

FISHERIES
NATIONAL FISHING CORPORATION OF NAMIBIA ACT 28 OF 1991
[GOVERNMENT GAZETTE: 27 DECEMBER 1991 No.330]

ACT

To provide for the formation of the National Fishing Corporation of Namibia Limited, a company with the object of exploiting the fish and other marine resources and promoting the establishment, development and efficiency of other businesses engaged in the fishing industry; and to provide for matters incidental thereto.

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

1 Definitions

In this Act, unless the context indicates otherwise-

"**board**" means the board of directors of the Corporation;

"**Companies Act**" means the Companies Act, 1973 (Act 61 of 1973) as amended;

"**Corporation**" means National Fishing Corporation of Namibia Limited;

"**director**" includes alternate director;

"**Government**" means the Government of the Republic of Namibia;

"**fishing industry**" means the fishing industry of the Republic of Namibia and includes the whole of the trade engaged in the exploitation of the fish and other marine resources (including aquatic plants, salt and guano), the buying, selling, processing (including preserving or preparing fish or marine products, and manufacturing by any method products wholly or partly derived from fish or other marine resources), and the marketing of fish, fish products and other marine resources or products wholly or partly derived therefrom;

"**Minister**" means the Minister of Fisheries and Marine Resources;

"**Namibia**" means the Republic of Namibia;

"**private shareholder**" means any holder of shares in the Corporation other than the Government as holder of Class A and Class B shares;

"**Registrar**" means the Registrar of Companies appointed under the Companies Act.

2 Incorporation of the Corporation

(1) There shall be a corporate body to be known as National Fishing Corporation of Namibia Limited.

(2) On the issue by the Registrar of the certificates referred to in subsection (4), the Corporation shall be deemed to be a public company incorporated under the Companies Act.

(3) The Minister shall submit to the Registrar the Memorandum and Articles of Association of the Corporation which shall be signed by the Minister.

(4) The Registrar shall register the Memorandum and Articles referred to in subsection (3), issue a certificate under his or her hand and seal that the Corporation is incorporated

as a public company under the Companies Act, and issue a certificate entitling the Corporation to commence business.

(5) The Registrar shall issue such directives and authorise such deviations from the regulations made under the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to the provisions of this Act.

(6) No registration fee or any other fee payable in terms of the Companies Act shall be payable to the Registrar in respect of the registration of the Corporation or the certificate entitling it to commence business.

3 Application of provisions of Companies Act

(1) The provisions of the Companies Act shall apply to the Corporation, save for-

(a) those provisions of the Companies Act that are inconsistent with the provisions of this Act;

(b) sections 73, 103 (1), 193, 195, 208 (2) and 221 until the first annual general meeting of the Corporation.

(2) Save for the provisions of section 7 of this Act and any other provisions of the Companies Act or any other law, the exclusion of which may be inconsistent with this Act, the Minister may, by notice in the *Gazette*, exclude the application to the Corporation of any provision of the Companies Act or any other law relating to companies, or render such provision or law applicable subject to such modification as the Minister may deem fit, and the Minister may withdraw or amend such notice.

4 Memorandum and Articles of Association of corporation

(1) The Memorandum and Articles of Association of the Corporation submitted to the Registrar in terms of section 3 shall include the provisions contained in sections 5 and 6 of this Act.

(2) The Minister shall lay copies of the Memorandum and Articles of Association of the Corporation, and of all amendments thereto, upon the Table of the National Assembly within fourteen days after their registration if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within fourteen days after the commencement of its first ensuing ordinary session.

5 Certain provisions to be included in Memorandum of Association

The Memorandum of Association of the Corporation shall on registration include the following provisions-

"(1) Main objects.

The main objects of the Corporation shall be:

(a) to carry on the business of-

(i) exploiting the fish and other marine resources, including aquatic plants, salt and guano; and

(ii) buying, selling, processing and marketing of fish, fish products, such other marine resources or products derived therefrom and manufacturing fish products and products wholly or partly derived from such other marine resources; and

(iii) facilitating, promoting, guiding and assisting in the financing of:

(aa) new businesses and undertakings; and

(bb) the expansion, better organisation and modernisation of and the more efficient carrying out of operations in existing businesses and undertakings, to engage, or be engaged, in the fishing industry.

(b) to undertake research or other projects and to carry out such other activities for the development of the fishing and marine sector, or any related sector, as shall be agreed from time to time with the Minister or with any other person or body, local or foreign, provided that the Corporation shall be compensated for any costs incurred in undertaking or carrying out any such activities;

(c) to finance, by funds transferred to the Corporation by the Government, such operations or projects of such businesses and undertakings engaged in the fishing industry as the Minister may specify, and to enter into contracts with such businesses and undertakings to ensure that the operations or projects specified by the Minister are carried out.

