GUIDELINES FOR ASPIRING NEW GENERATION APPLICANTS

Version 4, 28 September 2007
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1. Background

The Electricity Act (Act 2 of 2000) created an independent regulatory authority, the Electricity Control Board (ECB) to control, regulate & promote the Namibian Electricity Supply Industry (ESI). As part of this mandate the ECB makes recommendations to the Minister of Mines and Energy with regard to the issue, transfer, amendment, renewal and cancellation of licenses. In terms of Section 17 of the Electricity Act (Duty to obtain a license), no person may establish or carry on generation, transmission, distribution, supply, import or export electricity unless such person holds a license.

The primary objective of these guidelines is thus to assist potential new investors in the electricity generation sector of Namibia to acquire a license through clarifying the procedural and information requirements as well as the license evaluation process. The rationale behind this objective is that new investments in the power generation sector are required urgently not only in Namibia, but also in the Southern Africa Region, due to a looming power supply shortage.

To attract investors to Namibia and facilitate investment in the Namibian ESI, the ECB has completed an Independent Power Producer (IPP) and Investment Market Framework for Namibia. The final report is available on the ECB website, www.ecb.org.na under “General Documents”. Apart from providing potential investors in the generation sector of Namibia with detailed information on the power supply situation in Namibia and the Southern Africa Region, it also provides guidelines to the framework that Namibia intends to use to attract investments in the generation sector as well as the current electricity policies in Namibia. It is therefore recommended that aspiring new generation license applicants read at least the executive summary of this report.

In addition some brief information about Namibia is contained in Annexure 8. A summary of incentives for manufacturers and exporters are contained in Annexure 9. The Foreign Investment Act is contained in Annexure 10.

2. Requirements of the Electricity Act, 2000

The requirements of the Electricity Act of 2000 are detailed in Section 18 of the Electricity Act (extracted in Appendix 1). Any potential generator must complete and submit a license application form (Appendix 4) to the secretariat of the ECB. The license application is evaluated internally and a recommendation is made to the Board of Directors of the ECB. The Board then makes a recommendation to the Minister of Mines and Energy, who ultimately makes the decision whether a license is granted or refused.

If the Minister grants the license, the secretariat of the ECB issues the license subject to certain conditions, which must also be approved by the Minister of Mines and Energy.

It should be noted that the license application should be advertised in at least one of the local English newspapers distributed nationally at the cost of the prospective licensee. The contents of the advertisement are detailed in the Electricity Regulations: Administration (attached as Appendix 2). A sample license application advertisement is contained in Appendix 3. The purpose of the advertisement is to afford aggrieved parties the opportunity to object to the license application within a period of 30 days after the placement of the advertisement.
It should be noted that the area where the generation activities will take place should be accurately depicted on a map, as this area will form part of the issued license. The prospective licensee should also submit proof to the ECB that a permanent or temporary right to the land has been obtained from the relevant Local/Regional Authority, private individual/company or relevant Government Ministry (protected areas). Annexure 11 contains a map of Namibia indicating briefly the various owners of land.

The tariffs, which the prospective licensee intends to charge, should also be clearly defined. It is an independent function of the ECB to determine tariffs and only approved tariffs will be attached to the license to be issued. No license can be issued without a schedule of approved tariffs.

If the license applicant is independent of Namibia Power Corporation (NamPower), a Power Purchase Agreement/s (PPA/s) with NamPower and/or Regional Electricity Distributor (RED) and/or large consumer/s will be required. The tariffs form part of the PPA, and it follows that the ECB will have to approve the PPA as well. If the PPA negotiations are not completed, the ECB may issue a preliminary schedule of approved tariffs. However, the license applicant must submit proof to the ECB that NamPower and/or Regional Electricity Distributor (RED) and/or large consumer/s are willing to negotiate on the preliminary tariffs. License applicants should also note that, should they be making use of NamPower’s transmission network to transport power to RED/s and/or large consumers, they should negotiate a power transfer (wheeling) agreement and tariff with NamPower.

3. Requirements of the Electricity Regulations: Administrative

The requirements (especially information to be provided) for prospective licensees are detailed in Regulations 3 and 4 of the Electricity Regulations: Administrative (extracted in Appendix 2). It should be noted that the information requirements listed in Regulation 3 are not exhaustive and the ECB may request additional information in accordance with regulation 3 (3).

The contents of the advertisement to be placed are detailed in Regulation 4: Advertising. A sample of how the advertisement should look is contained in Appendix 3. It should be noted that the prospective licensee should submit a copy of the newspaper advertisement to the ECB within 14 days of its publication, that a local English newspaper distributed nationally should be used and that the advertisement should state that objections must be submitted to the ECB.

The fee structure is contained in Appendix 7 (from the Electricity Regulations: Administrative). For a new generation license an application fee of N$500 (payable upon submission of the application) and an issue fee of N$1,000 (payable only when the license is successful, upon receipt of the license and its conditions). These fees are payable per application – i.e. if more than one license is required (for example an additional supply licence) the same fees are payable also for the additional license(s).

4. Requirements of the Electricity Control Board (ECB)

This is contained in the Generation License Application form (Appendix 4) and is based on the information and general requirements of the Electricity Act, 2000 and the Electricity
Regulations: Administrative and other relevant information the ECB requires. It is organized in the following sections with notes, where applicable.

Section A: Particulars of License Application

**Nature of application:** In the event of an applicant applying for the first time for a generation licence, this should be the issue of a “New license”.

Desired period, normally the asset life-time or the period for which the prospective licensee intends to operate the plant.

**Other permits, approvals & authorization:** It should be noted that an Environmental Impact Assessment (EIA) might be required by Namibia’s environmental policy and legislation (Namibia’s Ministry of Environment and Tourism is the relevant authority to liaise with). *Should all these matters not already been adequately addressed* and should the issue of a license be recommended, a license will be issued for a *specific period*, allowing the licensee enough time to address all these issues. Note that *it is the duty of the applicant to establish the permits, approvals and other authorisations that may be required in terms of Namibian laws.*

A temporary or permanent right to the land on which the plant will be situated must also be acquired before the license application will be considered.

Section B: Particulars of Applicant

General particulars like name, address, contact numbers, etc.

For companies a *copy of the registration document* is required as well as the resolution of the board of directors authorizing the application. This means the incorporation certificate, the certificate to commence business and the memorandum of association (for Namibian registered companies, these are CM forms 1 – 4).

This section should be signed by the highest administration authority of the company, close corporation, etc duly authorised to do so.

Section C: Geographical Area to which the application relates

An accurate map clearly indicating the boundaries where the plant will be situated is required for the issue of a license. A temporary or permanent right to the land on which the plant will be situated must also be acquired before the license application will be considered.

