



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No.3031

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GOVERNMENT NOTICE

- No. 172 Appointment of Commission of Inquiry into the Activities, Affairs, Management and Operation of the Roads Authority, established by section 2 of the Roads Authority Act, 1999 (Act No. 17 of 1999) and the Road Fund Administration, established by section 2 of the Road Fund Administration Act, 1999 (Act No. 18 of 1999) 5

Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 21

2003

APPOINTMENT OF COMMISSION OF INQUIRY INTO THE ACTIVITIES,
AFFAIRS, MANAGEMENT AND OPERATION OF THE ROADS AUTHORITY,
ESTABLISHED BY SECTION 2 OF THE ROADS AUTHORITY ACT, 1999
(ACT NO. 17 OF 1999) AND THE ROAD FUND ADMINISTRATION,
ESTABLISHED BY SECTION 2 OF THE ROAD FUND ADMINISTRATION ACT,
1999 (ACT NO. 18 OF 1999)

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I

- (a) declare the provisions of that Act to be applicable with reference to the Commission of Inquiry into the Activities, Affairs, Management and Operations of the Roads Authority, established by section 2 of the Roads Authority Act, 1999 (Act No. 17

of 1999), and the Road Fund Administration, established by section 2 of the Road Fund Administration Act, 1999 (Act No. 18 of 1999), appointed by me, the appointment and terms of reference of which was made known by Government Notice No. 172 of 2003; and

(b) make the regulations set out in the Schedule with reference to that Commission.

Given under my Hand and Seal of the Republic of Namibia, at Windhoek this twenty-ninth day of July, Two Thousand and Three.

S.NUJOMA
PRESIDENT

BY ORDER OF THE PRESIDENT-IN-CABINET

SCHEDULE

1. In these regulations, unless the context otherwise indicates -

“chairperson” means the chairperson of the Commission;

“Commission” means the Commission of Inquiry into the Activities, Affairs, Management and Operations of the Roads Authority, established by section 2 of the Roads Authority Act, 1999 (Act No. 17 of 1999), and the Road Fund Administration, established by section 2 of the Road Fund Administration Act, 1999 (Act No. 18 of 1999), and ‘Commission of Inquiry’ has a corresponding meaning;

“document” includes any book, register, correspondence, pamphlet, note, record, (including any tape or other mechanical recording of anything or any transaction of any such notice, record, tape or other mechanical recording), list, circular, plan, placard, poster, publication, drawing, photograph or picture;

“financial institution” means -

- (a) any banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998);
- (b) any building society registered under the Building Societies Act, 1986 (Act No. 2 of 1986);
- (c) any registered insurer, insurance agent or insurance broker as defined in section 1 of the Short-term Insurance Act, 1998, (Act No.4 of 1998); or
- (d) any registered insurer, insurance agent or insurance broker as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998);

“inquiry” means the inquiry conducted by the Commission in the execution of its terms of reference;

“premises” includes any land, building, structure, or any part of any building or structure or any vehicle, vessel, aircraft, or other means of transport;

“staff member” means any person designated under regulation 2 to assist the Commission;

“terms of reference” means the terms of reference of the Commission as set out in Government Notice No. 172 of 2003;

“the Act” means the Commissions Act, 1947 (Act No. 8 of 1947).

2. (1) The administrative functions of the Commission must be performed by staff members in the public service assigned for that purpose by the Secretary to the President.

(2) The Secretary and other staff members referred to in subregulation (1) must perform their duties subject to the control and direction of the Commission.

3. The Commission may, on such terms and conditions as the Secretary to the President may approve -

- (a) appoint any person to assist the Commission in or in connection with the execution of its inquiry;
- (b) designate one or more persons to be present at the inquiry and to present evidence and arguments which have a bearing on the inquiry and subject to regulation 10, to cross-examine witnesses appearing before the Commission.

4. The chairperson must determine the procedure to be following at any proceedings of the Commission.

5. All sittings of the Commission must be held at such times and places as may be determined by the Commission.

6. Written submissions to the Commission must-

- (a) be prepared in the official language, if possible, or in any other language approved by the Secretary to the Commission;
- (b) if and where possible, be typewritten or word-processed on A4-size paper;
- (c) bear the name, address and telephone or fax number and e-mail address, if any, of the author and;
- (d) be submitted in tenfold.

7. No shorthand notes or mechanical records of the proceedings of the Commission shall be transcribed except by order of the Commission.

8. (1) Every person employed for, or assisting with, the performance of the functions of the Commission, including a person employed to transcribe the proceedings of the Commission, must preserve and aid in preserving secrecy with regard to the functions, proceedings and documents of the Commission and any matter or information which may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as disclosure of such proceedings, documents, matter or information is necessary for the purpose of the Commission's report, a criminal investigation or prosecution, or is required in terms of an order of a competent court.

(2) Every person referred to in subregulation (1), except a member of the Commission must at the outset take an oath or make an affirmation of fidelity and secrecy before the chairperson or a staff member authorized thereto by the chairperson in a form to be determined by the Commission.

