedings or findings of the Lands Tribunal;
 - (b) wilfully interrupt the proceedings of the Lands Tribunal or misconduct himself or herself in any manner during such proceedings; or
 - (c) do anything in relation to the Lands Tribunal which if done in a court of law would have constituted contempt of court.

(2) A person who contravenes subsection (1) commits an offence and is 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.

Appeals

130. A party to proceedings before the Lands Tribunal may appeal against any decision, order or determination given by the Lands Tribunal to the High Court in terms of rule 119 of the Rules of the High Court.

Expenses of Lands Tribunals

131. The expenditure incidental to the performance of functions of the Lands Tribunal is defrayed from the Fund.

Lands Tribunal Rules Board

- 132.** (1) There is established a rules board to be known as the Lands Tribunal Rules Board consists of five members -
- (a) the Judge-President of the High Court or any judge of that Court designated by the Judge President, who is the chairperson of the Lands Tribunal Rules Board;
 - (b) a practising legal practitioner nominated by the Law Society of Namibia and appointed by the Minister;
 - (c) a legal practitioner serving in the Ministry administering justice designated by the Attorney-General;

- (d) a staff member serving in the Ministry administering justice designated by the Minister responsible for justice;; and
 - (e) a staff member serving in the Ministry designated by the Minister.
- (2) The person appointed as a member of the Lands Tribunal Rules Board in terms of subsection (1)(b) is paid from the Fund such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.
- (3) The majority of the members of the Lands Tribunal Rules Board form a quorum for a meeting of the Board.
- (4) A decision of the majority of the members of the Rules Board present at a meeting constitutes a decision of the Board and, in the event of an equality of votes, member presiding at the meeting has, in addition to his or her deliberative vote, a casting vote.
- (5) The Lands Tribunal Rules Board may make rules in relating to -
- (a) the conduct of the proceedings of the Lands Tribunal;
 - (b) the manner in which any matter to be heard and determined by the Lands Tribunal is brought and continued before it;
 - (c) the tariff of fees chargeable by legal representatives;
 - (d) the fees payable in respect of the service or execution of any process of the Lands Tribunal and the tariff of costs and expenses which may be allowed in respect of such service or execution;
 - (e) the taxation of bills of costs;
 - (f) the hours during which the office of the registrar of the Lands Tribunal opens for the transaction of business;
 - (g) the period within which and the manner in which an appeal from a decision of the Lands Tribunal to the High Court is noted;
 - (h) the establishment of an investigating committee to investigate particular cases and appeals referred to in section 64 and to submit reports with respect to such cases or appeals to the Lands Tribunal; and
 - (i) any matter which may be necessary or expedient to prescribe in order to ensure the proper dispatch and conduct of the proceedings of the Lands Tribunal.
- (6) Rules made by the Lands Tribunal Rules Board under subsection (4) may not be of any force and effect unless published in the *Gazette*.

CHAPTER 5
LAND ACQUISITION AND DEVELOPMENT FUND

Establishment of Land Acquisition and Development Fund

133. (1) The Land Acquisition and Development Fund established by section 13A of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) is continued, subject to this Chapter.

- (2) Despite anything contained in any other law, the Fund consists of -
- (a) moneys appropriated by Parliament for the purposes of the Fund;
 - (b) moneys accruing to the Fund by virtue of this Act or any other law;
 - (c) interest on investments made from moneys of the Fund; and
 - (d) moneys which, with the approval of the Minister and the Minister responsible for finance, may accrue to the Fund from any other source, including donations and grants made for the benefit of the Fund.

Utilisation of money of Fund

134. There is defrayed from the Fund -

- (a) any amount which becomes payable in terms of this Act to meet any liability of the State -
 - (i) arising from the exercise of any power or the performance of any function conferred or imposed on the Minister by this Act in relation to the acquisition or development of agricultural land, or any right or interest in such land, including the payment of compensation, interest, costs and other moneys incidental to the exercise or performance of any such power or function;
 - (ii) for the payment of compensation in connection with any termination or cancellation of a lease in terms of this Act;
 - (iii) for the payment of compensation for improvements on both communal and agricultural land;
 - (iv) for the payment of agricultural infrastructure in both agricultural and communal lands as prescribed; and
 - (v) for the payment of capacity building of the beneficiaries and for providing farming inputs; and
- (b) any amount which the Fund is liable to be charged.

Administration of Fund

135. (1) The Commission must administer the Fund in accordance with an estimate of revenue and expenditure approved by the Minister and the Minister responsible for finance in respect of every financial year of the Fund which ends on 31 March of each year.

(2) Expenses may not be incurred as a charge against the Fund except in accordance with the estimate of expenditure referred to in subsection (1).

(3) The Commission must open a current account with a banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998) into which all moneys accruing to the Fund are deposited.

(4) The Commission may, with the approval of the Minister, invest moneys of the Fund that are not immediately required for the purposes of the Fund -

(a) with any banking institution registered under the Banking Institutions Act or with any Building society registered under the Building Societies Act, 1986 (Act 2 of 1986);

(b) with the Post Office Savings Bank established by the Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992); or

(c) any other institution approved by the Minister and the Minister responsible for finance.

(5) Any unexpended balance in the Fund at the end of a financial year is carried forward as a credit to the next financial year.

Accounting responsibility

136. (1) The chairperson of the Commission is the accounting officer of the Fund charged with the responsibility of accounting for all moneys received by and paid from the Fund.

(2) The accounting officer must cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the Fund and to explain the transaction and financial position of the Fund.

(3) The Auditor-General must audit the books of account, accounting statements and annual financial statements of the Fund and must submit a copy of his or her report on such audit to the Commission.

(4) The Commission must furnish the Minister with such information as the Minister may request from time to time regarding the activities and financial position of the Fund, and must as soon as practicable after the end of each financial year submit to the Minister copies of -

(a) the audited balance sheet and profit and loss accounts and the report of the Auditor-General; and

(b) the report by the Commission on its activities during that financial year.

(5) The Minister must table the financial statements and reports submitted in terms of subsection (4) in the National Assembly within 30 days of receipt, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ordinary session.

CHAPTER 6
LAND TAX

Definitions

- 137.** (1) For purposes of this Chapter -
- (a) “date of valuation” -
 - (i) in relation to the main valuation roll, means the date that the Minister causes the general valuation to be made in terms of section 139(1)(a); or
 - (ii) in relation to the interim valuation roll, means the date that the Minister caused the last general valuation to be made in terms of section 139(1)(a);
 - (b) “financial year” means the period from 1 April in any year to 31 March in the next year;
 - (c) “interim valuation roll” means the interim valuation roll referred to in section 139(3);
 - (d) “land tax” means land tax as referred to in section 138(2);
 - (e) “main valuation roll” means the main valuation roll referred to in section 140;
 - (f) “presiding officer” means a magistrate referred to in section 147(2)(a);
 - (g) “provisional valuation roll” means the provisional valuation roll prepared in terms of section 141(2);
 - (h) “representative” means a representative referred to in section 165;
 - (i) “unimproved site value” means the value of agricultural land as determined by the valuer under section 141(6) and as referred to in section 138;
 - (j) “Valuation Court” means the Valuation Court established by section 147; and
 - (k) “valuer” means a valuer appointed in terms of section 141.

(2) In the application of this Chapter and of any notice made pursuant to section 138, “owner”, includes a representative referred to in section 165 to the extent that those provisions relate to land tax.

Land Tax

138. (1) Despite any other law to the contrary, the Minister, after consultation with the Minister responsible for agriculture and the Minister responsible for finance, for the benefit of the Fund, may impose a land tax to be paid by every owner of agricultural land on the unimproved site value of such land.

(2) An owner of agricultural land must, for the benefit of the Fund, in respect of each financial year, pay a land tax based on the unimproved site value of the land as -

- (a) shown on the main or interim valuation roll; and
- (b) calculated at such rate or progressive rate as the Minister, with the approval of the National Assembly, may determine by notice in the *Gazette*.

(3) The land tax referred to in subsection (1) is calculated in accordance with the following formula:

$$T = V \times R,$$

in which formula -

“T” represents the land tax payable;

“V” represents the unimproved site value as determined under this Act; and

“R” represents the rate of land tax as determined under subsection (2).