Section D: Particulars of Generating Station

General and technical details of the power station. This should be completed as accurately as possible. The maximum capacity should be accurate as it will be stated in the license to be issued and which cannot be altered without ECB approval. An Operational Plan is also required. *Preliminary plans may be submitted but it will be subject to a condition that final documents and plans must be submitted prior to the erection of any structures.*

Section E: Particulars with any long-term arrangements with primary energy suppliers

This is required, as it will have an impact on the tariffs to be charged. *Note that FSAs (Fuel Supply Agreements) must be submitted to the ECB prior to signature thereof.*

Section F: Maintenance Programs and Decommissioning Costs

This is required, as it will have an impact on the tariffs to be charged.

Section G: Customer Profile
Details of the entity and its power profile to whom the prospective licensee will supply power.

Section H: Financial Information

Detailed financial information should be provided as accurate as possible. A detailed Business Plan is also required.

The proposed tariffs must be clearly outlined. The ECB must approve these tariffs before a license can be issued. The applicant must make sure with the ECB that all required information is available and/or submitted in order to enable the ECB to approve a proposed tariff.

Any PPA must be approved by the ECB before signature thereof. Should PPA negotiations not be concluded yet, the license applicant must submit proof to the ECB that NamPower and/or Regional Electricity Distributor (RED) and/or large consumer/s are willing to negotiate on the preliminary tariffs. License applicants should also note that, should they be making use of NamPower’s transmission network to transport power to RED/s and/or large consumers, they should negotiate a power transfer (wheeling) agreement and tariff with NamPower.

Please note that should any of the above be outstanding, a license can only be issued conditionally subject to all the information and other requirements being met within a specific period.

Section I: Additional Information

Any other relevant information the prospective licensee wants to bring to the attention of the ECB can be included here.
5. License Evaluation Procedure

The license evaluation procedure is depicted in the following flowchart:

Due to the urgent need for new investments in the power generation sector of Namibia, the ECB will, where appropriate, fast track the processing of a license application, provided that at least a pre-feasibility/conceptual study has been/is being completed and minimum requirements are met. Should there be other outstanding matters e.g. an EIA, PPA, information, etc. the ECB can recommend licenses to be issued that will be valid for a period of sufficient duration for the licensee to complete the outstanding requirements, which will be clearly defined in the license conditions. Hence, with only a pre-feasibility study completed and minimum other requirements being met, and provided that no substantial objections have
been received, the licensing procedure could be completed within 2 months. However, this should in no way be interpreted as being binding upon the functionaries involved and this is not applicable to acquiring a temporary or permanent right to the land where the power plant will be situated as well as proof of an off-taker/s willing to negotiate on the preliminary tariffs. Please note that a conditional license can only be issued by the ECB if the prospective investor submits proof to the ECB that the prospective investor has the necessary financial and technical resources to execute the project. This can be achieved by submitting the applicant’s latest annual report and/or the annual reports of the applicant’s financiers and/or engineering-construction companies that will execute the works. Should the financiers and/or the engineering-construction companies be not part of the applicant’s company structure, letters of intent by these parties to participate in the project should also be provided to the ECB.

6. Objections Procedure

The objections procedure is dealt with in Section 18 of the Electricity Act, 2000 (Appendix 1) and Regulation 5 of the Electricity Regulations: Administrative (Appendix 5).

Objections against a license application should be lodged in writing to the Board within 30 days of the advertising of the license application. The information that should be contained in the objection is detailed in Regulation 5(2). The Board has not determined a formal form for objections and objections are allowed in letter format or any other format an objector may select.

Within 7 days of receipt of an objection, the Board must forward the objection to the concerned license applicant. The Board may arrange for a public hearing on the objection. If a public hearing is not conducted, the concerned license applicant must respond to the objection in writing to the Board within 14 days after the closing date for objections.

The Board will make a ruling on the objection and include it in the recommendation to the Minister of Mines and Energy for the granting or refusal of a license. Ultimately the Minister of Mines and Energy will make the decision for the granting or refusal of a license, taking into consideration any objections that may have been received.

7. Evaluation Criteria

The evaluation criteria for consideration of a license application by the Minister of Mines and Energy is contained in Section 19 of the Electricity Act, 2000 (Appendix 6) and is followed by the ECB as well in making its recommendation to the Minister of Mines and Energy.

In summary, the following are the evaluation criteria:

1. Possible adverse affects on the environment and the rights and operation of others versus the benefits arising from the granting of the license. The Minister may require an Environmental Impact Assessment (EIA) to be conducted, if not done already, and/or the implementation of appropriate environmental management plan(s);

2. Adequacy of the technical and economic-financial resources of the prospective licensee to successfully conduct its licensed business including the technical and economic-financial viability of the project;
3. Ability of the applicant to provide an effective service to customers; and
4. Whether the grant or refusal of the license is in the public interest.

Note that the above is not an exhaustive list of criteria and the ECB or the Minister may take into account any other relevant criteria.
Appendix 1: License Application Extract from the Electricity Act, 2000

Application for licence

18. (1) An application for the issue of a licence must -

(a) be submitted to the Board; and

(b) be advertised, at the expense of the applicant, in the prescribed manner.

(2) Any objection to the issue of a licence must be submitted to the Board in the prescribed manner.

(3) The Board must consider an application in terms of subsection (1) and any objection thereto, and may for that purpose, at its discretion, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days’ notice must be given to the applicant and every objector.

(4) At a hearing in terms of subsection (3), the applicant and an objector may be represented by a legal practitioner and may lead evidence in support of the application or objection.

(5) Not later than 30 days after conclusion of a hearing in terms of subsection (3) or, if no hearing was arranged, 30 days after the expiry of the period allowed for the submission of objections in terms of subsection (2), the Board must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, including any conditions which the Board recommends should be imposed in relation to the licence.

(6) The Minister may either grant or refuse an application for the issue of a licence.

(7) If an application for the issue of a licence is refused the Minister must in writing inform the applicant of the reasons therefor.

(8) If an application is granted by the Minister, the Board must issue the licence in such form as the Board determines, and which must -

(a) specify the particular activity authorised by the licence;

(b) define the area in respect of which the licence is issued;

(c) contain or have attached to it any conditions imposed in relation to the licence, in addition to those provided for in this Act; and

(d) contain a schedule specifying the approved tariffs that may be charged by the licensee for the supply, provision or distribution of electricity to different classes of consumers.
Appendix 2: License Application Extracts from the Electricity Regulations: Administrative

Applications

3. (1) An application for the issue, renewal, amendment or transfer of a licence shall be made in the form determined by the Board and shall be accompanied by the appropriate application fee imposed by Annexure A, which fee in non-refundable.

