

BILL

To provide for the establishment of the Namibia Film Regulatory Authority as a state-owned enterprise; to provide for the objects, powers, duties and functions of the Authority; to provide for the continued existence of the Film Development Fund; to regulate activities relating to film production and the development and promotion of a film industry in Namibia; and to provide for matters incidental thereto.

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Definitions

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

"alternate member" means an alternate member of the Board appointed under section 6;

"authorisation" means an authorisation granted under section 23 to produce a film in Namibia;

"Authority" means the Namibia Film Regulatory Authority established by section 2;

"Board" means the Board of the Authority referred to in section 4;

“Commission” means the Namibia Film Commission established by the Namibia Film Commission Act;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 15(1);

“entertainment industry” means the businesses, enterprises and activities which provide services and facilities and cater for, attract and meet the needs of international and domestic entertainers;

"film" means any sequence of visual or digital images recorded on material of any description, and includes audio-visual productions such as cinematographic film, video, television and interactive media, so as to be capable, by the use of that material -

- (a) of being shown as a moving image; or
- (b) of being recorded on other material by the use of which it can be shown as a moving image,

but does not include any production being a report on news or current affairs;

"film production" means to produce for sale or commercial exploitation any film, and includes the organisation and preparation for the production, directing and operating of cameras, and "produce a film" has a corresponding meaning;

"film producer" means the person responsible for the film production;

"Fund" means the Film Development Fund established by section 17;

“levy” means an entertainment levy imposed under section 29;

"member" means a member of the Board appointed under section 4(1);

"Minister" means the Minister responsible for information and communication technology;

“[Namibia Film Commission Act](#)” means the [Namibia Film Commission Act, 2000](#)

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(Act No. 6 of 2000);

"person" includes any company incorporated or registered as such under any law and any body of persons corporate or unincorporate;

"prescribed" means prescribed by regulation;

“region” means a region as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional office” means a regional office established under section 10(1);

“regulation” means any regulation made under section 41; and

"this Act" includes any regulation.

PART I

NAMIBIA FILM REGULATORY AUTHORITY

Establishment of Namibia Film Regulatory Authority

2. (1) The Namibia Film Regulatory Authority (for which the abbreviation FRAN may be used) is hereby established.

(2) Notwithstanding subsection (1), but subject to this Act, the members and alternate members of the Commission who are in office at the date of commencement of this Act -

(a) is deemed to have been appointed in terms of this Act; and

(b) must perform the functions of the Board until their terms of office expires.

(3) The Authority is a juristic person which is capable, in its own name, of suing
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and of being sued and, subject to this Act, of performing all the acts that a juristic person may perform lawfully.

Objects of Authority

3. Subject to this Act, the objects of the Authority are to supervise, regulate, support, encourage and promote the development of photographic film production, the film industry and film marketing in Namibia, by -

- (a) promoting Namibia as a location for photography and film production on the international market;
- (b) attracting film producers and photographers to facilitate their initiatives to carry out film production in Namibia;
- (c) encouraging film producers to employ or make use of Namibian personnel and facilities for film production;
- (d) developing the film industry in Namibia; and
- (e) establishing relationships with any local or international person which may contribute to the development and promotion of the film industry in Namibia.

Board of authority and appointment of members

4. (1) The Authority is managed by a Board which, subject to section 2(2), and unless a different number is determined and recommended in accordance with sections 14(1)(a) and 15(1)(a) of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006), comprises of five members appointed by the Minister of whom -

- (a) one must be a staff member in the Ministry responsible for information and communication technology;

- (b) one must be a staff member nominated by the Minister responsible for home affairs and immigration;
- (c) one staff member nominated by the Minister responsible for environment and tourism; and
- (d) two persons nominated by a body or bodies recognised by the Minister as representing film producers, of which one must be appointed on account of his or her expertise relevant to the film industry.

(2) In order to appoint a person referred to in paragraph (d) of subsection (1) the Minister must in writing request a body or bodies contemplated therein to submit to the Minister within 30 days after the date of the request the names of persons who in its opinion represents its interests and is a fit and proper person to be appointed as a member of the Board.

(3) If no nomination is submitted to the Minister within the period specified in the relevant request under subsection (2), the Minister may appoint a person considered by him or her as suitable as a member of the Board under subsection (1)(d).

(4) When appointing persons as members under subsection (1) the Minister must ensure that at least one third of the members so appointed are female persons.

(5) The members of the Board must elect from among their number a chairperson and a vice-chairperson.

(6) The Minister must publish by notice in the *Gazette* -

- (a) as soon as possible after the commencement of this Act, the names of the members of the Board referred to in section 2(2); and
- (b) as soon as possible after the appointment of members as contemplated in subsection (1), the names of members of the Board so appointed.

