



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notices

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### MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING

No. 34

2001

#### COMMENCEMENT OF DECENTRALISATION ENABLING ACT, 2000 (ACT NO. 33 OF 2000)

In terms of section 10 of the Decentralisation Enabling Act, 2000 (Act No. 33 of 2000),

I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

**N. IYAMBO**  
**MINISTER OF REGIONAL AND**  
**LOCAL GOVERNMENT AND HOUSING**

Windhoek, 26 February 2001

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**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 35

2001

**COMMENCEMENT OF REGIONAL COUNCILS AMENDMENT ACT, 2000**  
**(ACT NO. 30 OF 2000)**

In terms of section 10 of the Regional Councils Amendment Act, 2000 (Act No. 30 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

**N. IYAMBO**  
**MINISTER OF REGIONAL AND**  
**LOCAL GOVERNMENT AND HOUSING**

Windhoek, 26 February 2001

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**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 36

2001

**COMMENCEMENT OF NATIONAL HOUSING DEVELOPMENT ACT, 2000**  
**(ACT NO. 28 OF 2000)**

In terms of section 38 of the National Housing Development Act, 2000 (Act No. 28 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

**N. IYAMBO**  
**MINISTER OF REGIONAL AND**  
**LOCAL GOVERNMENT AND HOUSING**

Windhoek, 26 February 2001

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**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 37

2001

**COMMENCEMENT OF NATIONAL HOUSING ENTERPRISE AMENDMENT**  
**ACT, 2000 (ACT NO. 32 OF 2000)**

In terms of section 15 of the National Housing Enterprise Amendment Act, 2000 (Act No. 32 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

**N. IYAMBO**  
**MINISTER OF REGIONAL AND**  
**LOCAL GOVERNMENT AND HOUSING**

Windhoek, 26 February 2001

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**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 38

2001

**COMMENCEMENT OF TRUST FUND FOR REGIONAL DEVELOPMENT AND  
EQUITY PROVISIONS ACT, 2000 (ACT NO. 22 OF 2000)**

In terms of section 20 of the Trust Fund for Regional Development and Equity Provisions Act, 2000 (Act No. 22 of 2000), I hereby determine that the said Act will come into operation on the date of publication of this notice in the *Gazette*.

**N. IYAMBO**  
**MINISTER OF REGIONAL AND  
LOCAL GOVERNMENT AND HOUSING**

Windhoek, 26 February 2001

**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 39

2001

**LOCAL AUTHORITIES ACT, 1992:  
COMMERCIALISATION REGULATIONS**

The Minister responsible for Local Government has under section 94A of the Local Authorities Act, 1992 (Act No. 23 of 1992), made the regulations set out in the Schedule.

**SCHEDULE****Definitions**

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“commercialise” means the commercialising of any service, function or duty in accordance with regulation 3;

“commercialised business” means any service, function or duty commercialised in accordance with regulation 3;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a local authority council into a company conducting a commercialised business by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into a lease agreement with, the company, including the furnishing of a guarantee in terms of section 30(1)(x) of the Act; and

“the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992).

**Commercialisation by local authority council**

2. (1) Subject to these regulations or to any other law, a local authority council may commercialise in whole or in part, with the prior written approval of the Minister and subject to such conditions as the Minister may impose in writing in the approval, any service rendered, or duty exercised or function carried out by the local authority council.

(2) The Minister may impose conditions under subregulation (1) which apply -

(a) to a local authority council specified in the approval granted under that subregulation; or

- (b) in general to all local authorities in respect of any commercialisation in accordance with these regulations; or
- (c) only to the commercialisation of a service, duty or function, and only to the local authority council, specified in the approval granted under that subregulation.

#### **Form and manner of Commercialisation**

3. A local authority council may commercialise, subject to the conditions imposed by the Minister under regulation 2, any service rendered, function exercised or duty carried out by the local authority council, by means of -

- (a) the acquisition of all the shares in a company registered or to be registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the registering of a company in which the local authority council is the sole shareholder, for the purpose of the commercialisation of such service, duty or function by the local authority council; and
- (b) the transferring and making over in writing to the company referred to in paragraph (a), subject to the conditions imposed by the Minister under regulation 2, of the power and authority of the local authority council to render, exercise or carry out the service, duty or function, to enable such company to render, exercise or carry out the service, duty or function so transferred or made over, subject to such conditions.