(2) At the least the following information, in so far as it is applicable to an application, shall be included in an application under subregulation (1):

(a) The name, nationality, identity number, or, in the case of a body corporate, the country of registration and its registration number, or, in the case of an authority created by law, only the name of such authority, and postal and business address of the applicant, and in the case of an application for a transfer of a licence, this information must be provided with regard to both the licensee and the proposed transferee;

(b) the type of application, namely an application for the issue, renewal, amendment or transfer of a licence;

(c) the type of activity to which the application applies, namely generation, transmission, supply, distribution, importation or export of electricity;

(d) in the case of an application for the issue or amendment of a licence -

(i) a map showing the proposed location where the applicant intends to erect or alter plant;

(ii) a description of the technical design, including a one-line diagram of the proposed plant, and its surrounding electrical system, which the applicant intends to erect or alter;

(iii) a description, including a site layout, of the area within which the applicant intends to carry out the activities to be authorised under the licence;

(iv) a calculation of the net present value of the proposed plant and any alternative plants which calculation must be in accordance with the guidelines determined by the Board; and;

(v) such other information as the Board may deem necessary regarding the plant and design;

(e) in the case of an application for the issue of a licence, a complete list of the standard tariffs which the applicant intends charging to be specified in the schedule of approved tariffs to be contained in the relevant licence;
(f) in the case of the issue, renewal, amendment or transfer of a licence, an outline of the intended operational and business plan, unless such plan has already been submitted during a previous application and has not changed in which case such previous plan must be attached;

(g) in the case of an application for the issue or renewal of a licence, the desired licence period and an estimate of the expected income and expenditure of the relevant undertaking to be carried on by the applicant under the licence during such licence period or such shorter period as the Minister may determine;

(h) in the case of an application for the issue, amendment or transfer of a licence, the proposed advertisement referred to in regulation 4; and

(i) such other particulars the Board may require in general or in the case of a particular type of or particular licence, or in terms of the Act or any regulations made thereunder, in order to enable the Board to make a recommendation on such application or on conditions to be imposed on a licence in terms of the Act.

(3) When considering an application, the Board may request an applicant to -

(a) submit to the Board such further information as the Board may require in order to enable it to make a recommendation on such application;

(b) present alternative proposals in the conformance with requirements presented by the Board to a proposal submitted by the applicant in the applicant’s application.

**Advertising**

4. (1) An applicant applying for the issue, amendment or transfer of a licence must advertise the application in the form approved by the Board.

(2) An advertisement referred to in subregulation (1) must be published in at least one national circulating in Namibia or one local newspaper circulating in the relevant local area.

(3) The advertisement must -

(a) specify the information required in terms of regulation 3(2)(a), (b), (c) and (d)(i); and

(b) list the information required in terms of regulation 3(2)(d)(ii), (iii), (iv) and (v), (e), (f), (g) and (i) and indicate clearly the physical address where such complete information can be inspected during normal business hours by any interested person.

(4) The applicant must submit a copy of the newspaper in which the application was advertised to the Board as proof that such application has been advertised in accordance with this regulation within 14 days of such publication.
Appendix 3: Sample License Application Advertisement


NOTICE OF APPLICATION IS HEREBY GIVEN BY NAMPOWER (PTY) LTD FOR A

GENERATION (Wind Power - Lüderitz) LICENCE

FROM THE ELECTRICITY CONTROL BOARD ESTABLISHED IN TERMS OF SECTION 2 OF THE ELECTRICITY ACT, 2000 (ACT 2 OF 2000)

In accordance with the requirements of Regulation 4(3)(b) the following information will be available to any interested person to inspect complete information in respect thereto at the PHYSICAL ADDRESS OF NAMPOWER, NamPower Library, 15 Luther Street, Windhoek, Republic of Namibia. Issue of a licence.

Applicant:
Namibian Power Corporation (Proprietary) Limited
Republic of Namibia
2007
P.O. BOX 2060, WINDHUK, REPUBLIC OF NAMIBIA
13 Luther Street, Windhoek, Republic of Namibia

Type of Application:
Generation of electricity

In accordance with the requirements of Regulation 4(3)(b) the following information will be available to any interested person to inspect complete information in respect thereto at the PHYSICAL ADDRESS OF NAMPOWER, NamPower Library, 15 Luther Street, Windhoek, Republic of Namibia. Issue of a licence.

1. Map showing proposed location where NamPower intends to erect or alter plant.
2. Description of the technical design, including a line-by-line diagram of the proposed plant, and its surrounding electrical system.
3. Description, including the site layout or the area within which NamPower intends to carry out activities authorized under the licence.
4. Calculation of the net present value of the proposed plant and any alternative plants.
5. Other information regarding the plant and design deemed necessary by the Electricity Control Board. Please note that the Board has called for no such information at the date hereof.
6. Complete list of the standard tariffs, from which NamPower intends to be specified in the schedule of approved tariffs to be contained in the relevant licence.
7. Outline of the intended operational and business plan.
8. Desired licence period.
9. Estimate of the expected income and expenditure of the relevant undertaking of NamPower under the licence and for such licence period or such shorter period at the request of the Electricity Control Board.
10. Any other information in the Electricity Control Board may require or as is required by the Electricity Act, 2000 (Act 2 of 2000) or any Regulation thereunder in order to enable the Electricity Control Board to make a recommendation or on the records above mentioned the licence. Where not that the applicant required no such information at the date hereof.

Any person desiring to object against this application may, within a period of 30 days after the date of publication of this advertisement, lodge a written objection against such application with the Electricity Control Board in a form determined by the Board and in compliance with the relevant provisions of Regulation 5 of the Electricity Regulations published in terms of section 38 of the Electricity Act. 2000 (Act 2 of 2000) or Government Notice 168 of 2000.

Any person desiring to object against this application may, within a period of 30 days after the date of publication of this advertisement, lodge a written objection against such application with the Electricity Control Board in a form determined by the Board and in compliance with the relevant provisions of Regulation 5 of the Electricity Regulations published in terms of section 38 of the Electricity Act. 2000 (Act 2 of 2000) or Government Notice 168 of 2000.

NamPower
APPLICATION FOR A LICENCE TO GENERATE ELECTRICITY IN TERMS OF THE ELECTRICITY ACT, 2000 (Act 2 of 2000).

Please return completed form to:

Electricity Control Board  
8 Bismarck Street  
P.O. Box 2923  
Windhoek  
Namibia

Tel: +264-61-374 300  
Fax: +264-61-374 305  
E-mail: info@ecb.org.na  
Website: http://www.ecb.org.na
SECTION A  PARTICULARS OF LICENCE APPLICATION

A.1 State nature of application (mark which is applicable):
   Issue of new Licence
   Renewal of Licence
   Amendment of Licence
   Transfer of Licence

A.2 Desired period of validity of Licence
   Desired commencement date_______/___/_____
   Desired validity period:______ years

A.3 Other permits, approvals and authorisations obtained/required, e. g environmental, safety and health, land, etc.

A.4 In terms of regulation 4 the applicant is obliged to advertise his licence application. Please attach a copy of the newspaper clipping attesting thereto.

