



Republic of Namibia
Annotated Statutes

National Housing Enterprise Act 5 of 1993

(GG 687)

came into force on date of publication: 18 August 1993

as amended by

National Housing Enterprise Amendment Act 32 of 2000 (GG 2463)

brought into force on 5 March 2001 by GN 37/2001 (GG 2492)

State-owned Enterprises Governance Act 2 of 2006 (GG 3698)

brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733);

amended and re-named the Public Enterprises Governance Act

by Act 8 of 2015 (GG 5835)

ACT

To provide for the continued existence of a body corporate established for the purpose of providing for the housing needs of the inhabitants of Namibia; to provide for the change of its name to that of “National Housing Enterprise”; to provide for its powers, duties and functions; and to provide for matters connected therewith.

(Signed by the President on 23 July 1993)

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

Definitions

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

“board” means the board of directors referred to in section 5(1);

“director” means a director appointed under section 5(2);

“Minister” means the Minister responsible for housing affairs;

[definition of “Minister” substituted by Act 32 of 2000]

“the NHE” means the National Housing Enterprise referred to in section 2;

“this Act” includes regulations made under this Act.

The National Housing Enterprise

2. (1) The body corporate which was established and existed under the law repealed by section 27(1) shall, notwithstanding the repeal of that law, continue to exist as a body corporate under the name National Housing Enterprise, the shortened form of which shall be “NHE”, and which may be used as an alternative to, and independent from, the name National Housing Enterprise.

(2) The Registrar of Companies shall as soon as possible after the commencement of this Act record the change of name effected by subsection (1) in the registers kept by the said Registrar.

(3) The head office of the NHE shall be situated at a place determined by the Minister and which shall be made known by notice in the *Gazette*.

Objects of NHE

3. The objects of the NHE shall be the financing of housing for inhabitants of Namibia and generally the providing for the housing needs of such inhabitants.

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Powers of NHE

4. For the purposes of achieving its objects, the NHE shall have power -
- (a) to take over, on such terms and conditions as may be agreed upon, any part of the business of a building society, registered under the Building Societies Act, 1986 (Act 2 of 1986), which may be conducted by the NHE in terms of this Act;
 - (b) to take over, on such terms and conditions as may be agreed upon, assets of such a building society or of a banking institution, as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) or of any other institution established or registered by or under any law;

[paragraph (b) amended by Act 32 of 2000]

- (c) to buy, take on lease or otherwise acquire, or to sell, lease or otherwise dispose of, or to hypothecate or pledge or otherwise deal with, any movable property or immovable property or any right in or over immovable property;
- (d) whether on its own or in co-operation with any other person, to erect residential or other buildings, or to undertake or execute township development projects or to advance moneys for any such purpose;
- (e) to form or acquire shares in any company of which the object is to erect or acquire residential buildings or to acquire or develop land for residential purposes or to advance moneys for any such purpose;
- (f) to make rules relating to -
 - (i) the exercising of the powers of the NHE; and
 - (ii) the management, including the financial management, of the NHE;

[paragraph (f) substituted by Act 32 of 2000]

- (g) to take cession from any person of any mortgage registered over immovable property;
- (h) to give cession to any person of any mortgage registered in favour of the NHE;
- (i) to lend money upon the security of a mortgage or notarial bond or any other security determined by the board;
- (j) to accept insurance policies at the surrender value thereof, bank guarantees, insurer's guarantee policies, cash or fixed deposits with a banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998) or a building society registered under the Building Societies Act, 1986, or deposits with the NHE, as collateral security in respect of loans granted by the NHE;

[paragraph (j) amended by Act 32 of 2000]

- (k) to raise or borrow money in Namibia or elsewhere;
- (l) to issue, make, draw, accept, endorse, guarantee or cause to be guaranteed bonds, debentures, securities, bills of exchange and other negotiable instruments;

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- (m) to act as agent for any person registered as an insurer under the Long-term Insurance Act, 1998 (Act No. 5 of 1998, or the Short-term Insurance Act, 1998 (Act No. 4 of 1998), as the case may be, in effecting insurance of the life of persons or in respect of immovable or movable property which is the subject of any mortgage or pledge registered or made in favour of the NHE;