(4) A notice referred to in subsection (2) may -

- (a) prescribe a tariff of different rates in respect of different categories of owners or different categories of agricultural land, differentiating on the basis of any one or more of the following -
 - (i) nationality or residence of owner;
 - (ii) size of agricultural land;
 - (iii) the number of farms owned by the same owner;
 - (iv) activities carried on or predominantly carried on whether farming operations or otherwise, by an owner or any person having the right of occupation and use of agricultural land through the owner; or
 - (v) any other basis which the Minister may determine and prescribe in the notice;
- (b) provide, for the purposes of paragraph (a)(iii), that where more than one farm is possessed or controlled by a person, whether as an individual owner or through an interest in the shareholding or membership of a company or a close corporation or any other form of legal entitlement or representation, including a trust of which the person has the right of appointment of the trustee or of designating beneficiaries, and which company, close corporation, trust or trustee is the owner, that such farms is considered to be owned by the same owner;
- (c) establish a system and process of registration of owners to identify the category into which they fall, determine the appropriate rate of land tax applicable to them, and provide for the form and manner in which application for registration is to be made; and

- (d) create offences for a contravention of or failure to comply with a provision of the notice relating to a process of registration contemplated in paragraph (c) or for knowingly giving false or misleading information in any document furnished in connection with the process of registration and prescribe penalties for such offences not exceeding a fine of N\$100 000 or a period of five years imprisonment, or both such fine and such imprisonment.

(5) For purposes of imposing land tax the notice referred to in subsection (1) may also provide for any other matter which in the opinion of the Minister is necessary for the effective imposition of land tax.

Valuation of agricultural land

139. (1) Despite anything to the contrary in any other law, the valuation roll in place at the commencement of this Act remains in force until the Minister causes a general valuation to be made as contemplated in subsection (2).

(2) The Minister may -

- (a) at intervals of five years, cause a general valuation to be made in respect of all agricultural land; and
- (b) of his or her own accord or at the request made in the prescribed form by any person at any time during a period of five years referred to in paragraph (a), cause an interim valuation to be made in respect of any agricultural land.

(3) The interim valuation roll may include -

- (a) any agricultural land that was omitted from the main valuation roll;
- (b) any agricultural land whose description has changed as a result of consolidation, subdivision or renumbering as shown on an approved diagram within the meaning of the Land Survey Act, 1993 (Act No. 33 of 1993);
- (c) any agricultural land whose size was incorrect on the main valuation roll; or
- (d) any agricultural land that was incorrectly assessed on the main valuation roll.

(4) Subject to subsection (5), the Minister must by notice in the *Gazette* determine the date of valuation and the period during which any such general or interim valuation is made.

(5) Where an interim valuation is to be made the Minister may give notice of that period by serving notices in writing on the owners of the agricultural land in question.

(6) When making an interim valuation, the same procedure as set out in subsection (4) with regard to a general valuation is observed.

(7) Any such interim valuation roll is based on what the value of the land would have been at the last general valuation and any increase or decrease in the value of land generally between the last general valuation and such interim valuation is disregarded.

Main valuation roll

140. (1) The provisional valuation roll, containing the valuations as decreased or increased or otherwise amended by the Valuation Court, of all agricultural land is the main valuation roll for the purposes of any assessment under section 159.

(2) The main valuation roll is at all times available for inspection by any interested person during office hours at the offices of the Ministry.

(3) The Minister, at the request of any interested person and on payment of such fee as may be determined by the Minister, must furnish that person with an extract from or copy of the main valuation roll.

Appointment, powers and functions and revocation of appointment of valuer

141. (1) When a general valuation or interim valuation of agricultural land is required to be made, the Minister must, subject to subsection (3), appoint a valuer by virtue of his or her expertise in the field of real estate valuation who does not have any interest, whether direct or indirect, which precludes him or her from performing his or her functions as valuer.

(2) The valuer must value the agricultural land in question and prepare a provisional valuation roll containing -

- (a) the farm number, registration division, region and farm name of the agricultural land in question;
- (b) the name of the owner of the land;
- (c) the size in hectares of the land;
- (d) the unimproved site value of the land;
- (e) remarks, if any, with regard to the agricultural land in question; and
- (f) such other information as the Minister may direct to be shown.

(3) A valuer, before assuming his or her duties, must take or make and subscribe before a commissioner of oaths an oath or affirmation in the following form:

*“I, do
(full name)*

solemnly swear/sincerely affirm and declare to appraise and value in accordance with, and for the purpose of the Land Act and the Land Valuation and Taxation Regulations made under that Act, any agricultural land, to the best of my skill and knowledge, without favour or prejudice, truly, impartially and conscientiously and for the full and market value thereof according to the intent and requirement of the applicable laws.

So help me God/I so affirm.”.

(4) The Minister must cause a certificate of appointment in such a form as the Minister may determine to be issued to a valuer upon his or her appointment.

(5) Subject to subsection (6), a valuer must value any agricultural land at a value equal to the market value at which in his or her opinion such land and other agricultural land of a similar agro-ecological zone classification might reasonably be expected to be sold by a willing seller to a willing buyer at the date of valuation.

(6) In determining the value of any agricultural land in terms of this Act, a valuer -

(a) may use the agro-ecological zone data supplied by the Ministry administering agricultural affairs at the date of valuation;

(b) must use a mass appraisal approach to value the land and must -

(i) divide the Republic of Namibia cadastral map into value zones to create an iso-value map showing the values of agricultural land per hectare; and

(ii) create value zones each of which may contain agricultural land with the same agro-ecological zone classification and any agricultural land that lies in two or more agro-ecological zone classifications may, for the purpose of preparing value zones, be placed in the agro-ecological zone classification that constitutes the greater part of such land;

(c) must conduct random inspections of any agricultural land but is not obliged to conduct physical inspections on all the agricultural land to be valued; and

(d) must disregard in respect of such agricultural land -

(i) the value of the improvements on such land;

(ii) any depreciation in the value of such land caused by excessive grazing, bush encroachment and other bad farming practices or poor management of such land;

(iii) any mortgage or other judicial encumbrance on such land;

(iv) any depreciation or appreciation in value attributed to proximity to a town;

(v) any depreciation or appreciation of the land value attributed to tourism or mining potential; and

(vi) any depreciation or appreciation of the land value resulting from a public road or railway line crossing through the land.

(7) Subject to subsection (8) and for the purposes of performing his or her functions in terms of this Act, a valuer or any person assisting the valuer may -

- (a) enter on such land at any reasonable time and after having given the owner, occupier or person in control of the land such prior notice as may in the circumstances be reasonable; or
 - (b) inspect and make copies or extracts from any register, document or record which contains particulars of any agricultural land and which is in the custody or under the control of a government official or any other person.
- (8) When a valuer or any person assisting the valuer exercises or performs a power or function in terms of this Act in the presence of any person affected, he or she must, on demand by such person -
- (a) in the case of a valuer, produce to such person the certificate of appointment issued in terms of subsection (4); or
 - (b) in the case of a person assisting the valuer, produce a letter duly signed by the valuer authorising him or her to perform specified functions on behalf of the valuer in accordance with subsections (12) and (13).
- (9) The owner, occupier or person in control of any agricultural land must, within such reasonable period as may be determined in writing by the valuer, furnish such information or documents as are required by the valuer to enable the valuer to exercise or perform his or her powers or functions in terms of this Act.
- (10) Any person who without just cause refuses or fails to comply with a notice or request by a valuer under subsection (7) or (9) or any person assisting the valuer, or who furnishes information or particulars which such person knows to be false or misleading commits an offence and -
- (a) is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; and
 - (b) if the offence of which such person is convicted is continued after the conviction he or she is liable to a fine not exceeding N\$200 for every day that the offence is so continued.
- (11) Despite a conviction under subsection (10), a person so convicted remains under a duty to comply with subsection (7) or (9).
- (12) It is a condition of every appointment of a person as a valuer that -
- (a) all information provided to or gathered by the valuer for the purpose of performing his or her duties as valuer, and all calculations made and all records, plans and forms generated by him or her in the performance of those duties, whether such information, calculations, records, plans or forms are kept in written form or stored in the form of data on a computer or any other mechanical or electronic device, are and remain the property of the State;
 - (b) the valuer, while being in the possession of the information, calculations, records, plans and forms referred to in paragraph (a), in whatever form, must take all steps necessary to ensure their safe custody and to prevent

them, or part thereof from getting lost, destroyed or defaced or being rendered useless or inaccessible in any other manner; and

- (c) all such information, calculations, records, plans and forms as may from time to time be required by the Minister from the valuer, and upon the termination of his or her designation or appointment for whatever reason, must be delivered by him or her to the Minister, in whatever form they were kept or stored by him or her, at no consideration other than the remuneration to which he or she is entitled by virtue of the terms and conditions upon which he or she has been designated or appointed,

but nothing in this subsection may be construed as preventing a valuer or any other authority from dealing with such information, calculations, records, plans or forms as may be required in terms of this Act;

(13) The valuer -

- (a) may not value any land in which he or she has a personal interest, or in which his or her spouse, partner or relative within the first degree of consanguinity or affinity is interested, without disclosing the nature and extent of such interest; and
- (b) must submit to the Minister a list, if any, of land in which he or she has an interest and extent of his or her interest and the Minister must submit such list to the valuation court.

(14) A valuer, when necessary, may delegate or assign to any suitable person any power or functions conferred or imposed upon the valuer in terms of this Act.