SECTION B  PARTICULARS OF APPLICANT

B.1 Full name of applicant

B.2 Identity number of applicant, or in the case of a body corporate, registration number:

B.3 Nationality of applicant, or in the case of a body corporate, country of registration:

B.4 In the case of an authority created by law, the name of the law in terms of which that authority was established/created:

B.5 Physical and postal address of applicant:

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1 The information required in this section must be provided with regard to both the licensee and the proposed transferee.
2 Attach a copy of the registration papers.
3 Where the applicant is a company a board resolution authorising the applicant must be attached.
4 If the applicant is a local government body, attach a copy of the proclamation establishing such body.
B.6 Telephone number of applicant:

(                       )

B.7 Fax number of applicant:

(  )

B.8 E-mail of applicant (if any):


B.9 Contact person at applicant:

Name: ______________________________________________________________________________
Position:
Telephone No: (_________________)____________________________________________________________
Fax No: (_________________)____________________________________________________________
E-mail: _____________________________________________________________________________

B.10 Signature of Applicant

Submitted at                                                         on                                           200

________________________________________
Signature

________________________________________
Name

Witnesses:

________________________________________  __________________________________________
Signature                                      Signature

________________________________________  __________________________________________
Name                                      Name

3 The highest administrative authority of the applicant must sign.
SECTION C  GEOGRAPHICAL AREA TO WHICH THE APPLICATION RELATES

In terms of regulation 3(2)(d) of the Electricity Regulations: Administrative, the following information is required:

(i) a map showing the proposed location where the applicant intends to erect or alter plant, where applicable;
(ii) a description of the technical design, including a one-line diagram of the proposed plant, and its surrounding electrical system, which the applicant intends to erect or alter, where applicable;
(iii) a description, including a site layout, of the area within which the applicant intends to carry out the activities to be authorised under the licence;
(iv) a calculation of the net present value of the proposed plant and any alternative plants, which calculation must be in accordance with the guidelines determined by the Board.

Additional requirements are:

(i) Submit a map to readily identify the area to which the application relates. The map must be to scale 1:250000 where boundaries follow existing boundaries. Where boundaries do not follow existing boundaries the map should be to the scale 1:50000.
(ii) Map must indicate local government boundaries within the area to which the application relates.
(iii) Provide a site map for each generation facility for which a licence is applied.

SECTION D  PARTICULARS OF GENERATING STATION

(To be provided for each generation station separately)

D.1 Name of generation station

D.2 Location of generation station

D.3 Address of generation station

D.4 Contact person at generation station

Name

Position

Telephone Number

Fax Number

E-mail (if any)

D.5 Type of generation station (i.e. thermal hydro, gas turbine, diesel generator)
D.6 Date on which the generation station was commissioned for an existing station or the expected commissioning date for a proposed station.

D.7 The installation capacity of each unit within the generating station (MVA)

D.8⁶ Maximum generating capacity (MW) expected to be available form the generating station and energy to be produced (MWh) over the next / first 5 years of operation. These estimates should be based on modelling of how the power station will fit into the demand profile of its customers, taking into account the least cost energy purchase consideration and demand management options of customers.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Nominal Capacity (MW)</th>
<th>Net Sent-out Capacity (MW)</th>
<th>Total Gross Production MWh</th>
<th>Own use MWh</th>
<th>Total Net Production – available for sale (MWh)</th>
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<tbody>
<tr>
<td>Year 1</td>
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<tr>
<td>Year 2</td>
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<td>Year 3</td>
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<td>Year 4</td>
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<tr>
<td>Year 5</td>
<td></td>
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D.9 If applicable, estimate of the energy conversion efficiency of the generating station.

D.10 Expected economic life of the generating station in years.

D.11 If the power station is not fully dispatchable (e.g. wind generators, co-generators, hydro generators, etc.) then provide a complete break down of when the station is likely to produce electricity. The breakdown should be specified per month, day of week and hour of day.

⁶ In terms of Electricity Regulation: Administrative 3(2)(f) an Operational Plan must be attached.
SECTION E  
PARTICULARS OF ANY LONG TERM ARRANGEMENTS WITH PRIMARY ENERGY SUPPLIERS

(To be provided for each generating station separately)

E.1 If applicable, name of primary energy supplier/s (mining house, colliery or other fuel suppliers)

____________________________________________________________

E.2 Particulars of the contractual arrangements with primary energy supplier

____________________________________________________________

____________________________________________________________

SECTION F  
MAINTAINANCE PROGRAMS AND DECOMMISSIONING COSTS

(To be provided for each generating station separately)

F.1 Details of any proposed major maintenance programmes, including the expected cost and duration thereof, covering the next five years. Project proposal to state the expected availability, planned outage rate and forced outage rate over the first/next five years of operation.

____________________________________________________________

____________________________________________________________

F.2 Details of any major decommissioning cost expected during the life of the power station and provided for in the project feasibility study.

____________________________________________________________

F.3 Details of major generating station expansion and modification planned for in the feasibility study (Dates, cost in current (state year) N$ and depreciation)

____________________________________________________________

____________________________________________________________

7 Attach copies of any signed agreements.
SECTION G CUSTOMER PROFILE

(To be provided for each generating station separately)

G.1 Particulars of the person or persons to whom the applicant is providing or intends to provide electricity from the generating station and particulars of the distribution of that electricity

SECTION H FINANCIAL INFORMATION

9 (To be provided for each generating station separately)

10

H.1 Submit statements of the accounts in respect of the undertaking carried out by the applicant, showing the financial state of affairs of the most recent period, together with copies of the latest audited annual accounts where such have been prepared. Cost data for each generating station is to be broken down into the following categories.

1.1 Primary Energy Cost (HFO, coal, gas, etc.)
1.2 Operations
1.3 Maintenance
1.4 Administration
1.5 Corporate overheads (specify method of allocating head office expenses)
1.6 Depreciation (specify method and rates)
1.7 Finance charges
1.8 Taxes
1.9 Capital expenses
1.10 Other

H.2 Submit annual financial and cost ratios with respect to the profitability, return on assets, cost per N$ of revenue, cost per kilowatt-hour sold and employees per unit of the generating stations.

8 For example, supply to Nampower or supply to local government distribution system. Any power purchase agreements entered into and the price structure of the contract must be approved by the Electricity Control Board before signature thereof.

9 In terms of Electricity Regulation: Administrative 3(2)(f) a Business Plan must be attached.

10 The financial projections should be based on a production plan for the power station and the revenue generated by participating in the electricity market and by bilateral contracts (Power Purchase Agreements) with customers. An integrated resource plan is required to demonstrate that the proposed power purchase agreement is the least cost solution available to the electricity purchaser.
H.3 Submit annual forecast for the next five years of cost, sales and revenue generated by the generating station(s), stating the assumptions underlying the figures.

H.4 Submit a complete cash flow sheet per annum over the life of the project.
Submit a complete Income and Expenditure statement per annum over the life of the project.
Submit a detailed capital plan of all capital expenditure up to commissioning by month (including a breakdown of donor funded assets).
Provide information about operational expenditure up to commissioning by month divided between fixed and variable.
Submit a capital plan of all capital expenditure after commissioning on an annual basis together with ongoing and life extension capital.
Submit operational expenditure after commissioning annually divided between fixed and variable expenditures.
Submit the present value of the expected cost over the life of the generation plan.
Submit the present value of the energy of the life of the generation plant.