[paragraph (m) amended by Act 32 of 2000]

- (n) to accept deposits from persons for investment and to determine the conditions of acceptance and repayment thereof, and to arrange for and to decide upon the investment and application thereof;
- (o) to accept donations and to receive moneys offered or due to the NHE and, with the approval of the Minister, to make donations to any organization or institution for any national, public, charitable or educational purpose;
- (p) to invest moneys of the NHE not immediately required for its affairs;
- (q) to pay all expenses incurred in connection with the administration of the affairs of the NHE;
- (r) to appoint staff members and to remunerate, house, discharge, suspend, or train them or cause them to be trained, and indemnify them in respect of any harm, damage or loss arising in the course of the performance of their duties, and to provide or give pension and sick benefits and housing facilities or benefits for or to such staff members;

[paragraph (r) amended by Act 32 of 2000]

- (s) to enter into any contract;
- (t) to exercise any other power which in the opinion of the Minister is necessary for, or conducive to, the achievement of the objects of the NHE and which the Minister may confer upon it by notice in the *Gazette*.

Board of directors

5. (1) The affairs of the NHE shall be managed and controlled by a board of directors, which may exercise the powers and perform the duties of the NHE with due regard to the provisions of this Act.

(2) The board of directors shall be constituted, and its members, including the chairperson and the vice-chairperson of the board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the Public Enterprises Governance Act, 2006.

[Subsection (2) is amended by Act 32 of 2000 and substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006.]

(3)

[subsection (3) amended by Act 32 of 2000 and deleted by Act 2 of 2006]

(4)

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[subsection (4) amended by Act 32 of 2000 and deleted by Act 2 of 2006]

(5) The Minister shall appoint the directors for their ability and experience in business or their knowledge of housing requirements in Namibia or their suitability otherwise as directors.

Alternate directors

6. (1) The Minister may, subject to section 15(2) of the Public Enterprises Governance Act, 2006 appoint any person to act as the alternate of a director during his or her absence or incapacity.

[Subsection (1) is amended by Act 32 of 2000 and substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006.]

(2)

[subsection (2) deleted by Act 2 of 2006]

(3) When an alternate director acts in the place of a director, he or she shall have the powers and perform the duties of that director.

(4) An alternate director appointed under subsection (1), shall be remunerated, as determined by the Minister, out of the remuneration which is due to the director in whose place he or she acts or which would have become due to such director if he or she had acted as director.

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

[subsection (5) amended by Act 32 of 2000]

Certain persons not qualified to become or to be directors

7. No member of the National Assembly or the National Council or any Regional Council shall be appointed as, or be, a director.

Tenure and conditions of office of directors

8. (1)

[subsection (1) substituted by Act 32 of 2000 and deleted by Act 2 of 2006]

(2) A director who is not in the full-time service of the State shall hold office on such conditions and be paid such remuneration as the Minister may determine.

(3) If any director performs any work on behalf of the NHE, otherwise than in his or her capacity as director or as an employee of the NHE, he or she may be paid, in addition to his or her remuneration as a director, such remuneration as the board may determine.

Committees of board

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

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- (a) assign to any sch committee any executive duties, subject to such directives as may be given by the board;

[The word “such” is misspelt in the *Government Gazette*, as reproduced above.]

- (b) with the approval of the Minister, and subject to such conditions as he or she may determine (including conditions relating to the constitution and functions of, and reporting by, the committee in question), delegate to any such committee any powers of the board.

[subsection (1) amended by Act 32 of 2000]

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

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

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

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

[subsections (1A)-(1D) inserted by Act 32 of 2000]

(2) Whenever a member of a committee appointed in terms of subsection (1) is unable to act as such a member on account of his or her absence or incapacity, the chairperson of the board may designate another director to act in the place of that member during his or her absence or incapacity, and a director so designated shall while he or she so acts have all the powers and perform all the duties of such member.

(3) The chairperson of the board may attend any meeting of a committee and shall be entitled to take part in the proceedings and vote at any such meeting.

Chief executive officer

10. (1) The board shall, with the approval of the Minister, appoint a person other than a director as chief executive officer of the NHE on such conditions of service and at such remuneration and service benefits as the board, subject to section 22(3) of the Public Enterprises Governance Act, 2006, may determine.