(15) An assignment under subsection (14) -

- (a) is in writing and subject to such limitations and conditions as the valuer may impose; and
- (b) may be reviewed and, if necessary, amended or withdrawn at any time.

(16) A valuer is not divested of any power or function delegated or assigned under subsection (14).

(17) The valuer may vary or revoke any decision taken under an assignment in terms of this Act, but such variation or revocation of the decision may not detract from any right that may have accrued as a result of the decision.

(18) The Minister may, in accordance with this subsection, terminate the appointment of an appointed valuer and appoint another one in his or her place on any of the following grounds -

- (a) if the valuer dies during the period of his or her appointment;
- (b) incapacity, incompetence or misconduct;
- (c) he or she is found guilty of a criminal offence involving fraud, perjury, theft, corruption or dishonesty by a court; or

- (d) he or she is declared insolvent.

Submission of provisional valuation roll to Minister

142. (1) The valuer, on the completion of a provisional valuation roll referred to in section 141(2), must sign and date a declaration appended to such roll and submit it to the Minister.

(2) A declaration appended to the provisional valuation roll or the interim valuation roll must state -

- (a) that the provisional valuation roll or the interim valuation roll has been prepared in accordance with this Act;
- (b) the full names and professional qualifications of the valuer; and
- (c) the date of valuation of the provisional valuation roll or the interim valuation roll.

(3) Every copy of the provisional valuation roll or the interim valuation roll must bear a copy of the declaration referred to in subsection (2).

Remuneration of valuer and other expenses

143. (1) The Minister, with the concurrence of the Minister responsible for finance, must determine the remuneration and allowances payable to the valuer, who is not in full-time employment of the State.

(2) The expenses incidental to the performance of any general or interim valuation, including the remuneration and allowances payable to a valuer or any other person, is defrayed from the Fund.

Objections against provisional valuation roll and withdrawal of valuation roll

144. (1) The Minister must cause a notice to be published in the *Gazette* and in at least two newspapers widely circulating in Namibia -

- (a) stating that -
 - (i) the provisional valuation roll is lying open for inspection during office hours at the place or places and during the period specified in such notice;
 - (ii) that the iso-value map, if any, is lying open for inspection during office hours at the place or places and during the period specified in such notice; and
 - (iii) any interested person may upon payment of such fee as may be prescribed, during the period and times specified in a notice referred to in paragraph (b), obtain a copy of such provisional valuation roll or any part;
- (b) calling upon every owner of agricultural land in respect of which a valuation is contained in the provisional valuation roll who wishes

to object to the valuation, to lodge, within 30 days of the date of the notice, an objection in the prescribed form against the valuation with the Minister setting out the grounds on which the objection is based; and

- (c) calling upon every owner of agricultural land in respect of which such land is contained or omitted on the provisional valuation roll who wishes to correct such information, to lodge, within 30 days from the date of notice, a data correction request with the Minister to be made in the prescribed form.

(2) The Permanent Secretary, the Registrar or any person representing any Government department may lodge data correction request with respect to any information contained on the provisional valuation roll setting out the grounds of objection or corrections to be made to the provisional valuation roll.

(3) The Minister must cause an owner who has lodged an objection pursuant to subsection (1) to be notified in writing by registered mail of the date and time on which and the place at which the valuation court will be sitting and that the list or document containing such registered mail constitutes proof of delivery of the letter or letters.

(4) Where an objection is made under subsection (2), the Minister must, not less than 30 days prior to the sitting of the valuation court, cause the owner of such land to be informed in writing about the valuation court sitting at a specified date, time and venue to hear his or her objection.

(5) For the purpose of resolving an objection or reaching an agreement to settle an objection with an owner who has lodged an objection pursuant to subsection (1), the valuer or any person assisting the valuer may communicate to such owner and explain issues, and the owner may -

- (a) withdraw the objection; or
- (b) reach an agreement to settle the objection, prior to the valuation court sitting.

(6) If an objection is withdrawn or a settlement agreement is reached under subsection (5), the objector must complete the withdrawal of objection or a settlement agreement in the prescribed form and submit it to the Minister.

(7) Subject to section 141(16), the Minister may, by notice in the *Gazette*, withdraw a provisional valuation roll if the appointment of the valuer is terminated.

Submission of provisional valuation roll to Valuation Court

145. The Minister must cause to be submitted to the valuation court within 30 days after the expiry of the 30 days mentioned in section 146(1)(b) and (c) -

- (a) the objections, if any, lodged with the Minister in terms of that section;
- (b) the provisional valuation roll submitted to the Minister in terms of section 142; and

- (c) the data correction request forms lodged with the Minister under section 146(2).

Notice of Valuation Court sitting

146. Subject to section 144, the Minister must cause a notice to be published in the *Gazette* and in at least two newspapers widely circulating in Namibia stating -

- (a) that the Valuation Court commences sitting within 60 days after the expiry of the display period mentioned in subsection 144(1); and
- (b) the time and the place or places as specified in such notice, to consider any valuation contained in the provisional valuation roll referred to in section 144(1)(a)(i) and to hear every objection lodged in respect of any such valuation.

Establishment of Valuation Court

147. (1) The Valuation Court established by regulation 8 of the Land Valuation and Taxation Regulations published under Government Notice No. 120 of 3 July 2007 to consider and determine valuations, information contained in a provisional valuation roll and objections lodged in relation to any such valuation is continued, subject to this Chapter.

- (2) A Valuation Court consists of five members -
 - (a) a magistrate designated, at the request of the Minister, by the Magistrates Commission established by section 2 of the Magistrates Act, 2003 (Act No. 3 of 2003);
 - (b) a valuer appointed by the Minister by virtue of his or her knowledge of valuations matters relevant to the application of this Act;
 - (c) a person from the farming community appointed by the Minister by virtue of his or her knowledge of agricultural matters relevant to the application of this Act;
 - (d) a person from the private sector appointed by the Minister by virtue of his or her expertise in the field of land matters relevant to the application of this Act; and
 - (e) a staff member of the Ministry administering agricultural affairs, designated by the Minister of that Ministry, at the request of the Minister.

(3) The Minister may further designate a staff member of the Public Service or a suitable member of the public, but who may not be a member of the Directorate of Valuation and Estate Management, to serve as Clerk of the Valuation Court and who must administer the affairs of the valuation court.

(4) The magistrate designated under subsection (2) (a) presides over the Valuation Court.

(5) Three members of the Valuation Court form a quorum at a sitting and a decision of the majority of the members at a sitting is the decision of the Valuation Court

and in the event of equality of votes the presiding officer has a casting vote in addition to the deliberative vote.

(6) If at any stage during the proceedings before a valuation court a member of that court dies or is otherwise incapable of performing his or her duties, the proceedings must continue before the remaining members of the court, but only if such remaining members include the magistrate designated under subsection (2)(a).

(7) If the magistrate is for any reason unable to preside over the proceedings of the Valuation Court, the Magistrates Commission must appoint an alternate magistrate, but that -

- (a) the proceedings of the valuation court must start anew; and
- (b) the Minister must cause a notice to be placed in the *Gazette* and in at least two newspapers widely circulating in Namibia, stating that the valuation court commences sitting within 30 days after the appointment of the alternate magistrate.

Oath of office

148. A member of the valuation court other than the presiding officer may not perform any function as such a member, unless he or she has taken an oath or made an affirmation before a magistrate, which is subscribed by the member as follows:

*“I, do
(full name)
solemnly swear/sincerely affirm and declare that I will in my capacity as
member of the valuation court administer justice to all persons alike, without
fear, favour or prejudice, and as the circumstances in any particular case may
require, in accordance with the laws of the Republic of Namibia.*

So help me God / I so affirm.”.

Assessors

149. (1) For the purpose of procuring assistance in the determination of any matter under this Act, a valuation court may appoint not more than two persons who are valuers to sit as assessors in an advisory capacity.

(2) If during any proceedings before a Valuation Court or so shortly before the commencement of the proceedings that a vacancy cannot be filled in time for the hearing, an assessor dies or for any other reason becomes incapable of taking his or her seat, the presiding officer may -

- (a) adjourn the proceedings to invoke the assistance of another person as assessor; or
 - (b) continue with the proceedings with the remaining assessor, if there be one, or without any assessor should there be no remaining assessor.
- (3) The Valuation Court must give due consideration to, but is not bound by, the opinion of any assessor.

Seat of Valuation Court

150. The Valuation Court may conduct its proceedings at any place throughout Namibia.

Powers and functions of Valuation Court

151. (1) The powers and functions of the Valuation Court are -

- (a) to consider any valuation contained in the provisional valuation roll and, subject to subsection (2), to hear every objection lodged in connection with such valuation;
- (b) to examine the iso- value map used as the basis for the valuation of agricultural land;
- (c) to examine the agro-ecological zone data at the date of valuation as supplied by the Ministry administering agricultural affairs;
- (d) to consider any withdrawal of objection or settlement agreement forms duly completed and lodged by land owners who had previously objected to the value of their agricultural land; and
- (e) to consider any other information other than the unimproved site values contained on a provisional valuation roll.