H.5 Project Financing: Provide a detailed description of the funding structure of the project. The description should contain the following:
• Submit a detailed funding plan including a list of investors, lenders and donor agencies.
• Provide the interest rates of all loans. If the project has debt to be redeemed in foreign currency, clearly indicate if a fixed rate would be negotiated. If not, indicate how the forex exposure would be mitigated to not adversely effect end consumers.
• Submit detailed information about the seniority of loans and clear agreed repayment plan.
• Submit a complete and detailed production plan.
• Submit a profile of energy production for a period of one year.
• Submit the possible assumptions about expected returns. Does the investor expect their returns in foreign currency? What, if any, instruments will be seen to mitigated the foreign currency exposure.
• Submit the tax implications on an annual basis.

SECTION I

ADDITIONAL INFORMATION

Please provide any other relevant information, which the applicant wishes to include with this application
Appendix 5: Objections Extract from Electricity Regulations: Administrative

Objections

5. (1) Any person desiring to object against an application advertised in terms of regulation 4 may, within a period of 30 days after the date of the publication of an advertisement, lodge a written objection against such application with the Board.

(2) An objection must be submitted in the form determined by the Board and the objector must include at least the following information in the objection -

(a) the name, nationality and identity number, or, in the case of a body corporate, the country of registration and its registration number, or, in the case of an authority created by law, only the name of such authority, and postal and physical address of the objector;

(b) a copy of the newspaper in which the advertisement was placed;

(c) the nature of the interest entertained by the objector in the application;

(d) detailed reasons for the objector’s objection.

(3) The Board must provide the applicant to whom the objection relates with a complete copy of the objection within seven days of such objection being lodged with the Board.

(4) If no public hearing is to be held with regard to an application, the Board must afford the relevant applicant at least 14 days after the closing date for objections to respond to the Board in writing to an objection lodged in terms of this regulation.
Appendix 6: Evaluation Criteria Extract from the Electricity Act, 2000

Criteria for consideration of application

19. (1) The Minister, in considering an application for the issue, renewal, amendment or transfer of a licence, and the Board, in making its recommendation to the Minister on such application, must give due consideration to matters or activities which may adversely affect, or result in damage to, the environment or the rights of others, weighed against the advantages in general that may be derived from the grant of the application.

(2) Without derogating from the generality of the provisions of subsection (1), the Minister or the Board may -

(a) request from the applicant, an environmental impact assessment study indicating the extent of any potential damage to or pollution of the environment and the steps proposed to be taken by the applicant to prevent or minimise such damage or pollution and to restore the environment generally and in terms of existing environmental legislation;

(b) request the applicant to submit details of the technical and economic-financial resources available to the applicant to execute the work, to operate the system and to carry on the business to which the application or licence relates, substantiated by documentary proof where applicable;

(c) take into consideration the extent to which the activities of the applicant will or may be detrimental to or adversely affect the rights and operation of other licensees or their customers in their area of operation;

(d) take into consideration the ability of the applicant to provide an effective service to customers;

(e) take into consideration whether the grant or refusal of the application in question is in the public interest.
Appendix 7: Fees Extract from the Electricity Regulations: Administrative

**FEES**

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Nature of Fee</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>Application fee for:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Issue of licence</td>
<td>N$ 500,00</td>
</tr>
<tr>
<td></td>
<td>(b) Renewal of licence</td>
<td>N$ 500,00</td>
</tr>
<tr>
<td></td>
<td>(c) Amendment of licence</td>
<td>N$ 250,00</td>
</tr>
<tr>
<td></td>
<td>(d) Transfer of licence</td>
<td>N$ 500,00</td>
</tr>
<tr>
<td>7.</td>
<td>Fee for:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Issue of licence</td>
<td>N$ 1000,00</td>
</tr>
<tr>
<td></td>
<td>(b) Renewal of licence</td>
<td>N$ 1000,00</td>
</tr>
<tr>
<td></td>
<td>(c) Amendment of licence</td>
<td>N$ 500,00</td>
</tr>
<tr>
<td></td>
<td>(d) Transfer of licence</td>
<td>N$ 1000,00</td>
</tr>
</tbody>
</table>
Appendix 8: General Information about Namibia

facts about Namibia

Location: South west of Africa bordering Angola, Botswana, South Africa, Zambia and Zimbabwe

Area: 824,269 square kilometres

Population (2001): 1,826,854; population growth rate: 2.6%

System of government: Multi-party democracy with checks and balances exercised through the state organs of the executive, legislative and the judiciary. General, presidential, regional and local elections every five years

Language: English is the official language

Religion: Secular state but over 90% of population is Christian

Currency: Namibian Dollar (N$) pegged 1:1 to the South African Rand

GDP (2002): N$32,116 million (US$4,0145 million, where US$1 = N$8.00)

GDP growth (1993-2002): 4% average

GDP per capita (2002): N$17,580 (US$2,197)

Inflation (1993-2002): 8.5% average

Key economic sectors/GDP (1993-2002): 19% primary, 16% secondary, 55% tertiary

Main exports (1993-2001): 52% minerals (±70% diamonds) 25% fish and fish products, 13% live animals, meat and animal products

Main export destinations: United Kingdom, South Africa, Spain, Germany, Italy, France, Japan, Switzerland, United States, Angola and the Netherlands

Main source of imports: South Africa, Germany, France, Italy, Japan, United Kingdom and the United States

Budget deficit: 3.1% of GDP for the financial year 2002/03
## Appendix 9: Incentives for Manufacturers & Exporters

<table>
<thead>
<tr>
<th>Special Incentives for Manufacturers, Exporters and EPZ Enterprises</th>
<th>Registered Manufacturers</th>
<th>Exporters of Manufactured Goods</th>
<th>Export Processing Zone Enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eligibility and Registration</strong></td>
<td>Enterprises engaged in manufacturing. Application to the Ministry of Trade and Industry and approval by the Ministry of Finance.</td>
<td>Enterprises that export manufactured goods whether produced in Namibia or not. Application and approval by the Ministry of Finance.</td>
<td>Enterprises engaged in manufacturing, assembly, packaging or break-bulk and exporting mainly outside of SACU markets. Application to the EPZ Committee through the ODC or EPZMC.</td>
</tr>
<tr>
<td><strong>Corporate Tax</strong></td>
<td>Set at a rate of 18% for a period of 10 years, whereafter it will revert to the prevailing general rate. Manufactured goods.</td>
<td>80% allowance on income derived from exporting.</td>
<td>Exempt.</td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td>Exemption on purchase and import of manufacturing machinery and equipment.</td>
<td>Normal treatment.</td>
<td>Exempt.</td>
</tr>
<tr>
<td><strong>Stamp &amp; Transfer Duty</strong></td>
<td>Normal treatment.</td>
<td>Normal treatment.</td>
<td>Exempt.</td>
</tr>
<tr>
<td><strong>Special Building Allowance</strong></td>
<td>Factory buildings written off at 20% in first year and balance at 8% for 10 years.</td>
<td>Not eligible.</td>
<td>Not eligible.</td>
</tr>
<tr>
<td><strong>Transportation Allowance</strong></td>
<td>Allowance for land-based transportation by road or rail of 25% deduction from total cost.</td>
<td>Not eligible.</td>
<td>Not eligible.</td>
</tr>
<tr>
<td><strong>Export Promotion Allowance</strong></td>
<td>Additional deduction from taxable income of 25%.</td>
<td>Not eligible.</td>
<td>Not eligible.</td>
</tr>
<tr>
<td><strong>Incentive for Training</strong></td>
<td>Additional deduction from taxable income of between 25% and 75%.</td>
<td>Not eligible.</td>
<td>Substantial, issued by government on implementation of approved training programme.</td>
</tr>
<tr>
<td><strong>Industrial Studies</strong></td>
<td>Available at 50% of cost</td>
<td>Not eligible.</td>
<td>Not eligible.</td>
</tr>
<tr>
<td><strong>Cash Grants</strong></td>
<td>50% of direct cost of approved export promotion activities.</td>
<td>Not eligible.</td>
<td>Not eligible.</td>
</tr>
</tbody>
</table>
Appendix 10: Foreign Investment Act

