

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

DRAFT

NATIONAL EQUITABLE ECONOMIC EMPOWERMENT BILL, 2015

(As read a First Time)

(Introduced by the Prime Minister)

BILL

To implement the National Equitable Economic Empowerment Framework; to provide for the development of the National Equitable Economic Empowerment Framework and define its purpose and objectives; to establish the Economic Empowerment Advisory Council responsible for the development, implementation, supervision, administration, review and evaluation of the National Equitable Economic Empowerment Framework and the promotion of coordination between the various pillars of economic empowerment; to provide for the appointment of the Economic Empowerment Commission; to provide for the issue of a national programme for economic transformation and empowerment, economic empowerment standards and transformation charters; and to provide for incidental matters.

Preamble

WHEREAS under colonial occupation, race was used to control access to Namibia's productive resources and access to skills;

WHEREAS there remains anxiety about continuing income disparities, skewed ownership of productive assets; low level of participation in business by previously disadvantaged persons; lack of socio-economic transformation in traditional communities; high level of unemployment; continuing racial imbalance in the management and control of private sector enterprises; the economic status of particularly racially disadvantaged women, youth and persons with disabilities; and the slow development of rural areas;

WHEREAS the Constitution of the Republic of Namibia in Article 23(2) and (3) and Article 95(a) mandates Parliament to enact legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically and educationally disadvantaged by past discriminatory laws or practices; or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of discriminatory laws or practices; and that in the enactment of such legislation and the application of any such

policies and practices, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation and to enact legislation to ensure equality of opportunity for women to enable them to participate fully in all spheres of Namibian society;

AND WHEREAS, unless further steps are taken to increase the effective participation of the majority of Namibians in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all Namibians;

And in order to—

promote the achievement of the constitutional right to equality, bring about socio-economic transformation in order to enhance equity, social justice and empowerment of the previously disadvantaged majority, and promote a higher economic growth rate, increased employment and more equitable income distribution; and implement a national policy on the National Equitable Economic Empowerment Framework so as to promote the economic unity of the nation, protect the common market, and promote equal opportunity and equal access to government services,

BE IT ENACTED as passed by the Parliament and assented to by the President of the Republic of Namibia, as follows-

ARRANGEMENT OF SECTIONS

PART I

INTRODUCTORY PROVISIONS

1. Definitions

PART II

THE NATIONAL EQUITABLE ECONOMIC EMPOWERMENT FRAMEWORK

2. **Establishment of National Equitable Empowerment Framework**
3. **Pillars of economic empowerment**
4. **Purpose and objectives of the Economic Empowerment Framework**

PART III

ECONOMIC EMPOWERMENT ADVISORY COUNCIL

5. **Establishment of Council**
6. **Composition of Council**
7. **Functions of Council**
8. **Meetings of Council**
9. **Disclosure of interest by members of Council**
10. **Committees of Council**
11. **Confidentiality in relation to functions of Council**
12. **Constitution and rules of Council**

PART IV

ECONOMIC EMPOWERMENT COMMISSION

13. **Establishment and status**
14. **Appointment of Commissioner and Acting Commissioner**
15. **Appointment of Deputy Commissioner and staff of Commission**
16. **Functions and powers of Commission**
17. **Specialist committees**

PART V

FINANCIAL PROVISIONS

18. **Finances for administration of Act**
19. **Financial year**
20. **Financial plan of Commission**
21. **Accounting and auditing**
22. **Exemption from taxes, duties and levies**

PART VI
COORDINATION OF THE NATIONAL EQUITABLE ECONOMIC
EMPOWERMENT FRAMEWORK

- 23. Ownership restrictions**
- 24. National programme for economic transformation and empowerment**
- 25. Economic empowerment standards**
- 26. Status of economic empowerment standards**
- 27. Sector-specific transformation charters**
- 28. Investigations by Commission**
- 29. Summonses**
- 30. Confidential information**

PART VII
GENERAL PROVISIONS

- 31. Cooperation with other supervisory and regulatory agencies and organizations**
- 32. Cancellation of contract or authorisation**
- 33. Prohibition on business with government bodies following conviction under this Act**
- 34. Reporting**
- 35. Delegation of powers and assignment of duties**
- 36. Conflicting interests**
- 37. Offences in connection with Commission**
- 38. Other offences and penalties**
- 39. Regulations**
- 40. Short title and commencement**

Schedule

PART I
INTRODUCTORY PROVISIONS

Definitions

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

“Central Procurement Board” means the Central Procurement Board established by the Procurement Act, 2015 (Act No. ___ of 2015);

“Commission” means the Economic Empowerment Commission established under **section 13**;

“Commissioner” means the Economic Empowerment Commissioner appointed under **section 14**;

“compliance status” means the extent of compliance of a private sector enterprise with applicable economic empowerment targets as rated by a government body, the Council or a verification professional and agency;

“Council” means the Economic Empowerment Advisory Council established under **section 5**;

“economic empowerment” means the viable economic empowerment of previously disadvantaged persons through diverse but integrated socio-economic strategies that include, but are not limited to—

- (a) increasing the number of previously disadvantaged persons that manage, own and control private sector enterprises and productive assets;

- (b) facilitating different forms of ownership by previously disadvantaged persons including but not limited to public, private, joint public-private or cooperative ownership;
- (c) facilitating representation of previously disadvantaged persons on the board and top management structures of existing and new private sector enterprises;
- (d) enhancing human resource and skills development;
- (e) achieving equitable representation in all occupational categories and levels in the workforce;
- (f) preferential treatment of private sector enterprises that achieve applicable economic empowerment targets or that are owned by previously disadvantaged persons, in-
 - (i) procurement by government bodies;
 - (ii) applying for the issue or award of a guarantee, loan, licence, permit, registration, grant, or concession;
- (g) requiring that established private sector enterprises mentor and share knowledge and technology regarding business development and market penetration with private sector enterprises owned by previously disadvantaged persons;
- (h) requiring private sector enterprises above a certain size to devote a part of after-tax profits to the social upliftment of communities comprising predominantly previously disadvantaged persons;
- (i) requiring private sector enterprises that are established after the commencement of this Act to effect a minimum ownership allocation to previously disadvantaged persons before commencing with their business operations; and