(2) The Valuation Court may not hear an objection against any valuation contained in the provisional valuation roll, if the objection is not lodged in accordance with this Act.

(3) After having considered any valuation contained in the provisional valuation roll or any objection lodged in connection with such valuation pursuant to subsection (1), the Valuation Court may -

- (a) confirm such valuation;
- (b) uphold such, objection and decrease or increase such valuation;
- (c) decrease such valuation without any objection having been lodged or increase such valuation after having afforded the owner of the agricultural land in question an opportunity to be heard;
- (d) order the valuer -
 - (i) to value any agricultural land omitted from the provisional valuation roll; or
 - (ii) to revalue any agricultural land with due regard to such guidelines and directions as it may determine, subject to section 141(5); or
- (e) make any other amendment to the provisional valuation roll as it may think necessary.

Proceedings before Valuation Court

152. (1) The proceedings before the Valuation Court is conducted in accordance with the prescribed procedure.

(2) For the purposes of considering any valuation or other information contained in the provisional valuation roll or hearing any objection lodged under this Act, the Valuation Court may -

- (a) summon by a notice in writing issued by the presiding officer or by any other member of the Valuation Court if such member is so authorised by the presiding officer, any person to appear before it at a date, time and place specified in such notice;
- (b) administer an oath or take an affirmation from a person referred to in paragraph (a) or any other person, including the valuer, present at a sitting of the Valuation Court and examine any such person under oath or affirmation.

(3) A person who has lodged an objection against a valuation contained in the provisional valuation roll must appear either in person or through a valuer or an agent.

(4) If an objection has been duly lodged in terms of this Act and has not been withdrawn and the objector fails to appear either personally or through a representative on the day appointed for the hearing of his or her objection, the Valuation Court must consider and determine the objection.

(5) The valuer must attend all sittings of the Valuation Court.

(6) A member of the Valuation Court may not take part in any proceedings or decision in relation to any agricultural land of which he or she or any connected person is the owner, and for the purposes of this subsection “connected person” means -

- (a) a parent, spouse or child of a member of the Valuation Court;
- (b) any person with whom a member of the Valuation Court, or his or her partner, agent, or business associate, is, in terms of the traditional laws and customs prevailing in Namibia, a partner in a customary union.

(7) Every decision made by the Valuation Court in terms of section 151(3) with regard to an objection or information on particular agricultural land contained in a provisional valuation roll is signed by the members of the Valuation Court and must -

- (a) state the agricultural land concerned;
- (b) set out the entry which is to be made in the roll in respect of such agricultural land; and
- (c) state the reasons for such decision.

(8) The Valuation Court must keep or cause to be kept proper record of its proceedings and findings, electronically or manually.

(9) An objector or his or her representative have the right to examine, without charge, the record of the Valuation Court proceedings relating to the objection to the valuation of his or her land.

(10) The Ministry has free access to the Valuation Court records at all times.

Appeal against decisions of Valuation Court

153. (1) A person who has lodged an objection in terms of section 144 and who is aggrieved by a decision of the Valuation Court made in relation to that objection may, within 30 days from the date on which notification of the decision was given, appeal against the decision of the Court to the Lands Tribunal.

(2) For the purpose of an appeal referred to in subsection (1) and the procedure to be followed with regard to such appeal, the decision of the valuation court is treated as a civil judgment of a magistrate's court.

(3) Despite any law to the contrary, the fact that an appeal against the decision of a valuation court is pending does not -

- (a) interfere with or affect the operation of such decision; or
- (b) prevent the land tax from being assessed and recovered on the basis of the valuation fixed by such decision in like manner as if no appeal was pending.

Main or interim valuation roll

154. (1) When the Valuation Court has completed its consideration of the provisional valuation roll and has made decisions referred to in section 152(7) -

- (a) the presiding officer must certify the roll; and
- (b) the clerk of the court must transmit the certified roll to the Minister together with a certified copy of all decisions of the Valuation Court.

(2) The provisional valuation roll containing the valuations, as decreased or increased or otherwise amended by the Valuation Court, of all agricultural land is known as the main or interim valuation roll.

(3) The Minister must by notice in the *Gazette* and in at least two newspapers widely circulating in Namibia, notify all persons that the valuation roll has been completed and certified in terms of subsection (1) and that on coming into operation -

- (a) the main valuation roll or interim valuation roll supersedes any previous main valuation roll or interim valuation roll;
- (b) if any agricultural land appears both in the main valuation roll and interim valuation roll, the latter entry supersedes the former entry.

(4) Subject to other provisions of section 159 a valuation roll is the primary basis upon which the land tax is assessed under that section.

(5) The main or interim valuation roll must at all times be available for inspection by any interested person during office hours at the offices of the Ministry.

(6) The Minister, at the request of any interested person and on payment of such fee as the Minister may prescribe, must cause such person to be furnished with an extract from or copy of the main valuation roll.

Alteration or correction of main valuation roll

155. (1) The Minister, at the request of any interested party or of his or her own accord, may cause the alteration or correction of the main or interim valuation roll but the alteration or correction is only made for the following purposes -

- (a) to correct a clerical error which does not affect the value per hectare assigned to a value zone on the iso-value map;
- (b) to correct an error which relates to the name, address or identity number of the owner concerned;
- (c) to record a change in the name or address of the owner concerned; or
- (d) to correct an error which relates to the size or land extent of the agricultural land in question.

(2) Where the request for a correction is on the accord of the Minister or valuer, the valuer, before causing any error to be corrected as referred to in subsection (1), the Minister must notify the land owner of the correction.

Remuneration and allowances of members of Valuation Court and expenses

156. (1) The Minister, with the concurrence of the Minister responsible for finance, determines the allowances payable to a member or an assessor of the Valuation Court who is not in the full-time employment of the State.

(2) The allowances referred to in subsection (1) and the expenditure incidental to the performance of the functions of the Valuation Court are defrayed from the Fund.

Date of operation and period of validity of valuation roll

157. (1) Subject to subsection (2), the valuation roll comes into operation on the commencement of the financial year following the certification under section 154(1).

(2) The Minister may by notice in the *Gazette* determine some other date on which the valuation roll comes into operation.

(3) Subject to subsection (4), the valuation roll is valid for a period of five years from the date it comes into operation.

(4) The Minister may by notice in the *Gazette* extend the validity of the existing main valuation roll for a further period of five years or until such time that a new valuation roll comes into operation, whichever comes first.

(5) Despite any provision in this Act or any other law to the contrary, the 2007 valuation roll remains valid until a new valuation roll comes into operation.

(6) A valuation contained in a main or interim valuation roll certified by the presiding officer and transmitted in terms of section 154(1) is not invalid by reason only of -

- (a) a mistake or variance in the name of owner, farm name, postal address or identity number of the owner of any agricultural land; or
- (b) an irregularity which occurred during the preparation of such valuation roll.

Owners to furnish land tax returns

158. (1) The Minister, by notice in the *Gazette*, must require all owners or specified owners of agricultural land to furnish land tax returns in respect of a particular financial year, or a particular financial year and each subsequent financial year.

(2) A land tax return referred to in subsection (1) is in such form as the Minister may determine and must contain -

- (a) the particulars of all agricultural land owned by the person who in terms of that subsection is required to complete such a return; and
- (b) such other information as the Minister may reasonably require for the purposes of assessment under section 159.

(3) Every owner who is required to furnish a land tax return in respect of any financial year must do so on or before 31 January of such year.

(4) Any person who fails to furnish a return in accordance with this Act commits an offence and is liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Assessment of land tax to be made

159. (1) The Minister may, from any relevant information in his or her possession, including information contained in the main valuation roll, and if available any land tax return referred to in section 158, cause an assessment to be made of the land tax payable by owners of agricultural land.

(2) An assessment under subsection (1) may be made even if the time for lodging of returns has not yet expired.

(3) Despite subsection (1), if a particular agricultural land does not appear on the main or interim valuation roll and a request is made to the Minister to include such land on the valuation roll under section 139(2)(b) by an owner who intends to apply for a land tax clearance certificate, the Minister must cause preparation of a provisional unimproved site value on the same basis used to value the main valuation roll provided that such land would be included on the next provisional valuation roll.

(4) Where an assessment has been made under this section, the Minister must serve a notice of assessment on the owner concerned as prescribed.