FOREIGN INVESTMENTS ACT 27 OF 1990
[ASSENTED TO 19 DECEMBER 1990] [DATE OF COMMENCEMENT: 7 JULY 1992]
(Signed by the President)
as amended by
Foreign Investment Amendment Act 24 of 1993
ACT
To make provision for the promotion of foreign investments in Namibia.
ARRANGEMENT OF SECTIONS
1 Interpretation

PART I
ADMINISTRATION OF ACT AND PRINCIPLES REGARDING FOREIGN INVESTMENT
2 Administration of Act
3 Business activities of foreign nationals

PART II
STATUS INVESTMENTS
4 Minister's power to issue Certificate of Status Investment
5 Investments eligible for Certificate of Status Investment
6 Application for a Certificate of Status Investment
7 Grant of a Certificate of Status Investment

RIGHTS AND OBLIGATIONS OF HOLDERS OF CERTIFICATES
8 Availability of foreign currency for certain payments
9 Availability of foreign currency for transfer of profits and proceeds of sale
10 Retention of foreign currency obtained from sale of exported goods
11 Compensation in case of expropriation
12 Obligations of holder of Certificate
13 Dispute settlement in respect of Special Status Investments

AMENDMENT, TRANSFER AND CANCELLATION OF CERTIFICATE
14 Amendment and transfer of a Certificate
15 Cancellation of a Certificate

PART III
MISCELLANEOUS
16 Offences
17 Regulations
18 Temporary provision relating to foreign exchange
19 Application
20 Short title and commencement

Interpretation
(1) In this Act, unless the context otherwise indicates-
"Bank of Namibia" means the Bank of Namibia established by section 2 of the Bank of Namibia Act, 1990 (Act 8 of 1990);
"business activity" means any activity engaged in for gain or reward in any part of the economy of Namibia;

"Certificate" means a Certificate of Status Investment issued under this Act;

"company" includes any other body corporate;

"enterprise" means the business or undertaking in which foreign assets are invested and in respect of which a Certificate has been issued;

"foreign assets" includes freely convertible foreign currency, and any currency, credits, rights, benefits or property, whether corporeal or incorporeal, obtained by the expenditure of foreign currency or, except as regards currency of Namibia which has not been obtained by the expenditure of foreign currency, belonging to a foreign national, and the returns derived from such credits, rights, benefits or property;

"foreign national" means-

(a) a person who is not a citizen of Namibia;

(b) a company incorporated under the laws of any country other than Namibia;

(c) a company incorporated within Namibia in which the majority of the issued share capital is beneficially owned by foreign nationals within the meaning of this definition;

"Government" means the Government of Namibia and includes any body or institution established by or under any law;

"the Minister" means the Minister of Trade and Industry;

"Namibian" means a citizen of Namibia and includes a company incorporated under the laws of Namibia in which the majority of the share capital is owned by Namibians within the meaning of this definition.

(2) At any time before a currency for Namibia has been established under section 19 of the Bank of Namibia Act, 1990 (Act 8 of 1990), an investment in Namibia by a foreign national of rand in the currency of the Republic of South Africa shall be deemed to be an investment of foreign assets notwithstanding that rand will during that period also be the currency for Namibia.

PART I
ADMINISTRATION OF ACT AND PRINCIPLES REGARDING FOREIGN INVESTMENT (ss 2-3)

Subject to the laws governing the public service, there shall be established in the Ministry of Trade and Industry a division, to be known as the Investment Centre, to assist the Minister in the administration of this Act.

Subject to the provisions of this section and the compliance with any formalities or requirements prescribed by any law in relation to the relevant business activity, a foreign national may invest and engage in any business activity in Namibia which any Namibian may undertake.

(2) For the purposes of any law governing the establishment and carrying on of any business activity or the taxation of the income, or any other aspect, of any business activity, a foreign national shall be in no different position than any Namibian, except as may be otherwise provided by this Act.

(3) No foreign national engaged in a business activity or intending to commence a business activity in Namibia shall be required to provide for the participation of the Government or any Namibian as shareholder or as partner in such business, or for the transfer of such business to the Government or any Namibian: Provided that it may be a condition of any licence or other authorisation to or any agreement with a foreign national for the grant of rights over natural resources that the Government shall be entitled to or may acquire an interest in any enterprise to be formed for the exploitation of such rights.

(4) The Minister may, by notice in the Gazette, specify any business or category of business which, in the Minister's opinion, is engaged primarily in the provision of services or the production of goods which can be provided or produced adequately by Namibians, and, with effect from the date of
such notice, no foreign national shall, subject to the provisions of section 7(3), through the investment of foreign assets, become engaged in or be permitted to become engaged in any business so specified or falling within any category of business so specified.

(5) Any law relating to natural resources or any licence or other authorisation granted under such a law conferring rights for the exploitation of such resources, may provide for the granting or enjoyment of such rights to or by Namibians on terms more favourable than those applicable to foreign nationals.

[Subsec (5) added by sec 1 of Act 24 of 1993.]

PART II
STATUS INVESTMENTS (ss 4-15)

[4] Minister's power to issue Certificate of Status Investments
If the investment of foreign assets in Namibia is an eligible investment as defined in section 5, the Minister may, subject to the provisions of this Act, issue a Certificate of Status Investment in respect thereof and the provisions of sections 8 to 13 shall apply in relation to the enterprise in respect of which the Certificate has been issued.

[5] Investments eligible for Certificate of Status Investment

(1) For the purposes of this Act, an investment is an eligible investment-

(a) if it is an investment, or proposed investment, in Namibia by a foreign national of foreign assets of a value of not less than the amount which the Minister may determine from time to time by notice in the Gazette for this purpose;  

(b) if it is a reinvestment, or proposed reinvestment, by a foreign national of the profit or proceeds of sale of an enterprise specified in a Certificate, irrespective of the amount of such reinvestment.