Powers, functions and duties of Board

5. Subject to this Act, the Board is responsible for the application and administration of this Act, and in addition to any other powers, functions and duties conferred upon the Board by or under this Act or any other law, the Board -

- (a) **must** administer the Fund;
- (b) **may** authorise under section 23 the film productions referred to in that section;
- (c) **must** ensure that the terms and conditions of any authorisation issued under this Act are complied with;
- (d) **may** liaise and exchange information, knowledge and expertise with authorities of other countries entrusted with powers, functions and duties similar to those of the Board;
- (e) **must, when requested,** provide information with regard to -
 - (i) Namibian writers, audio-visual technicians, actors, performers, musicians and production staff;
 - (ii) service providers, hotels, caterers, transportation and other facilities in Namibia;
 - (iii) legislation and regulations relevant to the film making industry, including information in respect of Namibian work permits and visas, customs procedures, taxation, traffic, employment, and environmental legislation and any other matters likely to affect film producers contemplating film production in Namibia;
- (f) **may** enter into any agreement, with the approval of the Minister and with the

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concurrence of the Minister of Finance, with any person with expert knowledge in a particular field to assist or advise the Authority in connection with any matter relating to its objects on such conditions as may be mutually agreed upon;

- (g) **may** undertake such investigations or research with regard to its objects as it may deem necessary or to promote film production and the development and promotion of a film industry in Namibia or as the Minister may require;
- (h) **may** implement measures to increase film production and the development and promotion of a film industry in Namibia;
- (i) **may** advise the Minister on matters pertaining to its functions and **must advise the Minister** on matters referred to it by the Minister;
- (j) either on its own initiative, or at the request of the Minister, **may** consult with the Minister on any matter which is of importance for the objects and powers, functions and duties of the Authority and the Board;
- (k) **may** disseminate information to persons engaged in film production and the public with respect to this Act and the functions of the Board;
- (l) **may** acquire or hire the movable or immovable property as may be required for the effective exercising of its powers, performance of its functions and carrying out of its duties, and dispose of property so acquired or hired;
- (m) **may** enter into contracts in connection with the performance of its functions;
- (n) **may borrow money from time to time by way of loans from any source within Namibia and against the security which it may deem fit or the issue of debentures, bills of exchange and other negotiable instruments;**
- (o) **must -**

- (i) develop a national policy on film production in Namibia;
 - (ii) submit that policy to the Minister for approval; and
 - (iii) development and implement a strategic plan to implement the approved policy; and
- (p) may generally do all such things as the Board considers necessary or expedient in order to achieve the objects of this Act.

Alternate members of the Board

6. (1) Subject to section 4(4), the Minister may appoint, at the request of the Board, for every member of the Board other than the chairperson, on the conditions and for the period determined by the Minister, an alternate member of the Board in the same manner as the member of the Board, and may terminate the appointment at any time: provided that the period of appointment of an alternate member may not exceed the period of appointment of a member of the Board as contemplated in section 4(1).

(2) Any alternate member appointed in terms of subsection (1) must during the absence of the member with respect to whom he or she has been appointed, or the member's inability to act as member, act as member of the Board or a committee thereof in the place of the member.

(3) In order to appoint an alternate member for a person referred to in paragraph (d) of section 4(1), the Minister must in writing request a body or bodies contemplated therein to submit to the Minister within 30 days after the date of the request the name of a person who in its opinion represents its interests and is a fit and proper person to be appointed as an alternate member of the Board.

(4) If no nomination is submitted to the Minister within the period specified in the relevant request under subsection (3), the Minister may appoint a person considered by him [Namibia Film Regulatory Authority Bill, 2014: 2nd amended draft: 3/09/2014]

or her as suitable as an alternate member of the Board under subsection (3).

- (5) The Minister must publish by notice in the *Gazette* -
- (a) as soon as possible after the commencement of this Act, the names of the alternate members of the Board referred to in section 2(2); and
 - (b) as soon as possible after the appointment of alternate members as contemplated in subsection (1), the names of alternate members of the Board so appointed.

Disqualifications for appointment as member or alternate member of the Board

7. Notwithstanding sections 4(1) and 6(1), a person is not eligible for appointment as a member or an alternate member of the Board if the person -

- (a) is not a Namibian citizen;
- (b) is a member of Parliament, a regional council or a local authority council;
- (c) has been convicted of an offence, other than a political offence committed before the date of Namibia's independence, in any country and sentenced to a term of imprisonment without the option of a fine for a period of 12 months or more; or
- (d) is an unrehabilitated insolvent.

Tenure and vacation of office of member or alternate member of Board and filling of vacancies

8. (1) Subject to subsection (2), and unless a different determination has been made in terms of section 14(1)(d) of the State-owned Enterprises Governance Act, 2006, a member or alternate member of the Board holds office for three years, but may be re-
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appointed as a member at the expiration of that period.

(2) A member or alternate member of the Board must vacate his or her office as member, if he or she -

- (a) resigns from office as a member by writing under his or her hand, addressed and delivered to the Minister;
- (b) has, without sufficient reasons or the leave of the Board, been absent from three consecutive meetings of the Board;
- (c) has become subject to any disqualification referred to in section 7; or
- (d) is removed from office under subsection (3) of this section.

(3) The Minister may remove any member or alternate member of the Board from office, if -

- (a) the Minister is satisfied that the member is by reason of his or her physical or mental condition or for any other reason incapable of acting as a member;
- (b) the member is guilty of conduct which renders him or her unable or unfit to efficiently discharge the functions of the office as a member or has contrary to section 13 divulged any matter which has been entrusted to him or her under secrecy or has taken part in the discussion of, or has voted in connection with, any matter referred to in section 14,

but the Minister may only so remove a member from office after giving notice to the member and after affording the member a reasonable opportunity to be heard.

(4) Any vacancy on the Board arising from any circumstance referred to in subsections (2) and (3) of this section, or caused by the death of any member or alternate member of the Board, must be filled, with due regard to section 4, for the unexpired portion [Namibia Film Regulatory Authority Bill, 2014: 2nd amended draft: 3/09/2014]

of the period of office of the member or alternate member who has vacated his or her office or who has died, as the case may be.

Meetings and decisions of Board

9. (1) Meetings of the Board must be held at the dates, times and places as the Board may determine, and the Board must hold at least **six** meetings per year.