- (j) promoting investment in private sector enterprises that achieve applicable economic empowerment targets or that are owned by previously disadvantaged persons;

“Economic Empowerment Framework” means the National Equitable Economic Empowerment Framework established by **section 2**;

“economic empowerment standards” means the economic empowerment standards contemplated by **section 25**;

“economic empowerment targets” means the targets for achieving economic empowerment of previously disadvantaged persons set out in the Economic Empowerment Framework as implemented by means of the national programme, economic empowerment standards and transformation charters;

“empowerment initiative” means any transaction, practice, scheme or other initiative which enhances and promotes compliance with this Act or any other law promoting economic empowerment;

“Employment Equity Commission” means the Employment Equity Commission established by Affirmative Action (Employment) Act, 1998 (Act No. 29 of 1998);

“fronting practice” means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of this Act, including but not limited to practices in connection with an empowerment initiative—

- (a) in terms of which previously disadvantaged persons who are appointed to a private sector enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise;

- (b) in terms of which the economic benefits received as a result of the compliance status of a private sector enterprise do not benefit previously disadvantaged persons in accordance with applicable economic empowerment targets;
- (c) involving the conclusion of a legal relationship with a previously disadvantaged person to enable a private sector enterprise to achieve compliance status without granting such previously disadvantaged person the economic benefits that would reasonably be expected to be associated with the status or position held by that previously disadvantaged person; or
- (d) involving the conclusion of an agreement with another private sector enterprise in order to achieve or enhance the compliance status of a private sector enterprise in circumstances in which—
 - (i) the identity of suppliers, service providers, clients or customers are not sufficiently disclosed to assess the latter enterprise's compliance status;
 - (ii) the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available; or
 - (iii) the terms and conditions were not negotiated at arm's length or on a fair and reasonable basis;

“government body” means-

- (a) an office, an agency or a ministry as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);
- (b) a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);
- (c) a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992);

- (d) a public enterprise as defined in section 1 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006);
- (e) a statutory body established by an Act of Parliament; or
- (f) any other body established for a public purpose;

“Minister” means _____

“Ministers responsible for the economic sector” means the Ministers responsible for finance, mines, energy, the environment, tourism, industrialization, trade, business development, agriculture, water, forestry, fisheries and marine resources;

“National Disability Council” means the National Disability Council established by the National Disability Council Act, 2004 (Act No. 26 of 2004);

“National Training Authority” means the National Training Authority established by the Vocational Education and Training Act, 2008 (Act No. 1 of 2008);

“National Youth Council” means the National Youth Council established by the National Youth Council Act, 2009 (Act No. 3 of 2009);

"national programme" means the national programme for economic transformation and empowerment contemplated in **section 24**;

"ownership" for purposes of economic empowerment means-

- (a) ownership or effective control of a private sector enterprise; or
- (b) the exercise of effective control over a legal person or trust having ownership or effective control of a private sector enterprise,

and ownership or effective control of a private sector enterprise is deemed when a person-

- (i) owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, such percentage of the shares or voting rights of the enterprise as determined by the economic empowerment standards; or
- (ii) despite having less than the percentage shareholding or voting rights determined by the economic empowerment standards, receives a large percentage of the enterprise's declared dividends;

"prescribed" means prescribed by regulation;

“previously disadvantaged persons” means persons contemplated in Article 23(2) and (3) of the Namibian Constitution and includes-

- (a) racially disadvantaged persons;
- (b) women; and
- (c) persons with any disability as defined in the National Disability Council Act, 2004 (Act No. 26 of 2004),

and “previously disadvantaged” or “previously disadvantaged person” has a similar meaning;

“private sector enterprise” means any business carried on for gain or reward by an individual, a body corporate, an unincorporated body of persons or a trust in the production, supply or distribution of goods or the provision of any service;

“pillars of empowerment” means the pillars of economic empowerment referred to in **section 3**;

"racially disadvantaged persons" means all persons who belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged as a consequence of

social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the Independence of Namibia;

“transformation charters” means the sector-specific transformation charters contemplated by **section 27**.

PART II

THE NAMIBIA EQUITABLE ECONOMIC EMPOWERMENT FRAMEWORK

Establishment

2. There is established the National Equitable Economic Empowerment Framework comprising the pillars of economic empowerment referred to in **section 3** and their interrelations in the-

- (a) development, implementation and monitoring of the economic empowerment of previously disadvantaged persons;
- (b) creation of an equitable and socially just society through transformation of the existing economic framework; and
- (c) stimulus of a vibrant and dynamic economy.

Pillars of economic empowerment

3. (1) The Economic Empowerment Framework encompasses six pillars of empowerment comprising-

- (a) economic ownership;
- (b) management control and employment equity;

- (c) human resources and skills development;
- (d) entrepreneurial development and marketing;
- (e) corporate social responsibility; and
- (f) value addition, technology and investment.
- (g) financing of transformation.

(2) The Economic Empowerment Framework must be implemented by means of the national programme, economic empowerment standards and transformation charters.

Purpose and objectives of the Economic Empowerment Framework

4. (1) The purpose of the Economic Empowerment Framework is to provide-

- (a) an overarching policy framework comprising the pillars of empowerment, aimed at promoting, facilitating and coordinating all economic empowerment policies of Government; and
- (b) the structure that private sector empowerment initiatives must conform with in seeking to achieve economic equity in planning, decision-making, and monitoring or assessment of economic policies, decision-making or other actions.