(2) General principles on which Corporation's powers to be exercised. The Corporation shall exercise its powers with a view to enhancing corporate profit and shareholder gain, taking into account the enhancement of corporate profit and shareholder gain by the Corporation in the promotion of an economically prosperous and efficient fishing industry conducted on sound business principles.

(3) Share capital. The share capital of the Corporation shall be R300 000 000 (Three Hundred Million Rands) divided into:-

(a) 51 000 000 (Fifty One Million) Class A shares of R1,00 each;

(b) 200 000 000 (Two Hundred Million) Class B shares of R1,00 each;

(c) 19 600 000 (Nineteen Million Six Hundred Thousand) Class C shares of R1,00 each;

(d) 14 700 000 (Fourteen Million Seven Hundred Thousand) Class D shares of R1,00 each;

(e) 14 700 000 (Fourteen Million Seven Hundred Thousand) Class E shares of R1,00 each.

(4) Variation of rights. Subject to the provisions of the Memorandum of Association restricting the Corporation's power to vary the rights attached to classes of shares, the Corporation may from time to time alter its capital and its shares in the ways and in the manner provided by section 75 of the Companies Act.

(5) Allotment of shares other than for cash. In the event of any Class A or Class B shares in the Corporation being allotted or issued otherwise than for cash, the value of the consideration given for such shares shall be determined by an accountant and auditor registered under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) appointed by the Minister for that purpose, or by such other person appointed by the Minister by reason of his or her special knowledge or experience, to value such consideration.

(6) Restriction on holding of shares.

(a) Only the Government shall be entitled to hold Class A and Class B shares in the Corporation;

(b) Only citizens of Namibia who are permanently resident in Namibia shall be entitled to hold Class C shares in the Corporation;

(c) Only companies incorporated in Namibia and in which the majority of issued share capital is held by citizens of Namibia shall be entitled to hold Class D shares in the Corporation;

(d) Only companies or other corporate bodies (whether incorporated in or outside Namibia) in which the majority of issued share capital is held by persons other than citizens of Namibia shall be entitled to hold Class E shares in the Corporation;

(e) Notwithstanding the provisions of paragraphs (b), (c) and (d) of this clause, the Government shall be entitled to subscribe for such of the Class C, Class D and Class E shares as are not taken up upon the conclusion of any offer of such shares for public subscription.

(7) Voting rights. The voting rights attached to the shares of the Corporation are-

(a) The Government as holders of Class A shares in the Corporation shall, irrespective of the number of Class A shares held, be entitled to 51 000 000 (Fifty One Million) votes;

(b) No voting rights shall be attached to Class B shares;

(c) The holders of Class C, Class D and Class E shares shall be entitled to one vote for each share held by them.

(8) Dividends. Any dividends paid by the Corporation shall be paid as follows-

(a) 15% of the total dividend to the Government as the holders of Class A shares;

(b) No dividend shall be paid to the holder of Class B shares;

(c) 34% of the total dividend to the holders of Class C shares *pro rata* to their shareholding;

(d) 25,5% of the total dividend to the holders of Class D shares *pro rata* to their shareholding; and

(e) 25,5% of the total dividend to the holders of Class E shares *pro rata* to their shareholding; provided that if the nominal capital of the Class C, Class D or Class E shares has not been fully subscribed, the percentage of such dividend payable to the holders of shares of that class shall be reduced to a percentage which bears the same proportion to the percentage dividend allocated to that class of share as the number of issued shares of that class bears to the nominal share capital of that class.

(9) Ranking of shares on winding-up. In the event of the winding-up of the Corporation, all shares shall rank *pari passu* for all purposes and in all respects.

(10) Variation of rights.

(a) The rights, whether contained in the Memorandum or the Articles of Association, attached to a class of shares may be varied only with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed at a separate general meeting of the holders of the shares of the class, and the provisions of section 199 of the Companies Act shall *mutatis mutandis* apply to the said resolution and meetings as if the resolution were a special resolution. To every such separate general meeting, the provisions of the Articles of Association relating to general meetings shall *mutatis mutandis* apply but so that the necessary quorum, unless the class concerned has only one member, shall be two persons holding or representing by proxy at least half of all the issued shares of that class.

(b) The variation of rights referred to in paragraph (a) shall be deemed to include any abrogation of rights and any alteration of the issued share capital that will increase the votes of only a certain class or classes of shares, or that will not increase the votes of all the classes of shares equally."

6 Certain provisions to be included in Articles of Associations

The Articles of Association of the Corporation shall on registration include the following provisions, which provisions may be amended in accordance with the provisions of the Companies Act-

"(1) Board of directors.