[Subsection (1) is amended by Act 32 of 2000 and substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006.]

(2) The chief executive officer so appointed shall perform such duties and functions as the board may determine.

(3) The chief executive officer shall, unless the board determines otherwise, attend board meetings, and may partake in discussions at such meetings, but shall not be entitled to vote.

[Subsection (3) is amended by Act 32 of 2000. The words “otherwise directs” are changed to “determines otherwise” without being indicated by amendment markings.]

(4) If the chief executive officer is absent or unable to perform his or her functions or if the post of chief executive officer is vacant, the board shall designate any suitable staff member of the NHE to act, during such absence or incapacity or until a chief executive officer

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is appointed, as chief executive officer and to perform such functions of the chief executive officer as the board may determine.

[subsection (4) amended by Act 32 of 2000]

(5)

[subsection (5) deleted by Act 32 of 2000]

Vacation of office by directors

11. (1) A director shall vacate his or her office -

- (a) if his or her estate is sequestrated or he or she enters into a compromise with his or her creditors;
- (b) if he or she is under any law detained as a mentally ill person;
- (c) if he or she is convicted of any offence and sentenced to imprisonment without the option of a fine;
- (d) if he or she, by writing under his or her hand addressed and delivered to the Minister, resigns from his or her office as director;
- (e) if he or she becomes disqualified in terms of section 7 from being a director;
- (f) if he or she is removed from office in terms of subsection (2).

(2) A director of the NHE may at any time be removed from office by the Minister if the Minister is of the opinion that he or she is unable or unfit to discharge the functions of a director.

(3) Any casual vacancy on the board caused by the death of or the vacation of office by a director, shall be filled for the unexpired portion of the period of office of the director who has died or has vacated his or her office, as the case may be.

Liability of director for loss or damage

12. A director shall not be personally liable for any loss or damage which may occur in or in connection with the performance of his or her duties, unless the loss or damage is due to his or her wilful misconduct, dishonesty, gross negligence or failure to comply with any provision of this Act.

Duty of director to disclose interest in contracts

13. (1) A director who is in any way directly or indirectly materially interested in a contract entered or proposed to be entered into by the NHE, shall disclose the nature of his or her interest and give full particulars thereof at a meeting of the board or at the first opportunity it is possible for him or her to do so, and if such contract is discussed by the board during a meeting thereof, such director shall withdraw from that meeting during the discussion and he or she shall not participate in any voting in connection therewith.

(2) Any disclosure of an interest by a director as contemplated in subsection (1), shall be recorded in the minutes of the meeting of the board at which such disclosure is made.

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Meetings of board

14. (1) Meetings of the board shall be held at such times and places as the board determines, but the chairperson of the board shall convene a special meeting of the board if requested in writing by at least three directors to do so.

(2) The chairperson of the board shall preside at meetings of the board, and if the chairperson is absent from or is for any other reason unable to preside at any meeting, the vice-chairperson shall act as chairperson at that meeting and shall, while so acting, have all the powers and duties of the chairperson.

(3) If both the chairperson and vice-chairperson are absent from a meeting the directors present shall elect one of their number to act as chairperson at that meeting.

(4) The majority of the directors constituting the board shall form a quorum for a meeting of the board.

(5) The decision of a majority of the directors present at any meeting of the board shall be the decision of the board, and in the event of an equality of votes, the chairperson of the board shall have a casting vote in addition to his or her deliberative vote.

(6) No decision of the board or act performed under the authority of the board shall be invalid only by reason of a vacancy on the board, or of the fact that a person not entitled to sit as a director was present at the meeting when the decision was taken or the act was authorized, if it was taken or authorized by the requisite majority of directors present and entitled to vote.

(7) The board shall cause minutes to be kept of the proceedings at its meetings, and such minutes shall as soon as practicable after they have been approved as correct, be submitted to the Minister for inspection.

[subsection (7) amended by Act 32 of 2000]

(8) The board shall make rules in relation to the holding of and procedure at meetings of the board.

[subsection (8) amended by Act 32 of 2000]

Share capital

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

[subsection (1) amended by Act 32 of 2000; a misspelling of the word "divided" in the original *Government Gazette* is also corrected, without being indicated by amendment markings]

(2) The Minister may, upon recommendation of the board, by notice in the *Gazette*, increase or reduce the share capital of the NHE by such amount as he or she may determine.