(2) The objectives of the Economic Empowerment Framework are to-

- (a) build coordinated, sustainable capacity for the development of an equitable and socially just society;

- (b) ensure that the people of Namibia share in national resources in an equitable and sustainable basis;
- (c) implement measurable programs to redress historical inequalities and ensure fair redistribution of national resources;
- (d) construct practical mechanisms of economic empowerment to enable previously disadvantaged persons to meaningfully participate in the economy;
- (e) identify and address barriers to socio-economic advancement to enable previously disadvantaged persons to access productive assets and opportunities for economic empowerment;
- (f) achieve a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new private sector enterprises;
- (g) guard against fronting practices, favouritism, nepotism and self-enrichment;
- (h) empower communities by enabling access to economic activities, infrastructure, ownership and skills;
- (i) promote access to finance for start-ups of previously disadvantaged persons including small, medium and micro enterprises, co-operatives owned by previously disadvantaged entrepreneurs, including those in the informal business sector;
- (j) increase effective economic participation and previously disadvantaged owned and managed private sector enterprises, including small, medium and micro enterprises and co-operatives and to enhance their access to financial and non-financial support;

- (k) set economic empowerment targets and provide realistic measurements for the achievement thereof;
 - (l) increase the extent to which racially disadvantaged women own and manage existing and new private sector enterprises, and to increase their access to economic activities, infrastructure and skills training; and
 - (m) ensure that economic empowerment targets address disparities occasioned by class, gender, disabilities and generational relationships.
- (3) The Economic Empowerment Framework must be administered and coordinated in accordance with **sections 23 to 30**, inclusive to ensure that its objectives are carried out in-
- (a) a cost-effective and efficient manner; and
 - (b) in accordance with the purpose and objectives of the Economic Empowerment Framework referred to in this section.

PART III

ECONOMIC EMPOWERMENT ADVISORY COUNCIL

Establishment of Council

5. There is established a Council to be known as the Economic Empowerment Advisory Council.

Composition of Council

- 6.** (1) The Council consists of the following members, namely-
- (a) the chairperson, appointed by the President from amongst the Ministers responsible for the economic sector;

- (b) the member of the Cabinet responsible for economic planning;
- (c) the member of the Cabinet responsible for employment eradication and social welfare;
- (d) the member of the Cabinet responsible for labour, industrial relations and employment creation;
- (e) three other members of the Cabinet, appointed by the President;
- (f) not more than three persons appointed by the President after consultation with the Minister, who in the opinion of the President, are suitable for appointment on account of any qualification relating to the objects of the Council; and
- (g) the Commissioner, who is a member by virtue of his or her office.

(2) The President may appoint an alternate member for a member of the Council referred to in paragraphs (a) to (e) of subsection (1).

(3) The President must make known by notice in the Gazette the names of the persons appointed as members and the names of the persons appointed as members of the Council, and their date of appointment.

(4) The Council may co-opt, on such conditions as the Council may determine and for such period, if any, as may be so determined from time to time, one or more persons to assist it in the performance of its functions or assist any committee of the Council referred to in **section 10** in the performance of such committee's functions, but such person or persons shall not be entitled to vote on any matter before the Council or such committee.

Functions of Council

7. (1) Subject to this Act, the Council must-
- (a) formulate and review the national programme for the implementation of the Economic Empowerment Framework in the manner referred to in **section 24**;
 - (b) exercise supervision over and final responsibility for the Commission, in terms of this Act or any other law;
 - (c) report to the President on the implementation of the Economic Empowerment Framework;
 - (d) maintain a database on enablers of and obstacles and threats to the implementation of the Economic Empowerment Framework;
 - (e) facilitate partnerships between government bodies and the private sector that will enhance the objectives of the Economic Empowerment Framework;
 - (f) ensure that there is consistency in the implementation of the Economic Empowerment Framework;
 - (g) provide direction to the Commission on the implementation of the Economic Empowerment Framework;
 - (h) if requested to do so, advise on draft transformation charters;
 - (i) conduct a national conference on economic empowerment once in every three years;
 - (j) advise the President on matters related to economic transformation and empowerment, whether of its own accord or at the request of the President.

Meetings of Council

8. (1) The chairperson of the Council decides when and where the Council meets.

(2) The Council must meet at least four times per year.

(3) At a meeting of the Council-

(a) the chairperson or, in the absence of the chairperson, any other member of the Council as the members present may elect, must preside;

(b) a majority of the members of the Council form a quorum;

(c) the Council must take decisions in a consensus-seeking manner and, if consensus cannot be reached on a matter, the matter must be submitted to Cabinet for decision.

(4) A resolution of the Council contained in writing and signed by all members of the Council constitutes a valid decision of the Council as if it had been passed at a meeting of the Council.

(5) The Council may, in its discretion, invite persons or entities who or which, in the opinion of the Council, may have an interest in a matter to be considered by the Council to make representations to the Council in relation to the matter in the manner and form as the Council may determine, and to attend a meeting or part of a meeting of the Council as observers and to take part in the deliberations at the meeting in relation to the matter, but a person so attending has no vote at the meeting.

(6) The Council-

(a) may regulate its own proceedings; and

(b) must cause minutes to be kept of proceedings and decisions at each

meeting of the Council.

Disclosure of interest by members of Council

9. (1) A Council member who has a direct or indirect personal or financial interest in any matter being discussed at a meeting of the Council must disclose the nature of that interest and must not further attend that meeting nor participate in any deliberations or decision of the Council in relation to the matter, except if the Council determines otherwise, and subject to any conditions the Council may determine.

(2) A disclosure of interest in accordance with subsection (1) must be noted in the minutes of the meeting concerned.

(3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years.

Committees of the Council

10. (1) The Council must establish a committee to advise it on each of the pillars of empowerment.

(2) The committee referred to in subsection (1) must comprise suitably qualified persons with knowledge and experience in the subject-matter of the particular pillar of economic empowerment for which the committee is established.

