

## **BILL**

**To establish the National Equitable Economic Empowerment Office and provide for its powers and functions; to establish the National Equitable Economic Empowerment Commission; to provide for pillars of equitable economic empowerment; to empower the Minister to issue standards of equitable economic empowerment and sector transformation charters; to provide for verification for compliance with standards of equitable economic empowerment; to provide for accreditation of verification agencies and verification officials; to provide for investigation of fronting practises; and to provide for incidental matters.**

*(Introduced by the Prime Minister)*

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

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PART 1  
PRELIMINARY PROVISIONS

**Definitions**

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

“associate”, means in relation to any person-

- (a) an employer;
- (b) a co-shareholder of a private company contemplated in section 20 of the Companies Act, 2004 (Act No. 28 of 2004);
- (c) a co-member of a close corporation contemplated in section 2 of the Close Corporations Act, 1988 (Act No. 26 of 1988);
- (d) a trustee or beneficiary of a trust contemplated in section 1 of the Trust Monies Protection Act, 1934 (Act No. 36 of 1934); and
- (e) a person to whom one has granted or from whom one has received a general power of attorney;

“accreditation body” means an institution contemplated in section 27(1) and 27(2);

“Commission” means the National Equitable Economic Empowerment Commission established by section 13;

“Commissioner” means the person appointed under section 6 as National Equitable Economic Empowerment Commissioner;

“empowerment beneficiary” means -

- (a) a Namibian citizens that were racially disadvantaged, either socially, economically or educationally, by colonial and apartheid laws, policies and practises before 21 March 1990; or
- (b) a descendant of a person contemplated in paragraph (a), who -
  - (i) is a Namibian citizen, by birth or descent; or
  - (ii) became a citizen of Namibia by naturalisation before 21 March 1990 or on or after 21 March 1990 according to applicable laws;

“empowerment transaction” means a transaction, practice, scheme or other initiative which affects compliance with this Act or any other law promoting equitable economic empowerment;

“empowerment industrialists” means empowerment beneficiaries involved in the establishment, creation, significant ownership, management and operation of industrial entities that derive value from the manufacturing of goods at a large scale;

“equitable economic empowerment” means the process of enabling all empowerment beneficiaries to participate in the economy and to share in the wealth and contribute to economic growth through diverse but integrated strategies that include -

- (a) increasing the number of empowerment industrialists;
- (b) increasing the number of empowerment beneficiaries that manage, own and control entities and productive assets;
- (c) facilitating ownership and management of entities and productive assets by communities, workers, cooperatives and other collective entities;
- (d) human resource and skills development;
- (e) achieving equitable representation in all occupational categories and levels in the workforce; and

(f) procurement and investment in entities that are owned, controlled or managed by empowerment beneficiaries;

(g) promoting and facilitating access to finance for entities of empowerment beneficiaries;

“Executive Director” means the person appointed under section 3(3) of the Public Service Act, 1995 as the Executive Director of the Ministry;

“fronting practice” has the meaning assigned to it in section 28;

“investigator” means a person appointed as investigation officer in terms of section 11 or as special investigator in terms of section 12;

“Minister” means the Minister designated under section 37(1)(a);

“Ministry” means the Ministry determined under section 37(1)(b) to be charged with the administration of this Act;

“pillars of equitable economic empowerment” means the pillars referred to in section 24;

“public entity” means” an office, ministry or agency of the government, and includes -

(a) a local authority council;

(b) a regional council;

(c) a public enterprise as referred to in the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006); and

(d) a body or trust that is owned or controlled by the Government, when engaged in any public function individually or in consortium;

“Public Service Act, 1995 ” means the Public Service Act, 1995 (Act No. 13 of 1995);

“prescribed” means prescribed by regulation;

“sector transformation charter” means the sector transformation charter published in terms of section 26;

“standards of equitable economic empowerment” means the standards for equitable economic empowerment published in terms of section 25;

“verification” means the process aimed at examining, confirming and validating the equitable economic empowerment status of an entity;

“verification agency” means an institution accredited under section 27 for the purpose of verifying and rating entities for compliance with equitable economic empowerment; and

“verification official” means an individual accredited under section 27 for the purpose of verifying and rating entities for compliance with equitable economic empowerment.

### **Conflict with other laws**

2. If there is a conflict between this Act and any other law, this Act prevails in respect of a matter dealt with specifically in this Act.

