



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 180 2000

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 14 of 2000: National Art Gallery of Namibia Act, 2000.

ACT

To establish a National Art Gallery of Namibia and to provide for its objects; to provide for a board of trustees of the gallery and to define the powers and functions of the board; and to provide for matters incidental thereto.

(Signed by the President on 5 July 2000)

ARRANGEMENT OF SECTIONS

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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 otherwise indicates -

"annual general meeting" means the meeting of the board referred to in section 9(4);

"Arts Association of Namibia" means the voluntary association, not for gain, established in terms of a written constitution adopted at an annual general meeting of that association, at Windhoek, on 27 August, 1981;

"board" means the board of trustees of the gallery, established by section 4;

"chairperson" means the person elected chairperson of the board under section 9(2);

"director" means the person referred to in section 15(b);

"financial year" means the financial year of the gallery, determined by section 17;

"gallery" means the National Art Gallery of Namibia established by section 2;

"Government collection" means all visual art of which the Government of the Republic of Namibia is the owner or over which it exercises custody and control;

"Minister" means the Minister responsible for Basic Education and Culture;

"permanent collection" means any collection of works of art of any description acquired and maintained by the gallery in terms of section 3(b) and any documentation pertaining to that collection;

"Permanent Secretary" means the Permanent Secretary of the Ministry responsible for Basic Education and Culture;

"this Act" includes the regulations made under it;

"trustee" means a member of the board;

"vice -chairperson" means the person elected vice-chairperson of the board under section 9(2);

"visual art" means all works of art or craft in any medium, including paintings, and all documentation pertaining to art, craft or painting.

Establishment of National Art Gallery of Namibia

2. There is hereby established a juristic person to be known as the National Art Gallery of Namibia.

Objects of gallery

3. The objects of the gallery are to -
- (a) secure premises and other facilities to accommodate itself, its activities and permanent collections;
 - (b) acquire and maintain a permanent collection of a high standard and representative nature;
 - (c) establish and manage archives of visual art;
 - (d) preserve and protect the Namibian visual art heritage forming part of the gallery's collections and documentation under the gallery's care;
 - (e) research, document and publish visual art;
 - (f) hold public exhibitions of visual art within or outside Namibia;
 - (g) preserve, exhibit and make accessible Namibia's visual art heritage;
 - (h) develop public interest in art;
 - (i) ensure that works of art are accessible, and exhibited, to the public both for viewing or for study and research;
 - (j) promote the public's enjoyment and understanding of visual art and other fine art in all the regions of Namibia;
 - (k) encourage the production of works of art in Namibia;
 - (l) promote Namibian art and artists;
 - (m) promote the exchange of ideas in art on an international level and participation in international exhibitions in art;
 - (n) develop education programmes in education activities and collaborate with schools, colleges, other education bodies, museums, libraries and archives in such activities;
 - (o) co-ordinate and sustain initiatives consistent with or in support of the objects of the gallery;
 - (p) exercise custody over the Government collection;
 - (q) research in, document and restore, works of art;
 - (r) provide curatorial services in and for Namibia; and
 - (s) inform itself and impart knowledge about international standards and ethics in curation.

Board of trustees

4. (1) There shall be a board of trustees of the gallery which shall, subject to this Act, be responsible for the policy, control and management of the affairs of the gallery.

(2) Without prejudice to the generality of subsection (1), the board shall -

- (a) take such action as may be necessary or appropriate to maintain, develop and manage collections of visual art owned by, or entrusted to, the gallery;
- (b) advise the Minister on matters pertaining to visual art education;
- (c) advise the Government on the acquisition or alienation of visual art, or on such acquisition or alienation by the Government as the board considers should be referred to the director for advice;
- (d) manage, control, and account to the Minister for, moneys received by the gallery and utilise those moneys for defraying expenses in connection with the performance of the gallery's functions;
- (e) keep a proper record of all visual art placed in the care of, or belonging to, the gallery and of the property of the gallery, and ensure that proper books of account are kept; and
- (f) devise such strategies and perform such functions as may be necessary or expedient for the achievement of the objects of the gallery.