(3) The Council may establish committees-

(a) to advise the Council, in relation to any matter which the Council refers to it; or

(b) to exercise any of the powers or perform any of the duties of the Council which the Council delegates or assigns to it.

(4) The Council may at any time dissolve or reconstitute a committee contemplated by subsection (3).

Confidentiality in relation to functions of Council

11. (1) A member of the Council or of a committee of the Council, and any other person required or permitted to be present at a meeting of the Council or such a committee, must not publish or communicate or in any other way disclose any information relating to the affairs of the Council or any of its committees, that has come to such person's knowledge-

- (a) in the exercise of any power or performance of any duty or function in connection with the functions of the Council; or
- (b) as a result of such person's attendance at a meeting of the Council or a committee of the Council.

(2) Subsection (1) does not apply to information disclosed-

- (a) for the purpose of the proper administration or enforcement of this Act or the performance of a function of the Council;
- (b) for the proper administration of justice; or
- (c) at the request in writing of a member of the Council or of a person authorised in writing by a member of the Council.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

Constitution and rules of Council

- 12.** (1) The Cabinet must establish a constitution for the Council.
- (2) The Cabinet may amend the constitution of the Council from time to time, after consultation with the Council.
- (3) The Council may, by resolution, and after consultation with the Cabinet, make rules to further regulate the proceedings of the Council.

PART IV ECONOMIC EMPOWERMENT COMMISSION

Establishment and status

- 13.** (1) There is established a body to be known as the Economic Empowerment Commission as an entity within the administration of the Office of the Prime Minister.
- (2) The Commission is headed by a Commissioner appointed in accordance with **section 14**.
- (3) The Commission—
- (a) has jurisdiction throughout Namibia;
 - (b) must be impartial and perform its functions without fear, favour or prejudice; and
 - (c) must exercise the functions assigned to it in terms of this Act or any other law—
 - (i) in the most cost-effective and efficient manner; and

- (ii) in accordance with the purpose and objectives of the Economic Empowerment Framework.

(4) The Council may issue directives of a general nature, which are consistent with this Act, to the Commission concerning the performance of its functions and the Commission must comply with any such directive.

(5) Each government body must assist the Commission to exercise its authority and perform its functions effectively.

Appointment of Commissioner and Acting Commissioner

14. (1) Subject to this Act, the Council with the approval of the President must-

- (a) appoint on a full-time basis a suitably qualified person with knowledge and experience in economics, financial planning, information technology and related fields of expertise to be the Commissioner;
- (b) determine the terms and conditions of service and other benefits for the office of the Commissioner.

(2) The Council may re-appoint a person as Commissioner at the expiry of that person's term of office for one additional term of office.

(3) The Commissioner—

- (a) is the Chief Executive of the Commission;
- (b) holds office for a term of five years;
- (c) is responsible for the administration of the Commission subject to the general control and supervision of the Council;

- (d) must perform the functions that are conferred on the Commissioner by or in terms of this Act;
- (e) must manage and direct the activities of the Commission; and
- (f) must supervise the Commission's staff.

(4) The Commissioner may, on three months' written notice addressed to the chairperson of the Council, resign as Commissioner.

(5) The Council may remove the Commissioner from office on account of—

- (a) serious misconduct;
- (b) permanent incapacity;
- (c) engaging in any activity that may undermine the integrity or standing of the Commission; or
- (d) any other legitimate ground that justifies the removal of the Commissioner.

(6) A person does not qualify for appointment as Commissioner if such person-

- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence,
- (b) does not reside in Namibia;
- (c) is an unrehabilitated insolvent;
- (d) has been convicted of an offence involving dishonesty and sentenced to

imprisonment without the option of a fine; or

(e) is a member of a local authority or regional council.

(7) If the Commissioner and the Deputy Commissioner are for any reason at the same time unable to perform their functions assigned to them in terms of this Act, the Council may, on such conditions as the Council may determine, appoint a suitable person as Acting Commissioner to perform the functions of the Commissioner.

(8) Subsection (7) does not apply if due to official duties the Commissioner is temporarily absent from his or her office, in which case the Deputy Commissioner must act as Commissioner.

Appointment of Deputy Commissioner and staff of Commission

15. (1) The Commissioner, in consultation with the Council, must appoint a person with suitable qualifications and experience to be the Deputy Commissioner for a term of five years.

(2) **Section 14(2), (4), (5) and (6)** apply to the Deputy Commissioner, read with such changes as are required by the context.

(3) The Deputy Commissioner must perform the functions of the Commissioner whenever—

(a) the Commissioner is unable for any reason to perform those functions;
or

(b) the office of Commissioner is vacant.

(4) The Commissioner may—

- (a) appoint staff members with suitable qualifications and experience, or contract with other persons, to assist the Commission in carrying out its functions; and
- (b) in consultation with the Council determine the remuneration, allowances, benefits and other terms and conditions of appointment of each staff member.

Functions and powers of Commission

- 16.** (1) The functions of the Commission are to-
- (a) oversee, supervise and promote adherence with this Act in the interest of the public;
 - (b) implement, administer, review and evaluate the Economic Empowerment Framework;
 - (c) coordinate the interaction between the various pillars of empowerment;
 - (d) strengthen and foster collaboration between the public and private sector in order to promote and safeguard the purpose and objectives of the Economic Empowerment Framework;
 - (e) receive complaints relating to economic empowerment in accordance with the provisions of this Act;
 - (f) investigate, either of its own initiative or in response to complaints received, any matter concerning economic empowerment;
 - (g) promote advocacy, access to opportunities and educational programs and empowerment initiatives;