(2) If the Board has determined the date, time and place of a meeting and a meeting can for any reason not be held on that date and at that time and place, the Chief Executive Officer must determine, after consultation with the chairperson of the Board, the date, time and place of its next meeting.

(3) The majority of the members of the Board form a quorum for any meeting thereof.

(4) The chairperson of the Board or, in the absence of the chairperson, the vice-chairperson, presides at all meetings of the Board at which he or she is present, and if both that chairperson and vice-chairperson are absent from any meeting, the members present must elect one of their number to preside at that meeting and the member so elected may during that meeting perform all the functions and exercise all the powers of the chairperson.

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

(6) The chairperson of the Board may at any time, and must convene, on the written request of at least one-third of the members of the Board or the Minister, a special meeting of the Board.

(7) The Board may in its rules made in terms of section 40 determine the procedure at its meetings and the meetings of any of its committees.

(8) No decision taken by the Board or an act performed under the authority of the Board is invalid by reason only of a vacancy on the Board, or by reason only of the fact that a person who is not entitled to sit a member sat as a member when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of members present at the time and entitled to sit as members.

(9) Notwithstanding subsection (5), a written resolution not passed at a meeting of the Board, but signed by all the members at the time present in Namibia and sufficient to constitute a quorum, is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted, and the resolution must be recorded in the minutes of the next ensuing meeting of the Board.

(10) The Board must cause written records to be kept of the proceedings at its meetings.

Establishment of regional offices

10. (1) The Board may establish for a region a regional office to be headed by a staff member of the Authority as the Board may determine.

(2) A staff member referred to in subsection (1) must in the exercise of his or her powers and the carrying out and the performance of his or her duties and functions be assisted by such other staff members of the Authority as the Board may determine.

(3) A staff member referred to in subsection (1) -

(a) is, in addition to the powers, duties and functions conferred or imposed upon him or her by this Act or any other law or any power or any function delegated or assigned to him or her by the Board or the Chief Executive Officer, in charge of the regional office in respect of which he or she has been appointed;

(b) must advise the Board with regard to applications contemplated in sections 23 and 25 relating to his or her region; and

- (c) must report to the Chief Executive Officer in this regard.

Committees

11. (1) The Board may from time to time establish one or more committees to advise the Board on the matters as the Board may refer to a committee, or to assist the Board in the exercise of such of its powers or the performance of such of its duties and functions under this Act as it may delegate or assign to a committee, and the Board may give directives in connection with the delegation or assignment as it may deem expedient.

(2) A committee established under subsection (1) consists of such members of the Board, including alternate members, as well as other persons, as the Board may appoint to the committee, but the other persons do not have any voting rights.

(3) The Board may designate any member of a committee to be the chairperson thereof.

(4) The Board is not divested of a power, function or duty delegated or assigned by it to a committee and may amend or set aside any decision of such a committee made in the exercise of the delegated powers or in the performance of the assigned functions or duties.

- (5) The Board may at any time dissolve or re-establish a committee.

Remuneration and expenditure

12. (1) A member or alternate member of the Board who is not in the full time employment of the Public Service must be paid out of moneys appropriated by Parliament for that purpose the remuneration and allowances as the Minister may determine, with the concurrence of the Minister of Finance, subject to section 22(1) of the State-owned Enterprises Governance Act, 2006: provided that the remuneration and allowances so determined may not be less than the remuneration and allowances received by the members concerned at the date of commencement of this Act.

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(2) The remuneration and allowances referred to in subsection (1) may differ according to -

- (a) the different offices held by members or alternate members; or
- (b) the different functions performed, whether in a part-time or full-time capacity, by the members or alternate members from time to time.

(3) The expenditure in connection with the application and administration of this Act and the exercise and performance of the powers, duties and functions of the Board must be paid out of moneys appropriated by Parliament for that purpose.

Preservation of secrecy

13. (1) Every person engaged in carrying out this Act -

- (a) must preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or the performance of the duties and functions conferred or imposed upon him or her in terms of this Act; and
- (b) may not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody,

except in so far as any such communication -

- (i) is made in the ordinary course of the exercise of his or her powers or the performance of his or her duties under this Act or any other law;
- (ii) is required by an order of a competent court; or
- (iii) is effected with the prior permission in writing of the Authority or person

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concerned.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is on conviction liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years, or to both the fine and the imprisonment.

Disclosure of interest

14. (1) A member or alternate member of the Board who -

- (a) has in any way a direct or indirect material interest in any financial assistance from the Fund or authorisation granted or to be granted under this Act; or
- (b) acquires the interest after the financial assistance or authorisation has been granted,

must disclose to the Board full particulars of the interest.

(2) The disclosure of interest referred to in subsection (1) must be in writing and be submitted to the Chief Executive Officer -

- (a) at or before the meeting of the Board at which the issue of the particular financial assistance or authorisation is considered for the first time; or
- (b) if the interest is acquired after the financial assistance or authorisation has been granted, at or before the first meeting of the Board to be held after the acquiring of the interest,

and if the financial assistance or authorisation is discussed by the Board during a meeting thereof, the member or alternate member concerned must withdraw from that meeting during the discussion and may not participate in any voting in connection therewith.

(3) The disclosure of an interest under this section and the decision taken by the
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members in connection therewith must be entered in the minutes of the meeting of the Board at which the disclosure is discussed.

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

Chief Executive Officer and other staff of the Authority

15. (1) The Board, with the concurrence of the Minister, must appoint a suitable person who has expertise relevant to the objects and functions of the Authority to be the Chief Executive Officer of the Authority.

