

Namibia

## Agricultural (Commercial) Land Reform Act, 1995

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Republic of Namibia  
Annotated Statutes

## Agricultural (Commercial) Land Reform Act, 1995

### Act 6 of 1995

Published in [Government Gazette no. 1040](#) on 3 March 1995

Assented to on 15 February 1995

There are multiple commencements:

Provisions	Status
Section 58–60, section 61, section 62	commenced on 3 March 1995
Section 1–13, section 63–75, section 76, section 77–79, section 80, section 81	commenced on 6 December 1995 by <a href="#">Government Notice 230 of 1995</a>
Section 14–17, section 18–37, section 38–57	commenced on 17 October 1996 by <a href="#">Government Notice 271 of 1996</a>
Section 13A–13D, section 37A	commenced on 29 December 2001 by <a href="#">Act 16 of 2000</a>
Section 75A, section 76A, section 76B, section 79A	commenced on 29 December 2001 by <a href="#">Act 2 of 2001</a>
Section 17A, section 60A	commenced on 1 March 2003 by <a href="#">Act 13 of 2002</a>

*[Up to date as at 14 July 2020]*

*[Amended by [Agricultural \(Commercial\) Land Reform Amendment Act, 2000 \(Act 16 of 2000\)](#) on 29 December 2001]*

*[Amended by [Agricultural \(Commercial\) Land Reform Amendment Act, 2001 \(Act 2 of 2001\)](#) on 29 December 2001]*

*[Amended by [Agricultural \(Commercial\) Land Reform Amendment Act, 2002 \(Act 13 of 2002\)](#) on 1 March 2003]*

*[Amended by [Agricultural \(Commercial\) Land Reform Amendment Act, 2003 \(Act 14 of 2003\)](#) on 19 November 2003]*

*[Amended by [Agricultural \(Commercial\) Land Reform Second Amendment Act, 2003 \(Act 19 of 2003\)](#) on 1 April 2004]*

*[Amended by [Agricultural \(Commercial\) Land Reform Amendment Act, 2013 \(Act 8 of 2013\)](#) on 31 May 2013]*

*[Amended by Agricultural (Commercial) Land Reform Amendment Act, 2014 (Act 1 of 2014) on 17 March 2014]*

*[Part VI came into force on date of publication: 3 March 1995 (section 81(3) of Act)]*

*[remainder of Act, with the exception of Parts II, III, IV and V, brought into force on 6 December 1995 by GN 230/1995 (GG 1214)]*

ACT

**To provide for the acquisition of agricultural land by the State for the purposes of land reform and for the allocation of such land to Namibian citizens who do not own or otherwise have the use of any or of adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices; to vest in the State a preferent right to purchase agricultural land for the purposes of the Act; to provide for the compulsory acquisition of certain agricultural land by the State for the purposes of the Act; to regulate the acquisition of agricultural land by foreign nationals; to establish a Lands Tribunal and determine its jurisdiction; and to provide for matters connected therewith.**

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

## 1. Definitions

In this Act, unless the context otherwise indicates -

“**agricultural land**” means any land or an undivided share in land, other than -

- (a) land situated in a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);
- (b) land situated in a settlement area as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992);
- (c) land of which the State is the owner or which is held in trust by the State or any Minister for any person;
- (d) land which the Minister by notice in the Gazette excludes from the provisions of this Act;

“**agricultural purposes**” includes game farming;

“**alienate**”, in relation to agricultural land, means sell, exchange, donate or otherwise dispose of, whether for any valuable consideration or otherwise, and includes, in the case where such land is registered in the name of -

- (a) a company, the sale or transfer of shares of the company to another person; or
- (b) a close corporation, the sale or transfer of any member’s interest in the close corporation, or any portion of such interest to another person.

*[definition of “alienate” substituted by Act 13 of 2002 and by Act 1 of 2014; the definition as substituted by Act 1 of 2014 should end with a semicolon rather than a full stop]*

“**body corporate**” means a body corporate established by an Act of Parliament, but does not include a company or close corporation formed by virtue only of being registered respectively under the Companies Act, 1973 (Act No. 61 of 1973), and the Close Corporations Act, 1988 (Act No. 26 of 1988);

*[The definition of “body corporate” is inserted by Act 13 of 2002. The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]*

“**close corporation**” means a close corporation registered under the Close Corporations Act, 1988 (Act 26 of 1988);

“**Commission**” means the Land Reform Advisory Commission established by section 2;

“**company**” means a company registered in terms of the Companies Act, 1973 (Act 61 of 1973);

*[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]*

“**controlling interest**”, in relation to -

- (a) a company, means -
  - (i) more than 50 per cent of the issued share capital of the company;
  - (ii) more than half of the voting rights in respect of the issued shares of the company; or
  - (iii) the power, either directly or indirectly, to appoint or remove the majority of the directors of the company without the concurrence of any other person; or
- (b) a close corporation, means more than 50 per cent of the interest in the close corporation;

“**date of expropriation**” means the date contemplated in section 20(2)(b);

“**date of notice**”, in relation to an expropriation notice or any other notice required or authorised to be given by the Minister under any provision of this Act, means the date on which such a notice is in terms of subsection (1) of section 78 delivered, tendered or posted to a person or is in terms of subsection (2) of that section published in the Gazette, and if such a notice is so delivered, tendered or posted as well as so published, the date on which it is published;

“**expropriation notice**” means a notice contemplated in section 20(2);

“**foreign national**” means -

- (a) a person who is not a Namibian citizen;
- (b) in relation to a company -
  - (i) a company incorporated under the laws of any country other than Namibia; or
  - (ii) a company incorporated in Namibia in which the controlling interest is not held by Namibian citizens or by a company or close corporation in which the controlling interest is held by Namibian citizens; and
- (c) in relation to a close corporation, a close corporation in which the controlling interest is not held by Namibian citizens;

“**Fund**” means the Land Acquisition and Development Fund established by section 13A of this Act;

*[definition of “Fund” inserted by Act 16 of 2000]*

“**Lands Tribunal**” means the Lands Tribunal established by section 63;

“**legal practitioner**” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

*[definition of “legal practitioner” inserted by Act 13 of 2002]*

“**local authority council**” means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);

“**Master**” means the Master of the High Court of Namibia;

“**Minister**” means the Minister of Lands, Resettlement and Rehabilitation;

“**owner**”, in relation to land or any registered right in or over land, means the person in whose name such land or right is registered, and includes -

- (a) if the owner is deceased, the executor of his or her estate;
- (b) if the estate of the owner has been sequestrated, the trustee of the insolvent estate;
- (c) if the owner is a company or a close corporation which is being wound up, the liquidator;
- (d) if the owner is a minor or a person otherwise under a legal disability, the guardian or curator of that person;

- (e) in respect of property attached in terms of an order of court, the sheriff, deputy sheriff or messenger of the court concerned, as the case may be;
- (f) the authorised representative of the owner in Namibia.

*[definition of “owner” substituted by Act 14 of 2003; the substituted definition should end with a semicolon rather than a full stop]*

“**Permanent Secretary**” means the Permanent Secretary: Lands, Resettlement and Rehabilitation;

“**prescribed**” means prescribed by regulation by the Minister;

*[definition of “prescribed” inserted by Act 16 of 2000]*

“**regional council**” means a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);

“**registered**”, in relation to land or a right in or over land, means registered in terms of the Deeds Registries Act, 1937 (Act 47 of 1937) or the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976);

“**Registrar**” means the registrar responsible for the deeds registry referred to in the Deeds Registries Act, 1937 (Act 47 of 1937), or the registrar responsible for the deeds registry referred to in the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976).

*[The full stop after this definition should be a semicolon as it is no longer the last definition in the section.]*

“**staff member**” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

*[definition of “staff member” inserted by Act 13 of 2002]*

“**this Act**” includes the regulations made thereunder.

*[definition of “this Act” inserted by Act 2 of 2001]*

## **Part I – LAND REFORM ADVISORY COMMISSION**

### **2. Establishment of Land Reform Advisory Commission**

There is hereby established a commission to be known as the Land Reform Advisory Commission.

### **3. Functions of the Commission**

The functions of the Commission shall be -

- (a) to make recommendations to the Minister or to advise the Minister in relation to any power conferred upon the Minister by this Act and which the Minister is required to exercise upon a recommendation of, or after consultation with, the Commission;
- (b) to investigate and consider, either of its own accord or upon a request by the Minister, any other matter relating to the exercise of the powers of the Minister under this Act and to make recommendations to the Minister in connection with any such matter; and
- (c) to perform such other functions as are assigned to it by this Act.

### **4. Composition of the Commission**

- (1) The members of the Commission shall consist of -
  - (a) the Permanent Secretary who shall be the chairperson;
  - (b) two other staff members of the Ministry of Lands, Resettlement and Rehabilitation, one of whom shall be designated by the Minister as deputy chairperson;

- (c) one staff member of the Ministry of Agriculture, Water and Rural Development designated by the Minister of Agriculture, Water and Rural Development;
- (d) one staff member of the Ministry of Justice who possesses the necessary knowledge of law to make a substantial contribution towards the functions of the Commission, designated by the Minister of Justice;
- (e) two persons nominated by each of such associations or bodies involved in agricultural affairs as the Minister may by notice in the Gazette designate for the purposes of this paragraph;
- (f) one person nominated by the Agricultural Bank of Namibia mentioned in section 3 of the Agricultural Bank Act, 1944 (Act 13 of 1944); and

*[The Agricultural Bank Act 13 of 1944 has been replaced by the Agricultural Bank of Namibia Act 5 of 2003.]*

- (g) four persons, of whom at least two shall be females, and who shall be persons who are not employed in the Public Service and who, in the opinion of the Minister, are suitably qualified having regard to the functions of the Commission,

all of whom shall be appointed by the Minister, but the persons referred to in paragraph (g) shall be so appointed only with the approval of the National Assembly.

*[Subsection (1) is amended by Act 16 of 2000 and substituted by Act 13 of 2002. Section 2(2) of Act 13 of 2002 provides the following transitional provision: "Any person who immediately before the commencement of this Act held office as a member of the Land Reform Advisory Commission established by section 2 of the principal Act by virtue of his or her appointment under section 4 of the principal Act before the amendment of the said section 4 by this Act, shall, notwithstanding section 5 of the principal Act, at such commencement cease to hold office by virtue of that appointment."]*

- (2) A person shall not be competent to be appointed or to act as a member of the Commission if he or she -
  - (a) is not a Namibian citizen;
  - (b) is a member of the National Assembly, the National Council or a regional council;
  - (c) is an unrehabilitated insolvent; or
  - (d) has been convicted of an offence, other than a political offence committed before the date of Namibia's independence, for which he or she has been sentenced to imprisonment without the option of a fine for a period of 12 months or more.
- (3) *[subsection (3) deleted by Act 16 of 2000]*

## 5. Term of office

Subject to section 6(1), a member of the Commission shall hold office for a period of three years from the date of appointment and may be re-appointed upon the expiry of such term.

## 6. Vacation of office and filling of vacancies

- (1) The office of a member of the Commission shall become vacant if he or she -
  - (a) becomes subject to any disqualification mentioned in section 4(2);
  - (b) has been absent, without the leave of the Commission, from more than three consecutive meetings of the Commission or of a committee thereof of which he or she is a member;
  - (c) by notice in writing to the Minister resigns as a member of the Commission;

*[paragraph (c) amended by Act 13 of 2002]*

  - (d) is removed from office under subsection (2).



*[The full stop at the end of paragraph (d) should be a semicolon now that it is no longer the last paragraph in the subsection.]*

- (e) in the case of a member referred to in paragraph (a),(b), (c) or (d) of subsection (1) of section 4, ceases to hold the qualification by virtue of which he or she was appointed as a member of the Commission; or

*[paragraph (e) inserted by Act 13 of 2002]*

- (f) in the case of a member referred to in paragraph (e) or (f) of subsection (1) of section 4, by reason of the withdrawal of his or her nomination by written notice addressed and delivered to the Minister, no longer represents the association, body or banking institution that has nominated him or her.

*[paragraph (f) inserted by Act 13 of 2002]*

- (2) If the Minister is satisfied that a member of the Commission -

- (a) has become physically or mentally incapable of performing his or her duties as a member; or  
 (b) is otherwise unable or unfit to discharge the functions of a member of the Commission,

the Minister may remove such member from his or her office, but a member referred to in paragraph (g) of subsection (1) of section 4 shall not be removed from office, except with the approval of the National Assembly.

*[subsection (2) amended by Act 13 of 2002]*

- (3) A vacancy on the Commission arising from a circumstance referred to in subsection (1) or caused by the death of a member shall be filled by the appointment of another person in the manner in which the member whose office has been vacated was required to be appointed, and any person so appointed shall hold office for the unexpired portion of the term of office of the member in whose stead he or she is appointed.

## 7. Remuneration and allowances

A member of the Commission or of a committee thereof established under section 9(1), who is not in the full-time employment of the Public Service, shall be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

*[section 7 amended by Act 13 of 2002; changes to punctuation not indicated by amendment markings]*

## 8. Meetings

- (1) Subject to subsection (2), meetings of the Commission shall be held at such times and places as the chairperson may determine.
- (2) The chairperson shall convene a meeting of the Commission if the Minister or at least three members in writing so request.
- (3) Seven members shall form a quorum at a meeting of the Commission.
- (4) The chairperson of the Commission or, in his or her absence, the deputy chairperson shall preside at the meetings of the Commission, and if both the chairperson and the deputy chairperson are absent from, or for any other reason are unable to preside at, any meeting of the Commission, the members present thereat shall elect one of their number to preside at that meeting.

*[subsection (4) substituted by Act 13 of 2002]*

- (5) The Commission may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Commission, but such person shall have no vote.
- (6) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a

casting vote in addition to his or her deliberative vote.

- (7) The Commission may make rules in relation to the holding of, and procedure at, meetings of the Commission.