The affairs of the Corporation shall be managed, controlled, supervised, evaluated and reviewed by a Board of Directors, which may exercise all such powers of the Corporation as are by the Companies Act or these Articles of Association required to be exercised by the shareholders of the Corporation at a general meeting of shareholders.

(2) Share qualification.

It shall not be necessary for any director to hold any shares in the Corporation in order to qualify himself or herself as such.

(3) Remuneration of directors.

(a) A director who is not in the full-time employment of the State shall hold office upon such conditions, including conditions as to remuneration and allowances, as may be determined by the board.

(b) An alternate director who is not in the full-time employment of the State shall be remunerated, as determined by the board, out of the remuneration which is due to the director in whose place he or she is acting or which would have become due to such director if he or she had acted as director.

(c) If a director or alternate director performs any work on behalf of the Corporation other than his or her work as a director or holds any office in the employ of the Corporation other than his or her office of director, such director may be paid such additional remuneration as the board may determine.

(4) Chairperson.

(a) The directors shall appoint one of their number as chairperson of the board who shall preside at all meetings of the board at which he or she is present and who, in the event of an equality of votes on any matter, shall have a casting vote in addition to his or her deliberative vote.

(b) If at any meeting the chairperson is not within ten minutes of the time appointed for holding the same present or willing to act as chairperson thereof, the directors present shall choose someone of their number to be chairperson of such meeting, and the person so acting shall have a casting vote in addition to his or her deliberative vote.

(5) Chief executive officer.

(a) The board may from time to time, on such conditions as it may determine, appoint one of its members or any other person who is not a member of the board as chief executive officer of the Corporation.

(b) The chief executive officer shall occupy himself or herself full-time with the affairs of the Corporation and shall perform such functions as the board may assign to him or her.

(c) The board may from time to time delegate to the chief executive officer such of its powers subject to such conditions as it may deem fit.

(d) If the chief executive officer is for any reason unable to act as such the board may appoint any other member of the board or any other person to act as chief executive officer during the period that the chief executive officer is unable to act as such.

(e) A director or other person appointed to act as chief executive officer under

paragraph (d) shall while so acting have all the powers and perform all the duties of the chief executive officer.

(6) Number of directors. The board shall consist of eight directors of whom-

(a) one shall be the Permanent Secretary: Fisheries and Marine Resources;

(b) four shall be persons who are not officers or employees in the Public Service and who shall be appointed by the Minister; and

(c) three shall be elected by the private shareholders in a manner prescribed by the Minister by notice in the *Gazette*; provided that if at any time the number of directors holding office is less than eight, the directors holding office shall for all purposes constitute the board of directors of the Corporation.

(7) Directors holding office of profit. Not more than three directors (including the chief executive officer if he or she is a director) may hold an office of profit under the Corporation.

(8) Alternate directors.

(a) The Minister may in respect of the director referred to in paragraph (a) of clause (6) and every director appointed under paragraph (b) of that clause, appoint an alternate director to act in the place of such director during his or her absence or inability to act as a member of the board.

(b) Each director elected by the private shareholders may appoint a person approved by the board to act as alternate director in his or her place during his or her absence or inability to act as member of the board.

(9) Period of office of directors.

(a) A director other than the director referred to in paragraph (a) of clause (6) shall, subject to the provisions of these articles, hold office for such period, not exceeding three years as-

(i) in the case of a director appointed by the Minister, the Minister determined at the time of his or her appointment;

(ii) in the case of a director elected by the private shareholders, the private shareholders determined at the time of his or her election.

(b) A director shall be eligible for re-appointment or re-election, as the case may be, after the expiration of his or her term of office.

(10) Disclosure of directors' interests.

(a) A director who has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Corporation shall disclose that interest or duty to the board in the manner provided by sections 234 to 237 of the Companies Act, and such disclosure shall be deemed to constitute disclosure to the Corporation.

(b) A director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he or she, directly or indirectly, has an interest or duty which is material and which conflicts or may conflict with the interests of the Corporation, and he or she shall not be counted in the quorum present at a meeting in relation to a resolution on which he or she is not entitled to vote."

7 Amendment of Memorandum and Articles of Association

After registration of the Corporation by the Registrar, the Memorandum and Articles of Association of the Corporation may only be amended as provided by the

Companies Act, notwithstanding anything to the contrary in this Act contained.

8 Shares shall be registered in name of beneficial owner

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1) No shares shall be registered in the name of any person other than that of its beneficial owner.

(2) The shares of a beneficial owner who causes or permits his or her shares to be registered in a name other than his or her own shall be forfeited to the State.

9 Representative appointed by Minister

(1) The Minister shall appoint a representative to attend a meeting or meetings of the shareholders and to vote thereat on behalf of the Government.