(2) The Board must determine, subject to section 22(3) of the State-owned Enterprises Governance Act, 2006, the remuneration and other conditions of service of the Chief Executive Officer.

(3) The Chief Executive Officer is appointed for a period of 5 years and is eligible for re-appointment upon the expiry of that period.

(4) The Chief Executive Officer -

(a) must perform the functions as are conferred on him or her by or under this Act or as may be delegated or assigned to him or her by the Board;

(b) is responsible for the carrying out of the resolutions of the Board; and

(c) manages the affairs of the Authority and the Board subject to the control and directions of the Board.

(5) Except if the Board decides otherwise, the Chief Executive Officer must attend meetings of the Board and may take part in discussions on any matter under consideration before the Board, but has no right to vote on any such matter.

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(6) If the office of the Chief Executive Officer is vacant or he or she is for any reason unable to perform the functions of the office, the Board may appoint -

- (a) a staff member of the Authority; or
- (b) any other suitable person,

to act as Chief Executive Officer during the vacancy or during the period that the Chief Executive Officer is unable to perform those functions.

(7) The Board, [subject to subsections \(9\) and \(10\)](#) -

- (a) may appoint the additional staff members of the Authority as it considers necessary to assist it in the exercise of its powers and the performance of its functions under this Act;
- (b) determines, subject to section 22(3) of the State-Owned Enterprises Governance Act, 2006, the remuneration and other conditions of service and benefits of the other management staff members of the Authority;
- (c) determines the remuneration and other conditions of service and benefits of the other staff members of the Authority.

(8) Any reference in any other law to the secretary of the Authority contemplated in section 12(1) of the Namibia Film Commission Act, is construed as a reference to the Chief Executive Officer.

[\(9\) Staff members appointed to the Commission immediately prior to the date of commencement of this Act continue to be staff members of the Authority from that date and are deemed to be staff members appointed under subsection \(7\)\(a\).](#)

[\(10\) The conditions of service of staff members referred to in subsection \(9\) as on \[Namibia Film Regulatory Authority Bill, 2014: 2nd amended draft: 3/09/2014\]](#)

the date of commencement of this Act may not be less favourable than the conditions of service which applied to them immediately before the date of commencement of this Act.

Report to Minister

16. (1) The Board must submit, not later than 31 October of every year, to the Minister a report on the activities of the Authority and the report of the Auditor-General referred to in section 20(3) in respect of the immediately preceding financial year.

(2) The Minister must lay the reports referred to in subsection (1) upon the Tables of the National Assembly within twenty eight days of receipt thereof, if the National Assembly is in ordinary session, or if the National Assembly is not sitting in ordinary session, then within twenty eight days after the commencement of its first ensuing ordinary session.

PART II

FILM DEVELOPMENT FUND

Continued existence of Film Development Fund

17. (1) The Film and Video Development Fund established by section 14 of the Namibia Film Commission Act continues to exist as the Film Development Fund, together with all monies standing to the credit of the Fund.

(2) The Fund is credited with -

- (a) moneys appropriated by Parliament for purposes of the Fund, [the Authority or for the administration of this Act](#) and paid for the benefit of the Fund, [the Authority or for the administration of this Act](#) at such times and in such manner as the Minister may determine;
- (b) moneys accruing to the Fund from any other source, including donations or grants made for the benefit of the Fund;

- (c) any entertainment levies, interest and penalties paid by persons in terms of this Act;
- (d) prescribed fees received by the Authority for granting, renewing or transferring any authorisation in terms of this Act;
- (e) moneys, including interest, received by means of, or in respect of the repayment of any loan granted from the Fund in terms of section 19;
- (f) interest derived from the investment of moneys standing to the credit of the Fund;
- (g) any money to which the Fund is or may become entitled.

(3) Subject to section 19, the moneys available in the Fund may only be utilised to provide funding for -

- (a) the establishment, development, support and maintaining of a film industry in Namibia;
- (b) the financial assistance of Namibian film producers, including the giving of bursaries for study in film making;
- (c) the development, production and distribution of Namibian film, video and television production projects, including specific projects; and
- (d) script development.

(4) The Board must utilise donations to the Fund in the manner, if any, as agreed to between the Board and the donor concerned.

(5) Any unexpended balance in the Fund at the close of any financial year, including accrued interest on investment balances and other receipts, must be carried forward
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as a credit in the Fund to the next ensuing financial year.

Management of Fund

18. (1) The Fund is managed and controlled by the Board in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister in respect of each financial year of the Fund, and no expenditure payable from the Fund may be incurred except in accordance with the approved estimate of expenditure.

(2) The Chief Executive Officer is the accounting officer in relation to the affairs of the Fund and is responsible, subject to the directions of the Board and in accordance with [regulations made in this regard](#), for the administrative functions pertaining to the Fund, including -

- (a) the collection and recovery, for the benefit of the Fund, of all moneys due or accruing to the Fund; and
 - (b) the administrative control over payments from the Fund.
- (3) The Board must in the name of the Fund open and maintain an account -
- (a) with any banking institution or building society registered under the laws governing banking institutions and building societies in Namibia; or
 - (b) with the Post Office Savings Bank controlled and managed by Namibia Post Limited established under the Post and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992),

into which must be deposited all moneys received by the Fund and from which all payments from the Fund must be made: provided that the account of the Fund at the commencement of this Act is deemed to be the account contemplated in this subsection.

(4) No payments may be made out of the account referred to in subsection (3),
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except -

- (a) on authority of the Board, reflected in the records referred to in section 9(9); and
- (b) in accordance with generally accepted accounting standards.