Composition of board

5. (1) The board shall consist of not less than three and not more than five trustees who shall, subject to section 6, be appointed by the Minister as follows:

- (a) two trustees from amongst persons nominated by the Arts Association of Namibia;
- (b) one trustee being the Permanent Secretary;
- (c) one person nominated by an association or organisation which the Minister reasonably believes represents regional councils in Namibia, and who is not necessarily a councillor, but who is conversant with matters pertaining to visual art within regions; and
- (d) the remainder of the trustees from amongst nominations made to the Minister by the public.

(2) Whenever nominations for trustees referred to in subsection (1)(d) are required to be made, the Minister shall make public invitations for such nominations within a specified period, being not less than 60 days.

(3) The invitations referred to in subsection (2) shall be published in not less than two newspapers circulating in Namibia.

(4) If the Permanent Secretary is unable to attend a meeting of the board, he or she shall delegate one official from his or her ministry to attend the meeting in his or her stead.

Disqualification for appointment as trustee

6. A person shall not qualify for appointment as a trustee if he or she -
- (a) is not a Namibian citizen or a holder of a permanent residence permit;
 - (b) is an unrehabilitated insolvent; or
 - (c) has during the period of ten years immediately preceding the date of commencement of this Act, or at any time after that date, been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

Term of office

7. (1) Subject to section 8, a trustee shall hold office for a term of three years from the date of his or her appointment and shall at the expiry of that term be eligible for re-appointment.

(2) Two of the first trustees shall hold office for a term of five years and shall be eligible for re-appointment for a term of three years.

(3) A trustee shall not hold office for more than two consecutive terms.

Vacation of office and filling of vacancies

8. (1) Notwithstanding Section 7, a trustee shall vacate his or her office if he or she -

- (a) has been absent from three consecutive meetings of the board without its leave;
- (b) becomes subject to a disqualification referred to in section 6; or
- (c) is removed from office by the Minister under subsection (2).

(2) The Minister may, by notice in writing, after the Minister has given the trustee a reasonable opportunity to be heard, and on the recommendation of the majority of the trustees, remove a trustee from office if that trustee -

- (a) is found by a competent court to be of unsound mind;
- (b) is found by the board to have contravened section 10; or
- (c) acts or conducts himself or herself in a manner considered by the board to be inconsistent with or prejudicial to the objects of the gallery.

(3) If a trustee dies or his or her office becomes vacant, the Minister shall, by notice in writing and with due regard to section 5, appoint any person as a trustee in place of any trustee who vacates his or her office.

Meetings of board

9. (1) The first meeting of the board shall be held at such time and place as the Minister may determine, and thereafter, subject to subsection (3), meetings of the

board shall be held at such times and places as the board may determine, but at least one such meeting shall be held every three months.

(2) The trustees shall, at their first meeting elect from amongst themselves a chairperson and a vice-chairperson, who shall hold office until the next annual general meeting, but shall be eligible for re-election.

(3) The chairperson may at any time convene a special meeting of the board when-

- (a) the Minister, in writing, requests him or her to do so; or
- (b) at least three trustees, in writing, request him or her to do so.

(4) There shall be an annual general meeting of the board which shall be held not more than three months after the commencement of every financial year of the gallery.

(5) The chairperson or, in his or her absence, the vice-chairperson or, in the absence of both the chairperson and the vice-chairperson, such trustee as the trustees present shall elect, shall preside at a meeting of the board.

(6) A majority of the trustees shall form a quorum at a meeting of the board.

(7) A decision of a majority of the trustees present at a meeting of the board shall be the decision of the board and in the event of an equality of votes, the chairperson or the person presiding shall have a casting vote in addition to his or her deliberative vote.