(2) Where the investment is for the acquisition of shares in a company incorporated in Namibia, the investment shall, notwithstanding that the value thereof is equal to or exceeds the amount determined under subsection (1)(a), qualify as an eligible investment only if-

(a) not less than ten per cent of the share capital of the company is held or will, following the investment, be held by the foreign national making the investment; or

(b) the Minister is satisfied that the foreign national making the investment is or will be actively involved in the management of the company.

(3) Where the investment is for the acquisition of a participating share in an unincorporated joint venture, the investment shall, notwithstanding that the value thereof is equal to or exceeds the amount determined under subsection (1)(a), qualify as an eligible investment only if-

(a) not less than ten per cent of the participating share of the joint venture is held or will, following the investment, be held by the foreign national making the investment; or

(b) the Minister is satisfied that the foreign national making the investment is or will be actively involved in the management of the joint venture.


(1) A foreign national may apply to the Minister for a Certificate of Status Investment in respect of an investment which qualifies as an eligible investment in terms of section 5.

(2) An application for a Certificate of Status Investment shall be in the prescribed form, which shall require such information from the applicant as may be necessary to enable the Minister to consider applications in accordance with subsection (3).

(3) In considering an application for a Certificate of Status Investment, the Minister shall have special regard to-

(a) the extent to which the proposed investment is likely to contribute towards Namibia's development objectives;
(b) the extent to which the enterprise in which the proposed investment is to be made will utilize Namibian resources, including labour and natural resources so as to contribute to the economy, by, inter alia-
   (i) increasing employment opportunities in Namibia;
   (ii) providing for the training of Namibians;
   (iii) earning or saving foreign exchange;
   (iv) generating development in the less developed areas of Namibia;

(c) the extent to which the enterprise in which the proposed investment is to be made will contribute to the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices or will facilitate the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society;

(d) the extent to which the enterprise in which the proposed investment is to be made will make provision for equal opportunities for women;

(e) the impact which the activities of the enterprise in which the proposed investment is to be made is likely to have on the environment and, where necessary, the measures proposed to deal with any adverse environmental consequences.

Grant of a Certificate of Status Investment

(1) If the Minister is satisfied that the investment in respect of which application for a Certificate is made will promote the interests of Namibia, the Minister may issue a Certificate in respect thereof.

(2) Every Certificate shall state-
   (a) the name of the foreign national to whom it is granted;
   (b) the name of, and give a description of, the enterprise in which the investment is or is to be made;
   (c) the amount or value of, and give a description of, the foreign assets invested or to be invested and, if they have not yet been invested in the enterprise, the period or periods within which they shall be invested;
   (d) the proportion of the foreign assets invested or to be invested to the total assets of the enterprise, and where the investment involves the acquisition of shares in a company, particulars of the shareholding;
   (e) that the implementation of such of the proposals forming part of the application for the Certificate as are set out in the Certificate shall constitute an obligation of the holder of the Certificate and a condition of the continued validity of the Certificate; and
   (f) such other matters as the Minister may deem necessary or expedient for the purposes of this Act.

(3) A notice by the Minister under section 3(4) shall not affect the validity of any Certificate issued before the date of such notice in respect of any enterprise which is an enterprise specified in such notice or which falls in any category of business so specified, or any right, privilege or benefit accorded by this Act to the holder of such a Certificate.

Availability of foreign currency for certain payments

(1) Notwithstanding the provisions of any other law, the Bank of Namibia shall ensure that there is available for purchase by the holder of a Certificate, at the request of that holder, freely convertible foreign currency which the holder may use without any restriction-
   (a) to repay, in accordance with a schedule approved by the Bank of Namibia, the principal sum of any loan in foreign currency, the proceeds of which formed part of the foreign assets invested in the enterprise, and to pay, subject to the prior payment or the retention of any tax which may be due thereon, the interest and service charges on such a loan as they fall due;
(b) to pay licence fees and royalties to persons ordinarily resident outside Namibia in respect of any intellectual property which is employed in connection with the enterprise, where such payments are due under an agreement which has been approved under any law relating to the transfer of technology or under an agreement approved by the Minister, with the concurrence of the Bank of Namibia, and specified in the Certificate.

(2) The provisions of subsection (1) shall, until the date of publication of the notice referred to in subsection (2) of section 18, have effect subject to the provisions of subsection (1) of that section.

Availability of foreign currency for transfer of profits and proceeds of sale

(1) Notwithstanding the provisions of any other law but subject to subsections (3) and (4) of this section, the Bank of Namibia shall ensure that there is available for purchase by the holder of a Certificate, at the request of that holder, convertible foreign currency which the holder may use without any restriction-

(a) for the transfer out of Namibia of the profits of the enterprise or, where the enterprise is carried on as a branch operation by a company which is a foreign national, for the payment to the head office of the company of remittances out of funds representing the branch profits, after deduction or retention in either case of any tax due;

(b) where an investment to which a Certificate relates is an investment in a company, for the payment to shareholders or stockholders ordinarily resident outside Namibia of dividends out of the profits of the enterprise, after deduction of any tax due;

(c) where the enterprise or any part of the undertaking carried on by the enterprise is sold to any person ordinarily resident in Namibia, for the transfer out of Namibia of the proceeds of such sale;

(d) where the enterprise is a company which has reduced its share capital in accordance with the provisions of the laws relating to companies, for the transfer out of Namibia of the sum by which the capital is so reduced.

(2) No provision of any law relating to exchange control shall apply to foreign currency which is the proceeds of the sale by the holder of a Certificate of the enterprise or any part of the undertaking carried on by the enterprise to a person not ordinarily resident in Namibia.

(3) Where, as evidenced by the Certificate, the foreign assets invested or to be invested in the enterprise constitute only a proportion of the total assets of the enterprise-

(a) the provisions of paragraphs (a), (c) and (d) of subsection (1) shall apply only to the like proportion of the profits, proceeds of sale or sum, as the case may be, referred to therein;

(b) the provisions of subsection (2) shall apply only to the like proportion of the proceeds of sale referred to therein.

(4) If, in the opinion of the Bank of Namibia, the amount of foreign currency required to give effect to paragraph (c) or (d) of subsection (1) in respect of any enterprise would have a significant adverse effect on the external payments liabilities of Namibia, the appropriate foreign currency may be made available by such number of instalments of such amounts and at such intervals as the Bank of Namibia may determine.

(5) The provisions of this section shall, until the date of publication of the notice referred to in subsection (2) of section 18, have effect subject to the provisions of subsection (1) of that section.

Retention of foreign currency obtained from sale of exported goods

(1) A Certificate may, on such terms and conditions as may be prescribed therein, provide for the retention outside Namibia by the holder of the Certificate of any payment, or a proportion of any payment, in foreign currency for goods produced by the enterprise or any undertaking carried on by the enterprise which are exported from Namibia.