#### **Alienation or encumbrance of shares and assets, and pooling of resources, services and property**

4. (1) A local authority council may -

- (a) not alienate, encumber or dispose of any shares owned by it in, or any of the assets of, or the local authority council's interest in, a company conducting a commercialised business, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, and which approval may be granted only after consultation with the Minister of Trade and Industry;
- (b) pool, subject to any conditions imposed by the Minister under regulation 2, any of its resources, services or property in a company conducting a commercialised business.

(2) No member or staff member of a local authority council or other person referred to in section 94A(1)(c)(iv) of the Act may obtain any shares or interest in a company conducting a commercialised business without the prior written approval of the local authority council concerned, subject to such conditions as the local authority council may determine and which approval may only be granted after consultation with the Minister.

#### **Amendment or alteration of statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of company conducting a commercialised business**

5. (1) The statutes and articles of association of a company referred to in regulation 3 conducting a commercialised business, must provide that, or must be amended to provide that, irrespective of the voting power of the local authority council on the board of directors of the company, the statutes or articles of association may not be amended or the share structure altered, including the transfer of ownership in shares, or the nature of operations of the company conducting the commercialised business, including the risks pertaining thereto, may not be changed without the prior written approval of the local authority council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the company concerned.

**Audit of accounting records and financial statements of commercialised business**

6. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 85 of the Act, the accounting records and financial statements of a company referred to in regulation 3 conducting a commercialised business.

(2) The company referred to in subregulation (1) must submit to the Minister and to the local authority council concerned copies of the audited accounting records and financial statements referred to in that subregulation, together with a report by the Auditor - General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

**Member or staff member of local authority council not to be employed by company**

7. (1) A company referred to in regulation 3 conducting a commercialised business may not employ a member or staff member of the local authority council concerned.

(2) Nothing in subregulation (1) prevents a staff member of a local authority council from resigning from the services of such local authority council in order to take up employment with a company referred to in that subregulation.

**General**

8. Nothing in these regulations prevents a local authority council from acquiring or from registering a company in accordance with regulation 3 for the purpose of conducting a commercialised business, with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, powers, functions or purposes of any of the local authority council's own operations, if the conducting of the commercialised business by the company so acquired or registered by the local authority council, may serve to improve the efficiency or effectiveness of any of the own operations of the local authority council.

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**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 40

2001

**LOCAL AUTHORITIES ACT, 1992:  
JOINT BUSINESS VENTURE REGULATIONS**

The Minister responsible for Local Government has under section 94A of the Local Authorities Act, 1992 (Act No. 23 of 1992), made the regulations set out in the Schedule.

**SCHEDULE****Definitions**

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“director” means a director of the board of directors of a company which has entered into a joint business venture in accordance with regulation 2, and a director representing a local authority council must be a member or staff member of the local authority council or an employee of the company who has been nominated by the local authority council to so act as director;

“Government” includes a Ministry, a regional council, a local authority council, a parastatal and a non governmental organisation;

“input” means the issue value of shares bought or the monetary or market value, as the case may be, of resources, services or property pooled by the local authority council concerned at the date when so pooled;

“joint business venture” means a joint business venture entered into in accordance with regulation 2;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a local authority council in a joint business venture by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into of a lease agreement with, the joint business venture, including the furnishing of a guarantee in terms of section 30(1)(x) of the Act;

“shareholder’s involvement” includes the issue value of all shares taken up and paid for, shareholder’s loans to the company concerned, or an input by means of pooling; and

“the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992).

### **Entering into joint business venture by local authority council**

2. (1) A local authority council may enter, subject to subregulation (2), for the purposes of exercising, performing or carrying out its powers, functions or duties in terms of the Act, and further subject to -

- (a) these regulations; and
- (b) the prior written approval of the Minister on such conditions as the Minister may impose,

into joint business ventures with the Government or any company or any trust, or conjointly with the Government and any company or any trust, in order to promote economic development and employment creation within its area or in order to supplement its funds referred to in section 80(1) of the Act.

- (2) The Minister may impose conditions under subregulation (1) which apply -
  - (a) to a local authority council specified in the approval granted under that subregulation; or
  - (b) in general to all local authorities in respect of any joint business venture in accordance with these regulations; or
  - (c) only to the joint business venture and only to the local authority council specified in the approval granted under that subregulation.