### **Purpose of Act**

3. The purpose of this Act is to -

(a) give effect to -

(i) Article 23(2) of the Namibian Constitution that mandates Parliament to enact legislation providing directly or indirectly for the advancement of persons who suffered as a result of past discriminatory laws, policies and practises;

(ii) give effect to Article 95(a) of the Namibian Constitutions that imposes a positive obligation on the State to give effect to the constitutional commitment to promote and maintain the welfare of the people of Namibia;

- (iii) give effect to the New Equitable Economic Empowerment Framework adopted by Cabinet as the overarching policy framework for equitable economic empowerment in Namibia;
- (b) acknowledge the fact that the past racial discriminatory laws, policies and practises denied the empowerment beneficiaries access to skills and resources as well as ownership, management and control of the Namibian economy;
- (c) recognise the effects of past racial discriminatory laws, policies and practices on empowerment beneficiaries that led to wealth and income disparities and inequitable participation in the growth management, control of the Namibian economy;
- (d) recognise the threats posed by the effects of past racial discriminatory laws, policies and practices to the rule of law, peace, stability, security, justice, democracy and sustainable development in Namibia;
- (e) enable the creation of a Namibian economy based on economic growth and equitable and sustainable distribution of wealth and income with the aim of improving the wellbeing of the Namibian society;
- (f) provide for a legal framework that creates the enabling environment fostering economic growth and wealth redistribution, and promoting the equitable economic empowerment of empowerment beneficiaries;
- (g) promote, facilitate and strengthen measures to implement the equitable economic empowerment and ancillary policies of the government including promoting the empowerment gains achieved personally or through other government policies, practices and initiatives in existence before the enactment of this law; and
- (h) give consideration to workers and broad based communities, who are empowerment beneficiaries.

## PART 2

## ESTABLISHMENT OF NATIONAL EQUITABLE ECONOMIC EMPOWERMENT OFFICE

**Establishment of National Equitable Economic Empowerment Office**

4. (1) There is established within the public service an office to be known as the National Equitable Economic Empowerment Office which must perform the functions entrusted to, and exercise the powers conferred on, the office by this Act.

(2) The Office consists of -

- (a) the Commissioner who is the head of the Office and is responsible for the direction, control and management of the Office; and
- (b) such other persons as may be appointed, seconded or transferred under the Public Service Act, 1995.

**Powers and functions of Office**

5. The powers and functions of the Office are to -

- (a) enforce and monitor compliance with this Act;
- (b) promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of equitable economic empowerment laws and policies of the Government;
- (c) advice public entities, private sector institutions and the general public on specific issues relating to equitable economic empowerment;
- (d) investigate complaints of fronting practices and other matters requiring investigation in terms of this Act;

- (e) recommend to appropriate authorities to institute civil or criminal charges against any person who has committed or is alleged to have committed an offence under this Act;
- (f) educate public entities, private sector institutions and the general public on the provisions of this Act;
- (g) foster cooperation between the public entities and private sector institutions in order to promote and safeguard the objects of this Act;
- (h) review, on his or her own initiative, as directed by the Minister or as required under this Act, the progress made on the implementation of this Act;
- (i) conduct research, prepare reports and other documents relating to equitable economic empowerment as required by this Act or as directed by the Minister;
- (j) study and review existing laws and make recommendations to the Minister for legislative proposals as may be necessary for the purpose of achieving the objects of this Act;
- (k) study and review existing policies and initiatives relating to equitable economic empowerment, and annually or as directed by the Minister make recommendations to the Minister for amendments or improvements as may be necessary for the purpose of achieving the objects of this Act;
- (l) prepare and issue guidelines and manuals, including any other incidental documents for use by entities who are subject to this Act;
- (m) develop and implement empowerment assessment tools to measure effectiveness of the equitable economic empowerment system and processes; and
- (n) exercise powers and perform functions conferred and imposed on the Commission by this Act or any other law.

### **Appointment of Commissioner and conditions of service**

6. (1) The President must after consultation with the Minister appoint a person whom the President considers suitable and who -

- (a) is of good character and of high integrity; and
- (b) possesses expertise relevant to the functions of the Commissioner,

as the Commissioner of Equitable Economic Empowerment.

(2) Before appointing a person as a Commissioner in terms of subsection (1), the President must

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- (a) nominate a person who complies with the requirements of that subsection; and
  - (b) submit the name of the nominated person to the National Assembly for its approval.
- (3) The President determines the conditions of service of the Commissioner.

### **Disqualification from appointment as Commissioner**

7. (1) A person is not eligible to be appointed as a Commissioner, if that person -

- (a) is a member of Parliament, regional council or a local authority council;
- (b) is not a Namibian citizen;
- (c) does not reside in Namibia;
- (d) has, during the period of 10 years preceding the date of appointment, been convicted of -
  - (i) theft, fraud, forgery or uttering a forged document, perjury or any other offence involving dishonesty; or
  - (ii) any other offence for which a sentence of imprisonment without the option of a fine has been imposed.
- (e) personally or through a spouse, a partner or associate has a direct or indirect financial interest or has acquired such interest in a business carried on in Namibia or elsewhere that may conflict or interfere with the proper performance of his or her function as a Commissioner;

- (f) has at any time been removed from an office of trust on account of breach of a fiduciary duty;
- (g) is an un-rehabilitated insolvent; or
- (h) is under any law declared to be of unsound mind.

