REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

PUBLIC ENTERPRISES GOVERNANCE AMENDMENT BILL

(As passed by the National Assembly)

(Introduced by the Prime Minister)

[B. 10 - 2025]

BILL

To amend the Public Enterprises Governance Act, 2019, so as to delete and substitute certain definitions; transfer certain powers and functions relating to public enterprises from the Minister responsible for public enterprises and the Minister responsible for Finance to the Prime Minister and the relevant Minister; provide for the powers and functions of the relevant Minister and the Prime Minister in relation to public enterprises; make provision for the designation of a recruitment committee; provide for agreements in relation to dividends between the relevant Minister, the Minister responsible for Finance and the Prime Minister; insert provisions relating to approval of a dividend policy in respect of commercial public enterprises by the relevant Minister; provide for the approval of a proposed investment by the relevant Minister with the concurrence of the Minister responsible for Finance; provide for the validation of certain acts done by the relevant Minister, the Minister responsible for Finance or the Prime Minister in respect of commercial public enterprises; and provide for incidental matters.

(Introduced by the Prime Minister)

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

Amendment of section 1 of Act No. 1 of 2019

1. Section 1 of the Public Enterprises Governance Act, 2019 (in this Act referred to as "the principal Act") is amended by the –

(a) deletion of the definition of "Minister";

(b) substitution for the definition of "Ministry" of the following definition:

""Ministry" means the Ministry responsible for **[public enterprises]** <u>the sector under which a public enterprise primarily operates</u>;"; and

(c) substitution for the definition of "relevant Minister" of the following definition:

""relevant Minister" means **[-**

(a) in respect of a non-commercial public enterprise -] <u>the Minister responsible for the sector under which the public enterprise primarily operates;</u>

[(i) that is created by a law, the Minister responsible for the administration of the law governing the establishment and functions of the public enterprise; and

(ii) that is not created by a law, the Minister responsible for the matters for which the public enterprise was established;

(b) **in respect of a commercial public enterprise, the Minister; and**

(c) **in respect of an extra-budgetary fund, the Minister responsible for Finance;]**”.

Amendment of Act No. 1 of 2019

2. (1) The principal Act is amended by the substitution for the words “the Minister” of the words “Prime Minister” in sections 2(1), 2(2), 2(3), 2(4), 3, 4(1), 4(2), 4(5), 11(1), 12(1), 12(2), 14(5)(e), 17(1), 17(2), 18(1), 18(3), 19, 24(1), 33(1), 33(3), 34(c), 35(1), 35(1)(d), 35(2), 35(2)(b), 36, 37, 38(1), 38(1)(a) and 43(1).

(2) The principal Act is amended by the substitution for the words “the Minister” of the words “relevant Minister” in sections 7(1),11(5), 16(2), 20(1), 20(2), 20(3)(a), 23(3), 26, 27(4), 28, 29(1), 29(2), 29(4), 30(2), 32(1), 32(2), 32(3) and 32(4).

Amendment of section 4 of Act No. 1 of 2019

3. Section 4 of the principal Act is amended by the –

(a) substitution for the heading of section 4 of the following heading:

“**Functions and powers of <u>Prime</u> Minister**”;

(b) substitution for subparagraph (iv) of paragraph (e) of subsection (1) of the following subparagraph:

“(iv) <u>the remuneration levels and</u> benefits for employees of public enterprises generally;”;

(c) substitution for subparagraph (v) of paragraph (e) of subsection (1) of the following subparagraph:

“(v) the classes of contracts entered into by a public enterprise (including joint ventures, acquisition of other businesses and agreements relating to the corporate structure of a partner of a public enterprise) **[that may only be concluded after consultation with the relevant Minister, the Minister or the Minister responsible for Finance]**;”;

(d) addition of the following subparagraphs after subparagraph (v):

“<u>(vi) the appointment, reappointment, terms and conditions of appointment and removal of board members of public enterprises;</u>