(8) The board may permit any person who has an interest in any matter due to be considered at that meeting, or any representative of that person, to attend and to take part in such discussions of the board as in the opinion of the board relate to such matter, but such person or representative shall not be entitled to vote.

(9) A decision of the board shall not be rendered invalid by reason only of a vacancy in the membership of the board or of the fact that a person who is not entitled to sit as a trustee did so sit when the decision was taken, if such decision was taken by the requisite majority of the trustees who were present at the time and entitled to vote.

(10) The chairperson shall cause a record to be kept of the proceedings of the meetings of the board, and shall cause that record to be submitted to the Minister as soon as possible after every meeting.

Disclosure of interest

10. (1) If a trustee or a member of a committee, not being a trustee, or his or her spouse, or any company, close corporation or partnership of which he or she or his or her spouse is a trustee, shareholder, member or partner, is in any way directly or indirectly interested in any matter which is the subject of consideration by the board or a committee and which may cause a conflict of interests in the performance of his or her duties as a trustee, he or she shall fully disclose the nature of such interest as soon as possible after the commencement of the meeting of the board or of the committee at which that matter is the subject of consideration, and that trustee or member of a committee shall not take part in the consideration of, or vote on, any question relating to that matter.

(2) A disclosure made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) If a trustee or a member of a committee referred to in subsection (1) fails to disclose a conflict of interests as required by that subsection, and is present at a meeting of the board or a committee, or in any manner participates in the consideration of, or votes on, any question relating to any matter referred to in subsection (1), the proceedings in relation to that matter shall as soon as such non-disclosure is discovered, be rendered invalid and thereafter be reviewed by the board or the committee, as the case may be, in the absence of the trustee or the committee member concerned.

Allowances

11. No allowance shall be paid to a trustee or a member of a committee for attending any meeting of the board or of a committee or for any work of the gallery performed by a trustee or a member of a committee, but a trustee or a member of a committee shall be entitled to be reimbursed any expenses reasonably incurred by him or her while travelling to, or attending, a meeting of the board or of a committee, or while performing any work of the gallery, and allowed by the board.

Committees of board

12. (1) The board may from time to time establish any committee to assist the board in the performance of its functions.

(2) At least one member of every committee shall be a trustee who shall be charged with the responsibility to liaise between the board and any committee referred to in subsection (1).

(3) Every committee shall, in writing, report to the board on its activities and the discharge of its functions at such intervals and at such times as the board may, subject to such rules as the board may make under section 15, determine.

Restriction of liability

13. A trustee, a member of a committee or an employee of the gallery shall not be personally liable for any loss or damage arising out of, or in connection with, the performance of his or her duties, unless the loss or damage is due to his or her willful misconduct or gross negligence or failure to comply with any provision of this Act or a direction or decision made under it.

Powers of board

14. (1) Subject to this Act, the board shall have such powers and perform such acts as are necessary for, or incidental to, the exercise of its functions.

(2) Without prejudice to the generality of subsection (1), the board may-

- (a) subject to subsections (3) and (4), let, sell, exchange or alienate any visual art, permanent collection or other movable property of the gallery; and
- (b) purchase or acquire, possess or hire any visual art, permanent collection or other movable property.

- (3) The board shall not -
- (a) without the prior written approval of the Minister, granted with the approval of the Minister responsible for Finance, purchase, sell, exchange, alienate, hypothecate or encumber any immovable property of the gallery; or
 - (b) dispose of any permanent collection or any part of it unless -
 - (i) the disposal relates to a permanent collection or any part of it which, in the board's opinion, is unsuitable for retention by the gallery and can be disposed of without detriment to the interests of the gallery in general, members of the public or students; or
 - (ii) the board is satisfied that the permanent collection or any part of it has become useless for the purposes of that collection by reason of damage, physical deterioration or infestation by a destructive organism.
- (4) The board may enter into agreements to take over, incorporate, or co-operate with, existing cultural institutions whose aims and objects are substantially consistent with the objects of the gallery, provided the Minister, in writing, approves any such agreement.