(2) A person nominated or considered for appointment as a Commissioner may not be appointed as such unless that person, on notification by the Minister of the proposed nomination, submits to the Minister a written statement in which he or she declares that he or she does not have any financial interest as contemplated in subsection (1)(e).

(3) A Commissioner who acquires a financial interest contemplated in subsection (1)(e) must disclose full details of such financial interest in writing to the Minister.

(4) The Minister must furnish the statement and disclosure referred to in subsection (2) and (3) to the President and publish the declaration in the *Gazette*.

(5) A person commits an offence if that person -

- (a) in a statement referred to in subsection (2), fails to disclose any interest which the person has as contemplated in that subsection; or
- (b) fails to comply with subsection (4),

and is liable on conviction to a fine not exceeding N\$60 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

### **Term of office of Commissioner**

8. (1) The Commissioner is appointed on a full-time basis for a term of five years and may be re-appointed at the expiry of that term, subject to a maximum of two terms of office.

(2) The Commissioner may not -

- (a) engage in the day to day management of any other entity or occupation;
- (b) take part in the management of the affairs of any political party; or
- (c) be a salaried employee of a person, body corporate or an organisation.

### **Removal from office of Commissioner**

- 9.** (1) The President may remove the Commissioner from office, if the Commissioner -
- (a) fails to comply with a condition of his or her appointment;
  - (b) fails to perform efficiently the functions of his or her office; or
  - (c) is found guilty of misconduct.

(2) Before removing a person as a Commissioner in terms of subsection (1) (a), (b) or (c) the President must -

- (a) notify the National Assembly must notify the National Assembly of the intended removal and reasons for removal; and
- (b) establish a panel to inquire into the matter referred to in subsection (1) (a), (b) or (c).

(3) The panel referred to in subsection (2)(b) must inquire into the matter referred to in subsection (1)(a), (b) or (c) or in accordance with such rules as the panel may make, which rules must conform to the rules of natural justice.

(4) The panel referred to in subsection (2) (b) must within 30 days after conclusion of the inquiry submit its report and recommendations to the President.

(5) If the President, on receipt of the panel's report and recommendations, finds that the Commissioner must be removed from office, the President must communicate that finding and the reasons for the decision to the National Assembly within 14 days after the finding if the National Assembly is then in session or, if the National Assembly is not then in session, within 14 days after its next session starts.

(6) The President must remove the Commissioner from office upon adoption by the National Assembly of a resolution calling for the removal of the Commissioner from office.

### **Acting Commissioner**

**10.** If the office of the Commissioner is vacant or the Commissioner is absent from duty or unable for any reason to perform the functions of his or her office, the President may, after consulting the Minister, and subject to section 7, appoint another suitable person to act as Commissioner during such vacancy or temporary absence.

### **Investigators**

- 11.** (1) On the recommendation of the Commissioner, subject to the Public Service Act, 1995 -
- (a) the Executive Director may appoint persons as investigators for the purposes of this Act; or
  - (b) staff members in the public service may be seconded or transferred to the Commission to serve as investigators for the purposes of this Act.
- (2) An investigator -
- (a) has such powers and functions as may be provided for by this Act or as may be delegated or assigned to the investigator by the Commissioner; and
  - (b) must exercise such power and perform such functions in compliance with the directions or instructions as may be specified orally or in writing by the Commissioner.
- (3) The Commissioner must issue an identification card to a person appointed as investigator in terms of subsection (1) or as a special investigator in terms of section 12.
- (4) The identification card referred to in subsection (2) -
- (a) must be signed by the Commissioner; and
  - (b) is *prima facie* evidence of the appointment of the person concerned.
- (6) An investigator must show his or her identification card to any person in relation to whom he or she may seek to exercise any power or perform any function under this Act.

### **Special investigators**

- 12.** (1) On the recommendation of the Commissioner, the Executive Director may appoint a person who has expert skills and knowledge in a particular field to be a special investigator to investigate any matter which an investigator contemplated in section 11 may investigate and which is specified -

- (a) in the instrument appointing the special investigator; or
- (b) in a written notice given to the special investigator by the Commissioner.

(2) A special investigator is appointed on a temporary basis as agreed between the Commissioner and the person and must perform his or her functions -

- (a) subject to the control and direction of the Commissioner; and
- (b) on the terms and conditions as the Commissioner and the special investigator may agree.

### PART 3

#### NATIONAL EQUITABLE ECONOMIC EMPOWERMENT COMMISSION

##### **Establishment of Commission**

**13.** There is established a body to be known as the National Equitable Economic Empowerment Commission.

##### **Object and functions of Commission**

**14.** (1) The main object of the Commission is to advise the Minister on high level policy matters relating to economic empowerment in Namibia.