<u>(vii) the appointment, suspension and removal of chief executive officers and other senior management staff of public enterprises;</u>

<u>(viii) the terms and conditions of appointment of chief executive officers and other senior management staff of public enterprises; and</u>

(ix) the integrated strategic business plan, an annual financial plan, a business plan, an investment plan and a dividend policy of public enterprises;";

(e) deletion of paragraphs (f) and (g) of subsection (1);

(f) substitution for paragraph (h) of subsection (1) of the following paragraph:

"(h) to furnish a relevant Minister with **[any comments he or she may wish to make]** recommendations that are necessary in relation to an integrated strategic business plan, an annual financial plan **[and]**, a business plan, an investment plan, a dividend policy or an annual budget of a public enterprise **[submitted to that Minister for approval and provided to the relevant Minister for information and comment]**;";

(g) deletion of paragraph (j) of subsection (1);

(h) substitution for subsection (3) of the following subsection:

"(3) Subsection (2) is not applicable in relation to a company in which any person holds shares conjointly with the State, in which event the relevant provisions of the memorandum of association and the articles of association, or any relevant law, are applicable, except that the provisions of section 8 **[9]** must be complied with in relation to any natural or juristic persons required to be appointed or nominated as directors or alternate directors by or on behalf of the State.";

(i) substitution for subsection (6) of the following subsection:

"(6) The Prime Minister must exercise [**the]** or perform his or her powers and functions relating to public enterprises, in terms of this Act, after consultation with Cabinet, and in the best interest of the State and the public enterprise concerned with due regard to the purpose for which the enterprise has been established;";

(j) deletion of subsection (7);

(k) insertion after subsection (7) of the following subsection:

"(7A) The Prime Minister must by notice in the *Gazette* publish any directives laid down in terms of section 4(1)(e) and such directives have the force of law."; and

(l) addition of the following subsection after subsection (8):

"(9) The Prime Minister must ensure compliance by public enterprises with the directives as set under section 4 of the Act.".

Insertion of sections 4A and 4B in Act No. 1 of 2019

4. The principal Act is amended by the insertion after section 4 of the following sections:

"**Powers and functions of relevant Minister**

4A. (1) In addition to any other powers conferred or functions imposed on the relevant Minister by this Act, the relevant Minister must -

(a) represent the State's ownership interest in respect of a public enterprise under his or her portfolio;

(b) appoint members of the board in terms of section 8 in accordance with the directives laid down by the Prime Minister under section 4(1)(e);

(c) remove members of the board in accordance with the directives laid down by the Prime Minister under section 4(1)(e);

(d) provide strategic directions and leadership to the board to ensure the board is able to execute its duties and perform the functions assigned in terms of this Act or the constituent document of the public enterprise;

(e) monitor and evaluate the performance of the public enterprise in accordance with the criteria set in terms of section 4(1)(d) of this Act;

(f) enter into governance and performance agreements, respectively, with the board and individual board members in accordance with the provisions of this Act;

(g) approve the integrated strategic business plan, annual business and financial plan, the annual budget and investment policy of the public enterprise in accordance with the provisions of this Act;

(h) approve, after consultation with the Minister responsible for Finance, a dividend policy submitted in terms of section 21;

(i) approve, in accordance with the directives laid down by the Prime Minister under section 4(1)(e)(iii), the remuneration of the board members and management staff of the public enterprise; and

(j) present the annual report of the public enterprise to the National Assembly in accordance with the provisions of this Act.

(2) The relevant Minister must exercise the powers and perform the functions relating to public enterprises under his or her portfolio, after consultation with Cabinet, in the best interest of the State and the public enterprise concerned, and with due regard to the purpose for which the public enterprise is established.

(3) The relevant Minister must ensure that staff members in the Ministry, Office or Agency for which the relevant Minister is responsible are made available to perform the functions of the relevant Minister under this Act or the establishing law or constituent document of a public enterprise in

a manner that enables the board of the public enterprise to carry out its duties promptly and efficiently.