(5) The Board may invest, with the approval of the Minister and with the concurrence of the Minister of Finance, any moneys standing to the credit of the Fund which is not required for immediate use under this Act -

- (a) with any banking institution or building society registered in terms of the laws governing banking institutions and building societies in Namibia; or
- (b) with the Post Office Savings Bank controlled and managed by Namibia Post Limited established under the Post and Telecommunications Companies Establishment Act, 1992.

Disbursements from Fund

19. (1) The Board may render, either by way of donation or loan and on the conditions as it may determine, of its own accord or on application made to it in the form as it may determine, from the Fund financial assistance to any person for any purpose referred to in section 17(3), including -

- (a) to provide training courses or training facilities in respect of film, video or television production;
- (b) for tuition, boarding fees, maintenance or travelling allowances to persons attending training courses in respect of film, video or television production.

(2) The Board may require, for the purpose of rendering financial assistance in terms of subsection (1), from the person in relation to whom such assistance is being [Namibia Film Regulatory Authority Bill, 2014: 2nd amended draft: 3/09/2014]

considered, to furnish the Board with the particulars or information or to submit or make available to it the books, documents, statements or records as it may require.

(3) The Board may require from a beneficiary of any financial assistance under subsection (1) to furnish it with the particulars and information or to submit or make available to it the documents, statements or records in respect of the appropriation of moneys paid to the beneficiary under that subsection, as it may require.

Financial year, bookkeeping and auditing of books and accounts

20. (1) The financial year of the Fund ends on 31 March of every year.

(2) The Chief Executive Officer must -

(a) keep or cause to be kept the account books 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 business of the Fund;

(b) as soon as possible, but not later than three months after the end of each financial year, submit the account books referred to in paragraph (a) to the Auditor-General for audit.

(3) The Auditor-General must submit, [not later than three months after the date on which the account books have been submitted to him or her as contemplated in subsection \(2\)\(b\)](#), a report on the audit concerned to the Board.

(4) [The Board must submit, not later than six months after the end of the financial year concerned to the Minister -](#)

(a) [the audited account books of the Authority and the Fund for that financial year; and](#)

(b) [the report of the Auditor-General on the audit.](#)

(5) The audited account books and report of the Auditor-General referred to in subsection (4) must comply with the requirements of section 26(2) of the State-owned Enterprises Governance Act, 2006, and must -

- (a) fairly present the state of financial affairs of the Authority and the Fund, their business, their financial results, their performance against predetermined objectives and their financial position at the end of the financial year concerned;
- (b) include particulars of -
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of the losses or irregular expenditure or fruitless and wasteful expenditure;
 - (iii) any losses recovered or written off; and
 - (iv) any other matter that may be prescribed.

(6) The Minister must table the audited account books and the report referred to in subsection (4) in the National Assembly -

- (a) within 30 days after receipt thereof, if the National Assembly is in ordinary session; or
- (b) if the National Assembly is not in ordinary session, within 30 days of the commencement of its next ordinary session.

Income of Fund exempt from tax

21. The Fund is exempted from any tax on income, any transfer duty or stamp duty, any value added tax and any import duty imposed by any law.

Liquidation of Fund

22. The Fund may only be wound up by or under the authority of an Act of Parliament.

PART III**AUTHORISATION TO PRODUCE FILMS****Authorisation to produce films**

23. (1) Subject to section 24, no person may carry out any film production in Namibia without the prior written authorisation of the Board.

(2) Every person who wishes to carry out any film production in Namibia must apply, in the form and manner as the Board may determine, to the Board for authorisation to do so.

(3) An application referred to in subsection (2) must be lodged with the Chief Executive Officer, together with the prescribed application fee, and must contain -

- (a) in the case of a natural person, the full names, nationality, postal and residential address of the person;
- (b) in the case of an incorporated or unincorporated body of persons, the name of the body of persons, its address and principal place of business, the names and addresses of its directors, members or management, as the case may be, and if applicable, particulars of its incorporation; and

- (c) particulars -
- (i) of the film production for which the authorisation in question is being applied for;
 - (ii) of the location or site where the film production is intended;
 - (iii) the condition of, and any existing damage to, the environment in respect of the location or site where the film production is intended;
 - (iv) an estimate of the effect which the proposed filming operations may have on the environment in respect of the location or site where the film production is intended and the proposed steps to be taken in order to minimize or prevent any such effect;
 - (iv) the manner in which it is intended to prevent pollution, to deal with any waste, to reclaim and rehabilitate land disturbed by way of the filming operations and to minimize the effect of the operations on land adjoining the location or site concerned; and
 - (vi) as may be specified by the Authority for purposes of considering the application.

(4) In order to enable it to consider any application referred to in subsection (3), the Board may cause the investigations to be made or undertaken by the Chief Executive Officer or otherwise as it may in its discretion deem necessary.

(5) The Board must consider each application referred to in subsection (2) and must -

- (a) approve the application referred to in subsection (2), if it satisfied -

- (i) that the application is in the interest of the film industry of Namibia;

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and

- (ii) that in the course of any such filming operations appropriate measures will be taken to minimize or prevent any pollution of the environment in respect of the location or site concerned,

and upon payment of the prescribed issuing fee, grant a written authorisation for the film production in question to the applicant concerned; or

- (b) refuse the application, if -

- (i) the information furnished in the application is incorrect or incomplete; or

- (ii) the granting of the authorisation will not be in the interest of Namibia or the Namibian film industry: Provided that an application may not be refused unfairly or unreasonably and merely on account of the content of the proposed film production, except if the content will be contrary to any of the fundamental rights enshrined in the Namibian Constitution or in violation of any other law.