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- (5) The notice of assessment must state -
- (a) the amount of the land tax payable on each piece of land and the total of such amounts; and
 - (b) the date on which land tax is due and payable.
- (6) When an owner of agricultural land ceases to be the owner before the end of the financial year in respect of which a land tax assessment in respect of the land was made -
- (a) such owner is liable to pay a portion of the land tax payable for the whole of such period proportionate to the time up to the end of the last month during which he or she continued to be the owner; and
 - (b) any person who is the new owner of such land during the remainder of the period contemplated in paragraph (a) is liable to pay a portion of such land tax in proportion to the time during which the person is the owner and the land tax must be recovered from such new owner in the same manner as if he or she had been originally assessed for such land.
- (7) An owner of agricultural land may for the purposes of subsection (6) request for a land tax clearance certificate during the period of the financial year in respect of which a land tax assessment for such year has not been made yet.
- (8) The Minister, upon receipt of the request under subsection (7), must cause a land tax assessment to be made for a portion of the land tax payable for the whole of such period proportionate to the time up to the end of the last month in which such person would cease to be the owner upon transfer of the agricultural land in question.
- (9) A prescribed fee is charged for every land tax clearance certificate issued in terms of subsection (8).

Rebate and interest on land tax payable

160. (1) To encourage the early payment of land tax the Minister may allow a rebate at such different rates not exceeding five percent of the land tax payable on or before any due date for payment mentioned in the relevant notice of assessment.

(2) If land tax is not paid on or before the due date for payment mentioned in the relevant notice of assessment, the Minister may charge interest at a rate not exceeding the rate prescribed under the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), which may be charged in respect of a judgment debt of any competent court.

Land tax as debt due to Fund

161. (1) When any land tax or any interest payable in terms of this Act becomes due and payable -

- (a) it is considered to be a debt due to the Fund; and
- (b) it may be recovered by the Minister in the manner provided for in this Act.

(2) Subject to subsection (3), if an owner fails to pay any land tax or interest when it is due and payable, the Minister may cause the filing with the clerk or registrar of a court of competent jurisdiction a statement -

- (a) certified, by the Permanent Secretary, as correct and setting forth the amount of all land tax and interest owed by the owner; and
- (b) which for all purposes -
 - (i) has the effect of a civil judgment of the court at which that statement has been so filed, and
 - (ii) any proceedings may be taken as if it were a civil proceedings of the court at which that statement has been so filed,

in favour of the Fund for a liquid debt in the amount specified in that statement.

(3) The Minister, before causing the filing of a statement in terms of subsection (2), must serve a notice on the owner concerned informing him or her of the intention of the Minister to file such a statement within 30 days of the date of the service of such notice in accordance with section 164.

(4) The Minister may by notice in writing addressed to the clerk or registrar of the relevant court, withdraw any statement referred to in subsection (2), and that statement ceases to have any effect.

(5) The Minister may institute proceedings afresh under subsection (2) in respect of any tax or interest to which a statement withdrawn under subsection (3) relates.

Reimbursement of overpayment of land tax

162. (1) Where the owner of agricultural land has paid any land tax in excess of any amount payable by him or her in terms of this Act, the owner may in writing apply to the Minister for a refund of the amount paid in excess.

(2) Any claim for a refund under subsection (1) is accompanied by documentary proof of the payment of the excess amount.

(3) If upon receipt of an application referred to in subsection (1) the Minister is satisfied that a refund is due to an owner of agricultural land, the Minister must cause the owner to be refunded from the Fund with the amount paid in excess not later than the end of the second calendar month following the date on which the excess was reported in terms of subsection (1).

(4) Where the Minister fails to refund any amount of land tax due to an owner on or before the date referred to in subsection (3), interest is paid on such amount at the rate prescribed under the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

Recovery of land tax from representatives

163. (1) Any land tax or interest payable by any representative in his or her representative capacity is recoverable from him or her under this Act, but to the

extent only of any assets belonging to the owner whom he or she represents which may be in his or her possession or under his or her control.

(2) Any land tax or interest payable by a company or close corporation is not recoverable from the public officer of the company or from any member of a close corporation referred to in section 165 of the Act, but is recoverable from the company or close corporation.

(3) A representative who pays any land tax or interest due under this Act is entitled -

- (a) to recover the amount so paid from the owner on whose behalf it is paid; or
- (b) to retain out of moneys that may be in his or her possession or may come to him or her in his or her representative capacity an amount equal to the amount so paid.

(4) A representative referred to in section 165(1)(b) of the Act who, pays any land tax or interest due under this Act by any deceased owner is entitled -

- (a) to recover the amount so paid from the estate of such deceased owner; or
- (b) to retain out of any moneys of the estate of such deceased that may be in his or her possession or that may come to him or her as executor or administrator of such estate, an amount equal to the amount so paid.

(5) A representative is personally liable for the payment of any land tax or interest payable by him or her in his or her representative capacity, if, while the amount remains unpaid -

- (a) he or she alienates or disposes of the agricultural land in respect of which such tax is payable; or
- (b) disposes off or parts with any moneys belonging to the owner whom he or she represents and is in his or her possession or comes to him or her after such tax or interest has become payable, if such tax or interest could legally have been paid from or out of such money.

Recovery of land tax from third parties

164. (1) Where an owner of agricultural land fails to pay land tax in respect of such land on or before the due date for payment, the Minister may, where the land is subject to a lease or other right of occupation or to a mortgage, by a notice in writing served on the lessee, occupier or mortgagee concerned, require him or her to pay to the Minister for the benefit of the Fund, on or before a date specified in such notice, an amount equal to the amount of land tax due.

(2) The money contemplated in subsection (1) is recoverable by the Minister from -

- (a) such lessee or occupier but only to the extent of any rent or other payments due by such lessee or occupier to the owner at the time of the

request under that subsection, or becoming due such lessee or occupier to the owner after such request; or

- (b) such mortgagee if in accordance with section 49 of the Deeds Registries Act the mortgage bond that is registered over such land contains a stipulation that future debts generally or future debts with regard to taxes are secured by it.

(3) Where a lessee or occupier or mortgagee, on whom a notice was served under subsection (1) is unable to comply with such notice he or she must before the expiry of the date for payment specified in such notice serve a notice in writing on the Minister informing the Minister accordingly and stating the reasons for his or her inability to so comply.

- (4) Upon receipt of a notice referred to in subsection (3), the Minister may
-

- (a) require any party concerned to furnish such further information and evidence as the Minister may think necessary to conclude the matter; and

- (b) by notice in writing, accept the notification or reject it.

- (5) Any payment made pursuant to a notice under this section is considered
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- (a) to have been made under the authority of the defaulting owner, and no liability may attach to the lessee, occupier or mortgagee in respect of the making of such payment; and

- (b) in the case where the lessee or occupier made such payment, to be a valid discharge, to the extent of the amount so paid, against the rent or other payments due by such lessee or occupier to the defaulting owner.

(6) The provisions of this Act relating to the collection and recovery of land tax apply with necessary changes to any amount due under this section as if such amount were land tax due under this Act.

Representatives of owners of agricultural land

165. (1) The person responsible for exercising any power or performing any duty relating to land tax conferred or imposed by or under this Act on an owner must -

- (a) where such owner is not ordinarily resident in Namibia, be any agent of such owner controlling his or her affairs in Namibia;
- (b) where such owner is deceased, be the executor or administrator of the estate of the deceased owner;
- (c) where the estate of the owner has been sequestrated, be the trustee or the administrator of the estate of such insolvent owner;

- (d) where such owner is a body corporate or unincorporated other than a company or close corporation, be any person responsible for accounting for the receipt and payment of moneys on behalf of any such body;
- (e) where such owner is a company -
 - (i) be the public officer thereof contemplated in section 93 of the Income Tax Act, 1981 (Act No. 24 of 1981); or
 - (ii) be the liquidator of such company where it has been wound up;
- (f) where such owner is a close corporation -
 - (i) be any member standing in a fiduciary relationship contemplated in section 42 of the Close Corporations Act, 1988 (Act No. 26 of 1988); or
 - (ii) be the liquidator of such close corporation where it has been wound up.

(2) Nothing contained in subsection (1) may be construed as relieving any owner from having to exercise or perform any power or duty relating to land tax conferred or imposed on such owner, by or under this Act -

- (a) where circumstances other than those contemplated in paragraphs (a) to (f) prevail; and
- (b) which any person mentioned in paragraphs (a) to (f) has failed to perform.

Exemption from land tax

166. (1) The Minister, on application made by an owner of agricultural land, by notice in the *Gazette*, may fully exempt or partially exempt such owner for such period as may be specified in that notice from land tax imposed under section 138 -

- (a) any agricultural land of such owner, but only if he or she is a person belonging to the category of persons contemplated in Article 23 of the Namibian Constitution;
- (b) any agricultural land that is primarily used for the activities of -
 - (i) religious institutions, hospital, school or hostel, provided such activities are not for profit or gain;
 - (ii) any state-aided institution, or any charitable institution as defined in section 1 of the Sales Tax Act, 1992 (Act No. 5 of 1992); or
 - (iii) any agricultural land that has been adversely affected by natural disasters or calamities.