## 9. Committees

- (1) There is established for every region a regional resettlement committee to assist the Commission in the exercise of such of its powers or the performance of such of its duties or functions under this Act as the Commission may delegate or assign to the committee.
- (2) A regional resettlement committee established under subsection (1) consists of not less than 11 and not more than 19 members -
- (a) the regional governor appointed in terms of the Special Advisors and Regional Governors Appointment Act, 1990 (Act No. 6 of 1990) for the respective region who is the chairperson of the committee;
  - (b) one or more members of the Commission, designated by the Commission for that purpose, and, if the Commission considers it necessary, one or more other suitable persons who are not members of the Commission appointed by the Commission.

*[There appear to be some words missing in the introductory phrase, as it does not logically connect to the paragraphs which follow it.]*

- (3) The Commission may -
- (a) establish one or more committees to assist the Commission in the exercise of such of its powers or the performance of such of its duties or functions under this Act as the Commission may delegate or assign to it;
  - (b) at any time dissolve or reconstitute a committee contemplated in paragraph (a).
- (4) If so authorised by the Commission, a committee may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the committee, but such person has no vote.
- (5) A delegation or assignment under this section may be made subject to such conditions and restrictions as the Commission may determine and may, at any time, be varied or withdrawn by it.
- (6) The Commission is not divested or relieved of any power or function delegated or assigned by it under this section, and may, without prejudice of a right, vary or set aside any decision taken in the exercise of the power so delegated.

*[section 9 amended by Act 13 of 2002 and by Act 8 of 2013, and substituted by Act 1 of 2014]*

## 10. Disclosure of interest

- (1) A member of the Commission shall not participate in the deliberations or vote on any matter which is the subject of consideration at a meeting of the Commission if, in relation to such matter, such member has any interest, whether direct or indirect, which precludes him or her from performing his or her functions as a member in a fair, unbiased and proper manner.
- (2) If at any stage during a meeting of the Commission it appears that a member of the Commission has or may have an interest which may cause a conflict of interests to arise on his or her part, that member shall forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss such disclosure and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests.
- (3) A disclosure by a member in accordance with subsection (2), and the decision taken by the remaining members in connection therewith, shall be recorded in the minutes of the meeting in question.

- (4) Any member of the Commission who contravenes subsection (1) or fails to comply with the provisions of subsection (2) shall be guilty of an offence and be liable upon conviction to a fine not exceeding N\$20 000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

## 11. Prohibition on publication or disclosure of information

- (1) No member of the Commission, or any other person attending any meeting of the Commission or a committee, or any person employed to assist the Commission or a committee in the performance of its functions, shall, without the written consent of the Minister, disclose to any other person any information in relation to the business or affairs of any other person acquired by him or her in the performance of his or her functions under this Act, except -
- (a) for the purpose of the performance of his or her functions under this Act; or
  - (b) when required to do so by any court or under any other law.
- (2) Any person who knowingly contravenes subsection (1) shall be guilty of an offence and be liable upon conviction to a fine not exceeding N\$8 000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

## 12. Expenditure

The remuneration and allowances payable to -

- (a) members of the Commission or of a committee thereof; and
- (b) any person referred to in paragraph (c) of subsection (1) of section 13,

and all expenses incidental to the performance of the functions of the Commission shall be defrayed from the Fund.

*[section 12 amended by Act 16 of 2000 and substituted by Act 13 of 2002]*

## 13. Performance of functions of Commission

- (1) The Commission shall in the exercise of its powers and the performance of its duties or functions under this Act be assisted by -
- (a) staff members of the Ministry of Lands, Resettlement and Rehabilitation designated for that purpose by the Permanent Secretary;
  - (b) such other staff members in the Public Service as may be seconded to the Ministry of Lands, Resettlement and Rehabilitation in terms of section 23 of the Public Service Act, 1995 (Act No. 13 of 1995), for purposes of the functions of the Commission; and
  - (c) such other persons as the Commission, with the approval of the Minister granted with the concurrence of the Minister of Finance, may enter into an agreement with to so assist the Commission or to advise it in regard to any matter falling within the scope of its functions.
- (2) An agreement referred to in paragraph (c) of subsection (1) shall be subject to such conditions as to remuneration and otherwise as the Minister may determine with the concurrence of the Minister of Finance.

*[section 13 substituted by Act 13 of 2002]*

## Part IA – LAND ACQUISITION AND DEVELOPMENT FUND

*[PART IA, comprising sections 13A-13D, inserted by Act 16 of 2000]*

### 13A. Establishment of the Land Acquisition and Development Fund

- (1) There is hereby established a Fund to be called the Land Acquisition and Development Fund.
- (2) Notwithstanding anything contained in any other law, there shall be paid into the Fund -
  - (a) moneys appropriated by Parliament for the purposes of the Fund;
  - (b) moneys accruing to the Fund by virtue of any provision of this Act or any other law;
  - (c) moneys which become payable to the State by any person in connection with the lease of any land allotted in terms of this Act, or the cancellation of any such lease;
  - (d) interest on investments made from moneys of the Fund; and
  - (e) moneys which with the approval of the Minister and the Minister of Finance, may accrue to the Fund from any other source, including donations and grants made for the benefit of the Fund.

*[section 13A inserted by Act 16 of 2000]*

### **13B. Appropriation of the Fund**

There shall be defrayed from the Fund -

- (a) any amount which becomes payable in terms of this Act to meet any liability of the State -
  - (i) arising from the exercise of any power or the performance of any function or duty conferred or imposed on the Minister by this Act in relation to the acquisition or development of agricultural land, or any right or interest in such land, including the payment of compensation, interest, costs and other moneys incidental to the exercise or performance of any such power, function or duty; or
  - (ii) for the payment of compensation in connection with any termination or cancellation of a lease in terms of this Act;
- (b) any amount which the Fund is liable to be charged with in terms of the regulations made pursuant to section 76.

*[section 13B inserted by Act 16 of 2000 and substituted by Act 2 of 2001]*

### **13C. Administration of the Fund**

- (1) The Commission shall administer the Fund with the concurrence of the Minister in accordance with an estimate of revenue and expenditure approved by the Minister and the Minister of Finance, in respect of every financial year of the Fund, which shall end on 31 March of each year.
- (2) No expenses shall be incurred as a charge against the Fund except in accordance with the estimate of expenditure referred to in subsection (1).
- (3) The Commission shall open a current account with a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), into which shall be deposited all moneys accruing to the Fund.

*[The Banks Act 23 of 1965 has been replaced by the Banking Institutions Act 2 of 1998.]*

- (4) The Commission may, with the approval of the Minister, invest moneys of the Fund that are not immediately required for the purposes of the Fund -
  - (a) with any banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), or with any building society registered under the Building Societies Act, 1986 (Act No. 2 of 1986);
 

*[The Banks Act 23 of 1965 has been replaced by the Banking Institutions Act 2 of 1998.]*
  - (b) with the Post Office Savings Bank established by the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992); or
  - (c) any other institution approved by the Minister and the Minister of Finance.

- (5) Any unexpended balance in the Fund at the end of a financial year shall be carried forward as a credit to the next financial year.

*[section 13C inserted by Act 16 of 2000]*

### **13D. Accounting responsibility**

- (1) The chairperson of the Commission shall be the accounting officer of the Fund charged with the responsibility of accounting for all moneys received by and paid from the Fund.
- (2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the Fund, and to explain the transactions and financial position of the Fund.
- (3) The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the Fund and shall submit a copy of his or her report on such audit to the Commission.
- (4) The Commission shall furnish the Minister with such information as the Minister may request from time to time regarding the activities and financial position of the Fund, and shall as soon as practicable after the end of each financial year submit to the Minister copies of-
- (a) the audited balance sheet and profit and loss accounts and the report of the Auditor-General; and
  - (b) a report by the Commission on its activities during that financial year.
- (5) The financial statements and reports submitted to the Minister in terms of subsection (4) shall be tabled in the National Assembly by the Minister within 30 days after receipt thereof, if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

*[section 13D inserted by Act 16 of 2000]*

## **Part II – ACQUISITION OF AGRICULTURAL LAND BY STATE FOR PURPOSES OF LAND REFORM**

### **14. Power of Minister to acquire agricultural land for purposes of land reform**

- (1) The Minister may, out of moneys available in the Fund, acquire in the public interest, in accordance with the provisions of this Act, agricultural land in order to make such land available for agricultural purposes to Namibian citizens who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices.

*[Subsection (1) is amended by Act 16 of 2000 and by Act 14 of 2003. Not all of the changes made by these Acts are indicated by amendment markings; Act 16 of 2000 removed the word “educationally” and Act 14 of 2003 re-inserted it.]*

- (2) The Minister may under subsection (1) acquire -
- (a) any agricultural land offered for sale to the Minister in terms of section 17(4), whether or not the offer is subsequently withdrawn;
  - (b) any agricultural land which has been acquired by a foreign national, or by a nominee owner on behalf or in the interest of a foreign national, in contravention of section 58 or 59; or
  - (c) any agricultural land which the Minister considers to be appropriate for the purposes contemplated in that subsection.

*[subsection (2) substituted by Act 14 of 2003]*

- (3) *[subsection (3) deleted by Act 14 of 2003]*

- (4) *[subsection (4) deleted by Act 14 of 2003]*
- (5) *[subsection (5) deleted by Act 14 of 2003]*
- (6) *[subsection (6) deleted by Act 14 of 2003]*
- (7) *[subsection (7) deleted by Act 14 of 2003]*
- (8) *[subsection (8) deleted by Act 14 of 2003]*
- (9) *[subsection (9) deleted by Act 14 of 2003]*

## 15. Inspection of agricultural land to be acquired

- (1) Where the Commission considers it necessary or expedient for the performance of its functions under this Act, the Commission may in writing authorise any person to enter upon and inspect any agricultural land, and may specifically -
  - (a) in order to ascertain whether such land is suitable for acquisition for the purposes contemplated in section 14(1), or in order to determine the value thereof, authorise that person to -
    - (i) enter upon such land with assistants and vehicles and equipment;
    - (ii) survey and determine the area and levels of that land;
    - (iii) dig or bore under the sub-soil;
  - (b) authorize that person to demarcate the boundaries of the land required for the said purposes.
- (2) A person authorised by the Commission under subsection (1) -
  - (a) may, in so far as it may be necessary to gain access to the land in question, enter upon and go across any other land;
  - (b) shall not, without the consent of the owner or occupier concerned, enter upon or cross any land, unless he or she has given the owner or occupier at least 7 days' notice of his or her intention to do so.
  - (c) shall not, in the exercise only of the powers conferred by this section, enter into any dwelling-house without the consent of the owner or occupier.

## Part III – PREFERENT RIGHT OF STATE TO PURCHASE AGRICULTURAL LAND

### 16. Definition for purposes of Part III

For the purposes of this Part, “certificate of waiver”, in relation to any offer to sell agricultural land in terms of subsection (4) of section 17, means a statement in writing made by the Minister certifying that the State waives its preferent right conferred by subsection (1) of that section and does not intend to acquire the agricultural land in question at the time of the offer.

### 17. Vesting in State of preferent right to purchase agricultural land

- (1) Subject to subsection (3), the State shall have a preferent right to purchase agricultural land whenever any owner of such land intends to alienate such land.
- (1A) Whenever one or more members of a company or close corporation which is the owner of agricultural land intends to sell or transfer -
 

*[The verb “intends” should be “intend” to be grammatically correct.]*

  - (a) in the case of a company, any shares of the company to another person; or
  - (b) in the case of a close corporation, any interest or interests in the close corporation, or any portion

of such interest, to another person,

it shall, for the purposes of subsection (1) of this section and section 17A(3), be deemed that the company or close corporation in its capacity as owner of the agricultural land held by it, intends to alienate such land.

*[subsection (1A) inserted by Act 13 of 2002 and amended by Act 1 of 2014]*

- (1B) An owner of agricultural land who intends to have a usufruct registered over the whole or part of such land in favour of a person, other than a relative of the owner, it is, for the purposes of subsection (1) and section 17B(3), deemed that the owner intends to alienate such land, and for the purpose of this subsection “relative” means spouse, child, parent or sibling of the owner.

*[Subsection (1B) inserted by Act 1 of 2014. The cross-reference to section 17B(3) is incorrect as there is no section 17B in the Act; it was probably intended to refer to section 17A(3). There is also a problem with the sentence structure; the provision may have been intended to read as follows: “Where an owner of agricultural land who intends to have a usufruct registered over the whole or part of such land in favour of a person, other than a relative of the owner, it is, for the purposes of subsection (1) and section 17B(3), deemed that the owner intends to alienate such land, and for the purpose of this subsection “relative” means spouse, child, parent or sibling of the owner.”]*

- (2) Notwithstanding anything to the contrary in any law contained but subject to subsection (3), no agreement of alienation of agricultural land entered into by the owner of such land, or, in the case where such land is alienated by a company or close corporation in the circumstances contemplated in paragraphs (a) and (b), respectively, of the definition of “alienate”, no agreement of sale or instrument of transfer or transfer otherwise of any shares of the company or of any member’s interest in the close corporation or of any portion of such interest to another person, shall be of any force and effect until the owner of such land -
- (a) has first offered such land for sale to the State; and
  - (b) has been furnished with a certificate of waiver in respect of such land and in respect of a specific buyer who in most cases must be a previously disadvantaged person contemplated in Article 23(2) of the Namibian Constitution.