(3) Only the State may become a shareholder of the NHE.

(4) The Minister shall take up shares in the NHE as he or she may deem necessary and on such conditions as he or she may determine, and such shares shall be paid for out of moneys appropriated by Parliament for that purpose.

Liability of shareholder

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16. The liability of the State as holder of shares in the NHE shall be limited to the amount of money unpaid on the issued shares.

Expenditure

17. The expenditure incurred in connection with the discharge of the functions of the NHE, including the remuneration of the directors, shall be defrayed from the funds of the NHE.

Appropriation of property of NHE and dividends

18. (1) Except as expressly otherwise provided in this Act, the property of the NHE, from whatever source acquired, shall be applied exclusively for promoting the objects of the NHE.

[subsection (1) amended by Act 32 of 2000]

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

[subsection (1) inserted by Act 32 of 2000]

Exemption

19. (1) No tax or charge on income imposed by or under any law shall be payable by the NHE.

(2) No transfer duty, stamp duty, office fee or other moneys shall be payable in respect of the transfer of property to the NHE which is taken over by the NHE under section 4(a) or (b).

Bookkeeping and auditing

20. (1) The provisions of Chapter XI of, and of Schedule 4 to, the Companies Act, 1973 (Act 61 of 1973), except sections 285, 302 and 306 and the provisions relating to offences, shall, subject to the provisions of subsection (2), apply *mutatis mutandis* to the NHE as if the NHE were a public company with a share capital and as if a company acquired or formed by the NHE under section 4(e) were a subsidiary of which the NHE is the holding company.

[subsection (1) amended by Act 32 of 2000]

(2) For the purposes of subsection (1) any reference in the relevant provisions of the Companies Act, 1973 -

- (a) to an obligation to lay annual financial statements or reports before an annual general meeting of a company or to send them to members or holders of debentures of a company or to the Registrar of Companies, shall be construed as a reference to an obligation to lay such statements and reports before the Minister within six months after the end of each financial year of the NHE or within such further period as the Minister may allow, or to send it to the Minister, as the case may be;
- (b) to the Registrar of Companies or a member of a company, shall be construed as a reference to the Minister;

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- (c) to the registered office of a company, shall be construed as a reference to the head office of the NHE contemplated in section 2(3);
- (d) to that Act, shall be construed as a reference to the relevant provisions thereof as applied by this section,

and section 226 of the Companies Act, 1973, shall, for the purposes of section 295 thereof, as applied by this section, also apply *mutatis mutandis* to the NHE.

(3) The auditor appointed under section 21 shall, together with the report referred to in section 301 of the Companies Act, 1973, as applied by this section, report to the Minister, with such comment as he or she thinks desirable, any -

- (a) decisions of the board having financial implications; and
- (b) matters relating to the management of the NHE,

which in his or her opinion resulted or may result in the application of the moneys of the NHE in a wasteful manner, or which were or are for some other reason to the disadvantage of the NHE.

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

Auditor

21. (1) The Minister shall appoint a person registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), as accountant and auditor, to act as auditor of the NHE and notify the NHE of such appointment.

(2) An auditor appointed under subsection (1) shall hold office for such period as determined by the Minister at the time of his or her appointment: Provided that such auditor may at any time be removed from office by the Minister.

(3) The remuneration of the auditor of the NHE shall be determined by agreement with the Minister after consultation by the Minister with the board.

(4) The auditor of the NHE may at any time during his or her period of office resign as such provided the requirements of subsections (5) and (6) are complied with.

(5) If the auditor of the NHE intends to resign he or she shall deliver to the Minister and the NHE a notice in writing in which he or she gives notice of his or her intention and indicates that he or she has no reason to believe that in the conduct of the affairs of the NHE a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the NHE or the State or the creditors of the NHE, other than an irregularity, if any, which has been reported by him or her to the Public Accountants' and Auditors' Board in terms of the Public Accountants' and Auditors' Act, 1951, and it shall not be necessary that the auditor shall have carried out, for the purposes of such notification, a special audit subsequent to the date up to which the last annual financial statement on which he or she has already reported, were made up.