- (2) The functions of the Commission are to -
- (a) make recommendations to the Minister regarding policy matters, including amendments to this Act, the making of regulations and issuing of economic empowerment measures such as standards and charters under this Act or any other law;
  - (b) advise the Minister on the formulation of economic empowerment policies in accordance with the current law and international best practices;

- (c) perform any other functions as may be conferred by this Act or any other law.

### **Constitution of Commission**

**15.** (1) The Commission consists of the following nine members -

- (a) the Commissioner who is the chairperson of the Commission;
- (b) eight persons appointed by President -
  - (i) of whom four must be persons representing public entities;
  - (ii) of whom three must be persons representing the private sector; and
  - (iii) of whom one must be a person representing the youth,

(2) In appointing persons as members of the Commission in terms of subsection (1) (b), regard must be had to persons living with disabilities.

(3) At least four members of the Commission must be women.

(4) The persons to be appointed as members of the Commission must have the necessary expertise relating to the powers and functions of the Commission.

(5) Before the appointment of members of the Commission referred to in subsection (1)(b) the Minister must in two newspapers circulating widely in Namibia and in any other manner the Minister considers appropriate, invite nominations from institutions contemplated in that subsection.

(6) The notice referred to in subsection (5) must specify the period within which nominations must be made and the manner of submission of nominations.

(7) From the names of persons nominated in terms of subsection (5), the Minister must -

- (a) recommend persons for appointment in terms subsection 1(b) and forward to the President the names of persons recommended; and
- (b) forward to the President the names of, and the expertise of, persons nominated in terms of subsection (5).

(8) If in terms of subsection (5) no nominations are made the President may appoint any suitable person to be a member of the Commission and a person appointed under this subsection holds office as if he or she was nominated in accordance with that subsection.

(9) As soon as possible after the appointment of members of the Commission in terms of subsections (1)(b), the President must by proclamation in the *Gazette* -

- (a) announce the names of persons appointed as members of the Commission;

(b) in the case of persons appointed in terms of subsection (1) (b), their date of appointment.

(10) Despite subsection (9), a failure to notify the names of members of the Commission in terms of that subsection does not invalidate any action or decision taken by the Commission.

(11) The provisions of section 7 relating to disqualification for appointment applies, with changes required in the context, to persons nominated for appointment as members of the Commission or appointed as members of Commission.

### **Term of office of member of Commission**

**16.** Members of the Commission, other than the Commissioner, are appointed for a term of three years and may be re-appointed at the expiry of that term, subject to a maximum of two terms of office.

### **Vacation of office and filling of vacancies**

**17.** (1) A member of the Commission vacates his or her office, if the member -

- (a) becomes disqualified in terms of section 7;
- (b) resigns his or her office by giving the President a written 30 days' notice of his or her intention to resign;
- (c) has been absent from three consecutive meetings of the Commission without leave of the Commissioner or the Commission;
- (d) no longer represents to interest group from which he or she was appointed is not a staff member or member of the institution which nominated him or her for appointment; or
- (d) is removed from office under subsection (2).

(2) The President may by notice in writing remove a member of the Commission, other than the Commissioner, from office if the President is satisfied that the member -

- (a) is guilty of neglect of duty, demonstrable incompetence or misconduct;
- (b) is incapable of performing the functions of his or her office, by reason of physical or mental illness;
- (c) without authorisation of the Commission, discloses any confidential information to a person not lawfully entitled to receive such information; or

(d) improperly acts on or uses information obtained as a result of his or her membership of the Commission.

(3) The President may remove a member of Commission only after having afforded that member an opportunity to be heard.

(4) If the office of a member of the Commission becomes vacant, the President must, subject to section 5, appoint a person as member of the Commission for the unexpired portion of the term of office of the member who ceased to hold office.

### **Meetings of Commission**

**18.** (1) The first meeting of the Commission must be held at such time and place as the Minister may determine and subsequent meetings of the Commission must be held at such time and place as the Commission or the Commissioner may determine.

(2) The Commission must have a meeting at least once in every two months.

(3) The Commissioner -

(a) may at any time;

(b) must at the written request of the Minister or the majority of the members of the Commission,

convene a special meeting of the Commission.

(4) The majority of the members of the Commission constitute a quorum at a meeting of the Commission.

(5) A decision of a majority of the members of the Commission present and voting at a meeting of the Commission constitutes a decision of the Commission, and in the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.

(6) A decision of the Commission or an act performed under the authority of the Commission is not invalid only by reason of -

(a) a vacancy on the Commission; or

- (b) the fact that a person not entitled to sit as a member of the Commission was in attendance when the decision was taken or act authorised,

if the decision was taken or act authorised by a majority of the members of the Commission who were present and entitled to vote at such meeting.

(7) The Commission may regulate the procedures to be followed at meetings of the Commission and committees of the Commission.

- (8) The Commission must keep minutes of its meetings.