- (h) maintain a registry of major economic empowerment transactions, above a threshold determined by the Council by notice in the *Gazette*;
- (i) receive and analyse such reports as may be prescribed concerning economic empowerment compliance from government bodies and private sector enterprises;
- (j) promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of economic empowerment;
- (k) to exercise such other powers which are not in conflict with this Act as may be conferred on the Commission in writing by the Council; and
- (l) inquire into and advise the Council on-
 - (i) the formulation and review of the national programme for the implementation of the Economic Empowerment Framework;
 - (ii) matters relating to economic transformation and empowerment in Namibia, whether of its own accord or at the request of the Council;
 - (iii) the application of this Act, amendments thereto and the making of regulations; or
 - (iv) any power, duty or function which may or is required to be exercised or performed in terms of this Act.
- (2) A complaint contemplated in subsection (1)(e) and (f) must be—
 - (a) in the prescribed form; and

- (b) substantiated by evidence justifying an investigation by the Commission.
- (3) The Commission must increase knowledge of the nature and dynamics and promote public awareness of matters relating to economic empowerment by—
- (a) implementing education and information measures to develop public awareness of the provisions of this Act, and in particular to advance the purposes of this Act;
 - (b) providing guidance to the public by—
 - (i) issuing explanatory notices outlining its procedures;
 - (ii) issuing non-binding opinions on the interpretation of any provision of this Act; or
 - (iii) applying to a court for a declaratory order on the interpretation or application of the provisions of this Act; and
 - (c) conducting research relating to its mandate and activities and, from time to time, publishing the results of that research.
- (4) The Commission may liaise with any regulatory authority on matters of common interest and, without limiting the generality of the foregoing, may—
- (a) exchange information with and receive information from any such regulatory authority pertaining either to matters of common interest or to a specific complaint or investigation;
 - (b) participate in the proceedings of any regulatory authority; and
 - (c) advise, or receive advice from, any regulatory authority.

(5) Despite the provisions of any law, but subject to the approval of the Council, the Commissioner may enter into an agreement with any other person, body of persons or government body to perform any of the Commission's duties and functions under this Act.

Specialist committees

17. (1) The Council may appoint one or more specialist committees to advise the Commission on the management of its resources or the performance of its functions.

(2) The Council may assign specific powers to the members of a specialist committee for the purposes of performing any function contemplated in subsection (1).

(3) A specialist committee may—

(a) be established for an indefinite term or for a period determined by the Council when the committee is established; and

(b) determine its own procedures.

(4) A specialist committee established under this section must—

(a) perform its functions impartially and without fear, favour or prejudice; and

(b) consist of—

(i) not more than eight persons who are independent from the Commission and are appointed by the Council for a term of not more than five years; and

- (ii) not more than two senior employees of the Commission designated by the Commissioner.
- (5) A member of a specialist committee must—
- (a) be a fit and proper person;
 - (b) should not have been removed involuntarily from a position of trust;
 - (c) have appropriate expertise or experience; and
 - (d) have the ability to perform effectively as a member of the committee.
- (6) Members of a specialist committee must not—
- (a) act in any way that is inconsistent with subsection (4)(a);
 - (b) expose themselves to any situation in which the risk of a conflict may arise between their responsibilities and any personal financial interest;
or
 - (c) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.
- (7) A member of a specialist committee ceases to be a member if—
- (a) the member resigns from the committee;
 - (b) the Council terminates the person's membership because the member no longer complies with subsection (5) or has contravened subsection (6); or
 - (c) the member's term of office has expired.

(8) A member of a specialist committee who has any personal or financial interest in any matter on which the committee gives advice, must disclose that interest and withdraw from the proceedings of the specialist committee when that matter is discussed.

(9) The Commission must remunerate and compensate—

- (a) a member contemplated in subsection (4)(b)(i) for expenses incurred to the extent determined by the Council; and
- (b) a member contemplated in subsection (4)(b)(ii) for expenses incurred to the extent that the member's remuneration and allowances as an employee of the Commission does not extend to that person's services as a member of the specialist committee.

PART V

FINANCIAL PROVISIONS

Finances for administration of Act

18. (1) The Commission is financed from—

- (a) money that is appropriated by Parliament for the Commission; and
- (b) money lawfully received from any other source.

(2) Any payment and any expenditure to be, or which may be made or incurred for purposes of the administration of the Economic Empowerment Framework, must be defrayed out of funds appropriated by law for that purpose.

Financial year

19. The financial year of the Commission ends on 31 March in each year.

Financial plan of Commission

20. The Commissioner must, at least 60 days before the commencement of its next financial year, or a later date determined by the Minister, submit to the Minister for approval a financial plan, which includes the financial operation of the Commission for the next three financial years.

Accounting and auditing

21. (1) The Commissioner must keep full and proper accounts and records of all moneys received or expended by the Commission and of all assets, liabilities and financial transactions of the Commission during the financial year of the Agency.

(2) The Auditor-General must examine and audit the accounts and records and the annual financial statements referred to in subsection (1) every year.

Exemption from taxes, duties and levies

22. No income or any other tax, duty or levy imposed under any law is payable by the Commission.

PART VI

COORDINATION OF THE NATIONAL EQUITABLE ECONOMIC EMPOWERMENT FRAMEWORK

Ownership restrictions

23. (1) Any private sector enterprise that is established after the commencement of this Act may commence business only when such enterprise has secured 25 per cent ownership by a racially disadvantaged person or persons or such higher percentage as may be determined by Minister by notice in the *Gazette*.

(2) Despite any other legislation to the contrary, no private sector enterprise that is owned and controlled by a previously disadvantaged person in accordance with the provisions of this Act, may allot, issue, or register the transfer of any portion of its ownership in such enterprise to a person that is not previously disadvantaged or to a domestic or foreign enterprise owned by a person that is not previously disadvantaged.

(3) A person who has received ownership in a private sector enterprise in accordance with the provisions of this Act may only allot, issue, or register the transfer of any of his or her ownership in such enterprise to a person that is previously disadvantaged.