[The word "auditor" is misspelt in the Government Gazette, as reproduced above.]

(6) The Minister shall upon receipt of a notification of resignation in terms of subsection (5), appoint, with due regard to the provisions of this section, an auditor to fill the

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vacancy whereafter the Minister shall forthwith by written notice to the auditor who intends to resign, acknowledge receipt of his or her notification of resignation.

(7) The resignation of the said auditor shall become effective upon the receipt by him or her of the notification of the Minister in terms of subsection (6).

Exercise of powers by NHE and submission of powers by board to Minister

22. (1) The NHE shall exercise its powers subject to the directions of the Minister.

(2) The Minister may require the board to submit to him or her for decision any matter relating to the powers of the NHE, and the board may of its own motion submit any matter to the Minister for decision.

(3) In regard to any matter submitted to the Minister in terms of subsection (2) -

- (a) the Minister shall give his or her decision after consultation with the board;
- (b) the Minister may, either in general or in particular, determine such conditions as he or she thinks fit,

and every such decision given or condition determined, shall for all purposes be deemed to be a decision given or a condition determined by the NHE, and no such decision or condition may be withdrawn or amended by the board except with the concurrence of the Minister.

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

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

[subsection (4) inserted by Act 32 of 2000]

Regulations

23. The Minister may make regulations relating to -

- (a) the procedure in connection with the submission of matters to the Minister under section 22;

[paragraph (a) substituted by Act 32 of 2000]

- (b) the conditions of appointment and the powers and duties of the chairperson of the board or a committee, the directors of the NHE and the members of a committee;
- (c) the quorum for and procedure at meetings of a committee, and the place where meetings of a committee shall be held;
- (d) the keeping of registers and records by the board or a committee;

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- (e) an official seal and the use thereof;
- (f) the service of notices;
- (g) the manner in and the conditions under which the NHE may issue, make, draw, accept and endorse bonds, debentures, securities, bills of exchange and other negotiable instruments;
- (h) the kind and the amount of liquid assets to be maintained by the NHE;
- (i) such other matters as are necessary or useful to be prescribed for the achievement of the objects of this Act, the generality of this provision not being limited by the provisions of the preceding paragraphs.

Liquidation

24. The NHE shall not be wound up except by or under the authority of an Act of Parliament.

Use of name of NHE

25. (1) No person or company shall carry on business under or, in the case of a company, be registered under the Companies Act, 1973 (Act 61 of 1973), under a name which is the same as that of the NHE or so nearly resembles it as to be calculated to deceive: Provided that a company shall not be prohibited from carrying on business or remaining registered under the name under which it was registered in terms of the Companies Act, 1973, at the commencement of this Act.

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

(2) Any person who carries on business in contravention of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding R 1 000.

Application of Act 23 of 1965 and Act 61 of 1973

26. (1) No provision of the Banking Institutions Act, 1998 (Act No. 2 of 1998), or, subject to the provisions of subsection (2) and of section 20, the Companies Act, 1973 (Act 61 of 1973), shall apply in relation to the NHE.

[subsection (1) amended by Act 32 of 2000]

(2) The Minister may by notice in the *Gazette* declare that any provision of the Companies Act, 1973, which is not inconsistent with the provisions of this Act, shall apply in relation to the NHE with such modifications as the Minister may determine, and he or she may amend or withdraw any such notice.

Repeal of Proclamation AG. 60 of 1978 and savings

27. (1) Subject to the provisions of subsection (2), the National Building and Investment Corporation of South West Africa Proclamation, 1978, is hereby repealed.

(2) The change of name effected by section 2(1) shall not affect the rights, liabilities and obligations of the body corporate referred to in that section, and any reference in any law, register, title deed or any other document to the Building and Investment Corporation of South West Africa, Limited, shall be construed as a reference to the National Housing Enterprise.

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(3) Anything done in terms of a provision of the National Building and Investment Corporation of South West Africa Proclamation, 1978, prior to the repeal of that Proclamation by subsection (1) and which can be done under a corresponding provision of this Act, shall be deemed to have been done under such provision of this Act.

Short title

28. This Act shall be called the National Housing Enterprise Act, 1993.