(2) Such representative shall have the right-

(a) to requisition the directors to call a meeting of the shareholders and give the members notice of any resolution he or she intends to move at any general meeting;

(b) to require that any resolutions he or she moves at any meeting of shareholders, of which the members have been given due notice, be put to the meeting; and

(c) to demand that a poll be taken on any question, including the election of a chairperson of the meeting and the adjournment of the meeting.

(3) If at the time and place appointed for a meeting of shareholders, no private shareholders are present in person or represented by proxy, a resolution signed by the representative of the Minister shall be deemed to be a resolution of shareholders taken at a meeting of shareholders.

10 Information to be furnished to Minister and to National Assembly

(1) The Corporation shall on the day on which it sends copies of the annual financial statements to its members as provided in subsection (1) of section 302 of the Companies Act, send to the Minister a copy, certified to be a true copy by a director and the secretary of the Corporation of-

(a) the annual financial statements and group annual financial statements, if any;

(b) the annual financial statements of every private company which is a subsidiary of the Corporation; and

(c) the directors' report, which report shall, in addition to the information required by section 299 of the Companies Act, deal with what the Corporation has done and plans to do, and with what the directors consider can be done by the Government, to improve the efficiency and otherwise promote the fishing industry.

(2) The Minister shall lay copies of the report and the financial statements referred to in subsection (1) upon the Table of the National Assembly within fourteen days after receipt thereof by the Minister, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within fourteen days after the commencement of its first ensuing ordinary session.

11 Procedure for election of private directors

The Minister may, by notice in the *Gazette*, determine the procedure for the election of the directors required to be elected by the private shareholders.

12 Winding-up and judicial management

The Corporation shall not be wound up or placed under judicial management except by or under the authority of an Act of Parliament.

13 Transfer of certain assets and rights to Corporation

(1) In this section-

"promoters" means the two persons who in terms of a resolution taken on 1 September 1987 by the former Cabinet under the Administration of the Administrator-General before Namibia's independence were appointed for the purpose of forming a public company to procure interests in the fishing industry for the benefit of the inhabitants of Namibia;

"trust" means the assets and rights which were acquired by or accrued to the promoters in their capacities as trustees of the public company they were commissioned to form, and includes any assets and rights held by any other person for or on behalf of such company, which assets and rights shall be deemed to be a trust for the purposes of this section.

(2) The Minister shall, on such conditions as the Minister may determine, appoint a person whom the Minister deems fit to take charge of the trust and dispose of it in accordance with the provisions of this section.

(3) On the appointment of a person under subsection (2), the trust shall vest in such person who shall deal with it in a manner which shall be most beneficial to the trust for the purpose of the vesting of the net assets and rights of the trust in the Corporation in terms of subsection (7).

(4) The person appointed under subsection (2) may-

(a) make such investigations as he or she may deem necessary in order to establish what the assets, rights, obligations and liabilities of the trust are; (b) subject to the approval of the Minister, enforce any right, liquidate any assets, or fulfil any obligation or liability of the trust;

(c) subject to the approval of the Minister, dispute or settle any claim against the trust;

(d) demand or obtain from any person any information or any document, book or voucher in the possession or under the control of any person in relation to the affairs of the trust.

(5) Any person who fails or refuses to comply with a demand made in terms of paragraph (d) of subsection (4) by the person concerned, shall be guilty of an offence and on conviction liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) If the President deems it necessary for the proper discharge of the functions of the person appointed under subsection (2), the President may by proclamation in the *Gazette* declare the provisions of the Commissions Act, 1947 (Act 8 of 1947), to be applicable with reference to the person so appointed, subject to such modifications and exceptions as may be specified in such proclamation, as if the person so appointed were a commission contemplated in section 1 of that Act.

(7) The person appointed under subsection (2) shall upon the completion of his or her functions in accordance with the provisions of this section, furnish the Minister with a report on his or her activities and with an inventory of the net assets and rights of the

trust.

(8)The net assets and rights referred to in subsection (1)shall with effect from a date determined by the Minister by notice in the *Gazette* vest in the Corporation.

14 Exemptions from liability

(1)No act or omission whatever by the Minister,or by any officer or other person in the employment of the State,in relation to the Corporation shall subject the State to liability for any loss or damage sustained by the Corporation or by any other person in consequence of any such act or omission.

(2)No act or omission whatever by the Minister or the Permanent Secretary: Fisheries and Marine Resources in relation to the Corporation shall subject him or her to any liability to the Corporation or any other person in consequence of any such act or omission unless such act or omission was *mala fide* .

15 Short title

This Act shall be called the National Fishing Corporation of Namibia Act,1991.