



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notices

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### MINISTRY OF REGIONAL AND LOCAL GOVERNMENT, HOUSING AND RURAL DEVELOPMENT

No. 113 2007

#### AMENDMENT OF COMMERCIALISATION REGULATIONS: LOCAL AUTHORITIES ACT, 1992

The Minister has, under section 94A of the Local Authorities Act, 1992 (Act No. 23 of 1992), amended the Commercialisation Regulations promulgated under Government Notice No. 39 of 2001 as set out in the Schedule.

## SCHEDULE

The regulations are amended by the insertion after regulation 2 of the following regulation:

**“Commercialisation of electricity supply and distribution”**

2A. (1) Subject to these regulations or to any other law, a local authority council may commercialise in whole or in part, with the written approval of the Minister and subject to such conditions as the Minister may impose, together with the regional council, a local authority council and private sector participation, electricity supply and distribution carried out by the local authority council.

(2) In the conditions imposed under subregulation (1), the Minister may authorise a commercialised business inclusive of operating within the local authority area of another local authority and a settlement area”.

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### MINISTRY OF REGIONAL AND LOCAL GOVERNMENT, HOUSING AND RURAL DEVELOPMENT

No. 114

2007

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

The Minister of Regional and Local Government, Housing and Rural Development has, under section 94A of the Local Authorities Act, 1992 (Act No. 23 of 1992),

- (a) made the regulations set out in the Schedule; and
- (b) repealed the Joint Business Venture Regulations published under Government Notice No. 40 of 5 March 2001.

## 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 joint business venture company or a director nominated by and representing a local authority council who may be a staff member of the local authority council or any other person with appropriate and relevant knowledge, expertise and experience;

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

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

“joint business venture company” means a joint business venture established under regulation 2, which takes the form of a company in terms of regulation 3(a);

“joint business venture trust” means a joint business venture established under regulation 2 and which takes the form of a trust in terms of regulation 3(b);

“pool” means the contribution made at any time by a local authority council to a joint business venture by way of -

- (a) the provision of labour or other services free of charge;
- (b) the supply of materials or equipment;
- (c) a disposal of assets, subject to section 30(1)(s) and (t) of the Act;
- (d) the assignment of incorporeal rights, real rights and personal rights;
- (e) the transfer of all necessary and relevant permits, authorisations, consents and licences;
- (f) the making of a cash payment;
- (g) the provision of a loan;
- (h) the entering into a lease agreement; and
- (i) the furnishing of a guarantee in terms of section 30(1)(x) of the Act;

“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, for the purposes of exercising, performing or carrying out its powers, functions or duties in terms of the Act, and subject to -

- (a) subregulation (2);
- (b) these regulations; and
- (c) the prior written approval of the Minister on such conditions as the Minister may impose,

enter into a joint business venture with the Government, whether for profit or non-profit purposes, or any company or any trust, or co-jointly with the Government and any company or any trust, in order to provide directly or indirectly for the advancement of persons within the Republic of Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or 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;
- (b) in general to all local authorities in respect of any joint business venture under these regulations;
- (c) only to the joint business venture and only to the local authority council specified in the approval granted under that subregulation; or

- (d) to the payment by a joint business venture to a local authority council of such amounts as may be or may become due and payable by the local authority council to a third party lender, financier or other creditor in terms of a written and binding agreement which pertains wholly or partially to activities to be undertaken by the joint business venture or to any assets, materials or equipment pooled by the local authority council in the joint business venture.

(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 of the Act.

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

**3.** A local authority council, when entering into a joint business venture under 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, subject to the conditions imposed by the Minister under regulation 2, pool in a joint business venture.

### **Acquisition of shares or other interest in joint business venture by 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 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 on the board of directors of a joint business venture company, or on the board of trustees of a joint business venture trust, in relation to the total representation on the board concerned, must be commensurate to the ratio of the number of shares held by a local authority or local authorities co-jointly to the total number of shares issued in the joint business venture.

#### **Amendment or alteration of articles of association and memorandum, trust deed, share or interest structure or nature of operation of joint business venture**

7. The memorandum and articles of association of a joint business venture company or the trust deed of a joint business venture trust must provide that, irrespective of the voting power of the local authority council as a shareholder at a general meeting of such company or at any meeting of the trustees of such a trust, as the case may be, the memorandum 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 the operations of the relevant joint business venture changed, including the risks pertaining thereto, without -

- (a) a majority vote in favour of such amendment or alteration, by the shareholders at a general meeting of such company or by the trustees at a meeting of the board of trustees of such a trust of not less than 75% of the votes exercisable by the shareholders or trustees as the case may be who are present and entitled to vote at such a meeting; and
- (b) the prior approval of the Minister, 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, with the necessary changes under 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 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 under that subregulation, within a period of 30 days after the completion of such audit.

#### **Staff members of local authority council not to be employed by joint business venture**

9. (1) A joint business venture entered into under regulation 2, other than a joint business venture company, may not employ a 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 under regulation 2 for the purposes of conducting a joint business venture 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.

**Transitional provisions**

**11.** (1) A joint business venture established pursuant to the repealed regulations is deemed as being established under these regulations.

(2) Anything done pursuant to the repealed regulations is deemed as being done under these regulations.

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