*[subsection (2) substituted by Act 13 of 2002, and amended by Act 1 of 2014]*

- (3) Subsections (1) and (2) shall not apply where agricultural land is alienated -
- (a) by or to a regional council or a local authority council or a body corporate as defined in section 1, but only to the extent that such land is alienated otherwise than being sold in the open market;  
*[paragraph (a) amended by Act 13 of 2002]*
  - (b) in accordance with a redistribution of assets in a deceased estate between heirs and legatees;  
*[paragraph (b) amended by Act 1 of 2014]*
  - (c) *[paragraph (c) deleted by Act 1 of 2014]*
  - (d) *[paragraph (d) deleted by Act 1 of 2014]*
  - (e) by a co-owner of such land to another co-owner thereof, except where -
    - (i) the other co-owner is a foreign national; or
    - (ii) such land is owned by a company or close corporation; or*[paragraph (e) amended by Act 13 of 2002 and by Act 1 of 2014]*
  - (f) in such other circumstances as the Minister may prescribe.
- (4) An offer to sell agricultural land to the State as required by subsection (2)(a) shall be made in writing to the Minister through the Permanent Secretary, and shall -

- (a) specify the price which the owner is prepared to accept for the land;
  - (b) contain such particulars as may be prescribed; and
  - (c) be accompanied by a true copy of the title deed under which such land is held by the owner concerned.
- (5) Unless the Minister decides to issue a certificate of waiver to the owner concerned, the Permanent Secretary shall within 60 days after receipt of an offer in terms of subsection (4) refer such offer to the Commission, which shall consider the offer and make its recommendations thereon to the Minister within 30 days after receipt of such referral.

*[subsection (5) amended by Act 13 of 2002]*

- (5A) (a) The owner of agricultural land offered to the State as required by subsection (2)(a) may, by notice in writing given to the Minister through the Permanent Secretary, withdraw such offer at any time before the Minister -
- (i) issues a certificate of waiver to such owner in terms of subsection (5) or (6)(a); or
  - (ii) accepts such offer or makes a counter offer for such agricultural land in terms of subsection (6)(b)(i) or (ii).
- (b) On receipt of a notice of withdrawal under paragraph (a), the Permanent Secretary shall forthwith refer such notice to the Minister.
- (c) A withdrawal of an offer under paragraph (a) shall have effect from the time the notice of withdrawal -
- (i) is delivered or tendered to the Permanent Secretary; or
  - (ii) is sent by registered post to the Permanent Secretary.

*[subsection (5A) inserted by Act 13 of 2002]*

- (6) Within 14 days after the receipt of the recommendations of the Commission, the Minister shall by notice in writing to the owner concerned, either -
- (a) decline the offer and issue to the owner a certificate of waiver; or
  - (b) if the Minister decides to acquire the land in question for the purposes contemplated in section 14(1) -
    - (i) accept the offer; or
    - (ii) if the Minister, acting on the recommendation of the Commission, considers the purchase price specified in the offer to be excessive -
      - (aa) make a counter offer to such owner, specifying the price which the Minister is prepared to pay for the land;
      - (bb) inform the owner that if such counter offer is not accepted by the owner, the owner must inform the Minister in writing within 14 days of receipt of the counter offer; and
    - (iii) after receipt of the letter referred to in paragraph (ii)(bb), the Minister must convene a negotiating committee to negotiate the purchase price with the owner, and advise the Minister.
    - (iv) if the negotiating committee and the owner fail to reach an agreement on the purchase price -
      - (aa) the owner, not later than 60 days after the failure to reach the agreement, may make an application to the Lands Tribunal for the determination of the purchase price; and
      - (bb) the committee must forthwith advise the owner of the provisions of subsection (7).



*[Subsection (6) is amended by Act 1 of 2014. The structure of the amended provision is problematic, particularly with regard to subparagraphs (iii) and (iv).]*

- (6A) (a) The Minister and the owner concerned may at any time before the expiry of the periods of 30 days and 14 days referred to in subsections (5) and (6), respectively, and notwithstanding those subsections, by written agreement extend the period within which -
- (i) the Commission shall make its recommendations as required by subsection (5);
  - (ii) the Minister shall decline or accept the offer in question or make a counter offer as required by subsection (6),
- for such period, not exceeding 90 days at a time, and on such conditions as the Minister and such owner may agree.
- (b) An offer made in terms of subsection (4) shall be deemed to have been declined by the Minister -
- (i) if the Commission has failed to make its recommendations thereon to the Minister in terms of subsection (5) within the period of 30 days referred to in that subsection, or, where that period has been extended by agreement under paragraph (a)(i) of this subsection, such extended period; or
  - (ii) if the Minister has failed to accept the offer or to make a counter offer in terms of paragraph (b) of subsection (6) within the period of 14 days referred to in that subsection, or, where that period has been extended by agreement under paragraph (a)(ii) of this subsection, such extended period.
- (c) Where, in the circumstances contemplated in paragraph (b), an offer is deemed to have been declined, the Minister shall, at the request of the owner concerned, issue a certificate of waiver in respect of the agricultural land offered for sale.

*[subsection (6A) inserted by Act 13 of 2002]*

- (7) Unless -
- (a) the Minister has issued to the owner a certificate of waiver;
  - (b) the Minister, acting on a recommendation of the Commission, and the owner have agreed on the purchase price for the land in question; or
  - (c) the Minister, acting on the advice of the negotiating committee, and the owner have agreed on the purchase price,

it shall be deemed that the owner has accepted a counter offer made by the Minister in terms of subsection (6)(b)(ii) if, upon expiry of the period specified in subparagraph (iv) of that subsection, the owner has not made application to the Lands Tribunal for the determination of the purchase price.

*[subsection (7) amended by Act 1 of 2014; not all of the changes are indicated by amendment markings]*

- (8) Where, in the circumstances contemplated in subsection (7), an owner is deemed to have accepted a counter offer made by the Minister, the owner shall, at the request of the Minister, and if the Minister pays to the owner the amount specified in the counter offer or furnishes to the owner a guarantee for the payment of that amount against registration of transfer of the land into the name of the State, cause the land to be transferred to the State through the Government Attorney or, where the Minister and owner have so agreed, through a conveyancer of the owner's choice.
- (9) Where a mortgage bond is registered over the land in question the Minister shall pay the amount concerned or furnish guarantees for the payment thereof, as contemplated in subsection (8), in accordance with such terms as may have been agreed upon between the owner and the mortgagee and as the Minister may have been notified of by them.
- (10) If the owner and the mortgagee fail to conclude an agreement as contemplated in subsection (9), any one of them or the Minister may make an application to the Lands Tribunal to determine what portion of the

amount payable by the State, shall be paid or guaranteed to the owner and mortgagee, respectively.

- (11) Subject to subsections (5A) and (7), and unless the Minister has issued to the owner concerned a certificate of waiver in respect of the land in question or the Minister and such owner have agreed otherwise, an offer made in terms of subsection (4) and a counter offer made in terms of subsection (6)(b)(ii) shall remain in force until -

*[introductory words amended by Act 13 of 2002, which also corrects a misspelling of the word "issued" in the original Act, without indicating this with amendment markings]*

- (a) it is substituted, either before or after the institution of proceedings for an application to the Lands Tribunal to determine the purchase price, by a subsequent offer by the owner or a subsequent counter offer by the Minister; or
- (b) the purchase price is determined by the Lands Tribunal.

### 17A. Period of validity of certificates of waiver

- (1) Subject to subsection (2), a certificate of waiver issued in respect of agricultural land shall remain in force for a period of one year from the date on which it was issued and, unless such certificate is for the purpose of transferring such land lodged with the Registrar within that period, it shall lapse.
- (2) The Minister may, on good cause shown in writing by the owner concerned, at any time before the expiry of the period referred to in subsection (1) extend such period.
- (3) When a certificate of waiver has lapsed in terms of subsection (1), the preferent right previously conferred on the State by subsection (1) of section 17 to purchase the agricultural land in question, shall revive if at any time after such lapsing the owner of such land intends to alienate such land.

*[section 17A inserted by Act 13 of 2002]*

### 18. Restriction on transfers of agricultural land

- (1) The Registrar shall not register any transfer of agricultural land unless -
- (a) a certificate of waiver;
- (b) a land tax clearance certificate; and
- (c) a fully completed land tax registration form contemplated in section 76(1A)(c),
- in respect of such land is submitted to the Registrar.

*[subsection (1) amended by Act 19 of 2003 to add paragraph (c)]*

- (2) The provisions of paragraph (a) and (c) of subsection (1) shall not apply where -
- (a) agricultural land has been alienated by or to the State;
- (b) agricultural land has been alienated in any of the circumstances contemplated in section 17(3);
- (c) agricultural land is to be transferred otherwise than by virtue of an alienation; or
- (d) the Minister in writing directs otherwise.

*[subsection (2) amended by Act 19 of 2003]*

- (3) The provisions of paragraph (b) of subsection (1) shall not apply where agricultural land has been alienated by the State.
- (4) For the purposes of subsection (1) "land tax clearance certificate" means a statement in writing by the Minister certifying that all land taxes imposed under this Act on the agricultural land in question have been paid.

*[section 18 substituted by Act 2 of 2001]*

## **Part IV – COMPULSORY ACQUISITION OF AGRICULTURAL LAND**

### **19. Definition for purposes of Part IV**

For the purposes of this part “property” means -

- (a) any agricultural land contemplated in section 14(2); or  
*[paragraph (a) amended by Act 14 of 2003]*
- (b) any right registered in or over such agricultural land.

### **20. Power of Minister to expropriate certain property**

- (1) Subject to section (1A), where the Minister, after consultation with the Commission, decides to acquire any property for the purposes of section 14(1) and -

- (a) the Minister and the owner of such property are unable to negotiate the sale of such property by mutual agreement; or

- (b) the whereabouts of the owner of such property cannot be ascertained after diligent inquiry,

the Minister may, subject to the payment of compensation in accordance with the provisions of this Act, expropriate such property for such purpose.

*[subsection (1) amended by Act 14 of 2003 and by Act 1 of 2014; not all of the changes of punctuation made by Act 14 of 2003 are indicated by amendment markings]*

- (1A) The Minister may prescribe criteria to be used for the expropriation of agricultural land.

*[subsection (1A) inserted by Act 1 of 2014]*

- (2) Where the Minister decides to expropriate any property, the Minister shall cause to be served on the owner concerned an expropriation notice which shall -

- (a) contain a clear and full description of the property in question or, where only a portion of agricultural land or a real right in or over such portion is expropriated, a sketch-plan showing the approximate position of such portion, and state the approximate extent of such portion;

- (b) state the date of expropriation as well as the date upon which the State will take possession of the property and the date so stated for the taking of possession shall not be more than 6 months after the date of expropriation so stated;

- (c) draw the attention of the owner to the provisions of sections 22(1) and 25(3)(b);

- (d) if an amount is therein offered as compensation, inform the owner that if a lessee has a right by virtue of an unregistered lease in respect of the property of which the Minister had no knowledge on the date of notice, the Minister may withdraw that offer;

- (e) contain such other information or statements as may be required to be contained in the expropriation notice by any other provision of this Act.

- (3) Where only a portion of a piece of agricultural land or a real right in or over such portion is expropriated, the owner may, within 30 days from the date of notice, request the Minister by registered post to furnish further particulars of such portion so as to enable the owner to determine the position or extent of the said portion, and upon the furnishing of such particulars the date of the notice in which such particulars are furnished, shall, for the purposes of this Act, be considered to be the date of notice.

- (4) Where the property expropriated is land, the Minister shall cause a copy of the expropriation notice, or a notice to the effect that the land is being expropriated giving the particulars of the expropriation, to be served -

- (a) upon every person who, according to the title deed of the land has any interest in that land or according to the registers of the Mining Commissioner referred to in section 4 of the Minerals (Prospecting and Mining) Act, 1992 (Act 33 of 1992) holds in respect of that land any mineral licence, mining claim or mining licence, as defined in section 1 of that Act; and
  - (b) if, to the knowledge of the Minister,
    - (i) the land was sold by the owner prior to the notice; or
    - (ii) a building was erected on the land which, on the date of notice, is subject to a builder's lien by virtue of a written building contract,
 upon the purchaser or builder concerned.
- (5) Where the property expropriated is land which is registered in the deeds registry referred to in section 2 of the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976) -
- (a) the provisions of the second proviso to section 16 and of sections 31 and 32 of the Deeds Registries Act, 1937 (Act 47 of 1937) shall mutatis mutandis apply as if those provisions were provisions contained also in the Registration of Deeds in Rehoboth Act, 1976; and
  - (b) regulation 57 of the regulations promulgated under section 10 of the Deeds Registries Act, 1937 by Government Notice 225 of 1964 shall mutatis mutandis apply as if that regulation were a regulation made under the Registration of Deeds in Rehoboth Act, 1976.
- (6) Notwithstanding anything to the contrary contained in this Act, the Commission shall, where the Minister decides in terms of subsection (1) to expropriate any agricultural land, consider the interests of any persons employed and lawfully residing on such land, and the families of such persons residing with them, and may make such recommendation to the Minister in relation to such employees and their families as it may consider fair and equitable in the circumstances.

*[subsection (6) amended by Act 13 of 2002]*

## 21. Passing of ownership in expropriated property

- (1) The ownership of property expropriated in terms of section 20 shall on the date of expropriation vest in the State, released, subject to the provisions of section 30, from all mortgage bonds, if any, but subject to all rights, other than mortgage bonds, registered over or in relation to that land in favour of third parties, unless such rights have been expropriated from the owner thereof in accordance with the provisions of section 20.
- (2) The State shall take possession of any property expropriated on the date stated in the expropriation notice in terms of section 20(2)(b) or such other date as may be agreed upon between the owner concerned and the Minister.
- (3) The owner of expropriated property shall from the date of expropriation to the date upon which the State takes possession of the property, take care of and maintain the property, and if the owner wilfully or negligently fails to do so and as a result thereof the land depreciates in value, the Minister may recover the amount of the depreciation from the owner.
- (4) The Minister shall compensate the owner for costs which were necessarily incurred after the date of expropriation in respect of the maintenance or care of property in accordance with the provisions of subsection (3).
- (5) The owner shall be entitled to the use of the expropriated property, and any income derived by the owner from that property, from the date of expropriation to the date upon which the State takes or is required to take possession of the property.