National programme for economic transformation and empowerment

24. (1) Subject to subsection (2), the Council, once in every three years, or at such other intervals as the Council may determine, must prepare and issue a national programme for economic transformation and empowerment for the following three years, or such other period as the Council may determine, which programme must-

- (a) set out the national direction for the implementation of the Economic Empowerment Framework in Namibia in accordance with the pillars of empowerment;
- (b) develop a plan for facilitating the financing economic transformation and empowerment, including the creation of incentive schemes to support effective private sector enterprises owned and managed by previously disadvantaged persons;
- (c) provide a system for government bodies and private sector enterprises to prepare transformation charters and to report on compliance with those charters and economic empowerment standards;

- (d) review the state of economic transformation and empowerment in Namibia for the previous three years or such other period as has lapsed between the current national programme and the previous national programme;
- (e) identify shortcomings and priorities for economic transformation and empowerment;
- (f) provide for an integrated coordinated and uniform approach to economic transformation and empowerment by all government bodies, the private sector, non-governmental organisations, local communities and other stakeholders;
- (g) set out the programs and projects envisaged by the Council to be undertaken by it during the period covered by the national programme;
- (h) assess the previous national programme, if any; and
- (i) be consistent with this Act.

(2) When drawing up a national programme the Council must consult with relevant government bodies, the private sector, non-governmental organisations, local communities and other stakeholders, as it may identify.

(3) The Minister must-

- (a) submit a national programme to the Cabinet for comment; and
- (b) after any change made to it by Cabinet, if any, table the national programme in the National Assembly for approval.

(4) Every national programme may be periodically reviewed and subsections (2) and (3) apply in the same manner to a reviewed programme.

Economic empowerment standards

25. (1) In order to promote the purposes of the Act, the Council may by notice in the *Gazette* issue economic empowerment standards for each sector of the economy setting out—

- (a) the further interpretation and definition of economic transformation and empowerment;
- (b) the interpretation and definition of different categories of empowerment entities and previously disadvantaged persons;
- (c) qualification and accreditation criteria for preferential purposes for procurement and other economic activities;
- (d) economic transformation targets;
- (e) indicators to measure the impact of economic transformation and empowerment on socio-economic transformation and development in Namibia;
- (f) weighting to be attached to the indicators referred to in paragraph (e);
- (g) the definition and parameters of a scorecard determining economic empowerment targets and thresholds in respect of each pillar of economic empowerment against which compliance with the Economic Empowerment Framework is measured.
- (h) guidelines for stakeholders in different sectors of the economy to draw up sector-specific transformation charters for their sector; and
- (i) verification and certification criteria for rating the compliance status of private sector enterprises including the appointment of verification professionals and agencies;

(j) any other matter necessary to achieve the objectives of this Act.

(2) A national programme must be taken into account in preparing economic empowerment standards.

(3) Economic empowerment standards issued in terms of subsection (1) must specify—

(a) economic empowerment targets consistent with the objectives of this Act; and

(b) the period within which those targets must be achieved.

(4) In order to promote the achievement of equality of women, as provided for in Article 23(3) of the Constitution, economic empowerment standards issued in terms of subsection (1) and any targets specified in such standards in terms of subsection (3), must contain standards to enhance the empowerment of racially disadvantaged women.

(5) The Council must, before issuing, replacing or amending economic empowerment standards in terms of subsection (1)—

(a) publish the draft economic empowerment standards or amendment in the *Gazette* for public comment; and

(b) grant interested persons a period of at least 60 days to comment on the draft economic empowerment standards or amendment, as the case may be.

(6) If requested to do so, the Council may by notice in the *Gazette* permit government bodies to specify qualification criteria for procurement and other economic activities which exceed those set by the Council in terms of subsection (1).

(7) Economic empowerment standards remain in effect until amended, replaced or repealed.

Status of economic empowerment standards

26. (1) Every government body must apply relevant economic empowerment standards issued in terms of this Act in—

- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law;
- (b) developing and implementing a preferential procurement policy;
- (c) developing criteria for entering into partnerships with private sector enterprises in designated sectors of the economy; and
- (d) determining criteria for the awarding of incentives, grants and investment schemes in support of economic empowerment for previously disadvantaged persons.

(2) The Council may, after consultation with the relevant government body, exempt such body from a requirement contained in subsection (1) or allow a deviation from such requirement if particular objectively verifiable facts or circumstances applicable to the body necessitate an exemption or deviation.

(3) The Council must publish the notice of exemption or deviation in the *Gazette*.

(4) Subject to **section 25(6)**, a private sector enterprise in a sector of the economy in respect of which the Council has issued economic empowerment standards, may only be measured for compliance with the requirements of the Economic Empowerment Framework in accordance with those standards.

(5) Government bodies operating in a sector of the economy in respect of which the Council has issued economic empowerment standards, must report in the prescribed manner to the Council on their compliance with the Economic Empowerment Framework.

Sector-specific transformation charters

27. (1) Subject to subsection (2), the Council must promote a transformation charter for a particular sector of the economy and cause such charter to be published in the *Gazette* for general information, if the Council is satisfied that the charter—

- (a) has been developed by major stakeholders in that sector;
- (b) contains the development and implementation of a communication plan on economic transformation and empowerment; and
- (c) advances the objectives of this Act.

(2) Transformation charters may not set benchmarks lower than the economic empowerment targets and weightings as identified in the national programme or the economic empowerment standards.

(3) Transformation charters must complement the overall objectives of the Economic Empowerment Framework by addressing specific indicators identified by the economic empowerment standards for the measurement of economic transformation and the empowerment of previously disadvantaged persons.

Investigations by Commission

28. (1) Subject to the provisions of this Act, the Commission has the power, on its own initiative or on receipt of a complaint in the prescribed form, to investigate any matter arising from the application of the Act, including any empowerment initiative or category of empowerment initiatives.

(2) The format and the procedure to be followed in conducting any investigation must be determined by the Commission with due regard to the circumstances of each case, and may include the holding of a formal hearing.