Shareholder functions

4B. (1) Despite the provisions of any law, the relevant Minister must represent the Government as the shareholder of a state-owned company or a commercial public enterprise and must exercise powers and perform functions of a shareholder on behalf of the Government including the power to -

(a) approve, subject to subsection (2), in concurrence with the Minister responsible for Finance, major transactions outside the ordinary course of business that may materially impact the State's equity in the public enterprise, and if the relevant Minister is the Minister responsible for Finance, approval may be given after consultation with the Prime Minister;

(b) approve, subject to subsection (2), in concurrence with the Prime Minister and the Minister responsible for Finance, significant changes to the capital structure or constitutional documents of the public enterprise, and if the relevant Minister is the Minister responsible for Finance, approval may be given after consultation with the Prime Minister;

(c) authorise the disposal or acquisition of a material portion of the public enterprise's assets or undertaking with the concurrence of the Minister responsible for Finance, and if the relevant Minister is the Minister responsible for Finance, authorisation may be given after consultation with the Prime Minister; and

(d) call for general meetings of the public enterprise where necessary to exercise shareholder rights or address matters of significant implication to the State.

(2) The relevant Minister must exercise and perform the powers and functions referred to in subsection (1) with the approval of Cabinet, in the best interest of the State and of the public enterprise or state-owned company concerned, and with due regard to the purpose for which the public enterprise has been established.

(3) Despite subsection (1), the powers and functions related to the raising of a loan, furnishing a guarantee, indemnity or security in respect of any financial commitment are subject to PART IV and section 36 of the State Finance Act, 1991 (Act No. 31 of 1991).".

Amendment of section 5 of Act No. 1 of 2019

5. Section 5 of the principal Act is amended by the –

(a) substitution for subsection (1) of the following subsection:

"(1) A staff member of a Ministry, the Office of the Prime Minister or any other person who exercises a power or performs a function in terms of this Act may not disclose to any person information relating to the affairs of a public enterprise or of any other person, acquired by him or her in the exercise of his or her powers or the performance of his or her functions under this Act, except -

(a) for the purpose of the exercise of his or her powers or the performance of his or her functions in terms of this Act or any other law; or

(b) as a result of performing any duty or rendering any service to the Ministry.

[A staff member of the Ministry or any consultant engaged by the Ministry must not publish or communicate or in any other way disclose any information relating to the affairs of any public enterprise or a member of the board of a public enterprise or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person's knowledge -

(a) in the performance of any function in connection with the functions of the Minister; or

(b) as a result of performing any duty or rendering any service at or to the Ministry.]"; and

(b) substitution for subsection (2) of the following subsection:

"(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 the functions of **[the]** a relevant Minister or the Prime Minister;

(b) for the proper administration of justice; or

(c) at the request of any staff member of **[the]** a Ministry, the Office of the Prime Minister or any other person authorised in writing by **[the]** a relevant Minister or the Prime Minister.".

Amendment of section 6 of Act No. 1 of 2019

6. Section 6 of the principal Act is amended by the addition of the following subsection after subsection (2):

"(3) Despite subsections (1) and (2) and section 8, if the provisions of an establishing law or document require nominations from various institutions or persons for the constitution of a board of a public enterprise that establishing law or document applies and the relevant Minister may, with due regard to section 4(2)(a) and with the concurrence of the Prime Minister, reduce the number of board members to be appointed.".

Insertion of section 7A in Act No. 1 of 2019

7. The principal Act is amended by the insertion after section 7 of the following section:

"**Limitation on term of office of board member**

7A. (1) A member of the board holds office for a term of three years.

(2) A member of the board referred to in subsection (1) is eligible for re-appointment, at the expiration of that term, for a period not exceeding one additional term.

(3) Despite section 8(1) and subject to subsection (5) of that section, the relevant Minister may reappoint a member of the board referred to in subsection (2) if he or she is satisfied that such member of the board complies with the conditions in the performance agreement referred to in section 12.