(3) No person shall, except in so far as it may be necessary in the execution of the Commission's terms of reference, for the purposes of a criminal investigation or prosecution, or in terms of an order of a competent court, publish or furnish or communicate to any person the report of the Commission or a copy or any part thereof or an extract therefrom or any finding, recommendation or information contained therein, unless and until the President has made the report available for publication.

9. (1) Without limitation of the power conferred by section 3 of the Act, the Commission may, in accordance with that section, cause any director, manager or other employee of a financial institution to be summoned-

- (a) to produce any record, account or other document belonging to or in the possession, custody or control of the financial institution, including computer data or printouts or any other electronic medium by which information or data is stored and which relates to any person contemplated in paragraph 1.(a), (b), (c), or (d) of the Commission's terms of reference; and
- (b) to provide any information related to any record, account, document or article referred to in paragraph (a).

(2) A director, manager or employee of a financial institution referred to in subregulation (1), must upon a request by the Commission, produce any document referred to in that subregulation and provide any requested information in relation thereto notwithstanding any duty of secrecy or other restriction on disclosure imposed by any law, agreement or otherwise.

10. (1) No person, other than a member of the Commission or a person designated under regulation 3 (b), nor the legal representative of any person, shall have the right to cross-examine any witness appearing before the Commission, unless the chairperson permits such cross-examination in the interests of the inquiry.

(2) The chairperson may, when he or she permits the cross-examination of any witness in terms of subregulation (1), limit such cross-examination to the subjects and in the manner, which he or she considers necessary in the interests of the inquiry.

11. Any witness appearing before the Commission may, in the discretion of the chairperson and in the manner determined by him or her, be assisted by a legal practitioner, or by any person, including, if he or she so desires, a person designated by the Secretary to the President for that purpose.

12. In any proceedings before the Commission, the chairperson must not be bound by the rules of law relating to the admissibility of evidence.

13. If, at the time of any person giving evidence before the Commission, members of the general public are or have been excluded from attendance of the proceedings of the Commission, the chairperson may, on the request of that person, direct that no person must disclose in any manner whatsoever the name or address of that person or any information likely to reveal his or her identity.

14. (1) Any member of the Commission, or staff member authorized thereto in writing by the Commission, may at any reasonable time, for that purpose of the inquiry -

- (a) enter any premises and carry out any investigation which he or she considers necessary; and
- (b) demand, inspect, seize or take copies of, or make extracts from any book, account or document found on such premises and which that member or staff member, believes may have a bearing on any matter relating to the inquiry.

(2) Without prejudice to the generality of the power conferred by subregulation (1), a member or staff member referred to in that subregulation may, in the exercise of the power conferred by the subregulation, demand from any director or the manager or any other employee of any financial institution -

- (a) the disclosure and inspection of any record, account or other document belonging to or in the possession, custody or control of the financial institution, including computer data or printouts or any other electronic

medium by which information or data is stored and which relates to any person contemplated in paragraph 1.(a), (b), (c) or (d) of the Commission's terms of reference; and

- (b) any information related to any record, account, document or article referred to in paragraph (a).

(3) A director, manager or employee of a financial institution referred to in subregulation (2), must comply with a demand made by a member or staff member under that subregulation, notwithstanding any duty of secrecy or other restriction on disclosure imposed by any law, agreement or otherwise.

(4) A member of the Commission or a staff member must, when exercising the power conferred by this regulation, show the written authorization referred to in subregulation (1) to any person in relation to whom the power is exercised and who requires proof of such authorization.

15. No person may insult, disparage or belittle the chairperson or any other member of the Commission or prejudice, influence or anticipate the proceedings or findings of the Commission.

16. Any person who contravenes or fails to comply with -

- (a) regulation 7 or 8, or any order of the chairperson made thereunder; or
(b) regulation 15,

commits an offence and is liable on conviction -

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding N\$200 or imprisonment for a period not exceeding six months; and
(ii) in the case of an offence referred to in paragraph (b) to a fine not exceeding N\$1000 or imprisonment for a period not exceeding one year.

Government Notice

OFFICE OF THE PRESIDENT

No. 172

2003

APPOINTMENT OF COMMISSION OF INQUIRY INTO THE ACTIVITIES,
AFFAIRS, MANAGEMENT AND OPERATION OF THE ROADS AUTHORITY,
ESTABLISHED BY SECTION 2 OF THE ROADS AUTHORITY ACT, 1999 (ACT
NO. 17 OF 1999) AND THE ROAD FUND ADMINISTRATION, ESTABLISHED
BY SECTION 2 OF THE ROAD FUND ADMINISTRATION ACT, 1999
(ACT NO. 18 OF 1999)

It is made known for general information that His Excellency Dr. Sam Nujoma, President of the Republic of Namibia, has appointed a Commission of Inquiry into the Activities, Affairs, Management and Operation of the Roads Authority, established by section 2 of the Roads Authority Act, 1999 (Act No. 17 of 1999) and the Road Fund Administration established by section 2 of the Road Fund Administration Act, 1999 (Act No. 18 of 1999), consisting of the following members:

Mr. Kenandei Tjivikua	-	Chairperson
Mr. Andries Leevi Hungamo	-	Member
Mrs. Notemba Tjipueja	-	Member
Mr. Goms Manette	-	Member
Mr. Sacky Shanghala	-	Member

The President has appointed Mrs. Ester Kaapanda as Secretary to the Commission.