## 22. Duties of owner of property expropriated

- (1) An owner whose property has been expropriated in terms of section 20, shall, subject to subsection (4),

within 60 days from the date of notice, deliver or cause to be delivered to the Minister a written statement indicating -

- (a) where the Minister in the expropriation notice has offered an amount as compensation for such property, whether or not that offer is accepted by the owner and, if the owner does not accept the amount offered, the amount which the owner claims as compensation and how much of that amount represents each of the respective amounts contemplated in section 25(1)(a)(i) and (ii) or (b) and full particulars as to how such amounts are made up;
  - (b) if no amount was so offered as compensation, the amount claimed by the owner as compensation and how much of that amount represents each of the respective amounts contemplated in section 25(1)(a)(i) and (ii) or (b) and full particulars as to how such amounts are made up;
  - (c) if the property expropriated is land and any amount is claimed in terms of paragraph (a) or (b), full particulars of all improvements on such land which, in the opinion of the owner, affect the value of the land;
  - (d) if the property expropriated is land -
    - (i) which prior to the date of notice was leased as a whole or in part by unregistered lease, and which is still in force on that date;
    - (ii) which prior to the date of notice was sold by the owner;
    - (iii) on which a building was erected which is subject to a builder's lien by virtue of a written building-contract,
 

the name and address of the lessee, purchaser or builder concerned;
  - (e) the address in Namibia to or at which the owner desires that further documents in connection with the expropriation may be posted or delivered or tendered.
- (2) The statement which in terms of subsection (1) is required to be delivered to the Minister, shall, where the property expropriated is land, be accompanied by -
- (a) the title deed which the owner holds in respect of the land in question or, if such title deed is in the possession or under the control of another person, written particulars of the name and address of that person;
  - (b) in a case where subparagraph (i), (ii) or (iii) of paragraph (d) of subsection (1) is applicable, by, as the case may be -
 

*[The word "cased" should be "case".]*

    - (i) the relevant lease agreement or a certified copy thereof, if it is in writing, or a written statement giving full particulars of the lease, if it is not in writing;
    - (ii) the relevant contract of purchase and sale or a certified copy thereof;
    - (iii) the relevant building contract or a certified copy thereof.
- (3) The Minister may, by written notice to any person in respect of whom particulars have been furnished in terms of subsection (2)(a), request that person to deliver or cause to be delivered to the Minister the title deed in question within 60 days of the date of notice.
- (4) The Minister may at his or her discretion extend the period of 60 days referred to in subsection (1), and, if the owner requests the Minister in writing within 30 days as from the date of notice to extend the said period of 60 days, the Minister shall extend such period by a further 60 days.
- (5) Any person who -
- (a) in a written statement referred to in subsection (1) or (2)(a) or (b)(i), furnishes particulars which such person knows to be false or misleading; or

- (b) without just cause refuses or fails to comply with a request by the Minister in terms of subsection (3),

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

### 23. Offers of compensation

- (1) The Minister may, upon a recommendation of the Commission, in the expropriation notice offer the owner concerned an amount as compensation for the property which is being expropriated.
- (2) If no compensation was offered by the Minister in the expropriation notice for the property in question and the owner concerned fails to furnish any relevant information in terms of section 22(1), the Minister shall, upon a recommendation of the Commission and within 60 days after the expiry of the period within which the written statement referred to in that section was required to be delivered to the Minister, offer to such owner, by notice in writing, an amount as compensation for such property.
- (3) If, in terms of section 22(1), an owner has indicated an amount claimed as compensation and has furnished the relevant information as required by that section, the Minister shall, if the Minister, acting on a recommendation of the Commission, is not prepared to pay that amount as compensation, within 60 days after the receipt of such claim of the owner, offer to the owner by notice in writing an amount as compensation and indicate how much of that amount represents each of the respective amounts contemplated in section 25(1)(a)(i) and (ii) or (b) and furnish full particulars as to how such amounts are made up.
- (4) The Minister shall, when an amount is offered as compensation in accordance with subsection (1), (2) or (3), in the notice concerned -
  - (a) inform the owner that if the amount offered is not accepted by the owner, the owner may, not later than a date specified by the Minister in the notice, which shall not be sooner than 90 days from the date of notice, make an application to the Lands Tribunal for the determination of the compensation; and
  - (b) draw the attention of the owner to the provisions of subsection (5)
- (5) Unless the Minister, acting on the recommendations of the Commission, and the owner have agreed otherwise in writing, the owner shall be deemed to have accepted an offer made by the Minister in accordance with subsection (1), (2) or (3) if, upon expiry of the date determined and specified by the Minister in terms of subsection (4), the owner has not made an application to the Lands Tribunal for the determination of the compensation.
- (6) Subject to subsection (5), a claim for compensation in terms of section 22(1) and an offer of compensation in accordance with subsection (1), (2) or (3) shall remain in force until it is substituted, either before or after the institution of proceedings for an application to the Lands Tribunal to determine the compensation, by a subsequent claim by the owner or a subsequent offer by the Minister, as the case may be, or until the compensation has been determined by the Lands Tribunal, unless the Minister and the owner have agreed otherwise.
- (7) The Minister may from time to time ask for particulars regarding the owner's claim for compensation, and the owner may from time to time ask for particulars regarding the Minister's offer of compensation, and particulars so asked for shall be furnished within a reasonable time.

### 24. Advance payment of portion of compensation offered

- (1) The Minister may, prior to the determination of the amount of compensation payable in terms of this Act for the property in question, but not before the date on which the State takes possession of the property, pay such portion of the amount offered as compensation for the property as the Minister, upon a recommendation of the Commission, may determine, but not more than 80 per cent of that amount, to the owner concerned or the person contemplated in section 30 or deposit such portion of that amount with

the Master under the same circumstances under which the Minister should have so paid or deposited such compensation had it been determined on that date.

- (2) The payment or deposit of any amount under subsection (1) shall not preclude the determination by agreement or by the Lands Tribunal of a different amount as compensation, but in the event the amount so determined as compensation is less than the portion paid or deposited, the owner to whom or on whose behalf such portion was paid, or the Master, as the case may be, shall refund the difference to the State together with, in the case of such owner, interest at the rate contemplated in section 25(3) from the date on which such portion was so paid, and, in the case of the Master, the interest accrued thereon.

## 25. Basis on which compensation is to be determined

- (1) The amount of compensation to be paid to an owner in respect of property expropriated in terms of this Act, shall be determined with due regard to the provisions of subsection (5), but shall not, subject to subsection (2), exceed -
- (a) where the property expropriated is agricultural land, the aggregate of -
- (i) the amount which the land would have realized if sold on the date of notice on the open market by a willing seller to a willing buyer; and
  - (ii) an amount to compensate any actual financial loss caused by the expropriation; and
- (b) where the property expropriated is a right, an amount to compensate any actual financial loss caused by the expropriation of the right.
- (2) Notwithstanding anything to the contrary contained in this Act, there shall, if the Commission so recommends, be added to the total amount payable in accordance with subsection (1) an amount equal to 10 per cent of such total amount, but not more than N\$10 000.
- (3) Interest at the standard interest rate determined in terms of section 35(a) of the State Finance Act, 1991 (Act 31 of 1991), shall, subject to subsection (4), be payable from the date on which the State takes possession of the property in question in terms of section 21(2) on any outstanding portion of the amount of compensation payable in accordance with subsection (1): Provided that -
- (a) in a case contemplated in section 31(4), in respect of the period calculated from the termination of 30 days from the date on which -
- (i) the property was so taken possession of, if prior to that date compensation for the property was offered or agreed upon; or
  - (ii) compensation for the property was offered or agreed upon, if possession thereof was taken before such offer or agreement,
- to the date on which the dispute was settled or the doubt was removed or the owner and the buyer or the mortgagee or the builder notified the Minister, as contemplated in section 30, as to the payment of the compensation money, the amount so payable shall, for the purposes of the payment of interest, be deemed not to be an outstanding amount.
- (b) if the owner fails to comply with the provisions of subsection (1) of section 22 within the period referred to in that subsection or an extension of that period under subsection (4) of that section, the amount so payable shall during the period of such failure and for the purpose of the payment of interest be deemed not to be an outstanding amount.
- (4) If the owner of expropriated property occupies or uses that property or any portion thereof, interest in terms of subsection (3) shall, in respect of the period of such occupation or use, be paid only on that portion of the outstanding amount as exceeds the reasonable value, as determined by the Minister on the recommendation of the Commission, of the benefit procured by the owner by such occupation or use.
- (5) In determining the amount of compensation to be paid for property expropriated in terms of section 20, the following considerations shall apply, namely -

- (a) if the value of the property was enhanced in consequence of the use thereof in a manner which is unlawful, such enhancement shall not be taken into account;
- (b) improvements made after the date of notice on or to the property in question, except where they were necessary for the proper maintenance of existing improvements or where they were undertaken in pursuance of obligations entered into before that date, shall not be taken into account;
- (c) no allowance shall be made for any unregistered right in respect of any other property or for any indirect damage or anything done with the object of obtaining compensation therefor;
- (d) any enhancement or depreciation, before or after the date of notice, in the value of the property in question, which may be due to the purpose for which or in connection with which the property is being expropriated, or which is a consequence of any work or act which the State may carry out or perform or already has carried out or performed or intends to carry out or perform in connection with such purpose, shall not be taken into account;
- (e) account shall be taken of any benefit which will enure to the person to be compensated -
  - (i) from any works which the State has built or constructed or has undertaken to build or construct on behalf of such person to compensate in whole or in part any financial loss which such person will suffer in consequence of the expropriation;
  - (ii) in consequence of the expropriation of the property for the purpose for which it was expropriated.

## 26. Compensation for rights under unregistered leases

- (1) A lessee whose unregistered lease in respect of expropriated agricultural land has been terminated by virtue of the provisions of section 32 shall be entitled, subject to subsections (2) and (3) of this section, to the payment of compensation as if the lessee's right were a registered right in respect of the land which was also expropriated on the date of expropriation of the land.
- (2) Where the Minister is aware that agricultural land which is being expropriated is leased under an unregistered lease, the Minister shall simultaneously with the expropriation notice in question to the owner of the land, or as soon as possible thereafter, send to the lessee in question a notice in which such lessee is informed of the expropriation, and thereupon the provisions of sections 20, 22, 23 and 24 shall mutatis mutandis apply as if such notice were a notice of expropriation under section 20(1) in respect of the rights of such lessee.
- (3) If the owner of expropriated agricultural land fails to comply with the provisions of section 22(1)(d)(i) and the Minister did not prior to the payment of any compensation to the owner become aware of the existence of the unregistered lease in respect of such property, the State shall not be obliged to pay compensation to the lessee concerned in respect of the termination of the rights under the relevant lease, but such owner shall be liable to any such lessee for damages suffered by the lessee in consequence of the termination of those rights.

## 27. Determination of compensation by Lands Tribunal or by arbitration in absence of agreement

- (1) Subject to subsections (2) and (3) of this section and section 23(5), the compensation to be paid for any property expropriated under section 20, shall, in the absence of agreement, on the application of any party concerned be determined by the Lands Tribunal.
- (2) If the owner has claimed an amount in terms of section 22(1), no proceedings for an application as contemplated in subsection (1) shall be instituted before the expiry of a period of 60 days after such amount was claimed.
- (3) The provisions of subsection (1) shall not be construed as preventing the Minister and an owner, or a lessee under an unregistered lease, from submitting by agreement any dispute concerning the amount of



compensation to be paid in terms of this Act in respect of the expropriation of property, to arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965).

- (4) (a) A party to an application contemplated in subsection (1) may, at any time before or during the hearing of such application, make a written offer to the other party to such application for the settlement of the dispute, and may do so without prejudice.
- (b) The party making the offer may therein accept liability for costs or a portion thereof, and if the offer does not state whether or not the party concerned accepts liability for costs or a portion thereof, that party shall be deemed to have made also an offer to pay the other party's costs up to the date of the offer.
- (c) The party to whom the offer is made, may accept the offer -
- (i) if the offer is made not less than seven days prior to the commencement of the hearing of the application, within seven days; or
  - (ii) if the offer was made less than seven days prior to the commencement of the hearing, within twenty-four hours; or
  - (iii) with the consent of the party who makes the offer, at any time.
- (d) Acceptance of the offer shall terminate the proceedings, except as regards disputes relating to the interpretation of the offer or to costs.
- (e) If such an offer to settle the dispute is not accepted and the Lands Tribunal determines the compensation at an amount -
- (i) which is equal to or in excess of the amount of the offer by the owner, the Lands Tribunal shall order the Minister to pay the owner's costs incurred after the date of the offer;
  - (ii) which is equal to or less than the amount of the offer by the Minister, the Lands Tribunal shall order the owner to pay the Minister's costs incurred after the date of the offer.
- (f) The Lands Tribunal shall in its discretion decide on costs incurred prior to the date of an offer.
- (g) If the Lands Tribunal has made an order as to costs without knowledge of an offer which had not been accepted and non-acceptance thereof is brought to the notice of the Lands Tribunal within five days from the date of the determination of the compensation by it, costs shall be reconsidered in the light thereof.
- (5) An offer which is not accepted shall not be disclosed to the Lands Tribunal before its decision is given.

## 28. Orders as to costs

- (1) Subject to the provisions of section 27(4), if the compensation awarded by the Lands Tribunal in any proceedings in terms of section 27(1) -
- (a) is equal to or in excess of the amount last claimed by the owner one month prior to the date for which the proceedings for the hearing of the application were for the first time placed on the roll, costs shall be awarded against the Minister;
  - (b) is equal to or less than the amount last offered by the Minister one month prior to the date contemplated in paragraph (a), costs shall be awarded against the owner;
  - (c) is less than the amount last so claimed by the owner, but exceeds the amount last so offered by the Minister, so much of the costs of the owner shall be awarded against the Minister as bears to such costs the same proportion as the difference between the compensation so awarded and the amount so offered, bears to the difference between the amount of compensation so awarded and the amount so claimed.
- (2) Notwithstanding the provisions of subsection (1), the Lands Tribunal shall in its discretion decide as to the costs -

- (a) in a case not mentioned in subsection (1);
- (b) if any party did not within a reasonable time comply with a request under section 23(7);
- (c) if any party abused the provisions of section 23(7); or
- (d) if, in the opinion of the Lands Tribunal, the conduct of any party during or prior to the proceedings, justifies a deviation from subsection (1).