(3) The Minister may grant, if foreign nationals will be involved in any joint business venture, his or her approval under subregulation (1) only after consultation with the Minister of Finance and the Minister of Trade and Industry.

(4) The written approval of the Minister under subregulation (1) is not required in the case of the municipal council of a municipality referred to in Part 1 of Schedule 1 to the Act.

### **Form of joint business venture**

3. A local authority council, when entering into a joint business venture in accordance with regulation 2 may -

- (a) take up shares in an existing company registered, or in a company to be registered, in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

- (b) accept the position of beneficiary of the trust established; or
- (c) enter into an agreement with the Government relating to the joint business venture,

for the purpose of establishing the joint business venture.

**Alienation, encumbrance or disposal of shares and assets, and pooling of resources, services and property**

- 4. A local authority council -
  - (a) excluding the municipal council of a municipality referred to in Part 1 of Schedule 1 to the Act, may not alienate or encumber any shares owned by it in a joint business venture, or otherwise encumber or dispose of its assets or other interest therein, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, granted after consultation with the Minister of Trade and Industry, which approval must specify the purchaser or the beneficiary, as the case may be, and the relevant shares or assets, as the case may be;
  - (b) may pool in a joint business venture, subject to the conditions imposed by the Minister under regulation 2, any of its resources, services or property.

**Acquisition of shares or other interest in joint business venture by members or staff members of local authority council**

5. No member or staff member of a local authority council or any person referred to in section 94A(1)(c)(iv) of the Act, may buy, accept, receive or otherwise acquire any shares or other interest in a joint business venture, excluding payments relating to director's fees or member's fees, or payment for services rendered with the written approval of the local authority council.

**Representation of local authority council on board of directors or board of trustees**

6. The representation of a local authority council concerned on the board of directors of a company or on the board of trustees of a trust, in relation to the total representation on the board concerned, must be commensurate to the ratio which the monetary value of the input by the local authority council in the joint business venture bears to the monetary value of the total shareholder's investment in the joint business venture.

**Amendment or alteration of articles of association and statute, trust deed, share or interest structure or nature of operations of joint business venture**

7. The statutes and articles of association of a company or the trust deed of a trust referred to in regulation 2(1) must provide that, irrespective of the voting power of the local authority council on the board of directors or at any meeting of the trustees, as the case may be, the statutes or articles of association or the trust deed may not be amended and the share or interest structure altered, including the transfer of ownership in shares, or the nature of operations of the joint business venture, including the risks pertaining thereto, may not be changed without the prior written approval of the local authority council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the joint business venture concerned.

**Audit of accounting records and financial statements of joint business venture**

8. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 85 of the Act, the accounting records and financial statements of a joint business venture.

(2) The joint business venture referred to in subregulation (1) must submit to the Minister and to the local authority council concerned copies of the audited accounting records and financial statements referred to in that subregulation, together with a report by the Auditor General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

**Members or staff members of local authority council not to be employed by joint business venture**

9. (1) A joint business venture entered into in accordance with regulation 2 may not employ a member or staff member of a local authority council.

(2) Nothing in subregulation (1) prevents a staff member of a local authority council to resign from such local authority in order to take up employment with a joint business venture referred to in that subregulation.

**General**

10. Nothing in these regulations prevents a local authority council from entering into a joint business venture in accordance with regulation 2 for the purpose of conducting a joint business with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, powers, functions or purposes of any of the local authority council's own operations, if the joint business venture may serve to improve the efficiency or effectiveness of any of the own operations of the local authority council.

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**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 41

2001

**REGIONAL COUNCILS ACT, 2002:  
COMMERCIALISATION REGULATIONS**

The Minister responsible for Regional Government has under section 44B of the Regional Councils Act, 1992 (Act No. 22 of 1992), made the regulations set out in the Schedule.

**SCHEDULE**

**Definitions**

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“commercialise” means the commercialising of any service, function or duty in accordance with regulation 3;

“commercialised business” means any service, function or duty in accordance with regulation 3;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a regional council into a company conducting a commercialised business by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into a lease agreement with, the company, including the furnishing of a guarantee in terms of section 28(1)(k) of the Act; and

“the Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992).