(2) An application referred to in subsection (1) is in such form as the Minister may determine and must specify the agricultural land to which it relates.

(3) The Minister may revoke any exemption granted under subsection (1) if the reason for granting such exemption ceases to exist, but may do so only after having afforded the owners concerned an opportunity to be heard.

CHAPTER 7 GENERAL PROVISIONS

Regulations

- 167.** (1) The Minister may make regulations in relation to -
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
 - (b) the hearing contemplated under section 166(3);
 - (c) the procedure for investigations to be conducted by a board for the purpose of considering an application under this Act, including the summoning of witnesses;
 - (d) the fees payable for any application or the issue of any certificate or other document in terms of this Act;
 - (e) the procedure for referral of a matter to an arbitrator in terms of section 33(6) or 39(7);
 - (f) the procedure for applications for authorisation for the erection of a fence on communal land and the circumstances in which such authorisation is not required;
 - (g) the procedure and period for the lodging of appeals in terms of section 54 and the fee payable;
 - (h) matters relating to roads, fences, pounds, watercourses, woods and the use of water, wood, clay and stone on communal land;
 - (i) the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on communal land;
 - (j) the combating and prevention of soil erosion, the protection of the pastoral resources and the limitation and control of the grazing of stock;
 - (k) the payment of compensation to persons or institutions offering public services whose rights to the occupation or use of communal land, granted or acquired under this Act, including a right referred to in section 29(1) or 44(1), are terminated on account of the withdrawal of any land from a communal land area for a purpose in the public interest under this Act;
 - (l) the form of land rights registers and other registers to be used in a land board office
 - (m) the manner and form in which the identity of persons are established or verified for the purpose of this Act;

- (n) the form of the consent to the cancellation of a lease hold or other right registered in a land board office;
 - (o) guidelines for identification of land for expropriation;
 - (p) the forms to be used for the purposes of this Act;
 - (q) the procedure for making any application under this Act;
 - (r) the procedure for applying for any consent to any transaction relating to or affecting land under this Act;
 - (s) the allowable size of an economic farming unit;
 - (t) valuation methods to be used for the acquisition of land for purposes of land reform and the allocation of a right of leasehold and an occupational land right; and
 - (u) any other matter as the Minister may consider necessary or expedient for giving effect to the objects of this Act.
- (2) Regulations made under subsection (1) may -
- (a) be made for a specified area or areas or in respect of a specified category or categories of persons or institutions and different regulations may be made for different areas or different categories of persons or institutions;
 - (b) prescribe penalties for a contravention of or failure to comply with any regulation not exceeding a fine of N\$8 000 or imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

Service of notices and documents

168. (1) Any notice, document or other communication required or authorised under this Act to be given to or served, or caused to be given to or served, on any person by the Minister is considered to have been duly given or served if, subject to subsection (2), the original or a true copy is delivered or tendered to the person concerned personally or sent by registered post to such person.

- (2) Where -
- (a) the whereabouts of the person, or in the case of several owners of property or several persons having an interest in property, every such owner or interested person, is not readily ascertainable by the Minister; or
 - (b) by reason of the number of such owners or persons having such an interest, or for any other reason, the Minister is satisfied that service of a notice or other document in accordance with subsection (1) is not practicable; or
 - (c) the property is subject to a *fideicommissum* and it is not known to the Minister who all the *fideicommissaries* are or will be,

the Minister, instead of or in addition to causing any notice or document to be served in accordance with subsection (1), must cause to be published, once in the *Gazette* and once a week during two consecutive weeks in two newspapers circulating in the area in which the land in question is situated, an appropriate notice complying with the relevant provision of this Act.

Penalty for hindering or obstructing

169. A person who wilfully hinders or obstructs any person authorised by or under this Act -

- (a) to enter upon any land or building for the purpose of inspection or carrying out any act prescribed by this Act;
- (b) to perform his or her functions;
- (c) to take possession of any agricultural land in terms of this Act; or
- (d) to exercise any power or performing any functions conferred or imposed under this Act,

commits an offence and is on conviction liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Delegation of powers and assignment of duties

170. (1) The Minister may in writing delegate or assign to any staff member in the Ministry any power or function conferred or imposed on the Minister by this Act, except the power granted under sections 138, 166 and 167.

(2) The Minister may vary or withdraw a delegation or assignment made under subsection (1) subject to such conditions as the Minister may determine.

(3) The Minister is not precluded from exercising or performing any power or function delegated or assigned under this section.

Authority for limitation of rights in respect of immovable property

171. In so far as the provisions of this Act limit the fundamental right of persons to dispose of immovable property and authorise the compulsory acquisition by the State of immovable property and of rights in or over such property, those provisions are enacted on the authority of Article 16(2) of the Namibian Constitution, read with Article 23(2) of that Constitution.

Savings and transitional provisions

172. (1) A person who at the commencement of this Act held office as a member of the Land Reform Advisory Commission established by section 2 of the repealed Agricultural (Commercial) Land Reform Act, 1995 is deemed to have been appointed under this Act -

- (a) until the expiry of his or her term of office as determined by or under that Act or constituent document; and

(b) on such conditions as applied to him or her as a member at the commencement of this Act.

(2) Despite anything to the contrary in any other law, the Minister continues to collect land tax which accrued prior to the commencement of this Act based on the 2007 valuation roll.

(3) The tax rates published under Government Notice No. 193 of 1 September 2004 are deemed to have been enabled in terms of this Act and remain in force until changed under this Act.

(4) A communal land board -

(a) established under the Communal Land Reform Act, 2002, repealed by this Act; and

(b) existing at the date of commencement of this Act,

is deemed to have been established under this Act.

(5) A permission to occupy issued under the Bantu Areas Land Regulations published under Government Notice No. R188 of 11 July 1969 continues to be valid until 12 months from the date of commencement of this Act.

(6) A person who hold a permission to occupy referred to in subsection (5) must apply for a right of leasehold in accordance with section 33 within 12 months of the commencement of this Act.

(7) Anything done under the repealed Agricultural (Commercial) Land Reform Act, 1995 or the repealed Communal Land Reform Act, 2002 that could have been done under this Act is deemed to have been done under a corresponding provision of this Act.

Repeal of laws

173. The laws mentioned in Schedule 2 are repealed to the extent set out in Column 3 of that Schedule.

Short title and commencement

174. This Act is called the Land Act, 2016 and commences on a date determined by the Minister by notice in the *Gazette*.

SCHEDULE 1
DESCRIPTION OF COMMUNAL LAND AREAS
(Section 17)

FORMER KAOKOLAND

Area 1

From a point where the +100 600 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system intersects the middle of the Kunene River; thence eastwards along the said middle to a point where it intersects the meridian of longitude 14E 00' 00" east; thence south-eastward along a straight line to a point where the meridian of longitude 14E 32' 00" east intersects the parallel of latitude 18E 30' 00" south; thence along a straight line to the south-eastern corner beacon of the Omatambo Maowe Quarantine Camp 740; thence south-eastward along a straight line to a point five kilometres due east of the water-hole Onaiso; thence south-westwards along a straight line to a point where the western boundary of the road reserve of Main Road 67 intersects the northern boundary of the farm Kowares 276; thence south-eastward along the western boundary of the said road reserve to a point where it intersects the northern boundary of the Remaining Extent of Tevere 643; thence generally westwards and southwards along the boundaries of the following farms so as to exclude them from this area: The Remaining Extent of Tevere 643, Westend 642, Marenphil 641, De Ville 638, Portion 1 and the Remaining Extent of Kamdescha 624 and Farm 621, to a point where the middle of the Ombonde River intersects the north-western boundary of the last-mentioned farm (approximately 2 000 metres from the westernmost corner beacon thereof); thence generally north-westward along the middle of said Ombonde River up to its confluence with the Hoanib River; thence generally north-westwards along the middle of the Hoanib river to a point where it intersects the south-eastern boundary of Sesfontein 207; thence along the boundary of the said Sesfontein 207, so as to exclude it from this area, to a point where the middle of the Hoanib River intersects the south-western boundary of Sesfontein 207; thence south westwards along the middle of the Hoanib River to a point where it intersects the meridian of longitude 13E 07' 02" east; thence northwards along the said meridian to a point where it intersects the parallel of latitude 19E 21' 57" south on the northern bank of the Hoanib River; thence south-westwards with the said bank to a point where it intersects the -5 300 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system, thence north-westwards in a straight line to a point where the +92 200 metre y-co-ordinate line on the said system intersects the parallel of latitude 18E 00' 00" south; thence in a straight line to a point where the +100 600 metre y-co-ordinate line on the said system intersects the middle of the Kunene River, the point of beginning.