(4) A member of the board referred to in subsection (2) may only be appointed for more than two consecutive terms if the appointment is as a result of a shortage of relevant skill on the board and after consultation with the Prime Minister.".

Amendment of section 8 of Act No. 1 of 2019

8. Section 8 of the principal Act is amended by the –

(a) substitution for the heading of section 8 of the following heading:

"**Procedure for appointment on board of [non-commercial] public enterprise**" **[or extra-budgetary fund]**";

(b) substitution for subsection (1) of the following subsection:

"(1) Whenever it is necessary to appoint members of the board of a **[non-commercial]** public enterprise **[or of an extra-budgetary fund]**, either upon a first constitution or a new term of office of members of the board, or for filling a vacancy, the recruitment committee **[staff members]** designated by the relevant Minister must **[, after consultation with the relevant Minister,]** make a report to the relevant Minister, in accordance with the directives laid down by the Prime Minister under section 4(1)(e), containing -

(a) recommendations on -

(i) the number of members, including executive members, if any, to be appointed if the establishing law or document provides that the relevant Minister has a discretion relating to the number in question;

(ii) the term for which the members, or members in particular positions are to be appointed if the establishing law or document provides that the relevant Minister has a discretion relating to the term in question; and

(iii) the expertise required in the membership of the board;

(b) the names of persons, equal to at least one and a half times the number of members recommended under paragraph (a)(i), who are qualified to be members of the board and who are recommended as being most suited to serve on the board, including the persons recommended to serve as executive members, if any, together with reasons why they are recommended; <u>and</u>

(c) in relation to the persons recommended under paragraph (b), particulars of -

(i) their personal details;

(ii) their knowledge, experience and skills concerning issues relevant to the functions of the public enterprise concerned; and

(iii) their commitment, if any, in relation to positions held on boards of other public enterprises and interests held in private undertakings<u>.</u>**[; and]**

[(d) any other information that may be relevant to enable the Minister to give the advice contemplated in this section.]";

(c) insertion of the following subsection after subsection (1):

<u>"(1A) The relevant Minister may, for the purpose of filling not more than two vacancies on the board, appoint a person with the knowledge, experience and skills relevant to the functions of the public enterprise as a member of the board without following the procedure set out in subsection (1).</u>";

(d) substitution for subsection (3) of the following subsection:

"(3) After the <u>relevant</u> Minister has considered the report prepared in terms of subsection (1), he or she must <u>submit the names of persons to be appointed as members of the board to Cabinet for consideration</u> [**forward the report together with his or her advice to the relevant Minister**].";

(e) deletion of subsection (4); and

(f) substitution for subsection (6) of the following subsection:

(6) When making an appointment under subsection (5), the relevant Minister is not bound by the recommendations <u>in the report</u> of the <u>recruitment committee referred to in subsection (1)</u> **[designated staff members referred to in subsection (1) or the advice given under subsection (4)]**: Provided that if he or she does not follow the recommendation **[or advice]**, the reason for the departure must be stated in the submission to Cabinet.".

Repeal of section 9 of Act No. 1 of 2019

9. The principal Act is amended by the repeal of section 9.

Amendment of section 10 of Act No. 1 of 2019

10. The principal Act is amended by the –

(a) substitution for section 10 of the following section:

"**Temporary board members**

10. (1) If at any time during the term of office of the board of a public enterprise <u>or following the expiry of the term of office of the board of a public enterprise</u> -

(a) the offices of all the members of the board become vacant; or

(b) the number of members of the board is reduced to less than the number of members required for a quorum of the board,

the relevant Minister may, despite **[sections]** <u>section</u> 8 **[and 9]** or anything to the contrary in any other law contained, and if circumstances of a pressing or urgent nature so require, appoint suitably qualified persons on a temporary basis to serve on the board until new members are appointed.