- (6) A written authorisation issued under subsection (5)(a) must -

- (a) be in the form as the Board may determine from time to time; and
- (b) be for the period and, in addition to any prescribed terms and conditions, be subject to the terms and conditions as the Board may determine, including conditions relating to the rehabilitation of the location or site where the film production is intended.

(7) If the Board refuses an authorisation under subsection (5)(b) it must in writing notify the applicant concerned of the refusal, setting out the reasons therefore, and the applicant may -

- (a) furnish the correct or complete information in the application and resubmit the application; or
- (b) resubmit an application in respect of which the granting of the authorisation will be in the interest of Namibia or the Namibian film industry.

(8) The Board may only consider an application for the renewal of any authorisation granted under subsection (5)(a) if the application for renewal, together with the prescribed renewal fee, has been received by the Authority before the date on which the authorisation expires.

(9) The Board -

- (a) may withdraw, or suspend on the conditions as it may determine, an authorisation if it is satisfied that the holder thereof has failed to comply with any of the terms or conditions thereof or this Act; and
- (b) must in writing inform the holder of the authorisation of the decision, setting out the reasons therefore,

but the Board may only withdraw an authorisation after it has afforded the holder concerned an opportunity to be heard.

(10) An authorisation granted under subsection (5)(a) must authorise all matters pertaining or incidental to the film production in question.

(11) Any person who contravenes or fails to comply with subsection (1) commits an offence and is on conviction liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding four years, or to both the fine and the imprisonment.

Exemption from authorisation

24. On application in writing the Board may exempt, on the conditions as it may determine, any person -

- (a) by notice in the *Gazette*; or
- (b) by notice in writing addressed to the person,

from compliance with section 23, and may in like manner amend or withdraw any such notice.

Transfer of authorisation

25. (1) An authorisation may only be transferred with the prior written approval of the Board.

(2) A holder of an authorisation (including the executor, trustee, or other administrator of the estate of the holder or its liquidator) who wishes to transfer an authorisation to another person must apply, in the form and manner as the Board may determine, for permission to do so.

(3) An application referred to in subsection (2) must be lodged with the Chief Executive Officer, together with the prescribed transfer fee and must contain the information and documents as the Board may require.

(4) The Board must consider each application for the transfer of an authorisation and may -

- (a) approve the transfer, subject to the terms and conditions as it may determine;
or

- (b) refuse the transfer, and must in writing notify the applicant concerned of the

refusal, setting out the reasons therefore.

(5) Any person who contravenes or fails to comply with subsection (1) commits an offence and is on conviction liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding four years, or to both the fine and the imprisonment.

Appeals

26. (1) Any person who is aggrieved by a decision taken in terms of section 23 or 25 may, within 30 days of receiving the written notice of the decision, appeal in writing to the Minister against that decision.

(2) The Minister may in respect of an appeal lodged in terms of subsection (1), upon consideration of the grounds of appeal and after consultation with the Board -

(a) confirm, set aside, or amend the decision in question; or

(b) make the order with regard thereto as he or she may deem expedient.

Inspections of authorisations

27. (1) Every person required to hold an authorisation granted under this Act must on demand of a person appointed by the Board make the authorisation available for inspection by the person.

(2) The Board must issue a letter of appointment to each person appointed by it for the purposes of subsection (1).

(3) Any person who requires that an authorisation be made available to him or her for inspection must produce his or her letter of appointment to the person from whom he or she requires the authorisation.

(4) Any person who contravenes or fails to comply with subsection (1) commits

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an offence and is on conviction liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years, or to both the fine and the imprisonment.

Limitation

28. In so far as this Part provides for a limitation of a fundamental freedom contemplated in Article 21 of the Namibian Constitution, in that it authorises a limitation upon a person's right to carry on any occupation, trade or business, the limitation is enacted on authority of Sub-Article (2) of that Article.

PART IV ENTERTAINMENT LEVY

Imposition of levy

29. (1) The Minister, with the concurrence of the Minister responsible for finance and after consultation with the Board, may impose by regulation an entertainment levy to be paid by persons or any category of persons engaged in the entertainment industry for the purpose of the development and promotion of film production and a film industry in Namibia.

- (2) The notice referred to in subsection (1) must contain
- (a) a description of the persons who must pay the levy;
 - (b) the basis for the calculation of the levy;
 - (c) the manner in which and the dates and times on, or periods within, which the levy is payable or collectable;
 - (d) a description of the body or person to which the levy must be paid or the body or person responsible for collection of the levy; and

(e) any other matter which is in the opinion of the Minister necessary for the effective imposition and collection of the levy.

(3) Different amounts of levy may be imposed under subsection (1) for different categories of persons by having regard -

(a) to the turnover of the persons;

(b) to entertainment that has been produced locally and entertainment that has been produced outside Namibia; and

(c) to such other criteria as the Minister, after consulting the Authority, may consider relevant.

(4) The Minister, with the concurrence of the Minister responsible for finance and after consultation with the Board, may vary or withdraw by notice in the *Gazette* any notice issued under subsection (1).

(5) A notice imposing or varying a levy must be published in the *Gazette* at least 30 days before its commencement.