**Commercialisation by regional council**

2. (1) Subject to these regulations or to any other law, a regional council may commercialise in whole or in part, with the prior written approval of the Minister and subject to such conditions as the Minister may impose in writing in the approval, any service rendered, or duty exercised or function carried out by the regional council.

- (2) The Minister may impose conditions under subregulation (1) which apply -
- (a) to a regional council specified in the approval granted under that subregulation; or
  - (b) in general to all regional councils in respect of any commercialisation in accordance with these regulations; or
  - (c) only to the commercialisation of a service, duty or function, and only to the regional council, specified in the approval granted under that subregulation.

**Form and manner of Commercialisation**

3. A regional council may commercialise, subject to the conditions imposed by the Minister under regulation 2, any service rendered, function exercised or duty carried out by the regional council, by means of -

- (a) the acquisition of all the shares in a company registered or to be registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the registering of a company in which the regional council is the sole shareholder, for the purpose of the commercialisation of such service, duty or function by the regional council; and
- (b) the transferring and making over in writing to the company referred to in paragraph (a), subject to the conditions imposed by the Minister under regulation 2, of the power and authority of the regional council to render, exercise or carry out the service, duty or function, in order to enable such company to render, exercise or carry out the service, duty or function so transferred or made over, subject to such conditions.

**Alienation or encumbrance of shares and assets, and pooling of resources, services and property**

4. (1) A regional council may -

- (a) not alienate, encumber or dispose of any shares owned by it in, or any of the assets of, or the regional council's interest in, a company conducting a commercialised business, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, and which approval may be granted only after consultation with the Minister of Trade and Industry;
- (b) pool, subject to any conditions imposed by the Minister under regulation 2, any of its resources, services or property in a company conducting a commercialised business.

(2) No member or staff of a regional council or other person referred to in section 44B(1)(c)(iv) of the Act may obtain any shares or interest in a company conducting a commercialised business without the prior written approval of the regional council concerned, subject to such conditions as the regional council may determine and which approval may only be granted after consultation with the Minister.

**Amendment or alteration of statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of company conducting a commercialised business**

5. The statutes and articles of association of a company referred to in regulation 3 conducting a commercialised business, must prove that, or must be amended to provide that, irrespective of the voting power of the regional council on the board of directors of the company, the statutes or articles of association may not be amended or the share structure altered, including the transfer of ownership in shares, or the nature of operations of the company conducting the commercialised business, including the risks pertaining thereto, may not be changed without the prior written approval of the regional council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the company concerned.

**Audit of accounting records and financial statements of commercialised business**

6. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 38 of the Act, the accounting records and financial statements of a company referred to in regulation 3 conducting a commercialised business.

(2) The company referred to in subregulation (1) must submit to the Minister and to the regional council concerned copies of the audited accounting records and financial statements referred to in that subregulation, together with a report by the Auditor General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

**Member or staff member of regional council not to be employed by company**

7. (1) A company referred to in regulation 3 conducting a commercialised business may not employ a member or staff member of the regional council concerned.

(2) Nothing in subregulation (1) prevents a staff member of a regional council from resigning from the services of such regional council in order to take up employment with a company referred to in that subregulation.

**General**

8. Nothing in these regulations prevents a regional council from acquiring or from registering a company in accordance with regulation 3 for the purpose of conducting a commercialised business, with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, functions or purposes of any of the regional council's own operations, if the conducting of the commercialised business by the company so acquired or registered by the regional council, may serve to improve the efficiency or effectiveness of any of the own operations of the regional council.

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**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 42

2001

**REGIONAL COUNCILS ACT, 1992:  
JOINT BUSINESS VENTURE REGULATIONS**

The Minister responsible for regional government has under section 44B of the Regional Councils Act, 1992 (Act No. 22 of 1992), made the regulations set out in the Schedule.

**SCHEDULE**

## Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and -

“director” means a director of the board of directors of a company which has entered into a joint business venture in accordance with regulation 2, and a director representing a regional council must be a member or staff member of the regional council or an employee of the company who has been nominated by the regional council to so act as director;

“Government” includes a Ministry, a local authority council, a regional council, a parastatal and a non governmental organisation;

“input” means the issue value of shares bought or the monetary or market value, as the case may be, of resources, services or property pooled by the regional council concerned at the date when so pooled;

“joint business venture” means a joint business venture entered into in accordance with regulation 2;

“pool” means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a regional council in a joint business venture by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into of a lease agreement with, the joint business venture, including the furnishing of a guarantee in terms of section 28(1)(k) of the Act;

“shareholder’s investment” includes the issue value of all shares taken up and paid for, shareholder’s loans to the company concerned, or an input by means of pooling; and

“the Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992).