### **Committees of Commission**

**19.** (1) The Commission may establish one or more committees to -

- (a) advise the Commission in the exercise of its powers and performance of its functions; or
- (b) exercise or perform any power or function that the Commission may delegate or assign to such committee.

(2) A committee established under subsection (1) must consist of at least one member and such other person or persons as the Commission may determine.

(3) For each committee of the Commission, the Commission must designate a member of the Commission as chairperson of the committee.

### **Disclosure of interests**

**20.** (1) The Commissioner, a member of the Commission or a member of committee of the Commission who has a direct or indirect interest in any matter -

- (a) pending before the Commission or a committee of the Commission; or
- (b) which is likely to conflict with any matter that the Commission is dealing with,

must, as soon as practicable after the relevant facts have come to his or her knowledge, in writing disclose the nature of his or her interest at the relevant meeting of the Commission or the committee.

(2) A member of the Commission or member of committee who has the interest to which the disclosure contemplated in subsection (3) relates -

- (a) may not be present during the deliberations or decision on such matter by the Commission or committee, or take part in the deliberations or decision on such matter by the Commission or committee;
- (b) must withdraw from any further deliberations or decision on such matter by the Commission or committee, if he or she was present at a meeting;
- (c) may, despite paragraph (a) and (b), remain in the meeting and participate in the deliberations on the subject matter in respect of which the declaration of interest was made, when the majority of the Commission or committee, after assessing the interests so declared, determines that the member does not need to withdraw from the meeting.

(3) A person who fails to disclose any interests in terms of subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$60 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

(4) The Commission must keep or cause to be kept a record of disclosures made in terms of this section.

### **Remuneration and allowances for members of Commission and committees**

21. A member of the Commission appointed in terms of section 15(1) (b) or member of a committee of the Commission appointed in terms of section 19, who is not in the full-time employment of the State must be paid such allowances and other remuneration as the Minister, with the concurrence of the Minister responsible for finance, may determine.

### **Administrative functions of Commission**

22. Subject to the Public Service Act, 1995, the Executive Director must designate -

- (a) a staff member in the public service to be the secretary of the Commission; and
- (b) staff members in the public service,

to assist the Commission by providing clerical and administrative functions to the Commission.

### **Annual report**

23. (1) The Commission must, within two months after 31 March of each year, prepare and submit to the Minister a report on the activities relating to the functions and powers of the Office and the Commission during the previous year.

(2) Despite subsection (1), the Commission may at any time prepare and submit to the Minister a special report referring to and commenting on any matter within the scope of the powers and functions of the Office or the Commission this Act, if it regards the matter to be urgent or important.

(3) The Minister must -

(a) submit the report referred to in subsection (1) and (2) to the Cabinet; and

(b) table the report referred to in subsection (1) and (2), within 14 days of its receipt if the National Assembly is then in session, or if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

#### PART 4

### PILLARS OF EQUITABLE ECONOMIC EMPOWERMENT AND OTHER MEASURES FOR EQUITABLE ECONOMIC EMPOWERMENT

#### **Pillars of equitable economic empowerment**

24. Equitable economic empowerment must take place through strategies and measures which are based on the following pillars of equitable economic empowerment -

(a) the ownership pillar, which is aimed at promoting the equitable ownership of entities and productive assets in Namibia by empowerment beneficiaries, and this is measured through indicators, including but not limited to, the number or percentage of ownership rights held directly or indirectly by empowerment beneficiaries in entities and ownership of productive assets;

(b) the management control and employment equity pillar is aimed at ensuring that the management structures and workforces of entities in Namibia more accurately reflect the

overall demographics of the Namibian population in particular the empowerment beneficiary demographics, and this is measured through indicators, including but not limited to, the number or percentage of exercisable voting rights held by empowerment beneficiaries and the number or percentage of economic empowerment beneficiaries on management, executive, middle management or senior level;

- (c) the human resources and skills development pillar is aimed at strengthening the skills and human resource base in Namibia, with an emphasis on measuring the extent to which employers carry out initiatives aimed at empowerment beneficiaries, and this is measured through indicators, including but not limited to, the expenditure on skills development for empowerment beneficiaries, support to and participation by empowerment beneficiaries in technical, academic and vocational learning programmes and participation by empowerment beneficiaries in internships and apprenticeship programmes;
- (d) the entrepreneurial development pillar is aimed at promoting sustainable access to the economy by empowerment beneficiaries and enhancing economic growth of entities owned by empowerment beneficiaries, and this is measured through indicators, including but not limited to, covering overhead costs, providing services at no or discounted cost, providing expertise and mentoring with the objective of contributing to the development, sustainability, financial and operational independence of empowerment beneficiaries;
- (e) the procurement pillar is aimed at growing development by promoting sourcing goods, works and services from empowerment beneficiaries, and this is measured through indicators, including but not limited to, expenditure on procurement of Namibian goods, works or services the extent to which entities of empowerment beneficiaries are intergrated into the value chains of entities;
- (e) the corporate social responsibility pillar is aimed at promoting the wellbeing and upliftment of empowerment beneficiaries with the aim of contributing towards socio-economic development of empowerment beneficiaries, and this is measured by indicators, including but not limited to, percentage spending on net profit after tax deductions in the form of monetary or non-monetary contributions aimed at improving the wellbeing of empowerment beneficiaries;