(2) **[The appointment of a person as member of a board under subsection (1) ceases to be of effect upon expiry of a period of six months from the date of the appointment, but the Minister may extend the period by an additional period of not more than two months at a time.]** <u>The appointment made in terms of subsection (1) must be for a period not exceeding six months, but the relevant Minister may extend the term of office for an additional period of not more than four months</u>."; and

(b) addition of the following subsection after subsection (2):

"<u>(3) The relevant Minister may, in special circumstances, with the concurrence of the Prime Minister, extend the appointment of the board members referred to in subsection (1) for another four months and there will be no further extension granted after that.</u>".

Amendment of section 13 of Act No. 1 of 2019

11. Section 13 of the principal Act is amended by the –

(a) substitution for subsection (2) of the following subsection:

"(2) <u>The relevant Minister must -</u> **[In the case of a commercial public enterprise -]**

(a) **[the Minister must]** forward the integrated strategic business plan submitted to him or her by a public enterprise through its board to any **[other]** Minister who in his or her opinion has a substantial interest in that public enterprise, for scrutiny and recommendation [**information and comment],** if any; and

(b) **[the Minister must]** after **[considering any comments]** consideration of any recommendation received in terms of paragraph (a), approve the integrated strategic business plan if he or she is satisfied with it or must refer it back to the board of the public enterprise, together with his or her comments and instructions for amendments **[thereto]** to the integrated strategic business plan.”; and

(b) deletion of subsection (3).

Amendment of section 14 of Act No. 1 of 2019

12. Section 14 of the principal Act is amended by the –

(a) substitution for subsection (2) of the following subsection:

“(2) The relevant Minister must - **[In the case of a commercial public enterprise -]**

(a) **[the Minister must]** forward the **[integrated]** annual business and financial plan submitted to him or her by a public enterprise through its board, to any **[other]** Minister who in his or her opinion has a substantial interest in that public enterprise, for scrutiny and recommendation [**for information and comment]**, if any; and

(b) **[the Minister must]** after **[considering any comments]** consideration of any recommendation received in terms of paragraph (a), approve the annual business and financial plan if he or she is satisfied with it or must refer it back to the board of the public enterprise, together with his or her comments and instructions for amendments **[thereto]** to the annual business and financial plan.”; and

(b) deletion of subsection (3).

Amendment of section 15 of Act No. 1 of 2019

13. Section 15 of the principal Act is amended by the –

(a) substitution for paragraph (e) of subsection (2) of the following paragraph:

“(e) furnish the relevant Minister **[and the Minister, in the case of a non-commercial public enterprise or an extra-budgetary fund,]** with a copy of the completed budget within **[2]** two months after the commencement of the financial year.”; and

(b) substitution for subsection (3) of the following subsection:

"(3) A public enterprise must not incur any expenditure except in accordance with an estimate of expenditure approved under this section: Provided that the relevant Minister with the concurrence of the Minister responsible for Finance may give his or her permission for the incurring of expenditure not contained in the estimate if unforeseen circumstances have arisen since the preparation of the estimate, and if the relevant Minister is the Minister responsible for Finance, the Minister responsible for Finance may give his or her permission with the concurrence of the Prime Minister.".

Substitution of section 21 of Act No. 1 of 2019

14. The principal Act is amended by the substitution for section 21 of the following section:

"**Dividends by commercial public enterprise**

21. (1) A commercial public enterprise must develop a dividend policy and submit it to the relevant Minister for approval.

(2) Prior to the approval, the relevant Minister must forward the dividend policy to the Prime Minister for scrutiny and advice.

(3) The relevant Minister must, after due consideration of any advice received, approve, with the concurrence of the Minister responsible for Finance, the dividend policy if he or she is satisfied or must refer the dividend policy back to the board of the commercial public enterprise, together with his or her comments and instructions for amendments to the dividend policy.

(4) The board of a commercial public enterprise must, submit to the relevant Minister a proposal on the distribution of profits for the preceding financial year and the declaration of dividends.

(5) The board of a commercial public enterprise must declare and pay the dividends -

(a) referred to in subsection (4) as is agreed to between the board, the relevant Minister and the Minister responsible for Finance; or

(b) referred to in subsection (4) as is agreed to between the board, the Minister responsible for Finance and the Prime Minister, where the relevant Minister is the Minister responsible for Finance.