## Entering into joint business venture by regional council

2. (1) A regional council may enter, subject to subregulation (2), for the purposes of exercising, performing or carrying out its powers, functions or duties in terms of the Act, and further subject to -

- (a) these regulations; and
- (b) the prior written approval of the Minister on such conditions as the Minister may impose,

into joint business ventures with the Government or any company or any trust, or conjointly with the Government and any company or any trust, in order to promote economic development and employment creation within its area in order to supplement its funds referred to in section 33(1) of the Act.

- (2) The Minister may impose conditions under subregulation (1) which apply -
  - (a) to a regional council specified in the approval granted under that subregulation; or
  - (b) in general to all regional councils in respect of any joint business venture in accordance with these regulations; or
  - (c) only to the joint business venture and only to the regional council specified in the approval granted under that subregulation.

(3) The Minister may grant, if foreign nationals will be involved in any joint business venture, his or her approval under subregulation (1) only after consultation with the Minister of Finance and the Minister of Trade and Industry.

**Form of joint business venture**

3. A regional council, when entering into a joint business venture in accordance with regulation 2, may -

- (a) take up shares in an existing company registered, or in a company to be registered, in terms of the Companies Act, 1973 (Act No. 61 of 1973);
- (b) accept the position of beneficiary of the trust established; or
- (c) enter into an agreement with the Government relating to the joint business venture,

for the purposes of establishing the joint business venture.

**Alienation, encumbrance or disposal of shares and assets, and pooling of resources, services and property**

4. A regional council may -

- (a) not alienate or encumber any shares owned by it in a joint business venture, or otherwise encumber or dispose of its assets or other interest therein, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, granted after consultation with the Minister of Trade and Industry, which approval must specify the purchaser or the beneficiary, as the case may be, and the relevant shares or assets, as the case may be;
- (b) pool in a joint business venture, subject to the conditions imposed by the Minister under regulation 2, any of its resources, services or property.

**Acquisition of shares or other interest in joint business venture by members of staff members of regional council**

5. No member or staff member of a regional council or any person referred to in section 16(1) or section 44B(c)(iv) of the Act, may buy, accept, receive or otherwise acquire any shares or other interest in a joint business venture, excluding payments relating to director's fees or member's fees, or payment for services rendered with the written approval of the regional council.

**Representation of regional council on board of directors or board of trustees**

6. The representation of a regional council concerned on the board of directors of a company or on the board of trustees of a trust, as the case may be, in relation to the total representation on the board concerned, must be commensurate to the ratio which the monetary value of the input by the regional council in the joint business venture bears to the monetary value of the total shareholder's investment in the joint business venture.

**Amendment or alteration of articles of association and statute, trust deed, share or interest structure or nature of operations of joint business venture**

7. The statutes and articles of association of a company or the trust deed of a trust referred to in regulation 2(1) must provide that, irrespective of the voting power of the regional council on the board of directors or at any meeting of the trustees, as the case may be, the statutes or articles of association or the trust deed may not be amended and the share or interest structure altered, including the transfer of ownership in shares, or the nature of operations of the joint business venture, including the risks pertaining thereto, may not be changed without the prior written approval of the regional council, which approval may only be granted in consultation with the Minister, and which approval must be entered into the minutes of the joint business venture concerned.

**Audit of accounting records and financial statements of joint business venture**

8. (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 38 of the Act, the accounting records and financial statements of a joint business venture.

(2) The joint business venture referred to in subregulation (1) must submit to the Minister and to the regional council concerned copies of the audited accounting records and financial statement referred to in that subregulation, together with a report by the Auditor General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

**Members or staff members of regional council not to be employed by joint business venture**

9. (1) A joint business venture entered into in accordance with regulation 2 may not employ a member or staff member of a regional council.

(2) Nothing in subregulation (1) prevents a staff member of a regional council to resign from such regional council in order to take up employment with a joint business venture referred to in that subregulation.

**General**

10. Nothing in these regulations prevents a regional council from entering into a joint business venture in accordance with regulation 2 for the purpose of conducting a joint business with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, powers, functions or purposes of any of the regional council's own operations, if the joint business venture may serve to improve the efficiency or effectiveness of any of the own operations of the regional council.