(2) Where a provision as contemplated in subsection (1) is made, no requirement of any law for the repatriation of the proceeds of the sale of goods exported from Namibia or for persons to offer such foreign currency to the Bank of Namibia or the Government shall apply to the foreign currency representing any payment or proportion of any payment referred to in subsection (1).
(3) The provisions of section shall, until the date of publication of the notice referred to in subsection (2) of section 18, have effect subject to the provisions of subsection (1) of that section.

[Subsec (3) added by sec 2 of Act 24 of 1993.]

Compensation in case of expropriation

(1) No enterprise, or part of an undertaking carried on by an enterprise, or interest in or right over any property forming part of such undertaking shall be expropriated except in accordance with the provisions of Article 16(2) of the Namibian Constitution.

(2) Where an enterprise or any part of an undertaking carried on by an enterprise, or any interest in or right over any property forming part of such undertaking is expropriated, the Government shall pay to the holder of the Certificate just compensation for such expropriation without undue delay and in freely convertible currency.

Obligations of holder of Certificate

(1) The holder of a Certificate shall-

(a) bring to Namibia and invest in or apply for the benefit of the enterprise, the foreign assets to which the Certificate relates within the time or times provided in the Certificate;

(b) carry out the obligations agreed between the Minister and the holder and specified in the Certificate;

(c) carry out such other obligations of the holder as are specified in the Certificate.

(2) If the holder of the Certificate fails to carry out the obligations referred to in this section within the time or periods, if any, specified in the Certificate, the Certificate may be cancelled in accordance with the provisions of section 15.

Settlement of disputes in respect of Status Investment

(1) If a person to whom a Certificate is to be issued under section 7 so elects, the Certificate shall provide that any dispute between the holder of the Certificate and the Government in respect of-

(a) any issue relating to the amount of, or any other matter in connection with, any compensation payable in a case of an expropriation as provided in section 11;

(b) the validity or continued validity of the Certificate,

shall be referred for settlement by international arbitration.

(2) Where a Certificate provides for the settlement of disputes by international arbitration, arbitration shall be in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force at the time when the Certificate was issued, unless by agreement between the Minister and the foreign national to whom the Certificate is to be issued, another method of settling the dispute has been chosen and the Certificate so provides.

(3) A Certificate which makes provision for international arbitration shall constitute the consent of the holder of the Certificate and the Government to submit to arbitration in the manner provided in the Certificate, and any award rendered in any such arbitration shall be final and binding on the holder of the Certificate and the Government.

(4) Nothing in this section shall be construed-

(a) in a case where a Certificate does not make provision for the settlement of disputes by international arbitration, as impairing or limiting the right of the holder of such Certificate, in the event of a dispute, to any remedy available to the holder in any competent court in Namibia;

(b) in a case where a Certificate does make provision for the settlement of disputes by international arbitration, as precluding the holder and the Minister from agreeing that any particular dispute shall not, as provided in the Certificate, be referred to international arbitration, but be heard and finally determined by any competent court in Namibia.

Amendment and transfer of a Certificate

The Minister may, with the consent, or on application, of the holder of a Certificate, as the case may be, amend a Certificate issued under this Act or transfer the Certificate to any other foreign national.
Cancellation of a Certificate

(1) Where-
   (a) the holder of a Certificate, or any person who acted on behalf of any applicant for a Certificate, is convicted of an offence under section 16 of this Act;
   (b) it is established to the satisfaction of the Minister that a Certificate was issued in consequence of incorrect information supplied by the applicant, or a person who acted on behalf of an applicant for a Certificate; or
   (c) the holder of a Certificate-
       (i) fails or neglects to implement the proposals forming part of the application for the Certificate, as set out in the Certificate; or
       (ii) fails or neglects to comply with any other obligation referred to in section 12, the Minister may give the holder of the Certificate written notice to show cause, within thirty days or such longer period as may be specified in the notice, why the Certificate should not be cancelled.

(2) If a person to whom notice is given under this section fails to comply with the notice, or fails to satisfy the Minister as to why the Certificate should not be cancelled, or in a case referred to in paragraph (c) of subsection (1), fails to satisfy the Minister that any past failure was not due to his or her fault and that adequate steps are being taken to comply with the requirements of the Certificate, the Minister may cancel the Certificate, but such cancellation shall not affect the right of the holder of the Certificate to refer any dispute relating to such cancellation to international arbitration or to the courts of Namibia in accordance with section 13.

PART III
MISCELLANEOUS (ss 16-20)

Offences

Any person who-
   (a) in or in connection with an application for a Certificate under this Act; or
   (b) for the purpose of obtaining or retaining any foreign currency as provided for in this Act, makes any statement which he or she knows to be false or does not believe to be true, or knowingly furnishes any false information, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a term not exceeding ten years, or to both such fine and such imprisonment.

Regulations

The Minister may make regulations prescribing-
   (a) the form and manner in which applications for Certificates shall be made, the information which shall accompany such applications and any fee payable on such applications;
   (b) the form and manner in which applications for or returns relating to foreign currency shall be made and the information which shall accompany such applications or returns;
   (c) the circumstances in which reports shall be made on the progress made in implementing the obligations of the holder of a Certificate and the information to be furnished in such reports;
   (d) such other matters as the Minister may deem necessary or expedient to prescribe for the purposes of this Act.

Temporary provision relating to foreign exchange

(1) Until the date of publication of the notice referred to in subsection (2), the provisions of sections 8, 9 and 10 shall be construed as though they had been amended or modified to the extent necessary to take account of the obligations of the Government under the Bilateral Agreement between the Governments of the Republic of Namibia and the Republic of South Africa, dated 4 April 1990, and any amendment or modification thereof; and
(b) in the event of Namibia becoming a party to the Multilateral Monetary Agreement existing between the Governments of the Kingdom of Lesotho, the Kingdom of Swaziland and the Republic of South Africa, also under that agreement and any amendment or modification thereof. [Subsec (1) amended by sec 3(a) of Act 24 of 1993.]

(2) As soon as-

(a) a currency for Namibia has been established under section 19 of the Bank of Namibia Act, 1990 (Act 8 of 1990); and

(b) the agreements referred to in subsection (1) have expired or have been terminated or are no longer in effect so as to impose on the Government of Namibia obligations relating to the management of foreign exchange transactions,

the Minister shall, by notice in the Gazette, declare that the provisions of subsection (1) of this section, subsection (2) of section 8, subsection (5) of section 9 and subsection (3) of section 10 have expired and thereafter those provisions shall be of no further force or effect. [Subsec (2) amended by sec 3(b) of Act 24 of 1993.]

Application

The provisions of this Act relating to Status Investments shall apply to any investment of foreign assets in Namibia, irrespective whether such investment was made before or after the commencement of this Act.

Short title and commencement

(1) This Act shall be called the Foreign Investments Act, 1990 and shall come into operation on a date to be fixed by the President by Proclamation in the Gazette.
Appendix 11: Land ownership in Namibia