## **29. Effect of application for determination of compensation and of noting of appeal**

Notwithstanding any application in terms of section 27(1) for the determination of compensation or an appeal against such a determination of the Lands Tribunal, the other provisions of this Act shall apply as if no such application or appeal had been made.

## **30. Discharge of debt secured by mortgage bond, and payment of compensation for certain unregistered rights**

- (1) If any agricultural land expropriated under section 20 was immediately prior to the date of expropriation encumbered by a registered mortgage bond or to the knowledge of the Minister the subject of an agreement contemplated in section 22(1)(d)(ii) or any building thereon was then subject to a lien as contemplated in section 22(1)(d)(iii), the Minister shall, subject to the provisions of subsection (3) of this section and section 31, not pay out any portion of the compensation money in question, except to such person and on such terms as may have been agreed upon between the owner of such land and the mortgagee, purchaser or builder concerned, as the case may be, and as the Minister may have been notified of by them.
- (2) If an owner of agricultural land has failed to comply with the provisions of section 22(1)(d)(ii) or (iii) and the purchaser or builder concerned in consequence thereof does not receive any portion of the compensation money by virtue of the provisions of subsection (1) of this section, the owner shall be liable to the purchaser or builder, as the case may be, for any damages which the purchaser or builder may have suffered in consequence of the expropriation, and the State shall not be obliged to pay compensation in respect of such damages.
- (3) If the owner and the mortgagee, purchaser or builder, as the case may be, fails to conclude an agreement contemplated in subsection (1), any one or more of them may make an application to the Lands Tribunal to determine the amount to be paid from the compensation money to each interested person respectively.

## **31. Deposit of compensation money with Master**

- (1) If agricultural land expropriated under section 20 was burdened with a fideicommissum or if compensation is payable in terms of this Act to a person whose place of residence is not known, or if the Minister is unable to determine to whom the compensation can be paid, the Minister may deposit the amount of such compensation with the Master, and after such deposit the State shall cease to be liable in respect of that amount.
- (2) Any moneys received by the Master in terms of subsection (1) or (4) of this section or in terms of section 24(1) shall -
  - (a) if the agricultural land in question was burdened with a fideicommissum, mutatis mutandis be subject to all the terms and conditions contained in the will or other instrument by which such fideicommissum was established; and
  - (b) subject to the provisions of paragraph (a), be paid into the Guardian's Fund referred to in section 86 of the Administration of Estates Act, 1965 (Act 66 of 1965), for the benefit of the persons who are or may become entitled thereto, and bear interest at the rate determined under section 88 of that Act.
- (3) The provisions of subsections (1) and (2) shall not affect the jurisdiction of a court to make an order in

respect of any moneys in question.

- (4) In the event of a dispute or doubt as to the person entitled to receive any compensation payable in terms of this Part, or in the event of the issue of an interdict by a competent court in respect of the payment of any such compensation, or if the owner and any mortgagee or any purchaser or any builder did not notify the Minister in terms of section 30 about the payment of such compensation, the Minister shall, subject to the provisions of subsection (3) of that section, pay the amount of such compensation to the Master.

### **32. Termination of unregistered rights in respect of land expropriated**

Where agricultural land is expropriated in terms of section 20, all rights in respect of such land not registered or recorded against the title deed thereof, except rights under a mineral licence, mining claim or mining licence referred to in section 20(4)(a), shall terminate on the date of expropriation and the State shall not be obliged, subject to sections 26 and 30, to pay any compensation for such rights.

### **33. Withdrawal of expropriation notice**

- (1) Notwithstanding anything to the contrary contained in any law, the Minister, after consultation with the Commission may by notice in writing to the owner and every other person to whom notice of the expropriation was given, withdraw an expropriation notice from a date mentioned in the notice of withdrawal, but an expropriation notice shall not be withdrawn -
- (a) after the expiration of three months after the date of expropriation, except with the written consent of the owner in question; or
- (b) if, where the property expropriated is land, transfer of the property in consequence of the expropriation has already been registered.
- (2) If any person directly or indirectly suffers any damage in consequence of the withdrawal of an expropriation, such person shall be entitled to compensation by the State for such damage.
- (3) If the expropriation of any property is withdrawn and the State has already paid compensation in connection with such expropriation, the amount of such compensation shall be a debt due to the State.
- (4) If an expropriation of property is withdrawn in terms of this section, the ownership in such property shall, from the date contemplated in subsection (1), again vest in the owner from whom it was expropriated, and any mortgage bonds, servitudes and other rights discharged or terminated in connection with the expropriation shall revive and the registrar of deeds shall, on receipt of a copy of, or publication in the Gazette of, the notice of withdrawal of expropriation in question, cancel any endorsement made in connection with the expropriation in his or her registers and on the title deed of the property in question.

*[The word "subsection" is misspelt in the Government Gazette, as reproduced above.]*

### **34. Expropriation of remainder where portion of land is expropriated**

The power of the Minister in terms of section 20 to expropriate only a portion of agricultural land, shall include the power to expropriate the remainder of such land if the owner so requests and satisfies the Minister that such remainder has because of the expropriation been rendered uneconomical to the owner, and the Minister may expropriate such remainder notwithstanding that it is not required for a purpose contemplated in section 14(1).

### **35. Application of Expropriation Ordinance, 1978**

- (1) The provisions of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978) shall not apply to an expropriation of property for the purposes contemplated in section 14(1).
- (2) Nothing in this Act shall be construed as preventing the expropriation of agricultural land in accordance with the provisions of the Expropriation Ordinance, 1978 for a purpose contemplated in that Ordinance.

## Part V – ALLOTMENT OF AGRICULTURAL LAND

*[heading of PART V substituted by Act 13 of 2002]*

### 36. Definition for purposes of Part V

For the purposes of this Part “farming unit” means any piece of surveyed land allotted or available for allotment under the provisions of this Part.

### 37. Power of Minister to alienate, lease or dispose of certain State land or agricultural land

Subject to the provisions of this Part, the Minister, after consultation with the Commission, may, by way of lease or in such other manner as may be prescribed, and under a scheme or otherwise allot to any person or group of persons contemplated in section 14(1), for agricultural purposes -

*[introductory words of section 37 amended by Act 13 of 2002]*

- (a) any land, other than communal land, of which the State is the owner and which has been made available by the President to the Minister for the purpose;
- (b) any agricultural land acquired by the State under the provisions of Part III or Part IV; or
- (c) any land allotted under the provisions of this Part which has reverted to the State in terms of any such a provision.

### 37A. Development or improvement of Land

The Minister may, from monies available in the Fund, arrange for the undertaking of the development or improvement of land referred to in section 37 by any authority or person, subject to such terms and conditions determined by the Minister in concurrence with the Minister of Finance.

*[Section 37A is inserted by Act 16 of 2000. The word “Land” in the heading should not be capitalised.]*

### 38. Subdivision of land

- (1) The Minister, in consultation with the Minister of Agriculture, Water and Rural Development, may -
  - (a) direct that any land acquired under this Act be subdivided into holdings for allotment to persons for purposes of small-scale farming; and
  - (b) cause each such holding to be surveyed.
- (2) Any subdivision of land in terms of subsection (1) shall be carried out in accordance with a partition plan prepared and recommended by the Commission.
- (3) Notwithstanding anything to the contrary contained in any other law regarding the subdivision and registration of land -
  - (a) the surveyor-general may approve any diagram or plan of subdivision prepared in accordance with a partition plan referred to in subsection (2); and
  - (b) the Registrar may register the transfer of any such piece of subdivided land or any undivided share in such a piece of land.

### 39. Preparation and publication of allotment plans

- (1) For the purpose of the allotment of land in terms of section 37 as a farming unit or farming units, the Commission shall prepare and recommend to the Minister an allotment plan.
- (2) An allotment plan referred to in subsection (1) shall -

- (a) show the boundaries of each farming unit;
  - (b) have annexed thereto or recorded thereon a statement of the approximate area of each farming unit; and
  - (c) have annexed thereto a statement -
    - (i) indicating the nature and value of any improvements existing on, and the estimated capital value of, each farming unit;
    - (ii) specifying the manner in which, as contemplated in section 37, the Commission recommends that a farming unit or all farming units or any of them be allotted and the terms and conditions subject to which such allotment be made; and
    - (iii) setting out the minimum qualifications which the Commission recommends be required of persons in order to qualify to be allotted any farming unit.
- (3) When an allotment plan has been approved by the Minister, the Minister shall cause copies thereof to be made available for public inspection at such place or places and during such times as the Minister shall cause to be made known by notice in the Gazette and in at least one newspaper circulating in the area in which the land is situated and, if the Minister considers it expedient, in any other manner as the Minister may direct.
- (4) The notice published under subsection (3) shall invite applications for the allotment of the farming unit or farming units offered for allotment and shall state -
- (a) the number of farming units offered for allotment and the location of each such unit;
  - (b) a description of each such farming unit;
  - (c) any special conditions upon which each farming unit is offered for allotment;
  - (d) the minimum qualifications required of applicants to qualify for the allotment of a farming unit;
  - (e) where any farming unit is offered for lease, the approximate rent thereof;
- [paragraph (e) amended by Act 13 of 2002]*
- (f) the manner of application for the allotment of a farming unit; and
  - (g) the closing date for such applications.
- (5) No allotment of any farming unit included in an allotment plan referred to in subsection (1) shall be made unless -
- (a) such allotment plan has been made available for public inspection in accordance with the provisions of subsection (3); and
  - (b) the closing date for applications specified in accordance with subsection (4)(g) has expired.

#### **40. Disposal of farming units reverting to the State**

- (1) The provisions of sections 38 and 39 shall not apply to the re-allotment of any farming unit that has previously been allotted but has reverted to the State in terms of any provision of this Part and which the Minister considers should be re-allotted without any alteration of the boundaries thereof.
- (2) Whenever the Minister intends to allot any farming unit referred to in subsection (1), the Minister shall by notice, given in the manner as prescribed in section 39(3), offer farming unit for allotment, and such notice shall contain the information contemplated in section 39(4).
- (3) No allotment of any farming unit referred to in subsection (1) shall be made, unless -
  - (a) the notice referred to in subsection (2) has been published; and
  - (b) the closing date for applications specified in the notice has expired.

#### 41. Applications for allotment and consideration of applications

- (1) Every application for the allotment of a farming unit offered for allotment under this Part shall be made in writing to the Minister in the manner stated in the relevant notice of offer.
- (2) Every application in terms of subsection (1) shall be accompanied by a written declaration by the applicant or, in the case of a joint application, by each applicant in the following form:

“I/ We do solemnly declare that I / we apply for the above farming unit on my/ our own behalf and for my / our sole use and benefit, and not as agent/ agents or trustee/ trustees for any other person.

Signature: .....

Place: .....

Date: .....

Before me - .....

Commissioner of Oaths”

- (3) Every application for the allotment of a farming unit in terms of subsection (1) shall, as soon as possible after the expiration of the closing date specified in the relevant notice of offer, be referred to the Commission, which shall make recommendations to the Minister thereon, and if there be more than one application for the same farming unit, recommend to which applicant the farming unit should be allotted or, in the case of several farming units, which farming unit or choice of different farming units should be offered to the applicant.
- (4) The Commission may, and shall if the Minister so directs, require any applicant for a farming unit to appear before it or any of its members to enable the Commission to obtain more information about the applicant and the applicant’s ability to develop and work the farming unit beneficially and carry out and observe the conditions subject to which the allotment is to be made.
- (5) The Commission shall not be obliged to recommend any applicant to the Minister.
- (6) In the consideration of any application for the allotment of any farming unit regard shall be had to -
- (a) the qualifications of the applicant as set out in the applicant’s application or as determined by virtue of the provisions of subsection (4);
  - (b) the financial means of, or available to, the applicant or applicants for the use, maintenance and development of the farming unit; and
  - (c) any other factors which are relevant to the application.
- (7) The Minister shall not approve any application for allotment of any farming unit made on behalf of a company or close corporation, unless such company or close corporation -
- (a) is incorporated under the laws of Namibia;
  - (b) undertakes that it will occupy the farming unit through the agency of a manager to be approved by the Minister under section 44(1) who will personally reside on that farming unit and use and develop it for agricultural purposes; and
  - (c) is legally competent to hold agricultural land under this Act or any other law.
- (8) The Minister shall, by written notice, inform all applicants of his or her decision on their applications.
- [subsection (8) substituted by Act 13 of 2002]*
- (8A) An applicant who is aggrieved by a decision of the Minister under this section not to allot a farming unit to him or her or it may, within 30 days from the date of notice of the Minister’s decision not to allot a farming unit to the applicant, or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.

*[subsection (8A) inserted by Act 13 of 2002]*

- (9) If an applicant in his or her application or in the declaration referred to in subsection (2) furnishes information or makes a statement material to the application which the applicant knows to be false or misleading, he or she shall be guilty of an offence and be liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a term of 5 years or to both such fine and such imprisonment.
- (10) In the event of the conviction of a lessee of a farming unit under subsection 9, the Minister may cancel the lease.

#### **42. Duration and registration of leases**

- (1) The term of any lease granted in respect of a farming unit under the provisions of this Part shall be ninety-nine years.
- (2) The Minister shall cause any lease referred to in subsection (1) to be registered in accordance with the provisions of the Deeds Registries Act, 1937 (Act 47 of 1937) or the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976), whichever is applicable.
- (3) The lessee shall be liable for the payment of any fees and costs pertaining to the registration of the lease.