Area 2

From a point where the middle of the Kunene River meets the coast line of the Atlantic Ocean; thence Eastwards along the middle of the said river to a point where it intersects the + 100 600 metre y-co-ordinate line on the LO 22/13-trigonometrical survey system; thence in a straight line to a point where the +92 200 metre y-co-ordinate line on the said system intersects the parallel of latitude 18E 00' 00" south; thence south-eastward in a straight line to a point where the northern bank of the Hoanib River intersects the -5300 metre y-co-ordinate line on the said system, thence south-westwards along the said northern bank to a point where it intersects the meridian of longitude 13E east; thence south-westwards in a straight line to a point where the parallel of latitude 19E 32' 00" south intersects the coast line of the Atlantic Ocean; thence generally north-westwards along the said coast line to the point of beginning.

FORMER DAMARALAND

Area 1

From the point where the meridian of longitude 13E 07' 02" East intersects the middle of the Hoanib River; thence north-eastward along the middle of that river to a point where it intersects the south-western boundary of Sesfontein 207; thence along the boundary of the said Sesfontein 207, so as to include it in this area, to a point where the south-eastern boundary thereof intersects the middle of the Hoanib River; thence generally south-eastward along the middle of the Hoanib River up to its confluence with the Ombonde River; thence along the middle of the Ombonde River to a point where it intersects the north-western boundary of Farm 621 (approximately 2 000 metres from its westernmost corner beacon); thence generally northwards and eastward along the boundaries of the following farms so as to include them in this area: Farm 621, the Remaining Extent and Portion 1 of Kamdescha 624, De Ville 638, Marenphil 641, Westend 642 and the Remaining Extent of Tevrede 643, to a point where the western boundary of the road reserve of Main Road 67 intersects the northern boundary of the last-mentioned farm; thence along the western boundary of the said road reserve to a point where it intersects the eastern boundary of the Remaining Extent of Marienhohe 639; so as to include the following farms in this area: The Remaining Extent of Tevrede 643, Portion 1 of Khoabendes 645, Portion 6 of Kaross 237, the Remaining Extent of Swartskamp 640, Portion 2 and the Remaining Extent of Marienhohe 639; thence south-eastward along the eastern boundary of the last-mentioned farm to its south-eastern corner beacon; thence generally southwards and south-westwards along the boundaries of the following farms so as to include them in this area: The Remaining Extent of Marienhohe 639, Quo Vadis 625, Waterbron 623, Condor 617, Emmanuel 613, Deo Volento 610, Dwars – Trek 611, Anker 602, Kakatswa Onguati 236, Portion 2 and Portion 1 of Amkarub 269, Portion 1 and the Remaining Extent of Brambach 271, the Remaining Extent and Portion 1 of Engelbrecht 272, Annabis 677, Spitskop 678, Rokeys 682, Portion 1 and the Remaining Extent of Aub 683, Smalruggens 684, Fransfontein 6, Waterval 384, Stille Woning 386, Braunfels 387, the Farm 388, Renosterkop 389, Löwenfontein 84, Otjiwarongo 150, Okombahe 139, Springbock-fontein 21, Tsumib 20, Kudubis 19, the Remaining Extent of Pforte 65, Sandamap - Noord 115, Sandamap 64, Eureka 99, Sukses 90, Hakskeen 89 and Portion 2 of Trekkoppe 120, to the most southern corner beacon of the last-mentioned farm, approximately 1 600 metres north of the Usakos-Swakopmund railway line; thence generally south-westwards along a line approximately 1 600 metres from and parallel to the said railway line to a point where it intersects the eastern boundary of Arandis Townlands 170, with geographic co-ordinate values 14E 59N 39O East and 22E 23N 25O South, thence generally northwards, westwards and southwards along the boundaries of the last mentioned property, to a point with geographic co-ordinate values 14E 46N 55O East and 22E 26N 49O South, approximately 1 600 metres north of the Usakos B Swakopmund railway line, so as to exclude Arandis Townlands 170 from this area, thence generally south-westwards along a line approximately 1 600 metres from and parallel to the said railway line to a point where the meridian of longitude 14E 53' 33" East intersects the parallel of latitude 22E 29' 08" South; thence north-westwards along a straight line to a point with geographic co-ordinate values 14E 31N 58O East and 21E 55N 05O South, on the southern boundary of Desert Water South 219, thence eastward, north-eastward, northwards, westwards and southwards, along the boundaries of Desert Water South 219 and Desert Water North 218, to a point with geographic co-ordinate values 14E 31N 33O East and 21E 54N 25O South on the western boundary of Desert Water South 219; so as to exclude these two properties from this area: thence north-westwards along a straight line to a point where the meridian of longitude 13E 57' 33" East intersects the parallel of latitude 21E 00' 09" South; thence north-westwards along a straight line to the point of beginning.

Area 2

Otjimbingwe 104, Registration Division H.

FORMER OWAMBOLAND

From the point where the meridian of longitude 14E East intersects the middle of the Kunene River; thence eastward along the middle of that river to a point at the Ruacana Falls above the crest or lip where the said middle intersects the parallel of latitude 17E 23' 23,73" South; thence eastward along the said parallel of latitude to a point where it intersects the meridian of longitude 18E east; thence southwards along the said meridian of longitude 18E east to the point where it intersects the northern boundary of the farm Last Hope 880; thence westwards to the north-western corner beacon of the farm Tsintsabis 881; thence southwards along the western boundary of the last-mentioned farm to the north-eastern corner beacon of the Farm 878; thence westwards along the northern boundaries of the following farms: Farm 878, the Remaining Extent and Portion 1 of Concordia 876, Vaalwater 875, the Remaining of Pietersburg 1347, Mankettifeld 1074, Gutwohne Nord 1073, Kumewa 1072, Stofdraai 1071, Grenspos 1070, Geluksanker 1279 and Operet 1260, to a point where the south-western road reserve boundary of Trunk Road 1, Section 10, intersects the northern boundary of Operet 1260; thence north-westwards along the north-eastern road reserve boundary of Trunk Road 1, Section 10, to a point where the north-eastern road reserve boundary intersects the parallel of latitude 18E 30N 00O South; thence westwards along the parallel of latitude 18E 30N 00O South to a point where the said parallel of latitude is intersected by a straight line drawn generally north-eastward from a point south-east of Otjivalunda East Salt Pan, so that the said salt pan is included; thence generally south-westwards along the said straight line to a point south-east of the said Otjivalunda East Salt Pan; thence generally westwards to the south-eastern corner beacon of the farm Quarantine Station 742; thence westwards along the southern boundary of the said farm Quarantine Station 742 to its south-western corner beacon; thence north-westwards in a straight line to a point where the parallel of latitude 18E 30N 00O South intersects the meridian of longitude 14E 32N 00O East; thence north-westwards in a straight line to a point where the meridian of longitude 14E East intersects the middle of the Kunene River, the point of beginning.

FORMER KAVANGO*Area 1*

From the point where meridian of longitude 18E east intersects the parallel of latitude 17E 23' 23,73" south; thence eastward along the said parallel up to a point where it intersects the middle of the Okavango River; thence generally south-eastwards along the said middle up to point where it intersects the boundary common to Namibia and Botswana; thence generally westwards along the said boundary up to a point where it joins meridian of longitude 21(east; thence southwards along the said meridian of longitude up to a point where it intersects the parallel of latitude 19(10' south; thence westwards along the said parallel of latitude to a point where it intersects the eastern boundary of the farm Talitha 1006; thence northwards along the boundaries of but excluding the following farms: Talitha 1006, Hero 1007, Verskyn 1012, Farm 1013, Wildgrund 1018 and Wildhagen 1019, to the north-eastern corner beacon of the last-mentioned farm; thence westwards along the boundaries of but excluding the following farms: Wildhagen 1019, Farm 1020, Farm 1021, Tiervlei 1166, Na-Oes 1027, Onreg 1028, Tranedal 1033, Farm 1034, Farm 1039, Farm 1040, Wag-'n-Bietjie 1046, Farm 1047, Farm 1052, Farm 1164, Farm 1058, Farm 1059, Farm 1061, Randeier 1062, the Remaining Extent of Wildernis 882 and Last Hope 880, to a point where the meridian of longitude 18(east intersects the northern boundary of the farm Last Hope 880; thence

northwards along the meridian of longitude 18(east to a point where it intersect the parallel of latitude 17E 23' 23,73" south, the point of beginning.

Area 2

From a point at the northern extremity of Sibanana Island in the Okavango River; thence north-eastward in a straight line up to Beacon 22 where meridian of longitude 23E 18' 00" east intersects the parallel of latitude 17E 40' 00" south; thence southwards along the said meridian of longitude up to a point where it intersects the boundary common to Namibia and Botswana; thence generally westwards along said boundary up to point where it intersects the middle of the Okavango River; thence generally north-westwards along the said middle to the point of beginning.

ZAMBEZI

That part of Namibia lying east of the meridian of longitude 23E 18' 00".