- (f) the value addition, technology and innovation pillar is aimed at promoting an export driven Namibian economy graduating from trading and extraction to manufacturing and value addition, and this is measured through indicators including but not limited to, supporting programmes for innovation by empowerment beneficiaries, job creation for empowerment beneficiaries, transforming raw materials locally; and transferring skills to entities owned by empowerment beneficiaries; and
- (g) the empowerment financing pillar is aimed at promoting sustainable financing for the establishment of, and sustaining of, entities of empowerment beneficiaries and empowerment transactions, and this is measured through indicators, including but not limited to, investments, loans, grants, guarantees and incentives facilitating access to finance by entities of empowerment industrialists and entities of other empowerment beneficiaries.

### **Standards of equitable economic empowerment**

**25.** (1) The Minister may by notice in the *Gazette* publish standards of equitable economic empowerment to give effect to the objects of this Act and the pillars of equitable economic empowerment.

(2) The Minister may replace or amend the standards published in terms of subsection (1).

(3) Before publishing, replacing or amending standards of equitable economic empowerment in terms of subsection (1) or subsection (2), the Minister must -

- (a) publish the draft standards in the *Gazette* for comments;
- (b) give notice of the preparation of the draft standards in at least two newspapers circulating widely in Namibia; and
- (c) give interested persons not more than 60 days to comment on the draft standards.

(4) For the purpose of subregulation (3), the Minister may, in addition to the publication in the *Gazette*, publish a standard on a website or through any other means which the Minister considers appropriate.

(5) The standards prepared in terms of subsection (1) or (2), may be of a general application or may be specific.

(6) The standards prepared in terms of subsection (1) or (2) must specify the pillars of equitable economic empowerment which must be complied with and the weighting to be attached to a specific pillar.

(7) The standards prepared in terms of subsection (1) or (2), may include -

- (a) qualification criteria for purposes of procurement of goods, works or services;
- (b) qualification criteria for approval of licences, permits or authorisations in terms of a law or for engaging in certain economic activities;
- (c) indicators to measure compliance with a pillar of economic empowerment;
- (d) the weighting to be attached to indicators referred to in paragraph (c); and
- (e) guidelines for stakeholders in the various sectors of the economy to draw up sector transformation charters for equitable economic empowerment for their sector.

(8) A notice published under that subsection (1) or (2) may -

- (a) specify exemptions in respect of different classes of public entities, licences, permits, authorisations or economic activities;
- (b) differentiate between different categories of empowerment beneficiaries, such as male, female, persons with disabilities and different categories of entities;
- (c) specify the date on which a particular standard takes effect; and
- (d) specify the period of review of a particular standard.

(9) Every public entity must apply the relevant standard of equitable economic empowerment published in terms of this Act, in -

- (a) determining qualification criteria for the purpose of procurement of goods, works or services;
- (b) for the issuing of licences, permits or other authorisations in terms of a law or for engaging in an economic activity;
- (c) developing and implementing a procurement plan;
- (d) developing criteria for entering into partnerships with the private sector institutions; and
- (e) determining criteria for the awarding of incentives, grants, investment or entrepreneurial schemes in support of equitable economic empowerment aimed for different categories empowerment beneficiaries.

(10) If justifiable circumstances exist, the Minister, after consultation with the relevant public entity, may exempt a public entity from a requirement in subsection (9) and such an exemption must be specified in the notice published under subsection (1) or (2).

### **Sector transformation charters**

**26.** (1) The Minister may by notice in the *Gazette* publish sector transformation charters in respect of the different sectors of the economy to give effect to the objects of this Act and the pillars of equitable economic empowerment.

- (2) The Minister may under subsection (1), publish -
  - (a) generic sector transformation charters which are of a general application; or
  - (b) specific sector transformation charters, which apply only to the specific sector of the economy.
- (3) The Minister may replace or amend the charters published in terms of subsection (1).

(4) Before publishing, replacing or amending sector transformation charters in terms of subsection (1) or subsection (3), the Minister must -

- (a) publish the draft charter in the *Gazette* for comments;
- (b) give notice of the preparation of the draft standards in at least two newspapers circulating widely in Namibia; and
- (c) give interested persons not more than 60 days to comment on the draft charters.

(5) For the purpose of subregulation (4), the Minister may, in addition to the publication in the *Gazette*, publish a draft charter in a newspaper, on a website or through any other means which the Minister considers appropriate.