**MINISTRY OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING**

No. 43

2001

THE REGIONAL COUNCILS ACT, 1992 (ACT NO. 22 OF 1992) :  
TENDER BOARD REGULATIONS

The Minister of Regional and Local Government and Housing has under section 44A of the Regional Councils Act, 1992 (Act No. 22 of 1992), made the regulations set out in the Schedule.

**SCHEDULE****ARRANGEMENT OF REGULATIONS**

Regulation No.

PART I  
INTRODUCTORY

1. Definitions

PART II  
GENERAL

2. Establishment and composition of regional tender boards

3. Period of and vacation of office of members of regional tender boards

4. Remuneration of members of regional tender boards
5. Disclosure of interest
6. • Powers and functions of regional tender boards
7. Performance of functions of regional tender boards
8. Meetings of regional tender boards
9. Procedures at meetings of regional tender boards
10. Decisions of regional tender boards
11. Committees of regional tender boards and delegation of powers
12. Meetings of committees and procedures at meetings of committees
13. Invitation to tender and applications for prequalification
14. Invitation to, and submission of, tenders
15. Contents of applications for prequalification
16. Final invitation to tender
17. Title of tender
18. Examination, evaluation, comparison and non-acceptance of tenders
19. Acceptance of tenders, and entry into force of agreements
20. Exemption from tender procedures
21. Administrative work
22. Expenditure
23. Price preferences
24. Costs of materials
25. Manufacturing costs
26. Liabilities
27. Non-compliance with title of tender or agreement, or delay in performance of agreement
28. Incorrect preferences
29. Promise or offer of a bribe, commission, gift, loan, benefit or other compensation by tenderer or contractor
30. Death of contractor, sequestration of contractor's estate, placement under judicial management or winding-up of contractor
31. Fees payable

### PART III CODE OF PROCEDURE

32. Invitation to tender and applications for prequalification
33. Tender documents to be made available by regional tender board
34. Reference to certain specifications
35. Determination of closing date for submission of tenders
36. Tender prices and delivery periods
37. General agreements
38. Samples
39. Determination of validity period of tenders
40. Submission of tenders
41. Closing date and time of tenders
42. Telegraphic and late tenders
43. Tenders received by regional tender board
44. Opening of tenders
45. Tenders for portion of items or specified quantities
46. Consideration of tenders
47. Comparison of tenders
48. Domestic value
49. Recommendation by department, division or section
50. Acceptance of tenders
51. Acceptance of tenders for unspecified quantities
52. Security
53. Cession of agreements
54. Communication with regional tender boards
55. Availability of regulations

ANNEXURE A : Price Preferences

ANNEXURE B : Particulars of Tenderer

PART I  
INTRODUCTORY

**Definitions**

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has that meaning, and -

“agreement” means an agreement entered into under regulation 6(1)(a);

“*bona fide* Namibian dealer or merchant” means any person who, at the time of tendering -

- (a) is lawfully conducting business in Namibia as a general dealer;
- (b) is lawfully conducting business in Namibia as a wholesale dealer;
- (c) is a company incorporated in Namibia in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (d) is a close corporation registered in Namibia in terms of the Close Corporations Act, 1988 (Act No. 26 of 1988);

“chairperson” means the chairperson of a regional tender board;

“closing date and time” means the closing date and time specified in a title of tender for the receipt of tenders;

“committee” means a committee appointed under regulation 11(1);

“company” means a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), and includes any other body corporate;

“contractor” means any person from whom a tender has been accepted by a regional tender board and with whom an agreement, whether in writing or otherwise, has been entered into;

“construction” means all work associated with the construction, reconstruction, repair or renovation of a building, structure or works;

“costs of materials” means the cost of materials determined in accordance with regulation 24;

“general agreement” means an agreement entered into for the furnishing of goods or the rendering of services to, or the disposal of, property of a regional council over a period of time specified in that agreement;

“goods” includes raw materials, products, equipment and other physical objects in any state or form, and electricity;

“goods produced or manufactured in Namibia” means goods which have a local content of not less than ten per cent of the manufacturing costs of the goods, as represented by materials produced, direct labour performed and the last process of manufacture of the goods accomplished, in Namibia, provided -