(3) Without limiting the powers of the Commission, the Commission may make a finding as to whether any empowerment initiative involves a fronting practice.

(4) The Commission may institute proceedings in a court to restrain any breach of this Act, including any fronting practice, or to obtain appropriate remedial relief.

(5) If the Commission is of the view that any matter it has investigated may involve the commission of a criminal offence in terms of this Act or any other law, it must refer the matter to the Office of the Prosecutor-General or an appropriate division of the Namibian Police.

(6) The Commission may, if it has investigated a matter and justifiable reasons exist, refer to—

- (a) the Commissioner of Inland Revenue any concerns regarding behaviour or conduct that may be prohibited or regulated in terms of legislation within the jurisdiction of that Commissioner; or
- (b) any regulatory authority any concerns regarding behaviour or conduct that may be prohibited or regulated in terms of legislation within the jurisdiction of that regulatory authority.

(7) The Commission may publish any finding or recommendation it has made in respect of any investigation which it had conducted in such manner as it may deem fit.

(8) A decision of the Commission to publish any finding or recommendation it has made may not be put into effect—

- (a) before proceedings for the judicial review of the decision have been completed or were not instituted within the period allowed therefor;
- (b) if the Commission has referred the matter to the Office of the Prosecutor-General or the Namibian Police in terms of subsection (5), and no prosecution has been instituted against the person concerned;
- (c) if the person concerned has been prosecuted and acquitted following the investigation of the Commission; or
- (d) where the person concerned has been convicted by a court of law, following an investigation of the Commission, before such person has in respect of the conviction exhausted all recognised legal proceedings to challenge such conviction.

Summonses

29. (1) At any time during an investigation being conducted by the Commission, the Commission may issue a summons in the prescribed form to any person who is believed to be able to furnish any information on the subject of the investigation or to have possession or control of any book, document or other object that has a bearing on that subject—

- (a) to appear before the Commission to be questioned at a time and place specified in the summons; or
- (b) to deliver or produce to the Commission any book, document or other object referred to in paragraph (a) at a time and place specified in the summons.

(2) A summons contemplated in subsection (1)—

- (a) must be signed by the Commissioner or by an employee of the Commission designated by the Commissioner; and
- (b) may be served in the same manner as a subpoena in a criminal case issued by a magistrates' court.

(3) If a person is summoned to appear before the Commission, or is required to deliver any book, document or other object to the Commission, the Commissioner or an employee of the Commission designated by the Commissioner—

- (a) may interrogate and administer an oath to, or accept an affirmation from, the person named in the summons; and
- (b) may retain any such book, document or other object for examination for a period not exceeding two months or such longer period as the court on good cause shown, may allow.

(4) A person questioned by the Commission must answer each question truthfully and to the best of that person's ability, but—

- (a) is not obliged to answer any question if the answer is self-incriminating; and
- (b) the person asking the questions must inform that person of the right set out in paragraph (a).

(5) No self-incriminating answer given or statement made by any person to the Commission will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence relating to the disclosure of false information, and then only to the extent that the answer or statement is relevant to prove the offence charged.

Confidential information

30. (1) When submitting information to the Commission, a person may claim that all or part of that information is confidential.

(2) Any claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential.

(3) The Commission must—

(a) consider a claim made in terms of subsection (1); and

(b) as soon as practicable make a decision on the confidentiality of the information and access to that information and provide written reasons for that decision.

(4) A person who has made a claim contemplated in subsection (1) in respect of which the Commission has made a decision in terms of subsection (3), may apply to court for a review of that decision within—

(a) 60 court days of becoming aware of the decision; or

(b) such longer period as a court may allow on good cause shown.

(5) When making any finding in respect of an investigation, the Commission may take confidential information into account.

(6) If any finding would reveal any confidential information, the Commission must provide a copy of the proposed finding to the party claiming confidentiality at least 30 court days before publishing those reasons.

(7) Within 14 court days after receiving a copy of the proposed finding in terms of subsection (6), a party may apply to a court for an appropriate order to protect the confidentiality of the relevant information.

PART VII GENERAL PROVISIONS

Co-operation with other supervisory and regulatory agencies and organisations

31. (1) The Council may enter into an arrangement with supervisory or regulatory agencies or organisations in Namibia, as set out in the Schedule to this Act, to-

- (a) co-ordinate and harmonise the exercise of jurisdiction in respect of economic empowerment, ownership and compliance with the Economic Empowerment Framework within a particular sector of the economy; and
 - (b) secure the consistent application of the principles of this Act or any other matter relevant to the objects of the Council.
- (2) Arrangements referred to in subsection (1) may include-
- (a) provision for the exchange of information between the Council and a supervisory or regulatory agency or organisation; and
 - (b) the rendering of assistance to that agency or organisation, subject thereto that the agency or organisation has measures satisfactory to the Council in place to safeguard confidential information.

Cancellation of contract or authorisation

32. Subject to Article 18 of the Constitution, any contract or authorisation awarded by a government body on account of false information knowingly furnished

by or on behalf of a private sector enterprise in respect of its economic empowerment status, may summarily be cancelled by the government body without prejudice to any other remedies that the government body may have.

Prohibition on business with government bodies following conviction under this Act

33. (1) Any person convicted of an offence in terms of this Act may not, for a period of 10 years from the date of conviction, contract or transact any business with any government body and must for that purpose be entered into the register of tender defaulters which the Central Procurement Board must maintain for that purpose and make available to relevant stakeholders.

(2) Where the convicted person is not a natural person, the court may in its discretion restrict the order contemplated in subsection (1) to only those members, directors or shareholders who contravened the provisions of this Act.

Reporting

34. (1) All government bodies must report on their compliance with the Economic Empowerment Framework in their audited annual financial statements and annual reports required under the State Finance Act, 1991 (Act No. 31 of 1991).