(6) The sector transformation charters may include -

- (a) qualification criteria for purposes of procurement of goods, works or services;
- (b) indicators to measure compliance with a pillar of economic empowerment;
- (c) the weighting to be attached to indicators referred to in paragraph (c); or
- (d) any other matter necessary to promote the objects of this Act.

(7) Sector transformation charters published in the *Gazette* in terms of subsection (1) or (3) are binding between and among entities operating in the specific sector.

(8) An entity in a sector in respect of which the Minister has published a sector transformation charter in terms of subsection (1) or (3) may only be measured for compliance with the requirements of equitable economic empowerment in accordance with that charter.

(9) The various sectors in respect of which the Minister published a sector transformation charter must, after the commencement of the charter, annually report to the minister responsible for the sector on their compliance with the charter.

## Accreditation and verification

27. (1) In accordance with the Public Service Act, 1995, the Minister may cause to be established a unit within the Ministry to be known as the accreditation body to perform the function of accrediting individuals and institutions as verification officials and verification agencies for the purpose of this Act.

(2) The Minister may enter into an agreement with an institution to be an accreditation body to perform the powers and function of accrediting individuals and institutions as verification officials and verification agencies for the purpose of this Act.

(3) The institution to be designated as an accreditation body under subsection (2) must comply with the prescribed requirements.

(4) The Minister must publish the agreement entered into under subsection (2) in the *Gazette*.

(5) Verification and rating for compliance with equitable economic empowerment for the purpose of this Act must only be conducted by verification officials and verification agencies accredited in terms of this Act.

(6) The Minister

(a) may prescribe the criteria for accrediting individuals as verification officials and institutions as verification agencies;

(b) may prescribe the powers and functions of accreditation bodies;

(b) may prescribe the revocation or suspension of accreditation as verification official or verification agency; and

(c) must by notice in the *Gazette* publish standards for verification.

## PART 6

### FRONTING PRACTISE AND INVESTIGATIONS

#### Fronting practise

28. (1) For the purpose of this Act, “fronting practice” means a contractual arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objects of this Act, or the implementation of this Act or a provision of this Act, including practises related to empowerment transactions.

(2) The indicators of fronting practices, include arrangements, acts or conduct -

(a) in terms of which empowerment beneficiaries who are appointed to entities are discouraged or inhibited from substantially participating in the main activities of that entity;

- (b) in terms of which the economic benefits received as a result of equitable economic empowerment status of an entity do not flow to empowerment beneficiaries in the ratio specified in the relevant legal documents;
- (c) involving the conclusion of a legal relationship with an empowerment beneficiary for the purpose of that entity achieving a certain level of equitable economic empowerment compliance without granting that beneficiary the economic benefits that would reasonably be expected to be associated with the status or position held by the beneficiary; or
- (d) involving the conclusion of an arrangement with another entity in order to achieve or enhance equitable economic empowerment status in circumstances in which -
  - (i) there are significant limitations, whether express or implied, on the identity of suppliers, service providers, clients or customers;
  - (ii) the maintenance of operations of an entity is reasonably considered to be improbable, having regard to the resources available;
  - (iii) the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis.

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

### **Investigations**

**29.** (1) The Commissioner may, on his or her initiative or on the lodging of a complaint in the prescribed manner, conduct investigations with respect to an activity prohibited by this Act or relating to empowerment transactions, or for the purposes of doing anything required or permitted to be done under this Act.

(2) An investigator, at the direction of the Commissioner, must conduct investigations with respect to an activity prohibited by this Act or relating to empowerment transactions, or for the purposes of doing anything required or permitted to be done under this Act.

(3) After an investigation in terms of this Act, the Commissioner may make a finding as to whether empowerment transaction involves a fronting practice.

(4) If the Commissioner is of the view that any matter investigated in terms of this Act may involve the commission of a criminal offence in terms of this Act or any other law, it must refer the matter to the Prosecutor-General.

(5) When performing the investigative functions under this Act, the Commissioner or an investigator has, subject to such necessary changes as may be required by context, the same powers, privileges and immunities as those conferred on the Ombudsman by section 4 of the Ombudsman Act, 1990 (Act No. 7 of 1990) and the provisions of that section do apply to an investigation under this Act as if it were an inquiry or investigation conducted by the Ombudsman under that Act.

## PART 7 GENERAL PROVISIONS

### **Access to information**

**29.** The Commissioner may request a person employed in or associated with a public entity to furnish the Commissioner with all information that may reasonably be required for an investigation in terms of this Act and such person must furnish the Commissioner with such information and permit the Commissioner to have access to any registers, records, documents, and electronic data, which may contain such information.