Notice of intention to impose or vary levy

30. Before imposing or varying a levy under section 29, the Minister must -

(a) by notice in the *Gazette* -

(i) inform affected persons or categories of persons of any such intention by specifying -

(aa) the details of the proposed imposition or variation;

(bb) the reasons for the proposed imposition or variation;

- (cc) the proposed date or dates of commencement of the proposed imposition or variation; and
 - (ii) invite affected persons or categories of persons to make representations to the Minister within 30 days of publication of the notice or the further period as the Minister may determine; and
- (b) consider any representations made in terms of paragraph (a)(ii).

Payment and collection of levy

31. (1) Any levy payable in terms of this Act must be paid -

- (a) to the Authority; or
- (b) to an agent designated by the Minister by notice in the *Gazette*, after consultation with the Board, to collect the levy on behalf of the Authority.

(2) Subject to subsection (3), the designated agent may withhold from its payment to the Authority the costs of collection of the levy.

(3) The total amount of collection costs referred to in subsection (2) may not exceed the percentage, as specified in the notice referred to in subsection (1)(b), of the total amount of levies collected by the designated agent.

Interest on late payment of levy and penalties on default of payment

32. If -

- (a) a person fails to pay a levy or any portion of a levy on or before the due date for payment, interest is payable on the outstanding amount at the rate prescribed under the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975),

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calculated from the last day for payment to the day that payment is received by the Authority or by the designated agent;

- (b) any levy remains unpaid after the last day for payment thereof, a penalty of ten percent of that unpaid amount is payable by the person concerned in addition to the interest contemplated in paragraph (a).

Levy, interest or penalty as debt due to Fund

33. (1) Any levy, interest or penalty due by a person in terms of this Act is deemed, from the date that it is due, to be a debt due to the Fund and may be recovered by the Authority or the designated agent in the manner provided for in this section.

(2) Subject to subsection (3), the Authority or designated agent may file, in respect of any debt due as contemplated in subsection (1), with the clerk or registrar of a court of competent jurisdiction a statement -

- (a) certified as correct by the Chief Executive Officer or the equivalent officer of the designated agent; and
- (b) stating the amount of all levies, penalties and interest due to the Fund by the person concerned.

(3) A statement filed under subsection (2) has the effect of, and any proceedings may be taken thereon, as if it were, a civil judgment of the court at which the statement was filed, in favour of the Fund for a liquid debt in the amount specified in the statement.

(4) The Authority or designated agent must serve, before filing a statement under subsection (2), a written notice on the person concerned -

- (a) accompanied by a copy of the statement; and

- (b) informing the person of its intention to file the statement 30 days after serving the notice.

(5) The Chief Executive Officer or the equivalent officer of the designated agent may withdraw, by notice in writing, addressed to the clerk or registrar of the court in question, a statement filed with that clerk or registrar and thereupon that statement ceases to have any effect.

(6) The Authority or designated agent may institute proceedings afresh under subsection (2) in respect of the levies, penalties or interest to which a statement withdrawn under subsection (5) relates.

Exemption from levy

34. On application in writing the Minister may exempt, on recommendation of the Board and by notice in the *Gazette*, any person or category or class of persons from the payment of a levy imposed under section 29.

Persons to keep records and furnish information

35. Every person who is liable in terms of a notice issued under section 29 to pay a levy must -

- (a) keep and maintain at his, her or its principal places of business in Namibia up-to-date records in the manner prescribed relating to all matters relevant to the calculation and payment of the levy;
- (b) within the period specified in the notice, furnish the Authority or designated agent with such information pertaining to the calculation and payment of the levy as the Authority or designated agent may reasonably request in the notice.

Appointment of inspectors

36. (1) The Board may appoint any of its staff members as inspectors to promote, monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the Authority or a designated agent.

(2) The Chief Executive Officer must issue to an inspector appointed under subsection (1) a certificate of appointment signed by the Chief Executive Officer.

(3) An inspector performing any function in terms of this Act must produce on request the certificate of appointment referred to in subsection (2).

Powers of inspectors

37. (1) In order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the Authority or a designated agent, an inspector may without warrant or notice, at any reasonable time enter any workplace or any other place, which is not a home, where a person carries on business or keeps any records.

(2) An inspector may enter a home or any place other than a place contemplated in subsection (1) only-

- (a) with the consent of the owner or occupier; or
- (b) if authorised by a warrant under subsection (3) to do so.

(3) A magistrate, or judge of the High Court, in chambers and having jurisdiction may issue a warrant on written application by an inspector stating under oath or affirmation the reasons for the need to enter the place in order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the Authority or designated agent.

(4) In order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by the Authority or the designated agent, an inspector may -

- (a) question any person either alone or in the presence of any other person on any matter to which this Act relates;
 - (b) order any person who has control over or custody of any book, document or thing to produce without delay, at the time and place as may be determined by the inspector, the book, document or thing;
 - (c) seize any book, document or thing which in the opinion of the inspector may serve as evidence in any matter in terms of this Act;
 - (d) examine or cause to be examined, make extracts from or copies of, any book, document or thing produced to or seized by the inspector and order any person who in the opinion of the inspector is qualified to do so to explain any entry in the book, document or thing; and
 - (e) order an employee to appear before the inspector at the time and place as may be determined by the inspector and question the employee.
- (5) An inspector performing any function in terms of this section -
- (a) may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection;
 - (b) must provide a receipt for any book, document or thing seized or produced in terms of subsection (4); and
 - (c) must return anything so seized or produced within a reasonable time.
- (6) Any person who, without just cause -
- (a) refuses to permit an inspector to enter any premises referred to in subsection (1) or to conduct any examination or inquiry in terms of subsection (4);

- (b) fails or refuses to produce any book, record or other document which an inspector has required him or her to produce in terms of subsection (4);
- (c) fails or refuses to explain any entry in a book, record or other document which an inspector has required him or her to explain in terms of subsection (4);
- (d) hinders or obstructs an inspector in the exercise of his or her powers in terms of this Act;
- (e) wilfully and knowingly furnishes false or misleading information to an inspector; or
- (f) removes or tampers with any book, record or other document seized by an inspector under subsection (4),

commits an offence and is on conviction liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding four years or to both such fine and such imprisonment.