- (a) the last process of manufacture is substantial and sufficient to change the nature of the product and give it new characteristics;
- (b) the final product represents a completely new product or at least an important state in the process of manufacture; and
- (c) each type of article qualifies separately in its own right, but does not, in relation to the process of manufacture, include -
  - (i) any packaging or bottling, or placing in flasks, bags, cases or boxes, or fixing on cards or boards, of goods, or any other simple packaging procedure;
  - (ii) any assembling of goods involving the construction of an article by putting together finished components which may require slight modifications, such as painting or trimming, before assembling, but excluding gluing, screwing, nailing, sewing and minor welding and riveting procedures, with or without the addition of local parts or components of minor importance such as screws, nuts and bolts;
  - (iii) any simple mixing or blending procedure of imported ingredients which does not result in the manufacture of a new or different product; and
  - (iv) any procedure to ensure the preservation of goods in good condition during transportation or storage, such as ventilation, spreading out, drying, freezing or placing in brine, sulphur-dioxide or other aqueous solutions, the removal of damaged parts or any cleaning or similar procedure;

“local content”, in relation to goods produced or manufactured in Namibia, means such percentage of the manufacturing costs of such goods in their final state of manufacture as represented by the costs of -

- (a) any materials grown, produced or manufactured in Namibia and which were used in the manufacture of the goods; and
- (b) any direct labour involved in the manufacture of the goods;

“manufacturing costs” means the manufacturing costs of goods determined in accordance with regulation 25;

“member of a regional tender board” includes an alternate member acting as such a member, as the case may be, appointed by or in terms of regulation 2(4);

“procure” means to acquire goods or services by any means, including by purchase, rental, lease or hire-purchase, and “procurement” has a corresponding meaning;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional tender board” means the tender board of a regional council, established in terms of regulation 2(1), and “board” has a corresponding meaning;

“sample” means a sample of goods to be procured or which are offered for procurement;

“secretary” means the secretary of a regional tender board;

“section” means a section of the Act;

“services” includes any construction, and “tender services” has a corresponding meaning;

“the Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992); and

“title of tender” includes the contents of an invitation to tender.



PART II  
GENERAL

**Establishment and composition of regional tender boards**

2. (1) There is hereby established a tender board for each regional council to be known as a regional tender board which shall provide tender services to the regional council for which it is established.

- (2) A regional tender board shall consist, subject to subregulation (3), of -
- (a) the regional officer of the regional council concerned, who shall be the chairperson;
  - (b) four staff members of the regional council, nominated by the regional officer and appointed in writing by the regional council concerned; and
  - (c) any two persons other than staff members of the regional council concerned, resident in the area of the regional council concerned, appointed in writing by the regional council, and who shall be Namibian citizens;
- (3) Not less than two members of a regional tender board shall be women.
- (4) A regional council shall -
- (a) appoint, with due regard to subregulation (2)(a)(ii) and (iii) and (b)(ii) and (iii), as the case may be, for each member of a regional tender board appointed by it in terms thereof, an alternate member, nominated in so far as applicable in accordance with that subregulation, and an alternate member so appointed may during the absence of the member of the regional tender board with respect to whom he or she is appointed, or in the case of such member's inability to act as member, act as member in place of that member; and
  - (b) designate any one of the members of a regional tender board as vice-chairperson thereof.

(5) The chairperson shall designate as secretary of the regional tender board concerned, any staff member of the regional council in respect of which the regional tender board is established.

(6) The chairperson shall preside at every meeting of a regional tender board, and if the chairperson is absent, the vice-chairperson shall preside at such meeting, and if both the chairperson and the vice-chairperson are absent from such meeting, the members of the regional tender board present thereat may elect under the chairpersonship of the secretary one of their number to preside at such meeting.

**Period of and vacation of office of members of regional tender boards**

3. (1) A member of a regional tender board who is a staff member of the regional council shall hold office at the discretion of the regional council, and any other member of a regional tender board shall hold office for a period of three years.

(2) A member of a regional tender board whose period of office has expired, shall be eligible for reappointment.

- (3) A member of a regional tender board shall vacate his or her office if he or she -
- (a) ceases to be a staff member of the regional council concerned, or in the case of a member of a regional tender board appointed in terms of regulation 2(2)(a)(iii) or (b)(iii), as the case may be, resigns by written notice addressed to the chairperson;