Rules

15. The board may make rules to regulate -
- (a) generally any matters which the board may consider necessary or expedient to regulate in order to achieve the objects of the gallery;
 - (b) the employment or appointment of such numbers and categories of staff as are required to ensure the efficient operation of the gallery, including the appointment of a director of the gallery;
 - (c) the procedure at meetings of the board;
 - (d) the safety, good custody and preservation of the visual art placed in the care of the gallery, and the property of the gallery;
 - (e) the management, control and utilisation of the funds of the gallery and all moneys received by the board; and
 - (f) the keeping of records of all financial transactions.

Funds of gallery

16. (1) The funds of the gallery shall consist of such moneys as may be obtained by the gallery-
- (a) by virtue of any appropriation made by Parliament for the purposes of the activities of the gallery;
 - (b) by virtue of any donation, grant or bequest made to the gallery;
 - (c) by virtue of fees, charges and subscriptions payable to the gallery; or

(d) from any other source.

(2) The Minister shall, in consultation with the Minister responsible for Finance, out of moneys appropriated by Parliament for the purposes of the activities of the gallery and on such terms and conditions as the Minister may from time to time determine, give an annual subsidy to the gallery.

(3) In order to enable the Minister to determine the financial requirements of the gallery, the board shall submit to the Minister, not later than August during each year, a detailed budget of its expected income and expenditure for the ensuing financial year of the gallery.

Financial year

17. The financial year of the gallery shall commence on 1 April and end on 31 March of the ensuing year.

Accounting and auditing

18. (1) The gallery shall keep such accounting records and financial statements as are necessary to reflect fairly the state of affairs and business of the gallery and to explain the transactions and financial condition of the gallery.

(2) The accounting records and financial statements of the gallery shall -

- (a) reflect specifically any amounts received by virtue of an appropriation by Parliament and any grant or donation made for the purpose of the gallery;
- (b) be audited annually by a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) and approved by the Auditor-General; and
- (c) be approved by the board at its annual general meeting.

Annual report

19. (1) Within two months after the end of each financial year, the board shall submit to the Minister a report, in writing, on the activities, programmes and projects of the gallery during the preceding financial year or on any other issue, if required by the Minister.

(2) The report referred to in subsection (1) shall contain -

- (a) audited financial statements and a report of the auditor on those statements; and
 - (b) such other matters as may be prescribed.
- (3) The Minister shall lay -
- (a) the report referred to in subsection (1); and
 - (b) the financial statements and the report referred to in subsection (2),

upon the Table in Parliament within 28 days after receipt thereof if Parliament is in session or, if Parliament is not in session, within 28 days after the commencement of its next ordinary session.

Security

20. The Master of the High Court shall not require a trustee to furnish security or to account to him or her in terms of the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934).

Curator of Government collection

21. (1) There shall be a person to be known as the curator of the Government collection who shall be appointed by the gallery, in consultation with the board to manage such collection and who shall have such other function as the gallery, in consultation with the board, may determine.

(2) The Minister shall, in consultation with the board and the director, authorize and provide the necessary funding for the curator of the Government collection.

Winding up of gallery

22. The gallery shall not be wound up or placed under judicial management except under authority of an Act of Parliament.

Regulations

23. The Minister may, by notice in the *Gazette* make regulations, not inconsistent with this Act, in relation to -

- (a) any matter which the Minister considers necessary or expedient to achieve the objects of this Act;
- (b) heritage conservation and management of the national visual art collections;
- (c) the acquisition of visual art and permanent collection for the gallery.

Transitional provision

24. Not later than six months after the commencement of this Act, the Minister shall, by notice in the *Gazette*, determine the date when the gallery shall assume responsibility over the Government collection.

Short title and commencement

25. This Act shall be called the National Art Gallery of Namibia Act, 2000, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.