Refusal or failure to pay levy, interest or penalty

38. Any person who is liable to pay any levy, interest or penalty due under this Act and who refuses or fails to pay the levy, penalty or interest concerned commits an offence and is on conviction liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding four years or to both the fine and the imprisonment.

PART V MISCELLANEOUS

Film copies to be furnished to National Archives of Namibia

- 39.** (1) Every film producer must -
- (a) furnish the National Archives of Namibia referred to in section 3(1)(a) of the [Namibia Film Regulatory Authority Bill, 2014: 2nd amended draft: 3/09/2014]

Archives Act, 1992 (Act 12 of 1992), with two copies of any film produced in Namibia; and

(b) notify the Authority within 14 days in writing accordingly.

(2) The National Archives of Namibia must deal with the copies referred to in subsection (1) in accordance with the laws governing legal deposits of documents to libraries in Namibia.

(3) Any person who contravenes or fails to comply with subsection (1)(a) or (b) commits an offence and is on conviction liable -

(a) in the case of a contravention of or failure to comply with subsection (1)(a), to a fine not exceeding N\$5 000 or to imprisonment for a period not exceeding one year or to both the fine and the imprisonment;

(b) in the case of a contravention of or failure to comply with subsection (1)(b), to a fine not exceeding N\$2 500 or to imprisonment for a period not exceeding six months or to both the fine and the imprisonment.

Rules by Board

40. (1) The Board may make, after consultation with the Minister, rules for the proper control and conduct of its affairs.

(2) Any amendment, substitution or repeal of any rule by the Board may only be made if -

(a) the Minister has been consulted with regard to the proposed amendment, substitution or repeal; and

(b) at least two-thirds of the members of the Board present at a meeting convened for the purposes of considering the amendment, substitution or repeal, have

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voted in favour thereof.

Regulations

41. (1) The Minister may make, after consultation with the Board, regulations in relation to -

- (a) the terms and conditions subject to which authorisations may be issued, renewed or transferred;
- (b) the fees payable for the application, issue, renewal or transfer of an authorisation;
- (c) the administration of the Fund;
- (d) appropriate measures that must be taken by the holder of the authorisation to minimize or prevent any pollution of the environment in respect of the location or site concerned or land adjoining the location or site; and
- (e) generally any matter which is required by this Act to be prescribed or which the Minister considers necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Regulations made in terms of subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, of a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years or to both the fine and the imprisonment.

Delegation or assignment of powers, functions and duties to Chief Executive Officer

42. (1) The Board may delegate or assign to the Chief Executive Officer any power, duty or function conferred upon or assigned to it by or under this Act, but it is not divested of any power so delegated and may amend or withdraw any decision made in the exercise of a power so delegated.

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(2) A delegation or assignment under subsection (1) may be made subject to the conditions and restrictions as may be determined by the Board, and any such condition or restriction may be withdrawn or amended by it.

Indemnity

43. A member, alternate member or committee member of the Board, a staff member of the Authority or the Minister is not personally liable for any damage or loss arising out of any act done by himself or herself in good faith and in the course of his or her powers, functions and duties contemplated in this Act, unless the loss or damage is due to his or her wilful misconduct, dishonesty or gross negligence.

Commencement of Namibia Film Commission Act and Namibia Film Commission Amendment Act, 2001

44. (1) Despite anything to the contrary contained in any law, the -

- (a) Namibia Film Commission Act, except section 31 thereof, is deemed to have come into operation on 5 May 2000;
- (b) Namibia Film Commission Amendment Act, 2001 (Act 11 of 2001), is deemed to have come into operation on the 28th of September 2001; and
- (c) the Namibia Film Commission Act is deemed to have been amended by the Namibia Film Commission Amendment Act, 2001, on the 28th of September 2001.

(2) Any monies paid in terms of the Namibia Film Commission Act are deemed to have been paid legally.

Repeal of laws

45. The Namibia Film Commission Act and the Namibia Film Commission Amendment Act, 2001, are repealed.

Transitional provisions

46. (1) Despite section 45, any authorisation, renewal or transfer issued, made or granted or any other thing done in terms of any law referred to in that section is, except in so far as may be otherwise required by this Act, deemed to have been issued, made, granted or done under the corresponding provision of this Act.

(2) With effect from the date of commencement of this Act, all assets, liabilities, rights or obligations of the Commission vest in the Authority.

(3) The Registrar of Deeds or any other person in charge of any other office where a register or a record is being kept of the ownership of or entitlement to an asset or right referred to in subsection (2) must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to give effect to that subsection.

(4) Notwithstanding any law to the contrary, no stamp duty, transfer duty, registration fee, value added tax or any other duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the vesting of assets or rights in the Authority as contemplated in subsection (2).

(5) The Authority is substituted for the Commission as a contracting party in respect of any agreement transferred to the Authority in terms of subsection (1), without that substitution bringing about a novation of the agreement.

Short title and commencement

47. This Act is called the Namibia Film Regulatory Authority Act, 2014, and [Namibia Film Regulatory Authority Bill, 2014: 2nd amended draft: 3/09/2014]

comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

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