FORMER BUSHMANLAND

From a point where the eastern boundary of the farm Talitha 1006 is intersected by the parallel of latitude 19E 10N south; thence eastward along the said parallel of latitude 19E 10N south to a point where the said parallel of latitude intersects the boundary common to Namibia and Botswana; thence southwards along the said common boundary to point where it intersects the parallel of latitude 20E south; thence westwards along the said parallel of latitude 20E south-eastern corner beacon of the Otjituo Native Reserve 235; thence north-westwards along the boundary of the said Otjituo Native Reserve to corner beacon of the farm Sandveld Game Ranch 1265; thence in a northerly, north-easterly and northerly direction along the boundary, of but excluding the following farms: Sandveld Game Ranch 1265, Oorkant 953, Onjama 952, Simondeum 991, Rumara 993, Farm 1124, the Remaining Extent and Portion 1 of Horabe Wes 1139, Hieromtrent 995, Vreugde 1000, Rooidag 1001 and Talitha 1006, to a point where the eastern boundary of the last-named farm is intersected by the parallel of latitude 19E 10N south, being the point of beginning.

FORMER HEREROLAND WEST

Area 1

From a point where the middle of the Otjosondjou Omuramba intersects the southern boundary of the Eastern Native Reserve 792; thence generally north-westwards along the boundary of the Eastern Native Reserve 792 to where it meets the Waterberg East Native Reserve 341; thence north-westwards, north-eastward and south-eastward along the boundaries of and including the said Waterberg East Native Reserve 341 and the Otjituo Native Reserve 235, to the corner beacon common to the Otjituo Native Reserve 235 and the Eastern Native Reserve 792 on the parallel of latitude 20E south; thence in a south-easterly direction along the boundary of the Eastern Native Reserve 792 to a point where the said boundary intersect the middle of the Otjosondjou Omuramba; thence generally westwards and south-westwards along the middle of the Otjosondjou Omuramba to a point where is intersects the southern boundary of the Eastern Native Reserve 792, being the point of the beginning.

Area 2

Ovitoto 55, Registration Division J.

FORMER HEREROLAND EAST*Area 1*

From the corner beacon common to the Otjituuo Native Reserve 235 and the Eastern Native Reserve 792 on the parallel of latitude 20E south; thence eastward in a straight line along the said parallel of latitude 20E south to a point where it intersects the boundary common to Namibia and Botswana; thence southwards along the said common boundary to a point where it intersects the parallel of latitude 22E south; thence westwards along the said parallel to a point where it intersects the meridian of longitude 20E east; thence in a straight line south to the south-western corner beacon of the farm 855; thence northwards along the boundaries of and including the following farms: Farm 855, Farm 854, Farm 849, Farm 848, Farm 843, Farm 842, Farm 837 and Farm 836, to the north-western corner beacon of the last-mentioned farm; thence south-westwards, northwards and generally westwards along the boundaries of an including the Epukiro Native Reserve 329 and the Eastern Native Reserve 792 to a point where the boundary of the last-mentioned Reserve intersects the middle of the Otjosondjou Omuramba; thence northwards and north-eastward along the middle of the said Omuramba to a point where it intersects the north-eastern boundary of the Eastern Native Reserve 792; thence north-westwards along the north-eastern boundary of the last-mentioned Reserve to the corner beacon common to the Otjituuo Native Reserve 235 and the Eastern Native Reserve 792, being the point of beginning.

Area 2

Aminuis Native Reserve 330 Registration Division L.

Area 3

Beginning at the north-eastern beacon of farm 949, Registration Division L; thence clockwise along the boundaries of the following farms so as to include them in this area; The said Farm 949, Farms 951, 953, 955, 957, 959, 961, 963, 965, 967, 969, 968, 966, 964, 962, 960, 958, 956, 954, 952, 950, 948 and 949, to the north-eastern beacon of the last-mentioned farm, the point of beginning.

FORMER NAMALAND*Area 1*

Starting at a point, the most western corner beacon of the farm Uibis 34, then generally eastwards, along the boundaries of the following farms, so as to include them in to this area: Uibis 34, portion A of farm Fleyfeld 33, portion B of Fleyfeld 33, Ubians 32, Ganaus 27, the Remaining Extent of Hatzum II 28, Rosenhof 97, Anis-kubab 96, Gibeon Reserve 76, Portion 1 of New Castle 218, Glencoe 78, Portion 1 of Kriess 219, Portion 1 of Verloorveld 220, to the north-eastern corner beacon of the last-mentioned farm, thence southwards along the boundaries of the following farms so as to include them in this area:

Portion 1 and the Remaining Extent of Verloorveld 220, Portion A of Goamus 70, Goamus Ost 69, the Remaining Extent and Portion 2 of Ventershoop 164, the Remaining Extent of Springbokvlei 237, Portion 1, the Remaining Extent and Portion 2 of Zoekmakaar 236, Portion 1 of Gross Daberas 17, Portion 1, the Remaining Extent and Portion 2 of Daberas Ost 18, the Remaining Extent of Klein Daberas 19, Tses Reserve 169, Blaukehl-Nord 141, Blaukehl-Sud 142, to the most south-eastern corner beacon of the last-mentioned farm, thence westwards along the boundaries of the following farms so as to include them in to this area: Blaukehl-Sud 142, Portion 1 of Blau Ost 144, Bloemhof 311, the Remaining Extent, Portion 4 and Portion 1 of Itzawisis 9, to a point common to the last-mentioned farm, Paradies 8 and Berseba Reserve 170, thence eastwards along the boundaries of the following farms so as to include them

in to this area: Berseba Reserve 170, the Remaining Extent and Portion 1 of Nabaos 7, the Remaining Extent and Portion 1 of Gellap-West 4, Berseba Reserve 170, to the most southern corner beacon (Neck, Trigonometric Beacon) of the last-mentioned farm, thence westwards along the boundaries of the following farms so as to include them into this area: Berseba Reserve 170, Garis 74, Schnepfenrivier 73, Kosis 72, Isaaksbrunn 71, Soromaas Reserve 40, to the south-western corner beacon of the last-mentioned farm; thence northwards, eastwards and northwards along the boundaries of the following farms so as to include them into this area, Soromaas Reserve 40, the Remaining Extent and Portion 1 of Florsheim 69, Nugoais 65, Pfalz 61, Doachas 57, Landshut 58, Berseba Reserve 170, Eidsamub 51, Liebenstein 50, Portion 2 and Portion 1 of Ou Tempelhof 583, Teschenbrugge 48, Kinachas I 37, Vergelee 380, Portion A of Kosis 36, Kamagams 35, Uibis 34, to the most western corner beacon of the last-mentioned farm, the point of beginning.

Area 2

Certain portion of the remaining extent of the farm Bondelswarts Reserve No. 134, Registration Division V, situate in the magisterial district of Karasburg, held under certificate of registered title No. 1800/1967; and Certain portion 23 (a portion of portion 8 of portion A) of the farm Kalkfontein West No. 48, Registration Division V, situate in the magisterial district of Karasburg, held under deed of transfer No. 1801/1967;

Area 3

Certain portion of the remaining extent of the farm Warmbad West No. 305, Registration Division V, situate in the magisterial district of Karasburg, held under certificate of registered government title No. 1534/1973; Certain portion 1 of the farm Warmbad West No. 305, Registration Division V, situate in the magisterial district of Karasburg, held under grant of land T1783/1977; and

Area 4

The farms Gainatseb No. 67, Eastwood No. 73, Tsumamas No. 74, and Kranspoort No. 475, Registration Division A, situate in the magisterial district of Outjo.

Area 5

Certain Farm Hoachanas No. 120, registration division M, situate in the magisterial district of Mariental, measuring 14252,5049 hectares.

SCHEDULE 2
LAWS REPEALED
(section 173)

No. and year of law	Short title	Extent of repeal
Act No. 6 of 1995	Agricultural (Commercial) Land Reform Act, 1995	The whole
Act No. 16 of 2000	Agricultural (Commercial) Land Reform Amendment Act, 2000	The whole
Act No. 2 of 2001	Agricultural (Commercial) Land Reform Amendment Act, 2001	The whole
Act No. 5 of 2002	Communal Land Reform Act, 2002	The whole
Act No. 13 of 2002	Agricultural (Commercial) Land Reform Amendment Act, 2002	The whole
Act No. 14 of 2003	Agricultural (Commercial) Land Reform Amendment Act, 2003	The whole
Act No. 19 of 2003	Agricultural (Commercial) Land Reform Second Amendment Act, 2003	The whole
Act No.11 of 2005	Communal Land Reform Amendment Act, 2005	The whole
Act No. 8 of 2013	Agricultural (Commercial) Land Reform Amendment, 2013	The whole
Act No. 13 of 2013	Communal Land Reform Amendment Act, 2013	The whole
Act No. 1 of 2014	Agricultural (Commercial) Land Reform Amendment, 2014	The whole