#### **43. Rent of farming unit**

The yearly rent payable in respect of any farming unit shall be such amount, and shall be payable on such terms and conditions, as the Minister, on the recommendation of the Commission, may determine.

#### **44. Occupation of farming unit leased**

- (1) Every lessee shall not later than three months after the date of commencement of the lease, or such extended period as the Minister, on the recommendation of the Commission, in a particular case may approve, take up effective occupation of the farming unit, either personally or through a manager in the full-time employment of the lessee approved by the Minister on the recommendation of the Commission, and beneficially use such farming unit for agricultural purposes.
- (2) For the purposes of subsection (1) "beneficially use" means -
  - (a) from the date of taking up effective occupation as required by that subsection -
    - (i) residence on the farming unit, either by the lessee personally or by a manager referred to in that subsection;
    - (ii) the practice of sound methods of good husbandry;
    - (iii) the proper care and maintenance of improvements on the farming unit;
  - (b) before the expiration of a period of three years after the date of the lessee taking up occupation as required by subsection (1), the annual cultivation of such portion of the area of the farming unit or the maintenance of livestock in accordance with the requirements laid down by the Minister on the recommendation of the Commission.
- (3) The requirements, if any, of the Minister under paragraph (b) of subsection (2) shall be laid down in each case by the Minister before the lease is granted and be incorporated in the lease and shall not thereafter be varied without the consent of the lessee.
- (4) The Minister, on the recommendation of the Commission, may permit any lessee to depart from the requirements of subparagraph (i) of paragraph (a) of subsection (2).
- (5) Except with the prior written approval of the Minister, granted on the recommendation of the Commission, a lessee of a farming unit shall not use such farming unit for any purpose other than agricultural purposes and purposes ancillary thereto and for the personal residence of himself or herself and his or her family or, where applicable, the lessee's manager approved under subsection (1) and his or

her family, and such employees as may be necessary for the lessee's farming operations on the farming unit.

#### 45. Termination of lease

- (1) On the termination of a lease by effluxion of time or otherwise, but subject to the provisions of sections 52 and 53, compensation shall be payable to a lessee in respect of buildings or improvements effected on the farming unit after the allotment thereof to the lessee in terms of this Part.
- (2) The Commission shall make recommendations to the Minister in relation to the compensation to be paid in terms of subsection (1) and, in the determination of such compensation, regard shall be had to -
  - (a) the value of the buildings or improvements concerned and the period of the lease;
  - (b) the economic state, at the date of termination of the lease, of the agricultural industry in the area in which the farming unit is situated;
  - (c) contributions made from public funds towards the cost of permanent improvements on the farming unit.
- (3) Notwithstanding anything to the contrary in any other law contained, there may, when any compensation determined under subsection (2) is payable to a lessee, be deducted from the amount so payable, any rent due and payable under the lease and any other debts owing to the State by the lessee.
- (4) The Minister shall, by written notice, inform a lessee of the amount -
  - (a) of any compensation payable to the lessee in terms of subsection (1); and
  - (b) when compensation is so payable to the lessee, of any deductions under subsection (3).

*[subsection (4) inserted by Act 13 of 2002]*

- (5) Any lessee who is aggrieved by the amount of any compensation determined by the Minister under subsection (2), or by the amount of any deductions made under subsection (3) from the compensation payable to him or her or it, may, within 30 days from the date of notice of the amount so determined or deducted, or such extended period as the Minister in a particular case may allow, appeal against the determination of that compensation or that deductions, or both, to the Lands Tribunal.

*[subsection (5) inserted by Act 13 of 2002]*

#### 46. Restraint on certain transactions by lessee of farming unit

- (1) Except with the prior written consent of the Minister, granted upon a recommendation of the Commission, a lessee shall not -
  - (a) assign, sublet, mortgage or in any manner whatsoever encumber, or part with possession of the farming unit in question or any part thereof; or
  - (b) enter into any partnership for the working of such farming unit.
- (2) An application for the Minister's consent for the purposes of subsection (1) shall be made in writing.
- (3) The Minister shall, by written notice, inform the lessee concerned of his or her decision under subsection (1).

*[subsection (3) inserted by Act 13 of 2002]*

- (4) Any lessee who is aggrieved by a decision of the Minister under subsection (1) may, within 30 days from the date of notice of that decision, or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.

*[subsection (4) inserted by Act 13 of 2002]*



- (5) No act referred to in paragraph (a) of subsection (1) which entails the registration, execution or attestation of any deed or other document in a deeds registry shall be so registered, executed or attested, unless proof of the required consent of the Minister under subsection (1) is submitted to the Registrar.

*[subsection (5) inserted by Act 13 of 2002]*

**47. \*\*\***

*[section 47 deleted by Act 13 of 2002]*

**48. \*\*\***

*[section 48 deleted by Act 13 of 2002]*

**49. \*\*\***

*[section 49 deleted by Act 13 of 2002]*

**50. Cancellation of lease**

- (1) Subject to subsection (3), if a lessee fails to comply with any provision of this Act which is applicable to the lessee or to fulfil any term or condition of the lease, the Minister may cause written notice to be served upon such lessee calling upon that lessee to remedy any default within a period specified by the Minister in the notice, and if the lessee fails to remedy such default within that period, the Minister, acting on the recommendation of the Commission, may cancel the lease, and, if the lease is so cancelled, the Minister shall by written notice inform the lessee of such cancellation.

*[subsection (1) amended by Act 13 of 2002]*

- (2) Subject to subsection (3), upon cancellation of a lease under subsection (1), the right to occupy the farming unit in question and all improvements thereon shall vest in the State, subject to the payment of compensation in accordance with the provisions of section 45.

*[subsection (2) amended by Act 13 of 2002]*

- (3) A cancellation of a lease under subsection (1) shall not take effect unless and until -

- (a) the period for noting an appeal under subsection (4) has expired and the lessee concerned has not noted an appeal; or
- (b) where an appeal has been noted under subsection (4), the appeal has been abandoned or dismissed.

*[subsection (3) inserted by Act 13 of 2002]*

- (4) Any lessee who is aggrieved by a decision of the Minister under subsection (1) to cancel his or her or its lease may, within 30 days from the date of notice of the Minister's decision to cancel the lease, or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.

*[subsection (4) inserted by Act 13 of 2002]*

**51. Debts due under lease cancelled or surrendered**

- (1) The termination of a lease under the provisions of this Part or the surrender of a lease shall not extinguish any debt due by the lessee to the State under such lease, and, upon such termination or surrender, such debt shall, subject to subsection (2), forthwith become payable to the State.
- (2) If the Minister, acting on the recommendation of the Commission, is satisfied that the termination or surrender of a lease was due to drought, flood, tempest, locusts, lack of water, failure of crops, disease of stock or other adverse farming conditions not attributable to the conduct of the lessee, the Minister may

waive the whole or any part of any debt which has become due and payable in terms of subsection (1).

## 52. Insolvency of lessee

- (1) If the lessee becomes insolvent or, in the case of a lessee which is a company or close corporation, the company or close corporation is placed under liquidation, the trustee of the insolvent estate or the liquidator of the company or close corporation, as the case may be, may assign the lease to any person approved in writing by the Minister on the recommendation of the Commission.
- (2) If the trustee or liquidator fails to assign the lease within the period of three months after the date of his or her appointment, or such longer period as the Minister may allow, the Minister may cancel the lease, in which event, the trustee or liquidator shall, subject to subsection (3), be entitled to be paid by the State, in accordance with section 45, compensation for the benefit of the insolvent estate or the company or close corporation under liquidation, as the case may be.
- (3) Notwithstanding anything to the contrary in any other law contained, the Minister may deduct from any compensation payable in terms of subsection (2), any rent due or any other debt owing to the State in respect of the farming unit.

## 53. Death or mental illness of lessee

- (1) If a lessee dies, or if a curator is appointed for a lessee under any law relating to mental health, the executor of the lessee's estate or such curator, as the case may be, may assign the lease to any person who is approved in writing by the Minister on the recommendation of the Commission.
- (2) Pending the assignment of the lease in accordance with the provisions of subsection (1), the executor or curator shall continue the lease on behalf of the estate or the lessee, as the case may be, subject to the provisions of this section and the terms and conditions of the lease, and which shall be fulfilled by the executor or curator or on his or her behalf by a person nominated by him or her and approved in writing by the Minister.
- (3) If the executor or curator fails to assign the lease within the period of three months after the date of his or her appointment as executor or curator or such longer period as the Minister may allow, the Minister may cancel the lease, in which event, the executor or curator shall be entitled to be paid by the State, in accordance with the provisions of section 45, compensation for the benefit of the deceased estate or the lessee, as the case may be.
- (4) Notwithstanding anything to the contrary in any other law contained, the Minister may deduct from any compensation payable in terms of subsection (3), any rent due or any other debt owing to the State in respect of the farming unit.
- (5) If, pending the assignment of the lease or during the period the lease is continued by the executor or curator as provided in subsection (2), the executor or the curator or the person nominated by him or her in terms of that subsection, as the case may be, fails to comply with any requirement of this Part which was applicable to the lessee or fails to fulfil any term or condition of the lease, the provisions of section 50 and 51 shall apply.

## 54. \*\*\*

*[section 54 deleted by Act 13 of 2002]*

## 55. \*\*\*

*[section 55 deleted by Act 13 of 2002]*

## 56. \*\*\*

*[section 56 deleted by Act 13 of 2002]*

## 57. Right to enter and inspect

- (1) Any member of the Commission, or any staff member or person referred to in paragraph (a), (b) or (c) of subsection (1) of section 13, or any other person authorised thereto in writing by the Minister or the Commission may at all reasonable times enter and inspect any farming unit allotted under this Part for the purpose of ascertaining whether the provisions of this Act, or the terms and conditions of the relevant agreement of lease, are being complied with in respect of the farming unit.

*[subsection (1) amended by Act 13 of 2002]*

- (2) Before exercising the powers conferred by subsection (1), the member of the Commission or staff member or person concerned shall, whenever reasonably practicable, either obtain the consent of the lessee of the farming unit or give the lessee not less than 48 hours' notice in writing of his or her intention to enter and inspect the farming unit, and unless such consent has been obtained or such notice has been given, the member of the Commission or staff member or person concerned shall not, in the exercise only of the powers conferred by this section, enter into any enclosed building or dwelling-house without the consent of the lessee.

*[subsection (2) amended by Act 13 of 2002; not all of the changes are indicated by amendment markings]*

## Part VI – RESTRICTION ON ACQUISITION OF AGRICULTURAL LAND BY FOREIGN NATIONALS

### 58. Restriction on acquisition of agricultural land by foreign nationals

- (1) Notwithstanding anything to the contrary in any other law contained, but subject to subsection (2) and section 62, no foreign national shall, after the date of commencement of this Part, without the prior written consent of the Minister, be competent -
- (a) to acquire agricultural land through the registration of transfer of ownership in the deeds registry; or
  - (b) to enter into an agreement with any other person whereby any right to the occupation or possession of agricultural land or a portion of such land is conferred upon the foreign national -
    - (i) for a period exceeding 10 years; or
    - (ii) for an indefinite period or for a fixed period of less than 10 years, but which is renewable from time to time, and without it being a condition of such agreement that the right of occupation or possession of the land concerned shall not exceed a period of 10 years in total.

- (2) If at any time after the commencement of this Part the controlling interest in any company or close corporation which is the owner of agricultural land passes to any foreign national, it shall be deemed, for the purposes of subsection (1)(a), that such company or close corporation acquired the agricultural land in question on the date on which the controlling interest so passed.

- (2A) When -

- (a) the Registrar of Companies becomes aware that the controlling interest in a company; or
- (b) the Registrar of Close Corporations becomes aware that the controlling interest in a close corporation,

owning agricultural land has passed to a foreign national, he or she shall forthwith inform the Permanent Secretary in writing that such interest has so passed.

*[subsection (2A) inserted by Act 13 of 2002]*

- (3) The provisions of subsection (1) shall not apply in respect of the registration in the deeds registry, at any time during a period of 60 days following the date of commencement of this Part, or such extended period as the Minister in any particular case may allow, of any agricultural land in the name of a foreign national where such registration is effected pursuant to an agreement or any other written instrument duly made

and entered into before the date of commencement of this Part.

- (4) An application for the Minister's consent for the purposes of subsection (1) shall be made in the prescribed form and be submitted through the Permanent Secretary to the Minister.
- (5) The Minister may grant an application in terms of subsection (4) subject to such conditions as the Minister may determine.
- (6) The Minister shall not grant an application made in terms of subsection (4), unless the Minister is satisfied -
  - (a) that the acquisition of the land concerned or of the right to occupation or possession of such land will constitute an eligible investment as contemplated in section 5 of the Foreign Investments Act, 1990 (Act 27 of 1990) in respect of which a Certificate of Status Investment has been issued or, after consultation with the Minister of Trade and Industry, will be issued to the applicant under section 7 of that Act;
  - (b) that the land concerned is capable of being used or occupied beneficially for the purpose which the applicant proposes to use or occupy it;
  - (c) the use or occupation of the land concerned will not have an adverse effect on the environment or adequate measures will be provided by the applicant to prevent or deal with any adverse environmental consequences which may result from such use or occupation.
- (7) The Minister may -
  - (a) in the case of an application for the acquisition of land, direct that any condition imposed under subsection (5) be included in the deed of transfer;
  - (b) at the request of the owner, vary or withdraw any condition so imposed.
- (8) Upon submission to the Registrar of a certificate by the Minister that a condition registered against the title deed of the land concerned by virtue of a direction of the Minister under paragraph (a) of subsection (7) has been varied or withdrawn under paragraph (b) of that subsection, the Registrar shall make such entries and endorsements as the Registrar considers necessary in or on any relevant register or document in his or her office or laid before him or her in order to record such variation or withdrawal.