(2) The-

- (a) National Training Authority must report on skills development spending and programs;
- (b) Employment Equity Commission must report on the implementation of affirmative action;
- (c) Disability Council must report on the implementation of the National Policy on Disability;

- (d) National Youth Council must report on the implementation of empowerment programs for Namibian youth,

to the Commission.

(3) The Council must furnish the President as soon as practicable after the end of each financial year with a report on its activities during the preceding year including-

- (a) the progress of economic empowerment;
- (b) the extent of implementation of the Economic Empowerment Framework;
- (c) the level of compliance of government bodies and private sector enterprises with the economic standards and transformation charters;
- (d) audited financial statements of the Commission and a report by the Auditor-General on those statements; and
- (e) any other matter which the Council deems necessary to report on.

(4) The report submitted to the President in terms of subsection (2), must be tabled in the National Assembly by the chairperson of the Council within 30 days after receipt thereof by the President, if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session.

Delegation of powers and assignment of duties

35. (1) The Commissioner may delegate any power conferred on him or her or any duty assigned to him or her under this Act, to any person with

appropriate knowledge and experience who is appointed to or contracted with the Commission to assist it in the carrying out of its functions.

(2) Despite subsection (1), the Commissioner may not delegate the powers referred to in **section 14 (1) or (4)**.

(3) A delegation under subsection (1) must be in writing and—

- (a) may be subject to any conditions or restrictions determined by the Commissioner;
- (b) does not prevent the exercise of the relevant power by the Commissioner.

(4) The Commissioner is not divested or relieved of the power or function delegated or assigned under subsection (3) and may at any time—

- (a) withdraw or amend any such delegation or assignment; or
- (b) without prejudice of any right, set aside or vary any decision made in the exercise of such power.

Conflicting interests

36. The Commissioner, members of a specialist committee and any person appointed to or contracted with the Commission to assist the Commission in the carrying out of its functions, must not—

- (a) engage in any activity that may undermine the integrity of the Commission;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a personal financial interest;

- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Commission.

Offences in connection with Commission

37. (1) It is an offence to disclose any confidential information concerning the affairs of any person obtained—

- (a) in carrying out any function in terms of this Act; or
- (b) as a result of initiating a complaint with the Commission, or participating in any proceedings in terms of this Act.

(2) Subsection (1) does not apply to information disclosed—

- (a) for the purpose of the proper administration or enforcement of this Act;
- (b) for the purpose of the proper administration of justice;
- (c) at the request of the Commission or a court entitled to receive the information; or

(d) when required to do so by any court under any law.

(3) A person commits an offence if that person—

- (a) hinders, obstructs or improperly attempts to influence the Commission when it is exercising a power or performing a duty in terms of this Act;

- (b) does anything calculated to improperly influence the Commission concerning any matter connected with an investigation by the Commission;
- (c) knowingly provides false information to the Commission;
- (d) anticipates any findings of the Commission in a way that is calculated to improperly influence the proceedings or findings;
- (e) does anything in connection with an investigation of the Commission that would have been contempt of court if the proceedings had occurred in a court of law; or
- (f) refuses to attend when summoned or, after attending, refuses to answer any question or produce any document as required by the summons, other than as contemplated in **section 29(4)(a)**.

Other offences and penalties

- 38.** (1) A person commits an offence if that person knowingly—
- (a) misrepresents or attempts to misrepresent the compliance status of an private sector enterprise;
 - (b) provides false information or misrepresents information to secure a particular compliance status or any benefit associated with complying with this Act;
 - (c) provides false information or misrepresents information to any government body in assessing the compliance status of private sector enterprise; or

(d) engages in a fronting practice.

(2) A procurement officer or other official of a government body who becomes aware of the commission of, or any attempt to commit, any offence referred to in subsection (1) and fails to report it to an appropriate law enforcement agency, is guilty of an offence.

(3) Any person convicted of an offence in terms of this Act, is liable—

(a) in the case of a contravention of subsection (1), to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover; or

(b) in the case of a contravention of subsection (2) or **section 37**, to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(4) For the purpose of determining a fine to be imposed for an offence in terms of subsection (1), the court must take into account the value of the transaction which was derived from, or sought to be derived from, the commission of the offence.

(5) A court in which any person is convicted of an offence in terms of subsection (3) must report the conviction to the Council and to that person's employer or principal, whichever is applicable.

(6) Despite anything to the contrary contained in any other law, a magistrates' court has jurisdiction to impose any penalty provided for in this Act.

Regulations

39. (1) The Minister may make regulations not inconsistent with the provisions of this Act relating to-

- (a) any matter that in terms of this Act may or must be prescribed;
- (b) the lodging of complaints with the Commission;
- (c) the conducting of investigations by the Commission;
- (d) the information that government body or private sector enterprise is required to provide to the Commission and the form and period of such reporting;
- (e) requiring all economic empowerment transactions above a prescribed threshold to be reported to the Commission; and
- (f) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation and administration of this Act.

(2) The Council may by notice in the *Gazette* issue guidelines and practice notes relating to the interpretation and application of this Act.

(3) The regulations may provide that any person who, without reasonable cause, contravenes or fails to comply with any provision thereof or any provision of the economic empowerment standards, commits an offence and may prescribe a penalty, not exceeding that prescribed by **section 38(3)**, for any contravention of or failure to comply with any provision thereof.

Short title and commencement

40. This Act shall be called the National Equitable Economic Empowerment Act, 2015 and shall come into operation on a date determined by the President by proclamation in the *Gazette*.

Schedule

Supervisory and regulatory agencies and organisations

(Section 31)

1. Employment Equity Commission
2. Bank of Namibia
3. Competition Commission
4. Communications Regulatory Authority of Namibia
5. Namibia Financial Institutions Supervisory Authority
6. Registrar of Companies
7. Offices, Ministries or Agencies regulating the fishing, mining, hunting and tourism sectors
8. Any other supervisory or regulatory agency determined by the Council by notice in the *Gazette*.