The Chairperson may, in consultation with the Secretary to the President, co-opt additional persons from time to time to assist the Commission in an advisory capacity in the performance of its assigned tasks.

The terms of reference of the Commission are as follows:

1. To inquire and report generally upon allegations of irregularity, malpractice and illegality pertaining to the establishment of the Roads Authority and the Road Fund Management, and all activities, affairs, management and operations of the Roads Authority and the Road Fund Administration since their establishment and, more particularly, but without derogating from the generality of the aforesaid, to inquire and report upon:
 - (a) the unlawful, irregular and/or undue payments made to and received by present, former and all alternate members of the Board of Directors of the Roads Authority and the Road Fund Administration appointed in terms of section 4 (2) of the Roads Authority Act, 1999 (Act No. 17 of 1999) and section 4 (2) of the Road Fund Administration Act, 1999 (Act No. 18 of 1999) respectively and/or relatives or associates of the said directors;
 - (b) the unlawful, irregular and/or undue payments made to and received by the present and all former Chief Executive Officers of the Roads Authority and the Road Fund Administration appointed in terms of section 14 (1) of the Roads Authority Act, 1999 (Act No. 17 of 1999) and section 14 (1) of the Road Fund Administration Act, 1999 (Act No. 18 of 1999) respectively and/or relatives or associates of the said Chief Executive Officers;
 - (c) the unlawful, irregular and/or undue payments made to and received by employees or former employees of the Roads Authority and the Road Fund Administration and/or relative or associates of the said employees or former employees;
 - (d) the unlawful, irregular and/or undue payments made to and received by natural or corporate persons engaged to render services to the Roads Authority and the Road Fund Administration, as advisers, consultants or contractors *inter alia*, and/or relatives, associates, subsidiaries and affiliates of such natural or corporate persons, as a result of services so rendered or work so performed;
 - (e) compliance by present, former and all alternate members of the Board of Directors of the Roads Authority and the Road Fund Administration with the provisions of the Roads Authority Act, 1999 (Act No. 17 of 1999) and the Road Fund Administration Act, 1999 (Act No. 18 of 1999) and established policies and procedures of the Roads Authority and the Road Fund Administration respectively;
 - (f) compliance by the present and all former Chief Executive Officers of the Roads Authority and the Road Fund Administration with the provisions of the Roads Authority Act, 1999 (Act No. 17 of 1999) and the Road Fund Administration Act, 1999 (Act No. 18 of 1999) and established policies and procedures of the Roads Authority and the Road Fund Administration

respectively;

- (g) compliance by employees and former employees of the Roads Authority and the Road Fund Administration with the provisions of the Roads Authority Act, 1999 (Act No. 17 of 1999) the Road Fund Administration Act, 1999 (Act No. 18 of 1999) and established policies and procedures of the Roads Authority and the Road Fund Administration respectively;
 - (h) the extent to which present, former and alternate members of the Board of Directors of the Roads Authority and the Road Fund Administration, present and all former Chief Executive Officers and present and former employees of the Roads Authority and the Road Fund Administration improperly benefited from the procurement by the Roads Authority and the Road Fund Administration respectively of goods or services;
 - (i) the quality of all the projects envisaged, commenced and/or completed by natural or corporate persons acting as advisers, consultants and contractors on behalf of the Roads Authority and the Road Fund Administration since the establishment of the Roads Authority and the Road Fund Administration respectively;
 - (j) the competence and quality of the Roads Authority and the Road Fund Administration management cadre;
 - (k) the employment practices regarding management staff and other personnel of the Roads Authority and the Road Fund Administration; and
 - (l) the overall financial management of the Roads Authority and the Road Fund Administration.
2. To report to the President on its findings and make relevant recommendations as it may deem necessary in light of the findings.
 3. The work of the Commission shall not be invalid on account of the absence of any member during any period of its existence.
 4. The Commission must submit a first interim report on the terms of reference within 3 (three) months of the date of appointment of the Commission and its final report within 2 (two) months of submission of its interim report or such further period as the President may, at the request of the Commission, determine.
 5. Interested persons wishing to submit written representations to or give evidence before the Commission are requested and required to send or submit, in the manner prescribed in the regulations set out in the Schedule to Proclamation No. 21 of 2003, written submissions in which those representations or a summary of that evidence is set out, to:

The Secretary
Commission of Inquiry: Roads Authority and Road Fund Administration
c/o The Secretary to the President
Private Bag 13339
Windhoek

State House, Windhoek
Tel. No: (061) 207 7111
Facsimile at (061) 221 780 or 221 770

6. The deadline for the aforesaid submissions is 30 August 2003, but the Commission may, in appropriate cases, call for representations after that date or accept and entertain representations received after that date.