## 59. Acquisition and holding of agricultural land for foreign national

No person shall acquire and hold, as a nominee owner, on behalf or in the interest of any foreign national any agricultural land if the Minister's written consent therefor has not been obtained as required by section 58.

## 60. Agricultural land unlawfully acquired or held

- (1) Where any agricultural land has been acquired -
  - (a) by a foreign national in contravention of section 58(1)(a); or
  - (b) by a nominee owner in contravention of section 59,

the Minister may issue an order that such agricultural land be sold, unless the Minister decides to acquire such land in accordance with the provisions of Part IV for the purposes of section 14(1).
- (2) Where the Minister issues an order under subsection (1) he or she shall give notice thereof in writing -
  - (a) to the foreign national concerned; and
  - (b) where applicable, to the nominee owner concerned,

and such notice shall state that unless the foreign national or such nominee owner, as the case may be, submits to the Minister, within a period of 90 days from the date of service of the notice, an agreement of sale or disposal otherwise of the land concerned to a person who is not by law disqualified from acquiring it, the Minister may cause such land to be sold in accordance with the provisions of subsection (3).

- (3) If an agreement of sale or disposal otherwise of the land as contemplated in subsection (2) is not submitted to the Minister within the period referred to in that subsection, or if, upon submission of such an agreement, subsequent proof that the land has been transferred to the purchaser concerned is not furnished to the Minister within 120 days of the date of the Minister's notice in terms of subsection (2), or such extended period as the Minister in a particular case may allow, the Minister may cause such land to be sold by public tender or public auction on such terms and conditions as the Minister may determine.
- (4) If, according to the registers of the Registrar, any mortgage bond or any other encumbrance or real right is registered over or in relation to agricultural land in respect of which an order is issued by the Minister under subsection (1), the Minister shall, if the address of the person in whose favour such mortgage bond, other encumbrance or real right is registered is stated in the deed or other instrument embodying such mortgage bond, other encumbrance or real right, cause a copy of the notice referred to in subsection (2) to be sent by registered post to that person at the address so stated.
- (5) A copy of every notice under subsection (2) shall be transmitted to the Registrar, and the Registrar shall upon receipt thereof endorse thereon the day and hour of its receipt and endorse in the appropriate registers that such a notice has been given in respect of the land in question.
- (6) Subject to the provisions of subsection (7), the Registrar shall not, after receipt by him or her of any notice referred to in subsection (2), register any transfer of, or any lease or mortgage bond or other encumbrance in respect of or over, the land in question, except where the Minister notifies the Registrar in writing that the registration of such transfer, lease, mortgage bond or other encumbrance, as the case may be, is in pursuance of an agreement of sale submitted to the Minister in terms of subsection (3) or a sale by public tender or public auction under that subsection, as the case may be.
- (7) If the Minister withdraws a notice referred to in subsection (2), the Minister shall cause a notice of the withdrawal to be transmitted to the Registrar, and upon receipt of such a notice or upon the transfer of the land in question in accordance with subsection (6), any endorsement made under subsection (5) shall be cancelled.
- (8) The costs incidental to the sale of any agricultural land by public tender or public auction under subsection (3) shall be a first charge upon the proceeds derived from such sale and any balance shall be applied towards the payment of any debt the payment of which is secured by the land in question, in its legal order of priority, and any balance left thereafter shall be paid to the foreign national concerned or, where applicable, to either the nominee owner or the foreign national concerned, as the Minister may direct.
- (9) The Minister and any officer designated by the Minister for that purpose, may sign any document and do whatever may be necessary in order to effect the transfer of any land sold by public tender or public auction under subsection (3) to the purchaser of such land.
- (10) If the owner of the land in question fails to produce the title deed thereof, or if the holder of any mortgage bond over such property fails to consent to the cancellation of the bond or the release of the property from the operation of the bond, the Registrar shall, if the Minister so directs in writing, register the transfer of ownership of the property and endorse the transfer on the duplicate title filed in his or her office and in the appropriate registers.

#### **60A. Offence relating to sale or disposal otherwise of agricultural land**

- (1) Notwithstanding any action taken by the Minister under section 60, where any agricultural land has been acquired -
  - (a) by a foreign national in contravention of section 58(1)(a); or
  - (b) by a nominee owner in contravention of section 59,the person who sold or otherwise disposed of that agricultural land to the foreign national or nominee owner shall, subject to subsection (2), be guilty of an offence and be liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a term not exceeding 5 years or to both such fine and such imprisonment.

- (2) In any prosecution under subsection (1), it shall be a defence to prove that the accused had reasonable grounds for believing and did believe that the person who acquired the agricultural land in question was not by law disqualified from acquiring it.

*[section 60A inserted by Act 13 of 2002]*

## 61. Restrictions upon registration of agricultural land

- (1) Notwithstanding anything to the contrary in any law contained, the Registrar shall not register any transfer of agricultural land or any lease or sublease in respect of such land or any cession of such a lease or sublease, unless there is submitted to the Registrar -
- (a) a statement made under oath or affirmation by or, in the case of a company or close corporation, on behalf of the transferee, lessee, sublessee or cessionary, as the case may be, declaring -
    - (i) his or her nationality or, in the case of a company or close corporation, the nationality of each member thereof and whether or not the company or close corporation is a foreign national; and
    - (ii) whether or not the land to be transferred or mentioned in the lease, sublease or cession, as the case may be, will be held by him or her or it on behalf or in the interest of any other person and, where applicable, giving particulars of the name and nationality of that person or, in the case of a company or close corporation, the name and nationality of each member thereof; and
  - (b) if in the statement referred to in paragraph (a), the transferee, lessee, sublessee or cessionary, as the case may be, declares that he or she is not a Namibian citizen or, in the case of a company or close corporation, that it is a foreign national, or that the land in question will be held by him or her or it on behalf or in the interest of another person who is not a Namibian citizen or, in the case of a company or close corporation, which is a foreign national-
    - (i) the written approval of the Minister referred to in section 58; or
    - (ii) proof by affidavit in the form and manner determined by the Registrar that he or she or it qualifies for exemption from the provisions of section 58 by virtue of the provisions of section 58(3) or 62,

and the Registrar may request the transferee, lessee, sublessee or cessionary concerned to submit to the Registrar such further proof as he or she may require that the transferee, lessee, sublessee or cessionary may lawfully acquire or hold such land in terms of this Part.

*[subsection (1) amended by Act 13 of 2002]*

- (2) Any person who in a statement referred to in subsection 1(a) makes any representation or any statement in a material particular knowing it to be false, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

## 62. Exemptions under this Part

- (1) The provisions of this Part shall not apply to the acquisition of agricultural land by a foreign national -
- (a) *[paragraph (a) deleted by Act 1 of 2014]*
  - (b) which is a public company conducting business as a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);
  - (c) which is a company of which the shares are listed on a licensed stock exchange in Namibia as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
  - (d) who is married in community of property to a Namibian citizen, and when in the case of the

acquisition of agricultural land by a company or close corporation the controlling interest in such company or close corporation is to be determined, any interest that the foreign national who is so married may have in such company or close corporation shall, for the purposes of this Part, be disregarded.

*[subsection (1) amended by Act 13 of 2002]*

- (2) The Minister may -
- (a) notwithstanding anything to the contrary in this Act contained, after consultation with the Minister of Agriculture, Water and Rural Development, by notice in the Gazette exclude from the application of the provisions of this Part any agricultural land or any category of such land or any category of persons;
  - (b) at any time vary or withdraw in a like manner such notice.

## **Part VII – THE LANDS TRIBUNAL**

### **63. Lands Tribunal**

- (1) There is hereby established a tribunal to be known as the Lands Tribunal.
- (2) The Lands Tribunal shall consist of five members, of whom -
  - (a) one shall be a person with legal qualifications and who has been practising law for a period of not less than five years, and who shall be the chairperson;
  - (b) one shall be a person who has experience of economical or financial matters;
  - (c) one shall be a person who has experience of agricultural matters,
 and who shall be appointed by the National Assembly by resolution upon a recommendation of the Minister.
- (3) The Minister shall, subject to the requirements of paragraph (a) of subsection (2) and with the approval of the National Assembly, appoint a person to be the alternate of the chairperson of the Lands Tribunal.
- (4) The members of the Lands Tribunal shall be appointed for three years and be paid from the Fund such remuneration as the Minister, with the concurrence of the Minister of Finance, may determine.

*[subsection (4) amended by Act 13 of 2002]*

- (5) The office of a member of the Lands Tribunal or a person appointed under subsection (3) shall become vacant if he or she -
  - (a) resigns that office by written notice to the Minister;
  - (b) is removed from office under subsection (6).
- (6) A member of the Lands Tribunal may be removed from office by the Minister acting with the approval of the National Assembly -
  - (a) if the member is permanently incapable of performing his or her duties;
  - (b) for neglect of duty; or
  - (c) for dishonourable conduct.
- (7) Any vacancy that occurs on the Lands Tribunal shall be filled by the appointment of another member in accordance with the provisions of subsection (2), and any person so appointed shall hold office for the unexpired portion of the period of office of the member in whose place he or she is appointed.

### **64. Oath of office**

- (1) A member of the Lands Tribunal shall not perform any function as such a member unless he or she has taken an oath or made an affirmation, which shall be subscribed by him or her, in the form set out below, namely:

“I, ..... do hereby

(full name)

swear / solemnly and sincerely affirm and declare that I will in my capacity as member of the Lands Tribunal administer justice to all persons alike, without fear, favour or prejudice, and as the circumstances in any particular case may require, in accordance with the law of the Republic of Namibia.”.

- (2) An oath or affirmation in terms of subsection (1) shall be made or taken before the Judge-President of the High Court of Namibia or any other judge of that Court designated by the Judge-President.

## 65. Assessors

- (1) For the purpose of procuring assistance in the determination of any matter under this Act, the Lands Tribunal may appoint not more than two persons with expertise relevant to the matter to sit as assessors in an advisory capacity.
- (2) If during any proceedings before the Lands Tribunal or so shortly before the commencement thereof that the vacancy cannot be filled in time for the hearing, an assessor dies or he or she for any other reason becomes incapable of taking his or her seat, the chairperson of the Lands Tribunal may either adjourn the proceedings in order to invoke the assistance of another person as assessor or proceed with the hearing with the remaining assessor, if there be one, or without any assessor should there be no remaining assessor.
- (3) Any person appointed as an assessor shall be entitled to such allowances as the Minister, with the concurrence of the Minister of Finance, may determine.
- (4) The Lands Tribunal shall give due consideration to, but shall not be bound by, the opinion of any assessor.

## 66. Registrar of Lands Tribunal

The Minister shall appoint an officer of the Public Service to be the registrar of the Lands Tribunal who shall be in charge of the administrative functions of the Lands Tribunal.

## 67. Seat and jurisdiction of Lands Tribunal

- (1) The seat of the Lands Tribunal shall be Windhoek, but the functions of the Lands Tribunal may be performed at any such place in Namibia as the chairperson of the Lands Tribunal may determine.
- (2) The Lands Tribunal shall have jurisdiction to -
- (a) decide any appeal lodged with it in terms of any provision of this Act;
  - (b) consider and give a decision on any application made to it in terms of any provision of this Act;
  - (c) generally to inquire and adjudicate upon any matter which is required or permitted to be referred to it under any provision of this Act or any other law.
- (3) Any decision, order or determination of the Lands Tribunal may be executed as if it were a decision, order or a determination made by the High Court of Namibia.

## 68. Proceedings of Lands Tribunal

- (1) Subject to subsection (2), the chairperson of the Lands Tribunal shall preside over the sittings of that Tribunal.
- (2) If at the commencement of any proceedings before the Lands Tribunal the chairperson is for any reason



unable to preside at such proceedings, the person appointed to be the alternate of the chairperson shall preside thereat.

- (3) Where any proceedings have commenced before the Lands Tribunal with either the chairperson or the alternate of the chairperson presiding thereat, such proceedings shall be completed with that person so presiding and if, at any time before the Lands Tribunal has taken a decision on the subject matter of the proceedings, the person so presiding dies or becomes otherwise incapable to perform his or her functions, the proceedings shall be adjourned and commenced de novo.
- (4) If at any stage during any proceedings before the Lands Tribunal any member thereof, other than the chairperson or the alternate of the chairperson, as the case may be, dies or becomes otherwise incapable of acting, the hearing shall be commenced de novo, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the remaining members.
- (5) If the term of office of any member of the Lands Tribunal expires during the course of any proceedings before the Lands Tribunal, the Minister may authorise the member concerned to continue acting as a member of the Lands Tribunal for the purpose of completing such proceedings.
- (6) A decision of the majority of the members of the Lands Tribunal shall be the decision of the Lands Tribunal.
- (7) A member of the Lands Tribunal or an assessor shall not sit at a hearing of the Tribunal if he or she has any interest direct or indirect or personal or pecuniary, in any matter before the Tribunal.
- (8) The Tribunal shall not be bound by the rules of evidence in civil proceedings.

## 69. Rules of Lands Tribunal

- (1) There shall be a Rules Board which shall consist of -
  - (a) the Judge-President of the High Court of Namibia or any judge of that Court designated from time to time by the Judge-President, who shall be the chairperson of the Rules Board;
  - (b) one practising legal practitioner nominated by the Law Society of Namibia;
  - (c) one legal practitioner serving in the Ministry of Justice designated by the Minister of Justice;
  - (d) one staff member serving in the Ministry of Justice designated by the Minister of Justice; and
  - (e) one staff member serving in the Ministry of Lands, Resettlement and Rehabilitation designated by the Minister.

*[subsection (1) amended by Act 13 of 2002]*

- (2) The person appointed as a member of the Rules Board in terms of paragraph (b) of subsection (1) shall be paid from the Fund such remuneration as the Minister, with the concurrence of the Minister of Finance, may determine.