[The board of a commercial public enterprise must -

(a) annually, at such time as the Minister may determine, submit to the Minister a proposal on the distribution of its profits for the past financial year and the declaration of dividends; and

(b) declare and pay such dividends -

(i) as is agreed to between the board and the Minister: Provided that the Minister responsible for Finance concurs with the agreement in question; or

(ii) as is directed in writing by the Minister with the concurrence of the Minister responsible for Finance, if an agreement referred to in subparagraph (i) has not been reached.]".

Amendment of section 22 of Act No. 1 of 2019

15. Section 22 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) The board of a public enterprise must as soon as possible, but in any case not later than six months after the end of each financial year of the public enterprise, submit an annual report on the operations of the public enterprise in that year to the relevant Minister, and simultaneously to the Prime Minister **[in the case of a non-commercial public enterprise or an extra-budgetary fund]**.".

Amendment of section 23 of Act No. 1 of 2019

16. Section 23 of the principal Act is amended by the insertion after subsection (3) of the following subsections:

"(3A) The relevant Minister must, with the concurrence of the Minister responsible for Finance, approve any proposed investment to be conducted by a public enterprise.

(3B) If the relevant Minister is the Minister responsible for Finance -

(a) the Minister responsible for Finance must for purposes of subsection (3A) consult with the Prime Minister; and

(b) the Minister responsible for Finance and the Prime Minister must agree before any investment referred to in subsection (3A) is approved.".

Substitution of section 25 of Act No. 1 of 2019

17. The principal Act is amended by the substitution for section 25 of the following section:

"**Power to direct special investigation**

25. If the relevant Minister [**(**] after consultation with the Prime [**relevant**] Minister, **[in the case of a non-commercial public enterprise or an extra-budgetary fund)]** considers it necessary or desirable for any reason, the relevant Minister may direct that a special investigation be conducted in relation to any matter concerning the business, trade, dealings, affairs, assets or liabilities of a public enterprise.".

Amendment of section 38 of Act No. 1 of 2019

18. Section 38 of the principal Act is amended by the substitution for paragraph (k) of subsection (1) of the following paragraph:

"(k) prescribing any matter on which **[the Minister may issue]** directives may be issued under section 4(1)(e); and".

Amendment of section 39 of Act No. 1 of 2019

19. The principal Act is amended by the substitution for section 39 of the following section:

"**Limitation of liability**

39. Neither the relevant Minister, the Prime Minister nor any person engaged in carrying out any provision of this Act, is liable in respect of anything done or omitted in good faith and not attributable to intent or negligence in the exercise of a power or performance of a duty or function under or by virtue of this Act or in respect of anything that may result therefrom.".

Substitution of section 40 of Act No. 1 of 2019

20. The principal Act is amended by the substitution for section 40 of the following section:

"**Exemptions**

40. Upon written application of a public enterprise, made through the relevant Minister and on good cause shown, the Prime Minister may, **[in consultation]** with the concurrence of Cabinet, by notice in the *Gazette* exempt the public enterprise from any of the provisions of this Act.".

Amendment of section 42 of Act No. 1 of 2019

21. Section 42 of the principal Act is amended by the –

(a) deletion of subsections (5), (6) and (7); and

(b) addition of the following subsection after subsection (8):

"(9) Anything done by the relevant Minister, the Minister responsible for Finance or the Prime Minister in respect of a commercial public enterprise from 21 March 2025 until the commencement of this Act is deemed to have been done by the Minister responsible for public enterprises in accordance with the provisions of this Act and is valid.".

Short title and commencement

22. (1) This Act is called the Public Enterprises Governance Amendment Act, 2025 and comes into operation on a date determined by the Prime Minister by notice in the *Gazette*.

(2) The Prime Minister, under subsection (1), may determine different dates for commencement of different sections.