### **Confidentiality**

**30.** (1) The Commissioner, an investigator, a person appointed or a staff member transferred or seconded under Public Service Act, 1995 to assist the Commissioner in the exercise or performance of the Commissioners powers or functions or any other person contracted to do work in terms of this Act, may not disclose to any other person confidential information, which the person has obtained in the exercise or performance of his or her powers or functions under or in terms of this Act, except if the disclosure of such information -

- (a) is required for the purpose of the exercise or performance of his or her powers or functions under or in terms of this Act or any other law; or
- (b) is required by order of a court of law or in terms of any other law.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 25 years, or to both such fine and such imprisonment.

### **Reporting on compliance**

**31.** Every public entity must report annually on their compliance with equitable economic empowerment and the report must be submitted to the Commissioner.

### **Directives by Minister**

**32.** (1) The Minister may in writing issue a directive to the Commissioner, public entities or private sector institutions to provide the Minister -

- (a) to provide the Minister with the information, reports or statistical returns specified in the directive, at the time or at the intervals specified in the directive; or
- (b) to provide the Minister with any document in its possession or custody or under its control, within the period specified in the directive;
- (c) perform acts necessary to meet obligations imposed by this Act.

(2) After having considered the directive under subsection (1), the Commissioner, public entity or private sector institution must give effect to the directive.

### **Offences and penalties**

**33.** (1) A person commits an offence, if the person -

- (a) not being the Commissioner, an investigator or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner in the exercise of his or her powers or functions, or an accredited body, verification agency or verification official, falsely represents himself or herself to be such person or body;
- (b) obstructs or improperly attempts to influence the Commissioner, an investigator or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the

Commissioner is the exercise of his or her powers or functions, or an accredited body, verification official or verification agency, when such person or body is exercising powers or performing functions in terms of this Act;

- (c) does anything calculated to improperly influence the Commissioner, an investigator or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner is the exercise of his or her powers or functions, or an accredited body, verification official or verification agency, concerning any matter connected with an investigation in terms of this Act;
  - (d) knowingly provides false information to the Commissioner, an investigator or a person appointed, seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner in the exercise of his or her powers or functions, or an accredited body, verification official or verification agency, in the exercise powers or functions in terms of this Act;
  - (e) anticipates any findings of the Commissioner or an investigator in a way that is calculated to improperly influence the investigation or findings; and
  - (f) does anything in connection with an investigation in terms of this Act that would have been contempt of court if the proceedings had occurred in a court of law; or
- (2) A person commits an offence if the person knowingly -
- (a) misrepresents or attempts to misrepresent the equitable economic empowerment status of an entity; or
  - (b) provides false information or misrepresents information to an accredited body, verification official or verification agency, to secure a particular equitable economic empowerment status or any benefit associated with the compliance with this Act.

(3) A person convicted of an offence in terms of subsection (1) or (2) is liable to fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

### **Delegation of powers and assignment of functions**

**35.** (1) The Minister may delegate or assign his or her powers or functions in terms of this Act to the Commissioner.

(2) The Commissioner may delegate or assign his or her powers or functions in terms of this Act to the investigator, or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner in the exercise or performance of his or her powers or functions in terms of this Act.

(3) The functionary authorised to delegate or assign a power or function in terms of this section, may not delegate or assign a power or function, to -

- (a) publish a notice in the *Gazette*;
- (b) issue directives or guidelines;
- (b) to make regulations or to publish standards of equitable economic empowerment or sector transformation charters; or
- (c) give exemptions,

in terms of this Act.

(4) A delegation or assignment referred to in subsection (1) or (2) -

- (a) must be in writing;
- (b) may be made subject to conditions;
- (c) may be withdrawn or amended in writing by the functionary;

- (d) does not prevent the functionary from exercising that power or performing that function; and
- (e) does not divest the functionary of the responsibility regarding the exercise of the delegated power or the performance of the assigned function.

### **Regulations**

- 36.** (1) The Minister may, by notice in the *Gazette*, make regulations relating to -
- (a) any matter that is required or permitted to be prescribed in terms of this Act;
  - (b) the conducting of investigations in terms of section 18;
  - (c) the findings of an investigation under section 18(3);
  - (d) reporting on compliance with this Act; and
  - (e) information that a person is required to provide in terms of this Act.
- (2) Regulations made under subsection (1) may -
- (a) create an offence for any contravention of a regulation or a failure to comply with a provision of a regulation; and
  - (b) prescribe penalties in respect of an offence contemplated in paragraph (a) not exceeding a fine of N\$ 60 000 or imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

### **Administration of Act**

- 37.** (1) The President may by proclamation in the *Gazette* -

- (a) assign the administration of this Act to any Minister;
  - (b) determine which Ministry is charged with the administration of this Act.
- (2) The President may in the proclamation referred to in subsection (1) -
- (a) determine that different provisions of this Act are administered by different Ministers; and
  - (b) determine that any power granted by this Act must be exercised by one Minister after consultation or with the concurrence of one or more other Ministers.

### **Short title and commencement**

**38.** (1) This Act is called National Equitable Economic Empowerment Act, 2021 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.