*[subsection (2) amended by Act 13 of 2002]*

- (3) The majority of the members of the Rules Board shall form a quorum for a meeting of that Board.
- (4) A decision of the majority of the members of the Rules Board present at a meeting thereof shall be a decision of that Board and, in the event of an equality of votes the chairperson of that Board shall in addition to his or her deliberative vote have a casting vote.
- (5) The Rules Board may make rules in relation to -
  - (a) the conduct of the proceedings of the Lands Tribunal;
  - (b) the manner in which any matter to be heard and determined by the Lands Tribunal shall be brought and continued before it;
  - (c) the tariff of fees chargeable by legal representatives;

- (d) the fees payable in respect of the service or execution of any process of the Lands Tribunal and the tariff of costs and expenses which may be allowed in respect of such service or execution;
  - (e) the taxation of bills of costs;
  - (f) the hours during which the office of the registrar of the Lands Tribunal shall be open for the transaction of business;
  - (g) the period within which and the manner in which an appeal from a decision of the Lands Tribunal to the High Court of Namibia shall be noted;
  - (h) generally, any matter which may be necessary or expedient to prescribe in order to ensure the proper dispatch and conduct of the proceedings of the Lands Tribunal.
- (6) No rule made by the Rules Board under subsection (4) shall be of any force and effect unless it is published in the Gazette.

## 70. Representation

In any proceedings before the Lands Tribunal a party to such proceedings may appear personally or by a legal practitioner.

*[section 70 amended by Act 13 of 2002]*

## 71. Summoning of witnesses

- (1) A party to any proceedings before the Lands Tribunal, may procure the attendance of any witness in the manner provided for in the rules of the Lands Tribunal.
- (2) The chairperson may administer the oath to, or accept an affirmation from any witness appearing before it to give evidence or to produce any book, record, document or thing.
- (3) Any member of the Lands Tribunal and any sitting person as an assessor in any proceedings before the Lands Tribunal may put any question to any witness appearing before it.
- (4) The chairperson of the Lands Tribunal may disallow any question put to a witness which in the opinion of the chairperson is not relevant to the matter which is being dealt with.
- (5) If any person who has been duly subpoenaed to attend any proceedings before the Lands Tribunal for the purpose of giving evidence or producing any book, record, document or thing in his or her possession or under his or her control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the chairperson of the Lands Tribunal, to remain in attendance throughout the proceedings, the Lands Tribunal may, upon being satisfied upon oath or affirmation or by return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his or her reasonable expenses have been paid or offered to him or her, impose upon the said person a fine not exceeding N\$2 000, or in default of payment, imprisonment for a term not exceeding six months.

## 72. Costs

Subject to the provisions of sections 27 and 28, the Lands Tribunal may in any proceedings before it make an order as to costs as it thinks fit.

## 73. Contempt of Lands Tribunal

- (1) No person shall -
  - (a) insult, disparage or belittle any member of the Lands Tribunal in that capacity, or prejudice influence or anticipate the proceedings or findings of the Lands Tribunal;

- (b) wilfully interrupt the proceedings of the Lands Tribunal or misconduct himself or herself in any manner during such proceedings;
  - (c) do anything in relation to the Lands Tribunal which if done in relation to a court of law would have constituted contempt of court.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a term not exceeding 12 months or to both such fine and such imprisonment.

#### 74. Appeals

Any party to any proceedings before the Lands Tribunal may appeal against any decision, order or determination, given by the Lands Tribunal as if it were a judgment or an order given in civil proceedings by a single judge of the High Court of Namibia sitting as a court of first instance, and, for the purposes of prosecuting any such an appeal the provisions relating to appeals of the High Court Act, 1990 (Act 16 of 1990) and of the Supreme Court Act, 1990 (Act 15 of 1990), as well as the rules of court made under those Acts, respectively, shall apply mutatis mutandis.

#### 75. Expenses of Lands Tribunal

The expenditure incidental to the performance of functions of the Tribunal shall be defrayed from the Fund.

*[section 75 amended by Act 13 of 2002]*

### Part VIII – LAND TAX AND GENERAL

*[heading of PART VIII substituted by Act 2 of 2001]*

#### 75A. Definition for purposes of Part VIII

In the application of the provisions of this Part and of any regulations made pursuant to section 76 “owner” shall, to the extent that those provisions relate to land tax, include a representative referred to in paragraph (bb) of the proviso to section 76A.

*[section 75A inserted by Act 2 of 2001]*

#### 76. Land tax

- (1) Notwithstanding any other law to the contrary the Minister, with the concurrence of the Minister responsible for Agriculture, and the Minister responsible for Finance, may -
- (a) for the benefit of the Fund by regulations made under section 77, impose a land tax to be paid by every owner of agricultural land on the value of such land, the amount of which shall be calculated in accordance with the following formula:
 
$$T=V \times R,$$
 in which formula -
    - “T” represents the land tax payable;
    - “V” represents the unimproved site value as determined under those regulations; and
    - “R” represents the rate of land tax as determined under paragraph (b); and
  - (b) by notice in the Gazette determine the rates of such land tax.

*[paragraph (b) amended by Act 19 of 2003]*

- (1A) A notice referred to in paragraph (b) of subsection (1) may -

- (a) prescribe a tariff of different rates in respect of different categories of owners or different categories of agricultural land, differentiating on the basis of any one or more of the following -
- (i) nationality or residence of owner;
  - (ii) size of agricultural land;
  - (iii) the number of farms owned by the same owner;
  - (iv) activities carried on or predominantly carried on agricultural land, whether farming operations or otherwise, by an owner or any person having the right of occupation and use of agricultural land through the owner thereof; or

*[The word "on" should be repeated in the phrase "activities carried on or predominantly carried on on agricultural land...".]*

- (v) any other basis which the Minister may determine and prescribe in the notice;
- (b) provide, for the purposes of paragraph (a)(iii), that where more than one farm is possessed or controlled by a person, whether as individual owner or through a controlling interest in the shareholding or membership of a company or a close corporation or any other form of legal entitlement or representation, including a trust of which the person has the right of appointment of the trustee or of designating beneficiaries, and which company, close corporation, trust or trustee is the owner, that such farms must be deemed to be owned by the same owner;

*[The word "where" in the phrase "where more than one farm is possessed or controlled" is misspelt in the Government Gazette, as reproduced above.]*

- (c) establish a system and process of registration of owners to identify the category into which they fall and determining the appropriate rate of land tax applicable to them, and provide for the form and manner in which application for registration is to be made; and
- (d) create offences for a contravention of or failure to comply with a provision of the notice relating to a process of registration contemplated in paragraph (c) or for knowingly give false or misleading information in any document furnished in connection with the process of registration, and prescribe penalties for such offences not exceeding a fine of N\$20 000 or a period of five years imprisonment, or both such fine and such imprisonment.

*[subsection (1A) inserted by Act 19 of 2003]*

- (2) For the purposes of imposing land tax the regulations referred to in subsection (1) may also provide for -
- (a) the method of calculating such tax and the due date for payment and manner of collection and recovery of such tax (including the payment of interest on such tax);
  - (b) the valuation of agricultural land by a valuer and the manner in which such valuation shall be carried out;
  - (c) the appointment and functions of a valuer;
  - (d) the preparation of a valuation roll by a valuer, the contents of such valuation roll and the manner in which an objection or appeal against such roll may be lodged by an owner;
  - (e) the constitution of a valuation court and its powers;
  - (f) the remuneration and allowances (if any) payable to a valuer, and the members and assessors of the valuation court, and for the payment of any expenditure incidental to the performance of the functions of such valuer and valuation court;
  - (g) the probative value of copies of or extracts from documents relating to the imposition of land tax;
  - (h) any other matter which in the opinion of the Minister is necessary for the effective imposition of land tax.

- (3) Regulations made pursuant to the provisions of this section may provide for a penalty for any contravention of or failure to comply with any provision of such regulations, including a penalty for a continuous offence.
- (4) No notice shall be issued under section (1)(b) without the approval, by resolution, of the National Assembly.

*[section 76 substituted by Act 2 of 2001]*

### **76A. Representatives of owners of agricultural land**

The person responsible for exercising any power or performing any duty relating to land tax conferred or imposed by or under this Act on an owner shall -

- (a) where such owner is not ordinarily resident in Namibia, be any agent of such owner controlling his or her affairs in Namibia;
- (b) where such owner is deceased, be the executor or administrator of the deceased owner's estate;
- (c) where such owner's estate has been sequestrated, be the trustee or the administrator of such insolvent owner's estate;
- (d) where such owner is a body of persons corporate or unincorporate (other than a company or close corporation), be any person responsible for accounting for the receipt and payment of moneys on behalf of any such body;
- (e) where such owner is a company -
- (i) be the public officer thereof contemplated in section 93 of the Income Tax Act, 1981 (Act No. 24 of 1981); or
  - (ii) be the liquidator of such company where it has been wound up;
- (f) where the owner is a close corporation -
- (i) be any member thereof standing in a fiduciary relationship contemplated in section 42 of the Close Corporations Act, 1988 (Act No. 26 of 1988); or
  - (ii) be the liquidator of such close corporation where it has been wound up;

Provided that nothing in this subsection contained shall be construed as relieving any owner from having to exercise or perform any power or duty relating to land tax conferred or imposed on such owner, by or under this Act -

- (aa) where circumstances other than those contemplated in paragraphs (a) to (f) prevail;
- (bb) which any person mentioned in paragraphs (a) to (f) (also to be known as the representative) has failed to perform.

*[The proviso refers to "this subsection", but section 76A is not divided into subsections. The proviso should probably refer to "this section".]*

*[section 76A inserted by Act 2 of 2001]*

### **76B. Exemption from land tax**

- (1) The Minister may on application made to him or her by an owner of agricultural land, exempt by notice in the Gazette for such period as may be specified in that notice from land tax imposed pursuant to section 76 -
- (a) any agricultural land of such owner, but only if he or she is a person belonging to the category of persons contemplated in Article 23 of the Namibian Constitution;

- (b) any agricultural land that is primarily used for the activities of-
  - (i) a church, mission, hospital, school or hostel, provided such activities shall not be for profit or gain;
  - (ii) any state-aided institution, or any charitable institution as defined in section 1 of the Sales Tax Act, 1992 (Act No. 5 of 1992).

*[The Sales Tax Act 5 of 1992 has been replaced by the Value-Added Tax Act 10 of 2000.]*

- (2) An application referred to in subsection (1) shall be in such form as the Minister may determine and shall specify the agricultural land to which it relates.
- (3) The Minister may revoke any exemption granted under subsection (1) if the reason for granting such exemption ceases to exist, but shall do so only after having afforded the owner concerned an opportunity to be heard.

*[section 76B inserted by Act 2 of 2001]*

## 77. Regulations

- (1) The Minister may make regulations in relation to -
  - (a) the forms to be used for the purposes of this Act;
  - (b) the procedure for making any application under this Act;
  - (c) the procedure for applying for any consent to any transaction relating to or affecting land under this Act; and
  - (d) any matter required or permitted to be prescribed by regulation under this Act.

## 78. Service of notices and documents

- (1) Any notice, document or other communication required or authorised under the provisions of this Act to be given to or served, or caused to be given to or served, on any person by the Minister shall be considered to have been duly given or served if, subject to subsection (2), the original or a true copy thereof is delivered or tendered to the person concerned personally or if sent by registered post to such person.

*[subsection (1) amended by Act 14 of 2003]*

- (2) Where -
  - (a) the whereabouts of the person, or in the case of several owners of property or several persons having an interest in property, every such owner or interested person, is not readily ascertainable by the Minister; or
  - (b) by reason of the number of such owners or persons having such an interest, or for any other reason, the Minister is satisfied that service of a notice or other document in accordance with subsection (1) is not practicable; or
  - (c) the property is subject to a fideicommissum and it is not known to the Minister who all the fideicommissaries are or will be,

the Minister shall, instead of or in addition to causing any notice or document to be served in accordance with subsection (1), cause to be published, once in the Gazette and once a week during two consecutive weeks in two newspapers circulating in the area in which the land in question is situated, an appropriate notice complying with the relevant provision of this Act.

## 79. Penalty for hindering or obstructing

Any person who wilfully hinders or obstructs any person authorised by or under this Act to enter upon any land

for the purpose of inspection or carrying out any act prescribed by this Act or from performing his or her functions or any duly authorised person taking possession of any agricultural land in terms of this Act or exercising any rights or performing any functions under this Act in relation thereto, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

### **79A. Delegation of powers and assignment of duties**

- (1) The Minister may in writing delegate or assign to any staff member in the Ministry of Lands, Resettlement and Rehabilitation any power or duty conferred or imposed on the Minister by this Act, except the power granted under sections 76, 76B and 77.
- (2) A delegation or assignment by the Minister under subsection (1) -
  - (a) may be effected subject to such conditions as the Minister may determine;
  - (b) may be withdrawn or varied by the Minister; and
  - (c) shall not preclude the Minister from exercising or performing any power or duty so delegated or assigned.

*[The word "exercising" is misspelt in the Government Gazette, as reproduced above.]*

*[section 79A inserted by Act 2 of 2001]*

### **80. Authority for limitation of rights in respect of immovable property**

In so far as the provisions of this Act limit the fundamental right of persons to dispose of immovable property and authorise the compulsory acquisition by the State of immovable property and of rights in or over such property, those provisions are enacted on authority of Article 16(2) of the Namibian Constitution, read with Article 23(2) thereof.

### **81. Short title and commencement**

- (1) This Act shall be called the Agricultural (Commercial) Land Reform Act, 1995 and shall come into operation, except Part VI thereof, on a date fixed by the Minister by notice in the Gazette.
- (2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.
- (3) The provisions of Part VI shall come into operation on the date of publication of this Act in the Gazette as an Act of Parliament.
- (4) Where in the application of any provision of Part VI any other provision of this Act which, by virtue of the provisions of subsections (1) and (2) has not yet come into operation, has a bearing on such application such provision shall, to the extent required for such application, be deemed to be of force and effect notwithstanding that such provision is not yet in operation.